

Item Nos. 05 to 09

Court No. 1

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

Appeal No. 14/2020
(I.A. No. 208/2020)

Chandni Chemicals Pvt. Ltd.

Appellant

Versus

Uttar Pradesh Pollution Control Board

Respondent

WITH

Appeal No. 15/2020
(I.A. No. 209/2020)

Amelia Textiles and Chemicals Pvt. Ltd.

Appellant

Versus

Uttar Pradesh Pollution Control Board

Respondent

WITH

Appeal No. 16/2020
(I.A. No. 210/2020)

Rukmini Chemicals Ltd.

Appellant

Versus

Uttar Pradesh Pollution Control Board

Respondent

WITH

Appeal No. 17/2020
(I.A. No. 211/2020)

Heilgers Chem Pvt. Ltd.

Appellant

Versus

Uttar Pradesh Pollution Control Board

Respondent

WITH

Appeal No. 18/2020
(I.A. No. 212/2020)

Waris Chemicals Pvt. Ltd.

Appellant

Versus

Uttar Pradesh Pollution Control Board

Respondent

Date of hearing: 04.01.2021

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

Appellant: Mr. Santosh Krishnan, Advocate

Respondent: Mr. Daleep Dhyani, Advocate for UPPCB

ORDER

1. This set of Appeals involves common issue of liability of the appellants for damage to the environment on account of illegal storage of chromium waste. Such storage led to pollution of ground water adversely affecting health of large number of inhabitants. The matter was dealt with by this Tribunal vide order dated 15.11.2019 in OA No. 985/2019, *In Re : Water Pollution by Tanneries at Jajmau, Kanpur, Uttar Pradesh*, in the light of a report by Justice Arun Tandon, former Judge of Allahabad High Court, who was appointed to head a Committee to oversee control of pollution in River Ganga vide order dated 06.08.2018 in *O.A No. 200/2014, M.C Mehta v. Union of India*. The said matter was earlier dealt with by this Tribunal on transfer of *W.P. (Civil) No. 3727/1985* by the Hon'ble Supreme Court. The Tribunal passed orders dated 10.12.2015 and 13.07.2017 for different segments of River Ganga. Execution of the said orders is still being dealt with. Considering the report of Justice Tandon, the Tribunal directed remediation of the chromium dump sites at Kanpur Dehat and Khan Chandpur and making provisions for health checkup and drinking water supply to the victims. The Tribunal also directed recovery of compensation on "Polluter Pays" principle and deposit of adhoc compensation by the State pending

recovery from the generators of waste resulting in damage to the environment.

2. On the last date i.e. 10.07.2020, following order was passed:

“1. This set of Appeals involves common issue of liability of the appellants for damage to the environment on account of illegal storage of chromium waste. Such storage led to pollution of ground water adversely affecting health of large number of inhabitants. The matter was dealt with by this Tribunal vide order dated 15.11.2019 in the light of a report by Justice Arun Tandon, former Judge of Allahabad High Court, who was appointed to head a Committee to oversee control of pollution in River Ganga vide order dated 06.08.2018 in O.A No. 200/2014, M.C Mehta v. Union of India. The said matter was earlier dealt with by this Tribunal on transfer of W.P. (Civil) No. 3727/1985 by the Hon’ble Supreme Court. The Tribunal passed orders dated 10.12.2015 and 13.07.2017 for different segments of River Ganga. Execution of the said orders is still being dealt with.

2. The Committee visited the site along with representatives from the NMCG, CPCB, UPPCB and the UP Jal Nigam. Noticing that the water from hand pumps/borewells was coloured and unfit for drinking, photographs of the same were taken and samples of the water were taken. It was also found that there was no source of potable water and the residents were required to purchase drinking water. Consumption of water was leading to diseases to the inhabitants and the animals.

