

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

(By Video Conferencing)

Original Application No. 258/2020

(With report dated 28.01.2021)

In Re: News item published in the “Indian Express” dated 04.11.2020 titled “Ahmedabad: Nine killed as godown collapses after factory blast”

Date of hearing: 23.03.2021

**CORAM: HON’BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON’BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON’BLE DR. NAGIN NANDA, EXPERT MEMBER**

Respondent: Mr. Raj Kumar, Advocate for CPCB  
Mr. Satyalipsu Ray, Advocate for MoEF & CC  
Mr. S.J. Sagale, Collector & DM (Ahmedabad)  
Mr. R.N. Parmar, Unit Head, GPCB

**ORDER**

1. Proceedings in this matter have been initiated based on media report of death of nine persons (**later the number of deaths has risen to 13 and nine injured have been identified**) on account of a factory blast at Ahmedabad on 04.11.2020. The incident, as reported, is as follows:-

*“Nine people were killed and six others were critically injured in a major blast that took place in a **chemical boiler factory at Pirana-Piplaj road in Ahmedabad** on Wednesday. Due to the impact of the blast, the walls and roof of an adjacent clothes godown came down, resulting in several workers getting trapped who were later rescued.*

According to fire safety officials, the blast occurred between 11:30 am to 11:40 am. Rescue team officials said two more persons were still believed to be trapped beneath the rubble. More than 60 personnel of the fire safety department were pressed into service with 24 fire tender vehicles as soon as the information was received. **“The rescue operation was challenging because of fire and the building collapse. So, we had to douse the fire, take out the smoke and then remove the debris. We have managed to rescue nine persons and they have been taken to LG Hospital for emergency medical treatment while nine bodies have also been retrieved. We fear that two persons are still trapped in the debris and our operation is going on,”** said MF Dastoor, Chief Fire Officer, Ahmedabad Municipal Corporation.

As per eye-witnesses, **the impact of the blast was so massive that it felt like an earthquake. Raju Ghanchi (24), an employee at Kanika Texo Fab garment company godown, said: “I was working in the godown when I heard the massive blast sound. Walls and the roof of our godown fell down. Many of my friends got trapped inside. I was also trapped as wooden shafts fell on my legs. Somehow I was rescued by others. I have received injuries on my legs.”**

Dhruv Chopra (28), the owner of Kanika Texo Fab company, said, **“I was at the parking spot near my godown when I heard a huge blast around 11:30 am. For a few minutes, I lost all my senses and somehow I called 108 number for the ambulance. Later my workers made calls to police and fire department. I have 30 workers in my godown and 28 have been accounted for. Two are still missing and I hope they are rescued safely.”**

2. The matter was considered on 11.11.2020 after serving advance notice to the CPCB, the Gujarat State PCB, District Magistrate, Ahmedabad, Director of Industrial Safety, Ahmedabad and **M/s Sahil Enterprises Chemical Boiler Factory, Pirana-Riplaj Road, Ahmedabad.** It was observed:

**“4. They have stated that in the incident in question, 12 persons have died and 10 persons are hospitalized for the last one week. The Chief Minister, Gujarat has constituted a fact-finding Committee under the Additional Chief Secretary, Labour and compensation of Rs. 4 lakhs to the next of the kin of the deceased has been announced, which is likely to be paid soon. The owner of the unit has been arrested and is in the judicial custody. The illegal godown was being operated without requisite consent for storing hazardous chemicals. The godown was rented by the operator.**

5. In view of above, a case is made out for proceeding further under section 15 of the NGT Act for compensating the victims and restoration of environment after further enquiries. Subject to further enquiry, **there appears to be failure of the statutory regulatory regime not only under the Water Act, the Air Act and the Environment (Protection) Act but also as per Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 (The 1989 Rules) and the Chemical Accidents (Emergency, Planning, Preparedness and Response) Rules, 1996 (The 1996 Rules) and the Disaster Management Act, 2005. The 1989 Rules require preparation of on-site and off-site emergency plan for the units storing hazardous chemicals. The on-site and off-site plan are to be overseen by the Chief Inspector of Factories (CIFs), Department of Industries, the District Magistrate, the State PCB and the Petroleum and Explosives Safety Organization (PESO). The 1996 Rules provide for constitution of a Central Crisis Group headed by the Secretary, MoEF to monitor post-accident situation. Crisis Alert System envisages control room and information network. The State Crisis Group is required to meet atleast once in three months to review all District off-site emergency plans in the State and assist in planning, preparedness and mitigation of chemical accidents. The District and Local Crisis Groups are also to perform similar functions in their respective areas. The affected victims of such damage are entitled to Monetary Compensation. Apart from taking other action, foremost is compensation to the victims of such tragedies as per law laid down in, (1987) 1 SCC 395, M.C. Mehta & Anr. v. UOI & Ors.**

6. xxx.....xxx.....xxxx

7. The last matter pertains to an incident on 03.06.2020 at Dahej, District Bharuch in Gujarat resulting in death of eight (08) persons and injury to 50 and displaced of about 4800 inhabitants. The Tribunal referred to the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 (The 1989 Rules) and the Chemical Accidents (Emergency, Planning, Preparedness and Response) Rules, 1996 (The 1996 Rules). Vide order dated 08.06.2020, the Tribunal passed following operative order:-

“

- 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 three months 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.*

*13. This order is without prejudice to any criminal or other statutory proceedings in accordance with law.*

*14. Since this tragedy follows so close on the heels of a similar one (in Vizag), it may be necessary to ensure that risk studies are duly undertaken by all industries in the country dealing with the hazardous chemicals and their on-site and off-site plans are operational and mock drills are carried out for testing the same. The State PCBs, concerned District Magistrates, CIFs of the Industries Departments may ensure the same and the nodal agency for the purpose will be the State PCBs, which may be monitored by the CPCB in an appropriate manner.*

*15. Since a direction has already been issued to the MoEF&CC to constitute an Expert Committee on the subject of revamping the monitoring mechanism to check and prevent violation of environmental norms and occurrence of such incidents in future particularly in establishments dealing with hazardous chemicals and a special drive may be initiated, no separate direction is necessary but this incident may also be kept in mind by the Expert Committee constituted in pursuance of order dated 01.06.2020.”*

*8. The Tribunal also fixed interim compensation as follows:-*

*“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."*

9. *The present matter also needs to be dealt with on same pattern. **While constituting a fact-finding Committee, directions have to be issued for interim compensation and remedial action by the statutory authorities. We assess the interim compensation for death at Rs. 15 lacs each (taking into account multiplier of around 16 and loss of earning of about one lac a year, apart from conventional sums) and for injuries of persons hospitalized at Rs. 5 lac per person. The interim compensation is the liability first of the owner of the unit and on his failure of the State. The amount is to be disbursed to ensure that it reaches the victim. Disbursement is to be made by the District Magistrate by making an appropriate plan in association with the Legal Services Authority.***

10. *Accordingly, we direct:*

a) *The owner of the unit may deposit an amount of Rs. 5 crores, minus the statutory compensation/ex gratia payments already made to the victims, if any, with the District Magistrate, Ahmedabad within 10 days from today. In default, the amount may be recovered from the assets of the unit, if any within one month, failing which this amount be deposited out of the State funds with liberty to recover the same from the unit or the erring officers. The amount of Rs. 4 Lacs*

**already announced will be adjusted in the amount to be paid under the above direction.**

b) *The amount may be disbursed by the District Magistrate by making a disbursement plan in coordination with the District Legal Services Authority with safeguards to ensure that amount reaches the beneficiaries and is not misappropriated by any intermediary.*

c) **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, Ahmedabad 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*

d) *The Committee may visit and inspect the site within 7 days and give its report within one month thereafter via email at [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.*

- e) 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.*
- f) The Committee may as far as possible make final quantification of compensation and also prepare a restoration plan in association with the District Magistrate, Ahmedabad. For the restoration plan, the nodal agency will be the representative of MoEF&CC.*
- g) 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.*
- h) Before recommencing any operations, the owner 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.*

**11. This order is without prejudice to any criminal or other statutory proceedings in accordance with law. Since this tragedy follows so close on the heels of a similar one, it may be necessary to ensure that risk studies are duly undertaken by the State authorities.”**

