

Item Nos. 01 & 02

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 05/2022

In re: News item published in The Indian Express dated 07.01.2022
titled **“Gujarat: At least 06 dead, 20 sick after gas leak at
industrial area in Surat”**

AND

Original Application No. 05/2022(WZ)
(I.A. No. 08/2022: For impleadment of Maharashtra State PCB and Hikal
Ltd, Sangam Enviro Pvt. Ltd as party respondents)

Brackish Water Research Centre

Applicant

Versus

Gujarat State Pollution Control Board & Ors.

Respondent(s)

Date of hearing: 18.01.2022

**CORAM: HON’BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON’BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON’BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON’BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON’BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Ms. Shilpa Chouhan, Advocate for Applicant in OA 05/2022 (WZ)

Respondent(s): Mr. Raj Kumar, Adv. for CPCB

ORDER

The Issue

1. The matter has been taken up in O.A No. 05/2022 in the light of media report¹ titled *“Gujarat: At least 06 dead, 20 sick after gas leak at industrial area in Surat”*. The report mentions that the incident happened

¹ Indian Express Daily, Dated 07.01.2022

due to gas leakage from a tanker outside Sachin Industrial area, Surat, leading to the workers getting suffocated.

Proceedings before the Tribunal and factual report of the CPCB

2. On 10.01.2022, the Registry issued advance notice for today's hearing to Gujarat Industrial Development Corporation, Sachin, Gujarat, CPCB, District Industrial Safety & Health Department, Govt. of Gujarat and the District Magistrate, Surat by email.

3. The CPCB has entered appearance and filed its response dated 17.01.2022 based on report received from the GPCB as follows:-

- **Casualties have occurred due to release of toxic gas resulting from illegal discharge of hazardous waste/chemical from a tanker (GJ 06 ZZ 6221) into natural drain parked Nr. Vishwaprem D & P Mills, P-6.Rd-3, GIDC-Sachin.**
- *GPCB carried out sampling of left over hazardous chemical in the tanker and wastewater samples from the natural drain at various locations namely upstream of the accident locations, accident location and downstream locations in two rounds on 06.01.2022.*
- **GPCB Central Laboratory carried out analysis of the samples and also requested CPCB RD vide email dated 07.01.2022 for help and support in analysing 15 nos. of wastewater & hazardous chemical samples collected from the accident site. On 08.01.2022, GPCB sent part of sample to CPCB Regional Directorate Vadodara for analysis. Accordingly, CPCB RD also carried out analysis of the samples collected by GPCB.**

4. The report also gives analysis of the CPCB as follows:-

“As per the CPCB analysis results, it is gathered that:

1. *The samples received in the office were to be analysed for various relevant physicochemical parameters pertaining to wastewater characteristics. However, the samples were not preserved. Samples supplied by GPCB were unpreserved. But **the tanker sample was highly basic hence preservation related issues would not interfere significantly with sulphide and cyanide content in tanker sample. Similarly Chemical Oxygen Demand, Ammonical nitrogen and phenolic compounds in samples collected from natural drain would not interfere with analytical results due to highly acidic in nature.***

2. This laboratory understood that GPCB carried out two rounds of sampling. The analytical information related to accident may be captured in first round of samples from natural drain and sample collected from tanker.
3. The analysis results of wastewater samples is given in Annexure-1. From the analytical results, it is inferred that

- (i) **Natural drain was carrying highly acidic wastewater. The pH of wastewater flowing in natural drain in upstream of accident site, at the accident site and in downstream of accident site was acidic and pH ranged from 1.62 to 2.61. The natural drain is not supposed to carry such acidic wastewater. Apart from pH, other analysed parameters namely COD, NH₃-N, phenolic compounds, sulphides and cyanides were also observed in high concentration. The concentration of analysed parameters even exceeds the general discharge standards notified under E(P)A, 1986 for effluents in upstream and downstream of a site.**
- (ii) The liquid hazardous material collected from tanker was highly basic. The pH was nearly 14. The analysis results of tanker sample is tabulated below

| Location | Date & Time of sampling | GPCB Lab Code | pH | COD | NH ₃ -N | SO ₄ ⁻² | S ⁻² | CN |
|--------------------------|--------------------------|---------------|------|--------------|--------------------|-------------------------------|-----------------|-------|
| Liquid waste from tanker | 06.01.2022 10.30 Hrs. | 233 | ≈ 14 | 3,00,67 2 | 13,832 | 13,453 | 87,95 6 | 165.1 |

Note: Except pH, all other results expressed in mg/L. *All the Samples received in 1.0 lit carboy except sample code 233 in glass bottle and without any preservations including ice.

