

Item No. 04

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 19/2021
(Earlier O.A. No. 618/2016)

(With report dated 22.06.2021)

Sanjay Kumar

Applicant

Versus

State of UP & Ors.

Respondent(s)

Date of hearing: 09.09.2021

**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 DR. NAGIN NANDA, EXPERT MEMBER**

Respondent: Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates for UPPCB

ORDER

1. The issue for consideration is permissibility of operation of hot mix plants at Noida beyond 'carrying capacity' of the ambient air of the area as per assessment of the statutory regulators – the CPCB and the State PCB, thereby adversely affecting the environment and the public health.

2. The matter was considered by the Tribunal earlier, almost five years back, vide order dated 23.11.2016 in O.A. No. 618/2016. Considering the status of compliance and adverse impact on air quality, the Tribunal directed sealing of all the hot mix plants. As a result, many hot mix plants shifted elsewhere. Vide order dated 20.11.2019, the Tribunal directed that the remaining may remain sealed till compliance of norms. The State PCB

was directed to file status report which was to be registered as a fresh OA. Accordingly, on report dated 4.12.2020 being filed by the State PCB, the office registered the present OA. which was considered on 24.02.2021.

3. The Tribunal held that the report does not consider the issue of carrying capacity of the area to sustain activities like hot mix plants and the siting criteria, including the *inter-se* distance followed so as not to violate the right of the citizens in the area to breathe fresh air. The Tribunal accordingly directed consideration of these aspects by a Joint Committee of CPCB and State PCB and to furnish a report to this Tribunal. The operative part of the order is reproduced below:

***“3. We have considered the above report which has not addressed the issue of carrying capacity of the area to sustain activities like hot mix plants and the siting criteria, including the inter-se distance followed so as not to violate the right of the citizens in the area to breathe fresh air. This observation is in the context of air quality in NCR which led to restrict activities with pollution potential. In this regard reference is made to the order dated 17.02.2021 in O.A. No. 1016/2019, Utkarsh Panwar v. Central Pollution Control Board & Ors., requiring regulation of brick kilns in the NCR in the light of the carrying capacity, till they are fired by coal generating air pollution. Question of use of cleaner fuel may require consideration in the context of hot mix plants also.*”**

4. Let a joint Committee of the CPCB and the State PCB look into the above aspects to determine whether and to what extent and subject to what safeguards hot mix plants can be sustained following the “Sustainable Development” and “Precautionary” principles, in the interest of public health. The State PCB will be nodal agency for coordination and compliance. The report be furnished to the Tribunal by 30.04.2021 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.”

4. In pursuance of above, report of the Joint Committee dated 22.06.2021 has been filed to the effect that supporting carrying capacity to sustain the hot mix plants in the study area was in the negative. However, in the recommendations it is stated that since hot mix plants are necessary for supplying raw material for repair and maintenance of roads,

the existing hot mix plants be allowed to continue but no new hot mix plants may be allowed to be established. The siting criteria should be applicable only for new establishments. The operative part of the report is reproduced below:-

“2.2 Terms of Reference (TOR) of the Joint Committee

As per orders of Hon’ble NGT, the Joint Committee was required to look into the following aspects and give report:

- i. Assessment of Carrying Capacity of the area to sustain activities like hot mix plants and to determine whether and to what extent and subject to what safeguards hot mix plants can be sustained following the "Sustainable Development" and "Precautionary" principles, in the interest of public health*
- ii. Siting criteria including inter-se distance*
- iii. Consideration of use of cleaner fuel in the context of hot mix plants*

2.3 Report of the Joint Committee

During the first meeting of the Joint committee, the responsibility matrix was discussed and finalized, so as to comply with the directions of the Hon'ble NGT in a time bound manner. Subsequent to the first meeting and site visit of the Joint Committee, various teams with specific tasks visited the site, under the supervision of the Joint Committee.

The Joint Committee deliberated on the various issues based on the outcome of the monitoring conducted and observations made 'during various site visits. The report of the Joint Committee on the various points is submitted as follows:

2.3.1 Observations made by the Joint Committee during site visits

The following are the main observations made by the Joint Committee during site visit:

- i. Out of 8 hot mix plants visited by the Joint Committee on 04.06.2021, it was observed that 7 hot mix plants were not in operation at the time of visit. It was informed by the units that these plants are not in operation from a long time due to implementation of Graded Response Action Plan (GRAP) and afterwards second wave of COVID-19 as a result no work order. The operational status & other details of hot mix plants visited on 04.06.2021 are as under:*

S.No.	Name and address of plant	Geographical location	Operational status	Product & its capacity	Type of Fuel	Consent status
1.	M/s Saroj Construction Co.Village- Nagli	28°29'36" N, 77°23'31" E	Non-operational	Dense Bituminous macadam/Dense	Diesel	Matter under consideration In Hon'ble

