

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

Original Application No. 681/2018

News item published in "The Times of India" Authored by Shri Vishwa  
Mohan

Titled

"NCAP with multiple timelines to clean air in 102 cities to be released  
around August 15"

(Report filed in O.A. No. 681/2018)

Date of hearing: 06.08.2019

**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 Applicant(s): None

For Respondent (s): Mr. Rajkumar, Advocate for CPCB  
Ms. Nandini Sen, Advocate for State of West  
Bengal  
Mr. Shuvodeep Roy, Mr. Sataroop Das, Advocates  
for State of Tripura  
Ms. K. Enatoli Sema, Advocate for State of  
Nagaland & PCB  
Mr. Dhananjay Baija, Advocate for Telangana  
State  
G. Indira, Advocate for Andaman & Nicobar  
Admn.  
Mr. Jogy Scaria, Advocate for KSPCB  
Mr. Shuvodeep Roy, Mr. Vinayak Gupta,  
Advocates for State of Assam  
Mr. T.V.S. Raghavendra Sreyas, Advocate for  
APPCB  
Mr. Rahul Khurana, Advocate for HSPCB

**ORDER**

1. The question for consideration is the remedial measures to be adopted to enforce the Ambient Air Quality Standards with reference to the provisions of the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the

EPA Act) in cities classified as 'Non-Attainment Cities' (NACs)<sup>1</sup> based on monitoring of the ambient air quality. Further question is compliance of Noise Pollution (Regulation and Control) Rules, 2000 (Noise Rules) framed under the provisions of the EPA Act.

### **I. Non-attainment Cities not meeting the standards of Air Quality**

2. Vide order dated 08.10.2018, this Tribunal noticed the newspaper report<sup>2</sup> to the effect that 102 cities were identified as NACs for not meeting the prescribed standards of air quality. The Air Act stipulates stopping of any activity violating norms of air quality and taking steps for prosecution or other regulatory measures<sup>3</sup> which have been read to include recovery of compensation on 'Polluter Pays' principle<sup>4</sup>. National Ambient Air Quality Standards are laid down under Section 16(2)(h) of the Air Act.<sup>5</sup> The Central Pollution Control Board (CPCB) compiled its report with reference to the said standards and published a list of 102 NACs<sup>6</sup>. The GoI prepared National Clean Air Programme (NCAP) proposing to reduce the pollution in next 10 years - 35% in next 3 years, 50% in next 5 years and 70-80% in next 10 years. It may be noted that as a result of such exercise, earlier in the year 2017 number of NACs was 95<sup>7</sup>.

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<sup>1</sup> NAC has been defined as those "Cities which are exceeding annual average concentrations of any of the notified parameters with respect to National Ambient Air Quality Standards for consecutively five years".

<sup>2</sup> Dated 03.08.2019 in the Times of India under the heading "NCAP with multiple timelines to clean air in 102 cities to be released around August 15".

<sup>3</sup> Section 22 read with Section 31A of the Air Act and

<sup>4</sup> Aryavart Foundation Vs. M/s Vapi Green Enviro Limited & Ors.O.A No. 95/2018, 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 accepted principle and part of environmental law of the country, even without specific statute.

<sup>5</sup> Notification dated 12.11.2009 issued by the CPCB

<sup>6</sup> [https://cpcb.nic.in/uploads/Non-Attainment\\_Cities.pdf](https://cpcb.nic.in/uploads/Non-Attainment_Cities.pdf)

<sup>7</sup> <http://cpcbenviis.nic.in/airpollution/finding.htm>. Based on ambient air quality data obtained (2008-2010) under National Air Quality Monitoring Programme (NAMP)

3. The Tribunal noted the concern arising from such large scale air pollution which grapples the country in spite of statutory mechanism under the Air Act, directions of the CPCB under section 18(1)(b), dated 29.12.2015 and directions of the Hon'ble Supreme Court for control of vehicular pollution<sup>8</sup>, industrial and construction sector pollution<sup>9</sup>, power sector pollution<sup>10</sup> and agricultural sector pollution<sup>11</sup> and orders of this Tribunal dealing with the said issues<sup>12</sup>. The Tribunal also referred to a Comprehensive Action Plan (CAP) for air pollution control for NCR prepared in pursuance of order of the Hon'ble Supreme Court dated 06.2.2017 by the Environment Pollution (Prevention and Control) Authority (EPCA) in consultation with the CPCB and DPCC on 05.04.2017<sup>13</sup> and Graded Response Action Plan (GRAP) notified by the MoEF&CC on 12.01.2017<sup>14</sup> stipulating specific steps for different levels of air quality such as improvement in emission and fuel quality and other measures for vehicles, strategies to reduce vehicle numbers, non-motorised transport network, parking policy, traffic management, closure of polluting power plants and industries including brick kilns, control of

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<sup>8</sup> M.C. Mehta v. Union of India (1985)2 SCC 431, M.C. Mehta v. Union of India (2001) 3 SCC 756, M.C. Mehta v. Union of India (1998) 6 SCC 63, M.C. Mehta v. Union of India (2002) 3 SCC 356, M.C. Mehta v. Union of India (1998) 6 SCC 60

