

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

(By Video Conferencing)

Original Application No. 681/2018

News item published in "The Times of India" Authored by Shri Vishwa Mohan titled "**NCAP with multiple timelines to clean air in 102 cities to be released around August 15**"

Date of hearing: 21.08.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER  
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Respondent(s): Mr. Raj Kumar, Advocate for CPCB  
Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates for UPPCB  
Mr. Ardhendu Prashad for MoRTH (in OA 773/2018)

**ORDER**

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**I. The Issue: Remedial Action for air pollution in 122 Non-Attainment Cities (NACs)**

1. This order is being passed in continuation of order dated 20.11.2019 on the subject of remedial measures to be adopted to enforce

the Ambient Air Quality Standards with reference to the provisions of the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the EPA Act) in cities classified as 'Non-Attainment Cities' (NACs)<sup>1</sup> based on monitoring of the ambient air quality. Further question is compliance of Noise Pollution (Regulation and Control) Rules, 2000 (Noise Rules) framed under the provisions of the EPA Act.

## **II. Order dated 08.10.2018:**

2. Vide order dated 08.10.2018, this Tribunal noticed the newspaper report<sup>2</sup> to the effect that 102 cities were identified as NACs for not meeting the prescribed standards of air quality. The Air Act stipulates stopping of any activity violating norms of air quality and taking steps for prosecution or other regulatory measures<sup>3</sup> which have been read to include recovery of compensation on 'Polluter Pays' principle<sup>4</sup>. National Ambient Air Quality Standards are laid down under Section 16(2)(h) of the Air Act.<sup>5</sup> The Central Pollution Control Board (CPCB) compiled its report with reference to the said standards and published a list of 102 NACs<sup>6</sup>. The GoI prepared National Clean Air Programme (NCAP) proposing to reduce the pollution in next 10 years - 35% in next 3 years, 50% in next 5 years and 70-80% in next 10 years. It may be noted that as a result of such exercise, earlier in the year 2017 number of NACs was

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<sup>1</sup> NAC has been defined as those "Cities which are exceeding annual average concentrations of any of the notified parameters with respect to National Ambient Air Quality Standards for consecutively five years".

<sup>2</sup> Dated 03.08.2019 in the Times of India under the heading "NCAP with multiple timelines to clean air in 102 cities to be released around August 15".

<sup>3</sup> Section 22 read with Section 31A of the Air Act and

<sup>4</sup> Aryavart Foundation Vs. M/s Vapi Green Enviro Limited & Ors.O.A No. 95/2018, Indian Council for Enviro Legal Action & Ors. v. Union of India & Ors. (1996) 3 SCC 212 Para 16, Vellore Citizens Welfare Forum v. Union of India & Ors. (1996)5SCC647 Para 12 to 18 - holding that 'Polluter Pay' principle is accepted principle and part of environmental law of the country, even without specific statute.

<sup>5</sup> Notification dated 12.11.2009 issued by the CPCB

<sup>6</sup> [https://cpcb.nic.in/uploads/Non-Attainment\\_Cities.pdf](https://cpcb.nic.in/uploads/Non-Attainment_Cities.pdf)

95<sup>7</sup> which number increased to 102 in the year 2018 and has now reached 122. This shows that action taken so far is inadequate and does not match the increasing pollution. Apart from this, the real number might increase further if complete and accurate data is not collected.

3. The Tribunal noted the concern arising from such large scale air pollution which grapples the country in spite of statutory mechanism under the Air Act, directions of the CPCB under section 18(1)(b), dated 29.12.2015 and directions of the Hon'ble Supreme Court for control of **vehicular pollution**<sup>8</sup>, **industrial and construction sector pollution**<sup>9</sup>, **power sector pollution**<sup>10</sup> and **agricultural sector pollution**<sup>11</sup> and orders of this Tribunal dealing with the said issues<sup>12</sup>. The Tribunal also referred to a Comprehensive Action Plan (CAP) for air pollution control for NCR prepared in pursuance of order of the Hon'ble Supreme Court dated 06.2.2017 by the Environment Pollution (Prevention and Control) Authority (EPCA) in consultation with the CPCB and Delhi Pollution Control Committee (DPCC) on 05.04.2017<sup>13</sup> and Graded Response Action Plan (GRAP) notified by the MoEF&CC on 12.01.2017 stipulating specific

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<sup>7</sup> <http://cpcbenvvis.nic.in/airpollution/finding.htm>. Based on ambient air quality data obtained (2008-2010) under National Air Quality Monitoring Programme (NAMP)

<sup>8</sup> Rural Litigation and Entitlement Kendra, Dehradun and Others Vs State of U.P. Others (1985) 2 SCC 431, M.C. Mehta v. Union of India (2001) 3 SCC 756, M.C. Mehta v. Union of India (1998) 6 SCC 63, M.C. Mehta v. Union of India (2002) 4 SCC 356, M.C. Mehta v. Union of India (1998) 6 SCC 60

<sup>9</sup> M.C. Mehta v. Union of India (1997) 2 SCC 353, M.C. Mehta v. Union of India and Shriram Foods and Fertilizer Industries and Anr. (1986) 2 SCC 176, Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P. (1985) 2 SCC 431, Mohd. Haroon Ansari v. District Collector (2004) 1 SCC 491, Union of India v. Union Carbide Co. (1989) 1 SCC 674, M.C. Mehta v. Union of India (1992) 3 SCC 256, Sterlite Industries (India) Ltd. etc. v. Union of India & Ors.(2013) 4 SCC 575 , M.C. Mehta v. Union of India (2004) 6 SCC 588, M.C. Mehta v. Kamal Nath (2000) 6 SCC 213

<sup>10</sup> Consumer Education and Research Centre v. Union of India (1995) 3 SCC 42, Dahanu Taluka Environment Protection group and Ors. v. Bombay Suburban Electricity Supply Company Ltd. and Ors (1991) 2 SCC 539

<sup>11</sup> Arjun Gopal and Ors v. Union of India and Ors (2017) 16 SCC 280, Dr. B.L Wadhwa v. Union of India and Ors (1996) 2 SCC 594

<sup>12</sup> Vardhman Kaushik v. Union of India and Ors. O.A no. 21 of 2014, Vikrant Kumar Tongad v. Environment Pollution (Prevention and Control) Authority and Ors, O.A No. 118 of 2013, Satish Kumar v. Union of India and Ors, O.A. No. 56 (T<sub>HC</sub>) OF 2013, Smt. Ganga Lalwani V. Union of India and Ors. O.A No. 451 of 2018

<sup>13</sup> Report No.71, EPCA-R/2-17/L-21, Comprehensive Action Plan for air pollution control with the objective to meet ambient air quality standards in the National Capital Territory of Delhi and National Capital Region, including states of Haryana, Rajasthan and Uttar Pradesh.

steps for different levels of air quality such **as improvement in emission and fuel quality and other measures for vehicles, strategies to reduce vehicle numbers, non-motorised transport network, parking policy, traffic management, closure of polluting power plants and industries including brick kilns, control of generator sets, open burning, open eateries, road dust, construction dust, etc.**<sup>14</sup>

4. Implementation of prescribed norms in the light of legal provisions and court directions remains a challenge. The consequence is that India is being ranked high in terms of level of pollution compared to many other countries with enormous adverse impact on public health. Most victims are children, senior citizens and the poor.<sup>15</sup>

5. The GRAP categorises levels of pollution as severe plus, severe, very poor, moderate to poor. The action to be taken in such situations includes stopping entry of trucks, stopping construction activities, odd and even scheme of private vehicles, shutting of schools, closing of brick kilns, stone crushers, hot mix plants, power plants, intensifying public transport services, mechanized cleaning of road, and sprinkling of water, stopping the use of diesel generator sets, enhancing parking fees, etc.

