

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE
APPLICATION No. 34/2013 (WZ)**

CORAM:

- 1. Hon'ble Shri Justice V.R. Kingaonkar
(Judicial Member)**
- 2. Hon'ble Dr. Ajay A. Deshpande
(Expert Member)**

B E T W E E N:

TARUN PATEL

Plot No.171, Opp. Rofel MBA Collage
GIDC, Vapi-396195.

....Applicant

A N D

- 1. THE CHAIRMAN,
GUJARAT POLLUTION CONTROL BOARD**
Through its Member Secretary,
ParyavaranBhavan, Sector 10-A,
Gandhinagar 382043,
- 2. THE CHAIRMAN,
GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION**
UdyogBhavan, Block No.4,2nd Floor,
Sector-11, Gandhinagar-382017

3. The Chairman,

Central Pollution Control Board

Parivesh Bhavan, CBD-cum-Office Complex,
East Arjun Nagar, Delhi - 110032

4. The Chairman,

Vapi Waste & Effluent Management Co. Ltd.

VIA House, Plot No.135
GIDC, Vapi-396195

5. The President,

Vapi Industries Association,

VIA House, Plot No.135,
GIDC, Vapi-396195.

.....**Respondents**

Counsel for Applicant

Mr. Debojit Borkakali,

Counsel for Respondent(s):

Mr. Viral K. Shah for Respondent No.1,

Mr. Swapnil Tourikar for Respondent No.3.

Date : April 1st, 2014

J U D G M E N T

1. The Applicant has challenged the decision of Gujarat Pollution Control Board (GPCB), through this Application filed under Section 14 of the National Green Tribunal Act, 2010, for the prescribed COD standards of 1000 mg/lt for the Small Scale Industries (SSI), which are members of the Common Effluent Treatment Plant (CETP) at Vapi, Gujarat.

2. The Applicant is an entrepreneur and submits that SSI plays an important role in the economy of the country and the growth of SSI units has been actively promoted by the Govt. of India to ensure balanced economic growth and to distribute benefits of industrial development in an equitable manner. The Applicant further submits that Vapi Industrial Estate was started by Gujarat Industrial Development Corporation (GIDC), Respondent No.2, in 1967 and is spread over 11.4 sq.kms. It is further pleaded that the Govt. of India has introduced a scheme of Common Effluent Treatment Plant (CETP) in 1991 and further devised a scheme to provide financial assistance for installation of Common Effluent Treatment Plant (CETP), in organized industrial areas. This scheme was an innovative technical and financial support scheme to ensure industrial growth in an environmentally compatible manner. The scheme envisages the provisions of CETP for SSI industries through liberal financial assistance from the Central and State Governments.

3. It is further stated that Hon'ble Gujarat High Court in the matter of "**Vapi Industrial Association Vs State of Gujarat, in Civil Application No.7780 of 1996, in Spl. Civil Application No.6926 of 1994**" vide order dated 27th February, 1997 has already directed the units at Vapi, which have no secondary treatment plant and have not become the members of CETP, shall close their units by March 13, 1997. The Applicant, therefore, submits that it is duty of GPCB- Respondent No.1, to ensure that the units have necessary effluent treatment plant, so as to meet with the norms and also, that they operate the same continuously and efficiently. The Vapi CETP operated by the Respondent-4 accepts industrial effluent from Member industries for the purpose of

further secondary/tertiary treatment, so as to ensure that effluent is ultimately discharged fully complying with the disposal parameters prescribed by the GPCB and so the units having inadequate treatment facilities and discharging untreated effluent into CETP shall not be permitted by GPCB to carry out manufacturing activities.

4. The Applicant submits that CETP scheme was developed primarily for SSI industries and as per the standards defined under the Environment (Protection) Rules, 1986, effluent standards for SSI, i.e. total discharge up to 25 KL/Day, have been prescribed which do not include Bio-chemical oxygen Demand (BOD) and Chemical oxygen Demand (COD) parameters. Similarly, Total Dissolved Solids (TDS) parameter is not also specified. However, all these three (3) parameters have been stipulated in the treated effluent quality of CETP through these standards. It is, therefore, claimed by the Applicant that SSI industries, which are presently defined as units whose capital cost of Building and Machinery is valued at less than Rs.5 crores and which also, generate industrial effluent less than 25 kl per day, are not required by Law to treat their effluent to achieve certain BOD/COD/TDS standards. The Applicant submits that GPCB has stipulated a uniform effluent quality standard for all types of industries i.e. large, medium and small as BOD < 400 mg/lit and COD < 1000mg/lit. The Applicant submits that small scale industries are not in a position either financially or technically to provide secondary or any further treatment after primary treatment to achieve these stringent additional standards. And as far as large and medium scale industries are concerned, they are allowed to join CETP only for hydraulic load at CETP and not for the purpose of giving further treatment in CETP. It is the case of the Applicant that the specified inlet

standards of CETP are applicable only to SSI units and as far as treated effluent quality of large and medium scale industries are concerned, the Environment (Protection) Rules, 1986, have specified several specific effluent standards and also the general standards for the treated effluents. These standards are specific standards and will be applicable for large and medium scale industries.

