

Item No. 01

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

**Original Application No.125/2023(CZ)
(I.A.No.11/2024)
(O.A.No.539/2023 - PB)**

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

Suo Moto....

Vs.

MPPCB & Ors.

Respondent(s)

Date of completion of hearing and reserving of order : 09.09.2024
Date of uploading of order on website : 23.09.2024

**CORAM: HON’BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON’BLE DR. AFROZ AHMAD, EXPERT MEMBER**

For Applicant(s):	None.
For Respondent(s):	Mr. Prashant M. Harne, Adv. (with Mr. Mehul Bhardwaj, Adv.) Ms. Parul Bhadoria, Adv. Mr. Rohit Sharma, Adv. Mr. Yadvendra Yadav, Adv. Dr. Sapna Aggarwal, 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 status 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
<i>Name of Industry</i>	<i>M/ s Sakshi Food Products</i>	
<i>Location of Industry</i>	<i>Survey No. 168/1, 168/2, 170/1 and 170/2 in Village Dhanela, AB Road, Tehsil Banmore, District Morena, MP GPS coordinates : Latitude26.4275N Longitude78.0400E</i>	<i>C 1</i>
<i>Type of Firm</i>	<i>Partnership Firm</i>	
<i>Name of Partners</i>	<i>1. Shri Sajal Agrawal 2. Smt. Sakshi Goyal</i>	
<i>Type of Industry</i>	<i>Small Scale, Orange Category, Non-hazardous type food Processing unit</i>	
<i>Date of commissioning Of industry</i>	<i>10.10.2015</i>	
<i>Product and Production Capacity</i>	Asperconsent of the MPPCB <i>1. CaramelColour-1500TPA 2. Flavored Concentrates/ Drinks-50 TPA 3. FruitCuts-3000TPA 4. InvertSugarSyrup-3000TPA</i>	<i>C 3</i>
<i>Raw Materials Used</i>	<i>1. DextroseSyrup-60TPA 2. Fruits-3000TPA 3. Sugar-5000TPA 4. VegetableOil-12TPA 5. ProcessChemicals-6TPA</i>	
<i>Status of Consent of MPPCB</i>	<i>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 (Validtill30.09.2021) 8. CTOgrantedon13.08.2021 (Validtill30.09.2024)</i>	<i>C 3</i>
<i>Status of Factory License issued by Industrial Health & Safety Department</i>	<i>Latest license to work a factory granted on 05.12.2022 for validity up to 31.12.2023</i>	<i>C 4</i>
<i>Status of Food License issued by GoI, Food Safety and Standards Authority of India underFSSAct,2006</i>	<i>Latest license granted on 01.05.2023 for validity up to 21.09.2024</i>	<i>C 5</i>

(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 vacuum 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. The matter was taken up by this Tribunal on 08.11.2023 and State of Madhya Pradesh, Director of Industrial Health, CPCB and the project proponent were also impleaded as a party and notices were issued to submit their reply. Reply by all the respondents have been filed. We have heard the learned counsel the parties and peruse the record.
5. The submission and argument of the learned counsel for the MoEF&CC, are that the report prepared by the Expert Committee, it is noted that the industry is an Orange category unit (Non-hazardous food processing unit) falling under the small-scale sector. However, it is also observed that the unit is dealing with ammonia gas in cylinders, which is listed as a hazardous chemical under MSIHC Rules, 1989. Further, the applicability of various provisions of MSIHC Rules, 1989 on the unit for using ammonia would depend on the quantity permitted for handling and storage and can be ascertained by the Department of Industrial Safety and Health. The unit is also regulated under the Air Act, 1981, and the Water Act, 1974. It is noted from the Expert Committee report that the accident with the deceased laborers happened due to Asphyxiation (acute suffocation) resulting from the inhalation of toxic gases viz. methane, propane, and hydrogen generated from the putrefaction of the papaya cuts. Hence, the accident apparently happened due to bad upkeep and

hygiene conditions in the unit, and not due to handling/ leakage of Ammonia gas.