6. The MoEF&CC has by various notifications put restrictions on activities in Coastal areas, Flood plains, Taj corridor Eco-sensitive zones, etc. in view of ecological sensitivity and impact of such activities on environment if such activities are carried out in unregulated areas. This needs to be extended to the NACs in view of impact on public health and

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<sup>14</sup> S.O.118(E), Notification, Ministry of Environment, Forest and Climate Change

<sup>15</sup> <https://www.thehindu.com/sci-tech/energy-and-environment/india-ranks-177-out-of-180-in-environmental-performance-index/article22513016.ece>, <https://www.ndtv.com/delhi-news/delhis-air-pollution-has-caused-of-death-of-15-000-people-study-1883022>.

environment to give effect to the 'Precautionary' and 'Sustainable Development' principles.

7. The Tribunal, after consideration of the issue on 08.10.2018, directed as follows:

- i. All the States and Union Territories with non-attainment cities must prepare appropriate action plans within two months aimed at bringing the standards of air quality within the prescribed norms within six months from date of finalization of the action plans.*
- ii. The Action Plans may be prepared by six-member committee comprising of Directors of Environment, Transport, Industries, Urban Development, Agriculture and Member Secretary, State Pollution Control Board or Committee of the concerned State. The Committee may be called Air Quality Monitoring Committee (AQMC). The AQMC will function under the overall supervision and coordination of Principal Secretary, Environment of the concerned State/Union Territory. This may be further supervised by the Chief Secretaries concerned or their counterparts in Union Territories by ensuring intra-sectoral co-ordination.*
- iii. The Action Plans may take into account the GRAP, the CAP and the action plan prepared by CPCB as well as all other relevant factors. The Action Plans may be forwarded to the CPCB by 31.12.2018. The same may be placed before the Committee as directed in direction no. vi. The Action Plan will include components like identification of source and its apportionment considering sectors like vehicular pollution, industrial pollution, dust pollution, construction activities, garbage burning, agricultural pollution including pollution caused by burning of crop residue, residential and indoor pollution etc. The action plan shall also consider measures for strengthening of Ambient Air Quality (AAQ) monitoring and steps for public awareness including issuing of advisory to public for prevention and control of air pollution and involvement of schools, colleges and other academic institutions and awareness programmes.*
- iv. The Action Plan will indicate steps to be taken to check different sources of pollution having speedy, definite and specific timelines for execution.*
- v. The Action Plan should be consistent with the carrying capacity assessment of the non-attainment cities in terms of vehicular pollution, industrial emissions and population density, extent of construction and construction activities etc. The carrying capacity assessment shall also lay emphasis on agricultural and indoor pollution in rural areas. Depending upon assessed carrying capacity and source apportionment, the authorities may consider the need for regulating number of vehicles and their parking and plying, population density, extent of construction and construction activities etc. Guidelines may accordingly be framed to regulate vehicles and industries in non-attainment cities in terms of carrying capacity assessment and source apportionment.*
- vi. The Committee comprising of (a) Shri. Prashant Gargava, Member Secretary, CPCB, (b) Dr. Mukesh Khare, Professor, IIT Delhi, and (c) Dr. Mukesh Sharma, Professor, IIT Kanpur shall examine the*

*Action Plans and on the recommendations of the said Committee, the Chairman, CPCB shall approve the same by 31.01.2019.*

*vii. The Chief Secretaries of the State and Administrators/ Advisors to Administrators of the Union Territories will be personally accountable for failure to formulate Action Plans, as directed.*

*viii. The CPCB, SPCBs and State Pollution Control Committees shall develop a public grievance redressal portal for redressal of public complaints on air pollution along with a supervisory mechanism for its disposal in a time bound manner. Any visible air pollution can be reported at such portal by email/SMS.*

*ix. The CPCB and all the State Pollution Control Boards and Pollution Control Committees shall collectively workout and design a robust nationwide ambient air quality monitoring programme in a revised format by strengthening the existing monitoring network with respect to coverage of more cities/towns. The scope of monitoring should be expanded to include all twelve (12) notified parameters as per Notification No B-29016/20/90/PCI-L dated 18th November, 2009 of CPCB. The continuous Ambient Air Quality Monitoring Stations (AAQMS) should be preferred in comparison to manual monitoring stations. The CPCB and States shall file a composite action plan with timelines for its execution which shall not be more than three months. It is expected that all such AAQMS shall be connected to central server of CPCB for reporting analysis of results in a form of Air Quality Bulletin for general public at regular intervals atleast on weekly basis and ambient air quality on continuous basis on e-portal. MoEF&CC will provide requisite funds for the purpose. MoEF&CC in consultation with Ministry of Housing and Urban Affairs, MoRTH, Ministry of Petroleum and Natural Gas, Ministry of Agriculture, Cooperation and Farmers Welfare or any other Ministry to lay down such guidelines as may be considered necessary for improvement of air quality in the country.”*

**III. Significant Orders dated 16.01.2019, 15.03.2019, 06.08.2019 and 20.11.2019:**

8. Compliance of the above directions was taken up for consideration periodically. Significant orders passed by the Tribunal are orders dated 16.01.2019, 15.03.2019, 06.08.2019 and 20.11.2019. Vide order dated 16.01.2019, the Tribunal directed<sup>16</sup> Chief Secretaries of all States/UTs to appear in person after acquainting themselves with the significant environmental issues including the issue of NACs in their respective States.

Accordingly, the Chief Secretaries of all the States/UTs appeared.

After interaction with them, the Tribunal inter alia directed further

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<sup>16</sup> Vide order dated 16.01.2019 in OA 606/2018

monitoring at their level atleast once every month and sending quarterly status reports.

Vide order dated 15.03.2019, the Tribunal considered the status of compliance by various States/UTs in the matter of preparing and executing action plans for control of air pollution. Since there was large scale of non-compliance, further directions were issued.

Vide order dated 06.08.2019, following questions were framed for consideration:

- “ a. *Whether a robust nationwide real time online continuous ambient air quality monitoring programme has been designed as admittedly there are shortcomings in the current air quality monitoring regime in view of area coverage and quality of data?*
- b. *Whether more cities have been identified as NACs and strategy to deal with the same has been prepared?*
- c. *Whether the States with NACs have prepared time bound and budgeted Action Plans for bringing the air quality of NACs in their States within the prescribed norms?*
- d. *Whether the components of such Action Plans are in conformity with the directions in order dated 08.10.2018<sup>17</sup>?*
- e. *Whether environmental compensation regime has been designed on ‘Polluter Pays’ principle?*
- f. *Whether CPCB, SPCBs and PCCs have developed a public grievance redressal portal?*
- g. *Further directions to deal with the situation.”*

Status with reference to each of the above questions was examined and following directions were issued:

- “ I. *CPCB, SPCBs and PCCs need to ensure assessment and installation of the requisite number of real time Online Continuous AAQMS within six months from today and indicate progress in this regard before the next date.*
- II. *The Expert Team of CPCB to design a model/SOP for source apportionment and carrying capacity assessment within two months which may be replicated for all the NACs. In the light*

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<sup>17</sup> (I) Identification of source of pollution; (II) Determining source apportionment including sectors like vehicular pollution, industrial pollution, dust pollution, construction activities, garbage burning, agricultural pollution including pollution caused by burning of crop residue, residential and indoor pollution etc; (III) measures for strengthening of Ambient Air Quality (AAQ) monitoring and (IV) Steps for public awareness including issuing of advisory to public for prevention and control of air pollution and involvement of schools, colleges and other academic institutions and awareness programmes.