5. The Applicant further submits that performance of CETP at Vapi, is not satisfactory since long and GPCB as well as Vapi Industries Association, have been taking several steps to improve the performance, however, in the process effluent standards for the small scale industries are being made more and more stringent, making it difficult, both technically as well as financially, for SSI industries to achieve the standard, which is hampering their growth and even existence. It is further submitted that non-compliance of CETP, is resulting into harsher actions by GPCB against defaulting units, either by way of closure or forfeiture of bank guarantee as a penal measure and therefore, it is pleaded by the Applicant that arbitrary parameters set out by the Respondent No.1-Board for SSI units situated at Vapi Industrial area are in violation of law. The major prayers of the Applicant are as under:

- “a.** Issue direction to modify the parameter of quality of discharge effluent to COD Present 1000 to 7,000 & BOD to 2000 at Vapi where discharge of effluent o; SSI units having less than 25 kl/Day.
- b.** Issue direction to the Respondent No.1 by making it mandatory to approach this Hon'ble Tribunal to try any offence punishable under the Act.

c. Issue direction to constitute a committee comprising) Executive Chief Officer (Environment) of GIDC, ii) Nominee of GPCB not below the rank of Head of Department and iii) Member of the Association running the CETP and make mandatory for the Committee to submit a report to GIDC and GPCB indicating which large scale and/or medium scale units should discharge their treated effluent into CETP or in some other place to be authorized by GPCB as a discharge area for such units.”

6. The Applicant has also prayed for following in his Application:

- i. *Discharge of effluent of SSI units having less than 25 kl/Day, Parameter of quality of effluent may be modified to COD Present 1000 to 10,000 & BOD to 2000.*
- ii. *The GPCB has no power/jurisdiction to impose pollution cost or direct the Appellant to furnish a Bank Guarantee as penal measure. Necessary directions be issued to GPCB in this matter, to make it mandatory for GPCB to approach appropriate Court to try any offence punishable under the Act.*
- iii. *Large and Medium Scale COD limit be made stringent from 1000 to 250 and BOD 100 as required by the Environment Act.*

7. The Respondent No.3 i.e. CPCB filed affidavit through Mr. Ajay Agarwal, Scientist-D, wherein, it is submitted that there is continuous non-compliance of standards by the CETP at Vapi, which is fact on record. The Respondent No.3, further submits that minimum national effluent standards for CETP have been

prescribed as per Schedule-I, of the Environment (Protection) Rules, 1986. The note attached to the standards states that these standards apply to SSIs, i.e. total discharge up to 25 KL/D and that for each CETP and its constituent units the State Board will prescribe standards as per local needs and conditions, which can be more stringent. It is further submitted that minimum national effluent standards for CETP, primarily prescribe limits only for pH and toxic parameters, therefore, CETP specific primary treatment limits for other parameters like BOD, COD and TDS, have to be defined and prescribed based on the design and capacity of CETP at the local level by the state boards.

8. The Respondent No.1, i.e. GPCB filed the affidavit through Tushar Shah, on 19th December, 2013. The Respondent No.1, submits that the Applicant has prayed for modification of parameters for discharge of effluents, which is not at all possible, as they are requesting for discretionary treatment. It further mentions that there are separate parameters for bank guarantee. It is submitted that Vapi CETP is one of the biggest waste water treatment plant in India and it was designed by the National Environmental Engineering and Research Institute (NEERI) in 1997.

9. Somewhere in 1997, Vapi Industrial Association took charge of CETP from GIDC and constituted a company named Vapi Waste Water Effluent Management Company Ltd. (VWWEMCL), to look after the management and administration of CETP. GPCB further submits that the said CETP was designed for 55 MLD and subsequently some domestic waste water from the residential area was also diverted to the CETP and as of now 52 to 55 MLD of industrial effluent released by the member units located in the industrial estate is

drifted/sent to the CETP through 93 km long underground pipeline network. GPCB further submits that CETP receives partially treated waste water from its 725 member industries situated in Vapi Industrial estate and all the industries having waste water discharge are the members of CETP.

