

Item No. 01

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, FINANCE CENTRE
KOLKATA**

(BY VIDEO CONFERENCE)

Original Application No. 64/2020/EZ

With

I.A No. 99/2021/EZ, I.A No. 15/2023/EZ
and I.A No. 16/2023/EZ

Dakshin Banga Matsyajibi Forum

Applicant

Versus

Inland Waterways Authority of India & Ors. ...

Respondent(s)

Date of hearing: 20.03.2023

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

Applicant: Mr. Ritwick Dutta, Advocate (in Virtual Mode) a/w Mr. Kaustav Dhar,
Advocate

Respondent(s): Mr. Sanjay Upadhyay, Advocate a/w Ms. Gitanjali Sanyal, Advocate
for R-1 (in Virtual Mode),
Mr. Soumitra Mukherjee, Advocate for R-2 (in Virtual Mode),
Mr. Surendra Kumar, Advocate for R-3 (in Virtual Mode),
Mr. Rajib Ray, Advocate for R-4, 7 & 8 (in Virtual Mode),
Mr. Prithwish Basu, Advocate for R-5 (in Virtual Mode),
Ms. Paushali Banerjee, Advocate for R-9

ORDER

The issue

1. Issue raised in this application is against inadequacy of mechanism to deal with incidents of capsizing of barges carrying fly-ash on the Indo-Bangladesh Protocol (IBP) Route which is through highly eco-sensitive and fragile Sundarbans in the State of West Bengal. Such incidents cause water pollution, affect water quality and deprive fishing community of livelihood.

Thus, there is need for preventing such incidents and remedying adverse effect thereof by holding owners of barges accountable.

Applicant's case

2. Case set out in the application is that transportation of cargo on the route is governed by 1972 Agreement between India and Bangladesh which requires compliance of protocols on Indian side by the Indian Waterways Authority of India (IWAI). Central Pollution Control Board (CPCB) Guidelines of 2013 provide for designed jetty and dedicated boats being used for transportation of fly ash to avoid harmful impact on eco-sensitive area but the said guidelines are not adequate. Dredging is undertaken which disturbs watercourse, mangroves, etc. Navigation is permissible only during high tide but the vessels are plying in low tide also without safeguards. The vessels carry toxic fly ash. On 12.03.2020, fly ash laden barge capsized in River Hooghly after collision with Kolkata Port Trust's boat at Uludanga Mahestala South 24 Paragana. On 9.4.2020, separate incident took place in Hooghly River at Tangruchar, Kulpi South 24 Paragana and the other in Muriganga at Kachuberia, Sagar, South 24 Paragana. On 18.04.2020, Fly ash barge capsized in River Paragana. On 25.05.2020, another fly ash laden barge capsized after hitting a submerged pontoon jetty that was damaged by the Cyclone Amphan in Hatania Doania at Namkhana, South 24 Pargana. The Ministry of Environment, Forest and Climate Change (MoEF&CC) published its report titled "status of Tigers, Co-predators and prey in India (2018) stating that use of the rivers within the Sundarban landscape poses a huge obstruction to the movement of tigers. Fly ash spillage into river water violated conditions. No Environmental Impact Assessment (EIA) has been conducted about the harmful impact of movement of such vessels on the eco-sensitive route. There is no provision for taking Environmental Clearance (EC) for

movement of such vessels. Wildlife in the area is also adversely affected by use of water channels inside the forest for commercial boat traffic. There is CAG report no. 1 of 2017 on the issue of violation of CRZ Notification, 2011 and inaction of the WBSCZMA. According to CAG report, there were deviations from CRZ clearance in six out of 13 projects. Condition of CRZ clearance given in September 2009 requiring installation of no spillage system was not followed. The said report is extracted below:

“(a) Spillage of fly ash in Haldi River

The proponent was engaged in export of fly ash to Bangladesh through barges. The fly ash was transported to the jetty by browsers and then filled into barges on the Haldi River using pipes. CRZ clearance was issued in September 2009 with the condition that the project proponent would install a system to ensure no spillage of fly ash into the river. Joint site inspection (24 June 2016) showed that fly ash was spilling into the river-water during loading of fly ash in barges. Further, NOC of WBPCB (March 2014) had stipulated the condition of annual export up to 1.2 lakh MT. Audit, however, observed that between 2014 and 2015, the proponent had exported 5.97 lakh MT of fly ash. thus violated the conditions of WBPCB. In addition, the process of loading of fly ash was also violating the conditions of the clearance which were stipulated to restrict water pollution.”

