

Item No. 07

Court No. 1

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

Original Application No. 232/2023

In re : News item published in Times of India dated 16.03.2023 titled “**5 including man & son suffocate to death at brick kiln in C’garh**”

Date of hearing: 06.04.2023

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

Respondent: Mr. Abhinay Sharma & Ms. Parul Khurana, Advocates for CECB

**ORDER**

1. Proceedings have been initiated suo-motu in the light of captioned news item about death of five persons and injury to one at a brick kiln in Chhattisgarh.

2. In response to the advance notice dated 20.03.2023 issued to the State PCB and District Magistrate, Mahasamund, Chhattisgarh, response has been filed by the State PCB on 05.04.2023, after interaction with the District Magistrate as follows:-

*“i. That on 14.03.2023, six laborers working in the brick kiln situated at Tehsil Basna, District Mahasamund, Chhattisgarh, set an assembled pile of bricks for heating at night and slept atop it.*

*ii. Thereafter, the next morning i.e., on 15.03.2023, the brick kiln owner i.e., Mr. Kunjbihari Pade along with the brick maker i.e., Mr. Arjun Kumar went to the location of the brick kiln. Upon reaching the spot, they found that 6 laborers were lying in an unconscious condition over the top of the brick.*

*iii. Subsequently, the aforesaid laborers were immediately shifted to the hospital for treatment, where five of them were declared dead. According to the doctors, the cause of the death for these workers was asphyxia due to smoke inhalation.*

iv. The sixth laborer was sent to the D.K.S specialty hospital, Raipur, for further treatment.

Following are the details of the aforementioned laborers: -

<b>S.No.</b>	<b>Name of the deceased worker/laborer</b>	<b>Age</b>
1	Mr. Janakram Bariha	35 years
2	Mr. Dayanidhi Bariha	30 years
3	Mr. Gangaram Bisi	55 years
4	Mr. Sonchand Bhoi	40 years
5	Mr. Varun Bariha	24 years
<b>Name of the injured worker/laborer</b>		
6	Mr. Manohar Bisi	30 years

v. Thereafter, the Inspector of Mines, District Mahamasund, submitted an investigation report on 28.03.2023, concerning the said incident, wherein it was stated that one Mr. Kunjbihari Pade, operated a brick kiln over his land and the contract of preparing the bricks was given by Mr. Avdhut Pade, father of Mr. Kunjbihari Pade. However, no official permission was sought from the Department of Minerals for the construction work of the hand brick kiln operated by Mr. Kunjbihari Pade. It was further stated in the report that as per Rule 3 of Chhattisgarh Minor Mineral Rules, 2015, Chhattisgarh native genetic potters or their cooperative societies are exempted from extracting soil from their village and since Mr. Kunjbihari Pade comes from the Kumhar community (that traditionally made pottery), therefore he comes under the exempted category and consequently no case was registered against him. Rule 3 of Chhattisgarh Minor Mineral Rules, 2015 is reproduced herein for the easy reference of this Hon'ble Tribunal: -

*Exemptions.* - Notwithstanding anything contained in these rules,-

(i) Extraction of ordinary clay or ordinary sand by hereditary Kumhars, being domicile of Chhattisgarh or their co-operative societies for preparing pots, tiles, and bricks by traditional means, but not by process of manufacture in chimney-kilns or by any mechanical means, from the area of village of their common residence that may be decided and earmarked by the Gram Panchayats within their respective panchayat area for extraction of ordinary clay and ordinary sand:

(ii) Provided that no extraction shall be made from any public place and within 50 meters in all directions from such public place;

(iii) The removal of minor minerals from quarries shall be exempted, whether situated in private or Government land, when such quarries have not been appropriated to the use of a department of the State Government and the minor minerals are not mined for sale but are required for the construction or repairs of wells, other agricultural works or for the construction or improvement of the dwelling houses of agriculturists, village artisans and laborers residing in revenue or forest villages;

(iv) *The minor minerals removed from Government lands for public works by Gram Panchayats, Janpad Panchayats, and Zila Panchayats for work undertaken by respective Panchayats shall be exempted.*

