

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE**

**APPLICATION No. 41/2013(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:**

**Rajendrasinh Mansinh Kashtrya,**

R/o. Kanjibapa Nagar,,  
Bherai Road, Rajula,  
District : Amrli (Gujarat)

**....Applicant**

**A N D**

- 1. Gujarat Pollution Control Board,**  
Through : The Member Secretary,  
Paryavaran Bhavan,  
Sector 10-A, Gandhinagar,  
Gujarat – 382 010
- 2. Gujarat Maritime Board,**  
Through : Chief Executive Officer,  
Sector 10-A, Gandhinagar,  
Gujarat – 382 010
- 3. State of Gujarat,**  
Through : Chief Secretary,

1<sup>st</sup> Block, 5<sup>th</sup> Floor,  
Sachivalaya, Gandhinagar  
Opp. Cine Circle, Sion (East)  
Gujarat – 382 010

**...Respondents**

**Counsel for Applicant :**

Mr. Parun Gupta, w/  
Mr. Rahul Choudhari,

**Counsel for Respondent Nos.1 :**

Mr. Viral Shah,

**Counsel for Respondent No. 2 :**

Mr. Premal Nanavati, Adv., w/  
Mr. S. S. Shetty,

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**DATE : 17<sup>th</sup> July, 2014**

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

**1.** By this Application, Applicant Rajendrasinh has sought following directions :

**(I)** Direct the Respondent Gujarat Maritime Board to stop coal handling unit located at Navlakhi Port on southwest end of the Gulf of Kutch in Hansthal Creek.

**(II)** Direct the State Pollution Control Board to do the assessment of the damage done to the environment to the marine life of the coastal area by the Gujarat Maritime Board by illegally operating the coal handling units.

**(III)** Direct the Gujarat Maritime Board to restore the area on the basis of polluter pays principle.

**(IV)** Direct the State Pollution Board to initiate proper action against the Gujarat Maritime Board for violating the environmental laws and polluting the environment.

**2.** The Application is filed under Section 14, 15 read with section 18 of the National Green Tribunal Act, 2010. Main grievance of the Applicant is against port activities of “Navlakhi Port” operated by Gujarat Maritime Board (Respondent No.2).

**3.** Briefly stated, the Applicant’s case is that without obtaining required lawful consent under provisions of the Air (Prevention and Control of Pollution) Act, 1981, Navlakhi Port is handling coal units, dumping coal near open areas and transportation thereof in the nearby places which results into Air and Water Pollution. Thus, the Respondent No.2 is causing violation of the Air (Prevention and Control of Pollution) Act, 1981 as well as that of the Water (Prevention and Control of Pollution) Act, 1974, and guidelines provided for coal handling. The Respondent No.1-Gujarat Pollution

Control Board is a regulatory body which is legally bound to control the Air and Water Pollution. The Navlakhi Port imports coal from foreign countries on large scale. The Port has installed coal handling capacity of 8.05 million tons per annum (MTPA) which is mainly imported and huge stock of coal is collected in open area. Thus, coal stocking activity results in coal dust emission. The Port is lighterage Port. Therefore, big vessels cannot enter the port for the purpose of unloading the coal. So, big vessels are anchored away from where the coal is transported through small vessels to Navlakhi Port where it is unloaded and stacked in huge heaps. Thereafter, it is loaded in trucks for supply to various consumers. The coal handling without proper management system is causing Air Pollution. It also leads to health hazard viz. breathlessness, eye soar etc. amongst the workers, residents of nearby area and passersby. The Maritime Board has not provided water fogging and sprinkling system in the coal handling area. There is no compound wall around the coal yards. The nearby agriculture fields are adversely affected due to emission of the coal dust which is spreading due to the wind and hurricane. The Gujarat Pollution

Control Board (GPCB) noted several deficiencies in the coal handling of Navlathi Port and gave directions from time to time. The consent to operate was also denied on two occasions, yet, the coal handling system of Navlakhi Port did not show any improvement. Consequently, the Applicant filed present Application seeking the directions as mentioned above.