3. Accordingly, the six-member joint Committee has filed its report on 28.01.2021. The report shows that the godown in question was being operated, on an agriculture land, in violation of revenue, municipal and environment law. The construction was contrary to the norms of constructions for safety and Municipal law requirement. The activity was hazardous without compliance of statutory safeguards. There was no ‘onsite’ and ‘offsite’ emergency plans, holding of mock drills and conducting of safety audits as per 1989 Rules. There is also no effective



functioning of State Crises Group and District Crises Group in accordance with 1996 Rules. The Revenue Authorities, District Administration, Industries Department as well as the Environment Department of Gujarat failed to check the illegalities and it is only after order of this Tribunal that penalty of Rs. 23 lakhs was imposed for violation of land use. Thus, the Committee has recommended that State is vicariously liable even though primary liability of the operator of the godown remains. The victims are required to be paid compensation. Safety protocols are required to be followed and reviewed at other locations also. The activity was hazardous without compliance of statutory Relevant extracts from the report are as follows:

**“4.0 ABOUT THE UNIT-WHERE FATAL ACCIDENT TOOK PLACE:**

*M/s Sahil Enterprise operated in Godown No.12 at Revakaka Estate, Pirana- Pipaja Road, Shahwadi, Ahmedabad. The owner of M/s Sahil Enterprise is Shri Hetal Girishbhai Sutariya who took godown on rent from Owner of the said premises (Godown no- 12) Shri Maldevbhai Pradeepbhai Bharwad and Shri Manishbhai Pradeepbhai Bharwad (as per Rent Agreement). Owners of Godown are sons of Shri Pradeepbhai alias Butabhai Revabhai Bharwad. As per Ahmedabad Municipal Corporation (AMC) documents, owners of the godown are Shri Ravabhai Arjanbhai Bharwad & Shri Pradeepbhai Revabhai Bharwad.*

***Shri Hetal Girishbhai Sutariya was doing chemical trading and manufacturing activity of Methyl Ethyl Ketone Peroxide (MEKP) with the use of raw materials-Methyl Ethyl Ketone, Hydrogen Peroxide, Dimethyl Phthalate and Di Ethyl Glycol. Previous day of incidence (on 03.11.2020), manufacturing of Methyl Ethyl Ketone Peroxide is carried out by mixing and stirring using glass flasks. Above said activity was carried out in the rented Godown No 12 with his working partner named Mr. Mustufa Alubhai Saiyad who died in this incident.***

*Size of Godown is 50 feet x 25 feet as per statement of the owner of M/s Sahil Enterprise, which is RCC Structure and having adjacent Godowns on the south side and north side of the similar nature. The Godowns did not have any ventilation window except the door (@ 3 feet x 2.7 feet size) in the front.*

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## **“5.0 SUMMARY OF THE REPORT:**

### **5.1 THE SEQUENCE OF EVENTS: -**

- *On 04.11.2020 around 11:30 hrs severe explosion at M/s Sahil Enterprise Godown No. 12, Revaka Estate, Piran-Piplaj Road, Shahwadi, Ahmedabad.*
- *The incident was reported to Fire Control Room, Ahmedabad Municipal Corporation (AMC) on 04.11.2020 at 11.40 hrs and the first turnout was from Aslali Fire Station at 11.42 hrs which was 9 km away from the accident site. The firefighting team took 10 minutes of time from getting a call to reach the site. Subsequently, more staff and vehicles were reached to the site. Due to the explosion, the walls along with the RCC structure were blown off resulting into the collapse of the RCC roof and persons buried under the rubble and fire due to chemicals and clothes (Saree, Punjabi suites/dresses etc). It was a case of explosion due to chemical activity and turned into multiple hazards where heavy smoke, fire and people trapped under the rubble were to be handled at the same time. The main firefighting operation was over in about 30 minutes except for some points where cloth was burning under the rubble. Firemen entered the godown and started rescue operation along with firefighting with operation of blowers to disperse the smoke. Nine persons rescued alive and 12 bodies recovered. NDRF team joined the rescue operation at 18.00 hrs. The rescue operation was over by 20.00 hrs after confirmation that all those missing were found. The Firefighting continued in small pockets for which debris had to be cleared, thus firefighting operation was over by 00.40 hrs. The injured and deceased persons were taken to L.G. Hospital, Maninagar, Ahmedabad (run by AMC) which is about 10 km from the accident site.*
- *Various Government Agencies rushed to the incident site and started their respective work. Government agencies namely Fire & Emergency Service, Ahmedabad Municipal Corporation (AMC), Department, Police Department, National Disaster Response Force (NDRF), Directorate Industrial Safety & Health (DISH), Gujarat Pollution Control Board (GPCB), Forensic Science Laboratory (FSL) etc.*
- *Due to blast which resulted into collapse of godowns (slab/beams/columns/walls)-*

- **Mr. Mustufa Alubhai Saiyad working with Shri Sutariya- M/s Sahil Enterprise, Godown No. 12) died whose activity resulted in an explosion.**
- 8 persons died and 4 persons injured who were working in adjacent godowns (A-11, A-10, C-1) in Nanubhai Estate (shed No A-4 to A-11 shed no C-1 to C-3 and Shed no B-1 to B-6) which is north, north-west direction of godown no-12 where explosion occurred). These godowns are occupied by M/s Kanika TexoFab., for manual saree, punjabi suits, dresses packing. These godowns are taken on rent from Shri Nanubhai Bharwad. There were a total of 24 persons working for packing on the day of the incident.
- 3 persons were injured when Texaco Synthetics Ltd. was running in Godowns no 8, 9 & 10, Revakaka estate which are opposite to godown No. 12 in west direction. Total 10 persons were working for cloth cutting and packaging.
- Other 03 persons died and 02 persons injured from H.K. Traders which are in Godown no. 10 in the south direction adjacent to Godown no. 11 (Ankur Fab Pvt Ltd), after Godown No. 12 (M/s Sahil Enterprise).
- **Total 12 persons died and 10 persons injured on 04.11.2020. Subsequently, one person succumbed to injuries on 13.11.2020 and till date a total 13 persons (8 Male, 5 Female) died and 09 persons (6 Male, 3 Female) injured.**
- Details of the injured, deceased persons from different units are summarized in following table-

Name of Unit	No of Injured person	No of Deceased
M/s Sahil Enterprise	--	1 (M)
M/s Kanika Texofab	4 (M-2, F-2)	9 (M-5, F-4)
M/s Texaco Synthetic Ltd	3 (M-3)	--
M/s H K Traders	2 (M-01, F-1)	3 (M-2, F-1)
	9 (M-6, F-3)	13 M-8, F-5)

- **Due to leakage or mishandling of chemicals in the storage of the hazardous chemicals (in the assembly as well as other drums having flammable and explosive chemicals), as the premises was without ventilation, vapour cloud might have been formed and blast occurred on account of either spark of electricity or otherwise. The possibility cannot be ruled out for the blast due to the fall of corboys/drums containing MEKP during parcel preparation, rearrangement of drums, mixing of Hydrogen peroxide (H2O2) with MEKP instead of Diethyl Glycol (DEG) without any cooling**

**arrangement outside the mixing assembly. Three craters were observed at the site. Had the premises been with adequate ventilation, in all probability, the incident could have been avoided.**

*The experts reports (Annexure-9 & 12) are in detail indicated chemicals, reaction of chemicals, analysis of data for purchase, production, sale, overpressure calculations, effect of overpressure due to blast at different distance, on building structure, effect of highly flammable chemicals as well as explosive chemicals, vapour cloud explosion, extent of damage, probable reasons etc.*

## **5.2 CAUSES OF FAILURES AND PERSONS AND AUTHORITIES RESPONSIBLE THEREOF**

- (i) The Owner of the Unit M/s Sahil Enterprise - Shri Sutariya, without obtaining permission from competent authority and without taking any precaution was storing and handling hazardous chemicals. In view of the nature of chemicals, it is to be presumed that he had knowledge about the process and preservation of the chemicals. The Committee members have seen the remaining godowns and all construction are substandard in nature. Essentially, the building was erected for storage of material only which need not have safety switches known as spark free switches or Spark Shield Switches and sockets used in industries. This indicates that he has not taken precautions during the activities and he has not taken on rent a premises suitable for the manufacturing hazardous chemicals. Clandestinely as he was doing the work without conveying the authorities in a space unfit for storage and manufacturing purposes, he cannot escape from his liability to make good to the people who have suffered.**
- (ii) That the land which was agricultural land could not have been used for any other purpose without obtaining the permission from the Collector and payment of the conversion charges. Even for the sake of argument, the plot having been included in the town planning scheme, the occupier of the land can use the land for the bonafide industrial purpose which is permissible, but that is only after payment of conversion tax leviable under Section 67-A is paid. The agriculturalist being aware that if the permission is taken for use of the land for non-agricultural purposes, he will have to pay the handsome amount to the**