6. To handle the chemical safety-related issues, the Respondent Ministry has notified two sets of chemical safety rules under the EP Act, 1986 i.e. the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 (MSIHC Rules, 1989] and The Chemical Accidents (Emergency, Planning, Preparedness, and Response) Rules [CAEPPR Rules, 1996). Further, around 684 hazardous chemicals are covered based on toxicity, flammability, and explosivity.
7. The CAEPPR rules complement the MSIHC rules and thereby provide with the required statutory backup for Crisis Management setup and organizational support. Further, the rules envisage a 'Four-tier Crisis Management System' in the country at the Central, State, District and Local levels. It is submitted that the provisions of MSIHC & CAEPPR rules assign the key responsibilities to various State Government Central Government Departments with an objective to keep a check on the chemical accidents.
8. The MSIHC Rules, 1989 require the occupier to provide necessary information that is likely to cause major accidents and affect general public during a major accident at the site which include submission of information on usage/storage/ manufacture of hazardous chemicals, seek approval of sites, prepare on-site emergency plan and safety reports, undertaking safety audits and mock-drills etc. The occupier is required to comply with above mentioned rule provisions with concerned authorities designated under Schedule-5 of the rules.
9. It is further argued that under the CAEPPR rules, a Central Crisis Group has been constituted in compliance with Rule 3 under the chairmanship

of the Secretary (EF&CC). A Central Crisis Group Alert System i.e., Red Book has also been brought in compliance with Rule 4 to facilitate quick information exchange during chemical emergencies. The Red Book contains name, address and contact details of Central and State Nodal authorities, relevant national agencies/ institutes pertaining to chemical (Industrial) disaster management. The Red Book is hosted on the website of MoEF&CC and updated annually. A virtual crisis control room is also set-up in the MoEF&CC to coordinate with State Authorities during chemical (industrial) accident emergencies. That various provisions of the MSIHC Rules, 1989 are briefly described as follows:

i.

“Rule	Heading	Description
<i>Rule 1</i>	<i>Short Title And Commencement</i>	<i>Manufacture, Storage and Import of Hazardous Chemical Rules, 1989</i>
<i>Rule 2</i>	<i>Definitions</i>	<i>Various terms used in the rules like Hazardous Chemical, industrial activity, isolated storage, import, Importer, export, exporter, isolated storage, major accident, major accident hazard etc. have been defined.</i>
<i>Rule 3</i>	<i>Duties of Authorities</i>	<i>Duties of authorities are specified in Schedule 5.</i>
<i>Rule 4</i>	<i>General Responsibility Of The Occupier During Industrial Activity</i>	<i>Responsibility of MAH occupier defined such as:</i> <i>(a) identify the major accident hazards; and</i> <i>(b) take adequate steps to –</i> <i>(i) prevent such major accidents and to limit their consequences to persons and the environment;</i> <i>(ii) Provide to the persons working on the site with the information, training and equipment including antidotes necessary to ensure their safety.</i>

Rule 5	<i>Notification Of Major Accident</i>	<i>Occupier should notify about the major chemical accident to concerned authority and concerned authority shall undertake full analysis of accident report and sent to MoEF&CC as prescribed.</i>
Rule 6	<i>Industrial Activity Which Rules 7 To Apply</i>	<i>To Defined industrial activity, isolated storage, new Industrial 15 activity, existing industrial activity are mentioned in rules for application of Rules 7 to 15.</i>
Rule 7	<i>Approval and Nonfiction of Sites</i>	<i>Occupier should not undertake any industrial activity without approval of concerned authority (as per Schedule 5) and submit a written report as per the particulars specified in Schedule 7 at least 3 months before commencing the activity.</i>
Rule 8	<i>Updating of the site following changes in the threshold authority,</i>	<i>Any change in details submitted by occupier as per Schedule 7 is required to be updated by the way of submission of an updated report to the concerned quantity.</i>
Rule 9	<i>Transitional Provisions</i>	<i>Modus of applicability of various rule provisions in respect of units operating prior to these rules as well as new industrial activity/ isolated storages</i>
Rule 10	<i>Safety Reports (Safety Audit Reports)</i>	<i>Occupier to conduct safety audit for new and existing industrial activity and prepare a safety reports as per Schedule 8 and submit it to concerned authority.</i>
Rule 11	<i>Updating of reports under rule 10</i>	<i>Occupier required to make prior reporting of the proposed modifications in an industrial activity as prescribed.</i>
Rule 12	<i>Requirement for further information to be sent to the authority.</i>	<i>Concerned authority may ask from occupier for additional information in industrial activity.</i>
Rule 13	<i>Preparation to on-site emergency plan by the occupier</i>	<i>Occupier should prepare and keep up-to-date 'on-site emergency plan' as specified in schedule 11.</i> <i>The occupier required to ensure that a mock drill of the 'on-site emergency plan' is conducted every six months</i>

