

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

Original Application No. 681/2018
(I.A. No. 411/2019)
WITH
Original Application No.10/2019 (EZ)

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"

WITH

Dr. Gautam Ghosh

Applicant(s)

Versus

State of West Bengal & Ors.

Respondent(s)

Date of hearing: 15.11.2019

Date of Order: 20.11.2019

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
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

ORDER

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I. The Issue: Remedial Action for air pollution in 122 Non-Attainment Cities (NACs)

1. This order is being passed in continuation of order dated 06.08.2019 on the subject of 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)¹ 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.

II. Order dated 08.10.2018

2. Vide order dated 08.10.2018, this Tribunal noticed the newspaper report² 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

¹ 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".

² 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".

for prosecution or other regulatory measures³ which have been read to include recovery of compensation on 'Polluter Pays' principle⁴. National Ambient Air Quality Standards are laid down under Section 16(2)(h) of the Air Act.⁵ The Central Pollution Control Board (CPCB) compiled its report with reference to the said standards and published a list of 102 NACs⁶. 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 95⁷ which number increased to 102 in the year 2018 and has now reached 122. This shows that action taken so far is inadequate and does not match the increasing pollution. Apart from this, the real number might increase further if complete and accurate data is collected.

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 pollution⁸, industrial and construction sector pollution⁹, power sector pollution¹⁰ and agricultural sector**

³ Section 22 read with Section 31A of the Air Act and

⁴ 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.

⁵ Notification dated 12.11.2009 issued by the CPCB

⁶ https://cpcb.nic.in/uploads/Non-Attainment_Cities.pdf

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

⁸ 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

⁹ 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) 2SCC 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

pollution¹¹ and orders of this Tribunal dealing with the said issues¹². 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 05.04.2017¹³ and Graded Response Action Plan (GRAP) notified by the MoEF&CC on 12.01.2017 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 generator sets, open burning, open eateries, road dust, construction dust, etc.**¹⁴

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.¹⁵

India (1992) 4 SCC 256, Sterlite Industries (India) Ltd. etc. v. Union of India & Ors.(2013) 4SCC 575 , M.C. Mehta v. Union of India (2004) 6 SCC 588, M.C. Mehta v. Kamal Nath (2000)6 SCC 213

¹⁰ 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) 2SCC 539

¹¹ 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

¹² 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

¹³ 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.

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

¹⁵ <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>.

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:
- 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.”

III. Order dated 15.03.2019

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. 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.”

IV. Order dated 16.01.2019

9. Apart from the above orders, it may be noted that vide order dated 16.01.2019 in O.A No. 606/2018¹⁶ 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 NACs¹⁷ dealt with in the present proceedings. On 23.04.2019, in O.A No. 606/2018¹⁸, 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-**

¹⁶ Compliance of Municipal Solid Waste Management Rules, 2016

¹⁷ Para 40 of Order dated 16.01.2019

¹⁸ Compliance of Municipal Solid Waste Management Rules, 2016 (State of Tamil Nadu)

medical waste¹⁹, plastic waste management²⁰, prohibiting polluting activity in polluted industrial areas²¹ and remediation of legacy waste dump-sites in the country²².

V. Order dated 06.08.2019

10. The matter was reviewed on 06.08.2019 in the light of the earlier proceedings and report dated 15.07.2019 filed by the CPCB.

Following questions were framed for consideration:

- “ 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 08.10.2018²³?
 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.”*

10.1 With reference to (a), it was found that number of 1500 real time Online Continuous Ambient Air Quality Monitoring Stations (OCAAQMS) was inadequate. CPCB suggested following number of minimum such stations based on 2011 consensus:

| Population | Minimum No. of | Minimum no of | Total |
|-------------------|-----------------------|----------------------|--------------|
|-------------------|-----------------------|----------------------|--------------|

¹⁹ O.A No. 710/2017

²⁰ Execution Application No. 13/2019

²¹ O.A No. 1038/2018

²² O.A No. 519/2019 and O.A No. 386/2019

²³ (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.

| (Census 2011) | manual station under NAMP | proposed CAAQMS | |
|--------------------------|---|--|----|
| 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 |

Direction was issued to assess optimal number of stations required and to install such stations linking them to the central server of CPCB. Environmental Compensation (EC) and Consent funds available with CPCB/SPCBs/PCCs could be utilized for the purpose. Details of such funds were required to be furnished along with action plans.