3. It is thus stated that the safety protocols laid down in the CPCB Guidelines of 2013 are not adequate. Study was conducted by the IWAI titled “Final Technical, Economic & Financial Feasibility Report for Development of Sundarbans Inland Waterways” (2017) which found that barge operations need to be better regulated for safe and proper transport of cargo which should include fixing accountability of barge owners to prevent and remedy the adverse environmental impact of capsizing of the barges and violation of environmental norms during movement to mitigate harmful impact of discharge of pollutants. There is thus need for detailed study including sediment, transport, siltation and environmental impact assessment. E-tender for the purpose was released by IWAI in 2018 but

the study has still not been undertaken. Directions sought in the application are as follows:

- i. Direct that an enquiry be conducted by an Expert Committee to be appointed by this Hon'ble Tribunal on the fly ash barge capsizing incidents that have happened in the last five years on the River Hooghly in West Bengal and investigate the reasons for the frequent capsizing of fly ash barges in the Hooghly and fix responsibility prepare a time bound action plan to prevent such occurrence;*
- ii. Direct the IWAI to identify the responsible barge owners and to hold IWAI as well as respective barge owners responsible for damage to environment, and direct for payment of environmental damages in accordance with the Polluter Pay Principle under Section 15 of the National Green Tribunal Act, 2010;*
- iii. Direct that a Biodiversity Impact Assessment be conducted by the National Biodiversity Board with full participation of the fisherfolk and other coastal communities dependent on River Hooghly under the provisions of Section 36 (4) of the Biological Diversity Act, 2002 on the impact and risk due to transport of fly ash through ecologically sensitive areas including the sundarbans and cRZ-1 areas.*
- iv. Direct for a detailed study including sediment transport, siltation and environmental impact assessment needs to be carried out to confirm the available area for reclamation to minimize the impact on the ecological balance, as recommended and accepted by IWAI in its report titled "Final Technical, Economic & Financial Feasibility Report for sundarbans Waterways-" 2017;*
- v. Direct that until such an assessment is conducted, transportation of fly-ash and other harmful substances be restricted on this highly ecologically stretch passing through the Sundarbans, and alternative route be explored through the Bay of Bengal;*
- vi. Direct that IWAI, State Pollution Control Board and Forest Department jointly form a monitoring mechanism to check the safety standards for barges carrying fly ash including fixing an age limit for those allowed to enter India waters; in particular, that these agencies ensure that the CPCB Guidelines which state "Dedicated boats and baryes should only carry fly ash containers for transportation of fly ash. Specially designed Jetty with automatic loading and unloading system for transportation of fly ash from silo to container should be developed" are followed in letter and spirit.*
- vii. Direct that a time bound action plan is prepared and implemented to remove all the fly ash that has been deposited in the Hooghly River Network, including the fly ash that has been carried downstream in the river, and that the said plan is prepared and implemented in accordance with international best practices, and in a transparent manner with the involvement of the public and environmental groups;*

viii. Direct for assessment of compensation and mechanism of disbursement of the same to the affected small scale and traditional fisherfolk communities who have suffered losses in terms of their livelihood due to the contamination and impact on the fish catch in the stretch in question due to the capsizing of the fly ash barges' pass any other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."