		and report submit to concerned authority as per Schedule 5
Rule 14	Preparation of off-site emergency plan by the authority.	District collector/ District authority should prepare and keep up-to-date 'off site emergency plan' as per format specified in schedule 12.
Rule 15	Information to be given to persons liable to be affected by a major	Occupier should inform public of the adjoining areas about the nature of the major accident hazard; and the safety measures and the "Do's" and "Don'ts" which should be adopted in the event of a major accident as prescribed.
Rule 16	Disclosures Information	Provisions on disclosure of information by concerned authority.
Rule 17	Collection, Development and Dissemination of Information	The occupier should prepare and develop a safety data sheet as specified in Schedule 9 in respect of a hazardous chemical handled by him and ensure that the information is recorded accurately and reflects the scientific evidence used in making the hazard determination. Container of hazardous chemical should be clearly labelled as specified under rule.
Rule 18	Import of Hazardous Chemicals	Any person responsible for importing hazardous chemicals in India should provide prior-information specified under the rule to the concerned authorities prescribed under the rules. Any person importing hazardous chemicals should maintain the records of the hazardous chemicals imported as specified in Schedule 10 and the records can be checked by the concerned authority
Rule 19	Improvement Notices	Concerned authority may serve the improvement notice to occupier in

		<i>case of violation of rules.</i>
<i>Rule 20</i>	<i>Power of the Central Government to modify the Schedules.</i>	<i>The Central Government may, at any time, by notification in the Official Gazette, make suitable changes in the Schedules.</i>

ii. That various provisions of the CA(EPPR) Rules, 1996 are briefly described as follows:

“Rule	Heading	Description
<i>Rule 1</i>	<i>Short Title And Commencement</i>	<i>Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 199</i>
<i>Rule 2</i>	<i>Definitions</i>	<i>Various definition viz. Chemical accident, industrial pocket, major chemical accident, industrial activity, hazardous chemical etc. has been given in the mentioned rule.</i>
<i>Rule 3</i>	<i>Constitution Of Central Crisis Group</i>	<i>Provision of constitution of CCG for management of chemical accident and functions.</i>
<i>Rule 4</i>	<i>Setting up of Crises Alarming System</i>	<i>Provision of Setting up a functional crisis control room, information networking system with the State Governments under Alert System.</i>
<i>Rule 5</i>	<i>Functions of the Central Crisis Group</i>	<i>Defined responsibilities of CCG/provide expert guidance for handling chemical accidents.</i>
<i>Rule 6</i>	<i>Constitution of State Crisis Group</i>	<i>Provisions enabling the State Government to constitute a State Crisis Group for management of chemical accidents</i>
<i>Rule 7</i>	<i>Functions of the Crisis Group State</i>	<i>Defined responsibilities of SCG/ to deal with chemical accidents and coordinate efforts in planning, preparedness and mitigation of a chemical accident</i>
<i>Rule 8</i>	<i>Constitution of the District And Local Crisis Group</i>	<i>The State Government constitute a District and Local Crisis Group for management of chemical accident</i>

Rule 9	Functions Of The District Crisis Group	Apex body in the district to deal with major chemical accidents and to provide expert guidance for handling chemical accidents
Rule 10	Functions Of The Local Crisis Group	To deal with chemical accidents and coordinate efforts in planning, preparedness and mitigation of a chemical accident
Rule 11	Powers of the members of the Central, State and District Crisis Groups	The Members of the Central Crisis Group, State Crisis Groups shall be deemed to be and District persons empowered by the Central Government in this behalf under sub-section (1) of section 10 of the Environment (Protection) Act, 1986.
Rule 12	Aid And assistance for the functioning of the District and Local Crisis Group.	Major Accident Hazard installations provide aid, assist and facilitate functioning of the District Crisis Group and Local Crisis Groups.
Rule 13	Information to the Public	CCG, SCG, LCG provide information on request regarding chemical accident prevention, preparedness and mitigation in the country, state and industrial pocket respectively.