10.2 With regard to (b), it was noted that a portal "Sameer" has been developed by the CPCB and on that pattern all States/UTs could develop such stations.

10.3 With regard (c), it was observed that 20 additional NACs were identified. Action plans were required to be prepared for the said additional 20 NACs within three months and after approval by CPCB, time bound action plans for remediation was to be initiated within three months.

10.4 With regard to (d), action plans for the cities for which the same had not been finalized were required to be finalized within two months and for failure, compensation were liable to be paid in terms of order of this Tribunal already passed.

10.5 With regard to (e), it was observed that where action plans could not be enforced, provision for accountability, source apportionment (SA), carrying capacity (CC) assessment was necessary. The CPCB was to prepare a model/SOP on the pattern of models already developed with regard to Shimla, Kasuali and Mcleodganj. Report in respect of Delhi dated 22.04.2019 filed in O.A No. 568/2016²⁴ was to be looked into. Apart from PM₁₀ and PM_{2.5}, other elements of pollution were also to be factored in. The Tribunal noted that Comprehensive Environmental Pollution Index (CEPI) prepared by the CPCB showing that 100 industrial clusters were polluted warranted immediate remediation. Timeline for review of action plans and for further micro planning was to be reduced.

10.6 With regard to (f), the Tribunal noted various estimates about death and diseases caused by air pollution and the necessity of reversing such trend for protection of environment and public health. The rule of law required guilty being punished and required to pay compensation for restoration of the environment and health. The enforcement regime was not commensurate to the problem as number of violations for large scale violation under the Air Act, which were criminal offences, was illusive. Similarly, compensation assessed and recovered did not match the violations.

10.7 With regard to (g), it was observed that proposal to reduce air pollution by 20%-30% by 2024 did not meet the Constitutional mandate of Right to breathe clean air. The targets were, thus, required to be increased and timeline required to be reduced.

²⁴ 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

Air pollution by DG sets was required to be part of action plans including retrofitting of emission-control devices on generators already being used which aspect was part of NCAP. Action was also required for action black carbon generators. It was further observed that unplanned industrial activities in residential areas were required to be closed/shifter as per mandate of judgment of Hon'ble Supreme Court in *M.C. Mehta vs. Union of India*, (2004) 6SCC 588.

10.8 With regard to issue of noise pollution which was earlier dealt with on 15.03.2019, directing procurement of noise monitoring devices, training of staff for using such devices and protocol for fixing noise meters with data loggers of noise creating equipments, the CPCB was directed to lay down scale of compensation for violations. The Tribunal noted that States of West Bengal and Tripura had already notified the requirement of fixing limiters on noise equipments which order was followed by this Tribunal vide order dated 01.08.2019 in *O.A. No. 519/2016, Hardeep Singh & Ors. vs SDMC & Ors.* The said direction was extended to all the States/ UTs.

10.9 Finally, following directions were issued:

- 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.

- 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."*

VI. Report of CPCB dated 14.11.2019 - consideration of status of compliance of directions I to XIV in order dated 06.08.2019

11 Accordingly, report dated 14.11.2019 has been filed by the CPCB. We have considered the report with the assistance of learned Counsel present. We proceed to consider the report and status of compliance with reference to each of the directions in the order dated 06.08.2019 as follows.

a) Direction - I:

Installation of Ambient Air Quality Monitoring Stations (AAQMS)

12 With regard to direction No. (I), it is stated that criteria has been evolved based on population and area of the cities according to which 800 CAAQMS and 1250 Manual Stations are required in addition to the existing ones. At present, proposal is to install 202 CAAQMS in 114 cities out of which process to install 152 is underway. Let assessed number of stations be installed within one year and quarterly progress reports furnished to CPCB by all the SPCBs/PCCs.