<sup>9</sup> M.C. Mehta v. Union of India (1997) 2 SCC 353, M.C. Mehta v. Union of India and Shriram Foods and Fertilizer Industries and Anr. (1986) 2 SCC 235, Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P. (1985) 2 SCC 431, Mohd. Haroon Ansari v. District Collector (1998) 6 SCC 60, Union of India v. Union Carbide Co. (1989) 1 SCC 674, M.C. Mehta v. Union of India (1992) 4 SCC 256, Sterlite Industries (India) Ltd. etc. v. Union of India & Ors.(2013) 4 SCC 575, M.C. Mehta v. Union of India (2004) 6 SCC 588, M.C. Mehta v. Kamal Nath (2000)6 SCC 213

<sup>10</sup> Consumer Education and Research Centre v. Union of India (1995)3 SCC 42, Dahanu Taluka Environment Protection group and Ors. v. Bombay Suburban Electricity Supply Company Ltd. and Ors (1991) 2 SCC 539

<sup>11</sup> Arjun Gopal and Ors v. Union of India and Ors (2017) 16 SCC 280, Dr. B.L Wadhwa v. Union of India and Ors (1996) 2 SCC 594

<sup>12</sup> Vardhman Kaushik v. Union of India and Ors. O.A no. 21 of 2014, Vikrant Kumar Tongad v. Environment Pollution (Prevention and Control) Authority and Ors, O.A No. 118 of 2013, Satish Kumar v. Union of India and Ors, O.A. No. 56 (THC) OF 2013, Smt. Ganga Lalwani V. Union of India and Ors. O.A No. 451 of 2018

<sup>13</sup> Report No.71, EPCA-R/2-17/L-21, Comprehensive Action Plan for air pollution control with the objective to meet ambient air quality standards in the National Capital Territory of Delhi and National Capital Region, including states of Haryana, Rajasthan and Uttar Pradesh.


<sup>14</sup> S.O.118(E), Notification, Ministry of Environment, Forest and Climate Change

generator sets, open burning, open eateries, road dust, construction dust, etc.<sup>15</sup>

4. Implementation of prescribed norms in the light of legal provisions and court directions remains a challenge. The consequence is that India is being ranked high in terms of level of pollution compared to many other countries with enormous adverse impact on public health. Most victims are children, senior citizens and the poor.
5. The GRAP categorises levels of pollution as severe plus, severe, very poor, moderate to poor. The action to be taken in such situations includes stopping entry of trucks, stopping construction activities, odd and even scheme of private vehicles, shutting of schools, closing of brick kilns, stone crushers, hot mix plants, power plants, intensifying public transport services, mechanised cleaning of road, and sprinkling of water, stopping the use of diesel generator sets, enhancing parking fees, etc.
6. The MoEF&CC has by various notifications put restriction on activities in Coastal areas, Flood plains, Taj corridor Eco-sensitive zones, etc. in view of ecological sensitivity and impact of such activities on environment if such activities are carried out in unregulated areas. This needs to be extended to the NACs in view of impact on public health and environment to give effect to the 'Precautionary' and 'Sustainable Development' principles.
7. The Tribunal after consideration of the issue on 08.10.2018, directed as follows:

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<sup>15</sup><https://www.thehindu.com/sci-tech/energy-and-environment/india-ranks-177-out-of-180-in-environmental-performance-index/article22513016.ece>,<https://www.ndtv.com/delhi-news/delhis-air-pollution-has-caused-of-death-of-15-000-people-study-1883022..>

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- i. All the States and Union Territories with non-attainment cities must prepare appropriate action plans within two months aimed at bringing the standards of air quality within the prescribed norms within six months from date of finalization of the action plans.
  - ii. The Action Plans may be prepared by six-member committee comprising of Directors of Environment, Transport, Industries, Urban Development, Agriculture and Member Secretary, State Pollution Control Board or Committee of the concerned State. The Committee may be called Air Quality Monitoring Committee (AQMC). The AQMC will function under the overall supervision and coordination of Principal Secretary, Environment of the concerned State/Union Territory. This may be further supervised by the Chief Secretaries concerned or their counterparts in Union Territories by ensuring intra-sectoral co-ordination.
  - iii. The Action Plans may take into account the GRAP, the CAP and the action plan prepared by CPCB as well as all other relevant factors. The Action Plans may be forwarded to the CPCB by 31.12.2018. The same may be placed before the Committee as directed in direction no. vi. The Action Plan will include components like identification of source and its apportionment considering sectors like vehicular pollution, industrial pollution, dust pollution, construction activities, garbage burning, agricultural pollution including pollution caused by burning of crop residue, residential and indoor pollution etc. The action plan shall also consider measures for strengthening of Ambient Air Quality (AAQ) monitoring and steps for public awareness including issuing of advisory to public for prevention and control of air pollution and involvement of schools, colleges and other academic institutions and awareness programmes.
  - iv. The Action Plan will indicate steps to be taken to check different sources of pollution having speedy, definite and specific timelines for execution.
  - v. The Action Plan should be consistent with the carrying capacity assessment of the non-attainment cities in terms of vehicular pollution, industrial emissions and population density, extent of construction and construction activities etc. The carrying capacity assessment shall also lay emphasis on agricultural and indoor pollution in rural areas. Depending upon assessed carrying capacity and source apportionment, the authorities may consider the need for regulating number of vehicles and their parking and plying, population density, extent of construction and construction activities etc. Guidelines may accordingly be framed to regulate vehicles and industries in non-attainment cities in terms of carrying capacity assessment and source apportionment.
  - vi. The Committee comprising of (a) Shri. Prashant Gargava, Member Secretary, CPCB, (b) Dr. Mukesh Khare, Professor, IIT Delhi, and (c) Dr. Mukesh Sharma, Professor, IIT Kanpur shall examine the Action Plans and on the recommendations of the said Committee, the Chairman, CPCB shall approve the same by 31.01.2019.
  - vii. The Chief Secretaries of the State and Administrators/ Advisors to Administrators of the Union Territories will be

