

News Item Published In Business ... vs . Uoi & Ors, (1987) 1 Scc 395. A on 28 February, 2023

Author: Adarsh Kumar Goel

Bench: Adarsh Kumar Goel

Item No. 01

Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 110/2023

In re : News item published in Business Standard dated 09.02.2023 titled
"Blast at JSPL's Raigarh plant kills two workers, two others injured"

Date of hearing: 28.02.2023

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

Respondent(s): Mr. A. Faraz Khan, Advocate for the State of Chhattisgarh
Ms. Gauri Rasgotra & Mr. Siddhant Puri, Advocates for Jindal
Steel & Power Ltd.

ORDER

1. Proceedings have been initiated in this matter suo-motu on the basis of the captioned media report to the effect that two workers died and two were injured on account of blast at M/s Jindal Steel & Power Limited, Raigarh, Chhattisgarh (JSPL).
2. In response to notice issued by the Registry on 10.02.2023 to M/s JSPL, Collector, Raigarh, Member Secretary, State PCB and Director, Industrial Safety and Health (DISH), Chhattisgarh, response has been filed by Chhattisgarh State PCB along with letter of DISH and also by M/s JSPL.
3. Response of the State PCB is that the incident took place on 10.06.2020 in which Shri Kanhaiya Lal Poddar and Shri Jayman Khellkon died on 12.06.2020 and Shri Arvind Kumar Singh and Shri

Laluram were injured. Details of the compensation paid to the heirs of the deceased and injured are mentioned as follows:-

"a. Late Shri Kanhaiya Lal Poddar:

i. He was registered under Employees State Insurance Corporation (hereinafter referred to as E.S.I.C), vide Registration No. is 5916584048. E.S.I.C is giving monthly pension at the rate of Rs.199.20 per day to the widow of the deceased worker.

ii. Immediate assistance of Rs. 25000/- has been given by the factory management to the dependents of the deceased worker.

iii. Amount of Rs. 2,00,000/- has been given to the widow of the deceased worker through JSPL Welfare Fund and Rs. 6000/- was being given to the dependents of the deceased worker through JSPL Welfare Pension Scheme iv. Amount of Rs. 5,00,000/- has been given through GPA policy to the dependents of the deceased worker.

b. Shri Jaiman Khalkho-

i. He was registered under ESIC vide Registration No. 5915443112. The deceased worker's widow, i.e., Smt. Anima Khalkho, receives a monthly pension of Rs. 142.30 per day from ESIC, and his two children, Sh. Deepak Khalkho and Sh. Raunak Khalkho, receives a monthly pension of Rs. 94.85 per day from ESIC.

ii. Immediate assistance of Rs. 25000/- has been given by the factory management to the dependents of the deceased worker.

iii. Amount of Rs. 2,00,000/- has also been given to the widow of the deceased worker through JSPL Welfare Fund and Rs. 6000/-is being given to the dependents of the deceased person through JSPL Welfare Pension Scheme.

iv. Amount of Rs. 5,00,000/- has been given through GPA policy to the dependents of the deceased person.

c. Shri Arvind Kumar Singh:

i. He was registered under the ESIC vide Registration No. 5915252284. Shri Arvind Kumar Singh did not suffer any permanent organ damage due to the said incident.

ii. Shri Arvind Kumar Singh received the monthly salary from the factory management during the course of his treatment.

d. Shri Lalu Ram:

i. He was registered under ESIC vide registration no. 5917111232. Shri Arvind Kumar Singh did not suffer any permanent organ damage due to the said incident.

ii. Shri Arvind Kumar Singh received a monthly salary from the factory management during the course of his treatment."

4. It is further stated that prohibitory order dated 11.06.2020 was issued restricting presence of workers at the site of the incident. FIR under the Factories Act, 1948 was filed on which based on confession, conviction of the factory occupiers was recorded, they were sentenced to imprisonment till rising of the court and fine of Rs. 4,20,000/- and in default of payment to undergo simple imprisonment of three months. He was also awarded sentence till sitting of the court. According to the annexed letter of DISH, details of the incident and cause of the incident are mentioned as follows:-

"08. Details of the accident:- In the M/s Jindal Steel & Power Limited, Unit - 1, Kharsia Road Raigarh, District Raigarh (Chhattisgarh) on 10.06.2020 workers Mr. Arvind Kumar Singh (Supervisor), Mr. Jaiman Khalkho, (Fitter), Mr. Kanhaiya Lal Poddar (Fitter) and Mr. Laluram (Helper) was working for cutting/dismantling of old vehicles in the central garage established in the factory. During the work, the work of gas cutting of the diesel tank of an old bus started at 11:20 am. At about 11:40 a.m. during the gas cutting of the said diesel tank, a sudden explosion occurred in the tank, causing serious burns to all the workers employed. After the accident, the workers were admitted through ambulance to OP Jindal Fortis Hospital, Raigarh for proper treatment. Shri Jaiman Khalkhon and Shri Kanhaiya Lal Poddar died on 12.06.2020 during treatment. After treatment, laborers namely Mr. Kanhaiya Lal Poddar has attended work on 04.09.2020 and Mr. Jaiman Khalkhon has attended work on 10.12.2020. Mr. Kanhaiya Lal Poddar and Mr. Jaiman Khalkhon did (should be Arvind and Lalu?) not suffer any permanent organ damage due to the accident.

