

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

Original Application No. 95/2018
(M.A. No. 1029/2018)

Aryavart Foundation

Applicant(s)

Versus

M/s Vapi Green Enviro Ltd. & Ors.

Respondent(s)

Date of hearing: 11.01.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Raj Panjwani, Senior Advocate with Dr. Surender Singh Hooda, Advocate

For Respondent (s): Mr. M.S. Kalra, Advocate for R-1
Mr. Shlok Chandra with Mr. Ritesh Kumar Sharma, Advocates for CPCB
Mr. Dhruv Pal, Advocate for GPCB

ORDER

1. The issue for consideration in this matter is discharge of untreated/partially treated trade effluents by more than 500 industrial units in Vapi Industrial Cluster into Daman Ganga River in District Valsad in Gujrat which meets the Arabian Sea. The effluents comprise of untreated coloured chemical liquids. Apart from Daman Ganga River, the other water body in which effluents are discharged is the *Bill Khadi* (a drain) which also falls into the Arabian Sea.
2. Case of the Applicant is that Common Effluent Treatment Plant (CETP) is being operated in the area by Respondent No. 1, M/s. Vapi Green Enviro Limited (Old name - Vapi Waste & Effluent Management Co. Ltd.) reportedly since 01.01.1997. The impact of discharge is serious threat to the aquatic life in the river as well as in the sea.

3. A study was carried out in February 2017 by the National Environmental Engineering Research Institute (NEERI). It was found that:

"The fish bioassay study on the final treated effluent sample discharged from Vapi CETP into the river indicates 100% mortality at 50, 75 and 100% waste water concentrations within 24 h exposure time (Plate 4.56). The experimental results presented in Table 9.6 reveal toxic nature of the treated effluent from Vapi CETP. Thus, it can be concluded from the fish bioassay study that the final treated effluent from Vapi CETP with high colour intensity, organic and inorganic matters is having toxic effect on aquatic life of Daman Ganga River. Therefore, Vapi CETP effluent must be treated adequately to remove the pollution parameters before discharging into Daman Ganga River."

"The final treated effluent discharge from the existing Vapi CETP (D-11A) has not only caused deterioration of the river water quality with respect to the colour and recalcitrant parameters but also has imparted toxic effect on aquatic life of Daman Ganga River (segment-II). Therefore, Vapi CETP must be scientifically upgraded for colour and recalcitrant pollutants removal including reject management with a final aim of achieving zero liquid effluent discharge as delineated under Section 11.0. This will result in recovery of good quality water, which can be reused as process water by the industries, leading to fresh water conservation."

4. Further case set out in the application is that Respondent No. 2, Gujarat Pollution Control Board (GPCB), carried out inspection and tested the water quality from P-Equalization Tank (Inlet) on 25.10.2017 and found that the same was not meeting the standards. Samples were also taken from overflow of primary clarifier (Inlet) and the storage tank and similar results were noticed. Tests were also carried out on 06.11.2017, 28.11.2017, 07.12.2017, 27.12.2017, 30.12.2017, 23.01.2018, 29.01.2018, 31.01.2018 and 05.02.2018 and same results were found. From the final outlet also similar results were seen on 27.12.2017, 30.12.2017, 23.01.2018 and 29.01.2018.
5. GPCB issued show cause notice dated 25.10.2017 and 01.11.2017 and direction under Section 33A of the Water (Prevention and Control

of Pollution) Act, 1974 requiring steps to be taken so that inlet and outlet norms are maintained. Applicants have annexed letter of the GPCB dated 23.12.2013 under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 to the CETP unit for renewing consent to operate for the CETP for the period upto 06.09.2018, subject to the norms laid down therein being maintained. The letter specifies the standards of inlet to be met by the units as well as outlet for which CETP is responsible. Various steps/reports from October 2017 onwards, however, show that the prescribed norms were not maintained.

6. The applicant accordingly seeks direction for taking appropriate steps, including up-gradation of CETP, restraining the CETP from receiving effluents from member units not conforming to the norms, recovering cost of damage to the environment.
7. The application was filed before this Tribunal on 26.02.2018 and notice was issued.
8. The parties appeared before the Tribunal including the CETP operator, GPCB, MoEF&CC, Gujarat Industrial Development Corporation (GIDC) and the Central Pollution Control Board (CPCB). Due opportunity has been given to file pleadings.
9. The Respondent No. 1, CETP operator for the industrial area of Vapi has stated that the CETP was commissioned in the year 1997. By 2001, all waste water generated in the industrial area was linked to the CETP. It also caters to the domestic sewage. It has complied with the earlier directions of NGT, Pune Bench in O.A. No. 109/2014, order dated 01.04.2014 to lay pipeline from existing discharge point to downstream 4.5 km. It is maintaining discharge norms. The

discharge was on the higher side as tanks had not been cleaned for many years.