**4.** By filing Affidavit-in-reply, Respondent No.1 (GSPCB) resisted the Application. According to GSPCB, consent to operate Navlakhi Port was granted which is valid till 23<sup>rd</sup> April 2018, subject to various conditions. It is averred that due to non-compliance of certain conditions, the request for extension of the consent to operate had been rejected on 18<sup>th</sup> April 2009 and 3<sup>rd</sup> November 2010. It is further stated that GPCB informed Respondent No.2 to comply with the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as well as the Hazardous Waste Management Rules. The GPCB had pointed out deficiencies in the coal handling at Navlakhi Port. The GPCB noticed Air Pollution caused due to unscientific handling of the coal loading and the unloading at Navlakhi Port and as such, the Maritime Board was

given directions to improve the coal handling system. The stance of the GPCB is that it had issued closure directions U/s. 31(A) of the Air (Prevention and Control of Pollution) Act, 1981 on 28<sup>th</sup> April 2013 for certain period and thereafter inspections were carried out from time to time. The Maritime Board undertook improvement work by providing water sprinkling in the area, construction of paved platform of 16000 sq. mtrs. and RCC road in the port area and therefore, the closure order was partly stayed. The GPCB noticed certain deficiencies during inspections between period of May 2011 till November 2011 and had issued Show Cause Notices to the Maritime Board. It had taken required measures to ensure due compliances of Air Act and the Water Act. The GPCB has filed supporting documents alongwith the Affidavit in reply.

**5.** By filing common counter Affidavit, the Application is opposed by Respondent Nos. 2 and 3. According to them, the activities of Navlakhi Port do not cause any environmental damage. It is alleged that though Navlakhi Port has capacity of about 10 million metric tone per year, yet, coal of such quantity does not normally reach to the fullest capacity in

stockyard of the coal which is imported at the port. The coal handling system duly takes care of appropriate coal loading and unloading, stocking and transportation. It is further contended that Navlakhi Port is notified as Port under the Gujarat Maritime Board Act 1981 and is being operated without causing environmental damage. It is further contended that at the time of transportation of coal, loaded trucks are scrupulously covered by following guidelines in order to avoid dusting and spreading of coal particles. It is denied that the fugitive emission and coal particle causes health hazards to the residents of the nearby locality and passersby and workers of the port. It is denied that nearby agricultural lands are affected by the dust emission due to improper handling of the coal in the area as alleged by the Applicant. The Respondent Nos. 2 and 3 have denied all the material averments made by the Applicant and have sought dismissal of the Application.

**6.** Following issues emerge in view of the controversy arising out of the pleadings referred above:

**(i)** Whether it is demonstrated that Navlakhi Port committed violation of the Air (Prevention and Control of Pollution) Act, 1981 ?

**(ii)** Whether it is required and necessary to issue directions against the Maritime Board to ensure appropriate coal handling by following an action plan to improve the coal handling system and guidelines for coal handling at Navlakhi Port so as to avoid any environmental damage/harm including violations of the Air Act, Water Act and Hazardous Waste Management Rules ?

**7.** We have heard Learned Counsel for the parties.

We have perused relevant documents and the record.

**8.** There is hardly any difficulty in reaching conclusion that till about end of year 2011, Navlakhi Port was unable to properly manage the coal handling system. It appears that one Sewa Gujarat Kanooni Sahay Samiti had approached the Hon'ble High Court of Gujarat by filing a Writ Petition against the Maritime Board and the GPCB. Copy of order in Spl. Civil Application No.1069 of 2000 (Annexure R-2) is placed on record by the Maritime Board. It appears that certain directions were given by the Hon'ble

Gujarat High Court to the Maritime Board in order to seek compliances of proper coal handling. The directions issued by the Hon'ble Gujarat High Court were as follows :