*of such study, further action may need to be considered by MoEF&CC within three months thereafter in terms of regulating the number of vehicles, action in terms of shift to e-vehicles and CNG vehicles, intensifying public transport system, mechanical cleaning of roads, enhancement of public parking facilities etc., improvement in fuel quality and traffic management, regulation of construction activities, strict adherence to siting guidelines with regard to stone crushers, mining, brick kilns, thermal power plants, coal handling, air polluting industries, hot mix plants, etc. Besides, activities like crop burning and burning of trash wood/leaves/debris for heating in winters to be strictly regulated and violations penalized as has been done by notifications for ESZ, CRZ, Ganga Flood plains etc.*

- III. *Concerned Town & Country Planning departments (with whatever be the name in the State) of all the States/UTs may ensure review of master plans specially for the NACs to be consistent with carrying capacity and source apportionment study reports within six months of such reports being available and furnish compliance reports to this Tribunal and CPCB.*
- IV. *Concerned States may evolve enforcement mechanism for closing/shifting of industrial units other than household industries from residential/non conforming areas in the light of law laid down in M.C. Mehta vs Union of India, (2004) 6SCC 588.*
- V. *SPCBs/PCCs need to develop interactive public grievance redressal portals on the pattern of CPCB portal "Sameer" within two months if not already done.*
- VI. *Actions Plans need to be prepared by States for the additional 20 NACs on the pattern of 102 NACs within three months and after its approval by CPCB within two months, States must initiate time bound action on remediation within next three months.*
- VII. *CPCB may finalize the pending action plans within two months. Environmental compensation may be deposited by the defaulting States in terms of our order dated 15.03.2019 with the CPCB.*
- VIII. *Timeline prescribed for reviewing action plans with regard to its report dated 15.07.2019 by the CPCB for further micro planning may be reduced from six months, preferably to four months. CPCB may give appropriate directions to the SPCBs/PCCs accordingly.*
- IX. *CPCB must forthwith come out with a compensation regime within two months for air as well as noise pollution to the extent such norms have not yet been laid down.*



- X. *Having regard to adverse impact on public health and constitutional mandate that right to clean air is a fundamental right, the MoEF&CC may modify the NCAP by reducing the timelines and increasing the target for reduction of air pollution.*
- XI. *Noise Limiters need to be installed on potential noise polluting devices, including retrofitting the existing devices. Appropriate directions be issued by the States/UTs within three months in the same manner as directed by this Tribunal for Delhi vide order dated 01.08.2019 in O.A. No. 519/2016, Hardeep Singh & Ors. vs SDMC & Ors.*
- XII. *The CPCB may also evaluate existing air quality monitoring mechanism of all States and UTs and furnish a report to this Tribunal before the next date in terms of capacity of its scientific and technical personnel both in terms of number of personnel and skill/competence and outreach programmes on public awareness and suggestions for improvement.*
- XIII. *The CPCB and States may have robust Emergency Response System and preparedness by way of mock drills and measures to be taken in the scenario when air pollution levels become severe plus and severe.*
- XIV. *The SPCBs and PCCs to submit details of 'consent' funds to CPCB and this Tribunal within two months alongwith Action Plans on the basis of template provided by CPCB. CPCB may scrutinize and approve such action plans within two months in accordance to our order dated 22.01.2019 in O.A. No. 101/2019. Finally, the State PCBs and PCCs may execute their Action Plans within next one year thereafter.*
- XV. *The Environmental Compensation levied by State Transport Departments may be divided in the ratio of 50:25:25 amongst the States, the SPCBs/PCCs and the CPCB."*

**Order dated 20.11.2019:**

9. Finally, order dated 20.11.2019 was passed in the light of the report dated 14.11.2019 filed by the CPCB with regard to status of compliance of the directions issued on 06.08.2019. Since progress achieved was not adequate, further directions were issued on the issues earlier considered as well as the issue of tackling the problem of remediation of legacy waste dump sites which were also a source of air

pollution, adversely affecting public health. Directions issued in the said order are:

*“29. In view of above, we direct as follows:*

- i) Let assessed number of stations be installed within one year and quarterly progress reports furnished to CPCB by all the SPCBs/PCCs. First such report may be furnished by 01.04.2020. All such stations should be connected to the server of the CPCB and data displayed at the national portal on online real-time basis with AQI in public domain. CPCB may have its own stations at such critical locations as considered necessary. All the 12 notified parameters should be duly monitored by the CAAQMS. In default of compliance, SPCB/PCCs will be liable to pay compensation @ Rs. 5 Lakh per month starting from 01.01.2021. Failure may also be reflected in the ACRs of the Member Secretaries of SPCBs/PCCs.*

*Procurement of such equipments may preferably be through Government E-marketing (GeM) Portal of Govt. of India. CPCB may take steps to have standards/specifications and accredited/reputed vendors notified on the said portal. CEO, GeM, may also take necessary steps in the matter.*

- ii) Let SA and CC be completed within three months by the SPCBs/PCCs utilizing available data, based on which MoEF&CC may take further follow up action in terms of direction para II of order dated 06.08.2019 quoted above. SPCBs/PCCs may furnish action taken report to CPCB so that CPCB can file an appropriate report before this Tribunal. For any default, compensation will be liable to be paid @ of Rs. 5 lakh per month after 01.04.2020. Failure may also be reflected in the ACRs of the Member Secretaries of SPCBs/PCCs. MoEF&CC may file compliance report before the next date.*

- iii) The review of master plans may now be carried out in the light of the studies within six months from the date of such studies in above terms. Mechanism for shifting industrial units from residential areas may be evolved immediately. Let both these aspects be complied by the all the States/UTs and reports furnished to the CPCB. The Chief Secretaries concerned may monitor compliance. In default, the concerned States/UTs will be liable to pay compensation @ Rs. 5 lakhs per month after the stipulated timeline already mentioned. The compensation may be recovered by the States/UTs from the erring officers and appropriate entries may also be made in the ACRs of the concerned Heads of the Departments. The CPCB may prepare a comprehensive report and furnish the same before the next date.*

- iv) *PGRPs may be developed for the remaining NACs and report furnished by the SPCBs/PCCs to CPCB within two months. In default, SPCBs/PCCs concerned will be liable to pay compensation @ Rs. 2 lakhs per month from 01.02.2020. CPCB may file a compliance report. Failure may also be reflected in the ACRs of the Member Secretaries of SPCBs/PCCs.*
- v) *Compliance may also be ensured for the remaining cities and report furnished to CPCB by the States/UTs by 31.01.2020. In default, compensation will be liable to be paid @ Rs. 10 lakhs per month from 01.02.2020. The compensation may be recovered by the States/UTs from the erring officers and appropriate entries may also be made in the ACRs of the Heads of the Departments concerned.*
- vi) *Let the approved action plans be executed accordingly in terms of the timeline provided therein and compliance report furnished by Chief Secretaries of the concerned States/UTs to CPCB on quarterly basis starting from 01.04.2020. CPCB may file compliance report before this Tribunal. Failure on this regard may be visited with adverse consequences.*
- vii) *Let the States/UTs ensure compliance of directions with regard to the remaining cities in terms of observations in Para 18 within by 30.06.2020. In default, the States/UTs will be liable to pay @ Rs. 5 lakhs per month till compliance. The compensation may be recovered by the States/UTs from the erring officers and appropriate entries may also be made in the ACRs of the concerned Heads of the Departments.*
- viii) *Let the NCAP be revisited in terms of observations in Para 20 before the next date, failing which the Tribunal have no option except to take coercive measures against concerned officers.*
- ix) *Let the directions for control of noise pollution be complied with in terms of observations in Para 21 and report furnished to CPCB by 31.03.2020. CPCB may furnish a comprehensive report to this Tribunal. If the said direction is not complied with, the defaulting States/UTs will be liable to pay compensation @ Rs. 2 lakhs per month which may be collected by the CPCB and recovered from the salary of the concerned Heads of the Departments.*

