

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

I.A. No. 479/2019
IN
Original Application No. 1038/2018
WITH
Review Application No. 44/2019
IN
Original Application No. 1038/2018

News item published in "The Asian Age" Authored by Sanjay Kaw
Titled

"CPCB to rank industrial units on pollution levels"

WITH

Union of India

Applicant(s)

Versus

News item published in "The Asian Age" Authored
by Sanjay Kaw Titled "CPCB to rank industrial units
on pollution levels"

Respondent(s)

Date of hearing : 19.08.2019

Date of uploading of order : 23.08.2019

**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 Applicants in the Review
Application and the I.A. :

Mr. Rajkumar, Advocate for CPCB
Mr. Attin Shankar Rastogi and Ms.
Suman Kharb, Advocates for
MoEF&CC

ORDER

1. This order will dispose of Review Application No. 44/2019 filed by the Ministry of Environment, Forest and Climate Change (MoEF&CC) for

review of the order of this Tribunal dated 10.07.2019 and I.A. No. 479/2019 filed by the Central Pollution Control Board (CPCB) for clarification of the said order.

2. Order dated 10.07.2019 dealt with the issue of remedial action against polluting industries in the identified polluting industrial clusters. The CPCB had carried out study of industrial clusters in the country with reference to the Comprehensive Environmental Pollution Index (CEPI) which includes weightages on nature of pollutants, ambient pollutant concentrations, receptors (number of people affected) and additional high-risk element. On the basis of the above study in 2009-10, 88 industrial clusters were notified as Polluted Industrial Areas (PIAs). These PIAs were ranked as 'critically polluted area' (CPA), 'severely polluted area' (SPA) and 'other polluted areas' (OPAs), depending upon the CEPI scores of each of these industrial areas. The CEPI criteria was revised in 2016 and, based on the CEPI-2016 criteria, CPCB carried out further monitoring in the year 2017-18 where it was found that number of identified polluted industrial clusters went up to 100. The said number includes 38 critically polluted, 31 severely polluted and remaining 31 as other polluted areas.

3. The Tribunal vide order dated 13.12.2018 directed all the State Pollution Control Boards (SPCBs)/Committees (PCCs) to finalize time bound action plans within three months so as to bring all polluted industrial clusters within the safe parameters under the provisions of

the Air Act and the Water Act. The SPCBs and CPCB were free to take coercive measures, including recovery of compensation for damages to the environment on 'Polluter Pays' principle and also to adopt precautionary measures on 'Precautionary' principle. The CPCB was directed to serve a copy of the above mentioned order to all the SPCBs who were to furnish the same to the respective Chief Secretaries of the States for necessary action. The MoEF&CC was directed to take steps on the basis of report of the CPCB. Action taken reports were to be furnished by the CPCB and the MoEF&CC to this Tribunal before 31.05.2019. In the States, action plans were to be prepared by Committees headed by the Chief Secretaries.

4. The matter was thereafter considered on 10.07.2019. From the letter dated 17.05.2019 produced during the hearing, the Tribunal noted the CEPI Score for 100 PIAs monitored during 2018 and held that while strategies may be worked out for reducing the pollution load in the industrial clusters in question, the statutory regulators must perform their functions in the light of 'sustainable development' and 'precautionary' principle of stopping polluting activities and taking other coercive measures. It was observed:

“23. In the present case, in view of massive exercise already done by CPCB, it is not necessary to require any further verification about the existence of pollution in the said PIAs. The Tribunal can direct that the polluting activities cannot be allowed to continue till adequate measures are taken as the Tribunal is bound to apply the ‘Sustainable Development’¹,

¹ M.C Mehta Vs. Union of India (1997) 2 SCC 353, where the Supreme Court of India held – The development of industry is essential for the economy of the country, but at the same time the environment and the ecosystems have to be protected. The pollution created as a consequence of development must be commensurate with the carrying capacity of our ecosystem.

'Precautionary'² and 'Polluter Pays'³ principle under Section 20 of the National Green Tribunal Act, 2010 to protect the environment and the victims. The statutory regulatory bodies can be required to straightaway identify the particular industrial units in the said PIAs that are causing pollution, particularly those units which fall under the red and orange category and take action against them by way of closing the polluting activity, initiating prosecution and assessing and recovering compensation. Pending such assessment, interim compensation may be recovered on the scale adopted by this Tribunal in the case of Vapi industrial area⁴.