10. The GPCB has referred to the order of the NGT dated 01.04.2014 in O.A. No. 34/2013 directing the Respondent no. 1 to maintain the laid down standards of effluent discharge. The industrial units were directed to set up/up-grade treatment plants. The GPCB was directed to use Bank Guarantee regime for improvement in pollution control systems.
11. The GPCB further submitted that the Vapi industrial estate is spread over 1117 hectares and is largest industrial area in Asia. It has industrial units of small, medium and large size in diverse sectors, such as Chemicals, Pharmaceuticals, Pesticides, Dyes & Dyes Intermediate and Pulp & Paper. There is substantial consumption of water in the production processes and resultantly there is discharge of effluents. The CETP was set up in the year 1997 and is operated by Respondent No. 1. The industrial units are required to do basic treatment of their effluents in their own premises which refers to Primary Effluent Treatment Plant (PETP). The Respondent No. 1 collects effluents through underground pipeline network and after primary, secondary and tertiary treatment at CETP, discharges effluents into Daman Ganga River at designated place. Each member industry is to provide basic treatment facilities to meet CETP inlet norms. Five hundred and nineteen (519) industrial units are members of CETP. Due to unsatisfactory treatment of effluents by CETP, and also based on Comprehensive Environmental Pollution Index (CEPI), Vapi industrial cluster was declared critically polluted Area on 13.01.2010. Major up-gradation was undertaken by the CETP by investing Rs. 464 Crores which led to improvement in the quality of effluent discharge. Accordingly, vide order dated 25.11.2016, the MoEF&CC lifted the moratorium on setting up of new

industries and expansion of existing industries. Certain industries have been identified as generating high COD. Common spray dryers have been developed in March 2018.

12. On earlier hearing, the Tribunal had before it the Order dated 01.04.2014 in O.A. No. 34/2013 of this Tribunal which showed that the CETP was not satisfactorily working.¹ There was need to take innovative enforcement measures by the GPCB.² It was held therein that though the Pollution Control Board could not apply the of “Polluter Pays” Principle as a punitive measure, it could take Bank Guarantee for non-compliance for ensuring improvement since the CETP was continuously not meeting the norms and such norms could not be relaxed.³ The CPCB in its reply dated 25.04.2018 stated that average value of inlet and outlet were not as per norms.⁴

13. In view of above, on 29.08.2018, the Tribunal directed the GPCB to take appropriate action in accordance with law in the matter for failure of mandatory requirements laid down by the Hon’ble Supreme Court in *Paryavaran Suraksha Samiti and Ors. vs. Union of India (UOI) and Ors.*⁵, for operational and effective ETPs. CPCB was to oversee the compliance of the order and action taken report was required to be filed.

14. In compliance of above order, the GPCB and the CPCB have filed their reports. The GPCB in its report dated 28.09.2018 states as follows:

“It is observed that Inlet quality - COD, NH₃-N and TSS are not meeting with inlet norms whereas COD and TSS at outlet of CETP are not meeting with Outlet norms.

CPCB, RD, Vadodara carry out quarterly monitoring of CETP, Vapi. The latest monitoring carried out on 11.08.2018 and results are provided at Annexure-III. It is observed that Inlet quality - TSS, FDS, BOD, COD and NH₃-N are not meeting

¹ Para 5

² Para 23

³ Para 32 & 33

⁴ Para 10

⁵ (2017) 5 SCC 326

with inlet norms whereas TSS, FD, COD, NH₃-N & Phenols at outlet of CETP are not meeting with outlet norms.

M/s VGEL (CETP) reportedly takes internal actions among the defaulting member units as per M/s VGEL monitoring but so far not provided the list of defaulting industries to GPCB though it is expected as per the Hon'ble NGT Order dated 29.08.2018, and also as per notices of direction issued by GPCB.

M/s VGEL (CETP) has not provided any action plan to comply with both inlet as well as outlet norms during the above review.”

15. GPCB has also stated that it has issued notice under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 for up-gradation of the CETP to achieve the standard of discharge and till then to take preventive action.

16. There is also a report dated 10.01.2019 of inspection carried out on 03.01.2019. The inspection team at the time of inspection comprised Regional Director, CPCB,-; Scientist-D, CPCB,-; Unit Head-Vapi, GPCB,-; Regional Officer, GPCB,-; AEE, GPCB, -; AGM, (Process) and CEO, VGEL(CETP) Vapi, -; three Directors of VGEL, Vapi and President Director, VIA, VGEL, Vapi

17. The frequency of compliance and non-compliance in the context of BOD, COD, NH₃N and TSS are as follows:

BOD			
<i>Inlet</i>		<i>Outlet</i>	
<i>Compliance</i>	<i>Non-compliance</i>	<i>Compliance</i>	<i>Non-compliance</i>
12	1	6	7
COD			
<i>Inlet</i>		<i>Outlet</i>	
<i>Compliance</i>	<i>Non-compliance</i>	<i>Compliance</i>	<i>Non-compliance</i>
0	13	3	10
NH3-N			
<i>Inlet</i>		<i>Outlet</i>	
<i>Compliance</i>	<i>Non-compliance</i>	<i>Compliance</i>	<i>Non-compliance</i>
0	13	9	4
TSS			
<i>Inlet</i>		<i>Outlet</i>	
<i>Compliance</i>	<i>Non-compliance</i>	<i>Compliance</i>	<i>Non-compliance</i>
4	9	6	7

