

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

(By Video Conferencing)

Original Application No. 143/2022

In re: News item published in The Tribune dated 22.02.2022 titled **“7 killed in blast at firecrackers factory in Himachal Una”**

Date of hearing: 08.03.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Respondent: Mr. Apoorv Devgan, IAS, Member Secretary with Mr. Divya Prakash Pande, Advocate for HPSPCB
Mr. Raghav Sharma, IAS, Deputy Commissioner, UNA
Mr. Balendu Shekhar, Advocate for CPCB

ORDER

1. The matter has been taken up in the light of media report¹ to the effect that 7 persons have died and 10 seriously injured in a blast at firecrackers factory in Una, Himachal Pradesh. Later, the number of dead has gone up to 11 and injured have been found to be 9, as per factual report to which reference will be made later.

2. Question for consideration is whether this Tribunal ought to issue directions for compensation to the victims and for preventing such incidents due to violation of statutory environmental safety norms, particularly under Manufacture, Storage and Import of Hazardous Chemical Rules, 1989.

¹ News Item dated 22.02.2022 published in The Tribune titled “7 killed in blast at firecrackers factory in Himachal's Una”: <https://www.tribuneindia.com/news/himachal/himachal-blast-at-factor-in-una-6-dead-many-injured-372069>

3. To ascertain factual position, advance notice of today's hearing was given on 23.02.2022 to the concerned authorities of the State. In response, reports have been filed by the State PCB and Deputy Commissioner, Una.

4. According to the report dated 02.03.2022 filed by the State PCB after undertaking visit to the site, the firecracker unit in question was operating illegally in Village Bathu, Tehsil Haroli, District Una, H.P. There was no consent of the State PCB nor any permission from the Industry Department, Labour Department, Electricity Board or Fire Department. There was no license from the Chief Controller of Explosives, Petroleum and Explosive and Safety Organization (PESO). Prior to establishing such unit, M/s. Nova Tech Engineers was manufacturing weighing scales, structures and steel structure etc. which were closed in 2014. The said previous establishments sold the land to Sh. Nikhil Soni son of Sh. Pramod Soni resident of 117, UG/F Raja Garden, Delhi 110027, who was running the firecracker unit in question illegally. Another firecracker unit was being run in the name of M/s. Jai Guruji in Village Bela Bathri, Tehsil Haroli, District Una, H.P. which has been sealed by the District Authorities and its power supply has been disconnected by the State Electricity Department. Divisional Commissioner, Kangra has been asked to look into the matter and the Director General of Police of HP has constituted a Special Investigation Team (SIT) for investigation of criminal offence.

5. The report of the Deputy Commissioner, Una dated 05.03.2022 acknowledges that six persons died on the spot and 14 were injured. Out of total 20 victims, 18 were females and 02 males. 11 injured persons were referred to PGI Chandigarh while three were admitted to local

hospital. Five persons have died later. Thus, in all 11 persons have died whose particulars are as follows:

| S. No. | Name | Details | Remarks |
|---------------|---|---|---|
| 1. | Akhtari (53 Years) W/o Anwar Hussain | #19, Santokhgarh, Santokhgarh, Una, Himachal Pradesh, 174301 | Died on the spot |
| 2. | Anmata (19 years) D/o Anwar | Santokhgarh, Una, Himachal Pradesh, 174301 | Died on the spot |
| 3. | Shaheen D/o Nannhe | Post office Fatehganj, Mirganj District Bareilly, UP 243501 | Died on the spot |
| 4. | Rajni Devi (28 years) D/o Kartar Chand | Dallewal, Hoshiarpur, Punjab – 144523 | Died on the spot |
| 5. | Monika (37 years) W/o Deepak Kumar | Ward No. 10, village & Post office Bahdala, Behdala, (459), Una, Himachal Pradesh – 174306 | Died on the spot |
| 6. | Sunita (35 years) W/o Kartar Chand | Village Bhangal, Post Office Bathri(174301), Nangal Rupnagar, Punjab- 140123 | Died on the spot |
| 7. | Asgari (45 years) W/o Noseh Ali | Ward No. 08, village & Post office Santokhgarh, Tehsil and District Una, Himachal Pradesh-174301 | Died at PGIMER Chandigarh on 24.02.2022 |
| 8. | Jafri (43 years) W/o Noor Mohammad | Near Gurudwara, Ward No. 07 village & Post Office Santokhgarh, Tehsil and District Una, Himachal Pradesh-174301 | Died at PGIMER Chandigarh on 24.02.2022 |
| 9. | Isharat B (39 years) W/o Moveen | 43, Sadar Cantt. Bareilly District Bareilly, UP – 243001 | Died at PGIMER Chandigarh on 25.02.2022 |
| 10. | Shakeela (43 years) w/o Nabi Hasan | Gora Loknathpur Mustakil, Bareilly, Behroli, UP – 243504 | Died at PGIMER Chandigarh on 26.02.2022 |
| 11. | Nasrin (36 years) W/o Chote | Ward No. 08, village & Post office, Santokhgarh, Tehsil and District Una, Himachal Pradesh- 174301 | Died at PGIMER Chandigarh on 27.02.2022 |

