

Item Nos. 03 to 06

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
(Through Video Conferencing)**

Appeal No. 174/2018  
(Earlier Appeal No. 59/2013 (SZ))  
WITH  
Appeal No. 175/2018  
(Earlier Appeal No. 60/2013 (SZ))  
WITH  
Appeal No. 172/2018  
(Earlier Appeal No. 20/2014 (SZ))  
WITH  
Appeal No. 173/2018  
(Earlier Appeal No. 21/2014 (SZ))

Shri Vijayaraghava Reddy & Ors.

Appellant(s)

Versus

Graphite India Limited & Ors.

Respondent(s)

With

Shri Bony Verghese K Oommen

Appellants (s)

Versus

Graphite India Limited & Ors.

Respondent(s)

With

Vijay Raghav Reddy

Appellants (s)

Versus

M/s. Graphite India Limited & Ors.

Respondent(s)

With

Vijay Raghav Reddy

Appellants (s)

Versus

M/s. Graphite India Limited & Ors.

Respondent(s)

Date of hearing: 28.01.2019

**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 Appellant(s):

Mr. Sumit Wadhva and Ms. Prena Ben,  
Advocates

For Respondent (s): Mr. V. Ramakrishnan, Sr. Advocate with Ms. Pushpa Menen and Mr. R. Srimathi, Advocates for R-1  
Mr. Gokul Krishnan, Advocate for KSPCB

**ORDER**

1. These appeals are directed against order dated 22.06.2013 passed by the Karnataka State Appellate Authority at Bangalore in appeal numbers 20/2012, 21/2012 and 22/2012 allowing appeals filed by respondent no. 1 i.e. Graphite India Limited, thereby setting aside the orders of closure and refusal of grant consent dated 02.07.2012 and 30.06.2012 respectively issued against it by the respondent no. 2, the Karnataka Pollution Control Board (KSPCB).

2. It is contended that respondent no. 1 industry engaged in manufacturing graphite electrodes, has a plant at ITPL main road, Bangalore, which emits high level of air pollution caused by the graphite dust generated by it which settles on the houses and water sources situated in the vicinity of the industry and is compounded by the vehicular pollution prevalent in the area. The complaints submitted by the appellant resulted in the Karnataka State Pollution Control Board (KSPCB) constituting a Technical Committee which visited the plant of the respondent no. 1 and after hearing the respondent no. 1-industry, several directions were issued for mitigation of the pollution including payment of Rs. 50 lacs and steps to be taken for suppressing fugitive dust emission by the end of April, 2012. The steps included installation of stack emission monitoring devices in all stacks discharging particulate matters. The respondent no. 1 – industry failed to comply with the directions of the Technical Committee leading to several proceedings being instituted by the KSPCB against it and numerous directions issued by the Board that included implementation of the guidelines prepared by the KSPCB. As those directions were not complied with by the respondent no. 1 – industry, the KSPCB, by order dated 30.06.2012, refused grant of

consent and directed closure of the respondent no. 1 – industry. This order was challenged by respondent no. 1 before the Karnataka State Appellate Authority at Bangalore which, upon hearing, allowed the appeal vide order dated 22.06.2013.

3. We need not enter into further details of the case except to observe that the appellant, while assailing the impugned judgment of the Appellate Authority, submitted that the Appellate Authority had overlooked vital relevant facts and glaring evidence of pollution caused by respondent no. 1 as it had been indisputably identified as pollution from graphite. It is contended that pollution caused by graphite industry is clearly distinguishable from vehicular and other pollutions. That apart, severe impact on the health of the residents resulting from graphite particulate matter was not taken into consideration. Various inspections of the industry carried out by the KSPCB and the consequential directions issued by the Board against respondent no. 1 – industry, had also not been given due consideration in passing the impugned judgment. The Appellant, thus, prays for quashing of the impugned order and to uphold the orders dated 02.07.2012 and 30.06.2012 passed by respondent no. 2 – KSPCB.

4. We have heard the learned counsel for the parties and perused the impugned judgment dated 22.06.2013. We find that the impugned judgment is not consensual. Of the three members headed by the Chairman, the third member has differed and has passed a separate dissenting judgment.

5. Upon careful consideration of the judgment passed by the majority of the Members, we find that the reasons assigned for holding the order of the KSPCB to be bad are not backed by any scientific evidence or data. It rather appears to be presumptuous. The crux of the findings of the majority judgment is that the black soot or dust cannot be

attributed to the respondent no. 1 – industry alone as there were other industries including cement industries in the area apart from the heavy vehicular traffic in the vicinity. It has also been held that the KSPCB had not examined the case keeping in view the other likely sources of pollution. The other remarkable observation in the majority judgment is that the residents complaining of the pollution had settled in an industrial area near the industry being fully aware of the pollution that would be caused.