iii. To prevent chemical (industrial) accidents in the country, the concerned Central/ State authorities have been delegated responsibilities as per Schedule 5 of the MSIHC Rules, 1989 wherein Petroleum and Explosives Safety Organization (PESO), has been made the nodal agency to approve and notify the sites plans of industrial activity as well as pipelines carrying hazardous chemicals including inter-state pipelines. The State Chief Inspector of Factories (appointed under factories Act, 1948) and PESO has also been mandated to examine/ assess/ review the On-site Emergency Plans for suitability in light of risks as well as review the safety reports & safety audit reports submitted by occupiers. PESO is also mandated to enforce directions and procedures under the Explosives Act, 1884 as well as the Petroleum Act, 1934.

iv. That the PESO and the State Chief Inspector of Factories, while giving approvals to industrial units, transportation pipelines and isolated storages are expected to ensure preparation of on-site emergency plans & safety reports by units, reviewing the details of mock-drills conducted and implementation of Standard Operating Procedures (SOPs) of industrial operation by the unit from industrial safety point of view.”

10. Learned counsel has further argued that The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 provides certain measures which are required to be taken by the authorities in cases of such incidents. The relevant paras are as follows:-

“Section 5 - Functions of the Central Crisis Group .-

- 1) The Central Crisis Group shall be the apex body to deal with major chemical accidents and to provide expert guidance for handling major chemical accidents.*
- 2) Without prejudice to the functions specified under sub-rule (1), the Central Crisis Group shall, -*
 - a) continuously monitor the post-accident situation arising out of a major chemical accident and suggest measures for prevention and to check recurrence of such accidents;*
 - b) conduct post-accident analysis of such major chemical accidents and evaluate responses;*
 - c) review district off-site emergency plans with a view to examine its adequacy in accordance with the Manufacture, Storage and Import of Hazardous Chemicals, Rules, and suggest measures to reduce risks in the Industrial pockets;*

- d) *review the progress reports submitted by the State Crisis Groups;*
- e) *respond to queries addressed to it by the State Crisis Groups and the District Crisis Groups;*
- f) *publish a State-wise list of experts and officials who are concerned with the handling of chemical accidents;*
- g) *render, in the event of a chemical accident in a State, all financial and infrastructural help as may be necessary*

Section 7 - Functions of the State Crisis Group.-

(1) The State Crisis Group shall be the apex body in the State to deal with major chemical accidents and to provide expert guidance for handling major chemical accidents.

(2) Without prejudice to the functions specified under sub-rule (1), the State Crisis Group shall –

- a) *review all district off-site emergency plans in the State with a view to examine its adequacy in accordance with the Manufacture, Storage and Import of Hazardous Chemicals, Rules and forward a report to the Central Crisis Group once in three months;*
- b) *assist the State Government in managing chemical accidents at a site;*
- c) *assist the State Government in the planning, preparedness and mitigation of major chemical accidents at a site in the State;*
- d) *continuously monitor the post accident situation arising out of a major chemical accident in the State and forward a report to the Central Crisis group;*
- e) *review the progress report submitted by the District Crisis groups;*

- f) respond to queries addressed to it by the District Crisis groups;*
- g) publish a list of experts and officials in the State who are concerned with the management of chemical accidents.*

Section 8 - Constitution of the District and Local Crisis Group.-

(1) The State Government shall cause to be constituted within thirty days from the date of commencement of these rules,-

(a) District Crisis Groups;

(b) Local Crisis Groups;

(2) The composition of the District Crisis Group and the Local Crisis Groups shall be as specified in Schedule 7 and 8 respectively.

(3) The District Crisis Group shall meet every forty five days and send a report to the State Crisis Group;

(4) The Local Crisis Group shall meet every month and forward a copy of the proceedings to the District Crisis Group.