(v) *The search for minor minerals at the surface, not involving any substantial removal of the soil by digging up pits, trenches, or otherwise, shall be exempted;*

(vi) *The chipping of outcrops with a geological hammer, for the purposes of taking samples, shall not be deemed to be a substantial removal of the soil: Provided that the aforesaid exemptions do not afford immunity from any action which might be taken under any existing rules or any act of the State or the Central Government, for unauthorized removal of minor minerals from 184 any land by private person without the permission of the State Government or any officer or Authority authorized by it in this behalf;*

(vii) *Excavation and regulation of the Minor Minerals specified in Part B of Schedule-II shall be governed by the Chhattisgarh Minor Mineral Sand Excavation and Trade Regulation Order, 2006.*

*6. Upon further inquiry, it came to the knowledge of the answering Respondent that the Chief Minister of Chhattisgarh i.e., Mr. Bhupesh Baghel has directed the officials to provide financial assistance of Rs. 2,00,000/- lakhs to the family of each of the deceased laborer and medical aid to the hospitalized brick kiln worker.”*

3. From the above, it is confirmed that five persons have died which has nexus to the activities of the brick kiln operating in violation of mandate of law that safety is absolute liability of a person undertaking hazardous business activity, as laid down inter alia in MC Mehta v UOI, (1987) 1 SCC 395.

4. This Tribunal has dealt with several cases of death and injuries having nexus to hazardous business activities and held the business entities in question to compensate the victims on principle of restitution @ Rs. 20 lacs for each death and varying scale depending on extent of injuries. If such business activity fails to pay, the State has to pay for failure to ensure safety with liberty to recover from such entities. Citizens are entitled to safety from hazards of business activities having potential for such incidents. The Tribunal has also directed safety mechanism to

be reviewed and also requested the State Legal Services Authorities to provide legal aid in such cases.

5. Reference is made to order dated 28.03.2023 in Original Application No. 204/2023, *In re: News item published in Newspaper The Hindu dated 07.03.2023 titled "Three children die during illegal mining in West Bengal"* as follows:-

“

3. Thus, it is clear from para 3 that deceased have been identified as Monu, aged 20, Somal and Rohit, aged 15 each and injured has been identified as Naresh Sahani. Mining activity was illegal and children were illegally engaged. There was failure on the part of the State to enforce applicable regulatory regime for the hazardous activity in question. Compensation of ₹2 Lakh each has been given to the heirs of the three deceased and ₹25,000/- for the injured by the State. No steps have been taken for recovery of compensation from the violator as per environmental law nor compensation paid to the victims is as per any reasonable basis. Even criminal case against the violator is not for theft of mined material nor for violation of environmental norms. Thus, the State cannot avoid responsibility for compensating the victims in view of negligence of its authorities in enforcing the rights of the victims by using its regulatory authority in controlling illegal hazardous activities.

4. **The Tribunal has dealt with number of cases of deaths and injuries to victims by failure to follow environmental norms and enforce right to environment which is part of right to life, heirs of the deceased and the victims have been held entitled to compensation on the principle of absolute liability arising out of doing hazardous commercial activity. Though such liability basically is of violator of law, where law violator is not made to pay compensation, the State has also been held to be liable to pay compensation as per its duty as welfare State to protect the citizen and also for failure to take steps to protect the citizens against hazardous illegal activities to prevent which is duty of the State. The Tribunal has acted consistently with parens patriae duty of the State in terms of law laid down inter alia in *MCD v. Uphaar Tragedy Victims Association*, (2011) 14 SCC 481 and *Vadodra Municipal Corporation v. Purshottam v. Murjani & Ors.* (2014) 16 SCC 14. Some of the observations from Supreme Court judgements are:**

**“T.N. Centre for Public Interest Litigation v. State of T.N., (2017) 6 SCC 734**

*The State stands on the position of a loco parentis to the citizens and when there are so many deaths of farmers in the State of Tamil Nadu, it becomes obligatory on the part of the State to express concern and sensitiveness to do the needful and not allow the impecunious and poverty-stricken farmers to*

