

News Item Published In The Times Of India ... vs . Yashyashvi Rasayan Pvt. on 31 August, 2021

Author: Adarsh Kumar Goel

Bench: Adarsh Kumar Goel

Item No. 05

(Court No.1)

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Original Application No. 65/2021

(With report dated 24.08.2021)

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"

Date of hearing: 31.08.2021

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Respondent: Mr. Narender Pal Singh, Advocate for DPCC

ORDER

1. Proceedings in this matter were initiated Suo Motu in the light of media report titled Delhi: Man charred to death as 'illegal' factory catches¹ to the effect that a 35-year-old man was charred to death while three others, including two firefighters, were injured after a massive fire broke out at a factory in North Delhi's Pratap Nagar in the wee hours on Saturday. Investigations revealed that it was an illegal unit where multiple factories and some packaging units were being operated from different rooms. The workers of the factory resided in the same complex as well. The building comprised ground plus two floors and the second floor had a temporary roof shed, which collapsed due to the fire. The door of the building was locked from outside and the call to the fire department was made much later. The deceased has been Dated 28.02.2021, The Times of India: <https://timesofindia.indiatimes.com/city/delhi/man-charred-to-death-as-illegal-factory-catches-fire/articleshow/81249707.cms> identified as Upchand

Kumar (35), a resident of Siwan in Bihar. His body was recovered from one of the rooms on the first floor where a cylinder blast also occurred. The other injured was identified as Sushil, a resident of Kishanganj. Two other injured persons were firefighters one of whom sustained a burn injury while trying to remove the body.

2. Vide order dated 02.03.2021, the Tribunal noted prima-facie violations of the statutory norms and constituted a five-Member joint Committee to visit the site and ascertain the cause of the incident, extent of damage, extent of compensation required to be recovered and the steps for preventing such occurrences in future. The Tribunal also noted incidents arising out of failure to observe safety norms in the recent past and direction issued by this Tribunal. Operative part of the order is reproduced below:-

"1...XXX.....XXX.....XXX

2. From the media reports, subject to further verification, there appears to be non-compliance of statutory safeguards under the provisions of the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 ("the 1989 Rules"), the Hazardous and other Waste (Management and Transboundary Movement) Rules, 2016 and the Plastic Waste Management Rules, 2016.

3. The owner/occupier of the hazardous activity is responsible for compensation to the victims and for restoration of the environment as per law laid down in M.C Mehta v. UoI & Ors.2. It is necessary to ascertain the cause of the incident, the extent of damage caused, the extent of compensation required to be paid for damage to the environment as well as for loss of lives, causing of injuries and steps required to be taken for preventing any such occurrence in future on the same pattern as the Tribunal has dealt with such accidents in the recent past3.

(1987) 1 SCC 395 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.);

4. While directing issuance of notice to the CPCB, the DPCC, the North Delhi Municipal Corporation and the District Magistrate, North Delhi by e-mail, we constitute a five-member joint committee comprising CPCB, DPCC, Director Industrial Safety, Delhi the North Delhi Municipal Corporation and District Magistrate, North Delhi. The nodal agency for coordination and compliance will be the

CPCB and the DPCC. The joint Committee may visit to the site and give its report about the cause of the incident, the extent of damage caused, the extent of compensation required to be paid for damage to the environment as well as for loss of lives, injuries and steps required to be taken for preventing any such occurrence in future within one month. Except for visit to the site at least once, the Committee will be free to conduct its proceedings online. It will be free to take the assistance from any other expert/organization. The Committee may suitably interact with the stakeholders and, apart from considering the present incident, also consider remedial measures for preventing such incidents in the area or by other establishments, even beyond the said area, in Delhi. The Committee may compile information about existence and working of onsite and offsite plans in terms of 1989 Rules and conducting of mock drills and safety SOPs and compliance status of environment norms. Since in the recent past, the Tribunal has dealt with similar issues of industrial accidents resulting in deaths and injuries and Expert Committees in some of such accidents have given reports to this Tribunal, such reports may also be taken into account by the Committee to the extent relevant. The reports are available on the website of the CPCB. The report may be filed by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF. Simultaneously, the report may also be uploaded on the website of the CPCB to enable the concerned stakeholders to access the same and file their response, if any."

iii. Order dated 06.08.2020, 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 18.01.2021, 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. 04/2020, 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 16.02.2021, 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")

3. Vide order dated 08.04.2021, the order was slightly modified to the effect that the District Magistrate involved is District Magistrate, Central and not North.

