

Item No. 01

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 171/2021

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"

Date of hearing: 22.07.2021

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE M. SATHYANARAYANAN, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Respondent(s): Mr. Narender Pal Singh, Advocate for DPCC
Ms. Kriti Garg, DM West Delhi

ORDER

1. The matter was taken up on the basis of media report appearing in Indian Express dated 12.07.2021 titled "Six killed in factory fire: Owner held, raids on to nab second accused". The report is to the effect that shoe and garment manufacturing unit was being run in West Delhi at Udyog Nagar and as a result of massive fire inside the factory six workers died. In all 12 workers were trapped out of whom six were rescued. 33 fire tenders were sent to the spot and around 140 firefighters took more than six hours to control the huge fire. DCP, Outer Delhi, said that Forensic Science Lab team found charred remains but the victims are yet to be identified. Missing workers have been identified as Shamshad, Vikram, Abhishek, Neeraj, Raju and Ajay. Owner of the factory has been arrested under Section 308 IPC (attempt to commit culpable homicide).

2. On 14.07.2021, advance notice of today's hearing was given by the office to Delhi Pollution Control Committee (DPCC), Central Pollution

Control Board (CPCB), District Magistrate, West Delhi, Directorate of Industrial Safety and Health, Delhi and M/s Apeksha International, J-5, Ground Floor, Udyog Nagar, Rohtak Road, Delhi. Only DPCC has filed its response. The District Magistrate has appeared in person. Response of DPCC is that incident took place on 21.06.2021 but no inspection could be done in absence of permission of the Fire Department. No consents under the Water (Prevention and Control of Pollution) Act, 1974 (Water Act) and the Air (Prevention and Control of Pollution) Act, 1981 (Air Act) have been given by the DPCC. As per version of nearby industrial units, no industrial activity was being carried on.

3. It is a matter of regret that though six persons have died in a gruesome incident, the administration has not shown sensitivity to collect meaningful information nor taken steps to compensate the heirs of the victims. It is also surprising that despite death of six persons, offence registered is for 'attempt to cause homicide'. Learned DM has informed that *ex-gratia* compensation of only Rs. 50,000/- per deceased has been announced but not paid. These startling facts show utter lack of concern for the loss of human lives by the concerned authorities. It is further surprising that inspite of notice, Director Industrial Safety and the unit in question have not even cared to put in appearance. DPCC has merely paid lip service by showing inability to provide any information on the subject.

4. The Tribunal has initiated proceedings in view of media information that shoe and garment manufacturing activity was being carried on which prima facie requires compliance of Water, Air and Environment (Protection) Acts and safety protocols which are normally part of consent conditions or conditions of relevant licence issuing by statutory regulators for such activities. Further, considering the magnitude of

explosion and deaths, some inflammable hazardous substance may have been stored. The report of the DPCC merely shows that there is huge stock of footwears and packaging material in the premises.

5. The Tribunal has recently dealt with 20 cases of industrial accidents¹ involving failure of industrial safety norms and invoking the

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- 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 03.02.2021, 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 19.02.2021, 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").
- ix. Order dated 08.01.2021, in relation to **Gas Leak in Agro Company** (O.A No. 107/2020, 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")
- x. Order dated **04.06.2021**, in relation to News item published in Navbharat Times dated 24.12.2020 titled "**Gas leaks in IFFCO Plant, 2 Officers dead**" (O.A No. 04/2021, In re: News item published in Navbharat Times dated 24.12.2020 titled "Gas leaks in IFFCO Plant, 2 Officers dead")
- xi. Order dated **11.02.2021**, in relation to accident of **toxic gas leak in Rourkela Steel Plant in Orissa**" (O.A. No. 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")
- xii. Order dated **11.06.2021**, in relation to accident of **Virudhunagar firecracker factory blast** (O.A. No. 44/2021, 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")
- xiii. Order dated **11.06.2021** in relation to accident of **quarry blast in Hirenagavalli, Chikkaballapu, Karnataka** (O.A. No. 59/2021, In re: News item published in Times Now

principle of absolute liability and awarded compensation to the heirs of the victims. Vide order dated 11.06.2021 in OA No. 44/2021, *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”* compensation was held to be payable at a flat rate of Rs. 20 lakhs by the State on the principle of State’s liability for failure to perform regulatory functions. It was observed:

“Persons responsible – Liability of the State for its failure

7. *The persons who had taken licences had further rented out the premises. Some private persons have been identified. It is also clear that incidents are frequent. Activities are highly dangerous but are not being regulated by the State PCB, Labour Department and the District Magistrate. The State has failed to put in appearance or give any explanation for its failure to protect lives of citizens by enforcing the law. The reason may be negligence of the concerned officers or incompetence. In such circumstances, the victims have to be compensated by the State and the State can recover the amount from erring parties. Primary liability is of the occupiers of the premises where activities were carried out leading to the incidents and the operators of the hazardous activity. It is the occupier who allowed the activities and the operators obviously were directly involved. The*

