

Item No. 01

Court No. 1

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

(By Video Conferencing)

I.A. No. 237/2020  
(filed by Respondent No.1, for modification of order dated 08.06.2020)  
IN

Original Application No. 85/2020  
(Earlier O.A. No. 22/2020(WZ))

Aryavart Foundation

Applicant(s)

Versus

Yashashvi Rasayan Pvt. Ltd. & Anr.

Respondent(s)

Date of hearing: 30.07.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s)-Original respondent No.1

in I.A. No. 237/2020: Mr. Sudhir Nanawati, Senior Advocate and Mr. Nakul  
Dewan, Senior Advocate with Shaishir Divatia, Advocate

For the original applicant-opposite party in the IA:

Mr. Raj Panjwani, Senior Advocate

**ORDER**

1. This application has been filed by Yashashvi Rasayan Pvt. Ltd., Respondent No.1, for modification of order dated 08.06.2020 passed by this Tribunal. The Application purports to be in pursuance of order of the Hon'ble Supreme Court dated 22.06.2020 passed in Civil Appeal No. 2629/2020 against the order of this Tribunal, which is reproduced below in entirety:

*“Heard Mr. Harish Salve, learned senior counsel appearing for the appellant. He has very fairly stated that with respect to payment of compensation of Rs. 15 Lakhs by way of interim compensation on*

account of death, the appellant has no objection. Similarly in case of grievous injuries, Rs. 5 Lakhs per person, they have no objection. And with respect to Rs. 2.5 Lakhs towards injuries caused to the persons hospitalised, they have no objection to deposit the amount, as ordered by the National Green Tribunal (NGT). However, with respect to the displacement of 4800 persons, compensation of Rs.25,000/- (Rupees Twenty Five Thousand) per person has been ordered. **It is submitted that there might have been displacement of persons only for few hours and therefore, the compensation awarded is on a higher side. It is not necessary to award the compensation in such a case of displacement of persons only for few hours. Moreover, the Tribunal has passed the order only on the basis of newspaper reports.**

After hearing the learned counsel for the appellant at length, we feel that it is a fit case in which the appellant should approach the NGT itself for modification of the order stating the fact in detail as to how many persons were displaced and for how much period.

We request the Tribunal to reassess the compensation, if necessary, in the light of the data to be placed before it. **It is made clear that we have not commented on the merits of the case while passing the order.**

**Ten days' time is granted to make the payment. The disbursement of the amount to the displaced persons shall remain stayed till a fresh decision is taken by the NGT.**

*The appeal is disposed of accordingly.”*

*(emphasis supplied)*

2. Before proceeding further, we may refer to the order dated 08.06.2020. Therein, the facts are mentioned as follows:

“1. Proceedings in this matter arise out of an incident dated 03.06.2020 at Dahej, District Bharuch, Gujarat which has been widely reported in the media. A massive blast took place in a chemical factory run by respondent No.1, Yashyashvi Rasayan Pvt. Ltd. (“The Company”). **On account of a fire in the storage tank of the factory, manufacturing several chemicals including Methanol and Xylene which find mention in the Schedule to the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 (The 1989 Rules). On account of the said incident, eight (08) workers were killed and atleast 50 injured. Bodies of some of the workers inside the factory were charred beyond recognition. We have seen some of the telling**

**photographs during the hearing. About 4800 inhabitants of the nearby villages had to be moved to safer place<sup>1</sup> on account of the incident.** The company has revenue in the range of Rs. 100 crores for the year ending 31.03.2018.<sup>2</sup> According to Mr. Panjwani, learned Senior Counsel appearing the applicant, the Company is owned by the Patel Group having large financial resources.

2. This application has been filed by an NGO located at Surat mentioning the above facts based on newspaper reports. The applicant has also referred to another recent shocking incident of 07.05.2020 in the factory of L.G. Polymers India at Vishakhapatnam where 12 persons died and several others were injured. It is stated that on 08.05.2020, the Central Pollution Control Board (CPCB) issued a circular requiring all the State PCBs to undertake safety audit of industries before they reopened after the COVID-19 situation. The industries dealing with hazardous chemicals were required to ensure that all safety protocols are followed and requisite equipment is operationalized and manpower is duly trained for handling such chemicals. On 11.05.2020, Maharashtra State PCB issued an identical circular specifically requiring the hazardous and chemical handling units to provide information with regard to onsite and off-site emergency plans, safety audit reports and action taken in pursuance of such report. It is stated that the company failed to follow requisite precautions and safety protocols. **The company is thus strictly and absolutely liable for the damage caused to the human lives, human health, property and the environment in violation of environmental norms, particularly the mandate of the 1989 Rules, the Chemical Accidents (Emergency, Planning, Preparedness and Response) Rules, 1996(the 1996 Rules) and the circular issued by the CPCB.”**