- personally accountable for failure to formulate Action Plans, as directed.*
- viii. *The CPCB, SPCBs and State Pollution Control Committees shall develop a public grievance redressal portal for redressal of public complaints on air pollution along with a supervisory mechanism for its disposal in a time bound manner. Any visible air pollution can be reported at such portal by email/SMS.*
- ix. *The CPCB and all the State Pollution Control Boards and Pollution Control Committees shall collectively workout and design a robust nationwide ambient air quality monitoring programme in a revised format by strengthening the existing monitoring network with respect to coverage of more cities/towns. The scope of monitoring should be expanded to include all twelve (12) notified parameters as per Notification No B-29016/20/90/PCI-L dated 18th November, 2009 of CPCB. The continuous Ambient Air Quality Monitoring Stations (AAQMS) should be preferred in comparison to manual monitoring stations. The CPCB and States shall file a composite action plan with timelines for its execution which shall not be more than three months. It is expected that all such AAQMS shall be connected to central server of CPCB for reporting analysis of results in a form of Air Quality Bulletin for general public at regular intervals atleast on weekly basis and ambient air quality on continuous basis on e-portal. MoEF&CC will provide requisite funds for the purpose. MoEF&CC in consultation with Ministry of Housing and Urban Affairs, MoRTH, Ministry of Petroleum and Natural Gas, Ministry of Agriculture, Cooperation and Farmers Welfare or any other Ministry to lay down such guidelines as may be considered necessary for improvement of air quality in the country.”*

8. Thereafter, compliance of the above directions was reviewed on 15.03.2019 in the light of report submitted by the CPCB on 15.02.2019. The Tribunal observed:

“5. In pursuance to the above, the CPCB has filed compliance report vide e-mail dated 15.02.2019. An updated status report has been furnished during the hearing by the learned counsel for the CPCB which is as follows:-

“Action Plan received: 83 cities  
Action plan not received: 19 cities  
Action Plan approved by CCB: 46  
Action Plan not approved by CCB: 11  
Action Plan under Review: 26+3 (three revised plan of  
Telangana received)  
Monitoring Network worked out in consultation with SPCBs”.

6. *The question is the action to be taken for non-compliance by the States in not preparing action plans or incomplete plans and further directions for execution of plans.*
7. *Non-compliance of order of this Tribunal is a criminal offence under Section 26 of the National Green Tribunal Act, 2010 and in case of Government, Head of the Department is deemed to be guilty for such an offence. Punishment provided is sentence upto three years or fine upto Rs. 10 crores or both with additional fine for the every day's failure. Under Section 25 of the NGT Act, 2010, order of the Tribunal is decree of Civil Court to be executed as per Civil Procedure Code. Section 51 Civil Procedure Code provides civil imprisonment as a mode for enforcing the decree. Alternatively, such further order can be passed as may be necessary to secure compliance.*
8. *Vide order dated 16.01.2019 in O.A. No. 606/2018, the Tribunal directed Chief Secretaries of all the States to appear in person and furnish compliance of various orders of this Tribunal, including the above order dated 08.10.2018 with regard to non-attainment cities. The Chief Secretaries of five States have already appeared and most of the States have are still non-compliant. They have been directed to take necessary steps with improved institutional mechanism and approach.*
9. *In view of non-compliance of orders of this Tribunal, on an important issue adversely affecting public health and lives of citizens, inspite of serious consequences statutorily provided by the Parliament, we direct Chief Secretaries of the States in respect of which action plans have not been filed i.e. Assam, Jharkhand, Maharashtra, Punjab, Uttarakhand and Nagaland to forthwith furnish such action plans. If such action plans are not furnished till 30.04.2019, the States will be liable to pay environment compensation of Rs. 1 crore each. The States, where action plans are found to be deficient and deficiencies are not removed till 30.04.2019, will be liable to pay Rs. 25 lacs each. The timeline for execution of the action plans is six months from the date of finalization of action plan. Budgetary provision must be made for execution of such plans.*
10. *If action plans are not executed within the specified timeline mentioned above, the defaulting States will be required to pay Environmental Compensation and may also be required to furnish performance guarantee for execution of plans in extended timeline as per recommendations received from CPCB. The CPCB may make its recommendation in the matter before the next date.*
11. *The CPCB is directed to update the number of cities. If on parameters applied, there are other cities, not included in list of 102, such cities may be also included.*
12. *We also direct CPCB to prepare noise pollution map and identify hotspots and categorize the cities with specified hotspots and propose a remedial action plan. Such report may be furnished within three months by e-mail at [ngt.filing@gmail.com](mailto:ngt.filing@gmail.com). We are informed that in 7 cities noise*

*monitoring mechanism has already been established by the CPCB which is functioning on continuous basis and is connected to the server of CPCB. The CPCB may consider setting up such mechanism in all the cities which are found to be having noise level above approved the threshold.”*

