

1660

**BEFORE THE NATIONAL GREEN TRIBUNAL,
WESTERN BENCH, PUNE**

PUNE ZONAL BENCH

ORIGINAL APPLICATION NO. 7 OF 2020

IN THE MATTER OF:

ARYAVART FOUNDATION

...APPLICANT

VERSUS

M/S NARODA ENVIRO PROJECTS LTD
(CETP) & ORS.

...RESPONDENTS

INDEX

Sr. No.	Particulars	Page Nos.
01.	Written Submissions on behalf of the Respondent No.1 – NARODA ENVIRO PROJECTS LIMITED	1660 -

Filed by:



ANUSHREE KAPADIA

ADVOCATE FOR THE RESPONDENT No.1

Off: B/7/83/2 First Floor

Safdarjung Enclave (Main)

Behind B7 Park, New Delhi – 110029

Mobile No. 9958 00 9320

Email: a.kapadiaoffice@gmail.com

Enrl. No. G/860/2006

**BEFORE THE NATIONAL GREEN TRIBUNAL,
WESTERN BENCH, PUNE**

Original Application No. 7 of 2020

Aryavarat Foundation

... Applicant

Versus

M/s. Naroda Enviro Projects Limited (CETP)

and others

... Respondents

WRITTEN SUBMISSIONS ON BEHALF OF
RESPONDENT NO.1 – NARODA ENVIRO PROJECTS
LIMITED

1. Background:

1.1 About Respondent No.1 - Naroda Enviro Project Ltd:

Respondent No.1 - Naroda Enviro Project Ltd (“NEPL”) runs a Common Effluent Treatment Plant (“CETP”) at Industrial Estate at Naroda, Ahmedabad, Gujarat. The Industrial Estate was established by Gujarat Industrial Development Corporation (“GIDC”) in the year 1962, at a considerable distance from the city of Ahmedabad beyond its municipal limits and also much before Environmental Laws were enacted for regulation of Industries in 1974. Resultantly, the Estate was not built with infrastructure that would have been commensurate to meet with the subsequent and involving legislative development in Environmental Laws. At the time of establishment, the Plot Holders at GIDC did not even have enough space which would later be required for establishing a secondary facility for effluent treatment.

- 1.2 **Gujarat High Court's Judgement leading to setting up of CETP:** The issue regarding pollution caused by industries set up in the Estate was considered by the Hon'ble High Court of Gujarat in 1995 in Special Civil Application No. 770 of 1995. The Hon'ble High Court heard all stakeholders like the State of Gujarat, Ahmedabad Municipal Corporation (**"AMC"**), Gujarat Pollution Control Board (**"GPCB"**), Gujarat Industrial Development Corporation (**"GIDC"**), the Petitioners therein and the Industries to find a solution and to create infrastructure to deal with the problems of pollution and for protection of environment. The Hon'ble High Court decided the petition vide judgment dated 05.08.1995, reported in 1995 (2) GLR 1210 (**Pg. 1227-1270**). The Hon'ble Court, inter alia, held that the Units discharging more than 25,000 liters of water per day, were required to give, both primary and secondary treatment to their effluent. The State Government, GIDC and AMC were directed to lay separate necessary pipes and/or drains to carry treated industrial effluent to Pirana for mixing the same with the treated sewage before discharge into the river Sabarmati. The Hon'ble Court recorded consensus among all parties that it was stated by all that if the primary and secondary treatment is given to the effluent and the same is thereafter mixed with the treated municipal sewage before it is discharged into the water, then there will be no water pollution. Para 150 of the said judgment reads as under:

"It has been submitted and accepted by all the parties that if the Industrial Units in these Estates are taken together in their collectivity, the GPCB norms regarding the TDS can be fully met only after the treated effluents from the Industrial Units are mixed with the Pirana sewage discharge after its treatment. The TDS is expected to be reduced to the level of the GPCB norms either as a result of secondary treatment given by the Industrial Unit concerned at the plant level or by mixing the treated industrial effluents of the Estate taken together and mixed with the Municipal sewage after its

treatment in the Pirana plant. Time has been given for this purpose upto 31.12.1995. Hence, for the purpose of aforesaid directions (a) and (b) the compliance of the GPCB norms will essentially mean compliance with norms other than TDS.”

- 1.3 **CETP of Respondent 1:** It was in the aforesaid background that CETP came to be set up in various Industrial Estates within the city of Ahmedabad, including in the Estate at Naroda GIDC. NEPL came to be incorporated and registered under Section 25 of the Companies Act, 1956 on 19.10.1995 to set up and run the CETP (**Pg. 220, Pr 4.1 of Reply**). NEPL thus runs on no profit basis. No profit is distributed to its members.
- 1.4 **Mega Pipeline:** The effluent treated by NEPL is discharged into river Sabarmati through a mega pipeline which was conceptualized under the judgment delivered in the PIL mentioned hereinabove, which carries effluent of six CETPs viz the answering Respondent No. 1 NEPL, Odhav Enviro Project Limited, Odhav Green Enviro Private Limited, Gujarat Vepari Mahamandal, Green Environment Cooperative Services Society Limited, Vatva and Reliance Industries Limited (**Pg. 232, Pr 9.4 of Reply**). Consent to establish under Section 25 of Water Act, 1974 and Section 21 of Air Act, 1981 is granted to MEGA (**Pg. 1565**).
- 1.5 **Minuscule contribution of NEPL to river Sabarmati:** Waterflow distribution in mega pipeline CETP-wise is illustrated in a pie chart at Annexure R/11 (**Pg.483**). It shows that the contribution of Naroda Enviro Project Limited, when the petition was filed, was 11.78% considering that its discharge volume was 3.50 MLD. The waterflow distribution at final discharge port in river Sabarmati after mixing of the effluent of mega with the sewage of Ahmedabad Municipal Corporation is illustrated in a pie chart at Annexure R/10, (**Pg.482**), which

shows that the contribution of Naroda Environment Project Ltd is less than 0.50%.