4. Before proceeding further, we may note that during pendency of the proceedings two more incidents have taken place. On 3.11.2021, a barge carrying fly ash capsized near Khashimara Village in Ghoramara Island in Sagar block. The applicant filed IA No. 99/2021/EZ on 20.11.2021 seeking direction to remove the fly ash and oil and fix responsibility on 'Polluter Pays' principle. Again on 25.2.2023, a barge with fly ash capsized near Nischintapur village in Kulpi Block in the Diamond Harbour sub division of the South 24 Parganas District. The applicant has filed IA No. 15/2023/EZ in respect thereof to which response has been filed by the IWAI. **I.A No. 16/2023/EZ** has been filed by Shyama Prasad Port Trust for direction against IWAI to restrain it from allowing barges from plying without safeguards particularly, Automatic Identification System. Direction has also been sought against MoEF&CC to restrict permission to the shipping agencies violating the rules and secure compliance of the regulations by the barges plying in Hooghly River.

Orders of the Tribunal

5. Vide order dated 19.10.2020, the Tribunal issued notice to the respondents including IWAI, CPCB, State PCB, Kolkata Port Trust (now named as Shyama Prasad Mukherjee Port) and the State of West Bengal. The Tribunal also constituted a joint Committee of CPCB, State PCB, PCCF Wildlife, West Bengal and District Magistrate, South 24 Parganas to verify factual aspects and suggest measures to prevent such incidents and mitigation measures for the fly ash already spilled in the waterway. The said Committee was reconstituted vide order dated 21.12.2020. By order dated 27.1.2022, the Tribunal required IWAI to indicate Standard

Operating Procedure (for short 'SOP') to deal with such incidents. Vide order dated 13.10.2022, the Tribunal dealt with IA No. 99/2021/EZ. It was noted from the affidavit of the State PCB dated 22.12.2021 that fly ash and diesel were recovered from the boat. The Tribunal observed that it was for the State PCB to take further action as per Water Act. It was also observed that there should be a mechanism to determine compensation in such matters.

Stand of respondents

6. The contesting parties have filed their respective replies. IWAI has prepared draft SOP in response to order of the Tribunal and CPCB has framed guidelines to determine environmental compensation for such cases. Committee constituted by the Tribunal has filed its report to which the applicant has filed suggestions.

Stand of IWAI

7. The stand of the IWAI is that movement of vessels is in the course of transport of fly ash to Bangladesh. All safeguards are adopted. From 2010 to 2020 only 17 incidents have taken place out of 27,440 voyages. Inland Waterways Authority of India Act, 1985 provides for regulation and development of waterways for shipping and navigation and also provides for conservancy measures and training for safety and convenience of shipping and navigation. India has 14,500 km of navigable rivers and canals where environmental friendly mode of transport can take place. Fly ash utilization helps the environment and is as per the objectives of Fly Ash Notification, 1999 for speedy utilization of fly ash. Permit for the vessel is given under Indian Vessels Act, 1917 (now 2021 Act) by the State Government. IWAI inspects the waterways to ensure that they remain in navigable conditions. Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and the Water (Prevention and Control of Pollution) Act, 1974

(Water Act) provide for pollution control. Loading and transportation is according to the consent conditions under the said Acts. Port Trust is to maintain the port as per Calcutta Port Rules, 1994 which regulates Vessels also. Earlier, India Bangladesh inland waterway was through tiger reserve but after 2011 it is via Bidya-Satjaliya-Raimogla rivers outside the Tiger Reserve Forest. Safeguards to avoid accidents include permission from Protocol Authority of IWAI called PIWT&T which is after inspection of the vessels which enter Indian waters at the border. Other provisions are Prevention of collision on National Waterways Regulation, 2002; National Waterways, Safety of Navigation and Shipping Regulations, 2002; Inland Waterways Authority of India (Classification of Inland Waterways in India) Regulation, 2006; the Inland Vessels Act. Still, accidents happen for reasons beyond human control such as cyclones, mechanical failures of vessels, inclement weather, human error of judgment and sometimes negligence. In such cases, IWAI takes up the matter with BIWTA in Bangladesh to ensure that vessel and cargo are salvaged without polluting the environment. Removal of fly ash or any other spillage is the responsibility of the Vessel Owner, Shipping Agent and the designated Department of the State Government under the Inland Vessels Act. Most of the vessels that have met with an accident have been salvaged and the cargo safely removed from the vessel. Specific information has also been given with regard to the accidents in question - Collision of M.V. Mamatamoy Maa, vessel named D.V. Rabindra on 12.03.2020, M.V. Tofa and Tarif-4, M.V. Drubo Ruponty, M.V. Ariel Kha-1, M.V. Prianka. Draft of SOP prepared in November, 2022 has been filed which provides for survey of vessels, registration of vessels, navigation, safety and signals, prevention of pollution caused by Inland vessel, wreck and salvage, fixing liability, principles to be followed, insurance of mechanically propelled vessels