The analysis results reveal that the sample of tanker was highly basic and toxic in nature. Concentrations of sulphides, ammonical nitrogen and cyanides were very high.

- (iii) As the tanker liquid waste was highly basic and natural drain wastewater was highly acidic, during such mixing generation of some abrupt toxic gases due to acid base reactions is envisaged. The content of tanker was found to have high sulphide and high cyanide concentration. It is nature of sulphide and cyanide that it liberates sulphide gases such as H₂S and cyanogenic gases such as HCN in acidic medium. Hence **the accident may have been caused by abrupt formation of such poisonous gases due to acid base reaction. It is worth to mention that HCN gas do not cause significant pungent smell and H₂S gas is highly pungent in odour. Hence people inhaling such**

mixed gases in an industrial area may not be able to alert themselves. Apart from these gases, some short-lived toxic volatile compounds may also have generated due to illegal discharge which may have further escalated the lethal impact.

The reaction of illegal discharge of liquid waste (highly basic) through tankers and highly acidic wastewater in upstream of the natural drain of the GIDC has resulted in the release of various toxic gases. The causality due to the intensified illegal activity has resulted in the accident. Such accidents are detrimental. Strict action in addition to environmental damage compensation from the polluter is needed. The generator (industry) and transporter both are responsible for the cause. The industry being the generator has a duty to treat such wastewater and meet the environmental compliance. Therefore, the state needs to formulate a firm action frame work to address the issue as similar incidences were also reported in the past.

*there is illegal disposal of waste into the Creek of Surat at Ankleshwar and Vapi. Two persons died while disposing of hazardous waste on 09.02.2019 on account of inhalation of toxic gases. **Such incidents take place from time to time on account of illegal trade. The Gujarat State Pollution Control Board (GSPCB) issued closure notices but revoked the same after few days without taking any strict action. Vehicles involved in illegal disposal of waste are not confiscated. Similar incidence of illegal discharge resulted in death of two persons due to inhalation of toxic gases on 09.02.2019 in the state of Gujarat was also dealt in the Hon'ble NGT matter OA 362 of 2019. In the matter Hon'ble NGT passed an order 09.05.2019 regarding illegal disposal of waste into the Creek of Surat at Aknkleshwar and Vapi.***

Also in the recent accidents happen in the state of Gujarat in the industries like M/s Yasashvi Rashyan, M/s UPL etc. wherein Hon'ble NGT taken up the matter and constituted various committee for calculation of Environmental damage and compensation. The reports were on record wherein the methodology adopted for calculation is reflected.

The part of order of Hon'ble NGT in O.A. No. 85/2020 (Earlier O.A.No.22/2020 [WZ]) (Aryavart Foundation through its President v/s Yashashvi Rasayan Pvt. Ltd &Anr) reads as:

“...32. In view of frequent accidents resulting in deaths and injuries, the Chief Secretaries of all the States/UTs may evolve a mechanism to ensure that the companies dealing with hazardous substance must forthwith pay compensation for deaths and injuries to the victims at least as per Workmen Compensation Act, 1923 wherever applicable or the principle of restitution laid down in Sarla Verma (supra), National

Insurance Company Ltd. v. Pranay Sethi, (2017) 16 SCC 680 to the victims either directly or through the District Magistrate.

33. Conduct of safety audits of all establishments having potential for such accidents may be ensured. All States/UTs may also ensure availability of healthcare facilities in the vicinity of such establishments. PCB and DM must assess cost of restoration of environment which should be recovered from company and spent on such restoration. The States and UTs in accordance with 1989 and 1996 Rules need to step up vigilance, surveillance and monitoring to avert such accidents. Preparedness to meet such eventualities be ensured. Regular mock drills may be ensured in respect of onsite and offsite emergency plans. We may also refer to the directions issued by this Tribunal to the MoEF&CC and all the States/UTs on the subject of strengthening regulatory and oversight measures, vide order dated 01.02.2021 in OA 837/2018, Sandeep Mittal vs. Ministry of Environment, Forests & Climate Change & Ors...