9. Apart from the above orders, it may be noted that vide order dated 16.01.2019 in O.A No. 606/2018<sup>16</sup> the Tribunal directed the Chief Secretaries of all the States/UTs to appear in person with their reports on significant environmental issues affecting the health of people, including the issue of NACs<sup>17</sup> dealt with in the present proceedings. On 23.04.2019, in O.A NO. 606/2018<sup>18</sup>, the Tribunal directed CPCB to explore preparation of Annual Environment Plan for the country giving status of compliance of environmental norms and gaps, if any. In the process, to undertake assessment of damage to the environment in monetary terms so that by applying the ‘Polluter Pays’ principle, the cost of damage is recovered from identified polluters. Further orders passed by the Tribunal which have direct bearing on air quality include action for management of bio-medical waste<sup>19</sup>, plastic waste management<sup>20</sup>, prohibiting polluting activity in polluted industrial areas<sup>21</sup> and remediation of legacy waste dump-sites in the country<sup>22</sup>.
10. We proceed to consider the status of compliance of our directions with regard to NACs. In the light of the report submitted by the CPCB on 15.07.2019. For convenience, we propose to consider the matter with reference to following questions:

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<sup>16</sup> Compliance of Municipal Solid Waste Management Rules, 2016

<sup>17</sup> Para 40 of Order dated 16.01.2019

<sup>18</sup> Compliance of Municipal Solid Waste Management Rules, 2016 (State of Tamil Nadu)

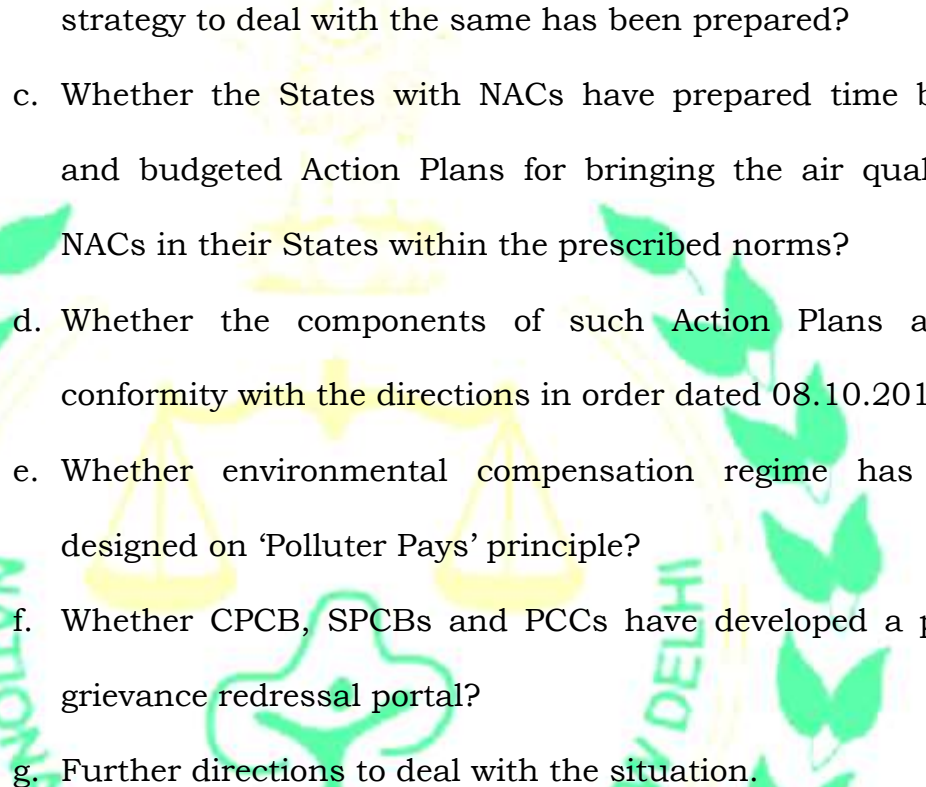
<sup>19</sup> O.A No. 710/2017

<sup>20</sup> Execution Application No. 13/2019

<sup>21</sup> O.A No. 1038/2018

<sup>22</sup> O.A No. 519/2019 and O.A No. 386/2019



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- a. Whether a robust nationwide real time online continuous ambient air quality monitoring programme has been designed as admittedly there are shortcomings in the current air quality monitoring regime in view of area coverage and quality of data?
  - b. Whether more cities have been identified as NACs and strategy to deal with the same has been prepared?
  - c. Whether the States with NACs have prepared time bound and budgeted Action Plans for bringing the air quality of NACs in their States within the prescribed norms?
  - d. Whether the components of such Action Plans are in conformity with the directions in order dated 08.10.2018<sup>23</sup>?
  - e. Whether environmental compensation regime has been designed on 'Polluter Pays' principle?
  - f. Whether CPCB, SPCBs and PCCs have developed a public grievance redressal portal?
  - g. Further directions to deal with the situation.

