

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

(BY HYBRID MODE)

Original Application No. 150/2023

In re: news item in NDTV dated 28.02.2023 titled **“2 Dead, 2 Injured in Explosion at Gujarat Pharma Company”**

Date of hearing: 15.03.2023

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

Respondent(s): Mr. R.B. Trivedi, Environment Engineer, Mr. A.O. Trivedi,
Regional Officer with Mr. R.R. Panchal, Law Officer for GPCB
Mr. Manu Bajaj, Advocate for Ven Petrochem and Pharma India
Pvt. Ltd.

ORDER

1. Matter has been taken up *suo-motu* in the light of captioned media report of death of two persons and injuries to other two in an explosion in Ven Petrochem & Pharma India Pvt. Ltd. (Project Proponent -PP), Valsad, Gujarat on 28.02.2023.

2. In response to advance notice dated 01.03.2023 sent by the Registry, the Gujarat State Pollution Control Board (GPCB) and the PP have entered appearance and filed their respective response. According to GPCB, the fire incident took place on 27.02.2023 due to blast and GPCB levied compensation of Rs. 25 lakhs. Number of deaths is four and number of injured is two. The PP has acknowledged the fact that the incident in question took place in which four persons died and two were injured but has pleaded that it has not violated any norms. Cause of accident is not known. The PP has deposited compensation of Rs. 25 lakhs assessed by State PCB. The PP has given cheque of Rs. 10 lakhs for the heirs of each of

the four deceased victims. Further, compensation can be paid under the Workmen Compensation Act, 1923 and NGT may not go into the matter in view of bar under Section 17 of the NGT Act, 2010.

3. We have heard learned counsel for the appearing parties and perused record.

4. As held in *M.C. Mehta vs. UOI & Ors, (1987) 1 SCC 395* and various orders of this Tribunal dealing with such incidents¹, the PP has absolute liability for any loss arising out of such incidents.