• In case of any such accidents which lead to environmental damage, environmental compensation accordingly may be assessed by the state agencies and strict action against the polluter should be taken by the concerned authorities. Thus, it is suggested that GPCB may evolve mechanism of calculation and recovery of Environmental Damage Compensation by constituting appropriate team of their own officials and any reputed academic institutions.

• GPCB along with GIDC need to investigate the source of illegal acidic discharge in the natural drain where the accident took place and also to take appropriate strict action including EDC.

• The matter of illegal discharge, illegal dumping of waste is a serious offence and need detailed investigation. Thus GPCB need to identify all such industries generating various acidic wastewater, acidic stream as co-product/hazardous waste, scrubbed liquor in the industrial estates. In addition specific category of waste streams such as high phenolic, high ammonia, high sulphite etc. also need to be identified. Manifest system may be adopted in case of transfer of such streams from one place to another. In addition material balance of all such industries with cross verification with actual production and various waste generated & disposed may be carried out on routine basis.

• All GIDC may have toll (amount may be only token) at entry & exit points and CCTV camera to identify movement of such tankers and all the tankers should have GPS enabled tracking system for the transportation of all chemicals and wastewater like hazardous waste

• Action policy for ceasing tankers involved in the illegal movement of toxic streams and action against the transporter need to be framed and published and implemented in strict sense by the concerned state authorities.

Another Petition on same issue

5. O.A No. 05/2022(WZ) has also been filed on the same issue. In I.A No. 08/2022 in the said matter, it is stated that **Hikal Ltd.** is operating a chemical manufacturing unit at Taloja MIDC Raigad, Maharashtra and the said company illegally sold its hazardous waste of sodium hydrosulfide to **Sangam Enviro Pvt. Ltd, a Vadodara based company in Gujarat** which is neither an “authorized user” or “authorized disposal facility” for Hazardous waste. The applicant has also referred to earlier order of this Tribunal dated 26.09.2019, which has already been mentioned in the CPCB report, quoted earlier. By the said order, the Tribunal dealt with the issue of illegal handling of hazardous waste resulting in death of two persons and serious injury to third person at Surat on 09.02.2019. The Tribunal constituted a joint Committee to ascertain facts and take remedial action and also requested Justice B.C Patel, former Chief Justice, Delhi High Court to oversee remedial action. The joint Committee confirmed violation of environmental norms and directed assessment and recovery of compensation and payment of interim compensation pending such assessment. The Tribunal also directed the Chief Secretary, Gujarat to take appropriate action against the erring officers and also to ensure compliance with the directions and norms for scientific handling of hazardous waste. The CPCB and GPCB were directed to undertake review of units handling hazardous waste in the State of Gujarat, including, fitting of GPS on vehicles transporting such waste. The directions of the Tribunal are reproduced below:-

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

- i. *The SPCB may assess and recover compensation on ‘Polluter Pays’ principle in accordance with law from the generator of the waste as well as the transporter.*

Pending such assessment, the SPCB may recover a sum of Rs. 50 lakhs as interim compensation jointly and severally from the generator as well as the transporter without prejudice to the remedies of the heirs of the deceased and the injured.

- ii. The Chief Secretary, State of Gujarat may look into the conduct of the SPCB in failing to perform its statutory duty in taking stringent action. As already noted, the SPCB had withdrawn the closure notice inspite of such serious incident of two deaths and grievous injury of another person and also damage to the environment, without even recovering any compensation for such damage, showing the Board in extremely poor light.*
- iii. To ensure effective environment governance, review of the manning/revamping of the GPCB may be undertaken within one month and initiating disciplinary or other action for the acts of omission and commission of key functionaries of the GPCB may be considered. Compliance report before this Tribunal be filed within one month by e-mail at judicial-ngt@gov.in.*
- iv. The interim compensation, recovered in pursuance of above, may be deposited with the CPCB for being spent for restoration of the environment.*

10. Report of the Chief Secretary may be filed in O.A. No. 804/2017, Rajive Narayan Vs. Union of India dealing with remedial action for scientific handling of hazardous waste.

11. The CPCB and GPCB may jointly undertake the review of other units handling hazardous waste in the State and ensure that any vehicle transporting hazardous waste is duly fitted with GPS.”