- 1.6 **Consents by GPCB:** NEPL CETP has Consent to operate. Its earlier Consents was issued on 20.10.2011(**Pg. 265, R/4**) and on 21.04.2017 which was valid till 02.08.2021 (**Pg.273, R/4**). It is pertinent to note that the said consent did not prescribe any inlet norms. So far as TDS is concerned, Para 3.4 read as under in keeping with what was decided by the High Court of Gujarat in Special Civil Application No. 770 of 1995:

“3.4 The effluent conforming to the above standards shall be discharged through closed pipelines into mega pipeline and shall be mixed with treated sewage of Pirana Sewage Treatment Plant of Ahmedabad Municipal Corporation so that concentration of Total Dissolved Solids shall remain below 2100 mg/l before ultimate disposal into river Sabarmati.”

The Inlet Quality Standards were prescribed for CETP for the first time vide Notification dated 01.01.2016 by stating that for each Common Effluent Treatment Plant, the State Board will prescribe Inlet Quality Standards for General Parameters, Ammoniacal Nitrogen and heavy metals as per design of CETP and the local needs and other conditions. So far as CETP Naroda is concerned, inlet norms came to be prescribed for the first time by amendment of consent dated 25.11.2017 (**Pg.282**).

There was further amendment in the consent on 14.07.2021 (**Pg.1009**), whereby the capacity of the CETP was increased from 3 MLD to 14 MLD.

The current consent was granted on 25.02.2023 and is valid till 21.11.2029 (**Pg.1354**).

- 1.7 **Treatment at CETP:** CEPT has 181 member industries. CETP receives effluent mainly from three types of industries, namely food, textile and chemical. CETP is based on the concept of segregation at source of three different types of effluents, which are treated separately. There are 30 sumps/drainage chambers at different locations within Naroda GIDC for conveyance of wastewater from CETP to members units to CETP. There is staggered timing for discharge of effluent. The plant undergoes continuous monitoring as well as upgradation so as to make it compatible with changing norms, changing pattern of effluent as well as to maximise use of available technology. (See Scheme of the Plant **Pg.252** of Reply to OA and further elaborated on Para 5, 6 of objections dated 08.10.2020 **Pg. 642-644**). Majority of the units are either micro, small or medium (**Pg.1655 to 1658**).
- 1.8 **Upgradation:** NEPL continuously strives to use better technology and find better solutions for prevention of pollution and preservation of environment. NEPL has spent ₹30 Crores in setting up the CETP and an additional ₹18 Crores on retrofitting and upgradation. This investment was made without any government subsidy, which means NEPL bore the entire financial burden on its own. Respondent no.1 has undertaken large scale upgradation to achieve optimum parameters. The work started in 2017 and NEPL has spent nearly Rs. 18 crores for retrofitting and enhancement of treatment facilities and the details thereof are submitted to GPCB since the beginning along with the bar charts, progress reports and photographs at regular intervals (Para 5.2 of reply at **Pg.223**). A certificate issued by the Chartered Accountant of NEPL on the expenses incurred as on 31.03.2022 is at **Pg. 1332-1333**. NEPL has deposited Rs. 2.18 Crores towards Deep Sea Pipeline.

- 1.9 **Pending Writ Petition (PIL) No. 98 of 2021 before Gujarat High Court re pollution in river Sabarmati:** The High Court of Gujarat initiated a Suo Moto Public Interest litigation being Writ Petition (PIL) No. 98 of 2021 with respect to pollution caused to river Sabarmati. The petition is pending and is regularly listed. All stakeholders like the State of Gujarat, GPCB, AMC, GIDC, all CETP are joined as respondents. The Hon'ble court vide order dated 10.12.2021 directed NEERI to visit all CETPs and to opine on the effectiveness of the treatment scheme adopted. So far as NEPL CETP is concerned, NEERI suggested that advanced oxidation process such as hydrodynamic cavitation be implemented. Pursuant to recommendations of NEERI in March 2022 pending W. P. (PIL) No. 98 of 2021 before the Hon'ble High Court of Gujarat, the Respondent no. 1 has implemented the suggestions of NEERI, being advanced oxidation process such as hydrodynamic cavitation as a better techno-economical option for chemical effluent stream. GPCB has at all stages been aware of the upgradation and has monitored all the activities of the Respondent no. 1. CPCB has also continuously monitored the activities and the discharge of the Respondent no. 1. **(Pg. 1289-1294).**

2. **This OA - Pleadings and Reports:**

2.1 **Pleadings:**

The Original Application is filed by Aryavarat Foundation, inter alia, praying for special and punitive damages against Respondent No.1 NEPL and its constituent member units towards restoration and restitution of river Sabarmati to bring it to its original pristine state. The following pleadings have been filed –

- (a) Applicant: OA filed by the Applicant **(Pg. 1 to 158)**. The Applicant has not filed any further pleadings.
- (b) CPCB: filed its reply at Pg.173-216.
- (c) GPCB: No reply is filed by GPCB.
- (d) NEPL:
 - (i) Reply to OA **(Pg.217-542)**
 - (ii) Objections to Report of Committee dated August 2020 **(Pg.640-901)**
 - (iii) Additional Affidavit **(Pg.996-1223)**
 - (iv) Compilation of Judgements **(Pg.1226-1276)**
 - (v) Additional Affidavit dated 01.07.2023 **(Pg.1284-1479)**
 - (vi) Objections to undated Report of CPCB and GPCB dated 02.09.2023 **(Pg.1481-1491)**
 - (vii) Reply/Objections to Report of Joint Committee dated 12.03.2024, dated 27.06.2024 **(Pg.1589-1659)**

2.2 Reports:

Three reports have been placed before this Hon'ble Tribunal –

- (i) First Report:

Report of August 2020 of Committee **(Pg.541-608)** appointed by the Hon'ble Tribunal by way of order dated 05.02.2020 read with order dated 29.06.2020. Respondent no. 1/NEPL has submitted its objections to the First Report **(Pg. 637-902)**

(ii) Second Report:

Pursuant to orders of the Hon'ble Tribunal dated 11.09.2020 and 21.09.2020, Respondent no.2 and 3 have prepared a report to determine the environmental compensation **(Pg. 948-978)**. This is not a report by the Joint Committee appointed by the Hon'ble Tribunal and is in violation of order dated 26.11.2020 of the Hon'ble Supreme Court of India in Civil Appeal No.3594-3595 of 2020 **(Pg. 1489)**. The copy of such Second Report was supplied to NEPL only on 12.07.2023 and objections to the second report had been filed. **(Pg. 1481-1491)**

(iii) Third Report:

After a large number of errors were pointed out to the Hon'ble Tribunal in the First Report, vide order dated 06.09.2023, the Hon'ble Tribunal was pleased to direct the Joint Committee to look into the objections of the Respondent no.1/NEPL, to assess exact number of days of prior violations, to hear NEPL before arriving at any conclusion and to determine the environmental damage compensation payable by NEPL. On 06.09.2023, the Hon'ble Tribunal also noted the miniscule contribution of NEPL in terms of quantum of treated effluent discharge in the River Sabarmati.

Pursuant to order of the Hon'ble Tribunal dated 06.09.2023, Third Report dated 12.03.2024 has been submitted by the Joint Committee of the Hon'ble Tribunal. **(Pg.1492-1588)** NEPL has submitted its detailed objections to the said Third Report **(Pg. 1589-1659)**.

3. Issues in this OA and contentions of NEPL:

- 3.1 The Applicant alleges that the Respondent NEPL and its members caused pollution to river Sabarmati and hence be held liable to pay Environmental Damage Compensation (“EDC”). Reliance is placed on the assertions made in the Original Application and the reports.

The respondent NEPL submits that there is nothing on record that shows:

- (i) that NEPL caused any pollution. None of its members are impleaded as a party Respondents;
- (ii) that NEPL is responsible for pollution in river Sabarmati or;
- (iii) that NEPL is liable to pay EDC.

The contentions of NEPL are elaborated hereinafter.

3.2 Dealing with OA:

The test reports from Annexures A-82 to A-86 to the OA cannot be attributed to the Respondent No.1 and the reliance thereon is misconceived and misleading. The point of collection of samples in the reports produced at Annexure A-82 to A-86 are from outlets of other STPs/entities which are not party to the present proceedings and which have no nexus with the answering Respondent. In fact, some of these STPs/entities are not even connected to the Mega Pipeline and are not made party to the present proceedings. The point of collection of sample at the outlet of Mega Pipeline into the River is not attributable to the answering Respondent as the effluent at such point is combined and received from 6 different STPs and many other illegal discharge points made into the Mega Pipeline and effluents/sewage from upstream river also merge at this point.

The method of collection of samples, the method of preservation of samples and the type of tests conducted are also not correct as whenever sampling is done by any Authority, it is necessary to preserve the sample, which in spite of several requests of the Respondent No.1 from time to time, has not been adhered to.

3.3 Dealing with Report of August 2020:

NEPL has filed detailed objections dated 08.10.2020. Point wise response to the conclusion reached by the committee is given in a tabular form at **Pg.668 of the Reply** which is reproduced below for convenience.

S.No.	Report (pg. 568)	Reply (pg. 668)
a)	The CETP and member units should meet their discharge norms for wastewater by augmenting their wastewater treatment system.	The CETP and member units are meeting discharge norms for wastewater and is consistently augmenting wastewater treatment system.
b)	The CETP should submit time bound action plan for improvement in waste water collection and treatment to achieve regulatory compliance.	An action plan for improvement in waste water collection and treatment is already under implementation.
c)	CETP should establish a mechanism for monitoring of effluent quality of each	An effective mechanism for monitoring of effluent waste water tankers is in

	waste-water tanker received for treatment in CETP (except for MEE/spray drier), monitor the effluent of member units/ each sump for hydraulic load and effluent quality and mechanism should be established to address the non-compliance by sharing the defaulting unit list with GPCB on regular basis.	place, both in respect of what comes to MEE and spray dryer and the one that comes to the sumps. Hydraulic load of each of the member units and effluent quality is regularly assessed
d)	The CETP should control spillages and leachates not only in CETP but also in MEE and spray drier area.	The sludge collection observed by the Committee was a monsoon phenomenon and as per guidelines issued by CPCB and direction issued by GPCB. NEPL has started disposal of accumulated sludge from 27.09.2020. Sludge removal data from 26.10.2021 to 02.11.2021. reveals 392.235 MLD of sludge removed. (Pg. 1035 of Addl. Affidavit)
e)	CETP should immediately construct proper sludge storage shed with leachate management facility and dispose the accumulated sludge on priority.	
f)	The CETP and its member units should take all necessary measures for removal of colour in effluent.	Colour is not a parameter that can be prescribed as per Entry 55 of Schedule I of the Rules. The parameter of 100 mg/l of colour in consent is without recording reasons and

		hence needs to be discarded. Said norm is contrary to outlet norms of dye and dye intermediates.
g)	A mechanism should be established by CETP after completion of its augmentation plan to review the overall operational effectiveness of its systems by engaging independent expert of national repute by critically auditing the existing mechanism and system and to suggest any improvements required to meet the norms. This is especially needed as even after receiving lean effluents from textile units and sewage, the CETP has not reached to its desired performance.	An augmentation plan for overall operational effectiveness is already under implementation.
h)	CETP to formulate mechanism to ensure the inlet quality norm compliance and hydraulic load compliance from member units in the sumps/chambers through	CETP has a mechanism in place to ensure inlet quality norms compliance and hydraulic load compliance for member units in sumps and chambers

	suitable system such as SCADA system.	
i)	Henceforth FDS should be monitored at outlet of member units, inlet of CETP, outlet of CETP and outfall of mega pipeline in Sabarmati river along with other consented parameters.	FDS monitoring would be done strictly at the outlet of member units, inlet of CETP, outlet of CETP. It is not possible for NEPL to monitor at the end of outfall of mega pipeline. FDS is not a parameter for majority of the members of the respondent CETP.

