

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION No. 68/2014(WZ)**

CORAM:

**Hon'ble Mr. Justice V.R. Kingaonkar
(Judicial Member)**

**Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

- 1. Mr. Ashok Gabaji Kajale,**
Age 62 yrs., Occn : Agriculturist,
- 2. Mr. Santosh Shrihari Walunj,**
Aged 36 yrs., Occn : Agriculture
No.1 & 2 R/o. Kahegaon,
Tq. Kopargaon, Distt. Ahmednagar
- 3. Mr. Jalindhar Bhausahab Shirsath,**
Age 37 yrs., Occn : Agriculturist,
- 4. Tatyasaheb Bhausahab Shirsath,**
Age 30 yrs., Occn : Agriculturist,
- 5. Mr. Baban Jagannath Landge,**
Aged 60 yrs., Occn : Agriculturist.
- 6. Mr. Dnyaneshwar Machhindra Landge,**
Age 32 yrs., Occn : Agriculture,
- 7. Mr. Jalindar Jagannath Landge,**
Age 56 yrs., Occn : Agriculturist,
- 8. Mr. Satish Changdeo Shirsath,**
Aged 27 yrs., Occn : Agriculturist,

Nos.3 to 8 R/o. Vari, Tal. Kopargaon,
Distt : Ahmednagar

9. Mr. Ajit Jankiram Kotade,

Age 32 yrs., Occn : Agriculturist,

10. Ramkrishna Bhikaji Kotade,

11. Sachin Namdev Kotade

Nos. 9 to 11 at Sade, Tq.Kopargaon,
Distt : Ahmednagar.

....Appellants

A N D

1. M/s. Godhavari Bio-Refineries Ltd.,

(Formerly known as Somaiya Organo-
Chemical Ltd.). Having its Industry at
Sakharwadi, Tq. Kopargaon,
Distt : Ahmednagar.

2. Maharashtra Pollution Control Board,

Having office at Kalpataru Point,
3rd and 4th Floor, Opp. Cine Planet,
Sion Circle, Mumbai 400 022.

3. Central Pollution Control Board,

PariveshBhavan East Arjun Nagar,
Delhi 110 032.

4. The District Collector,

Collectorate office,
Ahmednagar 414 001.

...Respondents

Counsel for Appellant :

Mr. Asim Sarode a/w.

Mr. Pratap Vitankar, Advs.

Counsel for Respondent No. 1:

Mr. Ashwin V. Hon, Adv.

Counsel for Respondent No.2:

Mr. D.M. Gupte, a/w.

Mrs. Supriya Dangare, Advs.

Counsel for Respondent No.3:

Mrs. Manda Gaikwad, Adv.

DATE : May 19th, 2015

J U D G M E N T

1. Through this Application, the Applicants who are resident of villages Kanhegaon Sade and Vari, Tq. Kopargaon, District Ahmednagar have approached this Tribunal under Section 14 and 15 read with sections 17 and 18 of National Green Tribunal Act, 2010, alleging that the industrial activities of Respondent No.1 are causing ground water pollution and thereby affecting ground water quality, pollution of river Godavari and loss of agriculture. The Applicants are seeking certain directions against the Industry and Respondent authorities including compensation and restitution of environment.
2. The Applicants submit that Respondent No.1- industry is in operation since long time and initially, the people were not aware about the environmental and health hazards being caused by its various products and their adverse effects on the society. However, with passage of time, and also incidents of such health related impacts

and also pollution of Godavari river water, people in the residential area started agitation against the Respondent No.1-industry at various levels. Some aggrieved persons had approached Hon'ble High Court through Writ Petition No.6659 of 2004 which was disposed of as withdrawn on 13-8-2008. In the said Writ Petition, Hon'ble High Court had directed 'NEERI' to submit the report and according to the report of NEERI, certain recommendations and precautions were required to be taken by the Respondent's unit. The Applicants alleged that the industry has not complied with such directions and recommendations of the NEERI Report.

3. The Applicants further submit that the products manufactured at Respondent No.1-industry are hazardous in nature and the industry is also handling large quantities of hazardous chemicals at the industrial premises. Respondent No.2-MPCB has time and again granted permission to Respondent No.1-unit either by renewal of consent for expansion/modification etc. without proper appraisal to the pollution control system and also the impact of the industrial emissions on the environment, particularly on the river water and ground water. The Applicants allege that the Industry is generating the highly polluting effluents from its distillery unit and also the chemical plant in substantial quantities and as the unit is located very near to river Godavari bank, certain illegal

discharges are getting mixed in the water of Godavari river. The Applicants allege that Respondent No.1-Industry has constructed several Kaccha lagoons though the authorities have directed demolition of the same and therefore the industry do not have proper effluent storage and handling arrangements. The Applicants allege that due to the ineffective effluent treatment and disposal system, the huge quantities of untreated effluent is stored in the Kaccha lagoons and further such effluents are used unscientifically for the agricultural purposes. Such Application of untreated effluents discharged from Kaccha lagoons has resulted into the ground water pollution in the vicinity. This ground water pollution is affecting the agricultural lands of the nearby residents, by affecting the soil quality and reducing the yield.

4. The Applicants submit that MPCB/CPCB which are the regulatory authorities, seem to be aware of such inadequate effluent management system at Respondent No.1-industry and therefore have taken, time and again action, against the industry. The Applicants submit that the Field Level Officers of the MPCB have recommended stringent actions in view of the pollution being caused by the Respondent No.1-industry. However, the MPCB for the reasons best known to them has not taken any stringent action against Respondent No.1-industry. The Applicants further submit that CPCB which is Respondent No.3,

issued closure directions to Respondent No.1-industry on 17-7-2013 under Section 5 of the Environment (Protection) Act 1986. Subsequently, the CPCB vide letter dated 15-10-2013 allowed the restart of industry, except the distillery division, with certain stringent directions. Thereafter, the MPCB on 11-2-2014 issued directions under Section 33(A) of the Water (Prevention and Control of Pollution) Act 1974 with reference to various complaints received by the Board and the investigations conducted thereon. All these actions of the Respondents authorities are in the form of reactive enforcement of the Environmental Regulations based on the complaints and sort of temporary action limited to the source of pollution.

5. Applicants allege that both these Respondents-authorities have not gone into the aspect of effects of pollution caused by the Respondent No.1-industry due to inadequate pollution control system as well as restitution and restoration of the environment. This is in spite of themselves recording clear violations of various environmental norms related to quality of treated effluent and having substantial knowledge and information, through their monitoring data, that the ground water in the area is polluted due to the activities of Respondent No.1-unit. The Applicants allege that due to such lack of comprehensive actions by the Respondent-authorities who have been empowered to take all suitable measures for

control and abatement of pollution including restitution and remediation of environment, their grievances related to ground water pollution and effect on agriculture are left unaddressed. Further, lack of stringent actions against the industry is resulting in continuous pollution being caused by the Respondent-industry and therefore, they have approached this Tribunal with prayers related to closing down the industrial activities, improving the pollution control system of the industry, directions to the authorities for taking legal actions against the industry, imposition of costs as well as payment of compensation for the agricultural losses etc.

6. Respondent No.3 i.e. CPCB filed an affidavit dated 1-8-2014 through Mr. B.R. Naidu, Scientist, E. It is the contention of CPCB that the State Pollution Control Board (SPCB) is rather having the primary responsibility for implementation of the Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981 as they grant the consent to the industrial operations under the provisions of Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981 by stipulating the emission norms and standards. SPCB is also empowered to take all the suitable actions including issuance of directions and other legal actions including prosecution, against the industry in case of any non-

compliance. CPCB submits that it carried out inspection of industry, only on the random basis either under the Environment Surveillance Squad Program or on certain complaints and references. The routine enforcement of the environmental regulations is performed by the SPCB.