Consideration of the matter and directions

12. It is patent from the factual report of the CPCB, based on information furnished by the GPCB that the incident is a result of unscientific handling, transportation and disposal of hazardous waste in violation of Hazardous and other Waste (Management and Transboundary Movement) Rules, 2016, Storage and Import of Hazardous Chemical Rules, 1989, Environment Protection Act, 1986 (hereinafter referred to as “EPA 1986”), Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as “Water Act”), the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as “Air Act”). Number of the tanker and its driver stand identified. In second matter, even name of Company which

generated and sold the waste and the Company which purchased it have been given which can be further verified. Thus, there is need to fix accountability and determine and enforce liability for the deaths and violation of environmental law.

13. As per principle of 'Absolute Liability', laid down in *M.C Mehta vs. UoI & Ors., (1987) 1 SCC 395*, principle of 'Strict and Absolute Liability' applies and the generator, transporter and handler of such waste is accountable for the loss of lives, injuries and damage to the environment. The heirs of the deceased and the injured are entitled to compensation. In this regard, reference may also be made to order of this Tribunal dated 08.06.2020 in *O.A No. 22/2020 (WZ), Aryavart Foundation through its President vs. Yashyashvi Rasayan Pvt. Ltd. & Anr.*, dealing with the incident dated 03.06.2020 at Dahej, District Bharuch, Gujarat. In the said incident, blast took place in chemical factory run by Yashyashvi Rasayan Pvt. Ltd. resulting in death of eight persons and injury to fifty. The Tribunal constituted a six member Committee headed by Justice B.C Patel, former Chief Justice, Delhi High Court to ascertain:-

- i. The sequence of events;
- ii. Causes of failure and persons and authorities responsible therefor;
- iii. Extent of damage to life, human and non-human; public health; and environment – including, water, soil, air;
- iv. Steps to be taken for compensation of victims and restitution of the damaged property and environment, and the cost involved;
- v. Remedial measures to prevent recurrence;
- vi. Any other incidental or allied issues found relevant.

14. The matter was thereafter disposed of vide order dated 03.02.2021

after considering the report of the Committee with following directions:-

28. *We do not find any tangible objections to the report of the Committee which stand accepted. The recommendations of the Committee need to be duly implemented which needs to be overseen by the statutory regulators. We note that in the recent past the Tribunal has come across the number of incidents of leakage of gases and handling of hazardous chemicals.² On investigation, this Tribunal has found that most of the accidents are result of non-compliance of laid down safety norms under the 1989 Rules and the Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 [1996 Rules]. There is, thus, need for the establishments handling hazardous chemicals to strictly follow the laid down norms, which need to be overseen by the statutory regulators.*

29. *We also uphold the compensation assessed by the Committee for the damage to the environment and in respect of the dead. We do not find any merit in the plea that displacement was on account of cyclone warning. This plea was never taken before this Tribunal during hearing on 8.6.2020 and 30.7.2020 or even before the Hon'ble Supreme Court. Only plea was that displacement was for few hours*