3.4 Dealing with Second Report:

Vide order dated 26.11.2020 passed by the Hon'ble Supreme Court in Civil Appeal No. 3594-3595 of 2020, the Hon'ble Supreme Court was pleased to set aside orders dated 11.09.2020 and 21.09.2020 in the present proceedings, to permit NEPL to file objections to the report of Pollution Control Board and that such objections be taken up and heard by the Hon'ble National Green Tribunal before passing any direction/s as to computation of compensation.

In light of the said order, the Respondent no. 2 and 3 herein could not have acted upon orders dated 11.09.2020 and 21.09.2020. Yet on 24.12.2020, Respondent No.2 and 3 have proceeded to compute environmental compensation in compliance of orders dated 11.09.2020 and 21.09.2020.

By way of the Third Report of Joint Committee (dated 12.03.2024), such report of 24.12.2020, which is effectively null

and void, has been re-affirmed, without any application of mind and without providing for any basis for calculation for the proposed environmental compensation to be paid by Respondent No.1.

The Joint Committee is independent of Respondent No.2 and 3 herein, and is a separate & distinct body for the purposes of complying with the directions contained in order dated 06.09.2023. The Joint Committee does not have any common identity with Respondent no.2 and 3 and cannot affirm a null and void report (second report) without application of mind and without explaining the calculation adopted by it. Reference to the second report is bad in law and vitiates the third report completely.

3.5 Dealing with the Third Report:

The Third Report is vitiated by non-application of mind, arbitrary observations, and for want of any specific and clear findings. The third report carries on the defects of the first report, which has been found to be very generic and therefore, not reliable.

The Joint Committee has attempted to revise and improvise on the First Report, by introducing new allegations and facts, which were never a part of the First Report, and such improvisation is arbitrary, unfair and bad in law.

Such new facts and assertions deserve to be discarded as the same is ex-facie beyond the purview of the mandate to the Committee contained in order dated 06.09.2023, in addition to being underhand. The Committee has introduced new photographs allegedly of the online monitoring system of Respondent no.1 as on 08 August 2020, when no such data or

material is mentioned in its First Report. Only when the Committee has been confronted with the online monitoring data of OCEMS device which is installed as per direction of the Respondents no.2 and 3 from their approved vendor and both Respondent no.1 and 2 get results every 15 minutes on their platforms which is ignored by Respondent No.2 while matching physical samples and an attempt has been made (after almost 4 years) to create doubt over such data without providing any scientific and real material in support of the ambiguous reasoning given by it to discard the online monitoring data. **(Pg.1592-1635)**

3.6 **Inlet Quality Standards:**

Inlet Quality Standards were prescribed for CETP for the first time vide Notification dated 01.01.2016. So far as CETP Naroda is concerned, inlet norms came to be prescribed for the first time by GPCB vide amendment dated 24.11.2017. Rule 3 of Environment Protection Rules, 1986 (**“the Rules”**) provide that standards for emission of discharge for environmental pollutants specified in Sub-Rule (1) of Sub-Rule (2) shall be complied with by an industry, operation or process within a period of one year of being so specified. Considering that Inlet Quality Standards were prescribed for NEPL for the first time on 24.11.2017, there cannot be any question about NEPL not meeting with inlet standards at least till 24.11.2018. There can thus be no assessment of Environmental Damage Compensation on the premise that CETP failed to meet with Inlet Quality Standards.

3.7 **Erroneous Application of Standards in the Consent:**

The Committee has failed to take into account certain apparent errors in the consent itself which is in teeth of provisions of law.

For example, the inlet parameter of 100 units for colour is misplaced considering that colour is neither a general parameter or a specific parameter in Entry 55 and considering that the corresponding parameter for Colour is 400 in Entry 8. Moreover, as per Entry 55, Inlet Quality Standards can be prescribed only in respect of General Parameters, Ammoniacal Nitrogen and heavy metals. Prescribing of Inlet Quality Standards in respect of temperature, colour, suspended solids, oil and grease, phenolic compounds, sulfides, total chromium, hexavalent chromium is thus ex-facie misplaced, uncalled for and amounts to overreaching the Rules. FDS does not find a corresponding parameter so far as dye and dye intermediate industry is concerned. Ph standard of 6.5 to 8.5 is contrary to the standard of 6 to 9 prescribed in Entry 55. Apart from the above, Rule 3(2) mandatorily requires that the State Board may specify more stringent standards from those provided in Schedule 1 to 4 only in respect of any specific industry, operation or process depending upon the quality of recipient system and after recording reasons therefor in writing. In the instant case, GPCB has not recorded any reasons for prescribing standards different than those prescribed in the Schedules. The aforesaid issues are relevant consideration while dealing with the issue of assessment of Environmental Damage Compensation.

3.8 **TDS:**

So far as TDS is concerned, CETP cannot be held responsible for any Environmental Damage Compensation for not meeting the said parameter. CETP came into existence as envisaged in the litigation before the Hon'ble High Court of Gujarat in Special Civil Application No. 770 of 1995. It was agreed by all stakeholders and also recorded in the judgment passed by the Hon'ble High Court of Gujarat that TDS shall not be a norm so far as the industrial units in the Estates before the Hon'ble High

Court which included Naroda Industrial Estate is concerned. The consent dated 22.04.2017 specifically so records in Para 3.4 which is reproduced below **(Pg.275)**:

“3.4 The effluent conforming to the above standards shall be discharged through closed pipelines into mega pipeline and shall be mixed with treated sewage of Pirana Sewage Treatment Plant of Ahmedabad Municipal Corporation so that concentration of Total Dissolved Solids shall remain below 2100 mg/l before ultimate disposal into river Sabarmati.”

A similar condition appears in previous consent dated 12.10.2011 which was valid till 19.04.2016 in para 4 of the said consent which is reproduced below **(Pg.267)**:

“4. The effluent conforming to the above standards shall be conveyed to Pirana Sewage Treatment Plant of Ahmedabad Municipal Corporation through closed pipelines & shall be mixed with treated sewage so that concentration of Total Dissolved Solids shall remain below 2100 mg/l before ultimate disposal into river Sabarmati.”