24. CPCB has compiled data of industrial clusters which are polluting in terms of air, water and other norms together. Under the law, even air pollution or water pollution or other pollution, are independent offences. The sustainable development and precautionary principle require any polluting activity to be prohibited and compensation recovered for damage caused from polluters. If there is air pollution, actionable under the Air Act, even if there is no violation of Water Act or EPA Act, such pollution cannot be ignored. There has to be prosecution, stopping of polluting activity and recovery of compensation for restoration of the environment. We have seen that even when norms of air, water and other pollution are being violated, prosecution, stopping of polluting activities and recovery of compensation is not taking place for which there is no justification. Likewise action to prohibit polluting activity, initiating prosecution and recovery of compensation is required not merely for the PIAs based on violation of norms under all the heads, but also for areas where air, water or other pollution is found individually. Thus areas not covered by PIAs are also required to be governed by our directions for enforcing the law by way of stopping polluting activity and taking other steps. The fact that such pollution is taking place is evidenced by there being acknowledged pollution in the form of 351 polluted river stretches⁵ and 102 non-attainment cities⁶.

² M.C Mehta vs. Union of India & Ors., (2009) 6 SCC 142, at para 23, 30 & 46, the Supreme Court addressed the issue of wide threat to forest ecology vis-à-vis the mining activities in the Aravalli hills and explained that it is important to evoke the precautionary principle to impose complete ban on mining in the Aravalli Range in state of Haryana.

³ Indian Council for Enviro Legal Action & Ors. Vs. Union of India & Ors., (1996) 3 SCC 212 Para 16, Vellore Citizens Welfare Forum Vs. Union of India & Ors. (1996) 5 SCC 647 Para 12-18 – holding that “Polluter Pay” principle is ‘accepted principle and part of environmental law of the country, even without specific statute. M.C Mehta Vs. Union of India & Ors., W.P (C) No. 13029/2015 order dated 24.10.2017 of the Supreme Court of India., O.A 95/2018, order dated 11.01.2019 & 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/STPs/STPs and to recover compensation for damage to the environment,

⁴ *Supra* 15

⁵ O.A. 673/2018, News Item Published in ‘The Hindu’ authored by Shri. Jacob Koshy titled “More river stretches are now critically polluted: CPCB”, Order dated 20.09.2018

⁶ O.A. 681/2018, 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” order dated 08.10.2018

25. CPCB must compile data of polluted industrial areas not confined to more than one parameters as is now being done, but also with respect to polluted areas based on water, air or other pollution individually. Compiling data for categorizing areas as polluted areas based on water pollution alone, or air pollution or other pollution alone may be a step in the right direction. Let this be now done in the next three months, with the assistance of State PCBs/PCCs or other experts. In this regard we may note that dealing with the industrial water pollution, this Tribunal directed the CPCB to compile its monitoring report with reference to 97 CETPs installed in different states as this was linked to 100 PIAs also.⁷

26. Needless to state that there is no right to carry on business in violation of pollution norms and right of statutory authorities is coupled with duty. Such right, does not carry any unlimited discretion of not taking action when pollution norms are violated.

27. In view of the material compiled by the CPCB, with the assistance of SPCBs/PCCs, in respect of polluted industrial areas, where action is not being taken by statutory authorities, the Tribunal has to exercise its jurisdiction of directing performance of statutory functions and duties by the State boards/committees, following similar direction by the Apex Court⁸.”

5. In the light of above findings, the Tribunal in its order dated 10.07.2019 directed:

“28. Accordingly, we direct the CPCB in coordination with all State PCBs/PCCs to take steps in exercise of statutory powers under the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974, Environment (Protection) Act, 1986 or any other law to prohibit operation of polluting activities in the said CPAs and SPAs within three months and furnish a compliance report to this Tribunal. The Central Pollution Control Board, in coordination with the State Boards/PCBs may make assessment of compensation to be recovered from the said polluting units for the period of last 5 years, taking into account the cost of

⁷ O.A No. 593/2017, order dated 19.02.2019, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.

⁸ M.C Mehta (Calcutta Tanneries' Matter) Vs. Union of India & Ors., (1997) 2 SCC 411, at para 17, the Supreme Court directed the Board to take action against defaulting tanneries which, including those which had not complied with the conditions under Water Act as mentioned in their consents. In M.C Mehta Vs. Union of India & Ors., (2004) 6 SCC 588, paras 37,48, 517 69, the Supreme Court passed direction on closure of industrial units which were illegally operating and were in violation of the Master Plan.


restoration and cost of damage to the public health and environment and the deterrence element. The scale of deterrence may be related to the period and the frequency of defaults. Such other factors as may be found relevant may also be taken into account. No further industrial activities or expansion be allowed with regard to 'red' and 'orange' category units till the said areas are brought within the prescribed parameters or till carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environmental norms. Pending assessment of compensation, interim compensation be recovered at the scale adopted by this Tribunal in the case of Vapi Industrial area as mentioned in para 22 above.