10. GPCB further submits that each member industry of the CETP has to provide adequate treatment facilities to meet with CETP inlet norms and all the industries located in GIDC Vapi, are discharging waste water into the underground drainage line, after treatment and after achieving inlet norms. GPCB further submits that there is no separate drainage line for disposal of waste water of small, medium and large scale industries. GPCB puts on record that inlet norms given to all industries in Vapi industrial area are BOD-400 mg/Lt, COD-1000 mg/Lt. SS-300 mg/Lt and pH-6.5 to 8.5. It is also submitted by GPCB that though, earlier CETP inlet was generally having COD of 1700 mg/Lt. which has now come down to about 1200 mg/Lt due to various actions taken by GPCB, which has also resulted in improving treated effluent quality of CETP from COD 700 mg/Lt to around 450 mg/Lt against the prescribed standards of COD < 250 mg/Lt.

11. GPCB further submits that there is no separate drainage line for disposal of SSI and for medium and for large scale industries and CETP was designed, considering BOD 400 mg/Lt and COD 1000 mg/Lt and CETP was designed and constructed for all the industries in GIDC Vapi. GPCB has further submitted that it is taking actions against non-complying units irrespective of large, medium and small scale industries to ensure that CETP outlet is as per desired quality. GPCB, therefore, resisted the Application, and sought dismissal thereof.

12. Respondent No.4, filed affidavit through Shri. Rajesh Doshi, CEO. The Respondent submitted that they have taken over the charge of CETP from GIDC, after its commissioning in 1997 and present Respondents are responsible for taking care of all the aspects of operation and maintenance of CETP. It is submitted that CETP is designed to treat partially treated effluent collected from all industrial units in GIDC industrial estate, through GIDC owned drainage network. Presently, approximately 677 (0 to 50 KL/542 units, 51-500 kl:108 units and above 500 kl :27 units) out of 723 registered member units are discharging effluent into CETP. Treated effluent from CETP is discharged into tidal zone of river 'Daman-Ganga' which flows at a distance of 300m from CETP, before joining Arabian Sea.

13. The Respondent No.4, further submits that all through the area of GIDC, common drainage network, is provided to discharge effluent, so it will be difficult to monitor whether proper treatment to the effluent is provided by the individual industry or not. Moreover, there is no individual water meter (discharge reading) or isolation valve, installed at the discharge end of the industry. It is further mentioned that the Respondent No.4, accepts all the discharge from all the industries and as such, there are no internal segregation of pipeline, which can differentiate effluent of small, medium or large scale industries and treat each one separately. It is further submitted that all the member industries have already agreed to discharge effluent of maximum 1000 mg/Lt. of COD after considering the norms set out by the regulatory Authorities and also design of CETP. It is further submitted that some of SSI units at times do not care to provide even primary treatment and discharge effluent with more than 10,000 mg/Lt of COD. Even they

do not intimate change in product and accordingly, there is significant change in the effluent quality and quantity. The Respondent No.4, therefore, finally submits that any modification in the standards based on the industry categorization is not possible and would put CETP operation in jeopardy.

14. During hearing on 20th December, 2013, CETP standards as defined under the Environment (Protection) Rules, 1986, were also discussed and considering footnote and also other standards prescribed for various types of industries, the Tribunal had specifically asked GPCB i.e. the Respondent No.1, and Respondent No.4, to explain in detail fixation of standards for SSI and medium/large scale industries along with detail justification and powers conferred upon the Authorities. GPCB further filed an affidavit through Mr. Tushar Shah, on 3rd March, 2014, which has conveniently scuttled this particular query and has not filed any supporting documents, statutory provisions or policy decision, which have been relied upon by the Respondent No.1- GPCB, while fixing the standards for individual industries i.e. small, medium and large scale.

15. Considering foregoing discussions and the prayers made in the Application, following issues are formulated for final disposal of this Application.

- 1.** Whether primary treatment standards as defined in the inlet effluent quality standards for CETP, stipulated under the Environment (Protection) Rules, 1986, can be uniformly applied to all types of industries contributing to CETP for their treated effluent quality?
- 2.** Whether GPCB has power to relax treated effluent quality standards particularly for

industries generating more than 25 KL/day than specified in the Environment (Protection) Rules, 1986, as amended?

3. Whether the Applicants are entitled to COD standards of 7000 mg/lt. instead of 1000 mg/lt.?

4. Whether the decision of the Board requiring industrial units to furnish bank guarantee is without jurisdiction and is of penal nature, and thus impermissible under the provisions of the Air Act and the Water Act?

