

Item No. 5

**BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)**

**Original Application No.125/2023(CZ)
(O.A.No.539/2023 - PB)**

News report published in The Times of India
dated 31.08.2023 titled “5 die in toxic
gas leak at MP factory”

Applicant

Vs.

State Pollution Control Board

Respondents

Date of Hearing: **08.11.2023**

**CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

For Applicant(s):

None.

For Respondent(s) :

Mr. Prashant M Harne, Adv.
Ms. Parul Bhadoria, Adv.
Mr. Mehul Bhardwaj , Adv.

ORDER

1. Issue raised in this application is death of five workers in a food industry in Morena, Madhya Pradesh on account of the impact of poisonous gases when these workers had entered the tank in a factory manufacturing synthetic cherries for paan and the food industry.
2. In light of the 2021 SCC Online SC-897, *Municipal Corporation of Greater Mumbai v. Ankita Sinha and Ors.* the Tribunal took the cognizance on 01.09.2023 and constituted a Committee with the District Magistrate and Director of Industry, Safety and Health to inquire the matter and submit a factual and action taken report.
3. The District Magistrate, Morena, Madhya Pradesh vide correspondence letter dated 30.09.2023, has communicated the visit of the Joint Committee and factual portion and observation as follows :-

**[A] “OBSERVATIONS AND INFORMATION ABOUT THE SPOT OF
ACCIDENT:**

1. *The industry M/s Sakshi Food Products is situated on a piece of land bearing survey numbers 168/1, 168/2,*

170/1 and 170/2 in Village Dhanela, AB Road, Tehsil Banmore, District Morena, MP. Total industrial plot area is 8296 square meter. This is the Small Scale Orange category industry. The industry is surrounded by open agriculture land. Nearest village Jaderua is about 1.00 km, National Highway is about 400 meters, nearest river Sank is 2.50 Km. and Railway line is about 1.60 Km. away from the industry. GPS coordinates of industry is Latitude 26.4275 N, Longitude 78.0400 E. The location is marked on Google map and it is enclosed.

2. A tragic accident happened within the premises of said industry on dated 30.08.2023 resulting in the death of five workers. There was a festive holiday in the factory due to Rakhi on the day of accident, so production activity was completely closed as reported. But for some maintenance and cleaning works at boiler section and papaya storage shed eight workers were present within factory premises. It was also informed to Joint Committee that papaya storage shed was in lock condition for about 16 hours before workers entered inside it for tank cleaning.
3. On the day of visit the said industry was completely closed. Factory premise has already been sealed by District Administration since the day of incident and was under the custody of police.
4. Joint Committee along with other Government officials reached the spot of accident with gas detector equipment.
5. The spot where accident took place is situated inside a covered storage shed having six RCC underground storage tanks of size 4.50 m × 4.50 m × 3.00 m each. The cut papaya pieces which are the raw material of industry for manufacturing fruit cuts were stored inside these tanks under preservation with 20% common salt solution. In five tanks papaya pieces were kept stored and one tank was empty inside which residues of papaya and salt solution was seen. The accident happened inside this empty tank during its manual desludging/emptying operation by un-skilled workers.

6. The gate of papaya cuts storage shed was opened before the Joint Committee during the visit. A sharp smell of putrefaction was experienced at the gate. The presence of gases was monitored by gas detector equipment by MPPCB officials. The gas detector indicate alarming presence of methane, propane, hydrogen gases inside the storage shed. There was no ventilation facility seen at storage shed to escape organic gases generated due to putrefaction of papaya.
7. It was also informed to Joint Committee that the papaya storage shed has locked since the day of incident to day of visit, except for 05.09.2023 on which Hon'ble Chairman National Commission for Safai Karmacharis, Shri M. Venkatesan visited the spot for a short while.
8. During the visit no deceased dependents or relatives were presented/contacted by the team for knowing the facts.
9. The brief description of said industry and status of permissions is summarized as under:

Title of Details	Description	Supporting Enclosure
Name of Industry	M/s Sakshi Food Products	
Location of Industry	Survey No. 168/1, 168/2, 170/1 and 170/2 in Village Dhanela, AB Road, Tehsil Banmore, District Morena, MP GPS coordinates : Latitude 26.4275N Longitude 78.0400E	C 1
Type of Firm	Partnership Firm	
Name of Partners	1. Shri Sajal Agrawal 2. Smt. Sakshi Goyal	
Type of Industry	Small Scale, Orange Category, Non-hazardous type food Processing unit	
Date of commissioning Of industry	10.10.2015	
Product and Production Capacity	Asperconsent of the MPPCB 1. Caramel Colour-1500TPA 2. Flavored Concentrates/ Drinks-50 TPA 3. Fruit Cuts-3000TPA 4. Invert Sugar Syrup-3000TPA	C 3
Raw Materials Used	1. Dextrose Syrup-60TPA 2. Fruits-3000TPA 3. Sugar-5000TPA 4. Vegetable Oil-12TPA 5. Process Chemicals-6TPA	