1. *While unloading coal from the barge, water shall be sprinkled to reduce dusting.*
2. *Vehicles shall not be overloaded and shall be covered from the top to prevent spillage on road and dusting.*
3. *Approach road shall be converted from WBM to Tar road and efficient water sprinkling shall be*
4. *Coal yard shall be guarded with compound wall having sufficient height to prevent dusting.*
5. *The concerned authorities are directed to identify and demark the storage places for various commodities considering their impact including health and hygiene in view point and then develop the coal storage yards considering the criteria suggested by GPCB. In order to bring the situation under control, it is suggested that rate of import of coal at the Port nearby may also explore feasibility of setting up the automatic and permanent water sprinkling and leachate recovery system at barge unloading, heaps and loading the transporting vehicles. The authorities are directed to prepare and implement the plan for regular maintenance of the port area.*
6. *The Gujarat Pollution Control Board shall supervise loading and unloading of coal at the*

*Port and take appropriate steps for control of pollution.*

**9.** According to the Learned Counsel for Maritime Board, above noted directions of the Hon'ble Gujarat High Court have been sufficiently complied with and, therefore, now it is unnecessary to consider the present Application. We cannot, however, overlook the fact that such order was issued by the Hon'ble High Court of Gujarat on 10<sup>th</sup> May 2000. Thereafter, much water has flown under the bridge. The record particularly number of documents produced by the GPCB placed on record go to show that between 2009 to 2011 the Maritime Board was caught on wrong foot. The GPCB stated that fugitive emission was observed near Weigh Bridge in the port area. It was further observed that there was no water sprinkling on the coal stock stored on the platform at the Railway siding. The loading and unloading of the coal was being improperly done. The GPCB noticed that the directions issued by the Hon'ble High Court of Gujarat were as per consent order and had been breached by the Maritime Board. The GPCB had also directed closure of the Navlakhi Port on one occasion. It had declined to extend the consent to operate the

port activities on 18-4-2009 as well as 3-11-2010 due to non compliance of the directions. The Show Cause Notices issued to the Maritime Board on 21-1-2014 and 20-4-2014 go to show that the Maritime Board failed to improve the Port Activities, particularly in respect of proper coal handling in the port area. Dusting was observed in the port area, sprinkling was not provided nor fogging system was available in the port area. The Maritime Board had not provided metal road in port area. The Maritime Board also had not provided hazardous waste storage facility.

**10.** It is the grievance of the Applicant that though GPCB observed non-compliances of the environmental norms committed by the Port Authorities, they have not taken stringent and precipitative action against the Port Authorities. Countering this argument, the learned counsel for GPCB cited various occasions where instruction letters, notices, closure and refusal of consent have been done by the GPCB on observing the non-compliances. The learned counsel for Applicant pointed out that inspite of such legal actions by the GPCB and also, orders of Hon'ble High Court, the GPCB could not enforce the environmental

regulations to ensure consistent compliance of norms. We could not find any specific efforts of GPCB, as envisaged under Section 22/2 and 23/3 of Air (Prevention and Control of Pollution) Act 1981 for taking remedial measures or recovering cost of such remedial measures. There is no record to show that prosecution as per provision of Air (Prevention and Control of Pollution) Act, 1981, has been launched. The Tribunal, therefore, feels there is an urgent need that GPCB shall revisit its enforcement policy which shall effectively integrate various aspects including inspection, monitoring, standards, compliances, directions, remedial measures and filing of complaints before the Court as per provisions of environmental acts, based on culpability environmental damages, severity of pollution, repeated violations etc. The enforcement strategy of GPCB seems to be restricted to be rounded and cyclic in approach involving inspection, monitoring, directions and forfeiture of Bank guarantee which is invoked in the event of each observed non-compliance. We, therefore, urge the GPCB to review its environmental enforcement policy on priority.