Section 9 - Functions of the District Crisis Group.-

(1) The District Crisis Group shall be the apex body in the district to deal with major chemical accidents and to provide expert guidance for handling chemical accidents

(2) Without prejudice to the functions specified under sub-rule (1), the District Crisis Group shall,-

- a) assist in the preparation of the district off-site emergency plan;*
- b) review all the on-site emergency plans prepared by the occupier of Major Accident Hazards installation for the preparation of the district off-site emergency plan*
- c) assist the district administration in the management of chemical accidents at a site lying within the district;*

- d) *continuously monitor every chemical accident;*
- e) *ensure continuous information flow from the district to the Central and State Crisis Group regarding accident situation and mitigation efforts;*
- f) *forward a report of the chemical accident within fifteen days to the State Crisis Group;*
- g) *conduct at least one full scale mock-drill of a chemical accident at a site each year and forward a report of the strength and the weakness of the plan to the State Crisis Group.*

Section 10 - Functions of the Local Crisis Group.-

(1) The Local Crisis Group shall be the body in the industrial pocket to deal with chemical accidents and coordinate efforts in planning, preparedness and mitigation of a chemical accident;

(2) Without prejudice to the functions specified under sub-rule (1), the Local Crisis Group shall,-

- a) *prepare local emergency plan for the industrial pocket;*
- b) *ensure dovetailing of the local emergency plan with the district off-site emergency plan;*
- c) *train personnel involved in chemical accident management;*
- d) *educate the population likely to be affected in a chemical accident about the remedies and existing preparedness in the area;*
- e) *conduct at least one full scale mock-drill of a chemical accident at a site every six months forward a report to the District Crisis Group;*
- f) *respond to all public inquiries on the subject.*

Section 11 - Powers of the Members of the Central, State and District Crisis Groups.-

(1) The Members of the Central Crisis Group, State Crisis Groups and District Crisis Groups shall be deemed to be persons empowered by the Central Government in this behalf under sub-section (1) of section 10 of the Environment (Protection) Act, 1986.

Section 12 - Aid and Assistance for the Functioning of the District and Local Crisis Groups.-

(1) The Major Accident Hazard installations in the industrial pockets in the district shall aid, assist and facilitate functioning of the District Crisis Group;

(2) The Major Accident Hazard installations in the industrial pockets shall also aid, assist and facilitate the functioning of the Local Crisis Group.”

11. The learned counsel for CPCB has submitted that the effluent standard for the food and fruit processing industries have been notified under the Environment (Protection) Rules, 1986 at serial no. 51, and the unit is required to maintain the standard.

12. The submission of respondent nos. 6, 7 and 8 are as follows :-

- i. *“The Respondents is an industry situated at Survey No. 168/1, 168/2, 170/1 & 170/2 in Village Dhanela, A.B. Road, Tehsil Banmore, District Morena, which is a small scale industry established for the purposes of manufacturing of invert sugar syrup, caramel, fruit cut/fruit peels and flavoured concentrate. The Answering Respondents have had all the valid permissions from all the concerned departments including the requisite Consent to Establish and Consent To Operate under the Air Act and Water Act.*

- ii. *The industry of Answering Respondents is spread over an area of about 8000 Sq.Mtr. and in order to manufacture fruit cut i.e. cherry, the Answering Respondents have constructed 6 underground storage tanks, wherein, brined papayas which is one of the raw material, is purchased from Jalgaon/ Raver and Kodour are stored in these underground storage tanks. Since the concentration of these brined papayas are required to have 20% common salt solution, therefore, apart from these brined papayas, common salt along with water is poured in these tanks, so as to prevent ripening of the papayas and to achieve appropriate concentration of salt in these brined papayas.*
- iii. *On the date of incident, there was a festive holiday in the factory due to Raksha Bandhan fest for which notice was issued on 29.08.2023 by Answering Respondent and therefore no production activities were going on in the factory premises.*
- iv. *In the factory belonging to the Answering Respondents, there are 10 number of employees deployed directly by the Answering Respondents and with respect to other petty works, a subcontractorship has been given to one local contractor namely Dhruv Enterprises. The entire work of cleaning and other ancillary works is undertaken by the labours belonging to Shri Sanjay Kushwah, Supervisor of Dhruv Enterprises. On the date of incident, these workers came to the factory of the Answering Respondents on direction of Shri Sanjay Kushwah without seeking any consent from Answering Respondent. Though with a bonafide motive of carrying out cleaning activities at the earliest, despite being duty bound to come and clean the factory at 12 Noon by their original contractor. These 6 workers chose to clean the storage tank without any instructions or guidance from the supervisor of Dhruv Enterprises, Shri Sanjay Kushwah, who have been supervising them since last half a decade regarding the procedure to be followed before cleaning the storage tank.*