Status of Consent of MPPCB	1. CTE granted on 08.05.2015 2. CTO granted on 15.10.2015 (Valid till 30.09.2016) 3. CTO granted on 03.12.2016 (Valid till 30.09.2017) 4. CTO granted on 19.01.2018 (Valid till 30.09.2019) 5. CTE Expansion granted on 19.09.2019 6. CTO granted on 19.12.2019 (Valid till 30.09.2020) 7. CTO Expansion granted on 18.05.2020 (Valid till 30.09.2021) 8. CTO granted on 13.08.2021 (Valid till 30.09.2024)	C 3
Status of Factory License issued by Industrial Health & Safety Department	Latest license to work a factory granted on 05.12.2022 for validity up to 31.12.2023	C 4
Status of Food License issued by GoI, Food Safety and Standards Authority of India under FSS Act, 2006	Latest license granted on 01.05.2023 for validity up to 21.09.2024	C 5

(B) CAUSE OF DEATH OF THE WORKERS:

Joint Committee discussed the matter with Industrial Health and Safety Department (IHSD) Officials present during the visit. Cause of death of five workers as per short postmortem report is **Asphyxiation**. This cause is supported by observations of the Joint Committee during visit that is presence of alarming concentration of organic gases like methane, propane, hydrogen generated due to putrefaction of papaya cuts indicated by gas detector equipment and also no ventilation facility found in papaya cuts storage shed to escape the generated gases. Thus accumulation of organic gases in alarming concentration inside the closed papaya cuts storage shed was the most probable cause of death of workers due to acute suffocation and asphyxiation. Following lapses are also responsible for the incident:

- i. No safety precaution signboard was displayed by industry within factory premises.
- ii. No safety equipment like safety belt, life line wire rope, mask, portable oxygen meter, oxygen cylinder supported respiration equipment etc. were provided to workers for emptying the

papaya preservation tank on the day of incident. Also no supervisor was available to supervise the tank emptying work.

- iii. No mechanical system or pump was provided for desludging and transfer of salt water from storage tank to disposal pit.*
- iv. The workers deployed by industry for cleaning of papaya storage tank emptying work were neither trained nor aware of the risks associated with the work and also no supervisor was present to guide them to carry out the work safely.*

(C) LAPSES WHICH RESULTED INTO GENERATION/ESCAPE OF POISONOUS GASES IN THE TANK:

Considering the observations made by Joint Committee during site visit and discussion with IHSD officials following lapses have been identified which were responsible for the tragic incident death of workers:

- 1. As intimated by IHS officials that no incident of putrefaction of papaya cuts during its storage and preservation happened in past in this factory. If any putrefaction occurred then that material is of no use as raw material. Normally no putrefaction of papaya cuts take place in preservation tanks under common salt solution of 20% strength. In exceptional case of not maintaining the common salt solution strength as per requirement of 20% or under hot and humid conditions putrefaction of papaya cuts take place then only organic gases like methane, propane and CO, CO₂ and other VOCs are generated. So proper ventilation facilities are required to escape the generated gases from the storage/preservation shed for comfort of workmen. But in the said industry papaya cuts storage cum preservation shed was*

found completely closed without proper ventilation facility. It was also informed to Joint Committee that papaya storage shed was in lock condition for about 16 hours before workers entered inside it for tank cleaning. Papaya cuts has already been used as raw material from the tank inside which incident was occurred. Only some salt water and papaya pulp was left. So it is expected that due to not maintaining salt solution concentration to 20% putrefaction of residue papaya pulp took place and harmful gases were generated and accumulation of these harmful gases inside the tank up to lethal concentration might cause death of workers. IHS officials also informed that ventilation opening not allowed under the provisions of Food Safety Standards Act to prevent contamination by insect, flies, extraneous material etc.

- 2. As per IHS officials industry established papaya cuts preservation shed without obtaining approval of layout map from the Chief Factory Inspector.*
- 3. As per IHS officials those workers who descended into the tank, succumb to asphyxiation but those stay at the floor level did not get harmed. Even rescue team retrieved body of the deceased within couple of hours without bearing any oxygen cylinder equipped breathing apparatus.*

(D) COMPENSATION TO BE GIVEN TO THE DECEASED.

As per information made available to Joint Committee by district administration Morena and Industrial Health and Safety Department Gwalior the status of compensation granted / under process to be given to legal ancestors of five deceased persons is as under:

- a. Under **Sambal Yojna** financial support of Rs. 4.00*

Lakh each for three deceased workers Ram Avtar Gurjar, Girraj Singh & Rajesh Singh has already been approved and E-payment order issued by Janpad Panchayat Jaura District Morena on dated 01.09.2023.