**a. Nationwide Ambient Air Quality Monitoring Programme**

11. According to the learned counsel for the CPCB, on instructions from the officers present, about 1,500 more real time Online Continuous Ambient Air Quality Monitoring Stations (OCAAQMS) are required to be installed to compile air quality data in the country. At present number of such stations is inadequate and consequently the correct

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<sup>23</sup> (I) Identification of source of pollution; (II) Determining source apportionment including sectors like vehicular pollution, industrial pollution, dust pollution, construction activities, garbage burning, agricultural pollution including pollution caused by burning of crop residue, residential and indoor pollution etc; (III) measures for strengthening of Ambient Air Quality (AAQ) monitoring and (IV) Steps for public awareness including issuing of advisory to public for prevention and control of air pollution and involvement of schools, colleges and other academic institutions and awareness programmes.

picture/status with regard to number of NACs is not been reported and that the number could be more than what has been reported. Strict compliance be reported in terms of our orders dated 08.10.2018 and 15.03.2019. The report of the CPCB on the subject states minimum number of required stations both manual and CAAQMS in terms of number of people as per 2011 census:

<b>Population (Census 2011)</b>	<b>Minimum No. of manual station under NAMP</b>	<b>Minimum no of proposed CAAQMS</b>	<b>Total</b>
1,00,000- < 5,00,000	1-Background 2-Residential/ Commercial	1-Residential	4
5,00,000- <10,00,000	1-Background 2-Residential/ Commercial	1-Residential 1-Traffic dominant area 1- Commercial	6
10,00,000- <50,00,000	1-Background 2-Residential/ Commercial	2-Residential 1-Traffic dominant area 1- Commercial 1-Industrial area	8
>50,00,000	1-Background in upwind direction 1-Background in down wind direction 2-Residential/ Commercial	4-Residential 3-Traffic dominant area 3- Commercial 2-Industrial area	16

12. It will thus be appropriate that the optimal figure is duly worked out by the CPCB and whatever number of manual and real time online continuous AAQMS are found necessary to be installed, may be installed within six months and linked to the central server of CPCB. The action with regard to this is necessary from CPCB, SPCBs and PCCs. For this purpose, environmental compensation fund available with CPCB, SPCBs and PCCs may be utilized. It has been stated by the learned Counsel of CPCB that thousands of crores of funds are lying with SPCBs and PCCs under the 'Consent' head in addition to Environmental Compensation and these funds needs to be utilized for

environmental restitution. Accordingly, each State PCB and PCC may give details of such funds to this Tribunal and the CPCB within two months. The State PCBs and PCCs must also submit action plan for utilization of these funds to CPCB within next two months. The CPCB within two months thereafter scrutinize and approve the same in terms of our orders dated 08.10.2018 and 15.03.2019.

**b. Interactive Public Grievance Redressal Portal**

13. The CPCB has developed such a portal “Sameer”. On the same pattern, all the States/UTs need to develop their respective interactive portals within two months from today, if not already done clearly defining the accountable personnel for grievance redressal and time span for grievance redressal.

**c. Directions for Additional NACs identified**

14. As per report of the CPCB, 20 more cities have been identified as NACs as follows:

Sl. No.	State	Sl. No.	City
1.	Andhra Pradesh	1.	Anantapur
		2.	Chitoor
		3.	Eluru
		4.	Kadapa
		5.	Ongole
		6.	Rajahmundry
		7.	Srikakulam
		8.	Vizianagaram
2.	Gujarat	9.	Vadodara
3.	Maharashtra	10.	Thane
4.	Odisha	11.	Kalinga Nagar
5.	Tamilnadu	12.	Trichy
6.	Telangana	13.	Sangareddy
7.	Uttarakhand	14.	Dehradun
8.	West Bengal	15.	Asansol
		16.	Barrackpore
		17.	Durgapur
		18.	Haldia
		19.	Howrah
		20.	Raniganj

We feel that this number may increase further given the fact that there is a huge gap in terms of air quality monitoring regime in our country. Meanwhile, the action plans may need to be prepared by the respective States for the said 20 NACs also, by the concerned states within next three months and after its approval by CPCB within two months the States referred to above must initiate time bound action on remediation within next three months.

**d. Action Plans for NACs**

15. The report shows that action plans for 92 cities have been approved by the CPCB. Out of the 102 action plans that were submitted by 30.04.2019 the CPCB has not approved 10 NACs' action plans namely Guwahati, Nagaon, Nalbari, Sibsagar, Silchar (Assam), Dhanbad (Jharkhand), Bangalore (Karnataka), Mumbai, Nasik and Solapur (Maharashtra). CPCB has issued directions to the concerned States for implementation/revision of the said plans. The same ought to be finalized within two months. The States which have failed to comply in terms of our order dated 15.03.2019 are liable to pay CPCB, the environmental compensation as per the extent of default.

**e. Components of Action Plans in conformity with order of this Tribunal**

16. The action plans provide for short term, medium term and long-term strategies as well as source apportionment, carrying capacity studies, public awareness, complaint redressal mechanism and budgetary support. The implementation strategies mentioned in the report include source apportionment and carrying capacity assessment with a view to fix liability to enforce the regulatory regime. Since source