*Procurement of requisite equipments may preferably be through Government E-marketing (GeM) Portal of Govt. of India. CPCB may take steps to have standards/specifications and accredited/reputed vendors notified on the said portal. CEO, GeM, may also take necessary steps in the matter.*

- x) *Let the evaluation of monitoring stations be done positively by 31.12.2019 in terms of observations in Para 22 and a compliance report filed before the next date. As already directed, the evaluation should not only be sound in terms of scientific and technical capacity but also effectiveness of the outreach programme.*
- xi) *Let the steps for ERS be taken as per observations in Para 23 and compliance report filed before the next date. The States have not given their response which may now positively be done within one month, failing which the Tribunal have no option except to take coercive measures against concerned officers.*
- xii) *The Chhattisgarh State PCB is directed to take remedial steps and modify its action plan on the subject of EC and Consent funds in terms of instructions of CPCB and direction of this Tribunal. Fresh action plan may be furnished to CPCB by 31.01.2020. We also disapprove the inaction by other SPCBs/PCCs in not complying with the directions. All other SPCBs/PCCs may give their action plans latest by 31.01.2020. In default, the erring SPCBs/PCCs will be liable to pay environmental compensation @ Rs. 5 lakhs per month till compliance of the directions which may be liable to be recovered from the concerned Chairmen and Member Secretaries. Failure may also be reflected in the ACRs of the Member Secretaries of SPCBs/PCCs. CPCB may file a consolidated report on the subject before the next date.*
- xiii) *It needs to be explored by the MoEF&CC and concerned States/UTs whether a part of CAMPA funds can be utilized for special afforestation drive in 122 NACs. If so, further necessary action be taken and a report furnished to this Tribunal by the MoEF&CC before the next date.*
- xiv) *Apart from other steps, focused attention may be required to ensure bio-remediation of legacy waste dump sites for which this Tribunal has already issued exhaustive directions in O.A. No. 519/2019 as already noted in para 9 above.*
- xv) *With regard to finalization of Emergency Response System (ERS), we are of view that the State Disaster Management Authorities in coordination with the SPCBs/PCCs and State Units of Meteorological Departments may include emergency as a part of disaster management and develop ERS accordingly which may be placed in public domain.*
- xvi) *The States/UTs which are able to successfully control air pollution in measurable terms in respect of 122 NACs may place their successful models and best practices on their respective websites for the benefit of others.”*

**IV. Order dated 26.02.2020 in OA 773/2018 regarding remedial action for unregulated parking and traffic congestion:**

10. The Tribunal considered another overlapping issue of unregulated illegal parking on the roads, adding to air pollution and impacting public health.<sup>18</sup> In order dated 26.02.2020, reference was made to the stand of the Ministry of Road Transport & Highways (MoRTH) that the Ministry was engaged in undertaking carrying capacity study for transport infrastructure. The Tribunal directed the concerned joint Secretaries of MoRTH as well as Ministry of Housing and Urban Development, Govt. of India and Member Secretary, CPCB to remain present in person, after acquainting themselves fully on the subject. Accordingly, a report dated 16.06.2020 has been filed by the MoRTH and by the Ministry of Urban Affairs jointly on the subject of undertaking carrying capacity of the roads.

**V. Reports of CPCB dated 06.03.2020, 21.07.2020 and 18.08.2020: Status of compliance of directions and response of MoEFF&CC declining to reduce time for abating air pollution under NCAP:**

11. In the light of above proceedings and in compliance of the earlier directions, reports of CPCB dated 06.03.2020, 21.07.2020 and 18.08.2020 have been filed. Apart from the said reports, two reports dated 06.03.2020 and 15.07.2020 have been filed by the Oversight Committee for compliance of environment issues for the State of UP, headed by Justice SVS Rathore, former Judge of the Allahabad High Court at Lucknow.<sup>19</sup> It is not necessary to separately refer to the reports filed by some other States as the said reports are already covered in the comprehensive report filed by the CPCB. A response has also been filed

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<sup>18</sup> OA 773/2018, Metro Transit Private Limited v. South Delhi Municipal Corporation & Ors.

<sup>19</sup> Constituted Vide order dated 16.03.2020, OA 670/2018, Atul Singh Chauhan v. Ministry of Environment, Forests and Climate Change & Ors.

by the MoEF&CC with reference to reducing time for abatement of air pollution under NCAP and utilisation of Compensatory Afforestation Fund Management & Planning Authority (CAMPA) funds (covered by directions viii and xiii in the last order). We may now refer to the reports in seriatim and also deal with the response of the MoEF&CC.

12. Since report dated 06.03.2020 filed by the CPCB has been updated by a subsequent report dated 21.07.2020 (with regard to noise pollution issue) and dated 18.08.2020 (with regard to other issues), it will suffice to refer it to the later reports. Report dated 18.08.2020 deals with the major issues. We may refer to the same directions-wise with reference to the directions in the last order referred to above.

a) **Direction – i)**

**Monitoring Stations – Continuous Ambient Air Quality Monitoring Stations (CAAQMS) and Manual Stations:**

13. The report gives status as on 01.04.2020 of number of monitoring stations already functioning and gap in requirement. Steps taken for notification of the standards and vendors are mentioned. It is further mentioned that out of twelve (12) modified parameters, eight (08) can be monitored on real time basis by the online stations and the remaining four (04) will have to be measured on manual basis.

We are of view that since out of additional 398 online stations required in the NACs, 173 have already been set up, the work of completing remaining 175 stations needs to be expeditiously completed within next six months. Work in this regard may commence within one month which may be monitored by the CPCB by having periodical online meetings with the Chairman/Member Secretaries of State PCBs/PCCs or other authorities. The Funds available under the ‘consent mechanism’/

‘environmental compensation’ may be utilized for the purpose by the State PCBs/PCCs. It will be preferable that out of the above, 25 stations are set up by CPCB/State PCBs/PCCs jointly, following an appropriate procedure to ensure best price and quality.

**b) Direction – ii)**

**Undertaking Source Apportionment (SA) and Carrying Capacity (CC) Studies:**

14. According to the CPCB, draft framework has been prepared and SA study completed in four States (for 05 cities). Study was under progress in 14 States (for 54 cities), and at proposal stage in 10 States (for 37 cities). Methodology for carrying capacity has been shared with State PCBs/PCCs. Twelve (12) States/UTs have given the details of the carrying capacity and the remaining have yet to take necessary steps. CC/SA studies are pre requisite for meaningful planning to enforce environmental law. This pre-requisite should have been undertaken long ago. Air quality norms have been statutorily laid down under the Air (Prevention and Control of Pollution) Act, 1981 as well as the Environment (Protection) Act, 1986 and such norms are being flagrantly violated, which has been made by the Parliament a criminal offence. If the rule of law has to have meaning and guilty are to be punished, the policies of the State have to be based on scientific studies to contain polluting activities within the scope of Carrying Capacity.

In this regard, it will be appropriate that such studies may be simultaneously undertaken by the State PCBs/PCCs utilizing the ‘consent mechanism’/‘environmental compensation’ fund for the purpose. Work in this regard may commence within one month which may be overseen by the CPCB by holding periodical online meetings in

same manner as for setting up of monitoring stations. State PCBs/PCCs will be at liberty to either undertake the study in-house or by hiring any other agencies. It will be preferable that 25 such studies are conducted jointly by CPCB/State PCBs/PCCs to set a pattern. However, as far as possible a uniform policy may be adopted in this regard which may be finalized by the CPCB in consultation with all State PCBs/PCCs.

**c) Direction – iii)**

**Review of Master Plans in the light of CC/SA Studies to identify areas where carrying capacity cannot sustain industrial or non-conforming activities which may have to be shifted on the pattern of directions of the Hon'ble Supreme Court in M.C. Mehta v. Union of India, (2004) 6 SCC 588:**

15. Steps in this regard will have to be taken as a consequence of SA/CC Studies. Let the same be done in the interest of public health and protection of environment, to give effect to the 'Sustainable Development' principle. CPCB may follow up and monitor this aspect with the concerned authorities in States/UTs.