18. As noted earlier, notice under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 was issued to the CETP while internal action is to be taken by the CETP itself.
19. We have heard the learned Counsel for the parties.
20. Learned Counsel for the applicant submitted that discharge of untreated effluents is beyond any doubt from the reports to which not only CPCB and GPCB but also the representatives of the CETP are party. The CETP operator, the polluting units and the GPCB may be made accountable for preventive and remedial steps, including punitive action and recovery of damages for restoration of the environment and by way of deterrent action.
21. Learned Counsel for Respondent No. 1 submitted that the operator of CETP is taking all such steps as are possible and no direction is called for. Learned Counsel for GPCB has not disputed the inspection reports which clearly demonstrates that the standards are not being met. On that basis, the GPCB has already issued notice to the CETP as well as to some of the industrial units for remedial actions. Thus, the GPCB has done its job. Learned Counsel for CPCB submitted that in view of the report of inspection carried out on 03.01.2019, CETP as well as the industrial units are clearly proved to be non-compliant with the laid down parameters for which appropriate directions may be issued by this Tribunal. There is continued failure of enforcement of law.
22. The questions that arise for consideration are as follows:
- i. Whether the CETP operator and its member units have failed to comply with the conditions of consent and norms of environment and caused pollution? If so, the manner in which they are to be held accountable?

- ii. Does the functioning of CETP in the present case and of CETPs in general in the country calls for review and modification?
- iii. Whether the State Pollution Control Board in the present case and regulatory authorities have not performed their duties as per the expectation and if so, what are the steps necessary to achieve the objects for which the Pollution Control Boards/Committees have been constituted under the Water Air and the Air Act?
- iv. What are the conclusions and what are the directions required to be issued by this Tribunal?

23. We now proceed to deal with the questions for consideration seriatim.

Re (i): Whether the CETP operator and its member units have failed to comply with the conditions of consent and caused pollution? If so, the manner in which they are to be held accountable?

24. We have reproduced the reports of inspections dated 28.09.2018 and 10.01.2019 clearly showing the CETP as well as the industrial units to be non-compliant. In support of the said reports, test reports have also been annexed. There is no reason to doubt the veracity of reports of inspections conducted by the joint team of representatives of CPCB, GPCB and the CETP operators. Thus, it is concluded that the CETP operator and the member units generally have failed to comply with the environmental norms for which they are held to be accountable.

25. Though, there are observations in order dated 01.04.2014 by the two-member Pune Bench of this Tribunal referred to earlier, that “Polluter Pays” principle cannot be invoked as a punitive measure and only ‘Precautionary Principle’ of requiring Bank Guarantee can be applied, the said view is in ignorance of the binding legal precedents in the judgment of the Hon’ble Supreme Court⁶ which lay down that

⁶ Indian Council for Enviro Legal Action & Ors. v. Union of India & Ors. (1996) 3 SCC 212 Para 16, Vellore Citizens Welfare Forum v. Union of India & Ors. (1996)5SCC647 Para 12 to 18 - holding that ‘Polluter Pay’ principle is

'Polluter Pays' principle is ingrained in the environmental jurisprudence of the country as well as statutory mandate under Section 20 of the NGT Act, 2010. This was considered in the recent order of the Tribunal (by four Member Bench) in *Paryavaran Suraksha Samiti and Anr. Vs. Union of India & Ors.*⁷, *Parveen Kakar & Ors. Vs. Ministry of Environment & Forests & Ors.*⁸ and in *News Item published in "The Asian Age" Authored by Sanjay Kaw titled "CPCB to rank industrial units on pollution levels"*⁹ wherein this Tribunal held that:

"11. Needless to say that it will be open to the SPCBs/Committees and CPCB to take coercive measures including recovery of compensation for the damage to the environment on 'Polluter Pays' principle as well as also to direct taking of such precautionary measures as may be necessary on the basis of 'Precautionary principle'."

26. This Tribunal has to follow principles of natural justice if it is to finally assess the damages. The Tribunal can also require the statutory authorities to perform their duty in the matter. We have heard the CETP operators but we have not heard the individual industrial units though CETP represents such units. The reports indicate deficiency in inlet as well as outlet which is evidence of failure of CETP operators as well as individual industrial cluster. Thus, there is objective material available to act against both- CETP operator and individual units. While on proved facts, interim arrangement is proposed, statutory authorities may finally determine the extent of accountability of the industrial units and such units may be given opportunity of hearing by the SPCB and the CPCB. To enable this to be done, we propose to constitute a Committee to hear

accepted principle and part of environmental law of the country, even without specific statute. *M.C. Mehta v. Union of India & Ors.*, W.P.(C) No. 13029/2015 order dated 24.10.2017 of Supreme Court of India

⁷ O.A. No. 593/2017 Order dated 03.08.2018: The Tribunal directed CPCB to take penal action against those accountable for failure in setting up CETPs/ETPs/STPs and to recover compensation for damage to the environment.

