

Item No. 02

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Appeal No. 03/2021 (WZ)

M/s Virat Alloys (P) Ltd.

Appellant

Versus

Gujarat Pollution Control Board

Respondent

Date of hearing: 18.03.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Appellant: Mr. Gaurav R. Chudasama, Advocate

ORDER

1. This appeal has been preferred against the order of the Gujarat State PCB (State PCB) dated 12.01.2021 directing closure of the appellant unit and requiring it to pay environmental compensation for the damage to the environment. The impugned order mentions that the local LCB Police detected a dump of Acidic Hazardous waste outside the premises of the appellant. Based on the said information, the office of the PCB visited the site on 24.01.2020 and found that the appellant had unauthorizedly stored/disposed off acidic hazardous waste outside the unit thereby violating the rules and conditions of CC&A. Accordingly, order dated 10.09.2020 was passed requiring the appellant to pay environment compensation. The appellant approached the Gujrat High Court by way of Special Civil Application No. 11762 of 2020. Order dated 01.10.2020 was passed directing the PCB to give hearing to the appellant. Hearing was given on 03.11.2020. The order notes as follows:

- [1]. The Industry's representative acknowledged that the industry had illegally disposed off acidic hazardous waste outside the premises and that had been caught by the LCB.*
- [2]. The acidic hazardous waste discharged by the industry is recollected and stored within the factory, which are to be disposed off in a short time at TSDF-ECO CARE.*
- [3]. Following the earlier suggestions for remaining remediation work given by Gujarat industrial and Technical Consultancy Organization Limited (GITCO) the unit has again assigned the task of issuing remediation completion certificate to GITCO. For this, Industry has submitted a letter of GITCO dated 2-11-20 on date of hearing.”*

2. The Board held that the unit unauthorizedly stored/disposed of the acidic hazardous waste in open and violated the rules and conditions of CC&A. The unit was directed to get remediation from GITCO. It was further noted that as per letter dated 16.10.2020 of the unit, the unit had not sent the recollected wastes to the TSDF site. Unit had not produced the certificate for completing the remediation work from GITCO. Conclusion in the impugned order is as follows:

“Conclusion:

1. From the facts of the matter, it would be evident that., the unit had unauthorizedly disposed the Acidic Hazardous Waste outside the unit and thereby, violated Rules and conditions of CC&A. That, the Board had considered the submissions made by the industry and had given chance to unit to get Remediation Completion Certificate from GITCO. The Board had also granted trail run for three months of the unit.

That despite the said opportunity being given to the unit, the unit did not comply with the conditions of the revocation including the conditions to complete remediation work at the site whereas, the Acidic Hazardous Waste was disposed of within a period of one month.

2. From the letter dated 16.10.2020, it is evident that, the unit has not sent the recollected waste at TSDF site. The unit has not produced the Remediation Completion Certificate work from GITCO.

So far as the amount of Environment Damage Compensation is concerned, the same has been done as per category (e) Intentional Discharges to the Environment Land, Water and Air resulting in to acute injury or damage to the environment this unit is responsible for to be pay Rs.50,00,000 (Fifty Lakh) interim Environment Damage compensation. The Said CPCB methodology is to be adopted

as per the directions of Hon. NGT Thus, the Board has issued an order to pay Interim Environment Damage Compensations of Rs, 50,00,000/-. Be that it may be so, the fact is that the said compensation is an interim compensation and not the final compensation which shall be assessed after necessary study.

In view of the aforesaid finding the representation of M/s. Virat Alloys Pvt. Ltd. cannot be accepted as there is a clear violation of provision of Environment Protection Act and rules framed thereunder and the reasons mentioned in the closure order dated 01.02.2020. Further, the violation of the directions of the Board has continued till date as the unit has continuously failed to take necessary steps such as submitting the Remediation Completion Certificate from GITCO.”