**d) Directions – iv) & v)**

**Development of Public Grievance Redressal Portal (PGRP):**

16. Eleven (11) States have developed PGRPs on the pattern of Sameer app and three (03) are in the process of developing such portals. Remaining States may also take steps accordingly preferably within three months. The CPCB as well as State PCBs/PCCs may evaluate functioning of such portals on real time basis in the interest of protection of environment and public health and to enforce rule of law. In particular, analysis may be undertaken about the number of complaints received, nature of issues raised and remedies provided. Such exercise



has to be ongoing. In the first instance, a report be compiled of status as on 31.12.2020 and report filed by the State PCBs/PCCs with the CPCB within one month thereafter.

**e) Directions – vi) and vii)**  
**Execution of Action Plans for NACs and EC regime:**

17. Execution of action plans is said to have commenced but progress report has been filed only by the State of UP. CPCB has developed a format but the reports have not been received. Let all the States/UTs ensure compliance in this regard. The States may also give information about the extent of improvement achieved, if any, in terms of reduction in pollution load.

**f) Directions – viii) and xiii)**  
**Revisiting of NCAP and use of Campa Funds : Consideration of response of MoEF&CC**

18. On this subject also, report has been filed by the MoEF&CC. The MoEF&CC has stated as follows:

*“The Committee upon further detailed deliberations concluded that 20-30% pollutant reduction under NCAP seems realistic. However, in order to assess impact of technological and policy interventions on air quality levels, a mid-term nationwide review with the help of identified technical experts may be conducted and targets can be updated, if required.”*

19. In our view, the stand of the MoEF&CC is against the constitutional mandate under Article 21. Right to clean air stands recognized as part of right to life and failure to address air pollution is denial of right to life. We may only refer to the law laid down by the Hon’ble Supreme Court on the subject. In *M.C. Mehta v. Union of India & Ors.*<sup>20</sup>, it was observed that deteriorating environment was a matter of serious concern. Such deterioration has to be addressed by stern

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<sup>20</sup> (1998) 9 SCC 589 Para 1 to 7

measures. In *Arjun Gopal & Ors. v. Union of India & Ors.*,<sup>21</sup> it was observed that there were reports of 1.5 million deaths per year in the country on account of air pollution. **Enforcement of ‘Sustainable Development’ principle and ‘Public Trust Doctrine’ require stern measures to be adopted to give effect to the mandate of international obligations for which the Environment (Protection) Act, 1986 and other laws have been enacted.** The Hon’ble Supreme Court has passed repeated orders with regard to controlling different sources of air pollution including air pollution by brick kilns, stone crushers, crop burning, blasting activities, mining, vehicular pollution, traffic management, industrial pollution, etc. These orders were taken into account while passing order dated 08.10.2018, quoted in paras 2, 3 and 4 above. Section 20 of the National Green Tribunal Act, 2010 requires enforcement of ‘Sustainable Development’, ‘Precautionary’ and ‘Polluter Pays’ principles. The stand that pollution cannot be controlled except to the extent of certain percent is directly hit by the Constitutional and statutory mandate. **Under the NCAP, target is to achieve norms in 10 years and reduce load to the extent of 35% in first three years with further reduction of pollution later. It means for 10 years pollution will remain unaddressed which is too long period of tolerating violations when clean air is right to life. Further, it is not clear what type of pollutants or all pollutants will be reduced. Thirdly, NACs cover cities where standards are not consecutively met for five years. What about other Cities. Fourthly, it is not clear as to what is monitoring mechanism for enforcement. There is no data how much pollution has been reduced in the last two years. Infact, in 2019, number of NACs has gone up from 102 to 122. A**

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<sup>21</sup> (2017) 1 SCC 41 Para 5 to 10 & 18

credible national monitoring mechanism needs to be notified with publication of achievements periodically. Such mechanism may include monthly interaction by the Secretary MoEF&CC or other senior level Central Govt. authorities with Chief Secretaries of States for handholding and coordination with reference to specific targets. MoEF&CC may review its decision and take further action as per law.

The MoEF&CC has also referred to Compensatory Afforestation Funds (CAF) Rules, 2018 under which the said funds can be utilized for planting and rejuvenation of forest covers in non-forest lands, falling in wildlife corridors, through certified nurseries, apart from such activities in forest areas. The States can utilize a part of CAMPA funds for special afforestation drives in areas under the administrative control in the NACs as per CAF Act, 2016. The concerned States may take appropriate action for utilizing the CAMPA Funds which may help abating pollution in 122 NACs. The CEO of CAMPA may hold a video conference with all the States/PCBs/PCCs to coordinate and facilitate the utilization of CAMPA Funds.

**g) Directions – ix) and x)  
Remedial action for control of noise pollution, including procurement of monitoring devices and installation of Noise Limiters:  
Evaluation of existing Air Quality Monitoring Mechanism:**

20. On this subject, CPCB has given a separate report dated 21.07.2020 covering compensation regime and also procurement of equipments, covered by a separate direction. As regards setting up of monitoring stations to map noise levels, it is stated that 23 States/UTs have given action plans while the remaining 12 are yet to submit. GeM has informed that specifications of sound level meters and reputed vendors list have been placed on the GeM portal. CPCB has also communicated its observations with regard to gaps in the action plans

submitted by the States. The States/UTs may address the gaps communicated by the CPCB with respect to the action plans and the States/UTs which have not yet furnished their action plans may do so positively by 31.12.2020.

We may note that in the context of Delhi, the issue of noise pollution has been dealt with by this Tribunal separately vide order dated 11.08.2020 in *Hardeep Singh & Ors. v. SDMC & Ors.*, OA 519/2016. The Tribunal approved the report of the CPCB dated 12.06.2020 laying down regime of compensation for violation of noise pollution norms as follows:

**“Table 1: Enlishment of Violation of Noise Rules and their respective Scale of Compensation.**

<b>Sr. No.</b>	<b>Violation of Noise Rules</b>	<b>Compensation (in Rupees) to be paid by defaulter</b>		<b>Action to be taken by designated authority</b>
1.	<b>USE OF LOUD SPEAKERS/PUBLIC ADDRESS SYSTEM<sup>1</sup> (Clause 5(1)-5(2), 6(i,ii,iii and v)<sup>1-5</sup></b>	₹ 10,000		Seizure
2.	<b>VIOLATION WRT GENERATOR SETS NORMS (standards attached as Annexure – IV to VI)</b>			
a)	<b>DG sets more than 1000 KVA</b>	₹ 1,00,000/-		Sealing of DG sets
b)	<b>DG sets 62.5 to 1000 KVA</b>	₹25,000/-		
c)	<b>DG sets upto 62.5 KVA</b>	₹ 10,000/-		
3.	<b>VIOLATION OF USE OF SOUND EMITTING CONSTRUCTION EQUIPMENT</b>	₹50,000/-		Seizure/Sealing of equipment
4.	<b>Bursting of Firecrackers beyond the prescribed time limit prescribed (Hon’ble Supreme Court and Clause 5A (2) and 6 (iv)<sup>7-8</sup></b>			
4(1)	<b>Violation by Individual/Household</b>	Residential / Commercial/Mixed Zone Silence Zone	Silence Zone	
		1,000	3,000	
4(2)	<b>Violation during</b>	10,000	20,000	<b>Fine to be paid by</b>