First such report may be furnished by 01.04.2020. All such stations should be connected to the server of the CPCB and data displayed at the national portal on online real-time basis with AQI in public domain. CPCB may have its own stations at such critical locations as considered necessary. All the 12 notified parameters should be duly monitored by the CAAQMS. In default of compliance, SPCB/PCCs will be liable to pay compensation @ Rs. 5 Lakh per month starting from 01.01.2021. Failure may also be reflected in the ACRs of the Member Secretaries of SPCBs/PCCs.

Procurement of such equipments may preferably be through Government E-marketing (GeM) Portal of Govt. of India. CPCB may take steps to have standards/specifications and accredited/reputed vendors notified on the said portal. CEO, GeM, may also take necessary steps in the matter.

b) Direction - II:

Model/SOP for Source Apportionment (SA) and Carrying Capacity (CC) of the NACs

13 With regard to direction No. (II), it is stated the methodology for Source Apportionment and Carrying Capacity study has been evolved which needs to be revised. Draft framework has already been shared with the expert and the SPCBs/PCCs on 10.10.2019. Let SA and CC be completed within three months by the SPCBs/PCCs utilizing available data, based on which MoEF&CC may take further follow up action in terms of direction para II of order dated 06.08.2019 quoted above. SPCBs/PCCs may furnish action taken report to CPCB so that CPCB can file an appropriate report before this Tribunal. For any default, compensation will be liable to be paid @ of Rs. 5 lakh per month after 01.04.2020. Failure may also be reflected in the ACRs of

the Member Secretaries of SPCBs/PCCs. MoEF&CC may file compliance report before the next date.

c) Direction – III and IV:

Review of Master Plans consistent with SA and CC and action in the light of law laid down in the order of Hon'ble Supreme Court in M.C. Mehta vs Union of India, (2004) 6 SCC 588 with regard to Delhi

- 14 With regard to direction No. (III) and (IV), requiring Town Country Planning Departments of all States/UTs to review master plans for NACs in accordance with the CC and SA studies and also evolving mechanism for closing/shifting industrial units from residential/non-conforming area, no report has been furnished. Review of master plans may require CC and SA studies, which have not yet been completed. The review of master plans may now be carried out in the light of the studies within six months from the date of such studies in above terms. Mechanism for shifting industrial units from residential areas may be evolved immediately. Let both these aspects be complied by the all the States/UTs and reports furnished to the CPCB. The Chief Secretaries concerned may monitor compliance. In default, the concerned States/UTs will be liable to pay compensation @ Rs. 5 lakhs per month after the stipulated timeline already mentioned. The compensation may be recovered by the States/UTs from the erring officers and appropriate entries may also be made in the ACRs of the concerned Heads of the Departments. The CPCB may prepare a comprehensive report and furnish the same before the next date.

d) Direction – V:

Development of Public Grievance Redressal Portal (PGRP)

15 With regard to direction No. (V), it is stated that 38 cities have developed Public Grievance Redressal Portal (PGRP). PGRPs may be developed for the remaining NACs and report furnished by the SPCBs/PCCs to CPCB within two months. In default, SPCBs/PCCs concerned will be liable to pay compensation @ Rs. 2 lakhs per month from 01.02.2020. CPCB may file a compliance report. Failure may also be reflected in the ACRs of the Member Secretaries of SPCBs/PCCs.

e) Direction – VI:

Action Plans for additional 20 NACs

16 With regard to direction No. (VI), it is stated that there is partial compliance with regard to 10 out of 20 newly added cities. Compliance may also be ensured for the remaining cities and report furnished to CPCB by the States/UTs by 31.01.2020. In default, compensation will be liable to be paid @ Rs. 10 lakhs per month from 01.02.2020. The compensation may be recovered by the States/UTs from the erring officers and appropriate entries may also be made in the ACRs of the Heads of the Departments concerned.

f) Direction – VII:

Finalization of Action Plans for 102 NACs and EC regime

17 With regard to direction No. (VII), it is stated that direction has already been complied. Let the approved action plans be executed accordingly in terms of the timeline provided therein and compliance report furnished by Chief Secretaries of the concerned States/UTs to CPCB on quarterly basis starting from 01.04.2020. CPCB may file compliance report before this Tribunal. Failure on this regard may be visited with adverse consequences.

g) Direction – VIII:

Micro Planning of Action Plans

18 With regard to direction No. (VIII), there is compliance by 38 cities. Let the States/UTs ensure compliance with regard to the remaining cities within by 30.06.2020. In default, the States/UTs will be liable to pay @ Rs. 5 lakhs per month till compliance. The compensation may be recovered by the States/UTs from the erring officers and appropriate entries may also be made in the ACRs of the concerned Heads of the Departments.

h) Direction – IX:

Compensation regime for Noise Pollution

19 With regard to direction No. (IX), EC graded is regime based on population. For noise pollution, EC regime has been prepared and furnished by CPCB in O.A. No. 519/2016.

i) Direction – X:

Revisiting of NCAP

20 With regard to direction No. (X), action was to be taken by the MoEF&CC but there is no report of compliance. Let the same be done before the next date, failing which the Tribunal have no option except to take coercive measures against concerned officers.

j) Direction – XI:

Remedial action for control of noise pollution including procurement of monitoring devices and installation of Noise Limiters

21 With regard to direction No. (XI), the States/UTs have not furnished the compliance reports. Let the same be complied with and report furnished to CPCB by 31.03.2020. CPCB may furnish a comprehensive report to this Tribunal. If the said direction is not

complied with, the defaulting States/UTs will be liable to pay compensation @ Rs. 2 lakhs per month which may be collected by the CPCB and recovered from the salary of the concerned Heads of the Departments.

Procurement of requisite equipments may preferably be through Government E-marketing (GeM) Portal of Govt. of India. CPCB may take steps to have standards/specifications and accredited/reputed vendors notified on the said portal. CEO, GeM, may also take necessary steps in the matter.

k) Direction – XII:

Evaluation of existing Air Quality Monitoring Mechanism

22 With regard to direction No. (XII), the CPCB has sought time till 05.12.2019 to make its evaluation. Let the same be done positively by 31.12.2019 and a compliance report filed before the next date. As already directed, the evaluation should not only be sound in terms of scientific and technical capacity but also effectiveness of the outreach programme.

l) Direction – XIII:

Finalization of Emergency Response System (ERS)

23 With regard to direction No. (XIII), the CPCB has given particulars of its own system with regard to NCR but not with regard to rest of the country. Let the same be done now and compliance report filed before the next date. The States have not given their response which may now positively be done within one month, failing which the Tribunal have no option except to take coercive measures against concerned officers.

m) Direction – XIV:

Status of Consent and EC Funds

24 With regard to direction No. (XIV), the CPCB has merely given a template for action plan but no further information has been furnished with regard to availability of EC and Consent funds with SPCBs/PCCs and their action plans except the one for the State of Chhattisgarh. Action plan furnished by the State of Chhattisgarh unfortunately has gone astray and against the order of this Tribunal. The direction in paragraph 12 of order dated 06.08.2019 was to utilize EC funds for installing the equipments and remediation/restitution of degraded environment. The Chhattisgarh plan is which as Annexure – (xiv) to the report of the CPCB mentions constructions of buildings, laboratories, offices, residential houses which are not purposes for which such amount can be spent. Doing so may call for prosecution of the concerned officers for misappropriation. The Chhattisgarh State PCB is directed to take remedial steps and modify its action plan in terms of instructions of CPCB and direction of this Tribunal. Fresh action plan may be furnished to CPCB by 31.01.2020. We also disapprove the inaction by other SPCBs/PCCs in not complying with the directions. All other SPCBs/PCCs may give their action plans latest by 31.01.2020. In default, the erring SPCBs/PCCs will be liable to pay environmental compensation @ Rs. 5 lakhs per month till compliance of the directions which may be liable to be recovered from the concerned Chairmen and Member Secretaries. Failure may also be reflected in the ACRs of the Member Secretaries of SPCBs/PCCs. CPCB may file a consolidated report on the subject before the next date.