	Wazidpur, Sector-135, Noida			bituminous concrete- 60 to 90 MT/Hr		NGT, O.A. 618/2016, I.A. No. 399/2019
2.	M/s Maa Bhagwati Construction Co. Village Wazidpur, Yamuna Pusta, Noida	28°29'24" N, 77°23'19" E	Non- operational	Dense Bituminous macadam/Dense bituminous concrete-45 MT/Hr	HSD	Valid upto 31.03.2022
3.	M/s JRD Infratech Pvt Ltd, Village-Nagli Wazidpur, Sector-135, Noida	28°29'17" N, 77°23'22" E	Non- operational	Dense Bituminous macadam/Dense bituminous concrete-60 MT/Hr	Diesel	Valid upto 31.03.2025
4.	M/s PMH Roadtech Pvt Ltd, Village-Nagli Wazidpur, Sector-135, Noida	28°29'20" N, 77°23'16" E	Non- operational	Dense Bituminous macadam/Dense bituminous concrete- 60 MT/Hr	Diesel	Valid upto 31.03.2025
5.	M/s S.R. Construction Village-Nagli Wazidpur, Sector-135, Noida	28°29'12" N, 77°23'21" E	Non- operational	Dense Bituminous macadam/Dense bituminous concrete- 60-80 MT/Hr	Diesel	Matter under consideration in Hon'ble NGT, O.A. 618/2016, I.A. No. 19/2019
6.	M/s Balaji Construction Village- Wazidpur, Sector-135, Noida	28°29'13" N, 77°23'15" E	Non- operational	Dense Bituminous macadam/Dense bituminous concrete- 60 MT/Hr	HSD	Valid upto 31.03.2024
7.	M/s MYC Infra Pvt Ltd, Village- Nagli Wazidpur, Sector-135, Noida	28°29'14" N, 77°23'39" E	Non- operational	Dense Bituminous macadam/Dense bituminous concrete- 60 MT/Hr	Diesel	Valid upto 31.03.2025
8.	M/s Yash Technobuild Pvt Ltd, Village- Wazidpur, Noida	28°29'23" N, 77°23'43" E	Operational	Dense Bituminous macadam/Dense bituminous concrete- 60 MT/Hr	Diesel	Valid upto 31.03.2026

ii. The Air Pollution Control system "Bag house filter Unit" and chimney of height about 45 ft, from ground level is attached with all the Hot Mix Plants to control the air pollution. All hot mix plants have installed proper monitoring arrangement and water sprinkling arrangement within premises.

2.3.2 Estimation of the Carrying Capacity of the Ambient Air Environment of hot mix cluster area village Wazidpur, Noida

It was directed by Hon'ble NGT to undertake a joint study to estimate the carrying capacity of ambient air environment in the hot mix cluster area village Wazidpur, Noida. It was informed by UPPCB

that nearest Continuous Ambient Air Quality Monitoring Station situated around 9 K.M. from hot mix cluster but the data can't be used for carrying capacity as the location is far away. UPPCB Teams carried out ambient air quality monitoring for two days (08/06/2021 to 09/06/2021 and 19/06/2021 to 20/06/2021) during operation of Hot Mix Plants at Hot Mix Plant Cluster and village- Wazidpur. UPPCB Teams also monitored at aforesaid station for a day (10/06/2021 to 11/06/2021) when Hot Mix Plants are not in operation. The consolidated monitoring results are given below:

Station Name	Date of Monitoring	PM₁₀	SO₂	NO₂
Village Wazidpur hot mix plants Cluster	08/06/2021	404	22	33
	10/06/2021	218	12	24
	19/06/2021	202	10	21
Village Wazidpur, Sector135, Noida i.e. farm house of Saroj Construction Co.	08/06/2021	336	13	23
	10/06/2021	192	9	22
	19/06/2021	156	7	17

Based on the available background concentration of data of air quality, the following approach was followed for estimating the carrying capacity of ambient air environment in the study area of hot mix cluster area village Wazidpur, Noida and applying box model:

- a. It is assumed that the impact of Hot mix Plants in Village- Wazidpur, Noida is restricted to a square of side 1.5 Km then the study area is taken as 2.25 Km².
- b. The carrying capacity is estimated on the day when Hot mix Plants are operational along with other air polluting activities and on the day when Hot mix Plants are nonoperational.
- c. The atmospheric mixing height in the study area varies between 553 to 670meters on day of Hot mix Plants operating while 730 meters on the day of non-operation of Hot mix Plants. The 90 percentile value which is majorly dominant during the study period is taken and accordingly this value was used to calculate the volume of the ambient air in the study area, as a product of atmospheric mixing height and the study area under reference.
 - d. **The concentration of PM₁₀ in ambient air was found to be varying between 156 to 404 µg/m³ in study area on the day of operation of Hot mix Plants, while, the day of non-operation of Hot mix Plants in study area, the concentration of PM₁₀ varies between 192 to 218 µg/m³. The 90 percentile value which is majorly dominant during the study period is taken and this value was used to calculate the total load of PM₁₀ load in the study area, as a product of predominant PM₁₀ particulate matter concentration and volume of the ambient air upto mixing height, in the study area.**
 - e. **The national ambient air quality standard (NAAQS) for PM₁₀ i.e. 100 µg/m³ and when multiplied by the volume of air in the study area, it provided the average assimilative capacity of the study area for the study period.**

f. Supportive carrying capacity of the study area was computed by taking the difference of assimilative carrying capacity of the area & total estimated load of PM₁₀ in the study area.

The carrying capacity assessment of ambient air environment, of study area as estimated by the Joint Committee based on the available data of ambient air quality monitored in the study area for the predominant air quality parameter i.e. PM₁₀ on day of operation of Hot Mix Plants, is as follows:

Particulars	Village- Wazidpur, Noida
Study Area (km²)	2.25
Mixing height (km)	0.550
Volume of air in the study area (km³)	1.24
PM₁₀ (µg/m³)	247
Total Estimated load of particulate matter in ambient air in the study area in a study period (kg)	306
Assimilative Carrying Capacity (kg)	124
Supportive Carrying Capacity(kg)	-182

The carrying capacity assessment of ambient air environment on day of non-operation of Hot mix Plants in study area, is as follows:

Particulars	Village- Wazidpur, Noida
<i>Study Area (km²)</i>	<i>2.25</i>
<i>Mixing height (km)</i>	<i>0.657</i>
<i>Volume of air in the study area km³</i>	<i>1.48</i>
<i>PM₁₀ (µg/ m³)</i>	<i>185</i>
<i>Total Estimated load of particulate matter in ambient air in the study area in a study period (kg)</i>	<i>274</i>
<i>Assimilative Carrying Capacity (kg)</i>	<i>148</i>
Supportive Carrying Capacity (kg)	-126

It may be concluded from the above table, as such there is no supportive capacity available in the ambient air environment with reference to P1`4₁₀, in the study area irrespective of operation of hot mix plants. There is about 30% reduction in supportive carrying capacity when hot mix plants are not in operation. It may require source apportionment study considering the different polluting activities in the study area to assess the contribution of individual activities to propose production limits as one of the preventive measures, so as to keep the ambient air environment within assimilative capacity.