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- ² i. Order dated 01.06.2020, relating to incident of gas leak dated 07.05.2020 in **LG Polymers India Pvt. Limited** at Vishakhapatnam, resulting in death of 11 persons and injuries to more than 100, apart from other damage (OA No. 73/2020, In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh);
- ii. Order dated 08.06.2020, relating to incident dated 03.06.2020 in a chemical factory, **Yashyashvi Rasayan Pvt. Ltd.** at Dahej, District Bharuch, Gujarat resulting in deaths and injuries and other damage (OA No. 85/2020) (Earlier OA 22/2020) (WZ), Aryavart Foundation through its President vs. Yashyashvi Rasayan Pvt. Ltd. & Anr.);
- iii. Order dated 02.07.2020, in relation to incident of **oil well blow out on 27.05.2020 at Baghjan in the Tinsukia District of Assam** resulting in deaths, injuries and damage to the environment (OA No. 43/2020(EZ), Bonani Kakkar vs. Oil India Limited & Ors.).
- iv. Orders dated 06.07.2020 and 22.12.2020, relating to incident dated 30.06.2020 on account of gas leakage at **Sainor Life Sciences** factory at Parawada in industrial area on the outskirts of Vishakhapatnam (OA No. 106/2020, News item published in the local daily "Economic Times" dated 30.06.2020 titled "Another Gas Leakage at Vizag Factory kills two, critically injures four...");
- v. Orders dated 08.07.2020 and 22.12.2020, dealing with the incident dated 01.07.2020 resulting in death of 6 person and injury to 17 due to blast of boiler in **M/s Neyveli Thermal Power Station** (NLCIL), Cuddalore (OA No. 108/2020, News item published in the "Indian Express" dated 01.07.2020 titled "Tamil Nadu Neyveli boiler blast: 6 dead, 17 injured") and;
- vi. Orders dated 23.07.2020 and 22.12.2020, in relation to incident of **fire engulfed the chemical plant of Visakha Solvents Ltd**, Vizag on 13.07.2020 at Ramky CETP Solvents building in Pharma City resulting in injuries (OA No. 134/2020, News item published on 13.07.2020 in the local daily named "India Today" titled "Massive fire engulf Vizag chemical plant, explosions heard, injuries reported").
- vii. Order **dated 18.12.2020**, in relation to incident of **explosion in a plastic recycling factory at Sujapur in Malda on 1.12.2020** resulting in death of six persons, including two minors and serious injuries to four persons (OA No. 272/2020, News item published in the "Times of India" dated 20.11.2020 entitled "Six killed as blast tears through Malda Plastic recycling factory").
- viii. Order dated **18.12.2020**, in relation to incident of **methane gas leak in a sugar factory** called Lokenete Bapurao Patil Agro Industries Ltd. in Mohol Taluka of Solapur District, Maharashtra on 21.11.2020 resulting in deaths and injuries and other damage (OA No. 274/2020, News item published in the "Indian Express" dated 23.11.2020 entitled "Maharashtra: Two Killed, eight injured in methane gas leak in sugar factory").

which did not justify compensation @Rs. 25000/- each. IA 364/2020 filed by the Company is not maintainable as far as the scale of compensation is concerned in view of order dated 30.7.2020 which was never challenged. The application is in the nature of second review. The action of the Company is not complying with the order is not fair and is clear defiance of binding orders of this Tribunal. There is no justification for seeking permission for paying even undisputed compensation, as no such permission is required. Injured and displaced having been identified, they have to be paid in terms of orders of this Tribunal which has to be ensured by the Collector. The report of the District legal authority also does not show compliance in that regard. Thus, the company needs to pay remaining amount to the heirs of the deceased in terms of compensation assessed by the Committee but if compensation in respect of any individual at higher rate has been paid by the Company by itself, the same will not be adjusted or recovered, as stated by learned Counsel for the Company itself. Similarly, injured and displaced need to be paid irrespective of the expenses incurred on medical treatment as compensation has been assessed by this Tribunal only for trauma faced, including pain and suffering and not for cost of treatment, which is a separate head. Payment said to have been made to the Sarpanch is not shown to be at the scale fixed by this Tribunal. Deficit amount be calculated and paid within one month by way of deposit with the Collector, failing which the same be recovered by coercive means. IA 364/2020 stands disposed of accordingly. IA 50/2020 and OA 24/2020(WZ) by fisherman will stand dismissed as the nexus of fish kill with the activities of the Company is not established.

30. *With regard to claim for punitive damages based on the observations in MCD v. Uphaar Cinema case (supra), we have considered the observations of Justice Raveendran in paras 65 to 71³*