- v. *The procedure that is being followed by the Answering Respondents in cleaning the storage tank is as follows: -*

After Complete Brined Papapays are removed from Tank



Water & Slurry is removed through motor pump



Presence of any gas is checked using gas detector and fresh air is forced inside the tank by air blower



Thick slurry which comprises of Papaya waste and salt, is removed manually by using proper safety equipment comprising of life line wire rope, Safety Belt, Safety Shoes, mask with portable oxygen cylinder etc.

- vi. *On the date of incident, all these 6 workers decided to clean one underground storage tank in absence of Supervisor of Contractor but, to utmost shock and surprise, 5 of the workers died apparently due to asphyxiation. The water stored in these tanks was not pumped outside with the help of the motor by these workers despite the motor being kept inside the plant store room.*
- vii. *The procedure that is being adopted towards storage of papayas and cleaning of these tanks is properly defined by the answering respondent. These workers have been deployed by the subcontractor, but irrespective of that, proper safety equipments are being supplied to all these workers by the Answering Respondents which are kept inside the factory store room and are provided to the workers from store by supervisor of contractor. To utmost dismay, these workers did not wear the safety equipment's as a result of which such an unfortunate incident occurred.*
- viii. *Though nobody could ascertain the exact cause of death of these workers, but it could easily be ascertained that these*

workers died after consuming the water present in these storage tanks. It is impossible that Methane Gas was present in the shed where the storage tanks are constructed or else the consequences of the same would have been witnessed by the Answering Respondents way back as production activities and storage of Papayas activities started taking place way back in the Year 2019.

ix. Immediately after the incident came to the knowledge of the Answering Respondents, all the requisite compensation to the families which tantamounts to almost Rs. 20 Lakhs per family has been paid to their family member.”

13. It is further argued that ETP was found overflowing on account of the fact that the industry has been sealed almost 22-25 days prior to the date of inspection and therefore, could have been no reasonable opportunity for the answering respondent to have a control or operate the ETP properly.
14. It is further argued that MPPCB has carried out the last inspection of the industry/unit on 12.08.2021 and ETP has been found installed and properly running and thus, consent was renewed.
15. Learned counsel for the respondent has further submitted that in view of the orders and parameters passed by this Tribunal in O.A. No. 327/2023 (dated 02.05.2023-PB), a reasonable compensation to the tune of Rs. 20 lakhs have been fixed and was directed to be paid and the unit has paid an amount of Rs. 24 lakhs from the company and Rs. 04 lakhs from the State Government and thus, total amount of approximately Rs. 28 lakhs have been paid to the affected persons.
16. The contention of the project proponent are that on the day of the incident due to festive holiday, the industry was not in operation and production activities were completely closed and the persons affected entered into the premises for cleaning purposes voluntarily without waiting the supervisor.

The presence of methane or pre-propane or any other infectious gases has accrued only on account of decomposition of the fruits waste which were lying unattended for almost 22 days on the date of inspection and not on account of any sludges or residue left out in the empty tanks wherein the incident had taken place.

17. Para-wise reply of the observations noted by the committee has been narrated as follows :-

SR. NO.	OBSERVATION BY THE COMMITTEE	ANSWER BY THE FACTORY MANAGEMENT
1	No safety precaution, sign board was displayed by industry within the Factory Premises.	All the safety precautions and sign boards were already existing and photographs of the same is already annexed along with the reply and is re annexed.
2	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.	All the safety equipment's were stored at the desired place in the factory premises of which not only the workers but every other person was very well aware, the supervisor was not available because admittedly these workers have entered the factory premises without the supervisor's knowledge and despite the fact that the supervisor had asked them to reach the factory at 12:00 noon, they had entered the tanks at 10:00 am i.e. two hours prior to the pre-intimated time given by the supervisor. The bills, photo and police seizure panchnama of all the safety equipment's are