6. Names of the injured persons are as follows:

| S. No. | Name | Details | Remarks |
|---------------|-------------|----------------|----------------|
|---------------|-------------|----------------|----------------|

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| 1. | <i>Farha (20 years) D/o Sageer</i> | <i>Village Sutuiya Post office Kichcha Udham Singh Nagar, Uttarakhand, 263148</i> | <i>Admitted in Regional Hospital, Una H.P.</i> |
| 2. | <i>Nikhat (16 years) D/o Mo Mobeen</i> | <i>Sadar Bazaar Cantt. Bareilly Bareilly, UP 243001</i> | <i>Not admitted at PGI, Minor injuries (Discharged)</i> |
| 3. | <i>Parveen D/o Nannhe</i> | <i>Village & Post Office Jankaur, Jankuar Khas (216), Una Himachal Pradesh – 174303</i> | <i>Treatment at Regional Hospital, Una HP (Discharged on 26.02.2022)</i> |
| 4. | <i>Joshi S/o Chandu Pal</i> | <i>Bathri, Tehsil Haroli, District Una, Himachal Pradesh</i> | <i>Admitted in PGIMER Chandigarh</i> |
| 5. | <i>Nasra (61 years) W/o Ali Hussain</i> | <i>Ward No. 8, village and Post office Santokhgarh, Tehsil & District Una, Himachal Pradesh – 174301</i> | <i>Referred to PGIMER Chandigarh (discharged on 26.02.2022)</i> |
| 6. | <i>Muskan (18 years) D/o Chote Lal</i> | <i>Village & Post office Santokhgarh, Tehsil & District Una, Himachal Pradesh – 174301</i> | <i>Referred to PGIMER Chandigarh (discharged on 23.02.2022)</i> |
| 7. | <i>Nafeesa (51 years) W/o Abdul Jabbar</i> | <i>Ward No. 8, village & post office Santokhgarh, Tehsil & District Una, Himachal Pradesh – 174303</i> | <i>Admitted in PGIMER Chandigarh</i> |
| 8. | <i>Asma (39 years) W/o Liaquat</i> | <i>House No. 21 Post Office Bahroli Gora Loknathpur Ehatmali, Bareilly, UP – 243504</i> | <i>Admitted in PGIMER Chandigarh</i> |
| 9. | <i>Ismail (19 years) S/o Guddu</i> | <i>Bathri, Tehsil Haroli, District Una, Himachal Pradesh</i> | <i>Referred to PGIMER Chandigarh further left for treatment at Ambala untraceable till now</i> ” |

7. Relief has been provided to the heirs of six deceased @ Rs. 50,000/- each and 08 injured persons have been given relief of Rs. 15,000/- each while 05 injured persons have been given relief of Rs. 5,000/- each. Rs. 4 lac per deceased will be disbursed to the heirs after codal formalities. Relief announced by the Hon'ble Prime Minister @ Rs. 2

lac per family of the deceased and Rs. 50,000/- per injured person is also to be given.

8. Action taken at the level of Deputy Commissioner, Una is reported to be that SDM has been asked to conduct enquiry about the circumstances, apart from the Chief Controller of Explosives and Deputy Chief Controller of Explosives being requested to inspect the premises. All industrial units in District are proposed to be checked about the statutory approvals under the Explosives Act, wherever required. There is also coordination with the Labour Department for documentation of the deceased and injured as per Employees' State Insurance Act, 1948 and Employees Compensation Act, 1923. Divisional Commissioner, Kangra recorded statements of the stakeholders on 24.02.2022 and also victims who were in the local hospital and also in the PGI, Chandigarh. Police investigation is underway for which SIT has been constituted. Four accused arrested are as follows:

- “1. *Deepak Singh Rana s/o Kushal Singh Rana, R/o village Nainwan, Tehsil Garhshankar, District Hoshiarpur, Punjab. (He was working as bill clerk/ supervisor in Jai Guruji Enterprises.*
2. *Gulfam S/o Shamsudeen R/o near Choti Masjid Lisari, village Lisari, Meerut, Uttar Pradesh. (He was managing the day to day operation of the factory where fire broke out. Younger brother of Nadeem).*
3. *Nadeem S/o Shamsudeen R/o near Choti Masjid Lisari, village Lisari, Meerut, UP. (Elder brother of Gulfam, Main supplier of raw material).*
4. *Rohit Suri S/o B.L. Suri, R/o House no. 365 Phase 1B, Shivalik Avenue, New Nangal District Ropar, Punjab.”*

9. In view of factual reports received from the concerned authorities, we proceed to consider the question of orders required to be passed under section 15 of the NGT Act.

10. We have heard the concerned officers present with learned Counsel and perused the record with their assistance.

11. Before proceeding further, we note that the Tribunal has recently dealt with 25 cases of industrial accidents² involving failure of industrial

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- i. Order dated 01.06.2020, relating to incident of gas leak dated 07.05.2020 in **LG Polymers India Pvt. Limited** at Vishakhapatnam, resulting in death of 11 persons and injuries to more than 100, apart from other damage (OA No. 73/2020, In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh);
- ii. Order dated 03.02.2021, relating to incident dated 03.06.2020 in a chemical factory, **Yashyashvi Rasayan Pvt. Ltd.** at Dahej, District Bharuch, Gujarat resulting in deaths and injuries and other damage (OA No. 85/2020) (Earlier OA 22/2020) (WZ), Aryavart Foundation through its President vs. Yashyashvi Rasayan Pvt. Ltd. & Anr.);
- iii. Order dated 19.02.2021, in relation to incident of **oil well blow out on 27.05.2020 at Baghjan in the Tinsukia District of Assam** resulting in deaths, injuries and damage to the environment (OA No. 43/2020(EZ), Bonani Kakkar vs. Oil India Limited & Ors.).
- iv. Orders dated 06.07.2020 and 22.12.2020, relating to incident dated 30.06.2020 on account of gas leakage at **Sainor Life Sciences** factory at Parawada in industrial area on the outskirts of Vishakhapatnam (OA No. 106/2020, News item published in the local daily "Economic Times" dated 30.06.2020 titled "Another Gas Leakage at Vizag Factory kills two, critically injures four...");
- v. Orders dated 08.07.2020 and 22.12.2020, dealing with the incident dated 01.07.2020 resulting in death of 6 person and injury to 17 due to blast of boiler in **M/s Neyveli Thermal Power Station** (NLCIL), Cuddalore (OA No. 108/2020, News item published in the "Indian Express" dated 01.07.2020 titled "Tamil Nadu Neyveli boiler blast: 6 dead, 17 injured") and;
- vi. Orders dated 23.07.2020 and 22.12.2020, in relation to incident of **fire engulfed the chemical plant of Visakha Solvents Ltd**, Vizag on 13.07.2020 at Ramky CETP Solvents building in Pharma City resulting in injuries (OA No. 134/2020, News item published on 13.07.2020 in the local daily named "India Today" titled "Massive fire engulf Vizag chemical plant, explosions heard, injuries reported").