plying in inland waters, inquiry into casualty, accident or wreck, pilotage, vessel detention and development fund.

8. Affidavit dated 20.03.2023 deals with I.A. No. 15/2023 about capsizing of barge carrying fly ash on 25.02.2023 near Nischintapur village in Kulpi Block in the Diamond Harbour subdivision of the South 24 Parganas district. It is stated that an inspection committee was constituted which visited the site on 26.02.2023. Cause of incident was stated to be restricted visibility due to dense fog. The vessel was taken towards the bank side for safety. Indian Shipping agent has evacuated the petroleum, oil and lubricant (POL) through pump to the barrels and brought to the shore by the mechanized wooden launch. No spillage of POL was observed in the river.

Report of the Committee constituted by the Tribunal

9. The State PCB has filed recommendations of the Committee to prevent incidents in future as follows:-

“i) Mandatory installation of tracking equipment on ships, barges enable tag and guide this ships/barges on scheduled at while on Indian water throw NW-1 and NW-97.

ii.) Proper demarcation of navy rational channel throw lighted buoys be maintained the IWAI for particularly during rough weather condition.

iii) Regular warning to be issued to Bangladesh bound barges by the IWAI to be extra cautious in accident prone 30 KM stretch (86% accidents) between Diamond Harbour to Sagar traversed by shifting submerged chars'.

iv) Under no circumstance the barges carrying flying ash be allowed to leave Indian Port without any certified 'Indian Master'. It should be notified that in case of non-compliance the respective shipping agent may be appropriately penalized.

v) A mechanism to verify the fitness of incoming vessels before allowing them through NW-97 be evolved by the Central Government as per Rules.

vi) A quick response team to be constituted under the ambit of State/Central Disaster Management Authority to address to any such eventualities in future and to conduct rescue and salvage operation as

well as to conduct water and sediment sampling immediately after the accident to assess the short term damage to the environment if any.

vii) In the event of Capsizing of fly ash bearing boats, the shipping agent is directed to deposit a damage cost/ compensation with the State Pollution Control Board following 'polluter pays' principle. In case of specific damage claimed by local fisherman and recommended by the district authorities such compensation may be awarded to the local fisherman. The quantum of such cost/ compensation may be decided by the Hon'ble National Green Tribunal.

viii) To assess environmental impact of the Waterway no. NW-97 through critically sensitive ecosystem of Sundarbans, IWAI may be directed to furnish a comprehensive EIA report (including short/ long term impact of such accidents) within a stipulated time as decided by the Hon'ble National Green Tribunal.

ix) Central Pollution Control Board may be urged to involve a methodology of assessment of environmental Compensation calculation to flying ash deposition in water environment (saline/fresh) riverine water, in line with such assessment for on land fly ash pollution/ non utilization.”

10. **State PCB** has suggested that compensation for damage to environment due to capsizing of Barge MV Banglar Shanti-1 should be Rs. 1 lakh with bank guarantee of Rs. 30 lakhs submitted. IWAI should conduct damage assessment and there should be SOP for removal of fly ash and minimal dilution. There should be comprehensive EIA of National Waterway 97. As per representative of CPCB in the joint Committee, compensation should be Rs. 90 lakhs to be paid by the owner of the barge.