It would not be out of place to mention that Annexure VII attached to the report of Joint Committee of August 2020 also does not refer to TDS as a parameter which could have bearing on alleged pollution caused by Respondent No.1 **(Pg.585-587)**.

- 3.9 **No Finding Re Pollution By Member Units:** The Committee in its report of August 2020 visited only three member units. Considering that the total number of member units was 181, the sample of three is negligible and cannot be looked at for holding the CETP liable to pay any Environmental Damage Compensation. It is pertinent to note that Annexure VIII to the said report **(Pg.594)** shows that almost all member units meet with parameters.

3.10 **Sludge:**

Collection of sludge which was noticed by the Committee in August 2020, was on account of monsoon and in view of various directives of Gujarat Pollution Control Board (Elaborated in Para 10, **Pg. 653** of the objections to the report by NEPL). As per CPCB Criteria For Hazardous Landfills (**Pg.688**), all hazardous waste management sites are required to be covered with final cover/intermediate cover and landfilling operations remained suspended during monsoon. GPCB also addresses letters to operators of landfill sites on monsoon, planning of landfill sites, requiring them to cap the face with the cover as is evidenced by letter of GPCB dated 11.06.2020 at **Pg.706**. Additionally, from 15.02.2021 to 25.10.2021, the TSDF sites in the state of Gujarat including those of Eco Care, an approved company of GIDC and also of Kutch Enviro of which Respondent No.1 were closed pursuant to a ban imposed on the facilities from accepting any hazardous waste from anyone as is evidenced by endorsement made by Respondent No.1 on 18.10.2021 on the inspection notice issued by GPCB (**Pg.1033**). NEPL has regularly removed hazardous waste. Such data is produced at **Pg.654, Pg.1034 and Pg.1355**. Apart from the above, Soil testing reports on record (**Pg.1030**) clearly show that there is no pollution of the soil where the CETP is located.

3.11 **Retrofitting work in 2018:**

The work of retrofitting is going on since 2018 well within the knowledge of GPCB. The upgradation work slowed down during the pandemic since March 2020. During the retrofitting work, some of the equipment, tanks at CETP do remain out of operation, which may lead to variation in parameter.

3.12 River Action Plan of River Sabarmati:

The OA overlooks the River Action Plan of River Sabarmati, drawn by River Rejuvenation Committee (“RRC”) of GPCB, which clearly indicates that the expansion of existing capacity of various treatment plants and quality assessment was an ongoing and continuous process. Pursuant to directions given by the Hon'ble Tribunal in OA No. 673/2018 dated 20.09.2018 (pg.285, Annexure R-5, Reply to OA), RRC of GPCB has prepared River Action Plan (pg.316, Annexure R-6, Reply to OA) for River Sabarmati. It is clear from the said plan that the CETPs of PRS Sabarmati do not achieve the prescribed norms because “*Upgradation of CETPs is required to achieve Norms*”. It is also clear from the minutes of the meetings of RRC (pg.355, Annexure R-7, Reply to OA) that “*For PRS Sabarmati, all CETPs of Ahmedabad are not meeting the norms as they are under upgradation (GECSL, NEPL, OEPL, NDES) under stabilization (NTIEM) as per the information given by concerned RO, GPCB ...*”.

3.13 Analysis Reports Not Reliable:

The Joint Committee Report of August 2020 mentions result of outlet parameters of CETP from 2015 to 2020. The table is based on samples taken and analyzed by GPCB. The said results cannot be relied on as the samples have been taken in absolute violation of procedure for taking samples as laid down in the Rules. Rule 6 lays down that the Officer empowered to take sample under Section 11 shall collect the sample in sufficient quantity to be divided into two uniform parts and collectively sealed and suitably mark the same and permit the person from whom the sample is taken to add his own seal. It requires one portion to be handed to the person from whom the sample is taken under acknowledgement. Rule 8 prescribes the procedure for submission of samples for analysis and the form of

laboratory report thereon. So far as NEPL is concerned, it has been consistent experience that GPCB does not give second part of the sample sealed and marked by it to NEPL. NEPL has protested to this flagrant violation of procedure on number of occasions (Letters at Annexure R/9, **Pg. 472** , at Annexure R/5, **Pg.719**). Violation of mandatory provisions prescribing method of taking samples render the results nugatory. It is an established principle of law that if a particular thing is required to be done in law in a particular manner, it has to be done in that way or not at all. Violation of mandatory procedure in drawing samples, which allows the person from whom the sample is drawn to keep a part of the sample and get it analyzed results in making the results of such test unreliable robbing them all evidentiary value. Parallel can be drawn from instances of violations in following mandatory procedure in respect of Food Adulteration Laws, Drugs and Cosmetic Laws and the like. There have also been instances where GPCB has corrected its own declared result after protest from the Respondent.

3.14 **Online Monitoring Data:**

GPCB has issued guidelines dated 17.11.2014 requiring industries/CEPTs to install Online Continuous Effluent Monitory System (**“OCEMS”**). NEPL has installed OCEMS from GPCB approved vendor. The data on OCEMS shows very different result from the results shown in the joint committee data. Reports of OCEMS of some of the dates mentioned in the report are attached at Annexure R/9, (**Pg.121-262**) which shows that the results of analysis by GPCB are unreliable when compared to results generated by OCEMS.

3.15 **Miniscule Contribution of NEPL to River Sabarmati:**

The Original Application is filed to hold NEPL responsible for polluting river Sabarmati. The total contribution of NEPL to the effluent discharged into river Sabarmati after mixing effluent from mega with sewage of AMC is less than 0.50%. When the load of water discharged by NEPL into river Sabarmati is so miniscule , it cannot be held responsible for polluting river Sabarmati and cannot be held accountable for Environmental Damage Compensation.