2.3.5 Source Emission Monitoring

A UPPCB team visited the site on 08/06/2021, 09/06/2021 and 19/06/2021 for source emission monitoring of one, three and one hot mix

plant which were found operational on aforesaid dates, respectively.
Source emission monitoring and the results are summarized below:

S. No	Name & Address of the hot mix plants	Date of monitoring	Stack Height (in m)	Cross Sectional Area of Stack (in m ²)	Average velocity (in m/s)	Average flow in m ³ /s)	Concentration of pollutants (in mg/Nm ³)	Pollution load (in kg/day)
1.	M/s Yash Technobuild Pvt LW, Village- Wazidpur, Yamuna Pusta, Noida	08/06/2021	14 (approx)	0.07	5.58	0.39	PM- 127 SO ₂ — 144 NO ₂ - 91	PM- 4.28 SO ₂ — 4.85 NO ₂ - 3.07
2.	M/s JRD Infratech Pvt Ltd, Village- Nagli Wazidpur, Sector-135, Noida	09/06/2021	14 (approx)	0.07	15.38	1.08	PM- 144 SO ₂ — 170 NO ₂ - 111	PM- 13.44 SO ₂ — 15.86 NO ₂ - 10.36
3.	M/s PMH Roadtech Pvt Ltd, Village- Nagli Wazidpur, Sector-135, Noida	09/06/2021	14 (approx)	0.07	9.44	0.66	PM- 141 SO ₂ — 181 NO ₂ - 107	PM- 8.04 SO ₂ — 10.32 NO ₂ - 6.10
4.	M/s MYC Infra Pvt Ltd, Village- Nagli Wazidpur, Sector-135, Noida	09/06/2021	14 (approx)	0.07	4.16	0.29	PM- 143 SO ₂ — 162 NO ₂ - 92	PM- 3.58 SO ₂ — 4.06 NO ₂ - 2.30
5.	M/s Balaji Construction Village- Wazidpur, Sector-135, Noida	19/06/2021	11 (approx)	0.28	3.86	1.08	PM- 173 SO ₂ - 181 NO ₂ - 113	PM- 16.14 SO ₂ - 16.89 NO ₂ - 10.54

An evaluation of the source emission monitoring of 05 hot mix plants indicated that individual hot mix plant are having PM, SO₂ and NO₂ concentration in between 127 to 173, 144 to 181 and 91 to 113 mg/m³, respectively. The average pollution load calculated in the study area with respect to PM, SO₂ and NO₂ are 9.10, 10.40 and 6.47 Kg/day, respectively.

2.3.6 DETAILS OF SITING OF HOT MIX PLANT CLUSTER:

A site visit by the joint committee on 04/06/2021 and following are observed with respect to siting of hot mix plants:

- i. All these 08 hot mix plants situated in the form of a cluster at Village Wazidpur, Sector-135, Noida and out of which 06 number of hot mix plants were reopened/operate after joint inspection and

recommendation of New Okhla Industrial Development Authority Noida, UPPCB etc. in compliance of the orders passed by Hon'ble NGT New Delhi. Rest 02 hot mix plants (M/s Saroj Construction Co. Village-Nagli Wazidpur, Sector-135, Noida and M/s S.R. Construction Village-Nagli Wazidpur, Sector-135, Noida) which are closed are under consideration in Honible NGT New Delhi in, O.A. 618/2016 as I.A. No. 399/2019 and I.A. No. 19/2019 respectively.

- ii. Hot mix plant is situated at a minimum distance of**
 - a. 140 meters (approx.) from residential dwelling (Sector-130, Noida)**
 - b. 1.9 KMs (approx.) from Yamuna river**
 - c. 1.3 KMs (approx.) from Noida Greater Noida expressway**
 - d. 2.1 KMs (approx.) from Felix hospital, Sector-137, Noida**
- iii. The inter-se distance between two hot mix plants were found minimum 150 meters (approx.)**

A map showing location of all 8 hot mix plants are given.

3.0 RECOMMENDATIONS:

It is to mention that this cluster of hot mix plants is the only cluster supplying raw material for pot-hole free roads, re-surfacing of roads, black topping of earthen roads to the concerned govt. agencies involved in maintenance & development of the rural/urban infrastructure in Noida & Greater Noida. Total 06 hot mix plants are in operation under direction of Hon'ble NGT, New Delhi in the said matter and are under regular monitoring of SPCB.

- i. Since, the carrying capacity of the study area is estimated to be negative and therefore, following actions are suggested to support & protect the air environment:**
 - a. No new hot mix plant may be allowed to establish & operate in the area including any expansion of the existing units.**
 - b. The supporting infrastructure such as road needs to be improved, development of green belts and provision of water sprinkling in in the hot mix plants in order to control the fugitive dust emission.**
- ii. Siting criteria will be applicable for new establishment. Existing establishments should take appropriate environmental friendly practices. In future Hot mix plants shall be setup as per siting policy/guidelines. However, they may follow criteria as below:**
 - a. It should be located in area wherever permissible and atleast 100 meters away from residential dwellings, health centres/hospitals & schools,**
 - b. Atleast 200 meters away from water spread area of major watercourses like Lake, canal and major drinking water sources,**

- c. ***Away from flood plain area of River and areas having shallow groundwater***
 - d. ***Atleast 50 meters of inter-se distance between two establishments (each establishment should provide 25 meters from each side) should be provided and developed green belt.***
 - e. ***Carrying capacity of the area may be considered while allowing new hot mix plant.***
- iii. ***At present these plants are using diesel as a fuel, recommended installation of additional Alkali scrubber to minimize of SO₂ and NO₂ emission.”***

5. We have heard learned Counsel for UP State PCB and considered the matter in the light of law laid down by the Hon'ble Supreme Court and orders of this Tribunal on the subject.