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- News dated 23.02.2021 titled “Karnataka: Six killed in quarry blast in Hiremagavalli, Chikkaballapur”)
- xiv. Order dated **11.06.2021** in relation to accident of **fire at UPL plant**, Jhagadia, District Bharuch, Gujarat (O.A. No. 60/2021, In re: News item published in The Hindu dated 23.02.2021 titled “Two dead, 5 missing in fire at UPL Plant”)
 - xv. Order dated **02.03.2021** in relation to accident of **massive fire broke out at an illegal factory at Pratap Nagar, North Delhi** (O.A. No. 65/2021, 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”)
 - xvi. Order dated **16.03.2021** in relation to Incident of **explosion of 3,000 kg reactor at the production wing of Tyche Industries Limited, on the outskirts of Kakinada, Andhra Pradesh (AP) on March 11, 2021** (O.A. No. 79/2021, In re: News item published in The Hindu dated 14.03.2021 titled “Safety lapses led to reactor blast at pharma unit”)
 - xvii. Order dated **23.03.2021** in relation to Incident of **blast in chemical boiler factory at Pirana-Piplaj road in Ahmedabad, Gujarat** (OA No. 258/2020, In Re: News item published in the “Indian Express” dated 04.11.2020 titled “Ahmedabad: Nine killed as godown collapses after factory blast”)
 - xviii. Order dated **16.06.2021** in relation to Incident of **fire in a chemical unit- SVS Aqua Technologies, at Village Urawade, District Pune, Maharashtra** (OA 130/2021, 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**”).
 - xix. Order dated **17.06.2021** in relation to Incident of **Incident of fire in Ambika Industries, GIDC Sachin, Pandesara, Tal: Churasi, District Surat-394221, Gujarat** (OA 31/2021 (WZ), Rakesh Suresh Chandra Kapadia v. Gujarat Pollution Control Board & Ors.)
 - xx. Order dated **25.06.2021** in relation to Incident of **blast in firecracker unit in Maharashtra’s Palghar on 17.06.2020 at 10:35 am** (OA 134/2021, 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”)

liability is joint and several and absolute. As found by the Committee there was failure to follow safety norms. Under MSIHC Rules 1989, Director Industrial Safety and District Magistrate have crucial role to oversee safety norms. In schedule V to the Rules, their responsibilities are clearly laid down. State PCB has responsibility to ensure that no industrial activity have potential for pollution of air or Water are run without consent to establish and consent to operate. Incidents are frequent but the State authorities have failed to perform their regulatory obligations for safety in operation of hazardous activities. We note that GO dated 23.12.2010 has been issued by the State to declare that the firecracker activities are covered by the Factories Act but the High Court has granted stay on 30.11.2011. However, this could not prevent either the State PCB or the District Magistrate or the Director Industrial Safety to discharge their statutory responsibility for ensuring safety of the workers and other citizens. Thus, the State cannot avoid responsibility to pay compensation to the victims in these circumstances. The victims need immediate relief and it is not possible for the victims to chase the violators who are scattered and whose means are not known. It is the State who have by its failure permitted illegal hazardous activities being carried out which has resulted in deaths and injuries. Public trust doctrine applies in the circumstances. The State is at liberty to recover from the violators or the erring officers. We have taken this view recently while dealing with another similar incident in Gujrat where hazardous activity was found to be operated illegally resulting in deaths and injuries and the violator did not appear to have known sources for payment of compensation. Vide order dated 23.03.2021 in O.A. No. 258/2020, In Re: News item published in the "Indian Express" dated 04.11.2020 titled "Ahmedabad: Nine killed as godown collapses after factory blast" this Tribunal held that the State will be liable to pay compensation to the victims except the victims who was responsible for the incident with liberty to recover from erring persons. Relevant extract from the order is as follows:-

"9.For death of all other persons and injured, the State will be liable to pay compensation, without prejudice to its right to recover the same from the violators of law or erring officers, following due process of law. The responsibility for compliance will be of the Chief Secretary, Gujarat, through the District Magistrate, Ahmedabad. In the light of directions already issued for preventive action by way of compliance of laid down safety norms, the State of Gujrat needs to take remedial measures to ensure that such incidents do not occur and hold accountable persons responsible for failure of the oversight. We also direct a joint Committee of Director, Industrial Safety and Health (DISH), Gujarat, and State PCB in coordination with respective Municipal Corporations and District Magistrates to conduct survey of the entire State to ascertain if any other such activities are going on, and if so to take remedial action by way of closing such illegal activities. The State PCB will be the nodal agency for coordination and compliance. The said Committee may give its report to the Chief Secretary, Gujarat within three months for further remedial action."

Principle of absolute liability

8. It is established law since *MC Mehta (1987) 1 SCC 395* and later judgements that liability of the person undertaking hazardous activities for commercial gains for any accident and loss is absolute.