*3. After considering the report of the Committee, the Tribunal directed the Chief Secretary, Uttar Pradesh to forthwith ensure steps for supply of drinking water to the residents in the affected area, apart from taking other remedial measures in the light of the report of Justice Tandon in respect of Rania, Kanpur Dehat and Rakhi Mandi, Kanpur Nagar, around the area of Chromium dumps as per earlier orders of this Tribunal. The Tribunal also considered the Report of the Chief Secretary, UP that the Executive Officer, Nagar Panchayat, Akbarpur had been directed to supply drinking water through tankers in the affected areas around Khanchandpur, Rania, Kanpur Dehat. Principal Secretary, Rural Development, UP had been asked to establish Piped Water Supply (PWS) in the affected areas. The District Magistrate, Kanpur Dehat and Principal Secretary, Panchayati Raj, UP had been directed to seal identified handpumps/borewells. Potable water supply already available for Rakhi Mandi was to be augmented. The Principal Secretary, Medical and Health had been asked to organize health checkup camps and to provide treatment. Direction had also been issued for in-situ safe disposal of Chromium dumps under the guidance of CPCB. **UPPCB has identified six industries responsible for dumping of the waste. The said industries were closed in the year 2005. Environmental Compensation of Rs. 280.01 crore had been assessed to be recovered from the said industries.** Closure order had been*

issued against 122 tanneries to prevent flow of effluents in the CETP which did not have sufficient capacity and also to prevent discharge in irrigation channel on 01.10.2019.

4. Finally the Tribunal directed as follows:

“11. It is undisputed that Chromium dumps containing toxic hexavalent Chromium (as mentioned in the report of the CPCB quoted above) has been in existence since 1976 and requisite steps have not been taken so far to dispose of the same as per mandate of law. **Chromium is considered to be an environmentally hazardous element and classified as class-A human carcinogen.**¹ Hexavalent Chromium Cr (VI) is toxic and the World Health Organization (WHO) has classified it as carcinogenic and can cause stomach ulcers and cancers and severe damage to kidneys and liver.² **The industries responsible for generating the said dumps were closed in the year 2005. The SPCB has assessed liability of environmental compensation of Rs. 280.01 crore only on 24.10.2019. There is no explanation why no such step was taken against the said industries earlier.** We may note that this Tribunal has been issuing directions for shifting of the Chromium dumps but the State of UP has failed to do so. The direction of this Tribunal has already been quoted above from the order dated 22.08.2019 (para 24). Such directions were also issued earlier vide order dated 13.07.2017.

12. From the above, it is clear that there is failure on the part of State of UP and its authorities in disposal of the Chromium dumps which is hazardous to the public health and the environment and the proposal now mentioned in the report of the Chief Secretary, UP is for in-situ remediation though earlier stand of the State of UP was to shift the Chromium waste to the Treatment Storage and Disposal Facility (TSDF) for hazardous waste as per Hazardous Waste Management Rules, 2016. The fact remains that the problem has not been tackled for the last 43 years and it has resulted in contamination of ground water affecting the health and life of the inhabitants and fauna. **Compensation has been assessed only in the year 2019 without it being clear whether there is a chance of actual recovery of the same. There is no explanation for earlier inaction by the State of UP and the UPPCB.**

13. For this failure, under the Public Trust Doctrine, **the State is liable to deposit the said assessed amount in an ESCROW account for restoration of environment and the public health in the area. Such deposit may be made within one-month from today. The amount may be spent after preparation of an action plan by the District Magistrates and the SPCB with the approval of the CPCB. The ESCROW account will be operated by the concerned District Magistrate in terms of action plan.**

¹ <http://www.isca.in/rjcs/Archives/v7/i7/7.%20ISCA-RJCS-2017-024.pdf>

² https://www.who.int/water_sanitation_health/waterquality/guidelines/chemicals/chromium.pdf?ua=1

*That in the Representation dated 10.02.2020 received from the factory in question, the Respondent has himself admitted that they have established and operated the factory which is generating Chrome Contaminated Waste at the abovementioned area. **It has not been clarified in the said Representation that how and where the disposal of hazardous waste has been done by them and have not disposed off the hazardous waste in the abovementioned area in an illegal manner. That it is undisputed that 06 factories have been set up in Khanchandpur, Rania area which is generating chrome contaminated waste and the hazardous waste is being disposed off at the abovementioned area in an illegal manner, whose calculation has been done in the D.P.R. prepared by the Central Pollution Control Board.***