VII. Further observations

25 We may add that it is well known that afforestation is one of the mitigation measures against air pollution. It needs to be explored by the MoEF&CC and concerned States/UTs whether a part of CAMPA funds can be utilized for special afforestation drive in 122 NACs. If so further necessary action be taken and a report furnished to this Tribunal by the MoEF&CC before the next date.

26 As already noted in para 9, one of the major untackled problem is remediation of legacy waste dump sites in the country releasing emissions in the ambient air. Often there are incidents of fires in such dump sites further adding to air pollution. Apart from other steps, focused attention may be required to ensure bio-remediation of such dump sites for which this Tribunal has already issued exhaustive directions in O.A. No. 519/2019 as already noted in para 9 above.

27 With regard to finalization of Emergency Response System (ERS), we are of view that the State Disaster Management Authorities in coordination with the SPCBs/PCCs and State Units of Meteorological Departments may include emergency as a part of disaster management and develop ERS accordingly which may be placed in public domain.

28 The problem of air pollution remains unabated having its toll on environment and public health. The States/UTs which are able to successfully control air pollution in measurable terms in respect of 122 NACs may place their successful models and best practices on their respective websites for the benefit of others.

VIII. Directions

29 In view of above, we direct as follows:

- i) Let assessed number of stations be installed within one year and quarterly progress reports furnished to CPCB by all the SPCBs/PCCs. First such report may be furnished by 01.04.2020. All such stations should be connected to the server of the CPCB and data displayed at the national portal on online real-time basis with AQI in public domain. CPCB may have its own stations at such critical locations as considered necessary. All the 12 notified parameters should be duly monitored by the CAAQMS. In default of compliance, SPCB/PCCs will be liable to pay compensation @ Rs. 5 Lakh per month starting from 01.01.2021. Failure may also be reflected in the ACRs of the Member Secretaries of SPCBs/PCCs.

Procurement of such equipments may preferably be through Government E-marketing (GeM) Portal of Govt. of India. CPCB may take steps to have standards/specifications and accredited/reputed vendors notified on the said portal. CEO, GeM, may also take necessary steps in the matter.

- ii) Let SA and CC be completed within three months by the SPCBs/PCCs utilizing available data, based on which MoEF&CC may take further follow up action in terms of direction para II of order dated 06.08.2019 quoted above. SPCBs/PCCs may furnish action taken report to CPCB so that CPCB can file an appropriate report before this Tribunal. For any default, compensation will be liable to be paid @ of Rs. 5 lakh per month after 01.04.2020. Failure may also be reflected in the ACRs of the Member

Secretaries of SPCBs/PCCs. MoEF&CC may file compliance report before the next date.

- iii) The review of master plans may now be carried out in the light of the studies within six months from the date of such studies in above terms. Mechanism for shifting industrial units from residential areas may be evolved immediately. Let both these aspects be complied by the all the States/UTs and reports furnished to the CPCB. The Chief Secretaries concerned may monitor compliance. In default, the concerned States/UTs will be liable to pay compensation @ Rs. 5 lakhs per month after the stipulated timeline already mentioned. The compensation may be recovered by the States/UTs from the erring officers and appropriate entries may also be made in the ACRs of the concerned Heads of the Departments. The CPCB may prepare a comprehensive report and furnish the same before the next date.
- iv) PGRPs may be developed for the remaining NACs and report furnished by the SPCBs/PCCs to CPCB within two months. In default, SPCBs/PCCs concerned will be liable to pay compensation @ Rs. 2 lakhs per month from 01.02.2020. CPCB may file a compliance report. Failure may also be reflected in the ACRs of the Member Secretaries of SPCBs/PCCs.
- v) Compliance may also be ensured for the remaining cities and report furnished to CPCB by the States/UTs by 31.01.2020. In default, compensation will be liable to be paid @ Rs. 10 lakhs per month from 01.02.2020. The compensation may be recovered by the States/UTs from the erring officers and appropriate entries

may also be made in the ACRs of the Heads of the Departments concerned.