**government for conversion etc. Despite erecting a number of godowns and collecting rents from the tenants, the landowner has continued to show the land as agricultural land in the revenue record. This is not merely an illegality but is a fraud with the statute and therefore, it must be taken very seriously. Even, the office of the collector was absolutely careless, negligent and therefore, responsible in allowing the erection of Godown and use of the same contrary to the provisions of law. How is it possible that for a number of years the farmer has not approached the revenue officer, namely the Talati for payment of revenue and copies of revenue records? Is it possible to believe that the Talati would not know about the construction carried out? In view of development not only on the land in question but surrounding lands were seen with construction and no cultivation was seen. The revenue officers are required to be presumed that they were aware about the construction and yet recorded as agricultural land in revenue records which are public documents. It appears that the office of the collector issued notice on 11.11.2020 for illegal construction made in 2000-2001 only after the blast (04.11.2020) to show that the office of the Collector has taken action and also to avoid responsibility.**

- (iii) After the erection of the Godown, when the area merged in the city limits of Ahmedabad Municipal Corporation, the staff of the AMC did not bother to find out the use of the premises and whether any permission was required or not to make use of the particular Godown. The law mandates to have permission from the Commissioner, AMC to run the workshop or workplace with the use of energy, namely electricity or mechanical power or water. Thus, to some extent the staff of the AMC is also responsible.**
- (iv) The duty of the DISH which is discussed in detail in earlier part clearly indicates that the officers did not make any enquiry.**

### **5.3 EXTENT OF DAMAGE TO LIFE, HUMAN AND NONHUMAN; PUBLIC HEALTH AND ENVIRONMENT-INCLUDING WATER, SOIL, AIR;**

*Due to accident (explosion followed by collapse of RCC structure (Slab/walls), 13 persons died and 09 persons got injured due to misdeed/illegal activity at M/s Sahil Enterprise at Godown No.*

12, Revakaka Estate. The collector office has disbursed Rs. 4 lacs each to the next of kin of deceased workers as ex-gratia assistance from CM Relief Fund between 11.11.2020 to 21.11.2020 for 12 deceased persons and another deceased person on 05.01.2021. Thus, total 52 lakhs disbursed to legal heirs of deceased workers. In case of minor heirs of two deceased persons the ex-gratia amount was disbursed as fixed deposit in the savings accounts of minor heirs and legal procedure to appoint guardians for minor heirs are in progress after due consultation with the District Legal Service Authority. Additionally monthly assistance of Rs. 3000 each to both minor heirs has been sanctioned under Palak Mata Pita Yojana of Gujarat Govt by District Authority.

**Interim compensation i.e. Rs. 15 lakhs to the deceased persons and Rs. 5 lakhs to injured persons (as per Hon'ble NGT order) is not disbursed till date.**

As indicated above, the amount as directed by the Hon'ble Tribunal has not been paid to all concerned. The action taken by District Administration including intimation to the owner of godown and M/s Sahil Enterprise to deposit Rs.5.00 crore as per order of Hon'ble NGT dated 11.11.2020 and steps taken to identify assets of the owner of the unit and owner of godown are provided in **Annexure-28** to recover the amount in view of the order that is made by the Hon'ble Tribunal by taking appropriate actions (under the Land Revenue Code).

District Administration has issued notice under Section-66 of Land Revenue Code, 1879 to owner of Godown –Shri Revabhai Bharwad & Pradeepbhai Alias Butabhai Bharwad) for using agricultural land without permission and fine of Rs. 24,61,500 has been imposed as penalty.

The committee has considered the matter with regard to the compensation to the heirs of the victims (deceased persons) and has submitted the details in **Annexure-27**. As directed by the Hon'ble Tribunal, the Committee has assessed the compensation to be paid to the next of kin of the deceased.

On account of non-receipt of disability certificate, the committee could not calculate the compensation. The members of the committee on receipt of the disability certificate will submit the entitlement of the persons who sustained grievous hurt. According to the latest information, 03 persons sustained grievous hurt and 06 persons sustained hurt and the committee is of the view that all must be paid as per order made by the Hon'ble Tribunal.

There is nothing to indicate that any nonhuman sustained an injury or even died.

*So far as the damage to the environment on account of wastewater, air pollution and soil are concerned, the committee is of the opinion that no damage has been caused.*

*The damage has been caused to the adjacent godowns which were constructed illegally and the business running into these godowns not as per designated use godowns as AMC records.*

*These properties are illegal/ unauthorized, the committee is not recommending for damage compensation caused to the property of the persons (other godowns/ Businesses).*

#### **5.4 STEPS TO BE TAKEN FOR COMPENSATION OF VICTIMS AND RESTITUTION OF THE DAMAGED PROPERTY AND ENVIRONMENT, AND THE COST INVOLVED**

*About the compensation to be paid to the next of kin of the deceased and the persons who sustained injuries and were hospitalised till today the benefits required to be extended as per order has not been extended. On account of providing relief to such people the amount of 4 lakh to the next of kin of the deceased was announced by the State Government and ultimately paid. It transpired that the owner of M/s Sahil Enterprise has not shown any interest in making any payment to the sufferers at his hands. As it happens in most of the cases that such people are not disclosing their real wealth and it becomes very difficult for the sufferers to recover. **It seems that the person who has allowed his property which he constructed illegally for the use which is not permissible under the law should also not go unpunished and unescaped. So, for as the remaining payment to the sufferers is concern, Govt. should not wait till M/s Sahil Enterprise or its owner deposits the amount and should see that the amount is paid to the sufferers. So far the property is concerned the owner is the sufferer as he has lost the constructed godown illegally and not all. It may be a matter between the others who suffered on account of blast and except one who was running packing business of clothes /sarees/suits etc in adjoining godowns, none has lodged any claim. He was rented premises only for the purpose of storing the goods and not for appointing a contractor and through workers for carry on the business as packers. As indicated in the order in detail it is not possible to determine the loss suffered by him. In fact, his humble request was to recover workman compensation from M/s Sahil Enterprise. He should not be held liable to make the payment to deceased who were working in his godown. He stated that he is waiting to clear the debris for his claim from the insurance company. Looking to the present-day situation and the family members having lost bread earner, the government should make***

**immediate arrangements to make the payment to the persons as directed by Hon'ble Tribunal. The land was used illegally the Govt. can exercise the power under the Revenue code and by taking appropriate action should see that the appropriate action is taken. About the environmental damage we have found that no such damage is caused to the environment.**

XXX.....XXX.....XXX.....

**“FINDING OF CHEMICALS AT THE SITE OF M/S SAHIL ENTERPRISE BY THE FORENSIC SCIENCE LABORATORY (FSL)**

14. The samples collected from the premises by the Investigating Officer, were forwarded to the Forensic Science Laboratory, Gandhinagar (hereinafter referred as “the FSL”) to ascertain as to what chemicals were used in the manufacturing process of Methyl Ethyl ketone Peroxide, and to ascertain explosive material used by the occupier. The reports of the FSL dated 12/11/2020 & 07/12/2020 are annexed herewith and collectively Mark Annexure-10. From the report of the FSL, it transpires that the various chemicals were found on analysis however, chemicals mentioned below in a tabular form being relevant are only referred to.

(The names of chemicals, effects of the chemicals, Sr No as per Part-II, Schedule-1 List of Hazardous and Toxic Chemicals, MSIHC Rule 1989)

<b>Column 1 (Sr. No)</b>	<b>List of hazardous chemicals (Column 2)</b>	<b>Characteristic</b>
004	Acetone	An organic compound. It is a colourless, <b>highly flammable</b> and volatile liquid with a characteristic pungent odour. Keep away from heat/sparks/open flames/hot surfaces.
056	Benzene	An organic chemical compound composed of six carbon atoms joined in a planar ring with one hydrogen atom attached to each
089	Propane	Propane is one of a group of <b>liquefied petroleum gases</b> . It is a gas at standard temperature and pressure, but compressible to a transportable liquid. A by-product of natural gas processing and petroleum refining,
244	Ethanol	An organic chemical compound volatile, <b>flammable</b> , colourless liquid with a slight characteristic odour.
247	Ethyl Acetate	Ethyl acetate is the organic compound and is <b>highly flammable</b>



318	Hydrogen Peroxide	A chemical compound with the formula H <sub>2</sub> O <sub>2</sub> , has been used as a propellant in rocketry. It is used as an oxidizer, bleaching agent, and antiseptic. In the heat of a fire, it can produce: Oxygen. <b>Unusual Fire &amp; Explosion Hazards. Incompatible with Methyl Ethyl Ketone.</b>
	Methyl Ethyl Ketone	<b>Highly flammable liquid</b> and vapour. Keep away from heat, hot surfaces, sparks, open flames and other ignition sources. Wear protective gloves/ protective clothing. Use explosion-proof electrical/ ventilating /lighting/ equipment. Use only non-sparking tools. <b>Incompatible with Hydrogen Peroxide,</b>
628	Toluene	<b>Flammable</b> material can release vapours that readily form flammable mixtures. Vapor accumulation could flash and/or explode if ignited. Material can accumulate static charges which may cause an ignition.
	Butane	<b>Extremely flammable gas. May form explosive mixtures</b> with air. Contains gas under pressure; may <b>explode if heated</b> . May displace oxygen and cause rapid suffocation.