⁸ O.A. No. 661/2018, Order dated 08.01.2019: The Tribunal stated that the Pollution Control Board had failed to perform its duties in taking statutorily mandated coercive measures under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 and 33B of the Water (Prevention and Control of Pollution) Act, 1974 or initiating prosecution. This Tribunal directed CPCB to exercise its statutory powers to determine and recover damages for violation of environmental norms by the respondent therein.

⁹ O.A. No. 1038/2018, Order dated 13.12.2018.

individual polluting units not meeting the norms and to quantify the amount of liability on “Polluter Pays” principle which can clearly be invoked by the regulatory body to enforce pollution norms not only as a ‘Precautionary Principle’ but also as remedial action if the unit is found to be polluting and not meeting the prescribed norms. Any other interpretation would grant immunity to the polluters and will not be conducive to the protection of the environment. We answer the question accordingly.

Re(ii): Does the functioning of CETP in the present case and of CETPs in general in the country calls for review and modification?

27. CETP Scheme was developed primarily to meet specific objectives under the Environment (Protection) Rules, 1986. It has, however, been found that inspite of setting up of CETPs, the environmental norms have not been maintained at several places in the country. The MoEF&CC itself imposed a moratorium for grant of permissions for setting up of industries in critically polluted areas/industrial clusters identified by the CPCB as shown by letter dated 25.11.2016. Time bound action plans were required to be prepared for improvement of environment quality in such clusters/areas. Moratorium was, thereafter, lifted in respect of certain clusters from time to time based on CEPI score subject to certain conditions.
28. The recent experience shows that situation at several places in the country is far from being satisfactory. This Tribunal has taken cognizance of the serious pollution caused on account of failure of CETPs vide order dated 13.12.2018 in *News Item published in “The Asian Age” Authored by Sanjay Kaw titled “CPCB to rank industrial units on pollution levels”*. It was noted that 43 industrial clusters in 16 States were identified as Critically Polluted Areas and 32 industrial clusters were categorized as Seriously Polluted Areas. In 2017-18, the number of identified polluted industrial clusters went

upto 100. Accordingly, the Tribunal directed the State Pollution Control Board to finalize time bound action plan to restore the environmental quality as per norms laid down by the CPCB and directed CPCB and SPCBs /PCCs to take coercive measures against the violators on the basis of 'Precautionary Principle' and 'Polluter Pays' principle.

29. This apart, in *Arvind Pundalik Mhatre v. Ministry of Environment, Forest and Climate Change & Ors.*¹⁰ the CETP was found not fully functional and effluents were being discharged at Taloja in the river *Kasaradi*. This Tribunal directed imposition of an amount of Rs. 5 Crores for severe impact on environment on account of non-functioning of the CETP resulting in imminent danger to the life of local population.

30. In *Rashid Ali Warsi Vs. UPSIDC & Ors.*¹¹, the Tribunal dealt with discharge of untreated effluents by textile units in Tronica City, Ghaziabad. CETP was not functional to the extent of requisite capacity and operating without valid consent. Member industries of CETP were directed to comply with PETP standards as prescribed by UPPCB.

31. In *Sidhgarbyang Kalyan Sewa Samiti, Sitargang, District – Udham Singh Nagar Vs. State of Uttarakhand & Ors.*¹², the Tribunal dealt with pollution in Sitarganj by industries. The STPs/CETP were not functional and untreated effluents and hazardous chemical were being discharged in open drain. It was noted that CETP was working without valid Consent to Operate (CTO). CPCB was directed to carry out fresh inspection of the CETP and the industries. The State PCB

¹⁰ O.A. No. 125/2018 Order dated 11.07.2018

¹¹ O.A. No. 317/2015 Order dated 13.11.2018

¹² O.A. No. 123/2018 Order dated 13.11.2018

was directed to take appropriate legal action against CETP and erring industries.

32. In *Indian Council for Enviro-Legal Action & Ors. Vs. Jammu and Kashmir State Pollution Control Board & Ors.*¹³, the Tribunal considered discharge of effluents by industries in river Basantar, Jammu. The industries were operating without valid consent. There was delay in establishment of CETP and STP. As a result, untreated sewage waste and effluents were discharged in the river. The SIDCO and Municipal Council were held liable to pay compensation for restoration of environment and failure in installing STPs respectively.
33. In *Paryavaran Suraksha Samiti and Anr. Vs. Union of India & Ors.*¹⁴, the Tribunal dealt with the issue of establishment and functioning of CETPs/ETPs/STPs in all the States and the question whether the effluents were treated as per prescribed limits or not. This Tribunal noted the requirements of continuous monitoring of CETPs/ETPs/STPs by the statutory authorities and directed that CPCB to take penal action against those accountable for failure in setting up CETPs/ETPs/STPs and to recover compensation for damage to the environment.
34. In *Stench Grips Mansa's Sacred Ghaggar River (Suo-Motu Case) and Yogender Kumar*¹⁵, the matter dealt with River Ghaggar which had turned into a polluted water body on account of discharge of effluents. The Tribunal noted failure of authorities in taking action against persons responsible for violation of law and directed to constitute Special Task Force to submit action taken report. The Tribunal directed that an action plan be prepared for preventing