29. We further direct CPCB, with the assistance of SPCBs/PCCs or other experts, to compile information with regard to polluted industrial areas based on water pollution norms separately, air pollution norms separately and other pollution norm separately and notify such information on public domain within three months. On completing this exercise, action against identified individual polluters may be initiated on the same pattern on which direction have been issued in para 28 and furnish a report to this Tribunal in this regard also, before the next date.

30. We direct the MoEF&CC to take steps for enforcement of action plan for improvement of the situation.

...

32. It is made clear that white and green or non-polluting industries which are not causing any pollution will not be affected by this order except that the parameters thereof may be monitored with a view to see that under the garb of label of white/green or otherwise, the polluting activity is not continued."

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6. We have heard learned Counsel for the MoEF&CC and the CPCB in support of their review application and application for clarification respectively.
 7. Case of the MoEF&CC in seeking review is that the MoEF&CC is yet to take a final view in the matter of protocol to be followed by the States/UTs for implementation of the action plan for environmental improvement of CPAs after considering the report of the CPCB, as noted in para 10 of the order dated 10.07.2019. Current CEPI

framework may need to be reviewed. CEPI score is to be used as a warning tool for formulating an action plan to restore environment quality. MoEF&CC will require six months for policy framework and one year for implementation and till then ban on expansion/setting up new industries may be kept in abeyance.

8. Case of CPCB in seeking clarification is that certain SPCBs/PCCs are not clear whether even compliant 'red' and 'orange' industries are to stop their operations and whether non-industrial 'red' and 'orange' category projects of public utility are also to be prohibited. Further, the units which have sought consent to establish (CTE) by abating the pollution or where EC and CTE is already granted are to be covered by order of this Tribunal. Industrial Associations have represented that compliant industries should not be affected and those who have already paid compensation should not be required to pay compensation again. CEPI score does not reflect contribution of individual sectors such as industrial, vehicular, generator sets, municipal and other solid wastes etc. separately which exercise was required to be undertaken.

9. We have given due consideration to the submissions. As regards the plea of MoEF&CC that CEPI policy framework will be finalized and implemented in six months and one year, we are of the view that the order of the Tribunal does not in any manner debar the MoEF&CC to take the proposed steps. However, pendency of such steps can be no justification for not enforcing the existing pollution norms and

applying the 'Sustainable' 'Precautionary' and 'Polluter Pays' principles on the basis of data available.

10. What the Tribunal has directed is *inter alia* to “*identify the particular industrial units in the said PIAs that are causing pollution, particularly those units which fall under the 'red' and 'orange' category and take action against them by way of closing the polluting activity, initiating prosecution and assessing and recovering compensation*”⁹. No ground whatsoever has been shown to review the said direction. Further direction of the Tribunal is that “*No further industrial activities or expansion be allowed with regard to 'red' and 'orange' category units till the said areas are brought within the prescribed parameters or till carrying capacity of area is assessed and new units or expansion is found viable having regard to the carrying capacity of the area and environmental norms.*”¹⁰ Objection to this direction is that there may be 'red' or 'orange' category units which may not in any manner add to the pollution. If it is so, all that is required is to determine viability of such units on 'Precautionary' principle by an appropriate mechanism. Reasons for doing so are that the area as per data available is polluted and 'red' and 'orange' category have higher potential for pollution. There is no absolute bar to such units being set up if they are found to be viable. This clarification should take care of any possible apprehension that the order of the Tribunal will obstruct any legitimate industrial activity. The MoEF&CC can forthwith devise an appropriate mechanism to ensure that new

⁹ Para 23

¹⁰ Para 28

legitimate activity or expansion can take place after due precautions are taken in the areas in question by 'red' and 'orange' category of units.

11. Coming to the apprehension of the CPCB, it is clear from paras 28 and 32 of the order reproduced above that action has to be taken only against polluting activities. If any unit is compliant with the norms, such unit is not affected. There is no basis for apprehension that compensation may have to be paid twice. The provisions of Air Act, Water Act and EPA Act and the rules or other environment norms are to be enforced not only against the industrial units but also against every polluting activity whether the same has already been set up or is yet to be set up in terms of provisions of the law in question. This being the undisputed legal position, no further clarification remains necessary.

The applications stand disposed of accordingly.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

August 19, 2019
I.A. No. 479/2019 In O.A. No. 1038/2018
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