*\*Although Hydrogen Peroxide & Methyl Ethyl Ketone (MEK) are incompatible with each other, their reaction to make product-MEKP requires suitable conditions by maintaining temperature, addition of catalyst/chemical to control reaction.*

15. *FSL report specifically states that” Methyl ethyl ketone (flammable substance) and hydrogen peroxide (oxidizing substance) in the above samples can be said to be components of a volatile organic peroxide called methyl ethyl ketone peroxide. The material is capable of reacting extremely with an explosion at ambient temperature, which can cause a fire and an explosion.*

16. *For the final product Methyl Ethyl Ketone Peroxide, the occupier gave a statement that he used (1) Hydrogen Peroxide (Sr No.318) (2) Methyl Ethyl Ketone (3) Dimethyl Phthalate, (4) Di-ethyl glycol. However, the statement of storage of chemicals stored/used by the occupier does not disclose the presence of other hazardous chemicals. **The FSL found the presence of eight hazardous chemicals referred to in the above paragraph. But, out of the hazardous chemicals indicated, the occupier only referred chemicals namely, (1) Hydrogen Peroxide ( Sr No.318) (2) Methyl Ethyl Ketone (3) Dimethyl Phthalate, (4) Di-ethyl glycol in the statement before the authorities. Thus, the person has not come out with the truth and therefore, he is unreliable.***

17. The details, collected by ACP- Investigating officer, Police Department, such as computerised two sheets showing storage/usage/sale of raw materials and product, procedure for checking active oxygen & hydrogen peroxide in Product-(MEKP), answers to questions raised by committee members are annexed herewith and collectively Mark Annexure-11.

18. During the procedure for checking active oxygen & hydrogen peroxide in Product-(MEKP), there is use of (1) Sulphuric acid, (Sr. No. 591); (2) Potassium iodide, (3) Potassium Permanganate, (3) Hydrochloric acid, [ as per list item appears as Hydrochloric acid (gas) at Sr. No. 313] (4) Ammonium Hepta Molibladam.

19. Thus, **the occupier was using hazardous chemicals which were highly flammable and explosive. The data sheets of all the chemicals stored in the Godown conveys that the same should be kept under good ventilation. This Godown had no ventilation at all (refer, Photographs of adjoining godowns in Annexure-7). No incompatible chemicals which are hazardous can be stored together in the Godown. “Methyl Ethyl Ketone reacts violently with strong oxidants and inorganic acids causing fire and explosion hazard. Attacks some plastic. Incompatible with chloroform, hydrogen peroxide, nitric acid, potassium t-butoxide, and 2-propanol (conversion from propane). Forms explosive mixture with air,**

- HIGHLY FLAMMABLE: Easily ignited by heat, sparks or flames. For Public Safety in case of **Fire**, if a tank, rail car or tank truck is involved in a fire, ISOLATE for 800 meters (1/2 mile) in all directions; also, consider initial evacuation for 800 meters (1/2 mile) in all directions. Methyl Ethyl Ketone - Key Info (nih.gov)” Thus, the occupier of the Godown, used a small premise meant for storage of goods which was without ventilation for manufacturing Methyl Ethyl Ketone Peroxide which was not safe at all. A man of a common prudence will not store incompatible hazardous chemicals together as the same is dangerous.

20. Expert Member Prof Chinmay Ghoroi, IIT Gandhinagar, forwarded the opinion in the subject matter which is in detail. The report is annexed herewith and Mark Annexure-12. The chemical Methyl Ethyl Ketone Peroxide was produced by reacting MEK and Hydrogen Peroxide. **The reaction is exothermic which requires proper cooling arrangement using circulating bath. MEK can quickly react with oxidizing materials and cause fires. It is moderately explosive requiring only a small flame or spark to cause a vigorous reaction. Hydrogen peroxide is a highly unstable strong oxidising liquid and can cause health hazards. It undergoes potentially explosive thermal**

**decomposition under heat. MEKP is highly reactive and unstable and decomposition is exothermic. It is sensitive to shock and temperature. It gradually decomposes during storage in sealed containers, leading to a large pressure build-up and subsequent explosion. MEKP is explosive material and very well known for various devastating accidents in several countries including India. It can undergo spontaneous ignition or decomposition into flammable vapours. Root causes of the accidents are wrongdoing, to rapid dosing, operational error and cooling failure. The examples are given as to how deadly it has affected human beings causing deaths and injuries. Between 1953-2019 and 7 countries in all 43 Explosions Took Place including 6 incidents in India. About 295 persons sustained injuries and 112 persons died including 17 in India. This indicates that the chemical is not only hazardous but reacts vigorously. In the present case even though in absence of threshold quantity of hazardous chemical, 13 persons died and 9 sustained injuries apart from loss of property. The details of 7 incidents on account of MEKP are also indicated in a separate table. After taking into consideration various aspects namely, the chemicals, the area, the process, storage etc. considering the approximate storage of different chemicals and its corresponding energy is pointed out and the total energy store comes to  $2.0947 \times 10^9$  J. The effect of the pressure has been explained in detail both by Shri Chinmay Ghoroi, IIT Gandhinagar and Shri Santosh Ghuge, NEERI, Nagpur in their reports. As pointed out by Shri Santosh, over pressure having intensity of 0.06 bar can shatter the glass windows. Overpressure of 0.3 bar would have an effect up to 167 m and can cause collapse of a roof and walls. In this case blast took place in a close Godown having no ventilation which would obviously generate more effective pressure leading to blowing of roof and walls, not only of the Godown where blast took place but damaging adjoining Godown also heavily**

21. From the report submitted by Dr. Amir Khan, Expert Member from NIDM, New Delhi, it is clear that on the information available through government sources (or in public domain through newspapers etc.), prime facie it seems that **M/s Sahil Enterprise was operating in an unauthorized area without a proper license to operate such a type of factory. No safety audit of the factory from HAZCHEM industries point was done. There is no implementation of building bye-laws and no provision of fulfilment of building code requirements for construction of buildings in this locality. In absence of proper architectural and engineering design, it seems the godown number 12, where M/s Sahil Enterprise was located, had no good**

**quality of construction. It is clear that the building of godown number 12 had not been designed for specific use of a chemical factory with risk of blast, proper ventilation, appropriate number of exits etc. There is a report annexed herewith Mark Annexure-13 from expert member Dr Amir Khan which states that “It seems there were no on-site/off-site protocols for management of emergencies (due to HAZCHEM) established in the locality in advance. It seems there is no fire control mechanism available at site or in the vicinity of the incident /accident site.**

**No information is available about the skill set (education/training) in handling or management of HAZCHEM of the workers of the factory. It seems there were no or limited community awareness programmes/campaigns on management of hazardous industries related issues (like do’s and don’ts) conducted in the locality (in the vicinity or in the industrial estate) by any of government or private agencies or NGO etc.**

*There should be clarity on the role played by the SDMA/DDMA. These agencies have to be more responsible in managing the prevention of such incidents in future. As per the Chemical Accidents (Emergency, Planning, Preparedness, Response) Rules, 1996, brought out under the Environment Protection Act 1986, it is mandatory to have State Crisis Group (SCG) and District Crisis Group (DCG) to help the State Disaster Management Authority (SDMA) and District Disaster Management Authority (DDMA) under the Disaster Management Act, 2005 in advisory roles to deal with Chemical Disaster Management (CDM). Such Groups proactively engaged in mitigating the impacts of such incidents in future. Regular checks on unauthorised development of HAZCHEM industries need to be maintained. Efforts need to be made to control development of such industries in unauthorised developed areas in the state. Following information may be of help*

- *Strategy for Community Awareness on Hazardous Materials (Annexure 1) with the report marked as Annexure-13*
- *Important Roles and Responsibilities of Various Stakeholders (Annexure 2) with the report marked as Annexure-13*

22. National Disaster Management Authority (NDMA) of the Government of India, pointed out in its report that “the authorities have failed to digest the report where it is specifically conveyed that there is need to have **a continuous reengineering system to improve and upgrade. Necessary provisions need to be enacted for fail-safe safety measures and there is an urgent need of critical evaluation and review pertaining to simultaneous**

**storage of non-compatible hazardous and toxic.** Despite what of literature available on the Internet with regard to compatible and incompatible hazardous and toxic, yet people are ignoring the caution and even today continue to store such hazardous and toxic chemicals together without bothering the dangers.