11. **According to the CPCB**, there is general framework of environmental compensation in pursuance to order of this Tribunal dated 24.04.2019 in O.A. No. 606/2018 which requires analysis of data to assess the cost of remediation. The framework also includes compensation for improper handling of hazardous waste. With regard to incident involving MV Banglar Shanti-1, it is stated that there is no evidence that fly ash existed at the site. As per field visit dated 09.08.2021 the Committee observed:-

“Solidified fly ash nodules and boulders recovered from study sites during previous salvage operation rule out the possibilities of long term or large scale leaching and contamination from fly ash loads in tidally affected saline water of neutral pH.

Any part of the mobile fly ash, however, if spilled in the tidal rivers during the accidents, would have been quickly dispersed and flowed towards the sea. No post facto mitigation measures could be suggested for such cases after the lapse of a year.”

12. The report further suggests that there should be a clear direction as well as SOP by Inland Waterways Authority of India. There should be documentation with photographs mentioning GPS coordinates and date/time of fly ash removal and salvage operation of sunken Barge as a part of transparency in the process of removal of fly ash from sunken barge to avoid mixing with river water. The Barge MV Banglar Shanti-1 has not yet been salvaged. As per letter forwarded by M/s Inland Waterways Authority of India on 02.01.2023, cost of salvaging the Barge is about Rs. 30 Lakhs. Direction may be given to inland Waterways Authority of India to salvage the Barge and cost incurred for this purpose may be taken from the responsible person/barge owner/agent in respect of MV Banglar Shanti -1. With regard to environment compensation the report states as follows:-

“As per “Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund”, 1.3.2 In other instances i.e. d, e and f, the environmental compensation may contain two parts - one requires providing immediate relief and other long-term measures such as remediation. In all these cases, detailed investigations are required from expert institutions/organizations based on which environmental compensation will be decided.

CPCB shall list the expert institutions for this purpose

However, for assessment of damage due to fly ash / HSD spillage in tidal stretch like the course of Sundarban waterways in Hoogly river, a detailed survey is required to be carried out by an interdisciplinary expert team consisting of Environmental Economist along with Environmental Chemist and Environmental Biologist following the “General Framework for Imposing Environmental Damage Compensation” published in Dec 2022 by CPCB. In continuation to the study, a specific methodology is also required to be formulated for evaluation of environmental damage-cost. Such study may be useful

for identification of the causes and possible solution in future for similar matters.

Fund for detailed investigations by expert institutions/organizations/ Interdisciplinary expert team, should be borne by responsible person/Barge Owner/Agent and accordingly direction may be given by Hon'ble National Green Tribunal to the Inland Waterways Authority of India.

Detail study report of ecological and economical damage due to non-salvaging of sunken Barge is not available and it is not possible by this committee as it is not an Expert institutions/organizations and such study may be done institutions/organizations/ Interdisciplinary expert team.

This is study may be a part of EIA /EMP of the water way no. NW 97 through critically sensitive ecosystem of Sunderbans, Hence, IWAI may be directed to furnish a comprehensive report (including short/long term impact of such accidents) within a stipulated time, as decided by the Hon'ble NGT.

A meeting was called on 09.01.2023. Committee has recommended following points as mentioned below:

- 1. For assessment of damage due fly ash/HSD spillage in tidal stretch like the course of Sundarban waterways in Hoogly river, a detailed survey is required to be carried out by an interdisciplinary expert team consisting of Environmental Economist along with Environmental Chemist and Environmental Biologist following the "General Framework-Imposing Environmental Damage Compensation" published in Dec 2022 by CPCB. In continuation to the study a specific methodology is also required to be formulated for evaluation of environmental damage-cost. Such study may be useful for identification of the causes and possible solution in future for similar matters.*
- 2. Till finalisation of such methodology, ad-hoc Environmental compensation of 1 Lakh INR on each case of barge accidents on the National Waterway NW-97 and 01(in Part) should be imposed on the transport company to be collected through IWAI to be deposited to the DDMA (District Disaster Management Authority, South 24 Parganas) or as decided by Hon'ble National Green Tribunal, for paying compensation to damage to the fishermen livelihood and any other damages.*
- 3. For any such sunken barge incident, a bank guarantee/ collateral of 30 lakhs INR may be submitted to West Bengal Pollution Control Board or as ordered by Hon'ble National Green Tribunal, which will be returned if the salvage operation is done within 3 three months. Beyond the three months, the bank guarantee may be utilized for salvage operation.*
- 4. Henceforth, for any recovery and disposal operation of fly ash from the sunken barges proper documentation with photographs from the accident location (GPS location) are to be conducted by the IWAI for damage assessment and the same to be sent to the Expert*