6. Since the joint Committee which has given the report comprises of statutory regulators - CPCB and State PCB, who are entrusted with the control of air quality as per laid down norms under the provisions of the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986, even without issuing notice to the stone crushers, we have taken up the report for consideration to determine whether the said regulators need to take further action for compliance of the law on the point. The issue is *in rem* to balance, on the one hand the rights of general public to breathe fresh air on the principle of 'sustainable development' and on the other right of stone crushers generally to operate in area which has no carrying capacity in terms of ambient air so that activity of hot mix plants does not cause damage to public health in terms of deaths and diseases by inhaling toxic air. Individual actions which may have to be taken against the affected stone crushers by the statutory regulators, following due process. It is also made clear that the aggrieved stone crushers will also be at liberty to take their remedies against any such action as per law. Thus, in our view, under the provisions of Section 15 read with Section 20 of the NGT Act, the Tribunal can certainly require the

statutory regulators to perform their legal obligation to uphold the principle of ‘Sustainable Development’.

7. Adverse health impact of polluted air quality has been noted inter-alia in judgement of Hon’ble Supreme Court in M.C. Mehta v. UOI¹, M.C. Mehta v. UOI², M.C. Mehta v. UOI³ and K. Guruprasad Rao v. State of Karnataka⁴ and order of this Tribunal dated 17.02.2021 in O.A. No. 1016/2019, *Utkarsh Panwar v. CPCB & Ors.* wherein the Tribunal directed stopping of all brick kilns in NCR beyond the assimilative carrying capacity in the air in NCR, till such brick kilns shift to PNG. Till shifting to PNG, it was directed that the brick kilns cannot operate except in limited number and only from March to June when assimilative air capacity permits such operations. The impact of air pollution on public health is noted in the order of the Hon’ble Supreme Court in Arjun Gopal & Ors. v. UOI & Ors.⁵:

Table 1

<i>AQI</i>	<i>Associated Health Impacts</i>
<i>Good (0-50)</i>	<i>Minimal impact.</i>
<i>Satisfactory (51-100)</i>	<i>May cause minor breathing discomfort to sensitive people.</i>
<i>Moderately polluted (101-200)</i>	<i>May cause breathing discomfort to people with lung disease such as asthma, and discomfort to people with heart disease, children and older adults.</i>
<i>Poor (201-300)</i>	<i>May cause breathing discomfort to people on prolonged exposure, and discomfort to people with heart disease.</i>
<i>Very Poor (301-400)</i>	<i>May cause respiratory illness to the people on prolonged exposure. Effect may be more pronounced in people with lung and heart diseases.</i>
<i>Severe May (401-500)</i>	<i>May cause respiratory impact even on healthy people, and serious health impacts on people with lung/heart disease. The health impacts may be experienced even during light physical activity.</i>

¹ (1998) 9 SCC 149

² (2000) 7 SCC 422

³ (2002) 4 SCC 378

⁴ (2012) 12 SCC 736

⁵ (2017) 1 SCC 412

8. In view of acknowledged adverse health effects and extent of carrying capacity to sustain the polluting activity of the hot mix plants, the question is further course of action to be adopted.

9. In *Arjun Gopal & Ors. v. UOI & Ors.*⁶, it was observed that the residents of NCR faced severe air quality standards which were worst in the World. It had serious adverse health impact. Life of citizens in NCR had been brought to virtual standstill. The Capital was placed in an environmental emergency of unseen proportions. It will be appropriate to extract some observations from the judgment:-

“4. The onset of winter and the festival/marriage season this year, presented to the residents of NCR severe concerns regarding the air quality standards. According to reports, the air quality standards in early November of this year were the worst in the world. It is reported that the PM_{2.5} levels recorded were “beyond scale” values (see India's Air Quality Among World's Worst Over Diwali Weekend: Report. 4-11-2016, Hindustan Times). The report indicates that 24-hour average of PM_{2.5} levels in South Delhi in 2016 were 38% higher than on the Diwali night of 2015. The day after Diwali, these levels were twice as high as the day after Diwali in 2015, crossing 650 µg/m³, which is 26 times above the WHO's standards or levels considered safe. Shockingly, on the morning of 1-11-2016, Delhi woke up to an average PM_{2.5} level of over 700 µg/m³ — some of the highest levels recorded the world over and 29 times above WHO standards. The report further states that the WHO guideline for 24-hour average PM_{2.5} levels is 25 µg/m³ and with an annual average PM_{2.5} level of 122 µg/m³, Delhi's air is the worst among global megacities with dense populations. We have particularly referred to the PM 2.5 levels because of the extreme effects and near invisibility of this type of particulate matter. PM_{2.5} or particulate matter 2.5 (PM_{2.5}), refers to tiny particles or droplets in the air that are two-and-one-half microns or less in width. It may be noted that the widths of the larger particles in the PM_{2.5} size range would be about thirty times smaller than that of a human hair. These particles primarily emanate from vehicle exhausts and other operations that involve the burning of fuels such as wood, heating oil or coal, and of course, use of fire crackers.