4. In the light of the above, the joint Committee has filed its report dated 24.08.2021 through the DPCC. The Committee visited the site and noted the nature of activity, cause of the incident, extent of damage and liability for compensation. The Committee has found that the factory was being run in violation of judgment of the Hon'ble Supreme Court in M.C. Mehta v. UOI & Ors.4, in residential area in violation of the safety and environmental norms. No statutory consent had been taken. The persons accountable are the land lord and the tenants of the building who have been identified as follows:-

1. Shri Heera Lal Raheja S/o Shri Paras Ram Raheja, r/o K-6, 2nd floor, Partap Nagar, 10, State bank of India, Sadar Bazar, Delhi.

2. Shri Sanjay Prashad S/o Shri Ram Prashad, r/o A-175, SK - 1, Sector - 93, Gautam Buddha Nagar, Noida, UP.

3. Shri Vijay Gupta c/o M/s Shree Swastika Silicate Mills, 18 UB Jawahar Nagar, Delhi - 7.

5. Compensation for violations of the norms have been assessed at Rs. 96,18,750/-, apart from compensation to the heirs of the deceased for which notice has been issued under the Employees Compensation Act, 1923.

6. The operative part of the report is reproduced below:-

"Observations of the Committee during inspection* a. During inspection, nothing was seen except burnt materials on the site and no responsible person was available at the site however with the help of other Government departments only one person i.e. Sh. Sanjay Prashad, (2004) 6 SCC 388 the owner of the unit which was engaged in the activity of nail polish/lipsticks, could be contacted.

b. Fire incident was occurred on 27.02.2021 at 03.34 a.m. at first floor of the premises located at Shri Swastic Silicate Mills, 10 Ram Bagh, Kishan Ganj, Delhi -110 007. The fire started from the room, which was being used for manufacturing of cosmetic items like Lipstick/Nail Polish.

c. The premises at 10 Ram Bagh, Old Rohtak Road, New Delhi belongs to M/s. Gujranwala Gurukul Trust Society (a society registered under the Society Registration Act). A lease agreement dated 13.6.1979 (annexed_w Annexure-I) made between M/s. Shree Swastika Silicate Mills , 18 UB Jawahar Nagar, Delhi -110 007 through its partner Smt. Prem Lata Gupta w/o Sh. J.P. Gupta And M/s. Gujranwala Gurukul Trust Society (a society registered under the society registration act) through its president Sh. Sukhdev Mehta (owner of the said property).

d. The said property was again rented out on 18.4.2001 and agreement was made between M/s. Gujranwala Gurukul Trust Society (a society registered under the Society Registration Act) through its Hon'ble Secretary Smt. Renu Mehta wife of Shri Vinay Mehta (landlord of the said property), 10 Ram Bagh, Old Rohtak Road, New Delhi and M/s. Shree Swastika Silicate Mills, 18 UB Jawahar Nagar, Delhi -7 through Mrs. Veena Gupta as a tenant.

In the said agreement, the tenant has been further entitled to sub-let, assign or otherwise part with possession of the tenanted premises either in full or in part to anyone on any condition which may be deemed fit by it and the landlord shall not object the same in any manner. The said agreement dated 18.4.2001 is annexed as Annexure -II.

e. Further Sh. Vijay Gupta do M/s. Shree Swastika Silicate Mills , 18 UB Jawahar Nagar, Delhi -7, rented out the said premises to following three persons/companies for commercial use:

SI Name and address of the Details of the Activity of the Tenure of No. rented Company/person rented unit the rent premises/room agreement no.