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- ¹ 1. *In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh*, OA No. 73/2020 decided on 01.06.2020.
2. *Aryavart Foundation through its President vs. Yashyashvi Rasayan Pvt. Ltd. & Anr.*, OA No. 85/2020 (Earlier OA 22/2020) (WZ) decided on 03.02.2021.
3. *Bonani Kakkar vs. Oil India Limited & Ors.*, OA No. 43/2020(EZ) decided on 19.02.2021.
4. *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..."*, OA No. 106/2020 decided on 22.12.2020.
5. *News item published in the "Indian Express" dated 01.07.2020 titled "Tamil Nadu Neyveli boiler blast: 6 dead, 17 injured"*, OA No. 108/2020 decided on 22.12.2020.
6. *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"*, OA No. 134/2020 decided on 22.12.2020.
7. *News item published in the "Times of India" dated 20.11.2020 entitled "Six killed as blast tears through Malda Plastic recycling factory"*, OA No. 272/2020 decided on 18.12.2020.
8. *News item published in the "Indian Express" dated 23.11.2020 entitled "Maharashtra: Two Killed, eight injured in methane gas leak in sugar factory"*, OA No. 274/2020 decided on 16.08.2021.
9. *In RE: News item published in the local daily "Indian Express Sunday Express" dated 28.06.2020 titled "Gas Leak in Agro Company Claims life of one"*, O.A No. 107/2020 decided on 08.01.2021.
10. *In re : News item published in Navbharat Times dated 24.12.2020 titled "Gas leaks in IFFCO Plant, 2 Officers dead"*, O.A. No. 04/2021 decided on 04.06.2021.
11. *In re: News item published in The Indian Express dated 07.01.2021 titled "Four workers dead due to toxic gas leak in Rourkela Steel Plant"*, O.A. No. 09/2021 decided on 11.02.2021.
12. *In re: News item published in The News Indian Express dated 12.02.2021 titled "At least 19 dead in Virudhunagar firecracker factory blast, more than 30 injured"*, O.A. No. 44/2021 decided on 03.03.2022.
13. *In re: News item published in Times Now News dated 23.02.2021 titled "Karnataka: Six killed in quarry blast in Hiremagavalli, Chikkaballapur"*, O.A. No. 59/2021 decided on 22.04.2022.
14. *In re: News item published in The Hindu dated 23.02.2021 titled "Two dead, 5 missing in fire at UPL Plant"*, O.A. No. 60/2021 decided on 14.12.2021.
15. *In re: News item published in The Times of India dated 28.02.2021 titled "Delhi : Man charred to death as illegal factory catches fire"*, O.A. No. 65/2021 decided on 31.08.2021.
16. *In re: News item published in The Hindu dated 14.03.2021 titled "Safety lapses led to reactor blast at pharma unit"*, OA No. 79/2021 decided on 31.08.2021.
17. *In Re: News item published in the "Indian Express" dated 04.11.2020 titled "Ahmedabad: Nine killed as godown collapses after factory blast"*, OA No. 258/2020 decided on 23.03.2021.
18. *In re: News item published in The Times of India dated 08.06.2021 titled "18, mostly women, killed in fire at Pune chemical unit"*, OA 130/2021 decided on 01.02.2022.
19. *Rakesh Suresh Chandra Kapadia v. Gujarat Pollution Control Board & Ors.*, OA No. 31/2021 (WZ), decided on 08.11.2021.
20. *In re: News item published in The Hindustan Times dated 17.06.2021, titled "Blast in firecracker unit in Maharashtra's Palghar, at least 10 injured"*, OA No. 134/2021 decided on 25.06.2021.
21. *In re: News item published in The Indian Express dated 12.07.2021 titled "Six killed in factory fire: Owner held, raids on to nab second accused"*, OA No. 171/2021 decided on 07.09.2021.
22. *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"*, OA No. 05/2022 decided on 18.01.2022.
23. *In re: News item published in India Today dated 26.12.2021 titled "7 dead in boiler explosion at noodle factory in Bihar's Muzaffarpur, probe ordered"*, OA No. 02/2022 decided on 22.04.2022.
24. *In re: News item published in The Economic Times dated 21.12.2021 titled "3 dead, 44 injured in flash fire at IOC's Haldia refinery"*, OA No. 440/2021 decided on 07.01.2022.

5. On the issue of bar under section 17 of the NGT Act for claims in respect of workmen, it was held that the said bar will apply only if the PP has paid such compensation under the Workmen Compensation Act or any other law and not otherwise, object of bar being to avoid duplication and if no compensation has been paid, NGT can award compensation atleast at floor level. Reference may only be made to latest order dated 28.2.2023 (sr. no. 29 in the foot note) as follows:

*“15. In OA 09/2021, “In re: News item published in The Indian Express dated 07.01.2021 titled **“Four workers dead due to toxic gas leak in Rourkela Steel Plant”**, vide order dated 11.02.2021, it was held that bar under section 17 of the NGT Act will not apply when compensation under Workmen Compensation has not been paid as is the situation herein. Observations from the said order are extracted below:*

*“On due consideration, we are unable to accept the submission of learned ASG that bar of section 17 NGT Act is applicable. **The deceased are not, even according to the RSP, covered by the definition of ‘workmen’ under the Workmen Compensation Act. RSP has not paid them on that basis.** Applicability of ESI Act does not exclude the NGT Act as section 17 is not attracted to such a case. Moreover, unless expressly excluded, jurisdiction of this Tribunal for victims of violation of environmental norms stands. For this, section 33 of the NGT Act provides for overriding effect of the said Act. Thus, the RSP can be required to provide compensation to the heirs of the deceased under section 15 of the NGT Act. Liability to pay compensation for an entity engaged in hazardous activity is absolute as per law laid down in *M.C. Mehta, (1987) 1 SCC 395. **Minimum such liability is as per restitution principle, though deterrent compensation can be awarded, depending on a fact situation. In awarding such compensation, compensation paid under any other provision can certainly be excluded. Thus, in the present case, the heirs of the deceased will be entitled to compensation which we propose to determine minus the compensation, if any, which may have been paid under any other provision. Needless to say that victims of such accident are normally, as in the present case also, poorest of the poor.****