7. CPCB further submits that CPCB inspected the Respondent No.1-industrial unit in December 2010 and based on the inspection findings, directions under section 5 of the Environment (Protection) Act 1986 were issued on 15-2-2011 to close down the manufacturing operations. The industry stopped the manufacturing operations accordingly and after verification of the compliance, modified directions were issued on 25-4-2011 to the industry allowing resuming of manufacturing operations as per the consent condition. Thereafter, the industry was again inspected in February 2013 and based on the observations non compliances, the directions for closure of manufacturing operations were again issued by the CPCB under Section 5 of Environment (Protection) Act 1986 on 17-7-2013. Thereafter, CPCB again verified the compliance on 30-09-2013 and based on the inspection findings, CPCB modified the directions on 15-10-2013 to close down manufacturing operations of distillery unit, till compliances of all measures/steps specified and allowing the operations of chemical units, by procuring ethyl alcohol, basic raw material from outside and strictly

following the pollution control measures. The Respondent-industry submitted detailed compliance report in January 2014 and subsequently on 6-6-2014 and informed that the compliance of directions is under progress and therefore, CPCB submits that the CPCB will again review the compliance of directions once the industry submits the compliance report.

8. CPCB further submits that the distillery unit having production process of alcohol from molasses generates spent wash on an average 10 KL to 15 KL per KL of alcohol produced. As per the guidelines of CPCB, the spent wash has to be concentrated (volume reduction) and then either incinerated or utilised in bio-composting following the prescribed protocol. In earlier visit of 15-12-2010, CPCB observed that industry was utilising 50% of the spent wash generated in one time controlled land application and remaining 50% by bio-methanation of spent wash followed by in bio-composting. However, storage of effluent in un-lined storage tank (solar evaporation) was observed. Subsequently, as per directions of CPCB one time land application of spent wash is discontinued and the unit has installed two (2) RO plants for concentration of spent wash and it is proposed to utilise the rejects of RO plants in bio-composting. CPCB therefore, submits that though it is primary responsibility of the State Board to ensure enforcement of the environmental regulations,

nonetheless CPCB has taken precipitatory action based on its inspections and therefore, has performed its functions.

9. Respondent No.2-MPCB has filed affidavit on 10-10-2014 through Shri V.V. Shinde, Regional Officer and submits that the Industry has established its distillery unit in the year 1957. Respondent No.1-industry has been granted consent to establish and operate at various stages in this period and the last consent to operate renewal is on 27-3-2014, which is valid upto 31-8-2014. MPCB submits that necessary conditions in respect of achieving zero discharge by installation of MEE/incineration as per the directions of CPCB dated 15-10-2013 have been incorporated in the consent order. Similarly, another separate consent to operate dated 25-7-2014 valid upto 31-8-2017 is granted for the chemical plant of the industry. MPCB submits that the Respondent No.1-industry had stopped all the manufacturing activities w.e.f. February 2013 in compliance to the closure directions issued by the CPCB, which were resumed for the chemical plant, only subsequent to CPCB's conditional directions dated 15-10-2013. MPCB had received recurring complaints in respect of pollution being caused by Respondent-industry from the Applicants and others, mainly related to pollution of their wells. Board had accordingly given personal hearing to the Applicants and industry on 29-4-2013 and during this hearing, a

Committee was constituted with representatives of Respondent No.1 and complainant as Members of the Committee.

10. Thereafter, MPCB issued directions on 11-2-2014 to the industry after again hearing the complainant and the representative of the industry and certain conditions were imposed on the industry, including scrapping and reclaiming all the empty solar pits (54 ha.) up to 30-4-2014, to empty, scrap and re-claim two lined lagoons along with effluent canal channels which are located adjacent to the complainant's land by 30-4-2014, sending hazardous waste effluent (8 m³/day) generated from crotonaldehyde plant to CHWTSDF regularly, besides, engaging Rahuri Vidyapeeth for assessment of damage to agricultural land and land fertility.

11. The Committee did conduct inspection and report was submitted to the Member Secretary in November 2013. The Committee while noting that the distillery unit was closed subsequent to directions of the CPCB, also observed that about 100 small and large lagoons were provided by the industry in surrounding area of about one (1) km. radius in the periphery, are spread over 54 Ha. of the land. Out of these lagoons, stone pitching has been done on 2 (two) lagoons and sludge was observed to be removed from these two (2) lagoons. However, other lagoons were not scrapped and re-claimed as directed by

the Board. One outlet was also found towards the downstream of the river from these lagoons. The Committee had made certain recommendations including immediate scraping and re-claiming all the kachcha lagoons and also remove the pacca lagoons which are located by the side of the river. Besides this, several recommendations were made related to compost plant, air pollution control etc.

12. Thereafter, MPCB has submitted the status report as on 29-9-2014 and submitted that all the solar pits of Kachcha lagoons spread over 54 Ha. have been scrapped and levelled and removed all the spent wash in the two (2) lined lagoons. In short, MPCB has submitted that the industry has substantially complied with its directions. MPCB has further submitted analysis results of the wells and the bore-well water samples taken at various occasions.

13. It is the case of MPCB that initially lagoon followed by solar evaporation was the standard treatment system of spent wash which continued up to year 1990. Subsequently, the Central Government insisted on full fledged primary and secondary facilities for the distilleries and time was given up to 2-4-1996 for the same after two extensions. MPCB further states that industry has upgraded their pollution control system with time and as per the CREP guidelines, the industry has gone for zero (0) discharge by way of bio-digester followed by composting.

However, on account of the industry's critical location which is near river Godavari, CPCB imposed stringent condition of MEE or incinerator with the directions dated 15-10-2013.

14. MPCB filed another affidavit on 10-12-2014 and submitted the analysis results of the ground water samples collected by the MPCB. MPCB filed another affidavit on 4-2-2015 which is primarily a compliance report where it is mentioned that the report of the M.S. University, Baroda was placed before the Consent Appraisal Committee, which is a top decision making authority for grant of consent in the Board, on 21-1-2015 and 2-2-2015. The CAC noted that about 23000 m³ spent wash was presently stored in lagoons which needs disposed on or before 31-5-2015. On close look of this affidavit, it is observed that most of the recommendations of the M.S. University have been considered by the CAC, however, the actual implementation and its time bound programme have been left to the Respondent-industry and further industry is advised to seek expert opinion on his own. The minutes of CAC also shows that certain notice under Rule 25 of the Hazardous Waste Regulations 2008 was to be issued to the industry for certain non-compliances. Another important aspect of CAC minutes is that the CAC noted the MPCB is not having expertise in preparing action plan for remediation of ground water and

surface water contamination as well as land pollution and therefore, the industry was advised to approach the concerned expert agency to take further actions.

(Emphasis supplied)

15. The MPCB filed one more affidavit on 25-2-2015 and submitted the various documents including visit reports, consent copies etc. as per the directions of this Tribunal. Though, it was expected that the technical organisation like MPCB will give an abstract of its consents and legal actions with compliances made from time to time, the affidavit has just enclosed the copies of consents and directions, and it is left to the Tribunal to go through the compilation for deriving the information. We would deal with this in final orders.

16. Respondent No.1-industry filed affidavit through Mr. Girish Kajaria and countered the allegations made in the Application. Respondent No.1 has raised an objection on the limitation of time as prescribed under Section 14 of the National Green Tribunal Act mentioning that industry is being run from more than 50 years and the Applicants and the Applicants are also living in nearby areas for the past several decades. The Application does not show the exact date on which the cause of action for the dispute first arose. Respondent No.1-industry further submits that one Writ Petition No.6659 of 2004 was filed before the Hon'ble High Court of Bombay bench at Aurangabad

alleging contamination of river Godavari and surrounding area wherein Hon'ble High Court on 28-4-2005 by way of interim order directed closure of the industry and subsequently, based on the expert agency, NEERI report and also consideration of the same by the MPCB, allowed the operation of chemical plants by order dated 1-7-2005. Further the Hon'ble High Court on 22-8-2005 constituted a monitoring Committee to oversee compliances. The compliance was regularly monitored and on 24-11-2005 Hon'ble High Court passed conditional order to permit to restart of the distillery as per the recommendations of the NEERI and thereafter based on such compliance, the Writ Petition was dismissed as withdrawn on 13-8-2008.