- vii. Order dated **18.12.2020**, in relation to incident of **explosion in a plastic recycling factory at Sujapur in Malda on 1.12.2020** resulting in death of six persons, including two minors and serious injuries to four persons (OA No. 272/2020, News item published in the "Times of India" dated 20.11.2020 entitled "Six killed as blast tears through Malda Plastic recycling factory").
- viii. Order dated **18.12.2020**, in relation to incident of **methane gas leak in a sugar factory** called Lokenete Bapurao Patil Agro Industries Ltd. in Mohol Taluka of Solapur District, Maharashtra on 21.11.2020 resulting in deaths and injuries and other damage (OA No. 274/2020, News item published in the "Indian Express" dated 23.11.2020 entitled "Maharashtra: Two Killed, eight injured in methane gas leak in sugar factory").
- ix. Order dated 08.01.2021, in relation to **Gas Leak in Agro Company** (O.A No. 107/2020, In RE: News item published in the local daily "Indian Express Sunday Express" dated 28.06.2020 titled "Gas Leak in Agro Company Claims life of one")
- x. Order dated **04.06.2021**, in relation to News item published in Navbharat Times dated 24.12.2020 titled "**Gas leaks in IFFCO Plant, 2 Officers dead**" (O.A No. 04/2021, In re: News item published in Navbharat Times dated 24.12.2020 titled "Gas leaks in IFFCO Plant, 2 Officers dead")
- xi. Order dated **11.02.2021**, in relation to accident of **toxic gas leak in Rourkela Steel Plant in Orissa**" (O.A. No. 09/2021, In re: News item published in The Indian Express dated 07.01.2021 titled "Four workers dead due to toxic gas leak in Rourkela Steel Plant")
- xii. Order dated **11.06.2021**, in relation to accident of **Virudhunagar firecracker factory blast** (O.A. No. 44/2021, In re: News item published in The News Indian Express dated 12.02.2021 titled "At least 19 dead in Virudhunagar firecracker factory blast, more than 30 injured")
- xiii. Order dated **11.06.2021** in relation to accident of **quarry blast in Hiremagavalli, Chikkaballapur, Karnataka** (O.A. No. 59/2021, In re: News item published in Times Now News dated 23.02.2021 titled "Karnataka: Six killed in quarry blast in Hiremagavalli, Chikkaballapur")
- xiv. Order dated **11.06.2021** and **14.12.2021** in relation to accident of **fire at UPL plant**, Jhagadia, District Bharuch, Gujarat (O.A. No. 60/2021, In re: News item published in The Hindu dated 23.02.2021 titled "Two dead, 5 missing in fire at UPL Plant")
- xv. Order dated **02.03.2021** and **31.08.2021** in relation to accident of **massive fire broke out at an illegal factory at Pratap Nagar, North Delhi** (O.A. No. 65/2021, In re: News item published in The Times of India dated 28.02.2021 titled "Delhi: Man charred to death as illegal factory catches fire")
- xvi. Order dated **16.03.2021** and **31.08.2021** in relation to Incident of **explosion of 3,000 kg reactor at the production wing of Tyche Industries Limited, on the outskirts of Kakinada, Andhra Pradesh (AP) on March 11, 2021** (O.A. No. 79/2021, In re: News item published in The Hindu dated 14.03.2021 titled "Safety lapses led to reactor blast at pharma unit")
- xvii. Order dated **23.03.2021** in relation to Incident of **blast in chemical boiler factory at Pirana-Piplaj road in Ahmedabad, Gujarat** (OA No. 258/2020, In Re: News item published in the "Indian Express" dated 04.11.2020 titled "Ahmedabad: Nine killed as godown collapses after factory blast")