vi) Let the approved action plans be executed accordingly in terms of the timeline provided therein and compliance report furnished by Chief Secretaries of the concerned States/UTs to CPCB on quarterly basis starting from 01.04.2020. CPCB may file compliance report before this Tribunal. Failure on this regard may be visited with adverse consequences.

vii) Let the States/UTs ensure compliance of directions with regard to the remaining cities in terms of observations in Para 18 within by 30.06.2020. In default, the States/UTs will be liable to pay @ Rs. 5 lakhs per month till compliance. The compensation may be recovered by the States/UTs from the erring officers and appropriate entries may also be made in the ACRs of the concerned Heads of the Departments.

viii) Let the NCAP be revisited in terms of observations in Para 20 before the next date, failing which the Tribunal have no option except to take coercive measures against concerned officers.

ix) Let the directions for control of noise pollution be complied with in terms of observations in Para 21 and report furnished to CPCB by 31.03.2020. CPCB may furnish a comprehensive report to this Tribunal. If the said direction is not complied with, the defaulting States/UTs will be liable to pay compensation @ Rs. 2 lakhs per month which may be collected by the CPCB and recovered from the salary of the concerned Heads of the Departments.

Procurement of requisite equipments may preferably be through Government E-marketing (GeM) Portal of Govt. of India. CPCB may take steps to have standards/specifications and accredited/reputed vendors notified on the said portal. CEO, GeM, may also take necessary steps in the matter.

- x) Let the evaluation of monitoring stations be done positively by 31.12.2019 in terms of observations in Para 22 and a compliance report filed before the next date. As already directed, the evaluation should not only be sound in terms of scientific and technical capacity but also effectiveness of the outreach programme.
- xi) Let the steps for ERS be taken as per observations in Para 23 and compliance report filed before the next date. The States have not given their response which may now positively be done within one month, failing which the Tribunal have no option except to take coercive measures against concerned officers.
- xii) The Chhattisgarh State PCB is directed to take remedial steps and modify its action plan on the subject of EC and Consent funds in terms of instructions of CPCB and direction of this Tribunal. Fresh action plan may be furnished to CPCB by 31.01.2020. We also disapprove the inaction by other SPCBs/PCCs in not complying with the directions. All other SPCBs/PCCs may give their action plans latest by 31.01.2020. In default, the erring SPCBs/PCCs will be liable to pay environmental compensation @ Rs. 5 lakhs per month till compliance of the directions which may be liable to be recovered from the concerned Chairmen and Member Secretaries. Failure

may also be reflected in the ACRs of the Member Secretaries of SPCBs/PCCs. CPCB may file a consolidated report on the subject before the next date.

xiii) It needs to be explored by the MoEF&CC and concerned States/UTs whether a part of CAMPA funds can be utilized for special afforestation drive in 122 NACs. If so, further necessary action be taken and a report furnished to this Tribunal by the MoEF&CC before the next date.

xiv) Apart from other steps, focused attention may be required to ensure bio-remediation of legacy waste dump sites for which this Tribunal has already issued exhaustive directions in O.A. No. 519/2019 as already noted in para 9 above.

xv) With regard to finalization of Emergency Response System (ERS), we are of view that the State Disaster Management Authorities in coordination with the SPCBs/PCCs and State Units of Meteorological Departments may include emergency as a part of disaster management and develop ERS accordingly which may be placed in public domain.

xvi) The States/UTs which are able to successfully control air pollution in measurable terms in respect of 122 NACs may place their successful models and best practices on their respective websites for the benefit of others.

Copies of this order be sent to MoEF&CC, Ministry of Earth Sciences, Govt. of India, CPCB, SPCBs/PCCs, Chief Secretaries of all States/UTs, State Disaster Management Authorities of all States/UTs by e-mail.

List for further consideration on 08.03.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

Saibal Dasgupta, EM

November 20, 2019
Original Application No. 681/2018
DV

