

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

Original Application No. 113/2019

Amit M. Panchal, Advocate

Applicant(s)

Versus

State of Gujarat

Respondent(s)

Date of hearing: 02.07.2019

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s):

For Respondent (s):

Mr. Dhruv Pal, Advocate for GPCB

ORDER

1. The issue for consideration is the remedial action to check air pollution in the Ahmedabad city in the interest of public health and the rule of law.
2. On receiving a complaint based on newspaper reports that there was huge pollution in the city of Ahmedabad, this Tribunal, vide order dated 26.03.2019, sought a factual and action taken report from a joint Committee comprising of Central Pollution Control Board (CPCB) and Gujarat State PCB. In the said order, it was recorded that as per the newspaper reports, average level of P.M 2.5 near *Pirana* was beyond safe limits and in the State of Gujarat, large mortality was reported on account of air pollution. It was also noted that pet coke and furnace oil were being used in the city of Ahmedabad, contributing to the toxic air in the city in violation of

judgement of the Hon'ble Supreme Court in *M.C Mehta v. Union of India &Ors*, 2017 SCC Online 1405, noting that in certain states pet coke and furnace oil was prohibited in every industry operation or process and directing that similar course may be considered by other states. This Tribunal considered the matter¹ in the light of the report of the CPCB and directed all states to revisit their policies on the subject.

3. Accordingly, a report has been filed vide email dated 25.04.2019 by the Member Secretary, Gujarat State PCB.

4. We have perused the report and we make a brief reference to the same. The report states that Ahmedabad is the seventh largest city in India and one of the most important centre for trade and commerce contributing about 60% of the total productivity of the State. Ahmedabad Municipal Corporation is functioning under the Bombay Provincial Municipal Corporation Act, 1949. Peripheral area of the city is under the administration of Ahmedabad Urban Development Authority. The city has three major industrial areas i.e. Naroda, Vatva and Odhav. The breakup of industries in the region of Ahmedabad is as follows:

“Table-1: Different category and scale of industries in Ahmedabad city

| Category | Small | Medium | Large | Total |
|-----------------|--------------|---------------|--------------|--------------|
| <i>Red</i> | 967 | 10 | 46 | 1023 |
| <i>Orange</i> | 275 | 26 | 35 | 336 |
| <i>Green</i> | 273 | 1 | 1 | 275 |
| Total | 1515 | 37 | 82 | 1634 |

¹Order dated 28.03.2019 in O.A 67 of 2019

5. The report further states that the city has over 40 lakhs vehicles. Air Quality Monitoring Stations (CAAQMS) have been installed and the statistics taken from the said Monitoring Stations show that average P.M 10 exceeds by 3.3 to 5.2 times and P.M 2.5 exceeds by 1.5 to 2.45 times of the annual average. It is further stated that on the basis of the Gujarat State PCB data base, only 19 industries have obtained consent under the Air (Prevention and Control of Pollution) Act, 1981 for utilizing furnace oil. Subsequently, 10 have switched over to PNG and Coal, 03 have installed cupola furnace, 02 have installed pit furnace (these types of furnaces utilizes solid fuel i.e coking coal), 4 are using furnace oil. It is further stated that most of the industries in Ahmedabad are utilizing coal (lignite, bituminous/sub-bituminous), coking coal, wood, briquettes, agro waste, diesel and electricity as fuel in the process for steam generation, thermic fluid heater and other ancillary activities. The report further makes general observation that approach roads in the city are unpaved and due to improper handling/disposal of ash by the industries, air pollution is taking place, apart from pollution from other sources. Residential habitats and commercial establishment are in close proximity to the industrial clusters which adds to the congestion and air pollution. Construction activities are also adding to the fugitive dust. 2-stroke auto rickshaws use light cut oil which causes pollution. The report further states that there is continued smoke emanating from municipal solid waste dump site at *Pirana* due to spontaneous landfill fires.
6. The action plan proposed by the State of Gujarat to control pollution has been annexed to the report which basically refers to control of construction activities and steps for waste management, apart from

traffic management and control of vehicular pollution. The plan is to be implemented by the Gujarat State PCB with coordination of Environment and Forest Department, Urban Development Department, Transport Department, Municipal Corporation, Traffic Police and the District Administration.