*resign to their fate or leave the downtrodden and the poor to yield to the idea of fatalism. The concept is alien in the welfare State and the social justice which is required to be translated in a democratic body polity. As is manifest from the assertions and the grievances that have been agitated, deaths are due to famine backdrop and other natural causes and also due to immense financial problem. The State, as the guardian, is required to see how to solve these problems or to meet the problems by taking curative measures treating it as a natural disaster. Silence is not the answer.*

**MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481**

*The law is well settled that a constitutional court can award monetary compensation against the State and its officials for its failure to safeguard fundamental rights of citizens but there is no system or method to measure the damages caused in such situations*

*Compensatory damages are intended to provide the claimant with a monetary amount necessary to recoup/replace what was lost, since damages in tort are generally awarded to place the claimants in the position he would have been in, had the tort not taken place; which are generally quantified under the heads of general damages and special damages. Punitive damages are intended to reform or to deter the wrongdoer from indulging in conduct similar to that which formed the basis for the claim. Punitive damages are not intended to compensate the claimant which he can claim in an ordinary private law claim in tort. Punitive damages are awarded by the constitutional court when the wrongdoer’s conduct was egregiously deceitful.”*

5. We may also refer to some earlier orders of the Tribunal dealing with industrial and other accidents on account of violation of environmental norms in the State of West Bengal<sup>1</sup>, where the Tribunal awarded compensation to the victims. Some extract from order dated 18.12.2020 in O.A. 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” is reproduced below:-

“xxx.....xxx.....xxx

6. The Tribunal dealt with the issue by requiring payment of compensation to the victims, restoration of environment and adopting suitable safety measures to avoid such recurrence in the light of Expert Committee reports. In the present case, the State PCB has acknowledged that the activity was illegal and the unit has now been found to be demolished. This cannot be sufficient step for enforcement of law and for remedy to the victims. The Tribunal fixed minimum interim compensation in such cases at Rs.

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<sup>1</sup> 1. News item published in the “Times of India” dated 20.11.2020 entitled “Six killed as blast tears through Malda Plastic recycling factory”, OA No. 272/2020 decided on 18.12.2020.

2. In re: News item published in The Economic Times dated 21.12.2021 titled “3 dead, 44 injured in flash fire at IOC’s Haldia refinery”, OA No. 440/2021 decided on 07.01.2022.

15 Lakhs in case of death, Rs. 5 Lakhs in case of serious injury and Rs. 2.5 Lakhs for simple injuries as follows<sup>2</sup>:

“6. ... we assess interim compensation for death to be 15 lacs each (taking into account multiplier of around 16 and loss of earning of about one lac a year, taking the minimum wage, apart from conventional sums), for grievous injury Rs. 5 lac per person, for other injuries of persons hospitalized Rs. 2.5 lac per person and for displacement at Rs. 25000/- per person.”

7. The State is under obligation to secure atleast this amount of compensation to the victims and if it is not able to do so, the State must pay this much amount of compensation out of its own funds, with liberty to recover the same from the persons responsible for the situation.

8. Accordingly, we direct the District Magistrate, Malda to give compensation in above terms to the victims within three months out of the State funds, excluding the amount already paid. It will be open to the District Magistrate to recover the amount from the concerned violators by taking coercive measures, as per law. The victims will be at liberty to seek any other relief in appropriate proceedings. This direction is without prejudice to the criminal liability of the management and the operators of such activities.”

**6. In the present case, death of the children is patently due to violation of established norms. The State Authorities failed to enforce the law and prevent the incident. Apart from illegal engagement of children, the mining in the river bank is not shown to be by any Authority of Law, such as, mining lease, replenishment study, DSR and Environment Clearance. No safeguards have been used in the process. Thus, the State cannot escape liability for violation of environmental norms. While primary liability is of the persons engaged in illegal mining on ‘Absolute Principle’ laid down in M.C. Mehta vs. Union of India & Ors., (1987) 1 SCC 395, when the violators have not been made to pay, it is the liability of the State to pay the compensation and recover the same from the violators. Liability for compensation is in addition to liability under the Criminal Law.**

7. Further, vide order dated 11.06.2021 passed in O.A. No. 44/2021 titled as 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”** the Tribunal held:-

“xxx  
.....xxx.....xxx

9. ...Compensation can be assessed on reasonable basis guided by restitution principle atleast at floor level, leaving other