¹³ O.A. No. 483/2016 Order dated 22.11.2018

¹⁴ O.A. No. 593/2017 Order dated 03.08.2018

¹⁵ O.A. No. 138/2016 (Case No. 559/19/11/14) and O.A. No. 139/2016 (Case No. 600/19/11/14) (TNHRC) Order dated 07.08.2018

discharge of untreated effluents in the river by setting up CETPs/ETPs/STPs.

35. In *Hero Motocorp Limited Vs. Union of India & Ors.*¹⁶, the Tribunal directed the Uttarakhand Pollution Control Board to regularly monitor the appellant unit for discharge of effluents.
36. From the above, it is clear that there is a large-scale failure of the CETP which calls for an extensive review regarding the functioning of CETPs in the country, reasons for its failure in meeting the prescribed norms and possible solutions to rectify the problems by the MoEF&CC and the CPCB. In the light of this, Expert Committee may be constituted for the purpose and be asked to submit its report in six months. Question No. (ii) is answered accordingly.

Re(iii): Whether the State Pollution Control Board in the present case and regulatory authorities have not performed their duties as per the expected norms and if so, what are the steps necessary to achieve the objects for which the Pollution Control Boards/Committees have been constituted under the Water Air and the Air Act?

37. The test reports compiled by a joint inspection team clearly shows the non-compliance by the CETP and industrial units as already noticed. We have also noted frequent failure of CETP mechanism while considering Question No. (ii). The SPCB has not shown that it took any stringent action as required which can act as deterrent against violation of pollution norms. Simply issuing notice has not brought about the desired results. No closures have been ordered, nor prosecution launched nor other adequate preventive and remedial measures, including assessment and recovery of damages taken. In this respect, there is failure of GPCB. We may only observe that even a regulatory authority may be held accountable if it colludes with polluters by being required to pay damages or errant officers being held liable for action, including prosecution. Frequent failures of

¹⁶ Appeal No. 55/2018 Order dated 27.09.2018

regulatory bodies need to be remedied for meaningful enforcement of environmental norms. This Tribunal in *Threat to life arising out of coal mining in South Garo Hills district Vs. State of Meghalaya & Ors.*¹⁷, held that State machinery is also required to compensate for their negligence and failure which may act as deterrent against the officers who neglected their basic duty of protecting the environment or colluded with the polluters and law violators. The polluters as well as colluding officers are to be made accountable not only by prosecution or closure of industry but also by assessing and recovering such damages for loss to the environment as it may not only compensate the environment or victims but also act as deterrent to prevent further damage.

38. It is well acknowledged that there is serious threat to the environment in this country. Studies show huge number of pollution related deaths and diseases¹⁸. Any violation of laid down environmental norms has to be seriously viewed and sternly dealt with.

39. It was in the year 1974 that the Water (Prevention and Control of Pollution) Act, 1974 was enacted after noticing that problem of pollution of rivers and streams had assumed considerable importance and urgency on account of growth of industries, threatening the sources of drinking water, the aquatic life and sources of irrigation. After considering the Expert Committee reports on the subject, the statutory framework was adopted giving enormous powers to the Pollution Control Boards (PCBs) for closure, prohibition or regulation of any industries operation or process as well as filing of complaints for prosecution. Minimum sentences have been laid down for violation

¹⁷ O.A. No. 110(T_{HC})/2012 Order dated 04.01.2019 para 28-29

¹⁸ https://niti.gov.in/writereaddata/files/new_initiatives/presentation-on-CWMI.pdf India ranks 120th in 122 countries in Water Quality Index as per Niti Ayog Report, <https://www.thehindu.com/sci-tech/energy-and-environment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece> Most pollution-linked deaths occur in India, <https://www.hindustantimes.com/india-news/delhi-world-s-most-polluted-city-mumbai-worse-than-beijing-who/story-m4JFT063r7x4Ti8ZbHF7mM.html> Delhi's most polluted city, Mumbai worse than Beijing as per WHO; http://www.un.org/waterforlifedecade/pdf/global_drinking_water_quality_index.pdf WHO Water Quality Index.

of the norms. Polluter Pays Principle is an accepted norm within the purview of regulatory regime. The statutory functions of the PCBs, include programs for prevention, abatement and control of pollution and exercise all incidental powers. The CPCB has powers to issue directions to the State Boards. Needless to say, that similar provisions have been made for protection of air quality under the Air (Prevention and Control of Pollution) Act, 1981 as well as for other environmental issues under the Environment (Protection) Act, 1986.