7. We note that the action plan does not specify the steps to be taken against the pollution by solid waste dump at *Pirana*. There is no exhaustive plan for controlling the industrial pollution. The plan is not preceded by any carrying capacity assessment or expert study in respect of source apportionment and required plan. There is no prompt timelines. The same is not as per State's obligation to provide pollution free environment to its citizens.

8. We may at this stage note that this Tribunal has been monitoring the issue of solid waste management in proceedings which initially arose out of the pollution at Surat in the State of Gujarat regulating in plague epidemic. After monitoring for several years by the Hon'ble Supreme Court, the proceedings were transferred to this Tribunal vide order dated 02.09.2014 in *Writ Petition No. 888/1996, Almitra H. Patel Vs. Union of India & Ors.* and the Tribunal disposed of the matter vide order dated 22.12.2016² directing compliance of the Waste Management Rules by preparing action plans with timelines and budgetary support. However, the State of Gujarat, apart from other States, continued to be projected as non-compliant in the annual reports published by the CPCB not only with regard to the Solid Waste Management Rules, 2016 but also Plastic Waste Management Rules, 2016, Bio-medical Waste Management Rules, 2016, Construction and Demolition Waste Management Rules, 2016, Hazardous Waste

²O.A 199 of 2014

Management Rules, 2016, E-Waste Waste Management Rules, 2016. The Tribunal accordingly passed further order dated 20.08.2018³ requiring the States to finalise their respective action plans by 31.10.2018 and execute the same by 31.12.2019. It was observed that instead of every individual Local Bodies floating tender, standard technical specifications may be specified by the concerned State so that services can be hired on standard terms to save time.⁴

9. Thereafter, the matter was reviewed vide order dated 16.01.2019 in *Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016* and the Tribunal, after referring to the earlier background, required the presence of the Chief Secretary of the State in person to respond to the serious issues of environment confronting the State. Accordingly, the Chief Secretary, Gujarat appeared on 09.04.2019 and filed a response which was dealt with by this Tribunal giving further direction in the matter.

10. The Tribunal has also been monitoring the issue of 102 non-attainment cities in the country⁵, 100 polluted industrial clusters⁶ and 351 polluted river stretches⁷, illegal sand mining⁸, ground water extraction⁹, management and recharge, conservation of water bodies¹⁰ and strengthening regulatory mechanism by requiring deterrent action against the polluters by way of preventing further pollution, taking punitive action by way of prosecution as well as

³O.A 606 of 2018

⁴Para 22 *ibid*

⁵O.A 681 of 2018

⁶O.A 1038 of 2018

⁷O.A 673 of 2018

⁸O.A 360 of 2015

⁹O.A 176 of 2015

¹⁰O.A 325 of 2015

recovering deterrent compensation for the damages¹¹. All these issues remain untackled in the State of Gujarat also, apart from most of other States. The Tribunal has expressed concern about in this regardin absence of adequate steps by the State¹². Clean environment being a Fundamental Right as well as a Directive Principle, every State is under Constitutional obligation to enforce the said right. The Tribunal is bound to apply the 'Precautionary', the 'Sustainable' and the 'Polluter Pays' principles under Section 20 of the National Green Tribunal Act, 2010 and issue appropriate directions for enforcing of the said principles under Section 15 of the Act. The directions are binding as a decree of the Court. Violation of the orders is actionable by way of prosecution, recovery of compensation and execution of the order by way of civil imprisonment of the concerned.

11. The situation in the present case is far from satisfactory as depicted from the report itself and immediate serious action is required. In view of mandate of law as well as the noble initiative of *Swachh Bharat Mission* of the Government of India¹³, the State of Gujarat must take the necessary steps for pollution control.