6. The dissenting judgment of Shri Lawrence Surendra, in our view, appear to be more reasonable and based upon scientific data and findings with particular reference to graphite. We may refer to the following portion of the judgment in this regard:-

#### **“4. Graphite Dust and Particulate Matter**

*Scientific literature on graphite dust pollution indicate that while every measure should be taken to capture the dust at the source, it is acknowledge that this is virtually impossible. There is always some form of health concern associated with any type of overexposure and graphite dust is no different. For this reason, exposure guidelines for graphite dust have been determined and identified in the Material Safety Data Sheet (MSDS) and as identified by the American Conference of Governmental Industrial Hygienists (ACGIH), the exposure guidelines for time-weighted average(TWA) for graphite dust cover an 8-hour period is 10 mg/m<sup>3</sup> total<sup>3</sup>. Excessive exposure to graphite dust over extended periods of time can cause a chronic and more serious condition known as Graphitosis, which is a form of pneumoconiosis. Literature on the subject advice that air quality samples should be taken on a regular basis to monitor the concentration of airborne graphite dust.*

*As regards of graphite dust on workers literature available with the US National Library of Medicine National Institute of Health (<http://www.ncbi.nlm.nih.gov/pubmed/advanced>) where epidemiological studies are available as for example in the case of workers from the graphite mine in Sri Lanka and of a group workers working in a graphite electrode manufacturing factory in Italy the studies showed adverse health impacts. In Sri Lankan case a cohort of workers were studied in 1987, 1990 and 1993. Radiographic lesions were found in 8.5%, 8.9% and 4.1% of the workers in these respective rounds. When workers with*

*radiographic lesions were clinically examined, a total of 18 cases of graphite pneumoconiosis and seven cases of active pulmonary tuberculosis were detected in three rounds. In the Italian case to investigate mortality from cancer and other diseases among workers in a graphite electrode production plant in Italy, a total of 1291 males actively employed between 1 January, 1950 and 31 December, 1989 who had worked at the plant for at least one year were studied. The follow up extended from 1950 to 1997. Standardized mortality ratios (SMR) and their 95 % confidence intervals (CI) were computed using mortality rates for the Italian and regional male population. Excess mortality was observed for all causes.”*

7. The Hon'ble Member has held that the respondent no. 1 is a Red Category industry and the appeal was with regard to an order passed in a case where the pollution was caused by the respondent no. 1-industry. It has been observed that the appellant industry cannot deflect its responsibility by pointing out other cases of pollution considering the fact that the case did not involve general air pollution but was a specific case of particulate matter pollution emanating from graphite dust that originates from the respondent no. 1-industry which was capable of travelling long distances and settling on homes, fields and water bodies.
8. Referring to the evidence available on the records, more particularly the reports of inspections of the factory carried out by the Authority, it was held that the respondent no. 1 was grossly non-compliant of the requirement of environment mitigation measures.
9. Upon examination of the impugned judgment and other materials available on record, we find the dissenting judgment to be more reasonable and is accordingly accepted. Consequently the majority judgment passed by the Chairman of the Appellate Authority and a single member stands hereby quashed and set aside.
10. As a natural corollary of the above, the directions issued by the KSPCB on 02.07.2012, the closure order against the respondent no.

1 plant and order dated 30.06.2012 refusing grant of consent for running of the appellant plant issued by the KSPCB stand restored.

11. However, while holding as above, we direct constitution of a joint Committee comprising of a representatives of CPCB, KSPCB and NEERI, Karnataka to carry out the following task:-

- (i) To carry out stack monitoring of the industry
- (ii) To carry out ambient air monitoring of the industrial unit and the surrounding area by setting up ambient air monitoring stations in at least ten different locations.
- (iii) To carry out study on source apportionment of pollution sources.

12. The entire exercise shall be carry out within two months. The KSPCB shall be the nodal agency.

13. Report be filed before the Tribunal by e-mail at [ngt.filing@gmail.com](mailto:ngt.filing@gmail.com).

14. With the above direction, all appeals stand disposed of.

15. List on 08.04.2019 for consideration of the report.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 28, 2019  
Appeal No. 174/2018  
(Earlier Appeal No. 59/2013 (SZ) and other connected matters  
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