safety norms. The Tribunal invoked the principle of absolute liability and awarded compensation to the heirs of the victims. Vide order dated 11.06.2021 in OA No. 44/2021 (which was reiterated on 03.03.2022, on remand by the Hon'ble Supreme Court), *In re: News item published in The News Indian Express dated 12.02.2021 titled "At least 19 dead in Virudhunagar firecracker factory blast, more than 30 injured"* compensation was held to be payable at a flat rate of Rs. 20 lakhs by the State on the principle of State's liability for failure to perform regulatory functions. It was observed:

"Persons responsible – Liability of the State for its failure

7. *The persons who had taken licences had further rented out the premises. Some private persons have been identified. It is also clear that incidents are frequent. Activities are highly dangerous but are not being regulated by the State PCB, Labour Department and the District Magistrate. The State has failed to put in appearance or give any explanation for its failure to protect lives of citizens by enforcing the law. The reason may be negligence of the concerned officers or incompetence. In such circumstances, **the victims have***

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- xxviii Order dated **16.06.2021** and **01.02.2022** in relation to Incident of **fire in a chemical unit- SVS Aqua Technologies, at Village Urawade, District Pune, Maharashtra** (OA 130/2021, In re: News item published in The Times of India dated 08.06.2021 titled "**18, mostly women, killed in fire at Pune chemical unit**").
 - xxix Order dated **17.06.2021** and **08.11.2021** in relation to Incident of **Incident of fire in Ambika Industries, GIDC Sachin, Pandesara, Tal: Churasi, District Surat-394221, Gujarat** (OA 31/2021 (WZ), Rakesh Suresh Chandra Kapadia v. Gujarat Pollution Control Board & Ors.)
 - xx Order dated **25.06.2021** in relation to Incident of **blast in firecracker unit in Maharashtra's Palghar on 17.06.2020 at 10:35 am** (OA 134/2021, In re: News item published in The Hindustan Times dated 17.06.2021, titled "Blast in firecracker unit in Maharashtra's Palghar, at least 10 injured")
 - xxi Order dated **07.09.2021** in relation to Incident of **massive fire inside the factory in West Delhi at Udyog Nagar** (OA 171/2021, In re: News item published in The Indian Express dated 12.07.2021 titled "Six killed in factory fire: Owner held, raids on to nab second accused")
 - xxii Order dated **03.01.2022** in relation to Incident of **landslide at Dadam Mining Zone in Tosham Block of Bhiwani District of Haryana on 01.01.2022 at 08:30 am** (OA 01/2022, In re: News item published in The Indian Express Newspaper dated 02.01.2022 titled "Four killed in Haryana mine landslide")
 - xxiii Order dated **07.01.2022** in relation to Incident of **flash fire in the Motor Spirit Quality (MSQ) unit of the refinery during shutdown and related works at around 2.50 pm on 21.12.2021** (OA 440/2021, In re: News item published in The Economic Times dated 21.12.2021 titled "3 dead, 44 injured in flash fire at IOC's Haldia refinery")
 - xxiv Order dated **11.01.2022** in relation to Incident of **boiler explosion in the factory of the project proponent in Bela Industrial area, Phase-II, Muzaffarpur, Bihar** (OA 02/2022, In re: News item published in India Today dated 26.12.2021 titled "7 dead in boiler explosion at noodle factory in Bihar's Muzaffarpur, probe ordered")
 - xxv Order dated **18.01.2022** in relation to Incident of **gas leakage from a tanker outside Sachin Industrial area, Surat** (OA 05/2022, In re: News item published in The Indian Express dated 07.01.2022 titled "Gujarat: At least 06 dead, 20 sick after gas leak at industrial area in Surat")

to be compensated by the State and the State can recover the amount from erring parties. Primary liability is of the occupiers of the premises where activities were carried out leading to the incidents and the operators of the hazardous activity. It is the occupier who allowed the activities and the operators obviously were directly involved. The liability is joint and several and absolute. As found by the Committee there was failure to follow safety norms. Under MSIHC Rules 1989, Director Industrial Safety and District Magistrate have crucial role to oversee safety norms. In schedule V to the Rules, their responsibilities are clearly laid down. State PCB has responsibility to ensure that no industrial activity have potential for pollution of air or Water are run without consent to establish and consent to operate. Incidents are frequent but the State authorities have failed to perform their regulatory obligations for safety in operation of hazardous activities. We note that GO dated 23.12.2010 has been issued by the State to declare that the firecracker activities are covered by the Factories Act but the High Court has granted stay on 30.11.2011. However, this could not prevent either the State PCB or the District Magistrate or the Director Industrial Safety to discharge their statutory responsibility for ensuring safety of the workers and other citizens. Thus, the State cannot avoid responsibility to pay compensation to the victims in these circumstances. The victims need immediate relief and it is not possible for the victims to chase the violators who are scattered and whose means are not known. It is the State who have by its failure permitted illegal hazardous activities being carried out which has resulted in deaths and injuries. Public trust doctrine applies in the circumstances. The State is at liberty to recover from the violators or the erring officers. We have taken this view recently while dealing with another similar incident in Gujrat where hazardous activity was found to be operated illegally resulting in deaths and injuries and the violator did not appear to have known sources for payment of compensation. Vide order dated 23.03.2021 in O.A. No. 258/2020, In Re: News item published in the "Indian Express" dated 04.11.2020 titled "Ahmedabad: Nine killed as godown collapses after factory blast" this Tribunal held that the State will be liable to pay compensation to the victims except the victims who was responsible for the incident with liberty to recover from erring persons. Relevant extract from the order is as follows:-

"9.For death of all other persons and injured, the State will be liable to pay compensation, without prejudice to its right to recover the same from the violators of law or erring officers, following due process of law. The responsibility for compliance will be of the Chief Secretary, Gujarat, through the District Magistrate, Ahmedabad. In the light of directions already issued for preventive action by way of compliance of laid down safety norms, the State of Gujrat needs to take remedial measures to ensure that such incidents do not occur and hold accountable persons responsible for failure of the oversight. We also direct a joint Committee of Director, Industrial Safety and Health (DISH), Gujarat, and State PCB in coordination with respective Municipal Corporations and District

Magistrates to conduct survey of the entire State to ascertain if any other such activities are going on, and if so to take remedial action by way of closing such illegal activities. The State PCB will be the nodal agency for coordination and compliance. The said Committee may give its report to the Chief Secretary, Gujarat within three months for further remedial action.”