40. As already noted, the SPCB is equally accountable for its failure and in appropriate cases can be prosecuted for conspiracy or collusion with other offenders causing pollution. The pollution cannot be allowed to be profitable activity and deterrent action must be taken wherever pollution is found so as to render causing of pollution unprofitable and unacceptable to prevent damage to the health and lives of the citizens. Any polluter must be subjected to heavy and deterrent economic sanctions. Unfortunately, this is not happening as expected for which failure the regulatory authority cannot disown their responsibility.

41. We note that the State of Environment in the country, even as per official figures, is alarming. As many as 351 river stretches have been declared to be polluted by the CPCB. Vide order dated 20.09.2018 in *Original Application No. 673/2018, News item published in 'The Hindu' authored by Shri. Jacob Koshy Titled "More river stretches are now critically polluted: CPCB"*, this Tribunal considered the issue of such polluted stretches and noticed the directions of the Hon'ble Supreme Court from time to time for stopping discharge of untreated sewage and effluents in water bodies. Such discharge causes serious diseases, including Cholera and Typhoid. Sewage treatment capacity was disproportionate to the sewage generated. As per some studies noted in the order, 75 to 80% water is polluted in India. Pollution of

River Yamuna¹⁹, Ganga²⁰, Hindon²¹, Ghaggar²², Sutlej and Beas²³, Son²⁴, Subarnarekha²⁵, Ami²⁶ were also noted. The States were directed to prepare action plans to make the water of the polluted river stretches atleast fit for bathing within six months from the dates of preparation of approved action plans. When the matter was reviewed on 19.12.2018, it was found that only 16 States had prepared action plans, most of which were not complete. The direction was issued for payment of environmental compensation per month by every State/UT for failure to prepare action plan and also to furnish Performance Guarantees for execution of the action plans within the stipulated time.

42. This Tribunal in *News Item Published in "The Times of India" Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15"*²⁷ has dealt with the issue of 102 air polluted cities identified by the CPCB. Taking into account eminent threat to human health as a result of air pollution, this Tribunal directed all the States/UTs with non-attainment cities to prepare action plans for bringing down the standards of air quality within the prescribed norms within six months. The Tribunal further constituted the Air Quality Monitoring Committee to ensure implementation of such action plans. The CPCB and the SPCBs were entrusted with the responsibility to design a robust nation-wide ambient air quality monitoring program to strengthen the existing monitoring network.

¹⁹ Manoj Mishra Vs. Union Of India O.A. No. 6/2012 order dated 26.07.2018

²⁰ M.C. Mehta vs. Union of India O.A. No. 200/2014 order dated 06.08.2018

²¹ Doaba Paryavaran Samiti vs. State of U.P. and Ors. O. A. No. 231/2014 Order dated 08.08.2018

²² Stench Grips Mansa's Sacred Ghaggar River (Suo-Motu Case) and Yogender Kumar O.A. No. 138/2016 Order dated 07.08.2018

²³ Sobha Singh and Ors. Vs. State of Punjab and Ors. O.A. No. 916/2018 Order dated 14.11.2018

²⁴ Amarshakti vs. State of Bihar and Ors. O.A. No. 596/2016 Order dated 24.08.2018

²⁵ Sudarsan das vs. State of West Bengal and Ors. O.A. No. 173/2018 Order dated 04.09.2018

²⁶ Meera Shukla vs. Municipal Corporation, Gorakhpur and Ors. O.A. No. 116/2014 Order dated 25.10.2018

²⁷ Original Application No. 681/2018 Order dated 08.10.2018

43. In re: *Compliance of Municipal Solid Waste Management Rules, 2016*²⁸, the Tribunal directed preparation of action plans for solid waste management consistent with the Solid Waste Management Rules, 2016 in view of the fact that as per annual report of the CPCB prepared in April 2018, most of the States were not complying with the statutory rules.

44. As already noted earlier, this Tribunal considered the matter of polluted industrial clusters in *News Item published in "The Asian Age" Authored by Sanjay Kaw titled "CPCB to rank industrial units on pollution levels"* vide order dated 13.12.2018. It was noted that 43 industrial clusters in 16 States were identified as Critically Polluted Areas and 32 industrial clusters were categorized as Seriously Polluted Areas. In 2017-18, the number of identified polluted industrial clusters went upto 100. Accordingly, the Tribunal directed the State Pollution Control Board to finalize time bound action plan to restore the environmental quality as per the norms laid down by the CPCB and directed CPCB and SPCBs to take coercive measures against the violators on the basis of 'Precautionary Principle' and 'Polluter Pays Principle'.