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- ³ 65. While awarding compensation to a large group of persons, by way of public law remedy, it will be unsafe to use a high income as the determinative factor. The reliance upon *Nilabati Behera* [(1993) 2 SCC 746 : 1993 SCC (Cri) 527 : AIR 1993 SC 1960] in this behalf is of no assistance as that case related to a single individual and there was specific evidence available in regard to the income. Therefore, the proper course would be to award a uniform amount keeping in view the principles relating to the award of compensation in public law remedy cases reserving liberty to the legal heirs of the deceased victims to claim an additional amount wherever they were not satisfied with the amount awarded. Taking note of the facts and circumstances, the amount of compensation awarded in public law remedy cases, and the need to provide a deterrent, we are of the view that the award of Rs 10 lakhs in the case of persons aged above 20 years and Rs 7.5 lakhs in regard to those who were 20 years or below as on the date of the incident, would be appropriate. We do not propose to disturb the award of Rs 1 lakh each in the case of injured. The amount awarded as compensation will carry interest at the rate of 9% per annum from the date of the writ petition as ordered by the High Court, reserve liberty to the victims or the LRs of the victims as the case may be to seek higher remedy wherever they are not satisfied with the compensation. Any increase shall be borne by the licensee (theatre owner) exclusively.
66. Normally, we would have let the matter rest there. But having regard to the special facts and circumstances of the case we propose to proceed a step further to do complete justice. The calamity resulted in the death of 59 persons and injury to 103 persons. The matter related to a ghastly fire incident of 1997. The Victims' Association has been fighting the cause of victims for more than 14 years. If at this stage, we require the victims to individually approach the civil court and claim compensation, it will cause hardship, apart from involving huge delay, as the matter will be fought in a hierarchy of courts. The incident is not disputed. The names and identity of the 59 persons who died and 103 persons who were injured are available and is not disputed.
67. Insofar as death cases are concerned the principle of determining compensation is streamlined by several decisions of this Court. (See for example *Sarla Verma v. DTC* [(2009) 6 SCC 121 : (2009) 2 SCC (Cri) 1002 : (2009) 2 SCC (Civ) 770] .) If three factors are available the compensation can be determined. The first is the age of the deceased, the second is the income of the deceased and the third is number of dependents (to determine the percentage of deduction for personal expenses). For convenience the third factor can also be excluded by adopting a standard deduction of one-third towards personal expenses. Therefore just two factors are required to be ascertained to determine the compensation in 59 individual cases. First is the annual income of the deceased, two-thirds of

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- which becomes the annual loss of dependency; and second, the age of the deceased which will furnish the multiplier in terms of *Sarla Verma* [(2009) 6 SCC 121 : (2009) 2 SCC (Cri) 1002 : (2009) 2 SCC (Civ) 770] . The annual loss of dependency multiplied by the multiplier will give the compensation. As this is a comparatively simple exercise, we direct the Registrar General of the Delhi High Court to receive applications in regard to death cases, from the claimants (legal heirs of the deceased) who want a compensation in excess of what has been awarded, that is, Rs 10 lakhs/Rs 7.5 lakhs. Such applications should be filed within three months from today. He shall hold a summary inquiry and determine the compensation. Any amount awarded in excess of what is hereby awarded as compensation shall be borne exclusively by the theatre owner. To expedite the process the claimants concerned and the licensee with their respective counsel shall appear before the Registrar without further notice. For this purpose the claimants and the theatre owner may appear before the Registrar on 10-1-2012 and take further orders in the matter. The hearing and determination of compensation may be assigned to any Registrar or other Senior Judge nominated by the learned Chief Justice/Acting Chief Justice of the Delhi High Court.
68. As far as the injured are concerned if they are not satisfied with the sum of Rs 1 lakh which has been awarded it is open to them to approach the civil court for claiming higher compensation and if they do so within 3 months from today, the same shall be entertained and disposed of in accordance with law. It is not possible to refer the injury cases for summary determination like death cases, as the principles are different and determination may require a more detailed enquiry.
69. We may next deal with the question of award of punitive damages of Rs 2,50,00,000 against the licensee. Before examining whether such punitive damages could be awarded at all, we have to notice the apparent mistake in arriving at the sum of Rs 2.5 crores. The High Court has stated that the licensee should be made liable to pay punitive damages to the extent of profit which it would have earned by selling tickets in regard to extra seats unauthorisedly and illegally sanctioned by the authorities and installed by the licensee. The High Court has not stated the arithmetical calculation of arriving at Rs 2,50,00,000 but it has indicated that the said sum has been assessed as the income earned by them by selling tickets for additional 250 seats between 1979 and 1996. The High Court has apparently calculated the ticket revenue at the rate of Rs 50 per ticket for 52 additional seats for three shows a day to arrive at a sum of Rs 7800 per day. For 17 years, this works out to Rs 4,83,99,000. Presumably, the High Court deducted Rs 2,33,99,000 towards entertainment tax, etc., to arrive at Rs 2.5 crores as profit from these additional seats.
70. Initially the seats were 250. Forty-three additional seats were sanctioned on 30-9-1976. Subsequently, the additional seats were cancelled. However, the Delhi High Court permitted the continuance of such number of seats which were permissible as per Rules. Therefore, all the 52 seats cannot be held to be illegal. What were illegal seats were the 15 seats that were added by securing an order dated 4-10-1980. The remaining 37 seats were found to be valid by the authorities. Therefore, if at all the licensee is to be made liable to reimburse the profits earned from illegal seats, it should be only in regard to these 15 seats and the eight seats in the Box which was the cause for closing one of the exits. Insofar as the eight seats in the owner's Box, though it is alleged that they were intended to be used only as complimentary seats, for the purpose of award of punitive damages, they are treated on a par with other balcony seats. The High Court also wrongly assumed that the ticket value to be Rs 50 from 1979 to 1996, because it was Rs 50 in the year 1997 for a balcony seat. Another erroneous assumption made is that for all shows on all the days, all these additional seats would be fully occupied. On a realistic assessment, (at a net average income of Rs 12 per seat with average 50% occupancy for 23 seats) the profits earned from these seats for 17 years would at best be Rs 25,00,000. Be that as it may.
71. We may next consider the appropriateness and legality of award of punitive damages. In this context, we may refer to the decision in *M.C. Mehta v. Union of India* [(1987) 1 SCC 395 : 1987 SCC (L&S) 37] wherein this Court considered the question as to what should be the measure of liability of an enterprise which is engaged in a hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or are injured. This Court held: (SCC pp. 420-21, paras 31-32):
- “31. ... in a modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to carry out part of the developmental programme, this rule evolved in the 19th century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. We need not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast-changing society and keep abreast with the economic developments taking place in the country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot afford to remain static. We have to evolve new principles and lay down new norms which would adequately deal with the new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence and we cannot countenance an argument that merely because the law in England does not recognise the rule of strict and absolute liability in cases of hazardous or inherently dangerous activities or the rule laid down in *Rylands v. Fletcher* [(1868) LR 3 HL 330 : (1861-73) All ER Rep 1 (HL)] as developed in England recognises certain limitations and exceptions, we in India must hold back our hands and not venture to evolve a new principle of liability since English