That in Para No.17 of the Representation submitted by the factory, it has been submitted that a proposal has been given on 01.04.2009 for imposing fine towards illegal hazardous waste has been done for the year 2009 too. The factory has informed that in Para No.17 of its Representation that fine has been imposed on the basis of approximate quantity of stored chromium waste of 45000 metric ton, whereas, in the D.P.R. prepared by the Central Pollution Control Board through its Advisor, the quantity of abovementioned stored chromium waste has been calculated as 62225 metric ton.

That the Hon'ble National Green Tribunal has passed an order in O.A. No.200/2014 in the matter of M.C. Mehta Versus Union of India dated 07.08.2019 that(viii) Other directions including displaying water quality data in public domain and at prominent places, development of biodiversity parks, prohibition of river bed mining, remediation of chromium dumpsites in Uttar Pradesh, collection of compensation from violators and involvement of society including religious, charitable, social and educational institutions for preventing and remedying of River Ganga..... That apart from the above said order, the Hon'ble National Green Tribunal, the Board has directed to impose the amount of environmental compensation in various other cases.

That Hon'ble Justice Shri Arun Tandon, President of Monitoring Committee has given following order during the review meeting on 08.08.2019 in compliance of order passed in O.A. No.200/2014: -

"It was directed that progress of removal of chromium from dump site at Rania be reported in the next meeting. The committee directed CPCB to issue notice for levy Environmental Compensation to the industries which have caused and area causing damage to the environment."

That the order was passed during the review meeting in the leadership of Chief Secretary, Government of U.P. on 17.10.2019 in compliance of order dated 27.09.2019 passed in

O.A. No.985/2009 and O.A. No.986/2019 by the Hon'ble National Green Tribunal that "**The proceedings for imposing of environmental compensation and its recovery shall be initiated on the basis of Polluter Pays Principle against the factories who have illegally dumped their chromium waste in Umran, Prasadhpur and Village Khanchandpur, District Kanpur Dehat.**" It has been mentioned in the minutes of meeting sent vide Letter No.N.G.T.335(2)/81-7-2019- 44(Writ)/2016 T.C. dated 19.10.2019 issued by Environment, Forest and Climate Change Department, Govt. of U.P.

That the following environmental compensation amount has been imposed against M/s Chandni Chemicals Pvt. Ltd., Khanchandpur, Rania, Kanpur Dehat while taking into consideration the guidelines issued in respect of calculation of environmental compensation in violation of Hazardous and other waste (Management and Transboundary movement) Rules, 2016, issued by the Central Pollution Control Board, New Delhi.

Environmental Compensation (EC)=Q x ERF x R

Where

Q is noticed or observed quantity (in ton) of hazardous or other wastes which have not been managed in compliance with various provisions of the Acts/Rules/Guidelines/ conditions of the authorization/ directions issued by CPCB/SPCB/PCC/MoEF&CC (barring procedural violations which have not caused environmental damage).

ERF: Environmental Risk Factor which is a number (as given in Table-1 below) denoting the increasing degree of risk to the environmental and human health due to the scenarios as given in the table: -

S. No.	Violation	ERF	
		For Hazardous Waste	For other Waste*
1	When hazardous and other wastes is disposed at unauthorized place or handed over or sold to unauthorized party	1.5	0.3
2	When treatment has not been imparted, as required, but only partial treatment has been given (TDF/Actual user)	1.0	0.2
3	When product (derived from hazardous or other waste) is not conforming to prescribed specification or is specified for restricted use but sold in open market against (in case of actual user)	1.0	0.2
4	Wastes found stored beyond the	0.1	0.05

	<i>stipulated period (refer Rule 8 of the HOWM Rules, 2008)</i>		
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R= Environmental Compensation factor, which may be taken as Rs.30,000/-

That in view of the abovesaid facts, the environmental compensation amount of Rs.39,98,57,850/- (Rupees Thirty Nine Crores Ninety Eight Lacs Fifty Seven Thousand Eight Hundred and Fifty) imposed on the factory in question by the Board on 19.11.2019 on the basis of Representation dated 10.02.2020 submitted by the Respondent, there are no basis to change it or set it aside.