Principle of absolute liability

8. *It is established law since MC Mehta (1987) 1 SCC 395 and later judgements that liability of the person undertaking hazardous activities for commercial gains for any accident and loss is absolute.*

Quantum of compensation

9. *From the report, it is clear that 27 persons have died and 26 injured on account of fire incidents which were result of unscientific handling of hazardous chemicals in violation of law. We also find that scale of compensation based on restitution principle needs to be awarded. Procedure of this Tribunal is summary and akin to public law remedy. Compensation can be assessed on reasonable basis guided by restitution principle atleast at floor level, leaving other remedies of the victims open. Thus, **broadly agreeing with the Committee, we direct that the scale of compensation should be Rs.20 lakhs in respect of each of the deceased victims and Rs.15 lakhs to persons who have burns in excess of 50% and Rs.10 lakhs for persons who have burns from 25 to 50% and Rs.5 lakhs for persons who have injuries between 5 to 25%. Victims who were treated as outpatients and who had but minor degree of burns or other forms of simple injuries shall be paid Rs.2 lakhs.***

10. *Accordingly, we hold that **the compensation assessed has to be paid by the State of Tamilnadu through the District Magistrate, Virudhunagar. Compliance will be responsibility of the Chief Secretary. Payment be ensured within one month from today. Ex gratia amount already paid may be deducted. We request the TN State Legal Services authority to provide legal aid to ensure that payment is made to genuine heirs of the deceased and to the injured without undue hassle.***

Remedial Measures

11. *Apart from requirement of compensating the victims, the issue remains how such incidents are to be prevented and if such incident happens what steps are to be taken to prevent loss of lives and health. There is need for review of the matter at highest level in the State to consider the remedial steps. Hazardous activities need to regulated in terms of quantity of material to be used in the process of hazardous activities, number of persons to be allowed to work and safeguards to be followed and monitoring compliance of such safeguards.*

In a recent order dated 3.2.2021 in OA 85/2020, Aryavrat Foundation vs. Yashyashvi Rasayan Pvt Ltd, the Tribunal observed:

“We note that in the recent past the Tribunal has come across the number of incidents of leakage of gases and handling of hazardous chemicals. On investigation, this Tribunal has found that most of the accidents are result of non-compliance of laid down safety norms under the 1989 Rules and the Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 [1996 Rules]. There is, thus, need for the establishments handling hazardous chemicals to strictly follow the laid down norms, which need to be overseen by the statutory regulators...

In view of frequent accidents resulting in deaths and injuries, the Chief Secretaries of all the States/UTs may evolve a mechanism to ensure that the companies dealing with hazardous substance must forthwith pay compensation for deaths and injuries to the victims at least as per Workmen Compensation Act, 1923 wherever applicable or the principle of restitution laid down in Sarla Verma (supra), National Insurance Company Ltd. v. Pranay Sethi, (2017) 16 SCC 680 to the victims either directly or through the District Magistrate.

Conduct of safety audits of all establishments having potential for such accidents may be ensured. All States/UTs may also ensure availability of healthcare facilities in the vicinity of such establishments. PCB and DM must assess cost of restoration of environment which should be recovered from company and spent on such restoration. The States and UTs in accordance with 1989 and 1996 Rules need to step up vigilance, surveillance and monitoring to avert such accidents. Preparedness to meet such eventualities be ensured. Regular mock drills may be ensured in respect of onsite and offsite emergency plans. We may also refer to the directions issued by this Tribunal to the MoEF&CC and all the States/UTs on the subject of strengthening regulatory and oversight measures, vide order dated 01.02.2021 in OA 837/2018, Sandeep Mittal vs. Ministry of Environment, Forests & Climate Change & Ors.”