<sup>2</sup> Order dated 08.06.2020 in O.A. No. 22/2020 (WZ), Aryavart Foundation through its President v. Yashyashvi Rasayan Pvt. Ltd. and Anr.

remedies of the victims open. Thus, **broadly agreeing with the Committee, we direct that the scale of compensation should be Rs.20 lakhs in respect of each of the deceased victims and Rs.15 lakhs to persons who have burns in excess of 50% and Rs.10 lakhs for persons who have burns from 25 to 50% and Rs.5 lakhs for persons who have injuries between 5 to 25%. Victims who were treated as outpatients and who had but minor degree of burns or other forms of simple injuries shall be paid Rs.2 lakhs.**

8. The Tribunal had dealt with series of industrial and accidental matters directing environmental compensation for deceased and injured in recent past<sup>3</sup>.

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- <sup>3</sup> 1. *In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh*, OA No. 73/2020 decided on 01.06.2020.
  2. *Aryavart Foundation through its President vs. Yashyashvi Rasayan Pvt. Ltd. & Anr.*, OA No. 85/2020 (Earlier OA 22/2020) (WZ) decided on 03.02.2021.
  3. *Bonani Kakkar vs. Oil India Limited & Ors.*, OA No. 43/2020(EZ) decided on 19.02.2021.
  4. News item published in the local daily "Economic Times" dated 30.06.2020 titled "Another Gas Leakage at Vizag Factory kills two, critically injures four...", OA No. 106/2020 decided on 22.12.2020.
  5. News item published in the "Indian Express" dated 01.07.2020 titled "Tamil Nadu Neyveli boiler blast: 6 dead, 17 injured", OA No. 108/2020 decided on 22.12.2020.
  6. News item published on 13.07.2020 in the local daily named "India Today" titled "Massive fire engulf Vizag chemical plant, explosions heard, injuries reported", OA No. 134/2020 decided on 22.12.2020.
  7. News item published in the "Times of India" dated 20.11.2020 entitled "Six killed as blast tears through Malda Plastic recycling factory", OA No. 272/2020 decided on 18.12.2020.
  8. News item published in the "Indian Express" dated 23.11.2020 entitled "Maharashtra: Two Killed, eight injured in methane gas leak in sugar factory", OA No. 274/2020 decided on 16.08.2021.
  9. *In RE: News item published in the local daily "Indian Express Sunday Express" dated 28.06.2020 titled "Gas Leak in Agro Company Claims life of one"*, O.A No. 107/2020 decided on 08.01.2021.
  10. *In re : News item published in Navbharat Times dated 24.12.2020 titled "Gas leaks in IFFCO Plant, 2 Officers dead"*, O.A. No. 04/2021 decided on 04.06.2021.
  11. *In re: News item published in The Indian Express dated 07.01.2021 titled "Four workers dead due to toxic gas leak in Rourkela Steel Plant"*, O.A. No. 09/2021 decided on 11.02.2021.
  12. *In re: News item published in The News Indian Express dated 12.02.2021 titled "At least 19 dead in Virudhunagar firecracker factory blast, more than 30 injured"*, O.A. No. 44/2021 decided on 03.03.2022.
  13. *In re: News item published in Times Now News dated 23.02.2021 titled "Karnataka: Six killed in quarry blast in Hiremagavalli, Chikkaballapur"*, O.A. No. 59/2021 decided on 22.04.2022.
  14. *In re: News item published in The Hindu dated 23.02.2021 titled "Two dead, 5 missing in fire at UPL Plant"*, O.A. No. 60/2021 decided on 14.12.2021.
  15. *In re: News item published in The Times of India dated 28.02.2021 titled "Delhi : Man charred to death as illegal factory catches fire"*, O.A. No. 65/2021 decided on 31.08.2021.
  16. *In re: News item published in The Hindu dated 14.03.2021 titled "Safety lapses led to reactor blast at pharma unit"*, OA No. 79/2021 decided on 31.08.2021.
  17. *In Re: News item published in the "Indian Express" dated 04.11.2020 titled "Ahmedabad: Nine killed as godown collapses after factory blast"*, OA No. 258/2020 decided on 23.03.2021.
  18. *In re: News item published in The Times of India dated 08.06.2021 titled "18, mostly women, killed in fire at Pune chemical unit"*, OA 130/2021 decided on 01.02.2022.
  19. *Rakesh Suresh Chandra Kapadia v. Gujarat Pollution Control Board & Ors.*, OA No. 31/2021 (WZ), decided on 08.11.2021.
  20. *In re: News item published in The Hindustan Times dated 17.06.2021, titled "Blast in firecracker unit in Maharashtra's Palghar, at least 10 injured"*, OA No. 134/2021 decided on 25.06.2021.
  21. *In re: News item published in The Indian Express dated 12.07.2021 titled "Six killed in factory fire: Owner held, raids on to nab second accused"*, OA No. 171/2021 decided on 07.09.2021.
  22. *In re: News item published in The Indian Express dated 07.01.2022 titled "Gujarat: At least 06 dead, 20 sick after gas leak at industrial area in Surat"*, OA No. 05/2022 decided on 18.01.2022.
  23. *In re: News item published in India Today dated 26.12.2021 titled "7 dead in boiler explosion at noodle factory in Bihar's Muzaffarpur, probe ordered"*, OA No. 02/2022 decided on 22.04.2022.
  24. *In re: News item published in The Economic Times dated 21.12.2021 titled "3 dead, 44 injured in flash fire at IOC's Haldia refinery"*, OA No. 440/2021 decided on 07.01.2022.
  25. *In re: News item published in The Tribune dated 22.02.2022 titled "7 killed in blast at firecrackers factory in Himachal Una"*, OA No. 143/2022 decided on 08.03.2022.