17. Respondent No.1-industry submits that on 8-2-2013 the operation of distillery was voluntarily shut down as there was no storage space for effluent in pacca lined tanks. Thereafter, CPCB issued closure directions on 17-7-2013 which was modified on 15-10-2013 for restart of chemical unit operation. Distillery is not functional till date. Respondent No.1 submits that the industry is taking all the necessary steps for control of pollution by providing necessary pollution control system and arrangements as per the directions of MPCB/CPCB and the consents granted to it. The effluent is now not stored in the kachcha lagoons and existing kachcha lagoons have been scrapped and fully levelled, after utilising the accumulated

sludge in bio-composting process. The MPCB has carried out inspection time and again and taken note of the compliances made. Respondent No.1-industry is providing drinking water supply to nearby villages i.e. Wari, Shingve, Sade, Kanhegaon since the year 2009. Besides this industry also claims to have provided employment to the local villagers and also supporting the social infrastructure project.

18. The Respondent-industry further submits that no effluent from the industry is being discharged/disposed causing any pollution in the surrounding area in the industry. The industry claims to have spent substantial amount in providing necessary pollution control system and its up-gradation from time to time based on evolving standards and protocols as notified by CPCB/MPCB.

19. Respondent No.1-industry further submits that some of the Applicants like Applicant Nos.9 to 11 have their lands on the other side of Godavari river and there is no well in these lands. The industry submits that before constructing the bio-composting plant, the lands were analysed by Maharashtra Engineers and Research Institution (MERI) Nasik who have given the specification for the site preparation. Summarising this, the case of the Respondent No.1-industry is that they are operating the industrial units for a long time and have provided necessary pollution control arrangements and operating

the same to meet the specified norms. They have upgraded their pollution control systems in order to meet more and more stringent standards which are being evolved and notified by the authorities and their industrial operations are not causing environmental pollution of any sort. The pollution control systems are being verified by the authorities time and again and in case of any non-compliance, actions have been taken by the authorities including even closure directions and therefore, it will not be correct to say that the industry is non-complying the norms and causing pollution. Further, the industry is in process of upgrading their pollution control system as per the directions of the authorities.

20. Respondent No.4 has not filed his affidavit though he has been served.

21. Heard learned Counsel of parties. We have carefully gone through the records. Considering the documents on record and also arguments advanced by Ld. Counsel for the parties, we are of the opinion that following issues arise for final adjudication of the present Application.

- 1) Whether the present Application is barred by the limitation of time as no specific cause of action has been presented and relied upon by the Applicants ?

2) Whether the industrial operations of Respondent Nos.1 and 2 have resulted into mismanaged discharge of effluent resulting into ground water pollution and damage to the fertility of the agricultural lands or the Flora and Pavana in that area ?

3) Whether the industrial operations of Respondent No.1 and 2 are being carried out as per the prescribed standard and norms need environmental regulations and whether such compliance has been verified by the concerned authorities ?

4) Whether the corrective and remedial measures are necessary to be initiated to improve the ground water quality and also the land pollution, if any, caused by Respondent No.1-industry? If yes, what measures shall be adopted ?

5) Whether Respondent No.1-industry is liable to pay any damages for the loss caused to the environment and particularly, impacts on agricultural lands of the villages due to loss of fertility and loss of yield, if yes, to what extent and from whom ?

6) Whether the authorities have acted effectively and scientifically while handling the enforcement and compliance of Respondent No.1-industry ?

7) Whether any specific directions are required to be issued by the Tribunal for the operation of Respondent-industry in environmental sound manner including the expansion etc. ?

Issue No.1 :

22. Respondent-1 industry has raised preliminary objection as far as the limitation prescribed under section 14 and 15 of NGT Act, 2010. It is the contention of learned Advocate for Respondent-1 Industry that the Applicants have not ascribed any specific date of initiation of cause of action and the entire Application is devoid of exact cause of action which is required for triggering the cause of action. Though Applicants have projected a proposition that the industrial operations of Respondent-1 have caused certain alleged environmental damages, however, exact cause of action or any particular event has not been referred by the Applicants. He therefore contended that the entire application is devoid of any merit and needs to be dismissed on the face of it. He also submits that the Applicants are staying in the vicinity of Respondent Industry and are well aware of Industrial activities of Respondent-Industry since a very long time and hence know the nature of the industrial activities. He further submits that the distillery unit of the Industry has started operations around year 1957 and the chemical unit is also more than 10 years old. He submits that the industry is manufacturing products as per the permissions granted by the Authorities and the Industry has upgraded both, manufacturing process and pollution control systems regularly, with technology available, modified standards

and norms by the Regulatory authorities and directions issued by the Authorities. He therefore contends that the Industry has always complied with the directions of Authorities and it is clearly evident from the fact that the distillery unit is closed since February 2013 for provision of concentration and incineration technology for spent wash, as per directions of CPCB.

23. The learned Advocate further pleads that though certain compensation has been demanded, the Applicant have failed to produce any justification or any logical analytical process while arriving at this quantum so claimed. He therefore strongly pleaded that the compensation has been claimed just to seek additional time available under the section 15 of NGT Act. He further contends that the Applicants have made several complaints against the industrial unit to MPCB and the MPCB Authorities have promptly acted on those complaints and taken action against the industry and therefore, the Applicants can not claim that their complaints are not attended or redressed. The learned Advocate finally submits that the Applicants have approached this Tribunal only after failing to prove their complaints with authorities, just for extraneous considerations and motives.

24. The Counsel for Applicants while denying that the Application is devoid of any specific cause of action,

submits that the Applicants have made complaints to the authorities regarding the ground water pollution caused by Respondent No.1-industrial activities. According to him, the MPCB had constituted a Committee to investigate the complaint and the said committee in its report dated 25-11-2013 clearly recorded that the water at the complainant's wells is polluted. More so, MPCB had issued certain directions to the industry for taking corrective measures. The committee had even recommended the MPCB authorities to obtain the report of concerned department, related to the damage to the property for submitting compensation proposal to the Collector. He, therefore, argues that the clear cause of action for seeking compensation has been established by the Applicants which is evident from the Affidavit of MPCB itself and therefore, in any case, the cause of action for the compensation purpose, under Section 15 of NGT Act, will commence only after MPCB's findings that the well waters are polluted. He further argues that in any case, the industry is not complying required standards and conditions laid down by the MPCB and therefore, such non compliances observed by the MPCB itself is cause of action under Section 14 of the National Green Tribunal Act. He therefore, submits that the Application is well within limitation, both under Section 14 as well as 15 of the National Green Tribunal Act, 2010.

25. We have carefully gone through the record and submissions made by the parties and arguments advanced by the learned counsel. The concept of cause of action has been well elaborated in various judgments of the Hon'ble Apex Court and also by the National Green Tribunal and therefore, we would prefer not to reproduce the same for sake of avoiding the repetitions. The National Green Tribunal Act has a special scheme of the Limitation U/s. 14 and 15 of NGT Act and the phraseology used in the relevant sub-clauses is very specific and therefore, for the better clarity, we would like to reproduce the relevant sub-sections 14 and 15 of the National Green Tribunal Act.

Section 14 of NGT Act :

1.
2.
3. No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose :

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

Section 15 of NGT Act :

1.
2.
3. No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose;

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

4.
5.

26. These sub-clauses have a typical phraseology and syntax wherein Section 14 of the NGT Act, the Limitation is from the date on which cause of action for such 'dispute' has first arisen. Similarly, for Section 15 of the NGT Act, the Limitation is from the date on which the cause for such compensation or relief has first arisen. The main contention of the Applicant is that their wells and lands are affected by unscientific effluent management at the Respondent No.1-industry. It is, therefore, necessary to examine when such fact was observed or established by the concerned authorities. It is but natural that only when it is established by the concerned authorities that there is pollution or environmental de-gradation that is caused or observed, then only the issue of compensation, remediation or restoration, as the case may be, will arise. The second aspect of such process will be developing the industry linkage with such pollution, in other words, establishing relationship between the cause and the effect i.e. source of pollution and the environmental degradation. Needless to say that such co-relation of the source of pollution and environment degradation is a scientific and skilled activity; and common citizen may not be able to perfectly establish the same. As a matter of fact, the common citizen can approach the authority with their complaints about the environment de-gradation and their perception about the likely cause or causes of such

degradation. It is for the authority to establish such linkage and also to establish that the environment degradation has taken place and the possible causes thereof. We have perused the record of MPCB and noted that regular complaints were received by MPCB and both MPCB and CPCB have taken action against the industry for certain non-compliances. However, they have not identified the environmental damages in clear terms, particularly for the ground water quality. The first such document which is available on record is the report of the Committee constituted by MPCB which submitted its report on 25-11-2013, which records that the ground water is polluted and there is need to assess the environmental damages for compensation purpose.