5. In India, air quality standards are measured in terms of the Air Quality Index (hereinafter “AQI”). The AQI was launched in India on 17-10-2014 by the Ministry of Environment and Forests. According to the press release of the Press information

⁶ (2017) 1 SCC 412

Bureau of the same date, it consists of a comprehensive set of parameters to monitor and assess the air quality. The AQI considers eight pollutants (PM₁₀, PM_{2.5}, NO₂, SO₂, CO, O₃, NH₃, and Pb), and based on the levels of these pollutants six categories of AQI ranging from “Good” to “Severe” have been prescribed. The index also suggests the health effects of the pollution categorywise. The gradation of AQI and its health impact is extracted below:

Tables 1 and 2 have already been reproduced in para 1 above and are not being repeated.

xxx.....xxxxxx
xxx.....xxxxxx

6. Reports indicate that AQI in Delhi was much above the severe standard, shooting off the AQI 500 mark on many days this November. On the day after Diwali, it was more than 14 times the safe limits (see Delhi's Pollution Levels Peaks at 14-16 Times Safe Limits, 31-10-2016, The Hindu). The adverse health effects of these hazardous levels of pollution are only too evident from the table given above. We do not intend to refer to the multiplicity of reports and data on this front.

7. The hazardous levels of air pollution in the last few weeks has spared very few from its ill effects. The life of the citizens of NCR was brought to a virtual standstill, not to speak about the plight of the thousands of mute flora and fauna in NCR. Schools were declared shut, denizens of the city advised to stay indoors, construction activities stopped, power stations shut and ban imposed on burning of garbage and agricultural waste. The fall in air quality has had a significant impact on people's lifestyle as well. The rising costs to protect against air pollution are substantial. It has come to our notice that people are queuing up to purchase protective masks and air purification systems in the wake of dense smog all over the NCR. In short, the capital was “smogged” into an environmental emergency of unseen proportions.

8. The adverse effects of these extreme levels of air pollution spare no one — the young, the old, the infirm and even the future generations. A study of the data of the Global Health Depository of the World Health Organisation reveals that India has the world's highest death rate from chronic respiratory diseases and that about 1.5 million people in India die annually due to indoor and outdoor pollution (see Delhi Wakes up to an Air Pollution Problem it cannot Ignore, 15-2-2015, The New York Times). The Kolkata-based Chittaranjan National Cancer Institute (CNCI), in a study commissioned and handed over to the Central Pollution Control Board, found that key indicators of respiratory health, lung function to palpitation, vision to blood pressure, of children in Delhi, between four and 17 years of age, were worse off than their counterparts elsewhere. It also found that more than 40% of the school children suffer from lung damage (see Landmark Study Lies Buried, 2-4-2015, The Indian

Express). We note with apprehension that there are nascent studies that suggest that pollution can lower children's IQ, hurt their test scores and increase the risks of autism, epilepsy, diabetes and even adult-onset diseases like multiple sclerosis (see *Holding Your Breath in India*, 29-5-2015, *The New York Times*).

9. It has been brought to our notice that the severe air pollution in the NCR is leading to multiple diseases and other health related issues amongst the people. It is said that the increase in respiratory diseases like asthma, lung cancer, bronchitis, etc. is primarily attributable to the worsening air quality in the NCR. The damage being caused to people's lungs is said to be irreversible. Other health related issues like allergies, temporary deafness are also on the rise. Various experts have pointed towards multiple adverse effects of air pollution on human health like premature deaths, rise in mortality rates, palpitation, loss of vision, arthritis, heart ailments, cancer, etc.

10. When we refer to these extreme effects, we are not merely referring to the inconvenience caused to people, but to abject deprivation of a range of constitutionally embedded rights that the residents of NCR ought to have enjoyed. Needless to state, the grim situation of air quality adversely affected the right to education, work, health and ultimately, the right to life of the citizens, and this Court is constitutionally bound to address their grave concerns. May we remind ourselves, that this is not the first time that this Court was impelled into ensuring clean air for the citizens of the capital region (see *M.C. Mehta v. Union of India* [*M.C. Mehta v. Union of India*, (1998) 6 SCC 60] , [*M.C. Mehta v. Union of India*, (1998) 9 SCC 589] , *M.C. Mehta v. Union of India* [*M.C. Mehta v. Union of India*, (1998) 8 SCC 648] and *M.C. Mehta v. Union of India* [*M.C. Mehta v. Union of India*, (1998) 8 SCC 206]).”

10. The precautionary principle has been elaborated in A.P. Pollution Control Board case [A.P. Pollution Control Board v. M.V. Nayudu, (1999) 2 SCC 718] as under:

“31. The “uncertainty” of scientific proof and its changing frontiers from time to time has led to great changes in environmental concepts during the period between the Stockholm Conference of 1972 and the Rio Conference of 1992. In Vellore Citizens' Welfare Forum v. Union of India [Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647] a three-Judge Bench of this Court referred to these changes, to the “precautionary principle” and the new concept of “burden of proof” in environmental matters. Kuldip Singh, J. after referring to the principles evolved in various international conferences and to the concept of “sustainable development”, stated that the precautionary principle, the polluter pays principle and the special concept of onus of proof have now emerged and govern the law in our country too, as

is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes, such as the Water Act, 1974 and other statutes, including the Environment (Protection) Act, 1986, these concepts are already implied. The learned Judge declared that these principles have now become part of our law. The relevant observations in Vellore case [Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647] in this behalf read as follows: (SCC p. 660, para 14)

'14. In view of the abovementioned constitutional and statutory provisions we have no hesitation in holding that the precautionary principle and the polluter pays principle are part of the environmental law of the country.'

The Court observed that even otherwise, the abovesaid principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law. In fact, on the facts of the case before this Court, it was directed that the authority to be appointed under Section 3(3) of the Environment (Protection) Act, 1986

'shall implement the "precautionary principle" and the "polluter pays principle".'

The learned Judges also observed that the new concept which places the burden of proof on the developer or industrialist who is proposing to alter the status quo, has also become part of our environmental law.

32. The Vellore [Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647] judgment has referred to these principles briefly but, in our view, it is necessary to explain their meaning in more detail, so that courts and tribunals or environmental authorities can properly apply the said principles in the matters which come before them.