9. *In view of above, we direct the District Magistrate, Siliguri/Darjeeling to ensure payment of compensation @ ₹20 Lakh each to the heirs of the deceased and ₹5 Lakh to the injured, after deducting the amount already paid. The payment may be made within one month and make the violators accountable under Environmental Law be taken simultaneously at the earliest.*

10. *The State PCB may exercise its regulatory authority under the environmental laws - the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981, the Environment (Protection) Act and Rules 1986, in coordination with any other concerned authority.”*

6. Though we find the statement about the manner of incident to be highly improbable, we are not required to finally pronounce upon the same as this issue can be gone into in criminal proceedings. The fact remains that deaths and injuries are on account of brick kiln activities for which the victims have to be compensated and the State has to take precautions to prevent such incidents in future, apart from paying compensation with liberty to recover the same from the concerned entity. State Legal Service Authority may provide legal aid in the matter.

7. Accordingly, we direct the District Magistrate, Mahasamund, Chhattisgarh to ensure payment of compensation to the victims within two months with liberty to recover the same from the PP. The State of Chhattisgarh may also take appropriate precautions to prevent such incidents. Compensation will be @ Rs. 20 lacs to the heirs of each deceased and Rs. 2 lac to the injured, in absence of information about extent of injuries. Payments already made can be adjusted.

The application is disposed of.

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26. *In re: News item published in Hindustan Times dated 05.03.2022 titled “Bhagalpur: 14 dead in firecracker unit blast”, OA 198/2022 decided on 27.05.2022.*  
27. *In re: News item published in The Times of India dated 12th April, 2022, titled “Six killed in chemical factory blast in Gujarat”, OA No. 272/2022 decided on 12.04.2022.*  
28. *In re: News item in NDTV dated 14.04.2022 titled “6 killed, 12 injured after fire breaks out at Andhra Pradesh Pharma Unit”, OA No. 284/2022 decided on 20.04.2022.*  
29. *In re : News item published in Business Standard dated 09.02.2023 titled “Blast at JSPL’s Raigarh plant kills two workers, two others injured”, OA No. 110/2023 decided on 28.02.2023*



The project proponent/concerned entity will be at liberty to move the Tribunal, if aggrieved by the above order.

A copy of this order be forwarded to the District Magistrate, Mahasamund, Chhattisgarh, Chief Secretary, Chhattisgarh and Chhattisgarh State Legal Service Authority by email for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

April 6, 2023  
Original Application No. 232/2023  
AB