16. Before proceeding to deal with core issues, we would like to record the development of CETPs in India. SSI industries have long been identified as one of the major pollution source and also difficult to control pollution. The Govt. of India, therefore, initiated innovative scheme to provide Common Effluent Treatment Plant (CETP), which was adopted to achieve end-of-the-pipe treatment for the common effluents generated from SSI units for the benefit of scale in the treatment process and technology. SSI units find it difficult to have full-fledged effluent treatment plant of its own due to complexity of effluent composition, scale of pollution load, financial viability and low technical expertise. This was more relevant in chemical sector as complexity of industrial effluents is very high and vary depending on processes and number of stages in manufacturing, making effluent composition difficult to treat. MoEF, Govt. of India, therefore, initiated a scheme to provide financial support to CETP to ensure the growth of small and medium entrepreneurs in an environmentally compatible manner in 1991. Though this scheme was initiated for ten (10) years, considering the usefulness, the scheme was extended, with some

revisions, from time to time. CETP also facilitates restriction of number of discharge points in the industrial estate for better enforcement and also to make skilled manpower available for proper treatment of effluent. More than 130 CETPs have now come up in the country. However, CETP itself is a complex technical and management concern, where significant variations in terms of effluent quality, effluent quantity, composition, shock load, effluent treatability etc. pose serious challenge in efficient management of CETP. The guidelines for CETP scheme prepared by MoEF, defines that SSI as unit, whose plant and machinery are valued at less than 5 crore. This categorization is basically derived from MSME Act, which is also a standard way of categorization of SSI industries with institutions like RBI etc. In the initial stage of this CETP development only SSI industries were allowed to join CETP, that too with less than 25 KL/Day effluent. Subsequently, MoEF has taken a decision to amend the CETP scheme to allow other SSI units generating more than 25 KL/Day effluent to CETP, and also, the large and medium scale units, subject to their meeting individual treatment standards. The recent revision in CETP scheme stipulates that large and medium scale industries, other than those belonging to 17 categories of heavily polluting industries, may join CETP after primary treatment or as considered necessary by the SPCB for the purpose of hydraulic load and for techno economic viability of CEPT. However, it has to be ensured that CETP primarily serves effluent discharge by SSI.

17. This takes us to standards stipulated under the provisions of Environment (Protection) Rules, 1986. The entry related to CETP is as follows:

Sr No	Industry	Parameter	Standards
1	2	3	4
55	COMMON EFFLUENT TREATMENT PLANTS	EFFLUENTS (Inlet effluent quality for ETP)	Concentration in mg/ltr
	A Primary Treatment	pH	5.5-9.0
		Temporary °C	45
		Oil & Grease	20
		..	
		..	
		..	
<p>Note:1. These Standards apply to the small scale industries, i.e. total discharge up to 25 KL/Day</p> <p>2. For each CETP and its constituent units, the State Board will prescribe standards as per the local needs and conditions; these can be more stringent than those prescribed above. However, in case of cluster of units, the State Board with the concurrence of CPCB in writing, may prescribe suitable limits.</p>			

The plain literal reading of Note-1 is necessary in view of presence of expression “i.e.”. Free Dictionary defines Comma as;

1. *Grammar.* A punctuation mark (,) used to indicate a separation of ideas or of elements within the structure of a sentence.
2. A pause or separation; a caesura.

Dictionary defines the sign (,), a mark of punctuation used for indicating a division in a sentence, a in setting off a word phases, or clause, especially when such a division is accompanied by a slight pause or is to be noted in order to the sequential elements of the sentence. It is also used to separate term in a list, to mark off thousands in numerals, to separate types or levels of information in bibliographic or other data.

Free Dictionary defines ‘i.e.’ as prep. Abbreviation for ‘id est.’ which is Latin for "that is" or "that is to say." It is used to expand or explain a general. It should not be confused with "e.g." which means, "for example."

18. Grammar and punctuations are hapless victims of the pace of life and we may prefer in this case not to go merely by a comma followed by 'i.e.' used in Note-1 because, though it seem to have been placed both as a matter of convenience and of meaningfulness, yet, a more thoughtful use of commas and other modes of punctuation would have helped clarify the meaning of the note beyond controversy. Besides, how far a clause which follows upon a comma governs every clause that precedes the comma is a matter not free from doubt. The Tribunal, therefore, considers it more safe and satisfactory to discover the true meaning of Note-1 by having regard to the substance of the matter as it emerges from the object and purpose of the Act, the context in which the expression is used and the consequences necessarily following upon the acceptance of any particular interpretation of the provision, the contravention of which may be followed by penal consequences.

19. A word on purposive construction. It simply means that while adopting a purposive approach, Courts should seek to give effect to the true purpose of legislation and must keep in view all material that bears on the background against which a legislation was effected and where more than one construction is possible, the one which eliminates the mischief identified should be favoured. But, where only one construction is possible, the Court is not to strain backwards and then bend forward followed by leaning to the left and then to the right to appropriate a space not intended to be appropriated by the legislation.