Quantum of compensation

9. From the report, it is clear that 27 persons have died and 26 injured on account of fire incidents which were result of unscientific handling of hazardous chemicals in violation of law. We also find that scale of compensation based on restitution principle needs to be awarded. Procedure of this Tribunal is summary and akin to public law remedy. Compensation can be assessed on reasonable basis guided by restitution principle atleast at floor level, leaving other remedies of the victims open. Thus, broadly agreeing with the Committee, we direct that the scale of compensation should be Rs.20 lakhs in respect of each of the deceased victims and Rs.15 lakhs to persons who have burns in excess of 50% and Rs.10 lakhs for persons who have burns from 25 to 50% and Rs.5 lakhs for persons who have injuries between 5 to 25%. Victims who were treated as outpatients and who had but minor degree of burns or other forms of simple injuries shall be paid Rs.2 lakhs.

10. Accordingly, we hold that **the compensation assessed has to be paid by the State of Tamilnadu through the District Magistrate, Virudhunagar. Compliance will be responsibility of the Chief Secretary. Payment be ensured within one month from today. Ex gratia amount already paid may be deducted. We request the TN State Legal Services authority to provide legal aid to ensure that payment is made to genuine heirs of the deceased and to the injured without undue hassle.**

Remedial Measures

11. Apart from requirement of compensating the victims, the issue remains how such incidents are to be prevented and if such incident happens what steps are to be taken to prevent loss of lives and health. There is need for review of the matter at highest level in the State to consider the remedial steps. Hazardous activities need to regulated in terms of quantity of material to be used in the process of hazardous activities, number of persons to be allowed to work and safeguards to be followed and monitoring compliance of such safeguards.

In a recent order dated 3.2.2021 in OA 85/2020, *Aryavrat Foundation vs. Yashyashwi Rasayan Pvt Ltd*, the Tribunal observed

“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. 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...

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.

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.”

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14. *Further, there is need for review at highest level in the State. We direct the Chief Secretary, Tamilnadu to hold a meeting with all the concerned stake holders, as identified by the Committee in the table in the report quoted above, titled ‘Remedial Measures to Prevent Accidents’, within one month. **After necessary deliberations, appropriate remedial measures be identified to avoid recurrence of such incidents in future. The same may be implemented through the District Magistrate or any other appropriate authority as per law, which may be overseen by the Chief Secretary. The State PCB may incorporate appropriate conditions in consents including prohibiting use of banned chemicals, compliance of 1989 and 1996 Rules. Further, mechanism to ensure taking of insurance policies covering risk to life and health of all workers and others likely to be affected by fire or other accidents. Mechanism may provide monitoring of compliance and stopping activities of units not following laid down sops and regulations. Substance of this order and regulatory measures may be published in local area in vernacular language for information of local inhabitants to facilitate information and compliance.”***

6. We are of the view that in view of prima facie violation of environmental laws, victims are required to be compensated under section 15 of the NGT Act. However, before passing a final order in the matter, it is necessary to have authentic information about the factual position of the nature of activity and nature of violation of law. It is also necessary to require compliance of safety norms to avoid such incidents in future.

7. Accordingly, we direct a joint Committee of CPCB, DPCC, District Magistrate, West Delhi, Director, Industrial Safety and Health and DCP, Outer Delhi to ascertain the cause of the incident, the status of compliance of the provisions of Water Act, Air Act and the Environment (Protection) Act, 1986 or any other relevant laws on the subject and remedial measures for compensating the victims and steps to prevent such incident in future. The Committee may particularly ascertain whether any hazardous inflammable material was stored in the premises. CPCB and DPCC will be the nodal agency for coordination and compliance. First meeting of the Committee may be held within one week. The Committee may visit the site and interact with the stakeholders, including the owner of the unit. Except for site visit, the Committee will be free to conduct proceedings online. It may take assistance of any other individual or institution for collecting all relevant Information. It may also consider the information on internet but verify the same. Information may also be taken from concerned authorities to whom the unit may have applied for any license/registration, including the trademark authorities, from the owner as well as the workers who were rescued. Following information is available on the internet with regard to the unit² in question:

² <https://m.indiamart.com/apekshainternational/about-us.html>

*“Nature of Business: Exporter and Manufacturer
Additional Business: Exporter
Company CEO: Pankaj Garg
Total Number of Employees: 51 to 100 People
Year of Establishment: 2006
Legal Status of Firm: Individual - Proprietor
Annual Turnover: Rs. 50 Lakh - 1 Crore”*

8. However, the Committee may collect facts independently. The report may be furnished within one month 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. This order will not affect the pending criminal proceedings.

A copy of this order be forwarded to CPCB, DPCC, District Magistrate, West Delhi, Director, Industrial Safety and Health and DCP, Outer Delhi by e-mail for compliance.

List for further consideration on 07.09.2021.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

M. Sathyanarayanan, JM

Brijesh Sethi, JM

Dr. Nagin Nanda, EM

July 22, 2021
Original Application No. 171/2021
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