3. Further observations in the order are:

**“4. It is undisputed during the hearing that the company is engaged in the manufacture of hazardous chemicals and is covered by the 1989 Rules and the 1996 Rules. It has to prepare and follow onsite and off-site emergency plan which is required to be duly audited and overseen by the statutory authorities including the Chief Inspector of Factories (CIFs), Department of Industries, the District Magistrate, the State PCB and the Petroleum and Explosives Safety Organization (PESO). Overall regulatory framework is under the Ministry of Environment, Forest and Climate Change (MoEF&CC). Liability of the Company is strict and absolute for the loss**

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<sup>1</sup> <https://indianexpress.com/article/cities/ahmedabad/gujarat-dahej-chemical-factory-fire-deaths-6441590/>

<sup>2</sup> <https://www.tofler.in/yashashvi-rasayan-private-limited/company/U24119GJ2003PTC041827>

**caused by its activities. Dependents/heirs of the deceased as well as the injured persons, the persons displaced on account of the incident have to be duly compensated. The company has also to bear the cost of restoration of the environment.**

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6. **While the company and other concerned have to be given due opportunity, an interim direction for compensation on the basis of available material cannot brook any delay. Interim compensation can be awarded on conservative subject to final compensation being determined later. While no compensation for death or injury or displacement may be adequate and environment is priceless, having regard to facts and circumstances and on ad hoc basis, 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. The company may make an interim deposit of Rs. 25 Crores excluding the deposit/payment already made in pursuance of order of the GPCB or otherwise or under the Workmen's Compensation Act, 1923 or any other statutory provisions or ex gratia in relation to the present incident. Disbursement may be made by preparing an appropriate plan by the District Magistrate in consultation with the District Legal Service Authority, Bharuch to be overseen by the Member Secretary, State Legal Service Authority. The amount may be deposited within 10 days from today. Disbursement may be made within one month thereafter. If the company fails to make the deposit, the State will be at liberty to recover the same by coercive methods but the disbursement may in such case be made out of the State funds within one month with right of the State to recover the amount from the company.**

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12. *Having regard to the facts and circumstances of the present case and in the light of material available on record and without prejudice to further opportunity being given to all concerned, we find it necessary to issue following directions:*

- a) **The Company may deposit an amount of Rs. 25 crores, minus the statutory compensation/ex gratia payments already made to the victims, if any, with the District Magistrate, Bharuch within 10 days from today.**

*The amount may be disbursed by the District Magistrate by making disbursement plan in the manner already indicated above (Para 6). Disbursement plan may consider safeguards to ensure that amount reaches the beneficiaries and is not misappropriated by any intermediary.*

- b) *We constitute a 6-member Committee comprising:*
- (i) Justice B.C. Patel, former Chief Justice, Delhi High Court and former Judge of the Gujarat High Court presently stationed at Ahmedabad - Chairman*
  - (ii) Representative of MoEF&CC – Member*
  - (iii) Representative of CPCB – Member*
  - (iv) Head of the Chemical Engineering Department of the IIT Gandhinagar - Member*
  - (v) Representative of NEERI - Member*
  - (vi) Representative of National Institute of Disaster Management, IIPA Campus, New Delhi – Member*

*The District Magistrate, Bharuch and GPCB will provide logistic support to the Committee to enable their fact-finding and reporting. The Committee will be at liberty to take assistance of such experts, individuals and institutions as may be considered necessary*

- c) *The Committee may visit and inspect the site within 7 days and give its report within one month thereafter via email [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in), (preferably in the form of searchable/OCR PDF and not image PDF). The Committee may specifically report:*
- i. The sequence of events;*
  - ii. Causes of failure and persons and authorities responsible therefor;*
  - iii. Extent of damage to life, human and non-human; public health; and environment – including, water, soil, air;*
  - iv. Steps to be taken for compensation of victims and restitution of the damaged property and environment, and the cost involved;*
  - v. Remedial measures to prevent recurrence;*
  - vi. Any other incidental or allied issues found relevant.*

*CPCB will be the nodal agency for coordination.*

*If any member is unable to visit physically, he may be associated online with the permission of the Chairman. The Committee may provide opportunity of being heard*

*to the Company as well as any other member of the public.*

*A copy of the report may be uploaded on the website of the CPCB and also provided to the Company for its response.*

