

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE  
APPLICATION No. 91/2014(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. Smt. Parwati Ben Bhanabhai Patel**

Age 70 years,  
R/o. Post :Karvad, Tal : Vapi,  
District Valsad 396 191

**2. Smt. Neeru Ben Bhanabhai Patel**

W/o. Shri Manharbhai, Age 53 years,  
R/o. Post :Karvad, Tal : Vapi,  
District Valsad 396 191

**3. Bhikhubhai Bhanabhai Patel,**

s/o. Shri Bhanabhai Age 50 Yrs.  
R/o. Post :Karvad, Tal : Vapi,  
District Valsad 396 191

**4. Shri Kamleshbhai Bhanabhai,**

S/o. Bhanabhai, Age 48 yrs.,  
R/o. Post :Karvad, Tal : Vapi,  
District Valsad 396 191

**5. Shri Jitendra Bhanabhai**

S/o. Bhanabhai, Age 44 yrs.,  
R/o. Post :Karvad, Tal : Vapi,  
District Valsad 396 191

**6. Shri Umesh Bhanabhai,**

S/o. Bhanabhai, Age 38 yrs.,  
R/o. Post :Karvad, Tal : Vapi,  
District Valsad 396 191

**7. Shri Rajesh Bhanabhai,**  
S/o. Bhanabhai, Age 38 yrs.,  
R/o. Post :Karvad, Tal : Vapi,  
District Valsad 396 191

**....Appellants**

**A N D**

- 1. Union of India,**  
Through Secretary,  
Ministry of Environment, Forest and  
Climate Change,  
Indira Paryavaran Bhavan,  
Jor Bagh Road,  
New Delhi 110 093
- 2. State of Gujarat,**  
Through Secretary,  
Ministry of Environment and  
Forest Department,  
Block No.14, NH-8, GIDC,  
Vapi 396 195 (Gujarat)
- 3. Vapi Industries Association,**  
Through : Its President,  
Plot No.135, NH-8,  
GICD, Vapi 396 195
- 4. M/s. Vapi Waste & Effluent Management  
Company Limited,**  
Through : Its Executive Director,  
Plot No.4807, Phase-IV,  
GICD, Vapi 396 195
- 5. Gujarat Industrial Development Corpn.,**  
Through : Its Chairman,  
Makarpura, GICD,  
Vapi 396 195 (Gujarat)
- 6. Central Pollution Control Board,**  
Through : Its Member Secretary,  
Parivesh Bhawan, BCD-Cum Office Complex,  
East Arjun Nagar,  
Delhi- 110 032.

**7. Gujarat State Pollution Control Board,**

Through : Its Member Secretary,  
Paryavaran Bhavan, Sector-10,  
Gandhinagar.

**8. The Collector,**

The Office of Collector and District Magistrate,  
District Emergency Operation Centre,  
Disaster Management Branch,  
Valsad-396 001 (Gujarat).

**...Respondents**

**Counsel for Appellant :**

Mr. Rahul Choudhary, w/.  
Mr. Ritwick Dutt, Adv.

**Counsel for Respondent No. 2:**

Mr. Parth H. Bhatt.  
Mr. Nikhil Sakhardande, Ms. Swagata Naik,

**Counsel for Respondent No.4 :**

Mr. Rajesh Doshi Exe. Director.

**Counsel for Respondent No.6:**

Ms. Manda Gaikwad, Adv.

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**DATE : February 27<sup>th</sup>, 2015**

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**J U D G M E N T**

1. By this Application filed under Section 14 and 15 of National Green Tribunal Act, 2010, the Applicants, who are the farmers and resident of village Karvad, District Valsad (Gujrat), have approached this Tribunal seeking damages caused to their agriculture lands, eco-system and environment due to spillage of hazardous wastes from Vapi Common Hazardous Waste Treatment Storage and Disposal

Facility (CHWTSDF) of Respondent Nos.3 and 4. The Applicants submit that on 17-7-2012, wall of the cell No.4 of the CHWTSDF collapsed and toxic waste contained therein spilled out to the surrounding area causing extensive environmental damage. The Applicants further submit that Gujarat Pollution Control Board (GPCB) and Central Pollution Control Board (CPCB) have conducted the inspections and have found that the overloading of waste disposed in the cell, entry of rain water into the cell and improper construction of retaining wall of the cell could be the reasons for such failure and these reasons clearly indicate negligence and lack of professional expertise of the concerned Respondent Nos.3 and 4 in managing the CHWTSDF operations.