12. As already noted, extensive survey has not taken place to identify the units using pet coke and furnace oil which add to the air pollution and which are prohibited under the orders of the Hon'ble Supreme Court. The Gujarat State PCB has merely gone by the industries who have applied for use of such oil. Further, the number of industries shown in the table reproduced above shows that large number of

¹¹O.A 95 of 2018

¹²Order dated 17.05.2019 in O.A 606 of 2018, para 44

¹³ The Government of India launched "Swachh Bharat Mission (Urban)" on 2nd October, 2014 with the objectives of Eliminating open defecation, Eradication of manual scavenging, 100% collection and scientific processing/disposal reuse/recycle of Municipal Solid Waste. to bring about a behavioural change in people regarding healthy sanitation practices. Generate awareness among the citizens about sanitation and its linkages with public health, strengthening of urban Local Bodies to design, execute and operate systems etc

'Red' and 'Orange' category industries are causing huge pollution and are located in the congested city of Ahmedabad. The law requires safe distance to be maintained between the 'Red'/'Orange' category industries and the habitation. Either the habitation has to be shifted to a safe distance or the industries have to be shifted to an appropriate location to avoid damage to public health. We also note that since it is reported that four industries are still using furnace oil, the same should be required to be shifted to PNG by the Gujarat State PCB by exercising its statutory powers. The Gujarat State PCB must also ensure that pet coke and furnace oil are not used in violation of law by any other industry. The action plan for air pollution needs to be appropriately revised to incorporate adequate provisions for control of air pollution based on an expert study and source apportionment. Even if polluting industries were permitted to be set up some time earlier, the State must use its regulatory power and shift such industries as are hazard to public health in the city. The citizens are entitled to clean air and right to good health as part of right to life. Use of coal as fuel needs to be checked if it is causing health hazard in a congested area. Faced with this situation, learned counsel for the GPCB seeks times to file an appropriate further affidavit in the matter. Let the same be done before the next date.

13. We may deal with an emergent issue raised in the application with regard to *Pirana* landfill site/dumping site. The report clearly acknowledges that there is continuous smoke emanating from the municipal solid waste dump site at *Pirana* due to landfill fires. It is undisputed that *Pirana* landfill is a huge source of pollution and is required to be dealt with as a legacy waste as per the Solid Waste Management Rules, 2016. As noted in the order of this Tribunal

dated 09.04.2019 in *Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016*, legacy waste at Pirana has crossed 95 lakh metric tones mark and it covers 84 acres of land occupied by three 75 feet mountains of garbage which is accumulating since 1982¹⁴. It is also resulting in wastage of 48,000 litres of water everyday.¹⁵ The Tribunal also noted in the order dated 09.04.2019 that as per 'Lancet Report', life expectancy had reduced by one year seven months in Gujarat because of air pollution, mortality due to Chronic Obstructive Pulmonary Disease (COPD), chronic asthma in the State and 21% are facing the risk of pulmonary diseases.¹⁶

14. In view of the above, highest priority is required to be accorded to tackle the legacy waste at Pirana landfill site in the interest of public health and rule of law and to restore 84 acres of prime land which may be of value of more than one thousand crores. The cost of clearing the site may be around Rs. 75 Crores if the Indore model is to be taken into account where 15 lakh metric tones of garbage was cleared at the cost of Rs. 10 crores¹⁷. In this regard, we have been informed during the hearing by Dr. A. B Akolkar, former Member Secretary, CPCB how the situation at Indore was tackled. He has informed that 15 lakh MT old waste was dumped at Devguradiya in 100 acre area during 2016-17, (First Phase) 50,000 cum old waste was bio-mined and green belt developed in bio-mined area. Subsequently, in the second phase, 5,50,000 cum waste during 2017 was bio-mined. In the third phase, 9,00,000 cum of work was bio-mined in 2018 by employing more machinery. The machinery used