apportionment and carrying capacity assessment has not been done, a model/SOP for source apportionment and carrying capacity needs to be worked out within two months by the CPCB and replicated for all such cities. We may note that some models on carrying capacity have been noted in our order dated 29.07.2019 in *O.A. No. 635/2017, Ramesh Chand vs. State of Himachal Pradesh & Ors.*, Order dated 05.10.2018 in *O.A. No. 218/2017, Society for Preservation of Kasauli and its Environs (SPOKE) Vs. M/s Kasauli Glaxie Resorts and in Yogindra Mohan Sengupta Vs. UOI, MoEF&CC & Ors., Original Application No. 121/2014* in context of Shimla Planning Area. By these orders, in the areas of Shimla, Kasauli, Manali and Mcleodganj, construction and certain other activities have been prohibited and regulated. In addition to these, a report of CPCB dated 22.04.2019 filed in *O.A. No. 568/2016*<sup>24</sup> on carrying capacity assessment may also need to be looked into. However, the said report is only with reference to PM<sub>10</sub> and PM<sub>2.5</sub>, whereas other pollutants affecting the ambient air quality may also need to be factored in. Further, CPCB report on CEPI Scores for 100 Industrial Areas/Clusters monitored during 2018 is the manifestation of deteriorating environment in term of Water EPI, Air EPI and Land EPI<sup>25</sup>. Accordingly, CEPI score has been evaluated. The CEPI score is itself a sort of manifestation of carrying capacity of 100 Industrial Areas/Clusters which warrants immediate action in terms of remediation and regulation to ameliorate the condition. The action plans must be read to include all components in terms of order of this Tribunal dated 08.10.2018.

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<sup>24</sup> Ajay Khara Vs. M/S Container Corporations of India Limited & Ors. Report by the CPCB is in relation to Carrying Capacity for Air Quality for Delhi- NCR

<sup>25</sup> The same is subject matter of order of this Tribunal dated 10.07.2019 in *O.A. No. 1038/2018*

17. The timeline prescribed by CPCB in its report dated 15.07.2019 for reviewing action plans for further micro planning needs to be reduced from six months, preferably to four months in view of severity of problem and adverse impact of air pollutants on public health.

**f. Compensation Regime**

18. The compensation regime based on 'Polluter Pays' principle is necessary in view of inadequate action under criminal law. There are no figures available about the number of persons convicted and sentenced under the Air Act even though there are various estimates about number of deaths and diseases caused by air pollution.<sup>26</sup> The Tribunal is not in a position to verify the said figures, nor expresses any opinion about the correctness thereof. It is made clear that this order is not being based on the said figures but on the data compiled by the CPCB. The fact that number of NACs is rising steeply even though the monitoring regime does not cover all the regions in the country, is evidence of exponential rise in pollution. It also reflects inadequate monitoring and enforcement mechanism. The trend needs to be reversed by paradigm shift in monitoring and enforcement mechanism. The rule of law requires that a person committing an offence or violation is made accountable to law by punishment and by being required to pay monetary compensation on 'Polluter Pays' principle. CPCB must forthwith come out with a compensation regime

<sup>26</sup> **Report by the Indian Council of Medical Research** has stated- In 2017, air pollution accounted for 12.4 lakh deaths in India, which included 6.7 lakh deaths due to outdoor particulate matter air pollution and 4.8 lakh deaths due to household air pollution. [https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(18\)30261-4/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(18)30261-4/fulltext) **As per the Lancet Journal-** In 2017, 1.24 million deaths occurred in India, which were 12.5% of the total deaths, all attributable to air pollution, including 0.67 million from ambient particulate matter pollution and 0.48 million from household air pollution. Of these deaths attributable to air pollution, 51.4% were in people younger than 70 years. India contributed 18.1% of the global population but had 26.2% of the global air pollution DALYs in 2017. [https://www.business-standard.com/article/current-affairs/air-pollution-kills-1-2-mn-indians-in-a-year-third-biggest-cause-of-death-119040300300\\_1.html](https://www.business-standard.com/article/current-affairs/air-pollution-kills-1-2-mn-indians-in-a-year-third-biggest-cause-of-death-119040300300_1.html) **The study titled "State of Global Air 2019" reported that Air pollution kills 1.2 mn Indians in a year, third biggest cause of death.**

as long time has already gone by. The Air Act has been in operation for the last 38 years. With the expertise and data already available, the compensation regime can be finalized preferably within one month. While 'Sustainable Development' and 'Precautionary' principle may *inter-alia* require planning for reducing pollution, violation of norms cannot continue without remedial action. Law has to be enforced without waiting for any further time by suitable regulatory action by way of prosecution and by recovery of compensation. Since it appears that prosecutions are not even remotely proportionate to the extent of violation and may have their own limitations and constraints for the authorities, there is no justification for not taking prompt action by way of compensation recovery to enforce rule of law.

**g. Further observations**

19. As per the CPCB report dated 15.07.2019, there is a proposal for national level target of 20-30% reduction of PM<sub>2.5</sub> and PM<sub>10</sub> concentration by 2024 under the National Clean Air Programme (NCAP) keeping 2017 as the base year. The timelines to reduce the air pollution by 20%-30% by 2024 needs to be reduced and the target of reduction needs to be increased, having regard to adverse effect on public health and in view of constitutional mandate of fundamental right to breathe clean air. Violation of such fundamental right cannot be allowed to be continued for such a longer time. The NCAP needs to be modified accordingly and a modified plan notified and implemented by the State instrumentalities in letter and spirit.
20. We note that the air pollution caused by DG Sets needs to be part of the action plans which may, if necessary, require retrofitting of

emission-control devices on generators already in use. CPCB may consider this aspect. The NCAP itself provides following action points:

- “1. *Introduction of gaseous fuels and enforcement of new and stringent SO<sub>2</sub>- NO<sub>x</sub> /PM<sub>2.5</sub> standards for industries using solid fuels.*
2. *Stricter enforcement of standards in large industries through continuous monitoring.*
3. *Full enforcement of zig-zag brick technology in brick kilns.*
4. *Elimination of DG set usage by provision of 24x7 electricity.*
5. *Control by innovative end of pipe control technologies.*
6. *Evolve standards and norms for in-use DG sets below 800 KW category.*
7. *For DG Sets already operational, ensure usage of either of the two options: (a) use of retrofitted emission control equipment having a minimum specified PM capturing efficiency of at least 70%, type approved by one of the 5 CPCB recognized labs; or (b) shifting to gas-based generators by employing new gas-based generators or retrofitting the existing DG sets for partial gas usage*
8. *Utilize the Gujarat case study for a compelling case for other states to adopt third-party audits for polluting industries for enhancing implementation(States).”*

Thus, DG Sets should also be covered by the action plans for all the States/UTs.

21. The action plans also need to incorporate provisions for action against black carbon generators.
22. One of the causes of air pollution is growth of unplanned industrial activities in residential areas. At some places, such activities though prohibited, have been regularized without regard to environmental norms. The same can no longer be allowed to continue and provision has to be made for closing/shifting as per law laid down in *M.C. Mehta vs. Union of India, (2004) 6SCC 588*. The master plans need to be reviewed and wherever such activities are against existing or new norms, the same need to be closed/shifted.



## II. Compliance of Noise Pollution Rules

23. The Tribunal considered the issue of noise pollution vide order dated 15.03.2019 in the present matter as this subject is also covered by the provisions of the Air Act. It was held that following steps are necessary to deal with the violations:

“13. ...

...

...

- i. *Training of regulatory machinery and identifying and notifying accountable officers and preparing action plan and monitoring mechanism.*
- ii. *Awareness, particularly among students through Education Department and involvement of Resident Welfare Associations (RWAs), social and religious institutions and volunteers.*
- iii. *Prosecution of violators, seizure of equipment and recovery of compensation from violators.*
- iv. *Requiring installation of noise,*
- v. *measurement meters by those using equipment capable of producing noise higher than the prescribed limit.”*

24. Accordingly, the directions were issued to the State Pollution Control Boards (SPCBs) and the Police Department of all the States/UTs to obtain noise monitoring devices, to train the staff regarding use of such devices and to develop a robust protocol for taking action including fixing of noise meters with data loggers on the equipments used for creating noise. Additionally, CPCB was directed to lay down scale of compensation for violation of noise pollution norms and also the conditions to be imposed while releasing any offending equipment which is seized in the course of implementing the noise regulations.

25. Accordingly, the CPCB has in its report dated 15.07.2019, furnished its report on this subject also. It is stated that the manufacturers find

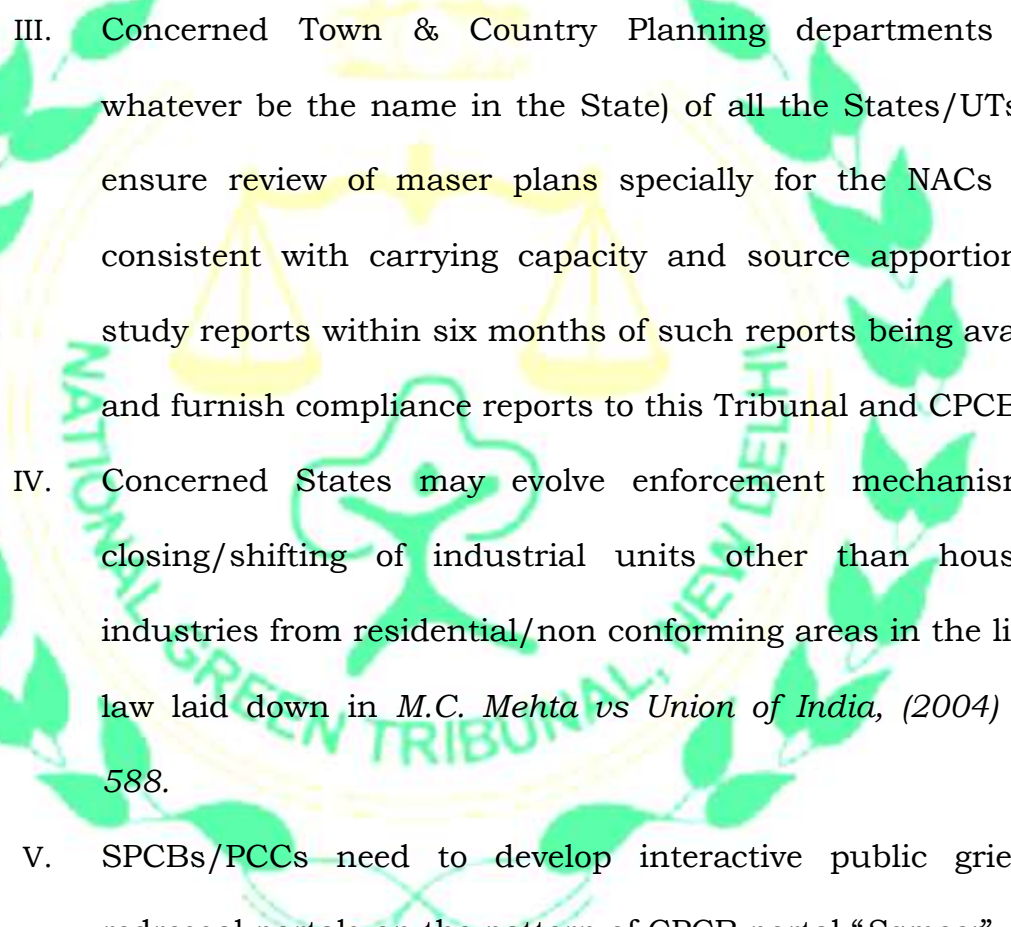
the installation of the limiter meters on noise generating equipments to be economically less viable. This cannot be a ground for not requiring such limiters to enforce the norms of noise pollution on the pattern followed in the States of West Bengal and Tripura. This Tribunal has already issued a direction in the context of Delhi to that effect that noise limiters in sound systems be installed and/or retrofitted, vide order dated 01.08.2019 in O.A. No. 519/2016, *Hardeep Singh & Ors. vs SDMC & Ors.* The said directions will apply to all the States/UTs. Appropriate notifications may be issued by the CPCB/SPCBs/PCCs within three months about the limiters being installed. The compensation regime for noise pollution needs to be worked out within one month by CPCB.