	<i>Possession</i> <i>a. Public Rallies</i> <i>b. Barat during marriage Religious event</i>			<i>Organizer</i>
4(3)	<i>First Violation within a fixed Premises:</i> <i>a. Function organized by RWA,</i> <i>b. Marriage Function</i> <i>c. Public Function</i> <i>d. Institution function</i> <i>e. Banquet Hall</i> <i>f. Open ground functions</i>	20,000		<i>Fine to be paid by Organizer and Owner of the place.</i>
4(4)	<i>Second Violation within a fixed Premises:</i> <i>a. Function organized by RWA,</i> <i>b. Marriage Function</i> <i>c. Public Function</i> <i>d. Institution function</i> <i>e. Banquet Hall</i> <i>Open ground function</i>	40,000		
4(5)	<i>More than Two Violation within a fixed Premises:</i> <i>a. Function organized by RWA,</i> <i>b. Marriage Function</i> <i>c. Public Function</i> <i>d. Institution function</i> <i>e. Banquet Hall</i> <i>Open ground function</i>	1,00,000 and action under EP Act.		<i>Sealing of Premises</i>

*Note:*

1. *Clause 5(1): A loud speaker or a public address system shall not be used except after obtaining written permission from the authority.*
2. *Clause 5(2): A loud speaker or a public address system or any sound producing instrument or a musical instrument or a sound amplifier shall not be used at night time except in closed premises for communication within, like auditoria, conference rooms, community halls, banquet halls or during a public emergency.*
3. *Clause 6 (1) Playing any music or uses any sound amplifiers in any place covered under the silence zone/area are prohibited.*
4. *Clause 6(ii): Beating a drum or tom-tom or blows a horn either musical or pressure, or trumpet or beats or sounds any instrumenting any place covered under the silence zone/area are prohibited.*
5. *Clause 6(iii): Exhibits any mimetic, musical or other performances of a nature to attract crowds in any place covered under the silence zone/area are prohibited.*
6. *Clause 5(A) (3): Sound emitting construction equipment shall not be used or operated during-night time in residential areas and silence zones*
7. *Sound emitting fire crackers shall not be burst in silence zone or during' night time in each zone;*
8. *As per directions of Hon'ble Supreme court, following time limits are prescribed for bursting fire crackers:  
Diwali: 8 pm to 10 pm  
Gurpurb: - 4am to 5 am and 9 pm to 10 pm  
New year and Christmas: 11.55 P.M to 12.30 A.*
9. *It may be noted that imposition of fine for notification of Rule 5A(1) falls within the purview of Motor Vehicle Rules, 2019”*

The Tribunal also directed strict monitoring at ground level for protection of public health and environment to be overseen at higher levels in the administration.

21. With regard to evaluation of existing AQMS, CPCB sought information from the States and after analyzing the same, suggested as follows:

- “ • *Adequate infrastructure in terms of instruments and staffs may be ensured by each Pollution Control Boards & Pollution Control Committees. Manpower requirement for further expansion of network also to be worked out.*
- *Mechanism should be developed by every State Pollution Control Boards / Pollution Control Committees for induction & service period trainings for staffs involved in sampling and analysis.*
  - *At least central laboratory in each state/UT should be accredited on priority, for those which are yet to be accredited.*
  - *CPCB guidelines for sampling and analysis should be followed with proper quality control.*
  - *Data dissemination to public including website, mobile aap, and display board at various places for mass awareness may be strengthened.”*

Let further steps be taken in terms of above suggestions by all the State PCBs/PCCs and information furnished by the State PCBs/PCCs to the CPCB by 31.12.2020. Existing Air quality control mechanism needs to be revamped for which CPCB may give its further suggestions in the next report. We reiterate the need to regulate noise caused by loudspeakers, DJs, Public Address systems and otherwise, particularly in residential areas as per Noise Control Rules, 2000, the judgement of the Hon'ble Supreme Court in (2005) 5 SCC 733<sup>22</sup> and relevant observations in the order of this Tribunal dated 11.08.2020 in *Hardeep Singh & Ors. v. SDMC & Ors., OA 519/2016*, passed in the context of Delhi. Report in this regard may be filed with the CPCB.

**h) Directions – xi) & xv)**

**Finalization of Emergency Response System (ERS) and coordination with Disaster Management Committees:**

22. The report mentions that eleven (11) States have developed GRAPs. CPCB has suggested that:

*“a suitable mechanism similar to Task Force under GRAP for Delhi-NCR may also be put in place to advice action needed under emergency air quality situations.”*

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<sup>22</sup> *In Re: Noise Pollution - Implementation of the Laws for restricting use of loud speakers and high volume producing sound systems*

Let all the States/UTs take further action to finalize the respective Emergency Response Systems ('ERSs') in the light of the above suggestion.

**Coordination with the State Disaster Management Authorities, State PCBs/PCCs and Meteorological Departments:**

This aspect may be taken up by all States/UTs so as to ensure that no environmental disasters happen. In this regard, the Tribunal has recently dealt with vide the problem of frequent environmental disasters vide order dated 23.07.2020 in OA 134/2020, News Item published on 13.07.2020 in daily "India Today" titled "Massive fire engulf Vizag chemical plant, explosions heard, injuries reported" and issued directions which may be looked into by all States/UTs and coordinated by the CPCB.

**i) Direction – xii)**

**Status of Consent and EC Funds:**

23. The CPCB constituted a Committee which has approved action plans of five (05) States and the remaining are yet to be finalized. Let further action be taken by 31.12.2020 in the light of order of this Tribunal on the subject dated 24.07.2020 in O.A. No. 102/2019, *Ashish Kumar Dixit v. State of Uttar Pradesh & Ors.* It will be preferable that MoEF&CC with assistance of CPCB lays down an institutional mechanism on the pattern of CAMPA or otherwise for proper utilization of consent and EC funds available with CPCB/State PCBs/PCCs.

**j) Direction xiv)**

**Bio-remediation of legacy waste dump sites:**

24. In terms of directions already issued in O.A. No. 519/2019, the CPCB has given the latest data on the subject and mentioned the



shortcomings in the procedure adopted by various Municipal Corporations where inspections were carried out by CPCB. CPCB conducted a meeting with respect to Municipal Corporations in Delhi and highlighted the issues and asked them to follow the CPCB guidelines on the subject. Let CPCB issue a fresh direction in this regard to all the State PCBs/ PCCs and coordinate further action with the concerned Urban Development/Local Bodies/PCBs/PCCs/Municipal Corporations. At least one site may be remediated and made a model of compliance in each of the 122 NACs. The Tribunal has already issued directions on this subject vide order dated 17.7.2019 in OA 519/2019 requiring commencement of remediation of legacy waste sites by 1.11.2019. Rule 22 of the Solid Waste Management Rules has fixed outer limit of 7.4.2021 for completing such remediation. However, for continued damage to environment by delay in remediation, environment compensation is liable to be paid. This being mandate of the Constitution, even extension of timeline in rule may at best provide defence against prosecution but inherent liability continues. By subsequent order dated 28.2.2020 (in OA 606/2018 para 41), it was directed that specified compensation will be payable if work does not commence by 1.4.2020. Let such remediation commence wherever it has not so commenced and data in this regard furnished to CPCB by 31.12.2020.

**k) Direction xvi)**

**Placing successful models by States on Websites**

25. No information has been furnished with reference to the said direction. CPCB may include information on the subject in its next report.

**VI. Consideration of report of Ministries of Road Transport & Highways and Urban Development dated 16.06.2020 with reference to order in OA 773/2018 on overlapping issue:**

26. We may now refer to the report dated 16.06.2020 received from the Ministries of Road, Transport and Highways (MoRTH) and Urban Development in response to the order of the Tribunal in *O.A. No. 773/2018* dealing with the issue of unregulated parking, adding to the air pollution, making it necessary to undertake carrying capacity of the roads and making planning to limit the number of vehicles, policies for parking etc and implementing its decisions to uphold the principle of sustainable development, preventing air pollution and chaos . The stand in the report is that the task of formulating methodology has been entrusted to M/s Urban Mass Transit Company Ltd. (UMTC). The UMTC is to carry out a pilot study in Faridabad which can be used for other NACs. UMTC has given its interim report which was discussed with the domain experts who suggested that the report needs to be revamped with additional aspects and indicators which involve collection of primary and secondary data. Such data collection is not possible on account of Covid-19 and will require 10-12 months.