20. It was also brought to the notice of Tribunal that the term 'SSI' has not been defined either in EP Act or EP Rules. The Literal interpretation of above Note-1 can lead to interpretation that SSI have been defined as industries

which are discharging total effluent up to 25 KL/Day. So this categorization can be considered as based on volumetric effluent load generated by the industry. As mentioned earlier, guidelines and literature available on CETP categorizes industries into small, medium and large scale based on the financial capital investment. It is now, therefore, necessary for this Tribunal to adjudicate on the particular issue. Similarly, Note-2, stipulates that State Board will prescribe standards as per local needs and conditions. This can be more stringent than those prescribed above. The plain reading of this stipulation also lead to interpretation that though State Boards are allowed to prescribe the standards as per local needs and conditions, these can be more stringent than prescribed one. This stipulation cannot be interpreted, as State Board can have the powers to prescribe the standards by relaxing the standards. Both components of above sentence of Note-2, need to be read conjointly and concurrently and cannot be read in isolation. Second part of Note-2, also prescribes that in case of cluster of units, the State Board with concurrence of CPCB in writing, may prescribe suitable limits. Here also, stipulation envisages prescription of suitable limits considering special and unique nature of industrial area and this cannot be interpreted as authorizing SPCB to relax the standards for cluster of units.

21. This can also be supported by the provisions of Rule 3(2) of the Environment (Protection) Rules, 1986, which provides that the State Board may specify more stringent standards for the relevant parameters with respect to specific nature or location. Moreover, under Section 17(a) of the Water (Prevention and Control of Pollution) Act, 1974, the State Board is empowered to lay down modified or amended effluent standards for

sewerage and treated effluents. Section 16 of the Water (Prevention and Control of Pollution) Act, 1974, provides that provisions thereof shall have effect notwithstanding inconsistent therewith contained in any other Act. So there is no ambiguity and inconsistency in the legal provisions that the standards prescribed under the Environment (Protection) Act, 1986, cannot be further relaxed by SPCB and they can only make it more stringent depending upon local conditions.

22. CETPs in Gujarat have undergone several improvements since intervention of Hon'ble High Court in the matter of **Pravinbhai Jajbhai Patel Vs Mr. S.N.Shelat and Ors in Spl. Civil Application No.770 of 1995** and its subsequent directions. The Hon'ble High Court of Gujarat has issued several orders to streamline CETP operations in order to upgrade them to meet total requirements and also improve their operations to meet desired effluent quality. The Hon'ble High Court had also ensured that all the effluent generating industries in the industrial area, where CETP is located, becomes member of CETP and discharge their effluent into CETP, after necessary treatment.

23. CETP at Vapi, is one of the major CETP in the country, however, it has been on the radar of the Regulatory Agencies, as well as, Judiciary, in view of continuous non-compliance of the standards. This takes us to Comprehensive Environmental Pollution Index of Vapi Industrial cluster, whereby Vapi, has been declared as one of the "Critically" polluted areas in the country. GPCB has already prepared an action plan to improve environmental condition, which is already in the public domain. The Applicant has highlighted this report, which has been prepared by GPCB and has been made as declared policy points for pollution control, (Policy of

Action Plan). Though this Action Plan has been submitted in 2010, it is observed from the reports of treated effluent quality at CETP Vapi submitted by GPCB, that even now treated effluent is not meeting the prescribed standards, though there are claims that there is significant improvement in treated effluent quality. This demonstrates a need on the part of GPCB, to take innovative enforcement measures to achieve treated effluent quality of CETP, which is the final aim of the entire process.

24. As stated above, it was brought to the notice of the Tribunal by the Applicant that while stipulating stringent standards of 1000 mg/Day of COD to SSI industries, GPCB has also specified similar standards for large and medium scale industries thereby vitiating and deviating the basic concept of CETP, which has been developed for benefit of SSI. This fact of similar standards for small, medium and large scale units, is also confirmed in the affidavit of GPCB. We had, therefore, asked GPCB to put on record explanation regarding fixation of standards for SSI units and large/medium scale units, however, during last hearing on March 7, 2014, the Counsel fairly admits that this aspect has not been dealt with in the affidavit filed on that day and also, makes statement that he does not have any specific instructions on the above aspect.

25. Considering above, we have noted that though present CETP inlet Standards, with literal interpretation, categories SSI industries as the industries which are discharging less than 25 KL/Day effluent, the other literature including MoEF's own guideline categories SSI industries based on economic investments. However, even considering both these categorization, all the units, whether they are LSI, MSI or SSI, which are generating

more than 25 KL/Day, are strictly outside the standards prescribed in the Environment (Protection) Rules, 1986, for CETP inlet standards. Accordingly, we find that primary treatment standards, as defined in inlet effluent quality standards of CETP stipulated under the Environment (Protection) Rules, 1986, cannot be uniformly applied to all types of industries contributing to CETP for their treated effluent quality standards. Hence, the Issue No.1, is answered in Negative.