09. Cause of the accident:-

1. The internal cleaning of the diesel tank was not done properly, nor was the atmosphere of inert gas (nitrogen) maintained inside the tank. Due to which the increased temperature inside the tank during the gas cutting of the tank created an explosive environment from the fumes of diesel and residual material available inside and the mixer of oxygen available inside, due to which the tank exploded due to the fire.

2. Two baffle partitions were made inside the diesel tank. The impact of these waffle partitions on the internal cleanliness of the tank was not properly analyzed.

3. The hazards present from the hazardous work were not studied. Permit to work for this work was not obtained from the safety department of the factory, nor was the

risk assessment of this dangerous work done.

4. By providing heat-resistant aprons/suits to the laborers engaged in gas-cutting work, their use was not ensured."

5. The findings recorded by the Labour Court who conducted trial for the Criminal Offence under the Factories Act, 1948 in FIR/ Criminal Case No. 13/ Factory Act/ 2020/ Fetal vide judgment dated 22.10.2021 are:-

"4. From the facts and circumstances of the case, it is clear that on 10.06.2020, you by adopting the unsecure work system and without providing the personal security equipment to the labours/ staffs, had drained the tank by taking off around 50 to 60 liters of diesel from the diesel tank of 300 liters capacity and by pouring 50 percent of water into the tank and had started the work of gas cutting without ensuring the presence of inferiority inside the tank. The tank exploded due to the heat generate from the gas cutting and the labour/ staff Jaiman Khalkhon and Kanhaiya Lal Poddar had burnt and died wherein it is not justified to acquit the accused persons on probation of good conduct or after the denunciation. Though even other cases are pending consideration in this court against the accused persons under the Factories Act, 1948 but the fact of being effected the operation/ direction of the factory on convicting the accused of the imprisonment cannot be denied and the fact of affecting hundreds of workers/ staffs financial working in the factory cannot be denied and the purpose of the justice is not to punish the convicted accused with the punishment of imprisonment only. The accused Dinesh Sarawagi is an old person aged about 60 years. Keeping in view the said fact, by finding the offence under section 92 of the Factories Act, 1948 for violation of section 7A(2)(a), section 41 read with Rule 73 (1) and section 37 (4) of the Factories Act, 1948, as proved against the accused persons, each of the accused persons is hereby convicted for the imprisonment till the sitting of the Court and the penalty of Rs. 70,000 - 70,000 (Rupees: Seventy -

Seventy Thousand only) for each of the offence, i.e. a total of Rs. 4,20,000/- (Rupees Four Lacs Twenty Thousand only). In case of not paying the penalty amount, the simple imprisonment of 3 - 3 months for each of the offence be made separately."

6. M/s JSPL have filed an affidavit today that under Factories Act, 1948, compensation has been duly paid to all the workmen. Over and above statutory benefits, compensation and monthly pension is being paid to the families of the two deceased workmen. Under Section 17 of the NGT Act, workmen have been expressly excluded as their welfare is covered under various other statutes including the Factories Act. M/s JSPL, however has volunteered to make further payment of Rs. 3 lakhs each to the two deceased workmen and Rs. 1 lakh each to the two injured workman. Para 9 to this effect is quoted below:-

"9. However, without prejudice to our legal submissions as per extant laws, it is submitted that the Answering Respondent is willing to make further payment, of

more than the voluntary payment earlier paid, of INR 3 lacs each to the two deceased workmen and INR 1 lacs each to the two injured workmen."

7. We have heard learned Counsels for the appearing parties and perused the records.

8. Question for consideration is whether interference of this Tribunal is called for under Section 15 of the NGT Act in the light of material on record, referred to above.

9. From the above, it stands established that death of two workers and burn injuries to two other surviving workers was on account of failure of the establishment to follow environmental safety norms. As held by the Hon'ble Supreme Court in M.C. Mehta vs. UOI & Ors, (1987) 1 SCC 395. A commercial establishment undertaking hazardous activities has absolute financial liability for injury or loss of life to anyone. Such liability is apart from liabilities under other laws, including criminal offences.