**Directions:**

26. In view of above discussion, we issue following directions:

- I. CPCB, SPCBs and PCCs need to ensure assessment and installation of the requisite number of real time Online Continuous AAQMS within six months from today and indicate progress in this regard before the next date.
- II. The Expert Team of CPCB to design a model/SOP for source apportionment and carrying capacity assessment within two months which may be replicated for all the NACs. In the light of such study, further action may need to be considered by MoEF&CC within three months thereafter in terms of regulating the number of vehicles, action in terms of shift to e-vehicles and CNG vehicles, intensifying public transport system, mechanical cleaning of roads, enhancement of public

parking facilities etc., improvement in fuel quality and traffic management, regulation of construction activities, strict adherence to siting guidelines with regard to stone crushers, mining, brick kilns, thermal power plants, coal handling, air polluting industries, hot mix plants, etc. Besides, activities like crop burning and burning of trash wood/leaves/debris for heating in winters to be strictly regulated and violations penalized as has been done by notifications for ESZ, CRZ, Ganga Flood plains etc.

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- III. Concerned Town & Country Planning departments (with whatever be the name in the State) of all the States/UTs may ensure review of master plans specially for the NACs to be consistent with carrying capacity and source apportionment study reports within six months of such reports being available and furnish compliance reports to this Tribunal and CPCB.
  - IV. Concerned States may evolve enforcement mechanism for closing/shifting of industrial units other than household industries from residential/non conforming areas in the light of law laid down in *M.C. Mehta vs Union of India, (2004) 6SCC 588*.
  - V. SPCBs/PCCs need to develop interactive public grievance redressal portals on the pattern of CPCB portal “Sameer” within two months if not already done.
  - VI. Actions Plans need to be prepared by States for the additional 20 NACs on the pattern of 102 NACs within three months and after its approval by CPCB within two months, States must initiate time bound action on remediation within next three months.

- VII. CPCB may finalize the pending action plans within two months. Environmental compensation may be deposited by the defaulting States in terms of our order dated 15.03.2019 with the CPCB.
- VIII. Timeline prescribed for reviewing action plans with regard to its report dated 15.07.2019 by the CPCB for further micro planning may be reduced from six months, preferably to four months. CPCB may give appropriate directions to the SPCBs/PCCs accordingly.
- IX. CPCB must forthwith come out with a compensation regime within two months for air as well as noise pollution to the extent such norms have not yet been laid down.
- X. Having regard to adverse impact on public health and constitutional mandate that right to clean air is a fundamental right, the MoEF&CC may modify the NCAP by reducing the timelines and increasing the target for reduction of air pollution.
- XI. Noise Limiters need to be installed on potential noise polluting devices, including retrofitting the existing devices. Appropriate directions be issued by the States/UTs within three months in the same manner as directed by this Tribunal for Delhi vide order dated 01.08.2019 in *O.A. No. 519/2016, Hardeep Singh & Ors. vs SDMC & Ors.*
- XII. The CPCB may also evaluate existing air quality monitoring mechanism of all States and UTs and furnish a report to this Tribunal before the next date in terms of capacity of its scientific and technical personnel both in terms of number of

personnel and skill/competence and outreach programmes on public awareness and suggestions for improvement.

XIII. The CPCB and States may have robust Emergency Response System and preparedness by way of mock drills and measures to be taken in the scenario when air pollution levels become severe plus and severe.

XIV. The SPCBs and PCCs to submit details of 'consent' funds to CPCB and this Tribunal within two months alongwith Action Plans on the basis of template provided by CPCB. CPCB may scrutinize and approve such action plans within two months in accordance to our order dated 22.01.2019 in O.A. No. 101/2019. Finally, the State PCBs and PCCs may execute their Action Plans within next one year thereafter.

XV. The Environmental Compensation levied by State Transport Departments may be divided in the ratio of 50:25:25 amongst the States, the SPCBs/PCCs and the CPCB.

Let further compliance reports be filed before the next date.

List for further consideration on 15.11.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

August 06, 2019  
Original Application No. 681/2018  
(I.A. No. 411/2019)  
DV