26. As stated above, the above CETP inlet standards under Entry No.55 of the EP Rules, 1986, are not applicable to large and medium scale industries, on volumetric load basis, which are generating more than 25 KL/Day effluent and also the Rule 3(2) of the Environment (Protection) Rules, 1986, empowers the State Boards only to make more stringent standards, it is clear that GPCB does not have necessary legal powers to relax treated effluent quality standards for the industries generating more than 25 KL/Day effluent, whether they are small, large or medium scale industries, even based on economic investment criteria. The justification given by GPCB like common drainage network also does not hold good, as standards are enforced at the outlet of individual industry and GPCB is expected to enforce the standards at the outlet of industry and not at the common network. Therefore, Issue No.2 is also answered in Negative.

27. Now coming to the bank Guarantee issue, the Applicant has challenged imposition of BG and also, forfeiture of same as a penal measure by GPCB. In this context, clear view has already been taken by various Dictums and we would like to refer some of them as below.

28. The learned Single Judge of the Hon'ble Delhi High Court in the matter of LPA 895/2010 Delhi Pollution Control Committee vs Spondor Landbase Ltd &Ors... has held that:

“Neither the language of Section 33(a) of the Water Act nor the language of Section 31(a) of the Air Act, contemplates the power on SPCB to levy any penalty.”

29. The Hon'ble Delhi High Court in the same review matter through the Judgment dated 23rd January, 2012, has further deliberated on the issue in detail. The relevant paragraphs are reproduced for clarity, as shown below:

“ 36. The Learned Single Judge has noted the decisions reported as 1975 (2) SCC 22 Khemka & Co.(Agencies) Pvt. Ltd vs. State of Maharashtra 1994 (4) SCC 276 J.K. Synthetics Ltd & Birla Cement Works vs. Commercial Taxes Officer and 1997 (6) SCC 479 India Carbon Ltd vs. State of Assam to opine that power to levy penalty has to be conferred by a substantive provision in the enactment.

37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act, and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to

initiate proceedings before the Court of Competent Jurisdiction and no more. ”

30. We would like to reproduce paragraphs in Judgment of this Tribunal in the case of **DVC Emta Coal Mines Ltd. Vs Pollution Control Appellate Authority (WB) in Appeal No.43 of 2012**, wherein it is observed that:

14. In **Splendor Landbase Ltd. vs. Delhi Pollution Control committee, reported in 173(2010) Delhi Law Times-52**, Hon'ble Delhi High Court had an occasion to interpret Section 33(A) of the Water Pollution Act. Relying upon judgment of the Apex Court in the case of **M/s. Khemka & Co. (Agencies) private limited vs. State of Maharashtra (1975) 2 SCC 22**, the Hon'ble Delhi High Court observed :

“In the considered view of this Court, the power to levy a penalty on any party is in the nature of a penal power. It is settled law that unless there is a specific power in the Statute enabling the authority to do so, it cannot levy penalties or damages with reference to the general power under Section 31A of the Air Act or Section 33A of Water Act.”

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“This court has, therefore, no hesitation, in coming to the conclusion that orders issued by the CMC or even the DPCC in the instant case levying penalty and requiring furnishing of bank guarantees and making the grant of consent to establish under the Water Act and consent to operate under the Air Act conditional upon payment of such penalties and furnishing of such bank guarantees, are entirely without the authority of law and require to be set aside.”

15. Let it be noted that Section 25 of the Water Pollution Act empowers the Board to impose conditions on the industrial units which may apply for consent to operate. There are penal provisions which make a person liable for punishment when it is found that conditions set-out under Section 25 or Section 26 of the Water Pollution Act are not complied with. The powers available under Section 33(A) of the Water Pollution Act are circumscribed by the other provisions of Water Pollution Act. Moreover, the competent authority is required to follow the procedure enumerated in the Water (Prevention and

Control of Pollution) Rules, 1975. Rule 34 envisages the manner in which such directions are required to be issued by the competent authority. Significantly, Rule 34(3) categorically provides that a copy of the proposed direction shall be given to the person against whom the same are required to be issued. It will be beneficial to reproduce Section 34(3) for ready reference.

It reads as follows:-

“34. Directions. – (1) xxxxxx

(2). Xxxxxx

(3) The person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.”

16. There is nothing on record to show that proposed directions were communicated to the Appellant as required in the manner stated above. Needless to say there is non-compliance of Rule 34(3) of the Water (Prevention and Control of Pollution) Rules, 1975. For this reason, the impugned direction issued by the WB Pollution Control Board is bad in law since it has been issued without having any legal authority. We are of the opinion that the Pollution Control Appellate Authority (P.C.A.A.) (WB) failed to take into account this important legal flaw while passing the impugned order dated 24.07.2012. The Appellate Authority committed error while holding the Appellant vicariously liable and to uphold the direction to pay pollution cost. We are of the opinion that the WB Pollution Control Board may not issue consent to operate the unit unless the other conditions enumerated at serial nos. 1 to 4 in the directions issued by the WB Pollution Control Board are complied with by the Appellant. The grant of consent to operate or to refuse the same if certain conditions are not complied with by the Appellant, is within the discretion of the Board (WB PCB).