1. Sh. Heera Lal Raheja s/o Sh. Room no. 108 Trading of 01.12.2020 Sh. Paras Ram Raheja, resident school to of K-6, 2nd floor, Partap Nagar, bags(Godown) 1.12.2022 10, State bank of India, Sadar Bazaar, Delhi

2. Sh. Sanjay Prashad son of Sh. 104, 105 and Manufacturing of 1.10.2019 to Ram Prashad, resident of A- 106 lipstick/nail 1.10.2022 175, S.K.-1, Sector-93, Gautam polish Buddha Nagar, Noida, Uttar Pradesh- 201301

3. Mrs. Babita Mishra wife of Sh. 102, 103, 109 Trading of 01.08.201 Deepak Kumar Mishra(C/o and 110 rexin Automobile 9 to ADG Canvas Pvt. Ltd.,) cover(Godown)

09.02.2020 resident of House no. 34, first floor, I-Block, Gali no.35, Mahendra Park, Adarsh Nagar, New Delhi-110 033 f. The said premises is located in residential area, which is not as per Master Plan of Delhi (MPD). The premises consisted of ground floor, first floor and terrace covered with tin shed. The total area of the premises around 1000 square meter approximately. The ground floor found used as Godown by M/s. Delhi U.P. Madhya Pradesh Transport Company.

g. The first floor was comprised of total 14 rooms of different sizes and it was reported by the nearby residents (refused to reveal their identities) that the fire was started from the room, which was used for manufacturing of Lipstick/Nail Polish. Out of 14 rooms located at the first floor, Sh. Sanjay Prashad had rented three (03) rooms and being used for manufacturing of Lipstick/Nail polish.

The fire engulfed the terrace also and the tin shed installed on terrace was found in collapsed condition. During inspection, it was revealed that the fire started due to leakage of gas from LPG cylinder while heating the chemical compound used in lipstick manufacturing.

h. Raw materials for manufacturing of lipstick/nail polish:

As reported by Sh. Sanjay Prashad, the raw materials used for manufacturing of nail polish/lipstick are oil, wax, color, perfumes, Rose Extracts, DM water, lacquer and camphor.

i. Description for manufacturing process for manufacturing nail polish/lipstick:

As reported raw materials are purchased from the market and heating is carried out through LPG cylinder. After that raw materials are mixed together in Stainless Steel mixture and thereafter the mixed material are kept sometime in homogenous mass for cooling and then filled in container for solidification. Finally the material is packed and labeled for dispatch to customer.

j. No firefighting equipment to extinguish the fire found installed in the premises. However, an emergency staircase found provided from first floor to terrace in the premises found permanently closed.

k. During the said unfortunate accident, a worker namely Sh. Upchand Chand S/o Sh. Raja Sah, aged 22 years was recovered in charred state due to fire. Another worker Sh. Susheel Kumar also received severe burn injuries in the said accident. As reported, in the said lipstick manufacturing factory four (4) number of workers were working but the exact number of workers working in the said unit could not be ascertain in spite of best efforts.

l. The notice under section 10A(1) of the Employee's Compensation Act, 1923, has been issued to Sh. Sanjay Prashad to deposit Rs. 1660275/- (Rs. Sixteen Lakhs Sixty Thousand Two Hundred Seventy Five only) in lieu of death of worker Sh. Upchand

s/o Sh/ Ram Sah). Also Sh. Prashad has been directed to furnish disability of percentage of injured employee Sh. Sushil Kumar s/o Sh. Jimidar Sahni

3. In the said premises, all the above-mentioned activities were operating without obtaining any statutory permission from any of the department.

4. The Hon'ble Supreme Court has passed a judgment on

07.05.2004 in WP(C) No. 4677 of 1985 titled as "M.C. Mehta Vs. Union of India & Others" for closure of the illegal units from the residential / non-conforming areas in NCT of Delhi. As per the said judgment, all industrial units that have come up in residential / non-conforming areas in Delhi on or after 1st August, 1990 shall close down. In compliance thereof, the Chief Secretary, Delhi decided that action on industries operating in non-conforming areas and violating the Master Plan of Delhi will be taken by the land owning agencies. Commissioner of Industries is working as a Nodal Officer on behalf of the Hon'ble Supreme Court Monitoring Committee as constituted by the Hon'ble Supreme Court of India in the judgment dated 07.05.2004.