*Committee/Expert Institution/ Expert Organisation
/Interdisciplinary expert team WBPCB as applicable.*

5. *It was also suggested that IWAI may be asked to formulate a SOP for removal of the fly ash with minimum dilution of the same with the river water after being technically vetted, and come out with a provision to impose certain damage cost and assessment of actual damage in case of capsizing of the Barge in future.*
6. *A Comprehensive EIA report (including short/long term impact of such accidents) on the National Waterway 97 is long due from the Inland Waterways Authority of India, and this must be completed within one year or as decided by the Hon'ble NGT.”*

13. It is further stated that in response to the letter of the CPCB to the Indian Agent of the vessel, M/s Kanishka responded that the fly ash was manually removed in gunny bags and transported to village Nischintapur, Kulpi. With regard to capsizing of barge on 25.02.2023, the IWAI has stated that Indian shipping agent of the vessel has evacuated the Petroleum Oil and Lubricant (POL) through pump to the barrels and brought the same to the shore by mechanized wooden launch. Fly ash was transported to merchant Kulpi.

Response of the Applicant

14. The applicant has filed response on 30.01.2023 to the SOP filed by the IWAI. It is stated that the same does not cover loss of livelihood of fishermen community. It does not specify the authority responsible for salvaging and restitution of environment. As per SOP, role of IWAI is limited to intimation of the accident and keeping of record. Onus is sought to be shifted to State Government by referring to the Inland Vessel Act, 2021. SOP does not provide for details of the action by the State under the Inland Vessel Act, 2021. Fly ash is a pollutant. Suggestions of the applicant to prevent such incidents are as follows:-

“i. Installation of Radar which is used for collision avoidance and navigation and complying with the requirements of the relevant International Maritime Organisation Standards.

ii. Installation of speed and distance indicator which is an equipment used for indicating speed of the vessel and distance steamed by the ship over water and complying with the requirements of the relevant International Maritime Organisation Standards.

iii. Every vessel shall be provided with a steering compass and efficient means for taking bearings, measuring depth of water, and measuring distance steamed.

iv. Emergency towing arrangements for tankers, chemical carrier and Gas carrier or vessels carrying hazardous and noxious substances of 50,000 tons deadweight or more shall be provided with an emergency towing arrangement in compliance with the relevant International Maritime Organization standard.”

15. The applicant has also stated that upgraded mechanism is required to avoid accidents in future. This should take into account not only Inland Vessel Act, 2021 but also the Merchant Shipping, (Safety of Navigation) Rules, 1997. With regard to compensation, loss of livelihood must be factored in while determining compensation. Comment of the applicant about the stand of CPCB is:-

“i. Though CPCB has tried to cover various elements, however, it is pertinent to note that the CPCB has failed to cover the critical aspect of loss of livelihood of people, especially the especially the fishing communities affected by the submergence of vessel. Hence, a very crucial aspect which is the very contention of the present Application has been overlooked thereby defeating the sole purpose.

ii. Further, it is to be noted that the CPCB framework has also missed upon the major aspect on who will be the implementing or regulating authority, as it has remained silent that against which actions who are the implementing agencies who shall take cognizance of the same and do the needful.

iii. Furthermore, it is significant to note that the CPCB framework has failed to provide any detailed information with regard to which specific mechanisms need to be formed or adopted to impose clean-up of costs and other remedial activities, as the framework is generic and has not discoursed about any particular mechanisms to be followed.”