3.16 **Non-Joinder Of Necessary Parties:**

The OA suffers from non-joinder and misjoinder of necessary parties. A number of CETPs, Ahmedabad Municipal Corporation (AMC) and industries in addition to large number of illegal outfalls, release effluents/ untreated water in the Sabarmati River. Pollution in River Sabarmati is not a result of alleged actions/non-actions solely of the Respondent no.1. The capacity of the CETP of NEPL is based on the effluent discharge from its member units which belong to various sectors *like* Food processing, Textiles, Pigments Dyes and Dye intermediaries, Pharmaceutical and Engineering. Serious allegations have been levelled against member industries of the answering Respondent without specifying the details of any such industry or arraying them as parties to the present proceedings. Moreover, the application seeks to remedy pollution of river Sabarmati without joining Ahmedabad Municipal Corporation (AMC), which releases effluent and sewage into the river and without joining the large number of industries that release their effluents into the Mega Pipeline flowing into River Sabarmati or even directly into the said River. The discharge by Respondent No.1 to river Sabarmati is less than 0.50% of the total discharge.

When the Applicant, Aryavart Foundation, is raising an issue about pollution to river Sabarmati it is incumbent on the Applicant to join all parties who discharge their effluent into one petition. The Applicant however has chosen to file one petition after other petition targeting different CETPs. It is pertinent to note that the Applicant filed Original Application No.38 of 2019 (WZ) **(pg.12 of Joint Report dated 12.03.2024)** against Vatva CETP name Green Environment Services Co-op. Society Ltd. and against Vapi CETP being Original Application No.95 of 2018 (PB) **(pg.12 of Joint Report dated 12.03.2024)** and now, this Original Application is being filed. Filing of such selective applications while alleging pollution to river Sabarmati ex facie appears to be ill advised, motivated and misplaced. The Application deserves to be dismissed on ground of non-joinder and mis-joinder of parties.

3.17 Committees' Reports not reliable:

The reports of the Joint Committee, including the Third Report, raise profound concern regarding the non-scientific, non-empirical and legally untenable approach adopted by the committee in its fact-finding process. The present proceedings call for evidence-based decision-making, and it is imperative to underscore the importance of scientific rigor and integrity in the pursuit of justice. While the Respondent no. 1 acknowledges the complexity of the issues at hand and the challenges inherent in fact-finding processes, it is crucial that the committee relies on methodologies grounded in sound scientific principles. By adhering to rigorous scientific methods, the committee can ensure the accuracy, reliability, and impartiality of its findings, thereby upholding the integrity of the judicial system. However, it is unfortunate that the committee's approach thus far has been lacking in scientific rigor and in complete disregard of the law. This not only undermines the credibility of the committee's findings but also jeopardizes the pursuit of justice and fairness.

Without a commitment to scientific principles, the proceedings are put to a risk of bias, misinformation, and injustice pervading the fact-finding process.

3.18 No evidence of pollution:

There is nothing on record that even suggests any harm, damage or destruction to any person or property or environmental system which is attributed to Respondent No.1. As is stated hereinabove the discharge that can be attribute to Respondent No.1 in river Sabarmati is less than 0.50%. There is nothing to show pollution in river Sabarmati, much less pollution that can be attributed to Respondent No.1. The Applicant relies on two documents to allege pollution, namely a Study Report prepared by CSIR-Central Salt and Marine Chemicals Research Institute, Bhavnagar of 06.12.2013 (Annexure A-1 at **Pg.47-58**) and an alleged Report on Joint Investigations by Paryavaran Suraksha Samiti and GPCB released on 12.03.2019 (Annexure A-2 at **Pg.59-62**). None of the two documents deserve any consideration for deciding the issue of pollution. So far as the CSIR report is concerned, it is published in 2013 and should not have even been attached while filing the Application in 2019. Apart from this, the said report itself suggests that a detailed study is required to assess impact on human health and contamination in the food. The said report cannot be relied on to say that Respondent No.1 caused any pollution to river Sabarmati. So far as the document at Annexure A-2 is concerned, it is just a press release which is not even signed by anyone. The Applicant has made absolutely misleading and contemptuous statement by terming a press release as a report. The press release does not bare any approval of GPCB as alleged. The said document needs to be discarded in toto. The Applicant in fact should be held accountable for producing a document which is not authentic and not what it is stated to be

in the pleadings on oath. The said press release does not even mention the manner in which the samples were collected, stored and analyzed. No authenticity can be attached to the findings in the so called press release. Apart from the above, Soil testing reports on record **(Pg.1030)** clearly show that there is no pollution of the soil where the CETP is located. In the circumstances, no liability can be fastened on Respondent No.1 to pay environmental Damage Compensation.

4. **Incorrect assessment of damages:**

Assuming without admitting for the sake of argument, and without prejudice to other contentions raised here in, including that of the answering Respondent not being liable to pay any compensation and the formula being faulty, Respondent no.1 submits that the assessment is even contrary to the said formula. The assessment is completely disproportionate, has no basis in facts. The Joint Committee has erred in accepting the assessment as per formula in the second report without applying its mind to the fact that the maximum factor which is being used in the formula for each item is without any basis, disproportionate and based on an unreasoned & unfair comparison with other cases, without applying its mind to the facts of the present case and without applying its mind to the fact that the respondent no. 1, even if assumed to be defaulting, has lesser number of industries, lesser quantity of effluent outfall, no defaulting member, and a good prima facie case on merits on issues of fact and law as compared to the cases where a parallel is sought to be drawn by the committee. Reliance is placed on comparison with three other CETPs, which were required to pay EDC **(Pg.1654)**. It is submitted that the formula treats all (for example, those with discharge load of 3 MLD, 30 MLD and 100 MLD; those with CEPI score of 50, 60, 70; those with COD of 300, 700, 1000) alike. It is submitted that the formula for assessment of EDC cannot be applied to each case, that too, without looking at volume of discharge, CEPI score, and extent of pollution.

As is held by the Principal Bench of National Green Tribunal in the case of Shiv Industries v. Chandigarh Pollution Control Committee **(2023 SCC Online NGT 483)**, application of the guidelines adopted by the Committee to all cases irrespective of relevant considerations may prove to be disastrous, there may be cases attracting mitigating factors. The formula, thus, cannot be applied as a thumb rule.