This Hon'ble Tribunal in OA No. 601/2018, entitled as "Mayank Manohar & Paras Singh, Reporter Times of India vs. Govt. of NCT of Delhi & Ors" was taken up regarding industries functioning in non- conforming areas of Delhi. This Hon'ble Tribunal also constituted an Oversight Committee, vide order dated 24.01.2019 in this matter, to prepare a time bound action plan to deal with the problem. This Hon'ble Tribunal closed the proceedings and directed to the Chief Secretary, Delhi to further monitor the issue in terms of order of the Hon'ble Supreme Court in M.C. Mehta (supra).

5. As per the provisions contained in Delhi Fire Service Rules, 2010, the buildings which are covered under Rule 27 are required to be referred to Delhi Fire Service by the local authorities (i.e. MCDs, NDMC, DDA etc.) or any other statutory authorities as per sub rule (1) of Rule 34 of Delhi Fire service Rules, 2010. The industrial occupancy having covered area on all floors more than 250 square meter is covered under sub rule (9) of Rule 27 of Delhi Fire Service Rule 2010 and building plan of such occupancy are required to be referred to Delhi Fire Services for scrutiny from Fire safety point of view.

6. In compliance of the above said order of Hon'ble NGT, the said committee had several meetings on 16.04.2021, 23.06.2021, 07.07.2021 and 14.07.2021. In order to prevent occurrence of such fires in residential/non-conforming areas of NCT of Delhi, the Joint Committee recommends the following:

I. That the buildings used for manufacturing/ godown should be allowed only in the specified area with necessary approvals from the concerned departments such as MCD, Fire Department, Labour Department industry department (Delhi Govt.), DPCC etc. II. No industrial setup or godown should be allowed in residential area which are not as per Master Plan of Delhi (MPD).

III. No electricity connection shall be given by the NDPL/BSES to such industrial activity or godowns or other activities, which are violating MPD. IV. To check the industrial activity /godown in the residential/non-confirming area of Delhi, a Special Task Force (STF) may be constituted, comprising of members from different Delhi Govt. department. The STF shall carry out visit/inspection and will sealed the operations and premises of such illegal activity by disconnecting their electricity. The STF shall be constituted zone wise in Delhi with following members:

a. Officer from District Magistrate/Nominee -

Chairperson b. Delhi Pollution Control Committee - Member Convener c. Municipal Corporation of Delhi (Licensing wing) -

Member d. Fire Department - Member e. Officer from local Police - Member f. Officer from BSES/BYPL/NDPL - Member (to disconnect the Electricity connection on spot) (STF shall schedule inspection at least once in three months) V. The Environmental Compensation Damages should be imposed on the owner of the property i.e. Sh. Vijay Gupta c/o M/s. Shree Swastika Silicate Mills , 18 UB Jawahar Nagar, Delhi -7 and;

Following owner of the units as both landlord and tenants are equally responsible for this tragic fire incident:

1. Sh. Heera Lal Raheja s/o Sh. Sh. Paras Ram Raheja, resident of K-6, 2nd floor, Partap Nagar, 10, State bank of India, Sadar Bazaar, Delhi

2. Sh. Sanjay Prashad son of Sh. Ram Prashad, resident of A-175, S.K.-1, Sector-93, Gautam Buddha Nagar, Noida, Uttar Pradesh- 201301 and

3. Mrs. Babita Mishra wife of Sh. Deepak Kumar Mishra(C/o ADG Canvas Pvt. Ltd.,) resident of House no.

34, first floor, I-Block, Gali no.35, Mahendra Park, Adarsh Nagar, New Delhi-110 033).

VI. The premises was rented out for use of commercial purpose by Sh. Vijay Gupta C/o M/s. Shree Swastika Silicate Mills , 18 UB Jawahar Nagar, Delhi -7 to Sh. Sanjay Prashad son of Sh. Ram Prashad, resident of A-175, S.K.-1, Sector-93, Gautam Buddha Nagar, Noida, Uttar Pradesh- 201301.