**2.** Some of the residents of village Karvad had filed similar Application No.87/2013 i.e. "Ramubhai Kariyabhai Patel and Others V/s. Union of India and others". This matter was decided vide judgment dated 18-2-2014.

**3.** In brief, it is contention of the Applicants that the assessment done by the Collector and District Magistrate on 22-5-2013, under the provisions of Gujarat Disaster Management Act, is highly underestimated and has been issued unilaterally without proper consultation, assessment of damages caused to the Applicants and their properties. The Applicants have objected to this compensation by sending representations to the Collector. It is the contention

of the Applicants that though this Tribunal has judiciously gone in to the assessment of damages and has issued directions for assessment of soil contamination and also, re-mediation thereof, the inaction on the part of authorities and also, the Respondent Nos.3 and 4 is resulting in the entire process of remediation being delayed and taking a long time. The Applicants apprehend that the re-mediation of soil may take at least another 10 years to regain the previous agricultural yields. The Applicants have therefore, submitted this Application with following prayers:

- 1.** Pass an order thereby holding that Respondent Nos.3, 4 and 5 are liable and responsible for damage caused to the applicants, ecosystem and environment and liable for payment of damages for loss of property and livelihood and liable for restoration of the area.
- 2.** Pass an order thereby directing the Respondent Nos.3, 4 and 5 to pay the compensation and damage to the Applicants as stated in para 15 and as given details in Annexure A-47.
- 3.** Pass an order thereby directing the Respondents to restore the agricultural fields of the applicants and surrounding environment to its original position.
- 4.** Pass an order thereby directing the Respondent No.7, GSPCB to not to renew the consolidated consent and authorization to the Respondent No.4 till the time they decontaminate and clean the site in question and comply with all the direction issued by GPCB, CPCB and this Hon'ble Tribunal.

4. Considering the Judgment delivered in Application No.87/2013, a report was called from Collector Valsad on the issue of compensation. The Collector, Valsad had filed an affidavit on 23-1-2015 and submitted the list of the said affected persons alongwith the amount payable to them as the Judgment of the Tribunal along with the Affidavit. He further submits that the seven (7) Applicants remained absent to collect the amount though they were informed. The Collector, Valsad further informed that the office of the Collector is ready and willing to pay the amount as directed by the Tribunal.

5. The GPCB i.e. Respondent No.7 also filed an affidavit on 7-1-2015 and resisted the Application. GPCB submits that the Hon'ble Tribunal has already settled this issue by Judgment in Application No.87/2013 wherein the affected persons have been monetarily compensated by judicious assessment of the damages including loss of yields, probable yield loss for next two (2), loss of fertility etc. GPCB, therefore submits that *"It is dangerous to be too good and this Application is a clear case of abuse of the process of law"*. The learned counsel of GPCB argued that this is a fit case where principle of *res judicata* is applicable and the Applicants had an opportunity to agitate their issues before this Tribunal during the course of hearing in the matter bearing No.87/2013. He claims that the Applicants in earlier Application are either neighbours or relatives of the

present Applicants and they cannot take a stand that they were not aware of the proceedings in Application No.87/2013. In any case, the principles of *res judicata* and constructive *res judicata* are clearly applicable, even considering that the Appellants were not aware of the proceeding.