33. A basic shift in the approach to environmental protection occurred initially between 1972 and 1982. Earlier, the concept was based on the "assimilative capacity" rule as revealed from Principle 6 of the Stockholm Declaration of the U.N. Conference on Human Environment, 1972. The said principle assumed that science could provide policy-makers with the information and means necessary to avoid encroaching upon the capacity of the environment to assimilate impacts and it presumed that relevant technical expertise would be available when environmental harm was predicted and there would be sufficient time to act in order to avoid such harm. But in the 11th Principle of the U.N. General Assembly Resolution on World Charter for Nature, 1982, the emphasis shifted to the "precautionary principle", and this was reiterated in the Rio Conference of 1992 in its Principle 15 which reads as follows:

'Principle 15.—In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing cost-effective measures to prevent environmental degradation.'

34. In regard to the cause for the emergence of this principle, Charmian Barton, in the article earlier referred to in "The Status of the

Precautionary Principle in Australia [(1998) 22 *Harvard Environmental Law Review* 509 at p. 547] says:

*‘There is nothing to prevent decision-makers from assessing the record and concluding that there is inadequate information on which to reach a determination. If it is not possible to make a decision with “some” confidence, **then it makes sense to err on the side of caution and prevent activities that may cause serious or irreversible harm.** An informed decision can be made at a later stage when additional data is available or resources permit further research. To ensure that greater caution is taken in environmental management, implementation of the principle through judicial and legislative means is necessary.’*

In other words, the inadequacies of science is the real basis that has led to the precautionary principle of 1982. It is based on the theory that it is better to err on the side of caution and prevent environmental harm which may indeed become irreversible.

35. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (justified) concern or risk potential. The precautionary principle was recommended by the UNEP Governing Council (1989). The Bomako Convention also lowered the threshold at which scientific evidence might require action by not referring to “serious” or “irreversible” as adjectives qualifying harm. However, summing up the legal status of the precautionary principle, one commentator characterised the principle as still “evolving” for though it is accepted as part of the international customary law, ‘the consequences of its application in any potential situation will be influenced by the circumstances of each case’. (See First Report of Dr. Sreenivasa Rao Pemmaraju — Special Rapporteur, International Law Commission dated 3-4-1998, paras 61 to 72.)”

(emphasis in original)

“36. We shall next elaborate the new concept of burden of proof referred to in Vellore case [Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647] at p. 658. In that case, Kuldip Singh, J. stated as follows: (SCC p. 658, para 11)

‘(iii) The “onus of proof” is on the actor or the developer/industrialist to show that his action is environmentally benign.’

*37. It is to be noticed that while the inadequacies of science have led to the “precautionary principle”, the said “precautionary principle” in its turn, has led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed, — is placed on those who want to change the status quo (Wynne, “Uncertainty and Environmental Learning: Reconceiving Science and Policy in the Preventive Paradigm” [(1992) 2 *Global Environmental Change* 111 at p. 123]). This is often termed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the change would*

*be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the **party attempting to preserve the status quo by maintaining a less polluted state should not carry the burden of proof and the party who wants to alter it, must bear this burden.** (See James M. Olson, "Shifting the Burden of Proof: How the Common Law can Safeguard Nature and Promote an Earth Ethic" [(1990) 20 Environmental Law 891 at p. 898] .) (Quoted in "The Status of the Precautionary Principle in Australia" [(1998) 22 Harvard Environmental Law Review 509 at p. 547] at pp. 519, 550.)*

38. The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment. (See Report of Dr Sreenivasa Rao Pemmaraju, Special Rapporteur, International Law Commission, dated 3-4-1998, Para 61.)"

(emphasis in original)

11. In Vellore Citizens' Welfare Forum case, 1996) 5 SCC 647, the Hon'ble Supreme Court banned the tanneries when it was found that they were causing immense damage to the environment. Environment protection, which is a facet of Article 21, was given supremacy over the right to carry on business enshrined in Article 19(1)(g). Following the said principle, it has been held that protection of right to health will have to be given priority. Health hazards in the form of various diseases that are the direct result of air pollution are well known. It leads to asthma, coughing, bronchitis, retarded nervous system breakdown and even cognitive impairment. Some of the diseases continue on a prolonged basis. Some of these which are caused because of high level of PM_{2.5} are even irreversible. In such cases, patients may have to continue to get the medical treatment for much longer period and even for life. Though there are no statistics as to what would be the cost for treating such diseases which are as a direct consequence of fireworks on these occasions like Diwali, it can safely be said that this may also be substantial.

12. It is well known that Carrying capacity is a facet of sustainable development. It is inherent in 'Precautionary Principle' as well as in 'Inter-generational Equity'. In *MC Mehta v. UOI & Ors.*⁷, **construction activity in the catchment area of Badkhal were directed to be restricted/regulated to the level of Carrying capacity.** It was observed that:-

“Preventive measures have to be taken keeping in view of the carrying capacity of the ecosystem operating in the environmental surroundings under consideration.”

13. In *Vellore Citizens' Welfare Forum v. UOI & Ors.*⁸, it was observed that quality of human life is to be improved within the carrying capacity to supporting ecosystem. Relevant extract is as follows:-

“10..... During the two decades from Stockholm to Rio “Sustainable Development” has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. “Sustainable Development” as defined by the Brundtland Report means “Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”. We have no hesitation in holding that “Sustainable Development” as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists.”

14. These observations are reiterated in (2006) 6 SCC 371.⁹

Tribunal's Approach to the subject

15. The Tribunal has a mandate to follow these principles under Section 20 read with Section 15 of the NGT Act and can issue appropriate directions for enforcement of these principles, as laid down in Mantri

⁷ (1997) 3 SCC 715

⁸ (1996) 5 SCC 647

⁹ Para 66 to 76

Techzone Pvt. Ltd. v. Forward Foundation and Ors.,¹⁰ and the Director General (Road Development) NHAI v. Aam Aadmi Lok Manch.¹¹ Environmental rule of law requires strict enforcement of these principles as laid down in Hanuman Laxman Aroskar v. UOI).¹²

16. This Tribunal in O.A. No. 681/2018, vide order dated 21.08.2020, dealt with the remedial measures for restoration of air quality in 122 Non-attainment cities, including Delhi where air quality is generally beyond norms. The Tribunal directed stopping polluting activities, including brick kilns and assessment of carrying capacity of urban areas to take policy decisions to control polluting potential activities beyond carrying capacity.