Shri Vijay Gupta fails to comply with the conditions as mentioned in the Rent Agreement. The activity falls under Orange Category and carried out in residential area. As per Environmental Compensation Policy framed in compliance of NGT order dated 31.08.2018 in OA no. 593/2017, the Environmental Compensation as per the following formula may be imposed:

EC=. PI xN xR xS xLF1 xLF2 EC -- Environmental Compensation PI - Pollution Index of Industrial Sector (50 for Orange category) N - Number of days of violation (513 days) R - A factor in Rupees for Environmental Compensation (Rs.250 as average Rupee factor as recommended by CPCB) S- Factor for scale of operation (0.5) LF1-Population factor where unit is located (2.0 for NCT of Delhi) LF2-Type of industrial collector in conformity with MPD in which unit is located (1.5 for non-conforming area) The total amount of Environmental Compensation as per the above said formula:

EC = 50 x513x250 x0.5x2x1.5 EC = Rs 9618750/- (Rs. Ninety Six Lakhs Eighteen Thousand seven Hundred Fifty only).

Hence The Environmental compensation of Rs. Rs 9618750/- (Rs. Ninety Six Lakhs Eighteen Thousand seven Hundred fifty only) as calculated above w.e.f. from 01.10.2019 (initial date of rent agreement) to the date of fire i.e. 27.02.2021 (total 513 days) should be levied to Sh. Vijay Gupta do M/s. Shree Swastika Silicate Mills , 18 UB Jawahar Nagar, Delhi -7.

It is humbly prayed that this Hon'ble National Green Tribunal may be pleased to take this report on record and pass such further order or other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

7. Even though no notice was issued by the Tribunal to the PP in absence of particulars, the joint Committee has visited the site. Notice has been issued to the PP under the Employees Compensation Act for death of a person. Remedial measures have been suggested for future.

The PP has been found to be operating without statutory consents in non conforming area without safety precautions, endangering life and health of others. In these circumstances, reserving liberty to the PP to move this Tribunal, we do not consider it necessary to defer the matter and to proceed by notice to the PP in view of established facts, duly verified by the statutory authorities who are themselves competent to take the recommended measures.

8. In view of the above, further action may be taken by the Statutory Authorities, following due process. The compensation assessed may be recovered and if not paid within one month, coercive measures be taken against the concerned persons as well as against the property involved.

We request the Member Secretary, Delhi State Legal Service Authority to ensure legal aid to the heirs of the deceased to enable due compensation to be paid to them. If the owners/tenant or other persons against whom action is taken are aggrieved, they are at liberty to take their remedies, including moving this Tribunal. The Authorities may also maintain vigil and take measures to prevent such incidents in future. We have noted the constitution of zone wise STF to check the illegal industrial activities and godowns in residential/non-conforming areas and are of the view that the same should be manned by officers of higher rank than the constitution now proposed. The Chief Secretary, Delhi may review the constitution accordingly.

The application is disposed of A copy of this order be forwarded to the Chief Secretary, Delhi, CPCB, DPCC, North Delhi Municipal Corporation, Director Industrial Safety, Delhi, District Magistrate, North Delhi, Member Secretary, Delhi State Legal Services Authority, M/s. Gujranwala Gurukul Trust Society (a society registered under the Society Registration Act) through its Secretary Smt. Renu Mehta wife of Shri Vinay Mehta (landlord of the said property), 10 Ram Bagh, Old Rohtak Road, New Delhi, M/s. Shree Swastika Silicate Mills, 18 UB Jawahar Nagar, Delhi -7 through Mrs. Veena Gupta (as a tenant of the property), Heera Lal Raheja S/o Shri Paras Ram Raheja, r/o K-6, 2nd floor, Partap Nagar, 10, State bank of India, Sadar Bazar, Delhi, Shri Sanjay Prashad S/o Shri Ram Prashad, r/o A-175, SK - 1, Sector - 93, Gautam Buddha Nagar, Noida, UP and Shri Vijay Gupta c/o M/s Shree Swastika Silicate Mills, 18 UB Jawahar Nagar, Delhi - 7 for compliance.

The application is disposed of.

Adarsh Kumar Goel, CP Sudhir Agarwal, JM Brijesh Sethi, JM Dr. Nagin Nanda, EM August 31, 2021 Original Application No. 65/2021 A