- b. Remaining two deceased workers Ram Naresh and Veer Singh were not found eligible for financial support under Sambal Yojna. So a proposal has been send by District Magistrate Morena on dated 31.08.2023 to Secretary to CM, Bhopal to sanction financial support of Rs. 4.0 Lakh each for these two workers from CM Relief Fund.*
- c. The case of compensation to work legal dependents of deceased workers under the provision of Workman Compensation Act, 1923 is under process in Labour Court Gwalior cum Commissioner Workman compensation. The name of deceased workers and amount of compensation due to their dependents from employer is mentioned herein below:-*

1.	<i>Rajesh Singh s/o Badri Ghurraiya</i>	<i>Age40 yrs.</i>	<i>Rs.888620/-</i>
2.	<i>Ram Avtar Gurjar s/o Ramkishan</i>	<i>Age34 yrs.</i>	<i>Rs.962105/-</i>
3.	<i>Ram Naresh s/o Ramkishan</i>	<i>Age38 yrs.</i>	<i>Rs.914627/-</i>
4.	<i>Veer Singh s/o Ramkishan</i>	<i>Age30 yrs.</i>	<i>Rs.1003503/-</i>
5.	<i>Girraj Singh s/o Munni Singh Ghuraiya</i>	<i>Age 35 yrs.</i>	<i>Rs.951200/-</i>

Demand drafts towards compensation to dependents of deceased has been prepared by employer enclosed. These drafts are being made in the name of Commissioner Compensation in compliance to Section 8 of Employees Compensation Act, 1923. Dependents were advised by IHS Department to file civil claim before the Industrial Labour Court. Now Labour Court will identify the dependents and apportioned compensation amount amongst dependents. The status and action taken report submitted by the Industrial Health and Safety Department is enclosed.

(E) ACTION TAKEN REPORT:

- a. *Industrial Health and Safety Department already filed criminal case against the industry M/s Sakshi Food Products under the provisions of Factory Act, 1948 on dated 08.09.2023 before CJM Court Morena bearing registration number RCT/5255/2023.*
- b. *MPPCB issued closer direction to industry M/s Sakshi Food Products under section 33A of The Water (Prevention and Control of Pollution) Act, 1974 & under section 31A of The Air (Prevention and Control of Pollution) Act, 1981 on dated 15.09.2023 due to non-compliance of consent conditions and discharge of polluted effluent in kachcha pond within factory premises.*

(F) CONCLUSION:

1. *The incident occurred because workers were not made aware of the gases generation in the process, non-availability of gas detectors/ alarming system in the raw material storage shed, Safety precautions not taken/ followed i.e. checking of oxygen levels and harmful gases presence in the tin shed as well as in concrete tanks, PPEs were not provided/ used while entering the shed & pit by the workers. No inspections of said factory in past two years by regulating authorities encourages employer to observe non-adherence to stipulation of the regulating laws.*
2. *The death of 5 workers may be occurred since raw material storage tin shed constructed at the back side of the plant is not having any ventilation and not even exhaust fan provided. As a result the gases (carbon dioxide, carbon monoxide, methane, propane, hydrogen sulphide etc.) generated due to putrefaction of papaya in preservation tank having higher density than oxygen have settled at the bottom of the tank and replaced the oxygen in*

the tank and caused breathing discomfort and collapsed the workers one by one when they entered in to the tank. As per the Industrial Health and Safety Department the industry has not taken approval of layout map for construction of tin shed of papaya storage cum preservation shed where the accident occurred. The postmortem report also revealed that the death occurred due to asphyxiation. As per the district administration, the samples were sent to the Forensic Laboratory and the report is awaited for knowing the exact reason for death. As per the ADM Morena the report is expected upto end of October 2023.

- 3. As per ADM Morena out of 5 deceased workers only 3 are eligible for compensation of Rs. 4 lakhs under state government Sambal Yojna scheme and 2 are not eligible. As per ADM payment process for all the three was done but due to non-availability of proper account the transaction failed. New account has been opened two- three days before. Process of transaction has been started and payment will be done shortly. Rest two deceased persons were not eligible under Sambal Yojna for them District Magistrate Morena sent a proposal to Secretary to CM, Bhopal for sanction of Rs. 4 lakhs from CM Relief Fund. However, it is unclear that the deceased dependents who are not eligible under Sambal Yojana will get the compensation or not and when will be the Sambal Yojana eligible deceased dependents will get the compensation, therefore NGT may issue directions to state government.*
- 4. NGT has fixed Rs. 20 lakhs as a compensation to the deceased dependents in the similar case i.e. vide order dated 02.05.2023 in OA No. 327 of 2023 in the matter of news items published in India Today dated 30.04.2023*

titled '3 minors among 11 dead in Ludhiana gas leak.