Consideration by the Tribunal and directions

16. Question for consideration is the scope for interference by the Tribunal in the given fact situation.

17. We have heard learned Counsel for the appearing parties and with their assistance gone through the record to which our attention has been drawn substance of which has been noted hereinabove.

18. While learned Counsel for the applicant has suggested revisiting regulatory framework to protect the environment and the fishermen, learned Counsel for IWAI states that there is adequate regulatory framework in the form of existing environmental laws. SOP has been prepared by the IWAI which can be revisited considering suggestions of the applicant or any other affected person. Compensation regime exists which has to apply as per applicable norms on facts. There is no grievance of any aggrieved individual seeking compensation nor alleged violators before the Tribunal. Thus, claim of the applicant is hypothetical in absence of claimant and alleged violator.

19. We have considered rival submissions. While it is undisputed that there have been incidents of capsizing of vessels carrying hazardous material on account of which damage to the environment is patent. It can also not be disputed that such incidents must be avoided and if such incident takes place, victim has to be compensated on principle of absolute liability.

20. Duty cast on the State under Articles 47 and 48-A in particular of Part IV of the Constitution has been read as conferring a corresponding right on the citizens under Article 21. Regulatory provisions of different legislations have to be read as being in addition to and not in derogation of the requirements of the Environment Protection Act, 1986 which has been

enacted to give effect to international conferences under Entry 13 of List I to Seventh Schedule read with Article 253 of the Constitution. The State, in particular has duty in that behalf to forge in its policy to maintain ecological balance and hygienic environment. Right to life with human dignity encompasses within its ambit the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation. These principles are well settled and for ready reference some of the observations in Supreme Court judgements are reproduced below:

M.C. Mehta v. Union of India (Shriram - Oleum Gas), (1987) 1 SCC 395 – absolute liability for harm as a result of hazardous/dangerous activity:

31. ... We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to

compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher

M.C. Mehta v. Union of India (Delhi vehicular air pollution), (2001) 3 SCC 756 : Other statutory norms are in addition to environmental norms

8.Besides, directions given for safeguarding health of the people, a right provided and protected by Article 21 of the Constitution, would override provisions of every statute including the Motor Vehicles Act, if they militate against the constitutional mandate of Article 21. We must, however, hasten to add that norms fixed under the Motor Vehicles Act are in addition to and not in derogation of the requirements of the Environment Protection Act

Virender Gaur v. State of Haryana, (1995) 2 SCC 577, at page 580 : Environment protection is part of right to life

7. Article 48-A in Part IV (Directive Principles) brought by the Constitution 42nd Amendment Act, 1976, enjoins that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes "a fundamental duty" on every citizen of India to "protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures". The word 'environment' is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment.

Research Foundation for Science Technology National Resource Policy v. Union of India, (2005) 10 SCC 510 : Responsibility of MoEF

21. It is, therefore, imperative to direct the Central Government to consider in detail and with all seriousness, the recommendations of restructuring and other suggestions which flow from the aforementioned part of the report. The Central Government and MOEF would also consider the strengthening of Hazardous Substances Management Division but not at the cost of weakening the other divisions.

M.C. Mehta v. Union of India, (1998) 9 SCC 589

5....We consider it appropriate that before issuing such directions, the Central Government should be given one more opportunity to indicate all the measures taken by it so far for discharge of the duty enjoined on it by the above provisions in Part IV of the Constitution and the Environment (Protection) Act, 1986.

*It need hardly be added that the **duty cast on the State under Articles 47 and 48-A in particular of Part IV of the Constitution is to be read as conferring a corresponding right on the citizens and, therefore, the right under Article 21 at least must be read to include the same within its ambit. At this point of time, the effect of the quality of the environment on the life of the inhabitants is much too obvious to require any emphasis or elaboration.***

*7. We may also add that the **Central Government in addition to stating all the steps taken so far, as indicated above, must also place before the Court the national policy, if any, drawn up in this behalf for the protection and improvement of the environment and the steps it proposes to take to restore the quality of the environment at least to the level at which it existed in 1977 together with the time-frame for the implementation of the programme.** These particulars be furnished on the affidavit of the Secretary, Ministry of Environment and Forests, Government of India.”*

21. Since several incidents have taken place causing pollution with potential for damage to the fish, there is need to take mitigation measures against such incidents in future. If such incident happens, there has to be mechanism for all possible remedial measures. This requires revisiting the applicable regulatory framework.