The Tribunal observed:-

*“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**¹³, **industrial and construction sector pollution**¹⁴, **power sector pollution**¹⁵ and **agricultural sector pollution**¹⁶ and orders of this Tribunal dealing with the said issues¹⁷. 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*

¹⁰ 2019 SCC online SC 322, Para 43-47

¹¹ AIR 2020 (SC) 3471, Para 75

¹² (2019) 15 SCC 401

¹³ Rural Litigation and Entitlement Kendra, Dehradune 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

¹⁴ 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) 2SCC 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) 4SCC 575 , M.C. Mehta v. Union of India (2004) 6 SCC 588, M.C. Mehta v. Kamal Nath (2000)6 SCC 213

¹⁵ 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) 2SCC 539

¹⁶ 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

¹⁷ 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_{HC}) OF 2013, Smt. Ganga Lalwani V. Union of India and Ors. O.A No. 451 of 2018

05.04.2017¹⁸ and Graded Response Action Plan (GRAP) notified by the MoEF&CC on 12.01.2017 stipulating specific 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.**¹⁹

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.²⁰

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

7to13...xxx.....xxxx.....xxx

17. Dealing with the issue of air pollution in manufacture of tiles at Morbi in Gujrat, vide order dated 6.3.2019 OA 20/17 Babubhai v GPCB, this Tribunal directed closure of industries operating with coal unless they shifted to natural gas. While under the orders of the Hon'ble Supreme

¹⁸ 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.

¹⁹ S.O.118(E), Notification, Ministry of Environment, Forest and Climate Change

²⁰ <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>.

Court, GRAP was laid down providing for closing of specified activities on crossing of air quality norms as laid down in the GRAP, the same did not debar consideration of further situations requiring closure/regulation.

18. We may also refer to direction issued by the CPCB on 27.11.2020 under Section 18 (1) (b) of the Air (Prevention & Control of Pollution) Act, 1981 for upcoming industrial units in NCR **to use only gas** and also refers to an earlier order requiring even the existing industries in NCR Delhi, **to shift to PNG by 31.03.2019 where gas supply is available**. The relevant part of the order is quoted below:-

“xx

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*Whereas, considering the deteriorating air quality in NCR-Delhi and also the fact that **already directions have been issued to all the existing industries in NCR-Delhi to switch over to cleaner fuels, it is decided that only those new industrial units shall be allowed to set-up in NCR-Delhi, which use cleaner fuels namely, natural gas (PNG/CNG), liquefied petroleum gas, bio gas, propane, butane etc. and***

Now therefore, in view of the above and exercising the powers conferred under section 8(1)(b) of Air (Prevention and Control of Pollution) Act, 1981, you are hereby directed to allow only those new industrial units in NCR-Delhi, which are using cleaner fuels, namely, natural gas (PNG/CNG), liquefied petroleum gas, bio-gas, propane, butane etc.”

19. Having regard to the above considerations, the Tribunal has passed recent orders to deal with situation arising out of air pollution caused by brick kilns in the NCR and also in the Mathura District. Order with regard to brick kilns dated 17.02.2021 in O.A. No. 1016/2019, *Utkarsh Panwar v. Central Pollution Control Board & Ors.*, which has already been referred to in the earlier order dated 24.02.2021 wherein the Tribunal directed that the brick kilns in the NCR be regulated in the light of the carrying capacity in the interest of public health unless improved technologies used which doesn't adversely affect the air quality. The Tribunal held that may be it

was a particular brick kiln maintained the standards was not enough if the air quality could not sustain such activities.

20. We may also refer to order of this Tribunal dated 01.12.2020 in O.A. No. 249/2020 whereby the Tribunal banned the fire crackers throughout India where air quality is poor and above in the interest of protection of public health. **Extract from order dated 1.12.2020 in OA 249/2020 is reproduced below:**

“18.If the air quality is ‘poor’ and above, it has been held by the Hon’ble Supreme Court in the table quoted in para 4 above that there is danger of heart diseases, respiratory illness and other serious health impact even before Covid. Covid is going to further aggravate the situation and therefore atleast in areas where air quality is ‘poor’ and above, no bursting of fire crackers should be permitted in view of ‘Precautionary’ principle, to be statutorily enforced by this Tribunal under Section 20 read with section 15 of the National Green Tribunal Act, 2010.

32.In view of above discussion, following directions are issued:

- i. **There will be total ban on sale and use of all kinds of fire crackers during Covid-19 pandemic in the NCR and all cities/towns in the country where the ambient air quality falls under the ‘poor’ and above category.**
- v. *We further direct that the Air Quality Monitoring Committees (AQMC) in terms of order of this Tribunal dated 08.10.2018 in OA No. 681/2018²¹ to coordinate with the District Magistrates.²² for compliance of the above directions.”*

21. This Tribunal, vide order dated 17.02.2021 in OA 1016/2019, *Utkarsh Panwar v. Central Pollution Control Board & Ors.*, considered the

²¹ The said order is as follows:

“15. xxx

xxx

xxx

i. xxx

xxx

xxx

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.”