Unfortunately, no proceedings appear to have been initiated for IPC offences such as under section 304 A IPC and only prosecution which has been initiated is under Factories Act only against the Managers who have been let off by imprisonment till rising of court and fine. It is not clear whether any legal aid has been made available to the victims. We are thus of the view that in the interest of justice, Chhattisgarh State Legal Services Authority may look into the matter of providing legal remedies to the victims. While it is true that section 17 of the NGT Act is available to the victims who are not workmen as workmen have other remedies but where victims do not have access to remedy, question is whether this Tribunal has any role.

10. In the present case, two workers died and two suffered burn injuries.

Injured are not shown to have been paid any compensation and only defence is that they did not lose any organ. Heirs of the deceased are also not shown to have been paid compensation under the workmen compensation Act. They have been only paid pension under ESI Act apart from some meagre amount out of labour welfare fund or under insurance policy. Thus, they have certainly been denied fair treatment and justice.

This Tribunal is a forum of limited jurisdiction but there is no bar from highlighting patent injustice to poor victims. As a responsible business entity, M/s JSPL is expected to show sensitiveness for loss of lives and injuries to persons on account of failure in following expected norms but unfortunately, they have chosen to raise technicalities and even two years after the incident, they have merely stated that they are willing to pay Rs.

3 lacs without undertaking to pay anything. Mere expression of willingness instead of doing duty is nothing. We cannot help recording our observation that the establishment has not shown concern expected from a responsible business entity. We hope Legal Service Authority will reach out to the victims for providing them access to justice.

11. As noted earlier, neither offences under IPC were added nor compensation under Workmen's Compensation Act, 1923 paid. It is well known that even victim of an accident gets compensation equal to loss of earning of the deceased as per norms laid down inter alia in Sarla Verma, (2009) 6 SCC 121, read with Pranay Sethi (2017) 16 SCC 680 and Uphaar Tragedy (2014) 14 SCC 481. Further, compliance of environmental safety norms is inherent obligation under the environment clearance as well as under consent mechanism under the Air and the Water Acts. This Tribunal has come across large number of cases of deaths and injuries on account of failure of establishments undertaking hazardous activities without following safety norms and victims are not getting justice. The statutory regulators fail to ensure compliance and also fail to make erring establishments duly accountable as appears to be the case here also.

12. Dealing with such situations, the Tribunal vide order dated 08.03.2022 in O.A. No. 143/2022 observed:-

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11.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 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 Gujarat 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 Gujarat 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."

13. We also note the observations in order dated 13.09.2022 in O A 545/2022, In re: News item published in The Hindu dated 25.07.2022 titled "Explosion in Bihar illegal firecracker unit kills five":

"The Tribunal has dealt with number of cases involving industrial accidents resulting into fatalities and injuries and issued directions to the MoEF&CC, States and the statutory regulators to strengthen monitoring for ensuring compliance of environmental safety norms and preventing such incidents. Particulars of the matters dealt with are:-

1. In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh, OA No. 73/2020 decided on 01.06.2020.

2. Aryavart Foundation through its President vs. Yashyashvi Rasayan Pvt. Ltd. & Anr., OA No. 85/2020 (Earlier OA 22/2020) (WZ) decided on 03.02.2021.

3. Bonani Kakkar vs. Oil India Limited & Ors., OA No. 43/2020(EZ) decided on 19.02.2021.

4. 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...", OA No. 106/2020 decided on 22.12.2020.

5. News item published in the "Indian Express" dated 01.07.2020 titled "Tamil Nadu Neyveli boiler blast: 6 dead, 17 injured", OA No. 108/2020 decided on 22.12.2020.

6. 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", OA No. 134/2020 decided on 22.12.2020.

7. News item published in the "Times of India" dated 20.11.2020 entitled "Six killed as blast tears through Malda Plastic recycling factory", OA No. 272/2020 decided on 18.12.2020.

8. News item published in the "Indian Express" dated 23.11.2020 entitled "Maharashtra: Two Killed, eight injured in methane gas leak in sugar factory", OA No. 274/2020 decided on 16.08.2021.

9. 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", O.A No. 107/2020 decided on 08.01.2021.