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14. Further, there is need for review at highest level in the State. We direct the Chief Secretary, Tamilnadu to hold a meeting with all the concerned stake holders, as identified by the Committee in the table in the report quoted above, titled ‘Remedial Measures to Prevent Accidents’, within one month. **After necessary deliberations, appropriate remedial measures be identified to avoid recurrence of such incidents in future. The same may be implemented through the District Magistrate or any other appropriate authority as per law, which may be overseen by the Chief Secretary. The State PCB may incorporate appropriate conditions in consents including prohibiting use of banned chemicals, compliance of 1989 and 1996 Rules. Further, mechanism to ensure taking of insurance policies covering risk to life and health of all workers and others likely to be affected by fire or other accidents. Mechanism**

may provide monitoring of compliance and stopping activities of units not following laid down sops and regulations. Substance of this order and regulatory measures may be published in local area in vernacular language for information of local inhabitants to facilitate information and compliance.”

12. Vide order dated 01.06.2020 in OA 73/2020, *In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village, Visakhapatnam in Andhra Pradesh*, the Tribunal observed:

“xxxxxx.....xxx

C. Failure of Authorities and need for remedial measures

35. *We are of the view that further remedial action needs to be taken in the matter of bringing to justice erring officers of authorities in the State and liability of the State or officers being further gone into. There is also need for rehabilitation plan utilizing the interim and further compensation. Lastly regulatory framework needs to be reviewed and strengthened, apart from identifying steps to ensure compliance of laid down safety norms and laying down further norms and procedure to avoid recurrence of such failures in future.*

36. *Safety of citizens and environment are of prime concern. Any economic or industrial activity, however necessary, has to be consistent with the safety of human beings and the environment. The damage to human life, human health and environment has to be restored by applying the ‘Sustainable Development’ principle, of which ‘Precautionary’ and ‘Polluter Pays’ principles are part. In this regard, significant role has to be played by the statutory authorities constituted under the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.”*

13. Thus, where deaths or injuries are result of hazardous commercial activity in violation of environmental safety norms as per rules framed under the EP Act, jurisdiction of this Tribunal under Section 15 of the NGT Act is attracted. Apart from principle of absolute liability on the part of owner/occupier of such activity, principle of “*parens patriae*” is attracted i.e. the State is in the nature of parent or guardian of the helpless citizen, who becomes victims of breach of safety norms which the State is expected to enforce. Thus, the victims are to be compensated

by the State and compensation paid to be recovered by the State from the wrong doer or person liable to pay on absolute liability principle but against whom helpless victim is not able to enforce its right.

14. In the present case, facts stand verified by the State authorities. Factual reports submitted by the Deputy Commissioner, Una and also the State PCB can be safely relied upon. From such reports, identity of the deceased and the injured is established. It is also clear that the same is attributable to the illegal hazardous activity, in violation of the environmental safety norms under the EP Act, 1986, including the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989. Thus, there is clear liability of the Project Proponents to compensate the heirs of the deceased and the injured on restitution principle. Having regard to the helpless nature of victims, it is difficult for them to recover the amount directly and the State failed in its duty of preventing regulated hazardous activity. The victims cannot be left without a remedy. Thus, the State can be required to first pay compensation and then recover the same from the violators. This is also the view earlier taken by the Tribunal inter-alia in OA No. 44/2021, supra.

15. Accordingly, the State is held liable to pay compensation to the heirs of the deceased @ Rs.20 lakhs in respect of each of the deceased victims, Rs.15 lakhs to persons who have burns in excess of 50%, Rs.10 lakhs for persons who have burns from 25 to 50% and Rs.5 lakhs for persons who have injuries between 5 to 25%. Victims who were treated as outpatients and who had but minor degree of burns or other forms of simple injuries are to be paid Rs. 2 lakhs each. This will be in addition to any ex-gratia payment made or which may be made. Such payments may be made by the State Administration within one month, after due

verification of identity through the District Magistrate, Una. Requisite amount be made available by the Chief Secretary, H.P. The amount may be recovered from the violators, in accordance with law by using coercive measures, if necessary. This will be in addition to criminal liability. The State may also take necessary preventive measures in respect of such accidents in the light of directions already issued by this Tribunal inter-alia in OA No. 44/2021, supra. For a coordinated road map, the Chief Secretary may conduct meeting on the subject of the concerned departments within one month, which may also be attended by Regional Officer of CPCB, Chandigarh.

16. If any party is aggrieved by the above order, they are at liberty to move this Tribunal.

The application is disposed of.

A copy of this order be forwarded to Chief Secretary, Himachal Pradesh, MoEF&CC, CPCB, State PCB, District Magistrate, Una and Director, Industrial Safety and Health, H.P. by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

March 08, 2022
Original Application No. 143/2022
DV