²² The District Environment Committee has been directed to be constituted by this Tribunal to prepare and execute District Environment Plan vide order dated 15.07.2019 in OA No. 710/2017, *Shailesh Singh vs. Sheela Hospital & Trauma Centre, Shahjanhanpur & Ors.*

issue of permissibility of brick kilns beyond the assimilative carrying capacity in the NCR and in the light of the Expert Committee report. This Tribunal directed that brick kilns be allowed to operate only from March to June using Zig-zag technology only to the extent of such number of brick kilns as were found to be viable in terms of the carrying capacity.

22. In recent order dated 12.08.2021 in O.A. No. 93/2021, *Mukesh Kumar Aggarwal v. Central Pollution Control Board & Anr.*, in the context of brick kilns in Mathura District, the Tribunal held:

***“13. Applying the same principles, we are of the view that the brick kilns ought to be permitted to the extent of carrying capacity, correctly calculated, strictly as per consent conditions, siting criteria and other environment norms. When air quality standards are exceeded, only non polluting technology has to be followed. Existing guidelines have to be strictly adhered to. Precautionary principle has to be applied and non compliant activity stopped.*”**

14&15...xxx.....xxx.....xxx

16. *In view of earlier orders quoted above and discussion in paras 10 to 12, we are of the view that steps need to be forthwith taken to stop operation of brick kilns already found to be operating in violation of environmental norms till compliance by the State PCB in exercise of its statutory power, following due process of law, till compliance. This will include brick kilns not following consent conditions, operating in excess of carrying capacity, CPCB guidelines and orders of this Tribunal, and those violating siting guidelines. Necessary action be ensured within two months. At the same time, there is need for further study of carrying capacity, applying correct data and norms. Air quality monitoring equipments be installed in the concerned area and if online monitoring stations cannot be set up, easily available equipments be used to continuously monitor air quality. Stringent monitoring mechanism be put in place. Process of mechanically giving consents be reviewed by the State PCB in view of binding ‘precautionary’ principle. Public health needs to be given due preference to the need for establishment of brick kilns. Violators be strictly proceeded against by way of prosecution, recovery of compensation and preventing pollution. While determining carrying capacity, other sources contributing pollution loads may be factored in while considering concentrations of PM₁₀ in microgram per cubic metre in addition to loads given in kgs. Further, mixing heights data may be referred from the nearest location of IMD station. It is also necessary to clarify reasons of high CEPI score (91.1) particularly for Air and remedial action plan.”*

23. In view of above discussions, we are of the opinion that in view of the report in the present matter that the carrying capacity in the area is negative i.e. the air norms are not being met, while benign activity not adding to the pollution can be allowed, polluting activity can be allowed only by ensuring that it does not add to the air pollution, by taking such stringent measures as may achieve desired result and may not adversely affect public health. Such measures may be use of appropriate technology, mitigation measures like dense forest shelter belts etc.

24. 'Sustainable Development' principle requires that the business activity should not compromise public health. This requires study of carrying capacity. In the present case, such capacity has been determined, though data considered is only of the month of June when air quality is comparatively better, compared to the winter months. Carrying capacity has not been assessed with reference to the average air quality for air quality of the months when air quality is comparatively inferior. The hot mix plants may operate even in winter, which are fast approaching. There is no justification in law for the recommendations that only new hot mix plants may not be allowed and the old hot mix plants may continue even at the cost of public health. Further, there is also no justification for the recommendation that the laid down siting criteria should apply only to new establishments. Already set up hot mix plants need not follow such criteria even if it results in damage to the public health and the environment. While the report with regard to the study can be considered for further action, the recommendations which are not in accordance with the environmental law cannot be accepted.

25. While we have no option except to enforce the environmental norms and stop hot mix plants not sustainable due to lack of carrying capacity,

we are mindful of difficulty which will arise not only for the operators of such plants but also those who need such services. While GRAP is already operative which results in closure of certain polluting activities on deterioration of air quality, to maintain air standards further restrictions on polluting activities are necessary in the interest of public health. At the same time, ways and means need to be explored to sustain such activities to the extent possible without adversely affecting the public health. Since PM concentrations in the Central Indian/Indo- Gangetic Plains are higher compared to Southern and East and North-Eastern parts of the country, to maintain regional balance in Developmental and industrial activities throughout the country and to support economy as well as the need of public, it is necessary that better technological options and advanced air pollution abatement measures are explored which enable sustainability of such activities. For this purpose, we constitute a seven member joint Committee which will have statutory authorities and subject matter experts to look into the issue and to give science-based expert report. The Committee will comprise MoEF & CC, CPCB, State PCB, District Magistrate, Prof. Mukesh Khare, IIT Delhi, Prof. Mukesh Sharma, IIT Kanpur and Prof. Shiva Nagendran, IIT Chennai. Proceedings may be steered by the Member Secretary, CPCB. The Committee may adopt any other expert Institutions or individuals of repute. It may give its report in three months. Pending this report, UP PCB not to allow non- compliant hot mix plants in terms of GRAP and the present carrying capacity study report.

26. Thus, we direct as follows:-

- i. The hot mix plants beyond carrying capacity may be closed at the earliest and as far as possible from 01.11.2021 by the statutory

regulators in exercise of their jurisdiction under the Air Act, 1981 and the EP Act, 1986. In other words, no hot mix plant – old or new may be allowed beyond carrying capacity and without compliance of the laid down siting norms from 01.11.2021.

- ii. A joint Committee comprising MoEF & CC, CPCB, State PCB, District Magistrate, Prof Mukesh Khare, IIT Delhi, Prof Mukesh Sharma, IIT Kanpur and Prof Shiva Nagendran, IIT Chennai may give a report in terms of para 25 above within three 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.

List for further consideration on receipt of the report.

A copy of this order be forwarded to MoEF & CC and CPCB, State PCB the District Magistrate, Gautam Budh Nagar, UP, Prof Mukesh Khare, IIT Delhi, Prof Mukesh Sharma, IIT Kanpur, Prof Shiva Nagendran, IIT Chennai, by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

September 09, 2021
Original Application No. 19/2021
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SN