23. It must be noted that the occupier was using hazardous chemicals and the effluent/residue generated was required to be treated/disposed of. Where the occupier was treating the effluent was not known. However, the police found a soak pit hence, they dug the place of the soak pit from where samples were collected by the Police and FSL examined the same. The report of FSL dated 07/12/2020 is marked as Annexure-10. The material collected on examination did not disclose the presence of hazardous chemicals. Police did this under a bonafide belief that the occupier might be discharging the generated effluent through the soak pit.

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**RESTRICTION/REGULATION OF STORAGE OF HAZARDOUS CHEMICALS WITHIN THE LOCAL LIMITS OF THE CITY**

28. Considering the building activities not limited for Industrial use but for other uses namely, industry, commerce, residence etc., the people may require assistance from the qualified persons so that building is erected according to requirement of building regulations. Section 372 of the Gujarat Provincial Municipal Corporation Act, (hereinafter referred as “the GPMC Act”) provides for a grant of licences to the Architects or the Engineers, the Structural Designers or the Plumbers and Clerk of works. With the assistance of the experts in the building industry, the plans are to be prepared for approval of the Corporation. The competent person being aware about the nature of the work to be carried out in the industry, and, the type of building with particular strength and size would be suggested by him and accordingly plan shall be prepared and submitted for approval. The plans are to be approved keeping in mind the other provisions contained in the GPMC Act by the competent authority.

29. Hazardous Chemicals can lead to contamination, fire, spills, explosion, gas release and toxic. Storing highly inflammable chemicals or explosive chemicals in an area which is not industrial is more dangerous to innocent people who may not be aware about the danger of hazardous chemicals. The persons who were working in the adjoining godowns died and sustained injuries. The present incident shows that for the explosion or blast it is not necessary that there should be “threshold quantity” as indicated in Rule 2(n) of the Chemical Rules. Therefore, a provision restricting the possession/storage

of hazardous Chemicals must be made with a requirement of area and type of building. The area for storage must be sufficiently ventilated as required with fire safety and other safety devices.

30. Even according to General Development Control Regulations effective from 18.05.2002 for permissible activities in the General Industrial Zone, which does not permit obnoxious and hazardous industrial activities. The Zone where the godowns are situated falls in the category, "General Industrial Zone". Thus, everyone was aware about the prohibitions to deal with hazardous chemicals in this Zone.

31. Section 376 of the GPMC Act refers to trade licences and other licences. The relevant provision is as here under: -

*"376- (1) Except under and in conformity with the terms and conditions of licence granted by the Commissioner, no person shall-*

*(a) keep in or upon any premises any article specified in the rules-*

*(I) in any quantity or in excess of the quantity specified in the rules as the maximum quantity of such article which may at one time be In or upon the same premises without a licence, and*

*(ii) for any purpose whatever for sale or for other domestic use as may be specified in the case of each article in the rules;*

*(b) (c) xxxxxx xxxxxx*

*(d) carry on, or allowed to be carried on, in or upon any premises-*

*(i) any of the trades or operations connected with any trade specified in the rules;*

*(ii) any trade or operation which in the opinion of the Commissioner is dangerous to life or health or property, or likely to create a nuisance either from the nature, or by reason of the manner in which, or the conditions under which the same is, or is proposed to be, carried on;*

*(e) carry on within the city or use any premises for, or trade operation of a farrier.*

*(2) (3) (4) (5) (6) (7) (8) xxxxxxxxxxxxxxx.*

32. Section 376A of the GPMC Act empowers the Commissioner to stop the use of premises where such use is dangerous or causes nuisance.

33. The Schedule A to the GPMC Act, provides Rules. Chapter XVIII provides rules for occupations for which licenses are needed. Part 1 refers to the articles which shall not be kept without a licence in or upon any premises. Part II refers to articles which shall be kept without a licence, in or upon any premises in quantities not exceeding at any one time and the maximum quantities as indicated. Sulphur is referred to with quantity 1/2 cwt. Part III refers to articles which shall be kept without a licence for sale or for other than domestic use in or upon any premises irrespective of the quantity at any one time or in quantities exceeding at any time the maximum quantity indicated in the part III. Part IV refers to trade or operations connected with trade which shall not be carried on in or upon any premises without a licence.

**34. No Dynamite, blasting powder, Nitro-glycerine, phosphorus, Gun-cotton and Fulminate of mercury shall be kept without a licence in or upon any premises. Even possession of sulphur is allowed to certain extent only. One is not allowed to carry on certain business without prior permission.**

35. It is important to note that the legislature regulated and prohibited the possession of certain articles. Reading the name of the articles, it is clear that with a view to avoid the accidents and for the safety of the people provisions are made. However, looking at the fact that the incident took place within the limits of the Ahmedabad Municipal Corporation and that too in the area not declared as an industrial zone, where one can store or manufacture Hazardous chemicals. Therefore, it is necessary that hazardous chemicals as indicated in clause (c) of Rule 2 of Chemical Rules, which defines "Hazardous Chemicals" ought to have been included in Part I of Chapter XVIII of schedule A of the GPMC Act. If all the hazardous chemicals would have been included in the aforesaid chapter for possession and use of the same with the licence from the Commissioner, Ahmedabad Municipal Corporation, the use of the same could have been restricted and such unwarranted incident could have been avoided. **Apart from other authorities, the Commissioner, Ahmedabad Municipal Corporation, who is responsible for looking after the City and the people of Ahmedabad, must be made aware of keeping hazardous chemicals within the limits of the city, to regulate the possession or use of the same under a licence/permission. It may be noted that there is no question of authorising the manufacturing of any hazardous chemical. The manufacturing activities of chemicals or activities of manufacturing the articles with hazardous chemicals**

**cannot be allowed in a city as the same would be dangerous on account of the nature of the chemical, its movement and its process etc.**

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**“RESPONSIBILITY OF THE OFFICERS OF AHMEDABAD MUNICIPAL CORPORATION IN ALLOWING THE STORAGE AND MANUFACTURING**

37. *In the instant case, an incident of blast occurred in Godown erected in an agricultural land. The agricultural land cannot be used for any purpose other than the agriculture as indicated in the Revenue Code. The area where the Godown is situated was under the jurisdiction of the Panchayat. According to the AMC the Godown in question is in revenue survey No. 298 of village Shahwadi. The Government of Gujarat, in exercise of the powers conferred by sub- section (3) of section 3 of the Bombay Provincial Municipal Corporations Act, 1949 altered the limits of the City of Ahmedabad under the Government Notification dated 5th February, 1986. **In exercise of the powers conferred by clause (2) of Article 243 of the Constitution of India, has further altered the limits of the City of Ahmedabad under the Government notification dated 14th February, 2006. In the notification, areas of various Gram Panchayats and Municipalities including Shahvadi Gram Panchayat were included in larger urban areas within the limits of City of Ahmedabad and as such areas shall form the part of City of Ahmedabad. Thus, the agricultural land of village Shahvadi, where the blast took place on 04/11/2020 was within the limits of the City of Ahmedabad.***

38. *This area is included in draft TPS No. 125. The land where the Godowns are constructed is in proposed final plot No. 109/2. According to the AMC, when the area was included in its limit, there is nothing to say definitely about the existence of the Godown. It is vaguely stated that “the property in question is seems to have been exist before the area included in AMC.” In a serious matter like this, the officers of the AMC have not bothered to verify the record of the gram panchayat with a view to find out whether there was a construction of Godown or not and if it was, whether the permission of the competent authority was obtained before the commencement of erection of a building, namely Godown? Unless the agricultural land is converted to Non-Agricultural land one cannot erect a building for any purpose. The officers of the AMC ought to have made enquiries thoroughly on this behalf. It is further stated that no evidence is available about development permission of the building in question or having been regularised under GRUDA Act by paying impact fees. It is interesting to note that the AMC is collecting property taxes from the year 2006-07. If the tax is*



levied, was it not the duty and responsibility to find out the nature of the construction and use of the same and also whether the construction erected is with permission or not?