		<i>already annexed with the Reply but are reproduced</i>
3	<i>No mechanical system or pump was provided for desludging and transferring the Salt water from the storage tank to the disposal pit.</i>	<i>There was a preexisting mechanical system and a proper water pump in the factory premises for removing the sludge from the empty tanks, and for transferring the Salt water from the storage tank to the disposal pits. The same was being used by the labours since the very inception of this unit for the purposes of desludging the material existing in the tanks. The bills and photographs of the motor are marked and annexed.</i>
4	<i>The workers deployed by the industry for cleaning of the papaya storage tanks 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.</i>	<i>The statement made by the surviving labour would clarify the position that all the labours were duly skilled for the work required to be done and they have done the similar category of work in the past for more than 10-15 times thus, it cannot be said that they were not qualified or skillfull enough to do the said work. Furthermore, it is admitted position of fact that these labours entered the premises and the storage shade without the consent of the supervisor concerned who had clearly instructed them to reach at 12 noon instead they chose to reach there at 10:00 am and start the work suo moto without letting the</i>

		<i>management know about the same and also without carrying the safety equipment.</i> <i>Furthermore, as it has been clarified above, the workers working under the said arrangement were subcontracted by the factory management through one of the companies namely Dhruv Enterprises and therefore there was no direct relationship between the factory management and the workers working towards the same except for the fact that the workers were very well aware about their functioning owing to their previous record of doing such activity in past. Affidavit given by surviving Labour is marked.</i>
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18. The records relating to the proceeding before the works man, commissioner for compensation and the notice of the precautions have been placed and are on record. To install adequate ventilation systems in the cut papaya storage shed to ensure a minimum of six air changes per hour, thereby maintaining a safe and breathable environment for workers. This can be achieved through the installation of turbo ventilators in the ceiling, which shall be supplemented by a mechanical exhaust system to enhance air circulation and ensure the efficient removal of any hazardous gases or contaminants.

19. The industry is directed to transform the unit from the manual mode of cleaning the papaya cuts storage tanks to a fully mechanized cleaning system. This shift is mandated to eliminate the inherent risks associated with manual cleaning operations, including exposure to hazardous gases, oxygen deficient environments, and other safety hazards.
20. The transfer of residual materials, including any sludge or leftover residues from the papaya cuts storage tanks, shall be conducted exclusively through the use of appropriate sludge transfer pumps, rather than by manual means. This measure is mandated to eliminate the significant risks associated with manual handling of such residues, which may include exposure to hazardous substances, contamination, and physical strain on workers. An organic gas monitor or indicator, equipped with an integrated alarm system, shall be installed within the raw papaya storage shed to continuously monitor the presence of hazardous gases, including but not limited to organic vapors produced by the decomposition of raw materials. The alarm system shall be configured to provide real-time alerts in the event that gas levels exceed safe thresholds, thereby enabling prompt evacuation and immediate corrective measures to prevent health risks or accidents.
21. Submission of the learned counsel for the State PCB is that a substantial amount of compensation to the tune of Rs. 24 lakhs to Rs. 28 Lakhs has been paid by the unit and the State Government and on the point of payment of compensation no further action is required. So far as precautionary measures are concerned the unit is required to follow the guidelines, accordingly, we direct as follows:-

- i. The CPCB and the MoEF&CC are directed to frame the guidelines for environmental management in food

processing industries for better management of environment taking into consideration mission life targets.

- ii. Respondent units and all other units shall strictly follow the manufacture, storage and import of Hazardous Chemical Rules, 1989 (quoted above), isolated storage at installation other than those covered by Schedule 4 strictly and letter and spirit.
- iii. The information of safety report as prescribed under Rule 10(1) provided in schedule 1 must be periodically submitted to the authorities concerned.
- iv. The guidelines and rules contained in The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 must be strictly complied with.
- v. The Secretary (Environment) and Member Secretary, State Pollution Control Board, Madhya Pradesh are directed to constitute a taskforce in light of the above orders and directions contained in the rule at the State Level and District Level so that immediate action should be taken in case of such incidents.

22. With these observations **Original Application No. 125/2023** along with **I.A. No. 11/2024** stand **disposed of**.

Sheo Kumar Singh, JM

Dr. Afroz Ahmad, EM

23rd September, 2024
O.A No. 125/2023(CZ)
PN