Without prejudice to the above, it is submitted that the application of factors even as per the guideline is erroneous as elaborated under:

- (i) **Pollution Index (PI):** The committee has accepted the maximum PI as per Second Report, without considering the actual default. The assessment of PI based on majority members of CETP being in red category and the respondent no. 1 CETP therefore being red category, is arbitrary, unreasonable and bad in law and has no nexus with actual default.
- (ii) **Number of days the violation has taken place (N):** The assessment of number of days in the Second Report is baseless and arbitrary and the objections thereto are narrated in detail hereinabove and more particularly in paragraph 16 hereinabove. The data relied upon in the second report at Annexure 3 is not based on any test report provided to NEPL or to the Joint Committee, not referred to in the OA or in any of the reports of Joint Committee. In order to arrive at computation of number of days, the Committee is required to show violation for each day for which environmental damage compensation is being assessed and such period cannot be assumed or presumed on an ad hoc basis by way of inferences and presumptions. There is no such assessment for each day whatsoever to arrive at an unreasonable period from 2015 to Aug 2020 in a casual manner. Further, as stated in para L3.8, it is reiterated that as per the terms of the CC & A, the period of upgradation is required to be excluded. It may be noted that the relevant CC & A and its terms for period prior to 26.11.2016 are not on record and it is not clear on what basis

violation is being alleged when there is no pleading or material on record prior to such date and no material has been examined by the parties or the Hon'ble Tribunal in this regard. Ex facie such period which is not even under consideration before the Hon'ble Tribunal ought to be discarded.

- (iii) **Factor for EC (in Rs.) (R):** The committee has erred in applying rupee factor of Rs.500 as a factor R. The formula suggests considering Rs 250 in cases of violation. It is pertinent to note that in case of Vatva GIDC, which is situated in the same city as the answering respondent and discharging in the same closed pipeline along with other industries and CETPs, Factor R was Rs. 250. The committee has also recorded that in case of CETP situated at Vatva GIDC factor R is different. There is no justification to apply the highest value of factor R. The committee has not given any justification for suggesting factor R to be Rs.500.
- (iv) **Factor for scale of industrial unit (S):** The committee has erred in applying 1.5 as factor S, for scale of operation of industrial unit. The formula requires that in case of a small or micro unit, the multiplicand would be 0.5, for medium, it would be 1 and for large units it would be 1.5. The Committee has erred in treating CETP as a large unit and has erred in applying 1.5 as a factor S. The committee has overlooked the fact that majority of its members were small and medium industries. A list of members of CETP with their categorization as micro, small, medium or large is at **Pg.1655-1658**. Considering that majority of its members are small or medium scale, factor S cannot exceed 0.5.
- (v) **Location Factor (LF):** The LF is required to be assessed based on the location of the outfall. The outfall is not within any city limits and is on the outskirts of Ahmedabad City, that too downstream, and the treated effluent of the Respondent no. 1 does not reach the city of Ahmedabad. As far as the

location of the CETP is concerned, the soil testing reports which are placed on record (**Pg.1030**), clearly show that there is no pollution of the soil where the CETP is located. The violations which are alleged against the respondent no. 1 are only pertaining to the treated effluents which are not entering the city limits of Ahmedabad. There is no direct discharge into the river and that treated effluents from NEPL merge with the discharge from other units and CETPs through closed mega pipeline and outlet is outside city limits at Pirana merging with AMC sewage, downstream. The adoption of maximum factor for location is also therefore erroneous and without application of mind.

5. **Mitigating factors:**

NEPL is a responsible, proactive entity with impeccable reputation for shouldering social responsibility and initiative for environmental protection (**Pg. 516-542**). It has received awards and recognition from various quarters, nationally and internationally, and its activities have also received judicial commendation, which is described in detail in Para 12 of reply to OA (**Pg.235 to 241**). NEPL has not received various subsidies (except for Rs.1 crore) and has, therefore, saved an expense to the tune of public exchequer. NEPL has planted more than 1,25,000 trees and runs a nursery at GIDC Naroda. It has set up a Renewable Energy Project with the support of Gujarat Energy Development Authority. NEPL is perhaps the only CETP that has installed a windmill of 1.25 MW in 2012 and the same is operational till today. NEPL managed a TSDF site for years and has set up a waste museum over the landfill site and recycling of waste into usable products. NEPL has thus done all that is possible for betterment of society, for protection of environment and for prevention of pollution. In the circumstances, exorbitant and prohibitive penalty in form of EDC is unfair, counter-productive and amounts to penalizing a

proactive entity which is technologically and economically conscious of its obligation to the environment. It is also pertinent that NEPL is not a profit-making industry but runs the CETP with the sole object of protection and preservation of environment. Considering the efforts which have been made over almost three decades coupled with the fact that it has continuously strived to achieve better results, considering that it is not for profit company, does not distribute any profit to its members coupled with the fact that there is no proof of pollution caused for which NEPL can be held liable to pay EDC,

6. **To summarise:**

In the light of the aforesaid facts and circumstances, the following position emerges:

- (i) the allegations in the OA are based on various test reports of samples taken by GPCB as stated hereinabove, the said test reports are wholly unreliable and cannot be relied upon as the methodology for sampling is contrary to the prescribed guidelines and Rules;
- (ii) The OA seeks relief with regard to the alleged contribution of Respondent No.1 to the pollution in river Sabarmati. As pointed above, the contribution of Respondent No.1 is miniscule and there is no admissible evidence to establish any violation on part of NEPL.
- (iii) The OA suffers from non-joinder and misjoinder of necessary parties. A number of CETPs and industries release water in the Sabarmati river. Pollution in River Sabarmati is not a result of alleged actions/non-actions solely of the Respondent No.1. The capacity of the CETP

of NEPL is based on the effluent discharge from its member units which belong to various sectors *vis-a-vis* Food processing, Textiles, Pigments Dyes and Dye intermediaries, Pharmaceutical and Engineering. Serious allegations have been levelled against member industries of the answering respondent without specifying the details of any such industry or arraying them as parties to the present proceedings. Moreover, the application seeks to remedy pollution of river Sabarmati without joining Ahmedabad Municipal Corporation (AMC), which releases effluent and sewage into the river and is responsible for the regulation thereof.