10. In re : News item published in Navbharat Times dated 24.12.2020 titled "Gas leaks in IFFCO Plant, 2 Officers dead", O.A. No. 04/2021 decided on 04.06.2021.
11. 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", O.A. No. 09/2021 decided on 11.02.2021.
12. 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, O.A. No. 44/2021 decided on 03.03.2022.
13. In re: News item published in Times Now News dated 23.02.2021 titled "Karnataka: Six killed in quarry blast in Hirenagavalli, Chikkaballapur", O.A. No. 59/2021 decided on 22.04.2022.
14. In re: News item published in The Hindu dated 23.02.2021 titled "Two dead, 5 missing in fire at UPL Plant", O.A. No. 60/2021 decided on 14.12.2021.
15. 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", O.A. No. 65/2021 decided on 31.08.2021.
16. In re: News item published in The Hindu dated 14.03.2021 titled "Safety lapses led to reactor blast at pharma unit", OA No. 79/2021 decided on 31.08.2021.
17. In Re: News item published in the "Indian Express" dated 04.11.2020 titled "Ahmedabad: Nine killed as godown collapses after factory blast", OA No. 258/2020 decided on 23.03.2021.
18. 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", OA 130/2021 decided on 01.02.2022.
19. Rakesh Suresh Chandra Kapadia v. Gujarat Pollution Control Board & Ors., OA No. 31/2021 (WZ), decided on 08.11.2021.
20. 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", OA No. 134/2021 decided on 25.06.2021.
21. 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", OA No. 171/2021 decided on 07.09.2021.
22. 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", OA No. 05/2022 decided on 18.01.2022.
23. 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", OA No. 02/2022 decided on 22.04.2022.

24. 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", OA No. 440/2021 decided on 07.01.2022.

25. In re: News item published in The Tribune dated 22.02.2022 titled "7 killed in blast at firecrackers factory in Himachal Una", OA No. 143/2022 decided on 08.03.2022.

26. In re: News item published in Hindustan Times dated 05.03.2022 titled "Bhagalpur: 14 dead in firecracker unit blast", OA 198/2022 decided on 27.05.2022.

27. In re: News item published in The Times of India dated 12th April, 2022, titled "Six killed in chemical factory blast in Gujarat", OA No. 272/2022 decided on 12.04.2022.

28. In re: News item in NDTV dated 14.04.2022 titled "6 killed, 12 injured after fire breaks out at Andhra Pradesh Pharma Unit", OA No. 284/2022 decided on 20.04.2022.

14. In all the above cases, the Tribunal awarded compensation to the victims and directed the statutory regulators to oversee compliance of safety norms to avoid such incidents in future. Situation remains far from satisfactory.

15. In OA 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", vide order dated 11.02.2021, it was held that bar under section 17 of the NGT Act will not apply when compensation under Workmen Compensation has not been paid as is the situation herein.

Observations from the said order are extracted below:

"On due consideration, we are unable to accept the submission of learned ASG that bar of section 17 NGT Act is applicable. The deceased are not, even according to the RSP, covered by the definition of 'workmen' under the Workmen Compensation Act. RSP has not paid them on that basis. Applicability of ESI Act does not exclude the NGT Act as section 17 is not attracted to such a case. Moreover, unless expressly excluded, jurisdiction of this Tribunal for victims of violation of environmental norms stands. For this, section 33 of the NGT Act provides for overriding effect of the said Act. Thus, the RSP can be required to provide compensation to the heirs of the deceased under section 15 of the NGT Act. Liability to pay compensation for an entity engaged in hazardous activity is absolute as per law laid down in M.C. Mehta, (1987) 1 SCC 395. Minimum such liability is as per restitution principle, though deterrent compensation can be awarded, depending on a fact situation. In awarding such compensation, compensation paid under any other provision can certainly be excluded. Thus, in the present case, the heirs of the deceased will be entitled to compensation which we propose to determine minus the compensation, if any, which may have been paid under any other provision. Needless to say that victims of such accident are normally, as in the present case also, poorest of the poor. Stand that death was by negligence of the victims is untenable and even if true, absolute liability

is not excluded at least on restitution basis. Prima facie, the stand of RSP is not acceptable in absence of showing compliance of statutory safeguards under the 1989 Rules framed under the EP Act, which can be enforced by this Tribunal. No details of mock drills have been filed nor onsite and offsite plans produced. We are not debaring the RSP from producing the same before the Committee which we are appointing. The fact remains that there is much to be desired in terms of statutory compliances."

16. Following the above, the heirs of the deceased will be entitled to an amount of Rs. 20 Lakhs each and injured will be entitled to Rs. 5 Lakhs each payable by the JSPL within one month. In default of payment, the District Magistrate may take coercive measures for recovery, including disconnecting the electricity.

17. We also request State Legal Service Authority to provide necessary legal aid in the matter. This order will not debar any other Civil or Criminal liability of M/s JSPL. We further direct DISH to audit the safety norms adopted by the unit so that such incidents do not re-occur in future.

The application is disposed of.

A copy of this order be forwarded to Chief Secretary, Chhattisgarh, MoEF&CC, CPCB, State PCB, M/s JSPL, DISH, District Magistrate, Raigarh and Chhattisgarh State Legal Service Authority by e-mail for compliance.

Adarsh Kumar Goel, CP Arun Kumar Tyagi, JM Dr. A. Senthil Vel, EM Dr. Afroz Ahmad, EM
February 28, 2023 Original Application No. 110/2023 SN