*Therefore, it is directed that the factory namely M/s Chandni Chemicals Pvt. Ltd. Khanchanderpur, Rania, Kanpur Dehat should deposit amount of **Rs.39,98,57,850/- (Rupees Thirty Nine Crores Ninety Eight Lacs Fifty Seven Thousand Eight Hundred and Fifty)** imposed on it as environmental compensation without any further delay in the Bank Account No.701502010002104, IFS Code: UBIN0570150 of U.P. Pollution Control Board, maintained with Union Bank of India, Vaibhav Khand, Gomti Nagar, Lucknow and ensure to produce the proof of payment of said amount in the Zonal Office and Head Office of the Board.”*

6. *In the present set of Appeals, the principal contention is that **the appellants were closed in the year 2005 and till 2019, i.e., for 14 years, no action was taken. At present, five companies are existing only on paper without any commercial activity. It is submitted that the proceedings for compensation are time barred. There is no explanation for the long inaction by the authorities. At this stage no record is available. There is neither any basis to hold that the waste belonged to the appellants nor for fixing quantum thereof.** Their assets, as per learned counsel, are less than 1 Crore collectively (subject to further verification by learned counsel). They thus have no capacity to pay the amount as on today. **It is further stated that there were similar 18 other companies generating chromium in the area. It has not been verified as to whether they have also contributed to the chromium dumps in question.***

7. *We find it necessary to seek response of the UPPCB with reference to the above which may be furnished within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.”*

3. Accordingly, reply has been filed. We have heard learned counsel for the parties. The matter will require consideration. Admitted. List for final hearing on 27th July, 2021.

4. We however do not find that a case is made out for absolute interim relief. While it is true that the State PCB failed to take action when the violation of environment norms commenced and for 14 years after the companies claim to have been closed. Limitation under Section 15(3) of the National Green Tribunal Act, 2010 for intervention of this Tribunal is five years from accrual of cause of action. If no limitation is prescribed, action has to be taken within reasonable time. At the same time, Section 15(3) does not apply for action by the State PCB and reasonableness of period is to be determined from case to case. There is no absolute bar to delayed action in every situation. Inaction by the PCB should not result in irreversible damage to the affected victims. Absolute liability for continuing damage to the environment and public health cannot be ignored and “Polluter Pays” principle has to be applied even if delay has been caused. The chromium dump in question at Kanpur Dehat is continuing to cause damage to the environment and the public health. The persons responsible for dumping such hazardous waste, which has contaminated the ground water to the detriment of the inhabitants, cannot disown responsibility for liability for such damage on the ground of inaction of the authorities or closing of the companies.³ Corporate veil may not be a defence to absolute liability for damage to environment.⁴ Of course, the liability of appellants has to be limited to the violations clearly attributable to them. The State PCB must determine such liability specifically, after due opportunity to the appellants, preferably within a period of three months and till this is

³ See (1987) 1 SCC 395, *M.C. Mehta v. Union of India & Ors.*, Para 31, (1996) 3 SCC 212, *Indian Council for Enviro Legal Action and Ors. v. Union of India*, Para 66, 67: (for Absolute Liability and application of “Polluter Pays” principle) and *Hindustan Times v. Union of India* (1998) 2 SCC 242, Para 20-22 for limitation not being applicable to such situations

⁴ (2016) 4 SCC 469, *State of Rajasthan & Ors. v. Gotan Limestone Khanij Udyog Pvt. Ltd. & Anr.*, Paras 24 to 28

done, further coercive measures may not be taken. It is made clear that any further proceedings will be subject to further orders.

5. The above observations are for interim relief and are subject to final order after further consideration. Applications for interim relief will stand disposed of accordingly.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

January 04, 2021
Appeal No. 14/2020
(I.A. No. 208/2020) & other
connected matters
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