27. In view of these facts that the ground water pollution was observed and recorded by MPCB in November 2013, the Application is well within the limitation as prescribed under Section 15 of the National Green Tribunal Act from compensation/restitution/ restoration point of view. It is further noted that the MPCB have issued detailed directions on 11-2-2014 based on the committee's findings wherein both the complainant as well as Respondents were given an opportunity of hearing and it is the stand of the Applicants that in spite of such directions issued, there is no improvement in the ground water quality. The Application which is filed on 9-6-2014 is therefore, well

within the limitation of six months as prescribed under Section 14 of the National Green Tribunal Act. The Application is, therefore, is within the limitation prescribed under NGT Act, 2010, and will proceed further and accordingly, further issues are dealt in following paras.

Issue Nos.2 and 3 :

28. Admittedly, the Respondent-1 Industry started its molasses based distillery somewhere around 1957. This distillery is a stand alone industry, implying that they source their raw material i.e. molasses from other industries for manufacture of industrial alcohol. Subsequently, the Industry has commenced its chemical unit to manufacture number of chemical products from the Alcohol, which is manufactured at their distillery, as forward business integration, though it is not on record when such chemical plants were commenced. In other words, the industrial unit of Respondent-1 has two distinct manufacturing processes and units i.e. distillery and chemical plants. The molasses based distilleries are known to generate highly polluting effluent called spent wash which has dark colour and very high BOD/COD. In the initial years, these industries were generally having anaerobic lagoons followed by one time land application technique for disposal of effluent. However, with many such units being made operational, complaints about ground and surface water pollution and also, availability of

treatment technologies, the regulatory authorities have prescribed stringent standards for the treatment and disposal of spent wash effluent, having both primary and secondary treatment units. In other words, an initial method of dilution was replaced by scientific effluent treatment technologies. The industrial effluent generated in chemical plant is also required to be treated and disposed scientifically.

29. In this background, it is now necessary to find out the regulatory prescription for the Distillery for the effluent treatment and disposal, to verify the management of industrial effluent. It was noted during the proceedings of the matter that there is no clarity on the regulatory regime prescribed for the industrial unit in MPCB's affidavits and therefore we had asked MPCB to produce copies of consents granted to industry in last 10 years. On perusal of these consents, following regulatory regime is observed.

Consent dated 16.3.2002 valid upto 31.3.2006

Products: Alcohol and other chemicals

Effluent generation 900 m³/d

Effluent Treatment standards: BOD: 30 mg/lt, COD: 250 mg/lt

(comprehensive treatment consisting primary/ secondary followed by biological two stage aeration)

Treated Effluent disposal: The treated effluent shall be used on land for ferti irrigation.

Similarly the Croronaldehyde and paraldehyde plant was given following regulatory regime:

Consent dated 17.4.2006 valid up to 14.07.2008

Products: Crotonaldehyde and paraldehyde

Effluent generation: 60 m³/d

Effluent Treatment standards: BOD: 30 mg/lt, COD: 250 mg/lt

(comprehensive treatment consisting primary/ secondary followed by biological two stage aeration)

Treated Effluent disposal: The treated effluent shall be disposed along with distillery effluent for composting and one time land application as per CPCB norms.

30. It is manifest from these consent, the MPCB had stipulated the industry to provide comprehensive treatment plant for the distillery unit to achieve stringent BOD/COD norms, before use of treated effluent for irrigation purpose. Similarly, the chemical plant was required to provide independent effluent treatment arrangements before common disposal. Now we would refer to the findings of visit of CPCB in 2010. The closure directions issued by CPCB on 15.2.2011 records such finding and are reproduced below:

1. The Unit has consented capacity of production of molasses based industrial alcohol of 60 MT/day, Acetaldehyde 50 MT/day, Acetic Acid 50 MT/day, and they acetate 100 MT/day.
2. During inspection, the Unit was operational and the industrial alcohol production was reported to be 75.12 KL, which was more than consented capacity.
3. The spent wash treatment and disposal system consists of following :
 - a. 50 % of the bio-methanated effluent is disposed through one time controlled land application. The Unit has signed MoU with Mahatma Phule Krishi Vidyapeeth, Rahuri, Ahmednagar with validity upto Feb. 2011 to utilize 1.50 lakhs m³ treated spent wash over 3000 hectare land.
 - b. 50 % of the bio-methanated spent wash is passed through RO and the reject is disposed through bio-composting. The Unit has unlined bio-composting yard of about 3 hectares.

4. During the visit, composting was not in operation and no press mud was found. The Unit has not provided any storage sheds for press mud/final compost. About 500 MT of compost was found in open land.
5. Out of the two digesters, one digester was in operation with feeding rate of 12.55 KL/hr. but it was not yet stabilised to meet the outlet COD characteristic. Anaerobic digester outlet effluent sample analysis shows BOD-3300 mg/l, COD-27, 487 mg/l.
6. RO plant was not in operation.
7. The Unit has 3 lined lagoons of total capacity of 90,000 m³, which are filled with spent wash upto 70 % of their capacity. The storage capacity of the lined lagoons is more than 3 months of spent wash generation.
8. The analysis of effluent stored in lagoon no.2 shows BOD-20, 702 mg/l, TSS-4, 756 mg/l TDS-73,068 mg/l, & COD-81,947 mg/l.
9. The Unit has provided unlined lagoons spread over 2-3 hectares, partially filled with spent wash.
10. The effluent treatment system provided is not adequate for treatment of effluent generated from production of organic chemicals namely, Acetaldehyde, Acetic Acid, and ethyl acetate. It was reported that effluent is being recycled.
11. Stack emission monitoring for two boilers of 18 MT/hr and 12MT/hr capacities shows PM emission of 1156 mg/Nm³. SO₂ emission of 8.66 kg/hr and 14.4 kg/hr respectively as against the standard of 12.5 kg/hr.

31. Subsequently these closure directions were modified while allowing the industrial operations on 25.4.2011 and it would be relevant to reproduce the conditional directions issued by CPCB:

1. The Unit shall resume its manufacturing operations as per the consent conditions issued by Maharashtra Pollution Control Board (MPCB) and shall comply with effluent disposal and emission norms as prescribed by the MPCB. The Unit shall not be allowed to employ land application/ferti-irrigation of spent wash generated after resumption of the operation.
2. The Unit shall submit a time bound programme for implementation of zero effluent discharge conditions either through concentration-incineration system or through co-processing in cement kilns or furnaces of thermal power plants/steel plants before 30-06-2011.

3. The Unit shall complete installation and commissioning of both the ESPs by September, 2011 for control of air emissions to meet the emission standards notified under the Environment (Protection) Rules, 1986.
4. The Unit shall dispose the spent wash stored in unlined lagoons and dismantle all the unlined lagoons/solar evaporation ponds by June 30, 2011.
5. The Unit shall dispose the spent wash stored in lined lagoons and restrict the capacity of lined lagoons to not more than 30 days equivalent of treated spent wash generation by June 30, 2011.
6. The Unit shall submit the progress report on monthly basis to the CPCB & MPCB.
7. The Unit shall deposit a Bank Guarantee of Rs.20.0 lakh (Rupees Twenty lakh only) with validity of one year and provision for forfeiture in case of violation of any of the above directions within 15 days of the receipt of these directions.

32. Thereafter, CPCB in its visit dated 21.02.2013 observed that the crotoaldehyde plant effluent which was having very high BOD/COD (14450 and 40669 mg/lt respectively) was just sprayed on coal without any treatment. The high concentration of BOD and COD indicate likely presence of VOC's and/or residual refractory COD which can not be just incinerated with coal without proper air pollution control arrangements and can give rise to emissions of unwarranted air pollutants in to the environment including POP's and dioxin/furans etc. And therefore CPCB issued closure directions on the findings of such a visit.