17. Similarly, this Tribunal in Appeal No. 10/2011 Hindustan CocaCola Beverages Pvt. Ltd. vs. WB Pollution Control Board examined identical question of law and held that the Board has no power to direct recovery of pollution cost. Considering the reasons discussed above, we have no hesitation in

holding that the WB Pollution Control Board committed patent error while directing the Appellant to pay pollution cost of Rs. 10 lakh and the Appellate Authority also erred in confirming such order. Hence the Appeal will have to be allowed.”

31. The Hon'ble Principal bench of NGT in its Judgment in the Appeal no. 68 Of 2012 has dealt on this issue in detail and we would like to reproduce some of the paras of this Judgment for clarity.

68. *Before entering into the realm of general discussion and the directions that the Tribunal needs to pass in the facts of the present case and in the larger administration of environmental justice, we may answer the issues/questions formulated by us in paragraph 24 of this judgment. The answers are as follows: -*

- a.** *Resolution of the Board for imposing a condition upon the industrial plants/units to furnish a bank guarantee as an interregnum for compliance and/or in the nature of compensation cannot be held to be without the authority of law or jurisdiction, in so far as it is not penal or punitive.*
- b.** *In the facts and circumstances of the present case, invocation of the bank guarantee by the Board for non-compliance of the conditions stated in the consent order and in view of the undertaking furnished by the industry cannot be held to be penal and impermissible under the provisions of the Air Act.*
- c.** *The order of the Appellate Authority suffers from apparent errors of facts and law. The appellate authority has taken into consideration irrelevant matters on the one hand and ignored other relevant matters on the other. The order of the appellate authority, thus, is liable to be set aside.*
- d.** *The bank had furnished an unequivocal guarantee for payment of the stated amount. In case of failure to comply during the specified period to the satisfaction of the Board, the bank guarantee could be forfeited. The bank guarantee has been*

invoked by the Board as per terms of the guarantee. Consequently, the Board would be entitled to receive the guarantee amount, however, would be entitled to use the same only for the purposes of compliance and/or for making good the environmental loss or degradation caused by the applicant.

74. *We hold that the condition requiring the respondents to furnish the bank guarantee is not penal and encashment thereof is neither unjustified nor covered under any of the exceptions stated in the judgment of the Supreme Court in the case of Vinetec Electronics Pvt. Ltd. (supra).*

75. *However, we further direct that the amounts received by the Board against encashment of bank guarantee shall, in preference to all other, be utilised for the compensatory purposes or restoration of the degraded environment resulting from emission and discharge of effluents and other pollutants in violation of the prescribed standards by the industry. Remnant, if any, may be utilised for installation of such effluent treatment plants/anti-pollution devices, directed to be installed under the order of consent or otherwise in the unit of the industry as it would help in bringing down the emission/pollution levels and bringing it in line with the prescribed parameters, thus protecting the environment. The Board shall have no authority or power to forfeit this amount and use it for any other, including for its own, purposes.*

32. The purport of all these Judgments will show that the SPCB cannot use the BG as a penal measure against any non-compliance, but can seek/invoke the BG for ensuring time-bound and well defined substantial improvements in the pollution control system. In simple words, BG regime shall not be used or rather misused as “pollute and pay”. Nor the BG regime can be used as substitute for the legal action against the non-compliance as per the provisions of Water Act, Air Act, and EP Act. The SPCB’s need to initiate penal action in case of regular non-compliance by lodging regular complaint as

envisaged under Water and Air Acts before the competent Court of Magistrate. Neither the BG can be taken as penalty or compensation for pollution. Wherever the Board requires a unit to furnish bank guarantee for compliance of conditions of consent order, installation of anti-pollution devices and ensuring that it is a pollution-free unit, then, in such cases, the Board should ensure that its order provides for a 'time targeted action plan'. In default of which and upon inspection, such bank guarantee would be liable to be invoked/encashed for environmental compensation and restoration purposes.

33. CETP at Vapi is continuously not meeting with the norms and, therefore, any relaxation of inlet standards to the units, which are covered under CETP inlet effluent quality standards, needs to be viewed in that context. The Applicant has prayed for relaxing standards for SSI industries (on economic criteria) of applicable parameters of BOD/COD. We are not inclined to issue any specific order in this regard, as CETP is not performing as per the standards and any further relaxation can further deteriorate the quality of CETP treated effluent. In any case, the CETP inlet and outlet standards need to be complied simultaneously, obviously, with a more emphasis on outlet standards considering the impacts on environment on Precautionary Principle. We, therefore, grant liberty to the Applicant to approach GPCB with the request along with duly technical justification that the enhanced pollution load due to such relaxed standards will not affect operations of CETP, and also, the safeguards to ensure that the apprehensions raised by GPCB and plant operators like release of shock load by SSI units, discharge of untreated effluent, change in characteristics of effluents etc., are fully addressed. However, such representation can only be made after six

(6) months of continuous compliance of standards of CETP outlet.