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25. *In re: News item published in The Tribune dated 22.02.2022 titled “7 killed in blast at firecrackers factory in Himachal Una”, OA No. 143/2022 decided on 08.03.2022.*
26. *In re: News item published in Hindustan Times dated 05.03.2022 titled “Bhagalpur: 14 dead in firecracker unit blast”, OA 198/2022 decided on 27.05.2022.*
27. *In re: News item published in The Times of India dated 12th April, 2022, titled “Six killed in chemical factory blast in Gujarat”, OA No. 272/2022 decided on 12.04.2022.*
28. *In re: News item in NDTV dated 14.04.2022 titled “6 killed, 12 injured after fire breaks out at Andhra Pradesh Pharma Unit”, OA No. 284/2022 decided on 20.04.2022.*
29. *In re : News item published in Business Standard dated 09.02.2023 titled “Blast at JSPL’s Raigarh plant kills two workers, two others injured”, OA No. 110/2023 decided on 28.02.2023*

Stand that death was by negligence of the victims is untenable and even if true, absolute liability is not excluded at least on restitution basis. Prima facie, the stand of RSP is not acceptable in absence of showing compliance of statutory safeguards under the 1989 Rules framed under the EP Act, which can be enforced by this Tribunal. No details of mock drills have been filed nor onsite and offsite plans produced. We are not debarring the RSP from producing the same before the Committee which we are appointing. The fact remains that there is much to be desired in terms of statutory compliances.”

6. Thus, while if workmen are covered by the Workmen Compensation Act, 1923 and are paid compensation under the provisions of the said Act, there can be no claim under the NGT Act, where compensation under Workmen Compensation Act has not been paid by the PP, the said bar will not apply and NGT can direct payment of floor level compensation at the rate mentioned above, the PP has to be held liable to pay such compensation. The liability to pay compensation is over and above accountability under criminal law and statutory regulators have to ensure that safety protocols are duly observed in conducting such industrial activity which is hazardous and has potential for loss of human lives.

7. It is undisputed that total amount paid by the PP to the victims is only Rs. 10 lakhs to heirs of each of the deceased which is neither adequate as per provisions of the Workmen Compensation Act nor as per scale of minimum compensation awarded by this Tribunal in number of cases mentioned above.

8. Following earlier cases, we direct the PP to pay further amount of Rs. 10 lakhs to heirs of each of the deceased and Rs. 10 lakhs be paid to each of injured. It will be open to the PP to adjust the amount in its liability under the Workmen Compensation Act. In case of any extra claim, the aggrieved parties will be at liberty to take appropriate remedy as per law.

9. Apart from payment of compensation, the statutory regulators have to ensure compliance of safety protocols in the light of report of the joint

Committee. This requires ascertaining precise cause of the incident and measures required to be adopted to prevent such incidents in future. Status of compliance of Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 has not been verified.

10. For this purpose, we consider it appropriate to constitute a joint Committee of Regional Director, CPCB, Vadodara, GPCB and District Magistrate Valsad. The Committee may undertake visit to the site, ascertain cause of incident and suggest measures to be adopted in future to prevent such incidents. The Committee may also suggest manner of utilization of amount of compensation of Rs. 25 lakhs deposited by the PP towards restoration of environment. State PCB will be the nodal agency for coordination and compliance.

11. Report of the Committee may be filed within two months with the Registrar General of this Tribunal by email with a copy to the Chief Secretary, Gujarat and the Chairman, GPCB for remedial action. If found necessary, the matter be placed for further directions before the Bench.

Subject to above, the application is disposed of.

A copy of this order be forwarded to Chief Secretary, Gujarat, CPCB, GPCB and District Magistrate, Valsad by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

March 15, 2023
Original Application No. 150/2023
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