33. It would be interesting to see the observations of MPCB as far as effluent treatment and disposal arrangements at the industry are concerned. As already mentioned earlier, MPCB has prescribed certain effluent

treatment and disposal regime for the industry. The initial submissions of MPCB did not reveal the status of effluent management at the industry and therefore, the Tribunal directed them to produce all the visit reports in last two years. MPCB has submitted the status of compliance of CPCB directions and it is revealed that most of the compliances reported by MPCB are in terms of statements of industry or information given by Industry. It seems that the MPCB has not independently verified the compliances, in terms of conditions given in the consent granted to the industry. Nonetheless, it is mentioned that the no separate ETP is provided for chemical effluent and is reported to be recycled. We have already referred to MPCB's consent order where effluent generation from the chemical plant is mentioned to be 60 m³/d and separate treatment/disposal system has been prescribed. This fact has not been verified by MPCB. Only thereafter, CPCB observed non-compliance as far as crotonaldehyde effluent, in subsequent visits and directions. However, even CPCB has also not verified the compliance of its own observation related to management of industrial effluent from chemical plant and compliance of direction dated 15.2.2011 at Sr. no. 6 regarding submission of time bound program for installation and commissioning of adequate ETP system for effluent generated from manufacturing of chemical products. It is not clear how the effluent generation of this

plant can be 9 m³/d when consent prescribes 60 m³/d. No justification is either given by industry or the MPCB. This aspect will be important while dealing with subsequent issues related to EC. Neither MPCB nor industry has given any factual records related to effluent generation from the chemical plant.

34. Another important aspect of the effluent treatment and disposal is for the spent wash. CPCB and MPCB have submitted on record various non-compliances observed from time to time, particularly non-scraping of old unlined kaccha lagoons, excessive spent wash stored in the lagoons, existence of by-pass arrangements, inadequacies of composting process etc. We would not repeat the averments made by CPCB/MPCB or the findings in their affidavit, as they are part of record. One important aspect of CPCB's conditional direction 25.4.2011, the industry was directed to submit the time bound program for provision of zero discharge either through concentration/incineration or through co-processing techniques by 30.6.2011, though subsequently it was not followed up for compliance before surveillance inspection in 2013 and closure subsequent to that.

35. We would also like to the standards notified for distilleries under Environment (Protection) Rules, 1986 which are as under:

- 1)** FERMENTATION INDUSTRY (DISTILLERIES, MALTRIES AND BREWERIES)
Concentration in the effluents not to exceed milligram per litre (except for pH and colour & odour)
pH 5.5 – 9.0
Colour & Odour All efforts should be made to remove colour and unpleasant odour as far as practicable.
Suspended Solids 100
BOD (3 days at 27oC)
-disposal into inland surface waters or river/ streams: 30
- disposal on land or for irrigation: 100

36. Under such circumstances and lack of clarity in pollution control system available and its performance from MPCB and CPCB affidavits, the Tribunal had appointed M.S. University, Baroda to conduct investigations and its detailed report is on record. The report summarises the consent conditions stipulated to industry from 1985 which indicates that even since 1990, MPCB has specified stringent BOD standards of 30, 100 and 500 for various disposal methods, though specific mention of primary, secondary and tertiary treatment systems has come in 1997 for the first time.

37. The report is categorical in terms of the effluent treatment system, as well as hazardous waste management at the Respondent No.1-industry. The report indicates that nearly 24,000 KL of spent wash is presently stored in lined lagoons which are required to be disposed of by bio-composting. This effluent is stored since February 2013, when the industry was directed to close by CPCB. However, the industry does not maintain any log-book or records for the spent wash generation, treatment

and bio-composting treatment. The report, therefore, records that it is difficult to judge the actual quantity of spent wash used for composting till date. The report records various non-compliances in the effluent management in detail. Further, the report also refers to chemical manufacturing unit and relevant recommendations are observations are below :

- *From chemical manufacturing units, substantial quantity of process drain and recovered water are gathered, which are reported to be reused for cooling tower make-up. Valid practice for such reuse is to collect each process drain or recovered water in separate tanks at the plant, analyse it for specific characteristics, carry out required treatment, and then reuse. At present it seems that GBL does not follow such practice, because no records for generation, analysis, and treatment of these streams are available.*
- *Boiler blowdown, process drain from paraldehyde plant, overflow of ash quenching, and DM plant regeneration stream flow in to an open pit. GBL reported that water from this pit is reused for cooling tower and ash quenching. The water from this tank was flowing to the nearby farm through a pipe. However, analysis of samples collected from this pit reveals that these streams are not suitable for reuse for the gardening purpose.*
- *During the visit, we experienced strong odour irritating to eyes and nose from the crotonaldehyde plant. It is recommended that GBL must take all the steps to prevent such fugitive emissions from the crotonaldehyde plant.*

In view of the above discussions, we are of the considered view that the existing water and air pollution control arrangements at the Respondent-1 industry are not up to the required levels in terms of provision of required effluent treatment systems, even today.

38. The main contention of Applicants is that the improper industrial effluent management system at the Respondent Industry has resulted into pollution of their

wells resulting in loss of agricultural lands and loss of yield. The Applicants and also, some other people in the surrounding complained to authorities about such pollution. It was expected that these authorities should have conducted proper and scientific investigations to assess ground water pollution while investigating pollution. However, it is observed from affidavit of MPCB and CPCB that no such scientific investigations have been carried out by both these organisations to assess the scale and spread of ground water contamination, if any.

39. CPCB has also not produced any water quality data and just refers that during visit, no instances of river water contamination and ground water contamination have come up to the notice of CPCB. Such submission of CPCB is rather surprising as the visit was made under Environmental surveillance program and not industry surveillance program. It was incumbent on CPCB to investigate the environmental status in and around industry under such program. Further, CPCB had observed certain non-compliance related to treatment and disposal of spent wash and chemical plant effluent, in its visits in 2010 and 2012, and therefore, being a technical organisation, it should have extended the scope of investigations to assessment of ground water and surface water which are logical fall out of such non-compliance.

CPCB has not placed any data on ground water and surface water quality on record.

40. In view of such affidavits by MPCB and CPCB which are statutory environmental regulatory authorities, Tribunal had appointed M.S. University, Baroda to assist the Tribunal. The MS university report is a detailed report which throws some light on the ground water status of the region. We are aware that MS University has conducted this study in short span, in a new territorial region, having disadvantage of language, manpower and unfamiliarity with terrain and industrial setting. In spite of all these constraints, the report of M.S. University is able to assist us in formulating our opinion, with the substantial environmental data presented in report. Majority of wells show a strong colour (Hazen values even up to 1040) besides very high TDS and nucleophiles. These observations are in line with sporadic time series data available with MPCB. The SAR values are found to be 2.7 to 10.4 which also indicate the unsuitability of water for agricultural purposes. The report also concludes that there is contamination of ground water and surface water in the area adjoining the industry.

41. Now, therefore, we will dwell over ascertaining the ground water status based on available information and data. MPCB has submitted some water quality data in its affidavit dated 10.10.2014. Perusal of this data shows

that some well samples were collected in 2013 and 2014 and the analysis results show that the well of Mr. Kajale has DO: 1.7 mg/lt, BOD: 165 mg/lt and COD: 412 mg/lt. Further most of the samples show high levels of TDS and concentrations of nucleophiles like SO₄, chlorides, phosphates, nitrates etc, which indicate ingress of some industrial effluents in the ground water. Similarly, the committee constituted by MPCB also observed similar trend of ground water quality in adjoining wells. The committee in its report of November, 2013 has clearly recorded the finding at point 17 of its recommendations (pp 596) that the complainants wells are polluted and suitable report from concerned departments be sought on damages which can be forwarded to Collector for further action.

42. We have elaborately dealt the issue nos. 2 and 3 with a purpose. The regulatory authorities like CPCB and MPCB who have been mandated by the Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981 and Environment (Protection) Act 1986 have failed to bring a comprehensive picture of status of Pollution Control System at the Respondent No.1-industry and therefore, we had to reproduce certain facts from the communications and correspondence and even had to appoint M.S. University with certain mandates. To summarize above discussion

on the status of pollution control system viz-a-viz a ground water quality, we do not have any hesitation to conclude that the Pollution Control Systems, at the Respondent No.1-industry are not managed scientifically and as per the norms or the standards or even the directions issued by regulatory authorities from time to time. We are also of the opinion that such mismanagement of the Pollution Control System including storage of spent wash in the unlined lagoons, unauthorized disposal through one time land Application and unscientifically disposal of chemical effluent has a strong linkage and relevance, resulting in adverse impacts on the surrounding ground water quality. The issue Nos.2 and 3 are accordingly answered i.e. the issue No.2 in the AFFIRMATIVE and No.3 in the NEGATIVE.