- (iv) Different outlet norms are applicable to different member units and they are bound by the directions of Hon'ble High Court of Gujarat in SCA No.770 of 1995. The norms introduced by GPCB in the amended consent dated 24.11.2017 which are taken as basis to arrive at Test Results (Annexed to the OA at Annexures 4 to 86) are also in complete disregard of the decision in SCA No. 770/1995 of Hon'ble High Court of Gujarat, without any reference to the local conditions and existing capacity of CETP
- (v) Respondent No.1 has made immense efforts since its inception to comply with the environmental norms, however, if the pollution in Sabarmati River still continues on account of contribution to pollution by other players/entities who are neither connected with the Respondent nor even a party here, the Respondent no. 1 cannot be saddled with the responsibility for the same.
- (vi) Further the Report of the Committee dated August 2020 has also analysed the inlet norms of the member industries

and the analysis shows that the inlet norms are by and large consistently met by all the industries. The proper functioning of the CETP and the ongoing upgradation of the same with the help of most advanced technologies is also accepted in the Report. The Additional affidavit of the Respondent filed on 22.11.2021 also substantiate that the answering Respondent is doing its best to further upgrade its functioning and has been active in this regard since 2017 by pursuing the issues with the Respondent no. 2 and other State agencies.

- (vii) The Hon'ble Supreme Court recently in the case in Civil Appeal No.4543/2021 - Sanghar Zuber Ismail vs. Ministry of Environment, Forests and Climate Change and Another, has held categorically that while adjudicating the issues concerning environmental compliances, this Hon'ble NGT has to independently adjudicate the disputes and arrive at conclusions. The Hon'ble Supreme Court has held that mere report of an expert committee should not ipso facto amount to adjudication of issues before this Hon'ble Tribunal, the latter itself being a statutory expert tribunal.

At Para 8 of the judgment, it has been held as under:

“.....Constitution of an expert committee does not absolve the NGT of its duty to adjudicate. The adjudicatory function of the NGT cannot be assigned to committees, even expert committees. The decision has to be that of the NGT. The NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal.”

The said ratio has been followed and the same principle has been reiterated time and again in the following decisions:

- Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others vs. State of Gujarat and others, 2022 SCC Online 120
- Grasim Industries Limited Vs. The State of Madhya Pradesh, 2024 INSC 926

- (viii) No fact-finding done by the Joint Committee, rather generic, unscientific and illogical reports are submitted before the Hon'ble Tribunal.
- (ix) Joint Committee Reports are entirely based on assumptions and presumptions and suffer from Ex facie ambivalence, speculation and uncertainty in all the Reports.
- (x) OCEMS data shows huge variance with data of GPCB, which in itself should be a reason to discard GPCB results.
- (xi) Fact-finding exercise explained in Third Report, defies the First Report and renders both reports unbelievable.
- (xii) Issues raised with respect to violation of inlet and outlet norms, not considered by the Joint Committee in any of its reports.
- (xiii) Sludge Removal issue raised without reference to – (1) absence of any grievance for the same in the O.A., (2) the practice and directions by GPCB itself for prohibition on removal and transport of sludge during monsoon and other periods, and (3) absence of any material on record to show any violation on this aspect, or on percolation of

leachate without reference to any soil testing report showing NEPL to be non-compliant.

- (xiv) Sewage Treatment by NEPL is done free of cost and as a benevolent gesture to do that work which is of AMC. It is shocking that the Joint Committee finds any default with such treatment of sewage.
- (xv) Technology is continuously changing, upgradation is a continuous process.
- (xvi) Expenditure is incurred all throughout to use best available technology (BAT). The formula adopted by the Joint Committee from the Second Report overlooks and ignores material aspects, such as quantum of discharge of effluents, the % of flow of such effluents from NEPL as compared to discharges by other entities, the cost of land, the cost of setting up the unit, the cost of continuous upgradation and investment in BAT, the expenditure towards treating domestic sewage free of cost.
- (xvii) Non-assessment of actual period of violation and assumptions and presumptions employed in the calculation of EDC, erroneous on the face of it.
- (xviii) There is nothing on record that even suggests any harm, damage or destruction to any person or property or environmental system which is attributed to Respondent No.1.
- (xix) The calculation of Environmental Damage Compensation is erroneous and based on non-applicable factors without considering mitigating factors.

7. It is therefore submitted that the Joint Inspection Committee Reports may be disregarded by this Hon'ble Tribunal and the O.A. deserves to be dismissed.

Date: 02.07.2025



Anushree P. Kapadia
Advocate for the Respondent No.1

Advance service Written Submission on behalf of Respondent No.1

1 message

Anushree Kapadia <a.kapadiaoffice@gmail.com>

Wed, Jul 2, 2025 at 6:11 PM

To: uh-gpcb-ahme@gujarat.gov.in, Rajesh Kumar <rajeshgpcb@gmail.com>, legal.gpcb@gmail.com, judicial-ngt@gov.in, aniruddha1488@gmail.com, Surender Singh Hooda <sshooda65@gmail.com>, maulik@nanavatico.com

BEFORE THE NATIONAL GREEN TRIBUNAL,
WESTERN BENCH, PUNE

Original Application No. 7 of 2020

Aryavarat Foundation... Applicant

Versus

M/s. Naroda Enviro Projects Limited (CETP)
and others ... Respondents

Sir/Madam

Please find attached herewith copy of Written Submission on behalf of the Respondent No.1 in the captioned matter.

--

- Office of
Anushree Kapadia
Advocate-on-Record
Supreme Court of India

Address:
B/7, Flat No. 83/2, First Floor,
Safdarjung Enclave (Main),
New Delhi 110 029

+91-9958009320

Disclaimer:

This message is confidential. It may also be privileged or otherwise protected by work product immunity or other legal rules. If you are not the intended recipient or you have received it by mistake, please let us know by e-mail reply and delete it from your system; you may not copy this message or disclose its contents to anyone. The integrity and security of this message cannot be guaranteed on the Internet. If verification is required please request a hard-copy version.

 **Written Submission on behalf of Respondent No.1.pdf**
493K