3. We have learned heard Counsel for the appellant. His main submission is that the appellant produced the report of GITCO that the remedial work could not be immediately carried out. Later, the remediation work has been completed as per certificate dated 12.12.2020 issued by GITCO. Further submission is that the damage was ‘moderate’ to ‘poor’ which attracted compensation of Rs. 10 lakhs. It was wrongly assumed that damage was ‘severe’, attracting compensation of Rs. 50 lakhs.

4. We are unable to accept the submissions. The contamination of the site has been duly established and has not been even disputed by the appellant before State PCB, as noted earlier. Acidic hazardous waste was illegally disposed of outside the premises instead of being disposed of in TSDF, resulting in damage to the site. Certificate dated 20.12.2020 showing remediation later itself shows that contamination was caused which was later remediated. Thus, for the period prior to remediation, the appellant is liable to pay compensation. With regard to quantum, according to the impugned order quoted earlier, basis of compensation is GPCB guidelines under which category 1(e) relates to intentional discharge on land, in water or in air resulting in acute injury or damage to the environment. The methodology is based on directions of NGT

approving CPCB report on the subject. We also find that as per earlier order of GPCB dated 10.09.2020, the basis of compensation was indicated as follows:

“xxx.....xxx.....xxx.....”

*In line of the Hon’ble NGT matter of O.A No. 593/2017 (WP (Civil) no. 375/2012 Central Pollution Control Board, New Delhi has framed guideline to levy of Environment Damage Compensation (EDC). It is decided by Board to impose interim Environment Damage Compensation (penalty) of Rs. 50,00,000/- (Rupees Fifty Lakh) as per present policy of Board considering **intentional discharge of pollutant in to environment (Category No. 1 (e) of the guideline, Medium scale, Red category industry).**”*

5. While levy of compensation is certainly justified having regard to discharge of acidic pollutant into the environment, resulting in contamination of soil, legal basis of quantification must be clear. The impugned order refers to GPCB guidelines and category no. 1(e) but the same is not quoted in the impugned order. Reference is made to the order of this Tribunal in OA 593/2017, *Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors.* which deals with levy of compensation for industrial pollution generally based on report of the CPCB. One of the tables from the CPCB report, quoted in the order, deals with compensation for air pollution in violation of GRAP in NCR which depends upon air quality i.e. ‘severe plus’, ‘sever’, ‘very poor’ and ‘moderate’ but perhaps the present case is not referable to the same. We may also note that with regard to hazardous waste, report of the CPCB dated 10.05.2019 was filed before this Tribunal in OA 804/2017, *Rajiv Narayan & Anr. Union of India & Ors.* which was considered by the Tribunal vide order dated 26.08.2019 (para 11). In the said report, CPCB annexed its document of May 2019 titled “Determination of Environmental Compensation to be recovered for violation of Hazardous

and Other Wastes (Management and Transboundary Movement) Rules, 2016". As per the said document, there are different categories of violations: 'A' - Procedural violations, 'B' - violations causing environmental damage, 'B2' - mismanagement of hazardous waste. For the said three categories, the compensation scale has been laid down, linked to the Environment Risk Factor (ERF) which relates to quantity of waste, scale of the operation of the facility, type of facility and compensation factor. The document also annexes "Guidelines on Implementing Liabilities for Environmental Damages due to Handling & Disposal of Hazardous Waste and Penalty" of January 2016, dealing with environmental liability and indicative cost of site assessment and remediation. State PCBs are required to make assessment as per basis indicated therein.

6. In view of above lack of clarity about the basis of compensation, without in any manner adversely commenting on the quantum as such, we are of the view that clarity on the subject is required. Either we call upon the State PCB to explain the basis before the Tribunal or to permit the appellant to appear before the State PCB so that State PCB can clearly indicate the basis after hearing the appellant. We find the second course to be more appropriate. Accordingly, we dispose of the appeal with a direction that the State PCB may pass a fresh order, as far as possible within two months, from the date of receipt of a copy of this order.

The appeal is disposed of accordingly.

A copy of this order be forwarded to the State PCB by e-mail for compliance.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

March 18, 2021
Appeal No. 03/2021 (WZ)
DV