Issue Nos.4 :

43. There is sufficient evidence on record that the ground water quality at the wells of the Applicants is deteriorated due to the unscientific industrial effluent management practices of the Respondent No.1-industry. Mere observation of the analysis reports presented by MPCB and M.S. University would reveal that the concentration of nucleophiles and parameters of the TDS, colour, COD etc. are exceeding the standard. The M.S. University report also indicate that many of these wells have significant colour which will make such water even

aesthetically unacceptable to be used for drinking or other purposes. Though, the industry is providing the drinking water to the surrounding area in compliance with the orders of the Hon'ble High Court, the rights of the Applicants to have their own dependable source of safe and clean water cannot be denied under any circumstances. The Applicants cannot be left without any alternative than to depend on the industry for the water supply. Further, the MPCB as a follow up of its own committee findings have identified that the adjoining lands are polluted/affected and have directed the industry to approach the agricultural university for assessing the impacts and the damages. Needless to say that such ground water, which is polluted when used for agriculture, will have its own adverse impact on land and also on agricultural yields.

44. All the above discussion will lead to the conclusion that the immediate corrective and remedial measures are necessarily be initiated to improve the ground water quality and also, the degradation of the land. Having concluded in affirmative of such necessity, the next logical question in corollary is how to conduct such corrective and remedial measures. The Tribunal is aware that the corrective and remedial measures as far as the ground water quality require highly skilled and analytical expertise; and the process itself is highly expensive and

time consuming besides it requires coordinated efforts from all stake-holders. The Tribunal is not expected to go into the details of such methodology or techniques of the remediation of the ground water but it is suffice to say that enough literature is available on this topic. The Tribunal is also aware that the ground water remediation has been practiced in India at very limited places and no significant material/literature is available on the actual implementation of the ground water remediation. We also refer to the judgment of the Hon'ble Apex Court in "*Indian Council of Enviro-Legal Action Vrs. Union of India, 1996 S.C.C.(3) 212*" decided on 13-2-1996 wherein the remediation of ground water quality was directed. However, the Hon'ble Supreme Court in IA no.36 and IA no.44 in writ petition (c) no.967 of 1989 in order dated 18.07.2011 has underlined the delay in execution of such remediation for one reason or other.

45. However, with the knowledge of such background and also the experience, the Tribunal is conscious of the fact that at some stage an initiative needs to be taken to remediate the ground water in a time bound manner in a scientific way and we therefore are of the opinion that the regulatory authorities will have to utilise their powers conferred by the environmental regulation to ensure that the ground water remediation is done in a time bound manner.

46. We have carefully gone through the functions and the powers of the MPCB as far as restitution of water quality is concerned. Section 17 of the Water (Prevention and Control of Pollution) Act 1974 mentions the functions of the Board and the relevant provisions of said section are reproduced below :

17. Functions of State Board : (1) subject to the provisions of this Act, the functions of a State Board shall be –

- (a) To plan a comprehensive program for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;
- (b) To advise the State Government on any matter concerning the prevention, control or abatement of water pollution;
- (c) To collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;
- (d) To encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
-
-
- (l) to take, vary or revoke any order—
 - (i) for the prevention, control or abatement of discharges of waste into streams or wells;
 - (ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or adopt such remedial measures as are necessary to prevent, control or abate water pollution;

47. The relevant section 30 and 32 of Water (Prevention and Control of Pollution) Act 1974 are reproduced below :

Section 30: Power of State Board to carry out certain works :

(1) [Where under this Act, any conditions have been imposed on any person while granting consent under Section 25 or 26 and such conditions require such person to execute any work in connection therewith and such work has not been executed within such time as may be specified in this behalf, the State Board may serve on the person concerned a notice requiring him within such time (not being less than thirty days) as may be specified in the notice to execute the work specified therein.]

(2) - - - - -

(3) - - - - -

Section 32 : Emergency measures in case of pollution of stream or well.

(1) Where it appears to the State Board that any poisonous, noxious or polluting matter is present in [any stream or well or on land by reason of the discharge of such matter in such stream or well or on such land] or has entered into that stream or well due to any accident or other unforeseen act or event, and if the Board is of opinion that it is necessary or expedient to take immediate action, it may for reasons to be recorded in writing, carry out such operations as it may consider necessary for all or any of the following purposes, that is to say,--

(a) removing that matter from the stream or well [or on land] and disposing it of in such manner as the Board considers appropriate;

(b) remedying or mitigating any pollution caused by its presence in the stream or well;

(c) issuing orders immediately restraining or prohibiting the person concerned from discharging any poisonous, noxious or polluting matter into the stream or well [or on land], or from making insanitary use of the stream or well.

(2) - - - - -

48. Further, the State Boards also have powers to obtain information under Section 20 of Water (Prevention and Control of Pollution) Act 1974 and powers to take sample of effluent under Section 21 of Water (Prevention and Control of Pollution) Act 1974. One relevant provision is under Section 24 of Water (Prevention and Control of Pollution) Act 1974 where the Board is empowered to place certain prohibition on use of streams or wells for disposal of polluting matter. Section 30 of the Water (Prevention and Control of Pollution) Act 1974 empowers the Board to carry out certain works and recover the expenses. Section 32 of Water (Prevention

and Control of Pollution) Act 1974 specifically mentions the remediation and mitigation of pollution caused by its presence in the stream or well. Section 33 of Water (Prevention and Control of Pollution) Act 1974 gives the overarching powers to give the directions subject to the provisions of the Act which can obviously cover all the facets of the water pollution control, prevention, control and abatement.

49. The 'Abatement' is defined in the law of Lexicon as "removal or destruction (of a nuisance). The abatement of pollution will include remediation efforts which specifically find mention in Section 30 of Water (Prevention and Control of Pollution) Act 1974. With this background, we are utmost concerned with the minutes of the MPCB Consent Committee, which is claimed to be highest decision making authority for grant of consent, that the Board does not have the expertise of ground water remediation. We have already issued orders in the various matters like *Jagannath Pharande, Sant Das Ganu Maharaj, Raghunath Lohakare*, wherein the Board has been directed to take measures for the ground water remediation. In spite of its clear mandate under provisions of Water (Prevention and Control of Pollution) Act 1974, it is surprising that the MPCB is on record with its inability to conduct the ground water remediation. What we have observed is that the MPCB has even failed

to provide a scientific and reliable ground water quality data in all these cases. In Application No. 157/2013 i.e. Society for Environment, we have already dealt on the issue of capacity building at MPCB as far as research, investigation and assessment and the relevant para No.26 we have dealt with the scientific and technical approach required to be taken by the MPCB while conducting the environmental monitoring.

50. This Tribunal has already dealt on the capacity building in the State Pollution Control Board in terms of its scientific and technical capability for the effective research and application oriented investigation in Application No.32/2013 i.e. Deshpande Lay Out. The findings therein are relevant in the present case to and in spite of our above observations, it is regretted to observe that MPCB has not taken any effective steps to strengthen its scientific and technical capability in the form of Research and Development Activities which are essential for assessment, monitoring and surveillance of the pollution and environmental degradation.

“MPCB is a special organization created under the provisions of Water and Air Acts and is expected to perform a scientific and technical role in implementation of environmental regulations. The MSW rules specifically mandate MPCB to monitor the environmental quality in view of MSW facility operations. Section 17 of Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 prescribe the mandate of SPCBs, which clearly shows the scientific and technical functions of the Board besides the enforcement responsibilities. Considering these provisions in mind, we called upon the MPCB to submit environmental quality data related to MSW facility operations to assess the

environmental impacts. Being a special scientific organ created under environmental statutes, MPCB is expected to assist this Tribunal with scientific data, analysis and research. However, in this case, we regret to note absence of scientific support through data and information made available by MPCB. We therefore feel it necessary that the MPCB shall develop its capacity in environmental monitoring and assessment with emphasis on research based, latest scientific and analytical tools, as envisaged in Section 17 of Water and Air Acts. The Water and Air Acts have provisions, giving MPCB specific powers coupled with certain duties as envisaged more specifically in Section 17 of Acts, and Section 33 of Water Act, and Section 31 of Air Act. We are not inclined to elaborate on these legal (J) Appln. No. 32(THC) of 2013 provisions and the organizational approach when an institution is bestowed with certain powers coupled with duties, as they are well documented. We therefore urge the MPCB through its Chairperson to examine this aspect thoroughly for developing a specialized group within the organization which will focus on scientific and technological research, analysis and interpretation of environmental data, new and clean technologies, besides scientific dissemination of information. We hope that MPCB will consider the above suggestion in proper perspective”.