45. In *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.*²⁹, the Hon'ble Supreme Court noted that the State Pollution Control Boards (SPCBs) continued to be manned by persons not having expertise or

²⁸ Original Application No. 606/2018 Order dated 31.08.2018

²⁹ (2018) 11 SCC 734 para 3-4, 28-34: The judgment takes into consideration various Committees appointed laying down guidelines for the functioning of SPCBs viz.,

- (a) Bhattacharya Committee (1984) proposed that the structural organization of SPCBs should consist of technical services, scientific services, planning, legal services, administrative services, accounts, training cell and research and development.
- (b) The Bellappa Committee (1990) - Recommended (i) introducing elaborate monitoring, reporting and organizational systems at the national level along with four regional centres and one training cell in each Board, (ii) effecting suitable changes in the Boards recruitment policy to enable them induct persons with suitable academic qualifications, and (iii) ensuring that the Chairman and Member-Secretary are appointed for a minimum of three years.
- (c) The Administrative Staff College of India (1994) - Recommended, inter alia, that (i) the SPCBs be reoriented for implementing the instrument mix of legislation and regulation, fiscal incentives, voluntary agreements, information campaigns and educational programmes.
- (d) The Menon Committee - Recommending that the State Governments should not interfere with recruitment policies of the SPCBs, especially where the Boards are making efforts to equip their institutions with more and better trained engineering and scientific staff.

professional experience. The State Governments were not able to appoint qualified, impartial, and politically neutral persons of high standing to the crucial regulatory posts. Political appointments were being made in blatant violation of Apex Court guidelines to debar favorable persons being appointed.³⁰ The appointments being made did not inspire the confidence of the people. The Hon'ble Supreme Court directed all the States to frame guidelines and recruitment rules within six months. It may be pertinent to lay emphasis on the following observations of the Hon'ble Supreme Court in the aforesaid judgment:

“Unless corrective measures are taken at the earliest, the State Governments should not be surprised if petitions are filed against the State for the issuance of a writ of quo warranto in respect of the appointment of the Chairperson and members of the SPCBs. We make it clear that it is left open to public spirited individuals to move the appropriate High Court for the issuance of a writ of quo warranto if any person who does not meet the statutory or constitutional requirements is appointed as a Chairperson or a member of any SPCB or is presently continuing as such.”

46. In addition to this, the Parliamentary Standing Committee on Science and Technology, Environment and Forest, August 2012 in its recommendations on the working of the SPCBs was perturbed to note that the SPCBs were not performing their duties vigilantly and recommended that MoEF&CC must ensure proper and effective coordination between the CPCB and SPCBs and take necessary steps to make the Pollution Control Boards functional and ensure that the discharge their duties effectively and efficiently.³¹

³⁰ *Ibid.* The judgment notes the report of the Tata Institute of Social Sciences published in 2013 titled “Environmental Regulatory Authorities in India: An Assessment of State Pollution Control Boards” which stated about the appointments to the SPCBs that time and again across state governments have not been able to choose a qualified, impartial, and politically neutral person of high standing to this crucial regulatory post. The recent appointments of chairpersons of various State Pollution Control Boards are in blatant violation of the Apex Court guidelines. The primary lacuna with this kind of appointment was that it did not evoke any trust in the people that decisions taken by an ex-official of the State or a former political leader, appointed to this regulatory post through what appeared to be a totally non-transparent unilateral decision. Many senior environmental scientists and other officers of various State Pollution Control Boards have expressed their concern for appointing bureaucrats and political leader as Chairpersons who they feel not able to create a favourable atmosphere and an effective work culture in the functioning of the Board.

³¹ Accessible at:
<http://164.100.47.5/newcommittee/reports/EnglishCommittees/Committee%20on%20S%20and%20T,%20Env.%20and%20Forests/230.pdf>

47. During the hearing it was stated by the learned Counsel for the GPCB that guidelines in terms of *Techi Tagi Tara* (supra) have been issued and thus, the judgment has been complied with. However, he has not been able to dispute that the persons appointed are not having technical or professional qualifications or background as expected.
48. This Tribunal, on 20.07.2018, in *Satish Kumar vs. U.O.I & Ors.*³² also observed that persons of judicial background may be required in key position in PCBs as several functions of the SPCBs are quasi-judicial.
49. The order of this Tribunal dated 07.08.2018 in *Stench Grips Mansa's Sacred Ghaggar River (Suo-Moto Case)*³³ noted that a task force must be constituted in every district and State to give reports on the environmental issues which should be published on the websites.
50. The Tribunal in the order on 08.08.2018 in *Doaba Paryavaran Samiti Vs. State of U.P. & Ors.*³⁴ noted that statutory authorities had miserably failed and were required to be held accountable for their failure.
51. In view of the fact clean environment, apart from other statutory provisions, is a mandate of Article 21 of the Constitution, causing of pollution having serious implications on health of the citizens cannot be accepted and no responsible authority could simply throw its hands in despair.³⁵
52. Thus, there being far from satisfactory governance on the part of the SPCBs, as depicted by the compiled data, resulting in large number of deaths and diseases in the country, remedial measures are required. Lack of effective governance in the present case is patent from absence of steps for prosecution of the guilty persons or recovery of

³² O.A No. 56 (THC) of 2013

³³ O.A. No. 138/2016 (T_{NHRC})

³⁴ O.A. No. 231/2014

³⁵ *Supra* note 18

damages for restoration of the environment which is primary responsibility of the SPCB. Appointment process does contribute to such ineffectiveness.