27. We are of the view that the approach adopted by the MoRTH can hardly be held to be consistent with the mandate of the Constitution, particularly the principles of 'Sustainable Development', 'Precautionary' principle and 'Polluter Pays' principles which have been held to be part of right to life under Article 21 of the Constitution in various judgments of the Hon'ble Supreme Court to which reference has already been made. There are international treaties requiring enforcement of these principles and directive principles under the Constitution also mandate obligation of the State to provide clean environment. It is well known that various activities in excess of carrying capacity of 122 cities have led to the said

cities being declared NACs and unless stern expeditious measures are taken, meaningful enforcement of 'Sustainable Development' principle, right to life and 'Public Trust Doctrine' is not possible. This Tribunal, under Section 20 of the National Green Tribunal Act, 2010, has the mandate to enforce these principles. In this view of the matter, dilatory tactics in the report can hardly be appreciated as this will prejudice the public health and environment, in breach of Constitution of the country. All concerned, including MoRTH must take meaningful and prompt action instead of shirking responsibility, as the report indicates. Unless proper planning is done to bring down the pollution load, mandate of protection of public health will remain only on paper. MoRTH may consider entrusting the task to Central Road Research Institute and the project may be funded by CPCB out of compensation funds or otherwise. On that basis, appropriate policies be prepared and executed to regulate order on roads, to avoid chaos and to check pollution. Policy may include number of vehicles to be registered in 122 NACs, specifying parking areas etc. so that roads do not become parkings, leading to traffic congestion and air pollution and policy to deal with vehicles already registered beyond carrying capacity of roads of the cities and parking areas available.

**VII. Consideration of report of Oversight Committee for the State of UP giving status of compliance in UP dated 16.06.2020:**

28. We now take up the latest report in the context of State of U.P. filed by the Oversight Committee (OC) constituted by the Tribunal for the environmental issues in the said State. The report of the OC dated 15.07.2020 has dealt with the issue of air pollution generally, compliance status in the State of UP with regard to NACs falling in the State, with

reference to different action points. The report concludes with the following recommendations:

**“Recommendations:**

***In view of above, we recommend as follows:***

- 1. It is fashionable for all the states to profess that they are promoting electric vehicles to reduce vehicular pollution. However Electric vehicles (EVs) can only be promoted if there is a charging station network in these cities. Though UP has come out with a charging station policy for Electric vehicles, there is not much progress on the ground. With the growth of charging stations for EVs in the cities, number of EVs will increase and vehicular pollution will go down.*
- 2. Another professed step is to switch over to cleaner fuels like PNG. Though the Ministry of Petroleum, GoI is expanding the PNG network in U.P, the progress is slow. It is true that the piped natural gas network would lead to shifting of industries/vehicles/domestic users to cleaner fuel leading to less air pollution. However for this shift over, both logistics and economics need to be worked out. **Some incentives should be given to industry to switch over from polluting fuel to gas-based systems.** Such an arrangement exists in the TTZ area in Agra. It could be extended to NCR Area. State Government need to take care of logistics like earmarking appropriate land for Gas Distribution Stations to enable easy accessibility.*
- 3. Brick Kilns contribute a large percentage to air pollution. Therefore Uttar Pradesh Brick Kiln (Siting Criteria for Establishment) Rules 2012 have been formulated to regulate the establishment of new Brick Kilns. Even for renewal of Consent to Operate, these Rules can be invoked. **Also, the carrying capacity of the area and other ambient air parameters need to be kept in mind while giving permission for new kilns or renewing consent for existing ones.** The situation is quite bad in NCR area, where keeping all these factors in view, NGT has ordered closure of Brick Kilns on 15.11.2019. The orders regarding brick kilns need to be enforced to guard against unsustainable air pollution. There are also complaints of burning of rubber tyres as fuel in brick kilns which produce noxious fumes. **A number of NAC cities including some in NCR region like Noida and Ghaziabad do not have Solid Waste Disposal/processing sites. The probability of Solid Waste burning in these NACs is quite high, leading to air pollution. Immediate steps be taken to establish solid waste processing facilities in these NACs.***
- 4. As far as construction activities are concerned, MoEF guidelines should be incorporated compulsorily in the contracts which are signed with contractors. Any violation of those guidelines should be penalized heavily. Ministry of Housing and Urban Development can include it in the urban bylaws, prepare model contracts and enforce them through Urban Development Authorities.*

5. **The SA and CC studies should be done in all the districts of UP.** An Air Quality Assessment, Emissions Inventory and Source Apportionment Studies for Kanpur City (Final Report) was done by IIT, Kanpur in 2010 and submitted to Central Pollution Control Board, New Delhi (Link: <http://164.100.107.13/Kanpur.pdf>). The details of the benefits received from this study and how this study has helped in improvising the air quality of Kanpur city should be made available to Hon'ble NGT.
6. **The open burning of poly-ethylene bags, plastic material and other waste brings both quantitative and qualitative deterioration in the environment.** The government should incentivize the use of cheap alternatives to poly-ethylene bags. The One District One Product (ODOP) Policy of MSME Department of Govt. of UP can be used to focus on forward and backward linkages for these environment-friendly packaging materials. Alternatively, Plants for conversion of Plastic to Fuel as in Mathura could be encouraged. Plastics could also be channelized for use in road construction along with bitumen.
7. As per the orders of the Supreme Court, a complete ban has been imposed on single-use plastic bags. Then, there is no point in manufacturing this type of plastic bag. **A complete shutdown should be imposed on the manufacturing of these single-use plastic bags.** In case of the default both the manufacturer and the retailer are liable to pay the environmental compensation and strict action should be taken against them.
8. **There is a need to have innovative solutions to use the leftover stubbles for the production of some useful items or to use this waste to prepare some useful decorative products with the help of self-help groups.** The leftover stubble can be used in treating the water and waste water as its derivatives have a high adsorption rate to adsorb heavy metals from water and wastewater. The commercial use of the rice husk to produce the silica gels, silicon chip, synthesis of activated carbon and silica, production of lightweight construction materials and insulation, catalysts, zeolites, ingredients for lithium-ion batteries, graphene, energy storage/capacitor, carbon capture, and in drug delivery vehicles.
9. The UPPCB should conduct public awareness programs to make the people aware of the benefits of the clean air which people have already experienced during the lockdown. Cumulative drives involving the people to improve the indoor air quality should be taken into action. The awareness about cost-effective methods such as indoor plantation should be promoted. The responsibility of the citizens should also be fixed and more and more public participation should be encouraged in improving the overall air quality.
10. **As per the directions given in NCAP for a reduction of 35% of the pollution in 3 years starting from the levels of**

***2017. The target has not been achieved. There needs to be an accountability matrix for each stakeholder and a system of continuous monitoring to achieve these targets in the prescribed time schedule. The work of flood plain zoning is in process in the State of Uttar Pradesh. UP has plans for massive afforestation to the tune of 25 crore plants this year. This could be utilized scientifically to develop Green Belts on riversides. The plantation will also benefit in controlling the floods and stabilization of the river banks.”***

29. The above recommendations certainly need serious consideration and action by the concerned authorities in the State of UP. A copy of the report be furnished to the Chief Secretary, UP for further action in the State at different levels. Such action may be coordinated and overseen by the Monitoring Committee.