### **REQUIREMENT OF PERMISSION FROM COMMISSIONER, AMC**

39. Section-313 of the GPMC Act, provides for regulation of Factories, workshops or workplace in which it is intended to employ steam, water, electrical and any other mechanical power.

According to this provision: -

No person shall-

- (i) newly establish in any premises,
- (ii) remove from one place to another, reopen or renew after discontinuance for a period not less than 3 years, enlarge or extend the year of dimensions of, any factory, workshop or workplace in which it is intended to employ steam, water, electrical or other mechanical power or any bakery except with the previous permission of the Commissioner nor shall any person work or allowed to be worked in any such factory, workshop, workplace or bakery without such permission.

40. In the instant case, the Godown was taken on rent as per agreement executed between occupier and the landlords (Mark Annexure-2). In the Godown Shri Hetal Sutaria, in the name of M/S Sahil Enterprise, was operating a workshop or a workplace with electrical energy and therefore, **it was compulsory for him to obtain a permission as contemplated under section 313 of the GPMC Act. Only after the incident, AMC raided such premises and sealed the same which facts are referred by the Committee appointed by the State Government.** There is nothing to show that such permission was obtained from the Commissioner, AMC and therefore, the occupier was operating the work-place or workshop without permission. It is unfortunate that the officers of the AMC visited the site only after the sad incident of explosion in which innocent persons died, sustained injuries and suffered heavy loss on account of damage caused to their goods and property. It is the duty of the AMC to see that no such person is working in any workplace with the aid of electrical or mechanical power without permission. Allowing the person to operate without such permission is an act of neglect on the part of the AMC.

### **OFFICE OF THE COLLECTORATE ALLOWING THE USE OF AGRICULTURAL LAND FOR THE PURPOSE NOT ALLOWED**

41. It is also required to be noted that the Godowns where the incident took place, were erected on agricultural land. If the land

is an agricultural land, under Section 65, of the Revenue Code, the occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents or other legal representatives, to erect farm buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purposes aforesaid. **Thus, the law prohibits the construction of the Godown or any other type of building or improvement which is not made for the better cultivation of the land. Such construction could be permissible only after following the procedure laid down in the Revenue Code. No such procedure has been followed and no permission has been obtained from the competent authority to erect the Godown by the occupier of the land.**

42 According to the record maintained by the Revenue Department of the Government of Gujarat, the land bearing Survey No. 298 is an Agricultural Land. Office of the City Mamlatdar and Executive Magistrate conveyed information on 20/11/2022 to the Sub- Registrars, Ahmedabad intimating that agricultural land bearing survey No. 298 of village Shahvadi liable to be attached, no process of registration with respect to this survey number and other lands of which survey numbers are indicated in the letter be allowed. The copy of the said letter is annexed herewith Mark Annexure-14.

43. **Thus, the erection of Godown is illegal and the office of the District Collector has not bothered for conversion of land use. The amount is required to be paid to the Government, namely the Collector for permission, conversion and conversion of the nature of tenure. It appears that neither the office of the Collector nor the office of the AMC have bothered about these aspects. It is also interesting to note that the Torrent Power Ltd has not given any electric connection to M/S Sahil enterprise, the occupier of the Godown where the incident took place.** The supply is in the name of the landlord. Thus, the landlord as well as the tenant both have not disclosed the correct facts to the authorities. It is clear from the revenue record that land bearing survey No. 298 stands in the name of Revabhai Arjanbhai Bharwad and Pradipkumar RevabhaiBharwad. The copy of village form No. 7 issued by the competent authority, to indicate the names of the occupiers, is annexed here with Mark Annexure-15. On the area measuring about 4654 m<sup>2</sup>, the erection of the Godowns was noticed hence, a notice was issued to the landlord soon after the blast. After issuing appropriate process, Deputy Collector (NA) on 21/11/2020 made an order holding that industrial shed and Godown were constructed without obtaining prior permission from the competent authority and therefore, for the breach of section 66 and 67 of the Revenue Code, a total fine of Rs. 24,61,499/- was imposed. As fine was not paid, the entry has been made to the same effect.

The entry is recorded in village Form No. 6. The copy of the said entry is annexed herewith Mark Annexure-16. As per the record (Mark Annexure-17) maintained by the Revenue Department, Government of Gujarat as on 15.02.2020, Survey no. 298, Village Shahwadi where the blast occurred is shown as agriculture land and the occupiers names are 1) Revabhai Arjanbhai Bharwad and 2) Pradeepkumar Revabhai Bharwad. The office of the Deputy Collector forwarded the order in detail made on 21.11.2020 conveying the amount fine imposed under different heads and directing the AMC to remove the unauthorised construction. The copy of the letter was also forwarded to the Municipal Commissioner, AMC. The said letter is annexed herewith and marked as Annexure- 18. It appears that proceedings were initiated on 11.11.2020 soon after the blast incident. Within a period of 10 days the office of the Collector disposed of the case so as to convey that they have taken action. It is also surprising that one Revabhai Arjanbhai Bharwad and others even consented to make the payment as per the rules. **It seems that only after the occurrence of the blast realising that the revenue officer will be held liable for erection of godowns which are unauthorised, the show is made of having taken action. Why was the action not taken at least within a reasonable period? What action has been taken for other illegal use of land or erection of buildings in the area where the blast took place?**

44. Even for the sake of argument it is believed that the occupier could have used the agricultural land for other than agricultural purposes, namely industrial, residential or commercial etc, Then the legislature has prohibited the use of land for the purpose of manufacture, preservation or processing of hazardous chemicals. **Section 65B of the Revenue Code has an explanation pointing out that the land cannot be used either for storage, processing or manufacturing hazardous chemicals.** The said explanation reads as under-;

For the purposes of this section, section 48 and section 67A, the expression "bonafide industrial purpose" means an activity of manufacture, preservation or processing of goods, (other than the hazardous and toxic chemicals specified in Part II of the Schedule I to the Manufacture, Storages and Import of Hazardous Chemicals Rules, 1989 made under the Environment (Protection) Act, 1989 and for the time being in force) or any handicraft, or industrial business or enterprise, carried on by any person and includes construction of industrial buildings used for the manufacturing process or purpose, or power projects or port projects and ancillary industrial usage like research and development, godown, canteen, office building of the industry concerned, or providing housing accommodation to the workers of the industry concerned, or establishment of industrial estate including a co-operative estate or service industry or tourism or cottage industry.

45. *The Collectorate is the competent authority for conversion of land under the Revenue Code and the Commissioner is the competent authority for issuing the permission for erection of a building in the instant case. Even by imposing impact fees the same could not have been regularised as the land is an agricultural land.*

46. *What is interesting to note is that the occupier of the Godown stated that he is in occupation since about 2 & 1/2 years. It is an admitted position that no officer the AMC ever visited the Godown prior to the accident. Even if it is taken for granted that the building can be used as a Godown, the question is whether it can be used for other than Godown? Can it be used for the process of mixing the hazardous chemicals in an assembly operating with electricity? Can Godown without any requisite ventilation be used for any other purpose than the Godown? It is clear that the owner of the land as well as the occupier of the Godown are responsible for their acts and omissions. The office of the Collectorate and the AMC are also negligent in discharging their duties. Even for the sake of argument it is accepted that the Godowns were erected with the permission of the competent authority, the question is why the same was allowed to use/occupy for a different purpose than for which it was constructed. Even in the adjoining Godown where a number of persons were working in the Godown as packer had no ventilation. Even Godown (No.A-11, C-1) was rented only for the purpose of storage of goods and not for the purpose of using it as a place for packing the goods. One fails to understand why the premises were allowed for the use other than the Godown forgetting the safety of the citizens? Permitting the occupier to engage in the industrial activities involving hazardous chemicals in a Godown meant for storage of other articles and that too without ventilation is nothing but criminal negligence. The use of hazardous chemicals or mixing of the same requires a building with proper design and strength with sufficient ventilation. This requirement is not only for the benefit of the occupier, but also for the benefit of neighbours and even the persons in the vicinity of the building.*

47. *Even if it is taken for granted that the AMC soon after merging the area in the limits of AMC was collecting the tax, the question is how there was a change of use of the building? The document is on record clearly indicates that the Godown was rented in the year 2016, much after the area merged with the city. It seems that none from the AMC took cognizance of even change of use of a building.*

48. *A copy of a licence agreement dated 11/10/2017 between the owners of the land (Survey No.293/2 for Godown Nos. A-6 to A-11 & B-1- to B-6) and Kanika Taxofab, having its office at shop No. 279/1, New Cloth Market, O/S Raipur Gate,*

Ahmedabad, is placed on record by the office of the Collector. The same is annexed herewith and Mark Annexure-19. The said document was forwarded to the District Magistrate by the counsel appearing for Kanika Texofab. From the document it appears that the licensee was required to pay rent per month in all ₹78,000/- to 6 licensors in equal proportion. As per the agreed covenants the licensee agreed to use the said premises for the purpose of keeping goods and things of their own business. Thus, reading the lease agreement it is clear that the Godown were leased only for the purpose of storage of goods and not for carrying out any work in the Godown.