53. There is, thus, urgent need to review the qualification and appointment procedure so as to realistically comply with the mandate of the judgment of the Hon'ble Supreme Court. There is also need to carry out performance audit of functioning of all the Pollution Control Boards and Pollution Control Committees in the country and to identify remedial steps required in manning and functioning of SPCBs and PCCs or otherwise. Unless strong effective regulatory regime is in place, and shortcomings identified and remedied to expect clean environment would be unrealistic and merely a dream.

Re(iv): What are the conclusions and what are the directions required to be issued by this Tribunal?

54. The above observations lead us to conclude as follows:

- i. CETP operator and the concerned industrial units have failed to comply with the pollution norms and are required to be made accountable for their failure within the framework of the regulatory regime with the assistance of experts making the CPCB as nodal agency to determine the extent of damage caused to the environment and cost of restoration.
- ii. The CETP and polluting industrial units must be required to deposit an interim amount for damage to the environment and for the cost of restoration pending further orders to be passed in the light of Expert Committee Report proposed to be constituted.
- iii. Functioning of CETP in the country generally calls for review in view of the fact that there are large number of failures in the existing CETP mechanism, as earlier noted. The abovementioned cases cannot be taken to be only isolated

cases. As many as 100 industrial clusters have been identified by the CPCB itself as critically polluted which supports the need for review.

- iv. The regulatory regime in the form of SPCBs has not been as effective as expected as noted by the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors.* (supra). This is partly on account of appointments not being upto the mark as well as absence of audit of performance and monitoring mechanism. This needs to be remedied in light of performance audit and study by an Expert Committee.

55. Accordingly, we direct as follows:

- (i) We direct constitution of following Committee to assess the extent of damage and cost of restoration of the environment and individual accountability of CETP and polluting industrial units:

- a) Representative of CPCB.
- b) Representative of IIM, Ahmadabad.
- c) Nominee of IIT, Ahmadabad.
- d) Scientist nominated by NEERI.
- e) Representative of GPCB.

- (i.a) The Committee may give its report within three months. The Committee will be entitled to take any factual or technical inputs in the manner found necessary. CPCB will be the nodal agency for the purpose. The Committee may also suggest steps for restoration of the environment.

- (i.b) The Committee may give hearing to the CETP operator and the units identified as polluting by the GPCB for which list will be furnished by the GPCB to the Committee indicating the period and nature of default within one month.

- (i.c) The GPCB may inform the defaulting units for compliance of this order.
- (i.d) The Committee may also consider data already available with it since the affidavit filed by the CPCB does indicate availability of such data with the CPCB.
- (i.e) The GPCB may also consider exercise of its statutory powers of prosecution which power is coupled with duty.
- (ii) Having regard to entirety of factual situation in the present case, we direct that except the green and white categories of industries, other category of defaulting industries connected to the CETP must make deposit with the CPCB, towards interim compensation within one month as follows:
- a) Large Industries – Rs. 1 Crore each.
 - b) Medium Industries – Rs. 50 Lakhs each.
 - c) Small Industries – Rs. 25 Lakhs each.
- (ii.a) The CETP may deposit a sum of Rs. 10 Crores with the CPCB towards interim compensation within one month.
- (iii) The amount may be utilized by the CPCB for restoration of the environment.
- (iv) The CPCB shall undertake jointly with GPCB extensive surveillance and monitoring of CETPs and at regular interval of three months and submit its report to this Tribunal.
- (v) We direct constitution of following Committee to review the functioning of the CETP in the country and to suggest modifications, if necessary:
- a) Representative of the MoEF&CC.
 - b) Representative of the CPCB.

- c) Representative of NEERI.
- (v.a) The representative of the CPCB will be the nodal agency. The report may be furnished within three months.
- (vi) The CPCB may conduct Performance Audit of all the SPCBs and Pollution Control Committees (PCCs) within six months by constituting appropriate expert inspection teams and furnish a report to this Tribunal. The CPCB may consider making Performance Audit at suitable intervals a regular feature of its working.
- (vii) We direct the MoEF&CC to constitute a three-member Expert Committee to consider steps to be taken to comply with the mandate of directions of the Hon'ble Supreme Court in *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors. (supra)* and suggestions for improvement, if any to remedy the existing deficiencies in the effective functioning of the regulatory bodies for meaningful protection of the environment.
- (vii.a) The Committee may suggest guidelines for functioning of the SPCBs and broad steps required for bringing air and water quality in polluted stretches and cities and industrial clusters and coastal/eco-sensitive zones within the prescribed norms and measures to be adopted, including recovery of damages, prosecution of offenders, restitution of contaminated and degraded environmental sites.
- (vii.b) The report of the Committee may be furnished before the next date.
- (viii) The CPCB may consider issuing appropriate directions in exercise of its statutory powers in the light of expert studies which may be carried out.

56. Copy of the order may be sent to CPCB by email and all reports in pursuance of the above directions be sent to this Tribunal at filing.ngt@gmail.com

List for further consideration on 19.08.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 11, 2019
Original Application No. 95/2018
DV