**VIII. Directions:**

30. In view of the above, the directions are summed up as follows:
- i. The work of completing remaining 175 monitoring stations needs to be expeditiously completed within next six months. Work in this regard may commence within one month, which may be monitored by the CPCB, by holding periodical online meetings with the Chairman/Member Secretaries of State PCBs/PCCs or other authorities. The funds available under the ‘consent mechanism’/‘environmental compensation’ may be utilized for the purpose by the State PCBs/PCCs. It will be preferable that out of the above, 25 stations are set up by CPCB/State PCBs/PCCs jointly (with CPCB financing out of its EC funds), following an appropriate procedure to ensure best price and quality;
  - ii. Carrying Capacity and Source Apportionment studies may be simultaneously undertaken by the State PCBs/PCCs, utilizing the ‘consent mechanism’/ ‘environmental compensation’ fund.

Work in this regard may commence within one month and completed in six months. State PCBs/PCCs will be at liberty to either undertake the study in-house or by hiring any other agencies. However, as far as possible a uniform policy may be adopted in this regard which may be finalized by the CPCB in consultation with all State PCBs/PCCs in same manner as in direction i. It will be preferable that 25 such studies are conducted jointly by CPCB/State PCBs/PCCs (with CPCB financing out of its EC Funds) to set a pattern;

- iii. Let further steps of prohibiting/shifting polluting activities which are found unsustainable/non conforming and beyond carrying capacity of NACs, as a consequence of SA/CC Studies or otherwise, to other locations, in the interest of public health and protection of environment to give effect to 'Sustainable Development' principle be taken by the States/UTs;
- iv. The States may take further steps to set up and operate PGRPs expeditiously, within three months. The CPCB as well as State PCBs/PCCs may evaluate functioning of such portals on real time basis in the direction of protection of environment. In particular analysis may be undertaken about the number of complaints received, effective steps for redressal taken and improvement achieved and planned. Such exercise may be ongoing but in the first instance may be compiled as on 31.12.2020 and report filed by the State PCBs/PCCs with the CPCB within one month thereafter;
- v. Action plans for newly added 20 NACs be completed expeditiously on the pattern of such plans for 102 cities, already prepared;

- vi. All the concerned States/UTs may execute action plans, including control of stubble burning, where ever necessary and bursting polluting and noise generating fire crackers and give information about the status of compliance of action plans as on 31.12.2020 to CPCB before 15.1.2021. They may also give information in a tabulated form about the extent of improvement achieved, if any, in terms of reduction in pollution load. Steps in terms of action plans completed, actions ongoing and actions incomplete;
- vii. Detailed micro level planning be undertaken in respect of each NAC by the concerned State/UT expeditiously and status as on 31.12.2020 be furnished to the CPCB within one month thereafter;
- viii. The States/UTs may address the gaps communicated by the CPCB with respect to the action plans for control of noise pollution and the States/UTs which have not yet furnished their action plans may do so positively by 31.12.2020. Compensation regime for violations of noise pollution be applied by all the States/UTs;
- ix. We find that NCAP for reduction of air pollution does not fully meet the mandate of sustainable development. Violation of laid down air pollution levels resulting in large number of deaths and diseases needs to be addressed expeditiously. Targeted time of reduction of pollution loads needs to be reduced and planned steps need to be sternly implemented on the ground. MoEF&CC may take further action as per law in the light of observations in para 19 above.



The States may utilize CAMPA funds, undertaking special afforestation drives in forest lands or other permissible locations in 122 NACs as per CAF Act, 2016 to abate pollution in the said cities. The CEO of CAMPA may hold a video conferencing with all the States PCBs/PCCs to coordinate and facilitate the utilization of CAMPA Funds;

- x. Let all the States/UTs take further action for procurement of equipments and taking other steps for control of noise pollution in 122 NACs as discussed in para 20 above and direction (viii) above, including applying compensation regime prepared by the CPCB and file their respective reports of status of compliance as on 31.12.2020 by 15.1.2021;
- xi. Let further steps be taken by all the States/UTs to finalise ERSs in terms of suggestion of the CPCB as quoted above in para 24, constituting a suitable mechanism similar to Task Force under GRAP for Delhi-NCR and information furnished to the CPCB by 31.12.2020;
- xii. let further steps be taken to plan utilisation of consent/EC funds by all the State PCBs/PCCs in the light of order of this Tribunal on the subject dated 24.07.2020 in *O.A. No. 102/2019, Ashish Kumar Dixit v. State of Uttar Pradesh & Ors* by 31.12.2020. It will be preferable that MoEF&CC with assistance of CPCB lays down an institutional mechanism on the pattern of CAMPA or otherwise for proper utilization of consent and EC funds available with CPCB/State PCBs/PCCs.
- xiii. Let CPCB issue a fresh direction with regard to the remediation of legacy waste sites in the light of deficiencies noticed by the CPCB and coordinate further action with the

concerned Urban Development /Local Bodies/PCBs/PCCs/Municipal Corporations. At least one site may be remediated and made a model of compliance in each of the 122 NACs. Where ever legacy waste sites remediation has not commenced, it may commence earliest having regard to the fact that timeline under statutory rules to complete such action is 7.4.2021 and continued delay is detrimental to public health and environment. Information of compliance status as on 31.12.2020 be furnished to CPCB in terms of observations in para 24 above;

- xiv. All the States/UTs and PCB/PCCs may take steps to coordinate with the State Disaster Management Authorities and Meteorological Departments. The observations of this Tribunal while dealing with the problem of frequent environmental disasters in order dated 23.07.2020 in OA 134/2020, News Item published on 13.07.2020 in daily "India Today" titled "Massive fire engulf Vizag chemical plant, explosions heard, injuries reported" may also be taken into account. Action taken reports be filed with the CPCB for submission of consolidated report to this Tribunal;
- xv. MoRTH may take further prompt action of undertaking carrying capacity studies with regard to road infrastructure, specially in 122 NACs, through Central Road Research Institute or any other agency which may be financed by CPCB out of compensation funds or otherwise. On that basis, proper policies be prepared to deal with the number of vehicles beyond parking capacity or carrying capacity and permitting entry or registration of number of vehicles, parking areas etc.

This is necessary to reduce congestion, unregulated parking and air pollution loads in 122 NACs. CPCB may coordinate with the concerned Ministries and acquaint this Tribunal with the outcome in its next report;

xvi. The recommendations of the Oversight Committee for the State of UP, in its report dated 15.07.2020, need serious consideration and action by the concerned authorities in the State of UP. The Chief Secretary, UP may ensure further action in the State at different levels which may be coordinated and overseen by the Monitoring Committee. The oversight Committee may give its further independent report to this Tribunal before the next date by e-mail;

xvii. In view of continued violation of law on significant environmental issues, to give effect to rule of law and Constitutional mandate of clean environment and for protection of public health and environment, monitoring must be done at the level of Chief Secretaries at least once in a month and the Chief Secretaries must have environment cells attached to their offices, as earlier directed by the Hon'ble Supreme Court and this Tribunal in OA 606/2018;

xviii. CPCB may file its consolidated report by email by January 31, 2021.

Copies of the order be sent to the Chief Secretaries of all States/UTs, Justice SVS Rathore, Chairman, Oversight Committee for the State of UP, Justice Jasbir Singh, Chairman Monitoring Committee appointed by this Tribunal for several environmental issues in the State of Punjab, Justice Pritam Pal, Chairman Monitoring Committee appointed by this Tribunal for several

environment issues in Haryana and Chandigarh, MoEF&CC, MoRTH, MoH&UD, CPCB, all States/UTs, State PCBs/PCCs and CEO, CAMPA by e-mail for compliance.

List for further consideration on 18.02.2021.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Satyawan Singh Garbyal, EM

Dr. Nagin Nanda, EM

August 21, 2020  
Original Application No. 681/2018  
DV