and Justice Radhakrishnan in paras 96 to 105. It was held that damages can be granted even against public authorities for violation of fundamental rights though there was difference of opinion as to the situations when public authorities are liable (with which issue we are not concerned in the present matter). In para 65, it was observed that in cases of mass torts, in a public law remedy, threshold amount can be awarded straightaway, leaving the parties for higher claims to regular remedies. In M.C. Mehta (supra), it was observed in paras 31 to 32 that liability of person engaged in hazardous activity for business is absolute and should be deterrent linked to the financial capacity. Remedy under section 15 of the NGT Act, 2010 for compensation to the victims of environmental damage is summary, as procedure under section 19 is summary. We are therefore, in the circumstances of the present case, while not ruling out applicability of principle of punitive damages in appropriate cases, inclined to award compensation as suggested by the Committee, which is based on principle of restitution at scale laid down in Sarla Verma v. DTC (2009) 6 SCC 121, i.e. considering age of the victim, income and loss suffered, without prejudice to the remedy of the victims to individually claim higher amounts in any other appropriate proceedings, as per law. Section 15 does not exclude other remedies and is not the exclusive remedy, as shown by sub section 2 and 4 of the said section. After taking into account deposit already made in respect of each item of compensation, the deficit amount may be deposited within one month with the District Magistrate for disbursements. Since the Committee has not given its specific recommendations about the quantum of compensation about the injured and the displaced. orders of this Tribunal dated 8.6.2020 read with order dated 30.7.2020 will govern the situation. The company may comply with

courts have not done so. We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. ... Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher [(1868) LR 3 HL 330 : (1861-73) All ER Rep 1 (HL)] .

32. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise.”

the same accordingly. In default of payment as above, the District Magistrate may take coercive measures. This is without prejudice to any higher amount being separately claimed in any other appropriate proceedings. The State PCB may not allow the functioning of the unit till compliance.

31. As already observed, the Unit must take all safety measures in terms of the recommendations of the Committee which may be overseen by the statutory regulators. This order will not affect any other pending proceedings which may be dealt with by concerned authorities in accordance with law. The statutory authorities may implement other recommendations of the Committee which may be coordinated by the CPCB through other concerned authorities.