- d) It will be open to the concerned authorities to act on the recommendations of the Committee to the extent the authorities find viable in exercise of their statutory powers pending further orders of this Tribunal.*
- e) The Committee may as far as possible make final quantification of compensation and also prepare a restoration plan in association with the District Magistrate, Bharuch. For the restoration plan, the nodal agency will be the representative of MoEF&CC.*
- f) The Chief Secretary, Gujarat may identify and take appropriate action against persons responsible for failure of law in permitting the Company to operate without statutory clearances within two months and give a report to this Tribunal.*
- g) In view of the stand of the State PCB that the order of closure has been passed, before recommencing any operations, the Company may bring it to the notice of this Tribunal, so that it can be ensured that there is no violation of statutory provisions and safety measures.*

4. Main ground for seeking modification of order of this Tribunal is that the persons displaced were brought back to their homes on the very same day, no damage was caused to their person or property and there was no permanent migration. Only basis of order of the Tribunal is media report and the applicant has not got opportunity of being heard. It is further stated that the compensation is excessive. According to the said applicant, a sum of Rs. 2.92 crores has been deposited on 29.06.2020, apart from Rs. 18 Lakhs deposited on 03.07.2020. Prayer is to recall direction to pay the remaining amount of Rs. 22.075 crores.

5. We do not find any merit in the prayer of the applicant. The order dated 08.06.2020 was passed after hearing the parties. The facts mentioned in the order remained undisputed after opportunity to the applicant before passing interim order, pending giving further opportunity in due course. The order is not based on media report alone, as wrongly submitted. The order was passed after preliminary verification of facts and after notice to the present applicant. Even now, neither the incident is disputed nor lack of adequate safeguards as per statutory mandate are disputed. Statutory Onsite and Offsite plans and their compliance are not shown. Liability of the applicant is absolute and compensation payable has to be deterrent. It is wrong to assume that there is no liability for displacement for 10-12 hours, unless the victims are forced to permanently migrate or that interim payment awarded to the heirs of the deceased and to the injured is not to be increased finally. It is also wrongly assumed that nothing is to be spent for restoration of the environment. The applicant has filed a certificate from Panchayat that the displaced persons were brought back to their residence late night. While authenticity of the certificate is yet to be examined, the affected persons certainly faced trauma, stress and inconvenience in being displaced from their respective houses on account of hazardous activities of the unit in question for which liability cannot be disowned. The occurrence admittedly took place at 12 noon and displacement atleast till late night for atleast 10-12 hours, even as per showing of the applicant. During this period, the affected persons faced trauma, displacement from their houses and all consequential problems. It is too much to contend that they are not to be paid any compensation and such displacement does not cause any physical or mental harm to a person. In our view, such displacement is certainly actionable wrong and

any commercial establishment engaged in hazardous activity for commercial purpose is certainly liable to compensate such displaced persons. Displacement was at large scale creating anxiety, fear, trauma, and misery. Some families may have minor children or senior citizens, females who certainly are bound to greatly suffer by such large scale and sudden displacement from their houses. Exact damage is to be fully ascertained but even as per conservative estimate, the amount of compensation of Rs. 25,000/- to each displaced person cannot, in our view, be held to be excessive, even on further consideration. There is no golden scale to measure such loss and a reasonable estimate has to be the basis.

6. Moreover, the applicant does not deserve any indulgence as it has not moved this Tribunal with clean hands. While availing the liberty granted to move this Tribunal, the applicant has not complied with the order of the Hon'ble Supreme Court requiring deposit of compensation in terms of order of this Tribunal within 10 days from the said order i.e. 22.06.2020. The applicant has not even moved this Tribunal during the said time. No extension of time has been sought to make the deposit after expiry of the said period. Only explanation is that disbursement of the amount was to remain stayed till fresh decision was taken by the Tribunal and therefore, it was not necessary to make the deposit even if expressly so directed. The plea is patently absurd as the order clearly and specifically required deposit even if the amount was not to be disbursed. Deposit of the amount is not a charity but clear expected amount of liability of the applicant, of course subject to further orders. Only compensation to the heirs of the deceased, to the injured and the displaced is to be immediately disbursed and compensation for damage to the environment is to be appropriated only after thorough evaluation.



Even if any amount is found to be in excess, the applicant will get it back. As already mentioned, the Tribunal has gone by conservative estimate and liability of the applicant is expected to be more than the said amount. It is against interest of justice to further delay deposit and disbursement of the amount to the victims of the tragedy as almost two months have passed from the date of the incident.

In view of above, the application for modification is dismissed.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

July 30, 2020  
I.A. No. 237/2020 in  
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