**11.** Considering the documents placed on record and the Report of the Site Inspection conducted by the GPCB, it goes without saying that the Maritime Board failed to take appropriate measures to avoid Air and Water Pollution at Navlakhi Port. There is no escape from conclusion that inspite of various directions from time to time, the coal handling system of the Respondent Nos. 2 and 3 was not updated and improved in order to avoid Air and Water Pollution. It appears that after interim orders of this Tribunal, certain improvements have been done by the Maritime Board. The Maritime Board has now provided paved platform at the Railway siding. The Maritime Board is required to seriously deal with the issue of Air and Water Pollution. An additional Affidavit is filed by the competent Officer of GPCB by name Rajeshbhai Patel in response to the directions of this Tribunal. His additional Affidavit shows that the site of Navlakhi Port was inspected by the team of M.S. University, Baroda and officers of the GPCB as well as the Maritime Board on 13<sup>th</sup> April 2014. The observations of the joint inspection are stated as follows :

- Civil Construction work of wheel washing platform and setting tanks are completed.
- Overall housekeeping is observed improved.
- Eleven nos. of dedicated tankers for sprinkling of water on roads and coal storage yard and same was found working.
- Water sprinkling is regularly carried out at each and every stage of loading and unloading by water tankers.
- Road side mud and coal storage platform mud is removed by dozer (scraper). After sun drying of mud it is mixed with coal.
- All the trucks and train rakes filled with coal were observed covered with tarpaulin sheet.
- Second Weigh Bridge within port area has been made functional and operative to avoid any traffic problems.
- GMB has not provided any wind breaking wall. On the inquiry it was informed that the tenders are invited and the work order will be given after completion of code of conduct – Lok Sabha election. It was assured that GMB will not raise height of coal heaps beyond 5 meter.
- On inquiry, it was informed that GMB had planted around 300 trees/plants, but due to less survival rate around 100 had survived. Plants like Piludi (Salvadora),

Sharu (Casuarina Equisetifolia) etc. are standing.

- The permanent human settlement area is around 09 k.m. from the port site. Nearest village is Lavanpur and Varshmedi is @ 9 k.m.

**12.** From the developments noted above, it can be gathered that there is improvement in the affairs of the management of Navlakhi Port after filing of the present Application. The Respondent Nos. 2 and 3 are ready and willing to comply with the recommendations of the M.S. University, Baroda. It may be noted that we called upon M.S. University, Baroda, to recommend an Action Plan for improvement in the coal handling system at Navlakhi Port. The Action Plan is recommended by M.S. University, Baroda at the time of final hearing. The learned counsel for the Applicant submitted that the recommendations of the M.S. University, Baroda are acceptable to the Applicant and may be directed to be implemented by the Respondent No.2 in *stricto sensu*. He further submitted that principle of “Polluter’s pay” also may be applied in the facts and circumstances of the present case. We directed the Counsel to prepare

a joint programme in consultation with each other and submit to this Tribunal. It appears that they did not prepare any common programme.

**12.** Navlakhi Port handles a significant quantity of mainly imported coal which is normally available in smaller sizes with significant percentage of fine dust. As mentioned earlier, the coal is brought to the port, from the large vessels anchored deep in the sea through smaller vessels or barges. Port Authorities are using moving machines like poclain for lifting of the coal from the smaller vessels and then stocking it in the port area. Subsequently, the stacked coal is lifted by similar machines for putting them in the transportation trucks. All this semi-mechanical system involves significant number of coal transfer points, which are important sources of fugitive dust emissions. In order to plan a comprehensive Air Pollution programme, all these potential sources of dust emissions need to be appropriately covered, which is not possible in the present coal handling arrangements. What efforts presently being taken by the Port Authorities are towards not allowing further spreading of the dust through measures like water fogging compound wall, garland drainage etc.

However, for such significant coal handling capacity, the Port Authority needs to plan for adopting the cleaner technology for handling of coal through hermetically sealed conveyance system and also fully mechanised coal lifting and also unloading. Such system will control the fugitive dust emission at the source itself, and also will lead to reduce the loss of coal through the emissions. Worldwide and even in India, several ports are adopting such mechanised coal handling practice as an environmental initiative. The loss of coal through the dust emissions is nothing but an environmental concern alongwith the financial loss to the port authorities. The port authorities have submitted that they intend to adopt mechanization of coal handling process in next five (5) years though verbally they agreed to time frame of three (3) years. Though we do not find any substantial justification for such a long duration, we feel it proper to leave the matter to GPCB and GMB to decide on the time frame. What we are keen is to ensure regular compliance of environmental norms.