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52. As per the report, the Government of Gujarat formed a high-power Committee consisting of (1) Additional Chief Secretary, Labour and Employment Department; (2) Chairman, Gujarat pollution Control Board, Gandhinagar. The report has been submitted by the said Committee to the State Government. The copy of the report is annexed herewith Mark Annexure-20. In the report submitted by the Committee to the State Government, a letter dated 13/11/2020 addressed by the Ahmedabad Municipal Corporation (hereinafter referred as "the AMC") is annexed. Reading the same it appears that various departments of the AMC undertook a strict checking to find out the premises where hazardous chemicals were being stored without obtaining appropriate permission / licence/NOC and a number of units were sealed found storing hazardous chemicals. The AMC within a period of one week sealed 46 units occupying 1,06,670 m<sup>2</sup> area, and submitted the report with the details of each individual unit, name of the responsible person, the place and the area occupied by the unit. On 09/11/2020 industrial shed measuring 2,500 m<sup>2</sup> and on 11/11/2020 industrial shed measuring 1,350 m<sup>2</sup> constructed without permission were demolished. On inspection of chemical units, 18 Units were found operating without licence from the Health Department which were served with notices. From the report it also appears that 116 units were served with notices for committing the breaches of Environmental Law by the Gujarat Pollution Control Board. Proceedings have been initiated against 36 units under the Factories Act 1948. In Surat 116 Godown operating without N.O.C. from the fire department were served with notices. The prosecution has been launched against the owners of the land as well as Shri Hetal G Sutariya, proprietor of M/S Sahil Enterprise. Considering various aspects, the Committee constituted by the State Government recommended that: -

1. No person shall store hazardous chemicals in Godown without obtaining Fire NOC.
2. For storage of hazardous chemicals in Godown, permission shall have to be obtained from the local authority.

3. *The supplier of electrical energy shall supply power only after ascertaining that Godown for storage of hazardous chemical have obtained the permissions indicated hereinabove at Sr. No. 1 and 2.*
4. *Storage of hazardous chemicals, be prohibited in residential areas.*
5. *In the Godown where hazardous chemicals are stored be prohibited for any type of manufacturing process.*

**REPORT BY OFFICERS OF THE DIRECTORATE OF INDUSTRIAL SAFETY AND HEALTH (DISH), FACTORY AND INSTALLATION**

53. *There was a formation of the District Crisis Group and Local Crisis Group. District Off-site emergency plan for District Ahmedabad. Whether proper hazard, vulnerability, capacity and risk analysis was done for the site of the accident or in its vicinity or not, was the question. The answer recorded is that the same is not applicable. From the answer recorded, it appears that no such analysis was done probably under the belief that the unit was not a factory under the provisions contained in the Factories Act, 1948, the same was not required to be done. No on-site/off-site protocols for management of emergencies were established. There was no information about the availability of the DM plan of M/S Sahil Enterprise. The other questions being not of much relevance are not referred.*

54. **According to the Director, Industrial Safety and Health, it is not in their province to make inquiry or to take any action under the rules known as” the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989” made by the Central Government in exercise of the powers conferred by Section 6, 8 and 25 of the Environment (Protection) Act, 1986.**

55. *Rule 6 refers to the eventuality indicated therein for the applicability of Rules 7 to 15. According to this provision a quantity of hazardous chemical listed in column 2 of Schedule 3 which is equal or more than the quantity specified in the entry for that chemical in column 3 and 4 (Rules 10-12 only for column 4) will attract the provisions contained in Rules 7 to 15.*

56. *Likewise, provision for isolated storage would be attracted, if the quantity of hazardous chemicals listed in column No. 2 of Schedule 2 possessed is or more than the quantity specified. The question raised is that the Chemicals Rules in the instant case shall not apply as the occupier did not possess the quantity of hazardous chemicals equal to or more than the prescribed at a time as referred in column 2 of Schedule 3. The Rules shall not apply in the instant case as the site where the blast took place is not a Factory as defined under the Factories Act, 1948. There was no workman at the site where blast*

occurred, Rules 7 to 15 shall not apply and therefore, Chemical Rules shall not apply. Reading the provisions contained in the rules, it appears that for applicability of Rules 7 to 15, the quantity of hazardous chemicals has been prescribed. In view of the computerised system or taking work from Robots, a person engaged in Hazardous chemicals may escape from the liability by saying that he has not employed, particular number of persons to attract the provisions contained in the Factories Act, 1948.

57. The real questions are that:

1. If a person is engaged in the process of mixing the hazardous chemicals which satisfy the criteria laid down in Part I of Schedule I or listed in Column 2 of Part II of the Schedule, but the quantity of such materials is less than the quantity involved as indicated Schedule 3, can it be said that the rules are not required to be observed by such a person?
2. Can it be said that as the site of M/S Sahil Enterprise was without labourers, the provisions contained in the Factories Act, 1948 will not apply and consequently the rules shall not apply?
3. What is required to be examined is that the chemicals used in the process were hazardous chemicals as defined but were not in the quantity as per Schedule 3, the provisions of the Chemicals Rules, the Rules will be attracted or not?

58. Part I of Schedule 1 refers to toxic chemicals, flammable chemicals, extremely flammable liquids, very highly flammable liquids, highly flammable liquids, flammable liquids and explosives, the nature of which is indicated. Explosive is an article which is in itself capable by chemical reaction of producing gas at such a temperature and pressure and at such a speed as to cause damage to the surrounding; or Which is designed to produce an effect by heat, light, sound, gas or smoke or combination of these as a result of non-determinative self-sustaining exothermic chemical reaction. Part II of Schedule 1 refers to a list of hazardous chemicals and toxic chemicals which are 684 in numbers.

59. One will have to refer to Rule 6 laying down the conditions for applicability of Rules 7 to 15. The relevant part is subrule (1) of rule 6 which reads as under: -

**6. INDUSTRIAL ACTIVITY TO WHICH RULES 7 TO 15 APPLY - (1) Rules 7 to 15 shall apply to, -**

- (a) an industrial activity in which there is involved a quantity of hazardous chemical listed in Column 2 of Schedule 3 which is equal to or more than the

quantity specified in the entry for that chemical in Column 3 & 4 (Rules 10-12 only for Column 4); and  
(b) isolated storage in which there is involved a quantity of a hazardous chemical listed in Column 2 of Schedule 2 which is equal to or more than the quantity specified in the entry for that chemical in Column 3/3 & 4 (rules 10-12 only for column 4).]

60. Therefore, one will have to look at the quantity prescribed in the Schedule making the person liable to follow certain procedures and obtain requisite permissions from the competent authority as indicated above. At the same time, one will have to refer Rule 17 which refers to collection, development and dissemination of information which is as under; -

- (1) This Rule shall apply to an industrial activity in which a hazardous chemical which satisfies any of the criteria laid down in part I of Schedule 1 (refers to toxic chemicals, flammable chemicals etc.) 1 [or listed] in Column 2 of Part II of this Schedule (in all 684 chemicals) or may be involved. (Column No. 1 is a serial number and the column No. 2 is the name of the hazardous chemical)
- (2) An occupier, who has control of an industrial activity in terms of Sub-Rule 1 of this Rule, shall arrange to obtain or develop information in the form of a safety data sheet as specified in Schedule 9. The information shall be accessible upon request for reference.
- (3) The occupier while obtaining or developing a safety data sheet as specified in Schedule 9 in respect of a hazardous chemical handled by him shall ensure that the information is recorded accurately and reflects the scientific evidence used in making the hazard determination. In case, any significant information regarding hazard of a chemical is available, it shall be added to the material safety data sheet as specified in Schedule 9 as soon as practicable.
- (4) Every container of a hazardous chemical shall be clearly labelled or marked to identify –(a) the contents of the container; (b) the name and address of manufacturer or importer of the hazardous chemical; (c) the physical, chemical and toxicological data as per the criteria given at Part I of Schedule 1
- (5) In terms of Sub-Rule 4 of this Rule where it is impracticable to label a chemical in view of the size of the container or the nature of the package, provision should be made for other effective means like tagging or accompanying documents.