¹⁴Order dated 09.04.2019 in O.A 606 of 2018, para 34

¹⁵Para 35 of *Ibid*

¹⁶Para 31 of *Ibid*

¹⁷<https://www.thebetterindia.com/169584/ias-hero-indore-garbage-management-recycling/>

for operations include; Trommels, Horizontal screens, excavators, back hoe loaders and dumpers. The recyclables recovered from the biomining process was sent for recycling, recyclable polythene was sent to cement plants and also for road making. The soil recovered was used for refilling the ground on the same site where greenery is developed. The recovered construction and demolition waste was recovered and sent to C&D processing facility to produce building materials. The leftover of the legacy waste was sent to secured landfill. Valuable land (80%) has been recovered by bio-remediation process of legacy waste. The information furnished by Dr.Akolkar is based on interaction with Dr.Syed Asad Ali Warsi, Chief Executive Officer of the Indore Municipal Corporation.

15. In view of clear potential of damage to public health, the issue of clearing the legacy waste at Pirana must be attended to preferably within two weeks and the work to clear the legacy waste may commence preferably within one month.

16. For this purpose, it is necessary to constitute a Committee as follows:

- (1) Chief Secretary, Gujarat, Chairman;
- (2) Finance Secretary, Gujarat, Member;
- (3) Urban Development Secretary, Gujarat, Member;
- (4) Commissioner, Municipal Corporation, Ahmedabad, Gujarat, Member;
- (5) CEO, Ahmedabad Urban Development Authority, Gujarat, Member;
- (6) Regional Director, CPCB, Member;
- (7) Member Secretary, SPCB, Gujarat, Member.

The Secretary, Urban Development, Gujarat, will be the nodal officer for coordination and compliance.

17. The Committee may co-opt any other technical persons/agencies. After removing of legacy waste from the entire or part of the land, the State may consider using part of the recovered land for integrated waste processing, treatment facility and for Treatment, Storage and Disposal Facility (TSDF) for hazardous waste and also have a bio-diversity park on the periphery to improve the air quality and ambience. The Committee may have the Commissioner, Municipal Corporation, Indore and Dr. Syed Asad Ali Warsi, Chief Executive Officer of the Indore Municipal Corporation as special invitees. As already observed, the Committee may meet preferably within two weeks and after taking stock of the situation, plan to start further action within one month.
18. We direct the State of Gujarat to transfer a sum of Rs. 75 crores to an ESCROW account. The State will be at liberty to recover the cost from the stakeholders in accordance with the Solid Waste Management Rules, 2016. If the project for clearing the Pirana dump site achieves success, the State may consider using that experience for clearing all other legacy wastes dump sites in the State. It will be open to the Committee to consider other successful models in the country, particularly Indore. The Committee may also propose a prompt timeline within which the whole project will be completed in view of health hazard being faced by the local residents. If the Urban Development of the State has, in the light of observations of this Tribunal in para 22 of the order dated 20.08.2019, already prescribed standards and technical specifications for dealing with hiring of services for the legacy waste, such standard may be followed to save

time and if not, Indore model may be adopted without waste of time, as the said model involves only hiring of machines and the human resource hired by the Corporation as per already applicable procedure. This observation is being made in view of urgency of the situation. Similar procedure can also be uniformly adopted for dealing with any legacy waste dump site in the country. It is however made clear that the disposal of legacy waste should be as per SWM Rules, 2016¹⁸. We note that CPCB has already prepared and circulated Standard Operating Procedure (SOP) on the subject of remediation of legacy waste.¹⁹

19. An interim report of the steps taken may be furnished to the Tribunal before the next date, by the Secretary, Urban Development, Gujarat, with an affidavit which may also deal with the issue mentioned in para 12 above.

List for further consideration on 20.08.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

July 02, 2019
Original Application No. 113/2019
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¹⁸Schedule I, Clause J, *Closure and Rehabilitation of old dumps*

¹⁹Report dated 28.02.2019 of the CPCB available on CPCB website