51. Hon’ble Supreme Court in Writ Petition (C) No. 664 of 1993, Indian Council for Enviro-legal Action Vs. Union of India (Uoi) and ors. (1996)5SCC281 has laid down the importance of enforcement of environment regulations as follows;

26. Enactment of a law, but tolerating its infringement, is worse than not enacting law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the Enforcement Authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for law abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the Legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that the Parliament enacted the Anti-Pollution Laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and Notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibits certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced.

Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of anti-pollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse affect of which will have to be borne by the future generations.

52. In view of the above discussion, it is necessary to find out the options available to perform the ground water remediation in view of the inability expressed by the MPCB due to lack of required technical man power. Firstly, we would like to refer this matter to the Chief Secretary of Government of Maharashtra who shall take review and examine how such inability to perform a statutory function can be expressed by the Regulatory Agency like MPCB. We also expect the Chief Secretary to ensure that suitable experts having relevant experience in pollution control, environmental remediation and associated research are available on Board of MPCB within next 3 months. We are constrained to enter in this domain only because of the fact that in number of cases the ground water is found to be polluted and with the increasing scarcity of water, it is necessary to safeguard the available resources of water and also, ensure remediation of surface and ground water on priority. We are also required to make this proposition in order to ensure that the provisions of Water (P&CP) Act, 1974 are effectively implemented which is main mandate of NGT under section 14 of the NGT Act, 2010.

53. In view of such inability expressed by MPCB and the urgent necessity of implementing the remedial measures in time bound manner, we are inclined to direct the CPCB to use its powers under Section 18(2) to

take over the regulatory regime at the Respondent No.1-unit and also, deal with the remediation of the ground water in the surrounding area, till the time the entire improvement in pollution control systems at industry and ground water remediation process is complete. Issue No. 4 is decided accordingly.

Issue No.5 :

54. It is now undisputed that the effluent management practices at the Respondent-industrial unit is not complying the consent conditions and also, the directions issued from time to time, as a result of such non-compliance, the authorities have even issued closure directions to the industry. As already observed while discussing issue Nos.2 and 3, such non-compliant effluent management practices of Respondent No.1 have resulted in the ground water contamination and also, the degradation of the land. There are no proper remediation measures undertaken by the Respondent No.1-industry and therefore, this is a fit case in which the principle of “polluter’s pay” is applicable. We cannot overlook mandate of Section 20 of the National Green Tribunal Act, 2010 which provides that the Tribunal shall follow the principle of “polluter’s pay” besides the principles of sustainable development and precautionary principle.

55. We may take brief survey of settled legal position in the context of pollution of water bodies. The Apex

Court in “**Tirupur Dyeing Factory Owners Vrs. Noyyal River A. Protection Association & Others, 2009 (9) S.C.C. 739**” took survey of the relevant case law viz. :

- (i) **Indian Council for Enviro Legal Action and Ors. Vrs. Union of India (UOI) and Ors. (1996) 3 S.C.C. 212.**
- (ii) **Vellore Citizens’ Welfare Forum Vrs. Union of India (1996) 5 S.C.C. 647**
- (iii) **People’s Union for Civil Liberties Vrs. Union of India, (1997) 3 S.C.C. 433 : (1997) SCC (Cri) 434.**
- (iv) **A.P. Pollution Control Board Vrs. Prof. M.V. Nayudu, (1999) 2 SCC 212.**
- (v) **M.C. Mehta Vrs. Union of India, (2009) 12 SCC 118.**

56. The Apex Court held that the Members of “Tirupur Dyeing Factory Owners Association” caused unabated pollution on account of discharging the Industrial effluents into Noyyal river to the extent, that the water of the river was neither fit for irrigation nor potable. It is observed :

“They cannot escape the responsibility to meet out the expenses of reversing the ecology. They are bound to meet the expenses of removing the sludge of the river and also for cleaning the dam. The principles of “polluter pays” and “precautionary principle” have to be read with the doctrine of “sustainable development”. It becomes the responsibility of the members of the appellant Association that they have to carry out their industrial activities without polluting the water”

57. The facts of the present case would show that the legal position considered and made applicable in case of

“Tirupur Dyeing Factory Owners Association” as referred supra in the present Application. There is no escape from the conclusion that M/s. Godavari Bio-Refineries Ltd., i.s. Respondent No.1 is require to pay damages caused due to operation of the industrial unit. Though, the Applicants have claimed that their agricultural lands are damaged in terms of its fertility and the yield, no such report has been placed on record. MPCB had directed the industry to engage the agricultural university but no such report is placed on record. In view of that though presently it may not be possible to decide the exact scope and quantum of such loss/damages, however, we may consider an approximate area within 2 km. radius of the industry that can be assessed and verified by a Committee, constituted for such purpose. We hold that the Respondent No.1-industry is also liable to pay the damages for the loss caused to the land-owners, to bear costs of remediation and to ensure the zero discharge. This answers the issue No. 5 together accordingly.

Issue No.6 :

58. In the present Application, the Respondent No.1-industry has two separate units namely the distillery and the chemicals. Both these industrial sectors have been identified as red category industries meaning that they are having high potential of causing pollution. Though, we could see from the record that the issue of pollution was

raised through the Writ Petition before Hon'ble High Court of Bombay and the Hon'ble High Court have asked NEERI to give report and based on such report and MPCB's views on the said report, Hon'ble High Court has allowed re-starting of industry with certain conditions. The industry has subsequently not complied with the conditions. It is noticed that till CPCB first initiated action against the industry in 2010, MPCB had not taken any action. Subsequently also, CPCB conducted inspection in 2013 and took action, but still there was no action by MPCB. MPCB formed a committee and its report though is very clear, was not promptly acted upon. The concerned official even referred his adverse views on addition of complainants and industry representative on such committee. Only after, MPCB was required to respond the report of M.S. University, certain directions have been given. However, in the mean time, consents were granted for expansion, product change and renewal for various units of Industry.

59. The Applicants during final hearings alleged that the industry is taking excessive production over and above the consented one, based on certain documents of Excise Department. This was countered by the industry with detailed records of manufacturing and also, the material sourced for outside, before further sale. Industry claimed that they are outsourcing the production/processing of

certain products through some other authorized units and the concerned departments' are aware of it. We are of the opinion that this issue needs to be examined by SEIAA and MPCB as the concerned regulatory authority for enforcement authority for EIA notification and Water/Air Act, 2010 respectively. We have also gone through the consent copies placed on record by MPCB. We have already noted that the affidavit just encloses the copies of consent without any abstract or summary, which is expected from organizations like MPCB. The abstract of such consents is as below;

Abstract of Consents issued to Industry

Sr. No.	Date of consent	Validity upto	I. II. Consent	III. Products		Trade Effluent (CMD)
				Name	Capacity, T/A	
1.	16.03.02	31.03.06	Operate	<ul style="list-style-type: none"> • Industrial Alcohol • Acetic Acid • Acetaldehyde • Fusel Oil • Dilute Acetic Acid • Ethyl Acetate 	<ul style="list-style-type: none"> • 1800 • 1500 • 1500 • 2.5 • 110 • 300 	900.0
2.	17.04.06	14.07.08	Operate	<ul style="list-style-type: none"> • Crotonaldehyde • Paraldehyde 	<ul style="list-style-type: none"> • 300 • 60 	60
3.	16.06.06	31.03.11	Operate	<ul style="list-style-type: none"> • Industrial Alcohol • Acetic Acid • Acetaldehyde • Fusel Oil • Dilute Acetic Acid • Ethyl Acetate 	<ul style="list-style-type: none"> • 1800 • 1500 • 1500 • 2.5 • 110 • 300 	900
4.	07.07.06		Operate/ Amendme nt to consent	<ul style="list-style-type: none"> • Crotonaldehyde • Paraldehyde 	<ul style="list-style-type: none"> • 500 • 60 	
5.	07.02.07	31/08.08	Operate	<ul style="list-style-type: none"> • Acetaldehyde • Diethyl Acetal • Ethyl Crotonate • Tri-Ethyl Butane • Herbal Extract • Methyl Crotonate • Methyl Beta-Amino Crotonate • Ethyl Beta-Amino Crotonate 	<ul style="list-style-type: none"> • 20 • 7.5 • 21 • 0.30 • 9.0 • 15.0 • 30 	2.0