**13.** Secondly, even during the dust emission abatement, the coal fine dust needs to be scientific controlled rather than just adopting the water fogging

and sprinkling measures. Though water is one of the most primitive agents which are used as dust controlled measures, new and clean technology is available through certain dust control chemical agents which are more effective in suppressing dust and are applied much less frequently. The Port Authorities need to carry out a scientific assessment of the efficacy of various dust control agents before adopting the new initiatives.

**13.** We have gone through the Action Plan put forth by the Respondent Nos. 2 and 3. The Respondent No.2 stated that some of the compliances have been duly done. It is, however, stated that some of the compliances will be done within a time period as stated in the last paragraph. For example; recommendation that there should be a proper drainage system around all coal storage area and along roads so that water drained from sprinkling and run off is collected at a common tank and can be reused after screening through the coal slit or any other effective treatment system is given time till end of June 2015 for compliance. We fail to see why such a long time is needed for compliance of the said recommendation. The Maritime Board appears to be

rather sitting over the correctional steps/measures required to be taken to improve the coal handling system. As a matter of fact, in the year 2000 itself, the Maritime Board was expected to update the system and ensure due compliances to meet the environmental norms. This could have avoided the second round of litigation. The proposed Action Plan of the Maritime Board shows that in respect of some of the recommendations, there are only assurances for compliances within a time frame. We are afraid, Maritime Board will again commit breach of the word and fail to comply the recommendations of the M.S. University. Be that may as it is, the parties have agreed to the recommendations of the M.S. University, Baroda and shall have to comply with the same and therefore, it would be appropriate to direct the Respondent No.2 (Maritime Board) to comply with the recommendations in *stricto sensu*. Needless to say, the Application will have to be partly granted.

**14.** We deem it proper to allow the Application in following terms :

- (I)** The Application is partly allowed.
- (II)** The Respondent No.2 is directed to strictly comply all the recommendations of the Civil Engineering Department, M.S. University,

Baroda, as per the Report dated 22<sup>nd</sup> March 2014. The recommendations indicated at Sr.Nos. 1 to 9 in the Report shall be complied with within period of four (4) weeks. Rest of the recommendations shown at Sr.No.10 to 12 in the Report of the M.S. University, Baroda shall be complied with within period of six (6) months hereafter.

- (III)** The Respondent No.1 (GPCB) shall monitor compliances done by the Respondent No.2 (Maritime Board) atleast periodically at each quarter and in case of any violation of the Air Act, Water Act or Hazardous Waste Management Rules, appropriate legal action shall be taken as may be permissible under the Law, including closure of the Port Activity.
- (IV)** The Respondent No.1 shall not issue consent to operate the Port if the conditions as per the recommendations of the M.S. University, Baroda are not found duly complied with within given time as mentioned above. The Applicant is at liberty to pinpoint any breach committed by Maritime Board, in the context of compliances of the recommendations of M.S. University, Baroda, within the above time period for action needed to be taken by the Respondent No.2.
- (V)** In case the consent to operate is so declined by the Respondent No.1 due to non compliances, as mentioned above, it shall not be approved without prior permission of this Tribunal.

- (VI)** The Respondent No.2 shall pay costs of Rs.25,000/- (Rs. Twenty five thousand) to the Applicant as the litigation cost and Rs.50,000/- (Rs. Fifty thousand) as cost of the Counsel's fees and also shall pay costs of Rs.50,000/- (Rs. Fifty thousand) to the Respondent No.1 as cost of the litigation and Counsel's fees and bear its own costs.
- (VII)** The Respondent No.1 may assess damages caused due to improper/illegal handling of the coal by the Respondent No.2 and may recover such amount of damages from Respondent No.2 for payment to the concerned victims by forfeiture of the security furnished to it as per the principle of Polluters pay.
- (VIII)** GPCB shall frame its enforcement policy in the next 12 (weeks) as discussed in above paragraphs and publish it on its website for public information.

The Application is accordingly disposed of.

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

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