34. In view of foregoing discussion and reasons stated above, we hold that the Application deserves to be partly allowed with following directions:

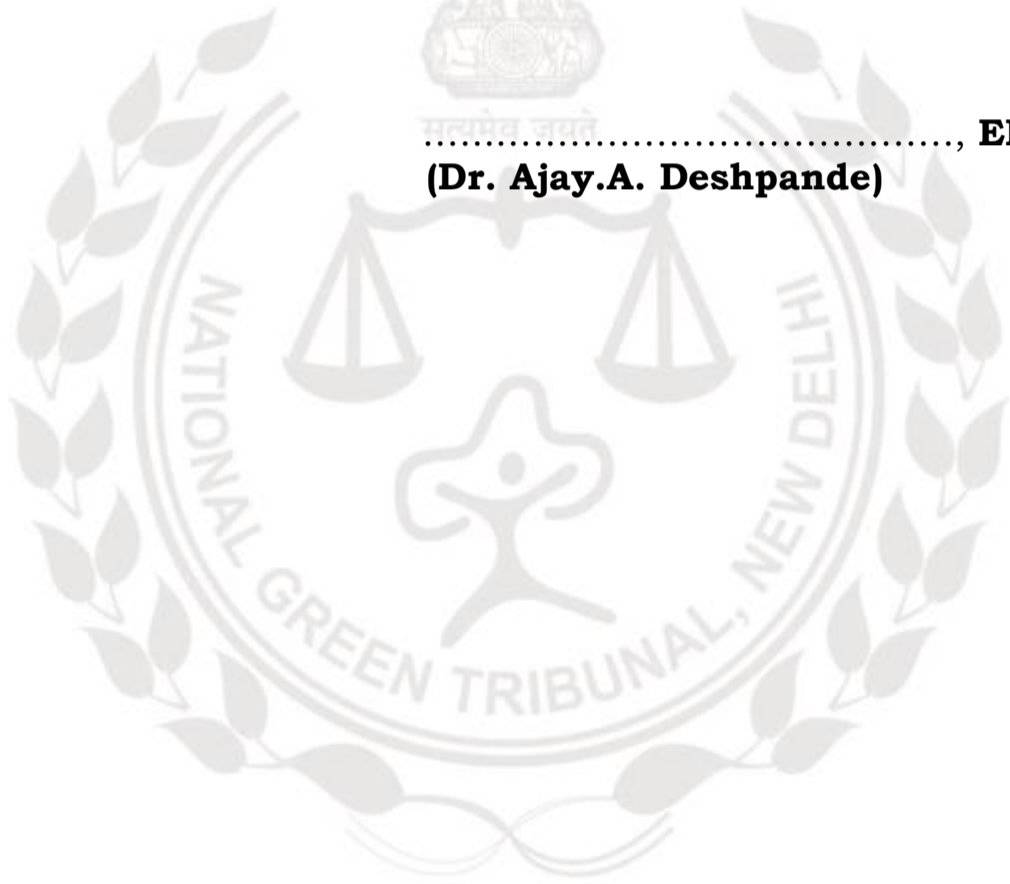
- (a)** The effluent discharge standards prescribed by GPCB for all industries generating more than 25 Kl/Day shall be as per the schedule VI or the Industry specific standards as per the Environment (Protection) Rules, 1986, whichever is stringent, or more stringent as stipulated by GPCB, prescribed as per the law.
- (b)** These above standards shall be notified for individual units by GPCB in next four (4) weeks and communicated to all concerned units. The industries are required to provide necessary treatment plant including any up gradation required within next six (6) months. GPCB shall obtain time bound program for such up gradation within next fifteen (15) days.
- (c)** In case these industries do not comply to the required standards stipulated as noted above, GPCB is at liberty to take necessary action as per Law against erring industries.
- (d)** GPCB can use the BG regime as per the defined policy of the Board to ensure the time-bound and well defined improvements in pollution control systems and the BG forfeiture shall not be done as a substitute for penal actions separately prescribed under the law. The Amount of BG forfeiture

shall be strictly used as described in judgment of PB, NGT in Appeal no. 68 of 2012.

Accordingly, the Application is disposed of. No Costs.

....., **JM**
(Justice V. R. Kingaonkar)

....., **EM**
(Dr. Ajay.A. Deshpande)



NGT