32. In view of frequent accidents resulting in deaths and injuries, the Chief Secretaries of all the States/UTs may evolve a mechanism to ensure that the companies dealing with hazardous substance must forthwith pay compensation for deaths and injuries to the victims at least as per Workmen Compensation Act, 1923 wherever applicable or the principle of restitution laid down in Sarla Verma (supra), National Insurance Company Ltd. v. Pranay Sethi, (2017) 16 SCC 680 to the victims either directly or through the District Magistrate.

33. Conduct of safety audits of all establishments having potential for such accidents may be ensured. All States/UTs may also ensure availability of healthcare facilities in the vicinity of such establishments. PCB and DM must assess cost of restoration of environment which should be recovered from company and spent on such restoration. The States and UTs in accordance with 1989 and 1996 Rules need to step up vigilance, surveillance and monitoring to avert such accidents. Preparedness to meet such eventualities be ensured. Regular mock drills may be ensured in respect of onsite and offsite emergency plans. We may also refer to the directions issued by this Tribunal to the MoEF&CC and all the States/UTs on the subject of strengthening regulatory and oversight measures, vide order dated 01.02.2021 in OA 837/2018, Sandeep Mittal vs. Ministry of Environment, Forests & Climate Change & Ors.”

15. In view of earlier orders of this Tribunal on the subject, remedial action is required in the present matter on the same pattern for payment of compensation to the victims, taking action against the violators and measures to prevent such occurrences.

16. Accordingly, we constitute a nine-member joint Committee as follows:

Justice B.C. Patel, former Chief Justice, Delhi High Court and former Judge of the Gujarat High Court presently stationed at Ahmedabad - Chairman,

Representative of MoEF&CC – Member,

Representative of CPCB – Member,

Secretary, Industries, Gujarat - Member

Gujarat State PCB – Member

State Disaster Management Committee – Member

SSP, Surat - Member

Head of the Chemical Engineering Department of the IIT
Gandhinagar – Member,

District Magistrate, Surat

17. The Committee may ascertain the sequence of events; causes of failure and persons and authorities responsible therefor; extent of damage to life, human and non-human; and environment – including, water, soil, air; steps to be taken for compensation of victims and restitution of the environment, and the cost involved; remedial measures to prevent recurrence; any other incidental or allied issues found relevant, including particularly already acidic effluents flowing in the drain in question. The nodal agency will be the CPCB and the State PCB for coordination and compliance. The Committee (or some of the members) may undertake visit to the site, conduct proceedings, if necessary online, interact with such stakeholders as may be necessary and place its report on the website of the State PCB within two months. The Chairman will be entitled to honorarium fixed by him from the GPCB (out of consent funds). The Committee may also consider the earlier reports with regard to similar earlier incidents in the recent past available on the website of the CPCB. The committee will be free to interact with authorities in other States if violator is found to be from another State. In view of repeated failures, monitoring mechanism for monitoring in a time bound manner may be ensured by the transporters and generators of hazardous waste including,

issue of installing GPS on vehicles transporting hazardous waste. Based on the report, the State PCB and the District Magistrate may ensure recovery and payment of compensation to the victims and restoration of environment. The Chief Secretary, Gujarat may review the status and compliance of Hazardous Waste Management Rules, 2016 and take steps for bridging the gap in coordination with the concerned authorities. An action taken report may be filed by the CPCB, GPCB, District Magistrate and the Chief Secretary, Gujarat within four months with the Registrar General, NGT 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. If any further direction is found necessary, he may place the matter before the Bench.

18. The PP will be at liberty to move this Tribunal, if aggrieved by any action of the statutory regulator in pursuance of the order either by way of application or by way of statutory appeal.

The Application is disposed of.

Pending IA also stands disposed of.

A copy of this order be forwarded to Justice B.C. Patel, former Chief Justice, Delhi High Court and former Judge of the Gujarat High Court presently stationed at Ahmedabad, MoEF&CC, CPCB, Chief Secretary, Gujarat, Secretary, Industries, Gujarat, Gujarat State PCB, State Disaster Management Committee, Gujrat, SSP, Surat, Head of the Chemical Engineering Department of the IIT Gandhinagar and District Magistrate, Surat by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Prof. A. Senthil Vel, EM

Dr. Afroz Ahmad, EM

January 18, 2022
Original Application No. 05/2022 &
Original Application No. 05/2022(WZ)
(I.A. No. 08/2022)
AB