6.	15.10.08	Upto commissioning of unit	Establish	<ul style="list-style-type: none"> Ethyl Acetate 	<ul style="list-style-type: none"> 2400 	2.0
7.	21.07.09	31.01.10	Operate	<ul style="list-style-type: none"> Ethyl Acetate 	<ul style="list-style-type: none"> 2400 	2.0
8.	09.07.10	Change of Name of the Industry				
9.	26.07.13	31.0 3.11 to 31.0 8.13		<ul style="list-style-type: none"> Industrial Alcohol Acetic Acid Acetaldehyde Fusel Oil Dilute Acetic Acid Ethyl Acetate 	<ul style="list-style-type: none"> 1800 1500 1500 2.5 110 3000 	720
10.	11.02.14	Upto 5	Establish for product mix	<ul style="list-style-type: none"> Crotonic Anhydride Crotonitrite 1-3 Butylene Glycol 2-Ethyl , 1-3 Hexane Diol 3-Methoxy Dutanol 3-Methyl 3-Pentene One(MPO) 	<ul style="list-style-type: none"> 8.33 8.33 41.66 33.33 25 333.33 	Nil from product mix
11.	27.03.14	31.0 8.13	Renewal of Consent alongwith amalgamation of chemical & R&D unit	<ul style="list-style-type: none"> Industrial Alcohol Acetic Acid Acetaldehyde Fusel Oil Dilute Acetic Acid Ethyl Acetate <p>Chemical Plant Products:</p> <ul style="list-style-type: none"> Crotoaldehyde Paraldehyde <p>R& D Products(Only 1 product manufacture at a time):</p> <ul style="list-style-type: none"> Acetaldehyde Diethyl Acetal Ethyl Crotonate Tri-ethyl Butane Herbal Extract Methyl Crotonate Methyl Beta -Amino Crotonate Ethyl Beta- Amino Crotonate 	<ul style="list-style-type: none"> 1800 1500 1500 2.5 110 5400 500 60 20 7.5 21.0 0.3 9.0 15.0 30 	784
12.	25.07.14	31.0 8.17	Part Consent to 1 st Operate with Amendme nt	<ul style="list-style-type: none"> Crotonic Anhydride Crotonitrite 1-3 Butylene Glycol 2- Ethyl , 1-3 Hexane Diol 3- Methoxy Butanol <p>By Products Name:</p> <ul style="list-style-type: none"> Sodium Sulphate Salts Impure 1-3 Butaylene Glycol Butanol 	<ul style="list-style-type: none"> 8.33 8.33 41.66 33.33 25.0 118.5 12.9 64.6 	NIL

60. It is interesting to note that the distillery as well as the chemical industry falls within the regime of environmental clearance under EIA Notification. On a close perusal of data of the products viz-a-viz capacity and also, the conditions of the consents in case of expansion/product makes change, we could observe that the committed reduction in certain product capacity levels, has not been effected and reflected in further consent granted to industry thereafter. Prima-facie, we find that it is a fit case to examine whether the EIA notification has been *strict-senso* complied by the industry and MPCB while granting the consents. We, therefore, find it necessary to examine such matter through the SEIAA, Maharashtra who shall examine this matter in next two (2) months and take necessary action in case of non compliances.

61. In view of the foregoing discussions, the Application is partly allowed with following directions which are being issued; under Section 14, 15 and 19 read with Section 20 of National Green Tribunal Act, 2010.

- a.** CPCB shall immediately prepare a ground water remediation action plan in the area of 2 km from the industry location, including methodology cost and time bound action plan, techniques for verifying its adequacy. CPCB may take help of expert institutes like NEERI, IGRI Hyderabad, M.S. University, CGWB etc as required or even form a

expert committee for such work. Chairman CPCB shall ensure that such action plan is ready within a time frame of two months, on priority basis. MPCB shall provide all necessary assistance to CPCB in this regard.

- b.** Such program shall be executed through Collector, Ahmednagar who shall form a local level committee with representatives of GSDA, agricultural department, CPCB, MPCB and CGWB or any other agency as may be required. The committee will be responsible for executing the remediation program with overall guidance and supervision of CPCB in next one year, or the time prescribed by CPCB in the remediation plan. CPCB shall be overall in-charge and responsible for planning and executing such remediation program.
- c.** The said committee shall also assess the damages to agriculture (land/yield) by carrying out necessary survey by taking help of Agricultural university of Rahuri. We expect the Vice Chancellor of the university to provide required expertise (not handling earlier industry references) and laboratory infrastructure for such study. Collector Ahmednagar shall make necessary request to Vice Chancellor for such assistance with copy of this judgment. Such exercise shall be completed in next 3 months, as already a protocol has been developed by University in this regard.
- d.** CPCB shall enforce the consent management regime at the industry on adhoc basis by way of stop gap arrangement, till such time that the industry upgrades the pollution control systems as per requirement of law and conditions of consents

and directions issued to Industry from time to time. However, MPCB shall ensure the compliance of its directions or can take contemplated actions which were planned before this judgment.

e. The chemical plants of the industry shall be closed till separate ETP and adequate disposal and reuse/recycle facilities with required data loggers/record system are provided by the industry which shall be verified by CPCB in terms of observations and recommendations made by M.S. University Baroda. CPCB shall forthwith issue such directions after giving sufficient time to industry to safely close its chemical activities, may be with 72 hrs notice. The industry shall ensure safe closure and also safety of all the chemicals in the premises.

f. The industry shall be liable to pay and bear all the cost of remediation of ground water and land, as may be required, including studies and actual execution of remediation works, besides compensation if any as decided by above directions. They shall initially deposit sum of Rs. 50 lakhs (Rs. fifty lakhs) with Collector in the escrow account of the Collector's office and Rs. 5 lakhs (Rs. Five lakhs) with CPCB for such purpose within next four (4) weeks, failing which the Collector shall realise the said amount under the Maharashtra Land Revenue Code, 1966, due from them. A compliance Report in this behalf be submitted by the Collector, within four (4) months to this Tribunal.

g. Considering the pollution of well water, the Applicants are entitled for compensation of Rs. 2

lakhs (Rs. Two lakhs) towards each well besides the remediation and damages as directed above. This amount shall be paid by Industry to Applicants through Collector, Ahmednagar within 4 weeks.

h. A compliance report shall be submitted by CPCB and Collector on monthly basis, till the entire remediation exercise is complete.

i. A compliance report shall be submitted by the Chief Secretary Maharashtra and SEIAA Maharashtra as related to directions in para 52 and 60 respectively. A copy of this order to be provided to the Chief Secretary and SEIAA by MPCB through its R.O. immediately in next one week. We also direct the Chief Secretary to issue necessary instructions to all field level agencies for an early execution of such remediation activity.

j. The Respondent NO.1 and MPCB shall pay Rs. 25,000/- (Rs. Twenty five thousand) each to Applicants as cost of this Application in four (4) weeks and bear their own.

62. As already mentioned in earlier paras, it is necessary for the Tribunal to monitor the implementation of its directions related to remediation to ensure its time-bound and effective manner. The matter is therefore posted for on 31.7.2015 for reporting of compliances.

63. While parting with the judgment, we would like to record our appreciation of the report prepared by Environmental Engineering Department, M.S. University which has assisted this Tribunal to adjudicate the matter

effectively. The Vice Chancellor of the university is requested to take note of the above good work by the concerned personnel.

64. The Application is disposed of.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay. A. Deshpande)

Date :May 19th, 2015.
ajp.

NGT