- 5. IHS official opinion in the instant case that regarding payment of extra ordinary compensation amount will be in-appropriate as law of legislature pertaining to compensation i.e. Employees Compensation Act, 1923 and Employees State Insurance Services Act, 1949 is already in place. So there is no legislative gap or vaccum exist in the matter of compensation per say. Hence power of Court under tort doctrine of jurisprudence is not applicable in the instant case.*
- 6. The permission for re-opening of the industry should be given only after complying all the norms as there is no ETP for treatment of effluent generated from the process and untreated effluent is stored inside the factory premises in the kachcha ponds, the ETP established earlier by the industry has been completely dismantled somewhere in last two years period without any intimation to MPPCB and operating the plant without any ETP, solid waste dumped inside plant premises, safety norms are not being followed, ammonia gas handling system is not proper as large number of cylinders stored openly in front of office which require proper earmarked space and adequate safety measures for preventing any kind of damage to human life if any leakage occurs.*
- 7. The industry was operated without any Effluent treatment plant and the old ETP was completely dismantled. The untreated effluent is disposed inside the factory premises in kachcha ponds so it can't be ruled out that the effluent was not pumped in to the ground water through bore well which is already existing near the wastewater storage pond. Report of untreated effluent stored in kachcha*

pond is enclosed which shows that stored effluent is not as per prescribed norms. Therefore, MPPCB may conduct detailed investigation before allowing the plant to operate.

- 8. The Joint committee recommends recovery of environment compensation from the project authorities under polluter pays principle based on a damage assessment study to be undertaken by an expert agency taking into consideration the ground water contamination, soil contamination, due to unauthorized discharge on land.*
- 9. Adequate ventilation shall be ensured in all the process areas including papaya cut storage shed and hydrocarbon and VOC detectors with alarm systems needs to be installed in the process areas for early detection of toxic gases.*
- 10. Standard Operating Procedure for evacuation of the papaya cut fruit from the brine preservations tanks needs to be established.*
- 11. Pre-placement hands-on trainings with periodic mock drills and safety trainings/talks shall be made a mandatory operational task in all the food processing industries.*
- 12. As the viscera of the deceased persons were sent for forensic analysis to Forensic Science Laboratory, the joint committee opines that the exact cause of death may be ascertained on receipt of FSL reports, although the preliminary findings reveals the exposure to toxic hydrocarbon/Volatile Organic compounds as the primary cause of death.*
- 13. Post-accident, all the processes were halted and storage tanks with rotten papaya were seen intact, which needs to be cleaned up on an urgent basis under the expert guidance to avoid further build-up of toxic gases in the factory premises. District Administration in consultation with the local MPPCB shall*

ensure the proper clean-up of all process vessels and storage tanks, funds for which shall be obtained from the project authorities under polluter pays principle.

14.Guidelines for environmental management in Food processing industries needs to be framed by CPCB in consultation with MoEF&CC for better management of Environment taking into consideration Mission LIFE targets also.”

4. Since the respondents has not been added as a party, the following should be added as a respondent –

1	State of Madhya Pradesh through District Magistrate, Morena, Madhya Pradesh.
	Madhya Pradesh Pollution Control Board
2	Director of Industrial, Health and Safety, Bhopal, M.P.
3	Central Pollution Control Board through Regional Director, Bhopal, Madhya Pradesh.
4	MoEF&CC through Integrated Office, Bhopal, M.P.
5	M/s Sakshi Food Products Village, Dhanela, AB Road, Tehsil, Banmore, District Morena, Madhya Pradesh.
6	Sh. Sajal Agrawal
7	Smt. Sakshi Goyal through M/s Sakshi Food Products, Survey No. 168, Village Dhanela, AB Road, Tehsil-Banmore, District Morena, M.P.

5. A substantial issue of environment has been raised.
6. Issue notice to the respondents, returnable within three weeks. Registry is directed to issue notice on available E-mail or through the State Pollution Control Bard or District Magistrate, Morena, M.P.
7. Respondents are directed to submit their reply within three weeks through E-filing portal, preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.
8. Respondents are further directed to showcause as to why the reasonable compensation be not awarded to the member of the deceased.
9. Applicant/Registry is directed to take necessary steps for service to the respondents by both ways and also on available email.

10. Applicant/Registry is directed to supply the copy of the application and relevant documents to the Respondent(s) within a week.

List it on **08th December, 2023**

Sheo Kumar Singh, JM

Dr. A. Senthil Vel, EM

08th November, 2023
O.A. No. 125/2023 (CZ)
PN