6. We have perused the Application, pleadings and documents on the record. This Tribunal has already pronounced the judgment in Application No.87/2013 and issued following directions :

**“34(1).** -----

**(2).** *The Respondent Nos. 3 and 4 shall pay the compensation to the affected farmers as identified by Collector in his order dated 22-5-2013, towards :*

- i Actual loss, equal to the amount identified by Collector in his order dated May 22, 2013*
- ii Probable future loss equal to double the said amount identified by Collector.*
- iii Non-pecuniary damages : equal to said amount identified by Collector.*
- iv Loss of soil fertility : equal to said amount identified by Collector.*

*This amount shall be deposited by the Respondent 3 and 4, with the Collector, Valsad within a period of one month, who shall ensure the proper distribution of the amount among the affected farmers in next one month. In case this amount and also the amount at point 1 above is not deposited within four (4) weeks, the Collector, Valsad shall immediately arrange for attachment of property of the Respondents 3 and 4 with*

*stock and barrel, in order to recover such amount without waiting for any further order and report to this Tribunal about the action taken in the matter. Applicant.*

**(3).** -----

**(4).** *Respondent Nos.3 and 4 shall deposit an amount of Rs.5,00,000/- (Five lacs) with the GPCB who shall immediately undertake the study of contamination of the affected area including the agricultural lands and also the water bodies, particularly the sludge which may have been accumulated at bunds in Bil-Khadi in order to evolve the comprehensive remediation program with the technical assistance of CPCB and any other expert agency, if required. We expect that GPCB/CPCB shall complete the exercise of evolving remediation plan, in next two (2) months. The remediation activities at the affected agricultural areas shall be completed in next six (6) months. The entire cost of evolving the remediation program and also, the actual remediation activities shall be borne by Respondent 2 and 3.*

**(5).** -----

**(6).** -----”

**7.** The abovementioned judgment deals with the responsibility of particular incident of the Hazardous Wastage Spillage, assessment of hazardous waste spilled over, damage to the agricultural land and remediation of measures thereof. Certain directions are issued to the Authorities to complete the assessment of soil contamination and remediation thereof in a time bound manner. Therefore, in our considered opinion, the issues raised in this Application, including responsibility of the incident,



compensation and remediation have already been dealt in the said judgment. The only limited concern which can be relevant now is related to scale of monetary compensation, in view of the continuous loss of the agriculture. The judgment in para 34(2) clearly considered the monetary compensation on various grounds such as actual loss, probable loss: equal to double the said amount non-pecuniary damages and loss of soil fertility. The Tribunal has also directed the CPCB and GPCB to evolve the soil remediation plan and carry out the remediation measures in six (6) months. Considering these aspects of the judgment, even the loss of fertility and futuristic loss for a certain period have been dealt in the Judgment and therefore, we do not find any merit at present to consider this Application, as the issues raised in this Application have already been settled in the Judgment in Application No.87/2013. We are also inclined to accept the arguments of learned counsel for the State as well as GPCB that the present Applicants cannot claim that they were not aware of the earlier proceeding before this Tribunal. There is no such averment in the present Application also. The present Applicants for the reasons best known to them abstained from raising their say in Application No.87/2013. Nonetheless, all their concerns have already been addressed in the judgment in Application No. 87/2013.

**8.** The principles of *res judicata* and constructive *res judicata* are well documented and it is needless to reproduce

various citations on these principles. We therefore, hold that the issues raised in the present Application have already been dealt with and decided in judgment in Application No.87/2013 and the present Application is barred by the principles of *res-judicata* and constructive *res-judicata*. The Application is, therefore dismissed with following directions:

- 1) The Collector shall send the cheque/Demand Draft towards the compensation ordered in Application No. 87 of 2013, by registered post to the Applicants and other claimants in next two (2) weeks.
- 2) The Applicants are at liberty to approach this Tribunal, if any of the directions issued in the judgment of Application No.87/2013 are not complied with by the Respondents, with prayers, if any, as permissible by the Law.

Application is disposed of. No costs.

....., **JM**

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

....., **EM**

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

**Date : February 27<sup>th</sup>, 2015.**