22. Section 14 of the IWAI Act 1985 lays down functions of IWAI which include “carry out surveys and investigations for the development, maintenance and better utilisation of the national waterways and the appurtenant land for shipping and navigation and prepare schemes in this

behalf; (b) provide or permit setting up of infrastructural facilities for national waterways; (c) carry out conservancy measures and training works and do all other acts necessary for the safety and convenience of shipping and navigation and improvement of the national waterways; (d) control activities such as throwing rubbish, dumping or removal of material, in or from the bed of the national waterways and appurtenant land, in so far as they may affect safe and efficient, shipping and navigation, maintenance of navigable channels, river training and conservancy measures; (e) remove or alter any obstruction or impediment in the national waterways and the appurtenant land which may impede the safe navigation or endanger safety of infrastructural facilities or conservancy measures where such obstruction or impediment has been lawfully made or has become lawful by reason of long continuance of such obstruction or impediment or otherwise, after making compensation to person suffering damage by such removal or alteration; (f) provide for the regulation of navigation and traffic (including the rule of the road) on national waterways; (g) regulate the construction or alteration of structures on, across or under the national waterways; (h) disseminate navigational meteorological information about national waterways; (i) ensure co- ordination of inland water transport on national waterways with other modes of transport; and (j) establish and maintain pilotage on national waterways.” Inland Vessels Act 2021 contains regulatory provisions for safety of vehicles and also to deal with pollution by such vehicles and IWAI has regulatory powers under the said Act also. CPCB guidelines 2013 are “Guidelines for Loading, Unloading and Nuisance free transportation of all types of fly ash, including bottom ash etc. generated by Thermal Power Stations provide for safeguards in the course of loading, unloading and transportation of fly ash”.

23. Thus, regulatory regime is available and only issue is failure of specified authority to take necessary measures. In absence of particulars of damage or victims and in absence of alleged violators being before the Tribunal, no particular relief can be given in respect of incidents mentioned. Prayers in the application as well as IA No. 16/2023/EZ filed by the Shyama Parshad Mukerjee Port Trust are omnibus and beyond observing that steps should be taken to prevent such incidents and if such incident happens, the situation should be satisfactorily remedied, we find it difficult to pass any specific direction. In the course of proceedings before the Tribunal, the committee has made recommendations and the applicant has made suggestions which need consideration by the statutory regulators and the authorities, including the IWAI, State PCB and MoEF&CC.

24. Needless to say that if incident takes place in India, any entity violating Indian law has to be dealt with as per laws of the country. A vessel owned by a foreign entity violating environmental safety norms does not stand on different footing. The proposed SOP prepared by the IWAI may be revisited in the light of above observations including inputs of the applicant which will be in addition to and not in derogation of existing environmental norms. This may be done preferably within two months.

25. With regard to incidents in question, we leave remedy of affected parties undisturbed subject to violator being party and details of loss caused being substantiated. However, with regard to different views on quantum of compensation to be recovered, we leave the matter to be finalized by the Chairman, State PCB after hearing the affected parties. This aspect may also be finalized preferably within two months.

The application is disposed of.

All pending IAs will also stand disposed of.

A copy of this order be forwarded to MoEF&CC, CPCB, State PCB and District Magistrate, Hooghly and IWAI by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

B. Amit Sthalekar, JM

Dr. A. Senthil Vel, EM

March 20, 2023
Original Application No. 64/2020/EZ
With I.A No. 99/2021/EZ, I.A No. 15/2023/EZ
and I.A No. 16/2023/EZ
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