61. Thus, Rule 17 makes it clear that the same shall apply where there is use of hazardous chemicals. The law has made it mandatory for the occupier to submit the form i.e., safety data



sheet as specified in Schedule 9. It is required to noted that only Rule 7 to 15 shall apply to an industrial activity possessed with a quantity of hazardous chemicals listed in Column 2 of Schedule 3 which is equal or more than the quantity specified in the entry for that chemical in Column 3 & 4(Rules 10-12only for Column 4). In the Industry, where the quantity of hazardous chemicals used is less than the specified will not be covered by the Rules 7 to 15. Yet, as the occupier consuming hazardous chemicals would be governed by other Rules. Rule 17 mandates the occupier, who handles the hazardous chemicals that he shall ensure that information is recorded accurately and reflects the scientific evidence used in making the hazard determination. It mandates that the container of a hazardous chemical shall be clearly labelled or marked to identify the contents of the container, name and address of the manufacture or importer and the physical, chemical and toxicological data as per the criteria given at part 1 of Schedule 1.

62. When the occupier operates the industrial installation, Rule 2(h) shall be attracted. Rule 2 (h) "industrial activity" means. (i) an operation or process carried out in an industrial installation referred to in Schedule 4 involving or likely to involve one or more hazardous chemicals and includes on-site storage or on-site transport which is associated with that operation or process, as the case may be; or (ii). isolated storage; or (iii.) Pipeline;

63. Schedule 4 of the Rules conveys that the installation for production, processing or treatment of organic or inorganic chemicals used for this purpose among others includes mixing. Law does not require that there should be a factory as defined under the Factories Act,1948 for the purpose of production, processing or treatment but there should be an installation. Even mixing is considered an industrial installation. **Thus, when the occupier is engaged with less than the threshold quantity in the activities referred in schedule 4, the copy of which is annexed herewith and Marked Annexure-21, the Chemicals Rules except Rules 7 to 15 will be applicable.**

**64. Thus, reading Rule 17 with Rule 2 (h) (i) and Schedule 4 it becomes clear that when a person is mixing hazardous chemicals, the provisions of Rule 17 will be attracted. The occupier engaged in an industrial installation is required to submit the Form as per Schedule 9. It seems that that has not been done. The occupier has not given the account of the material namely hazardous chemicals being used by him for mixing or making another product by mixing the chemicals which are hazardous.**

65. Schedule 5 at serial number 4, refers to the Chief Inspector of Factories appointed under the Factories Act, 1948 which mandates **the duty to prepare off-site emergency**

**plans in consultation with District Collector or District Emergency Authority as per Schedule 9 of this Schedule. If a person clandestinely operates an industrial installation, the authorities named in Schedule 5 must take action. How the Rules are to be enforced is the duties and responsibilities of the authority, which is assigned the work on this behalf. Random checking of the suppliers would indicate the name of purchasers and their addresses. Even the material supplied to the occupier by the supplier should have been enquired in detail to find out as to what quantity of the hazardous chemical, the occupier was supplied and what quantity of the hazardous chemicals was received. On examination of such documents, the authority could have initiated action for noncompliance of Rule 17.**

66. Rule 4 clearly indicates the duties of the occupier during industrial activity. It states that -

(1) these rules shall apply to-

- (a) an industrial activity in which a hazardous chemical, which satisfies any of the criteria laid down in Part 1 of Schedule 1 or listed in Column 2 of Part 2 of this schedule is, or may be, involved; and
- (b) isolated storage of hazardous chemicals listed in Schedule 2 in a quantity equal to or more than the threshold quantity specified in Column 3, thereof.

(2) An occupier has control of an industrial activity in terms of sub-rule (1) shall provide evidence to show that he has-

- (a) identified the major accident hazards; and
- (b) taken adequate steps to-
  - (i) prevent such major accidents and to limit their consequences to persons and the environment;
  - (ii) provide the persons working on the site with information, training and equipment including antidotes necessary to ensure their safety.

67. This provision makes it very clear that where an industrial activity is undertaken in which a hazardous chemical as indicated in Part I or Part II of Schedule 1 is, or may be involved, the occupier has to provide evidence to show that he has identified the major accident hazards and has taken adequate steps to prevent such major accidents and to limit the consequences to persons and environment. Not only this, but he has to provide information, training and equipment to the persons working on site. The question is who has to provide the information and to whom? Reading all the rules it appears that

the same shall apply to an occupier using hazardous chemicals which may be less than the quantity prescribed in Schedule 2, or even to an importer importing hazardous chemicals. Who has to satisfy about the requisite action taken by the occupier as indicated in the rule as aforesaid? Rule 3 mandates the concerned authority to inspect the industrial activity at least once in a calendar year. **The Chief Inspector of Factories is required to discharge duties not limited to the duties referred in column 3 of Schedule 5 but his duties are also subject to the other provision of the hazardous chemical rules. Wherever and whenever the industrial activity with the aid of hazardous chemicals is being undertaken, in view of rule 3 it is mandatory to inspect the industrial activity at least once in a year. To make it clear, the industrial activity is defined in sub- clause (h) which specifically states that an operation or process carried out in an industrial installation referred to in Schedule 4 involving or likely to involve one or more hazardous chemicals and includes on-site storage or on-site transport which is associated with that operation or process. Schedule 4 refers to installation for the production, processing or treatment of organic or inorganic chemicals used for these purposes, amongst others; (neither the Factory as defined under the Factories Act, 1948, nor the threshold quantity for industrial activity is required to be seen. Whether the hazardous chemical is used or not in industrial activity as defined is to be seen).**

68. In sub- clauses (a) to (s) of clause 1 of Schedule 4 different types of process is indicated, however, for the purpose of the present case the process indicated in sub- clause (h) mixing will be sufficient to state that the occupier was operating an installation for the purpose of production and in that process was using either organic or inorganic chemicals which were hazardous. Thus, it is very clear that the occupier was operating an industrial installation. Sub-Rule (a) of Rule 3 mandates to inspect the industrial activity without reference to any quantity used by the industrial installation. At this juncture it would be relevant to refer to sub- clause (b) of rule 4 which states that "Authority" means an authority mentioned in Column 2 of Schedule 5. Merely because rule 6 for attracting the provisions contained in Rules 7 to 15 prescribes the quantity of the hazardous chemical and its use as indicated in Schedule 3, it cannot be said by the authority that it is not within its province to find out whether an occupier has followed Rule 4 despite the mandate as indicated in subrule (a) of rule 3 to inspect the industrial activity at least once in a calendar year. In Schedule 4, no quantity is prescribed for applicability of rules and the quantity is prescribed in Schedule 3 for application of rules 7 to 15. Under the circumstances it is very clear that it is the duty of the authority to inspect any installation where the occupier uses a hazardous chemical.

69. If, the interpretation as suggested by the authority is accepted, it would mean that only the occupier engaged in the industrial activity in which a hazardous chemical used, which satisfies any of the criteria laid down in Part I of Schedule 1 or listed in Column 2 of Part II of the schedule is, or maybe, involved with the quantity which is prescribed for attracting Rule 7 to 15, only then action can be taken against an occupier for breach of Rules. It seems that the authority has lost the sight of small-scale manufacturers who are using less quantity than indicated in schedule 3. In view of clear definition of industrial activity, site, Rule 17, Rule 19, Schedule 1 Part I and Part II and Schedule-4 it is clear that the occupier engaged in process of hazardous chemicals who is not consuming the quantity of hazardous chemicals as prescribed in schedule 3 has to act as per the rules applicable and the authority has power to take action for the breach committed. Rule 19 very specifically states that if the concerned authority is of the opinion that a person has contravened the provision of these rules, the concerned authority shall serve on him a notice (in this para referred to as “an improvement notice”) requiring that person to remedy the contravention or, as the case may be (the matters occasioning it within 45 days). Thus, for breach of any rule, the authority is entitled to take the cognizance and issue an improvement notice.

70. Under the provisions contained in the Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 (hereinafter referred as “the accident rules”) the State Crisis Group, the District Crisis Group and the Local Crisis Groups are required to be formed as indicated in rule 6 (2), rule 8 and as per Schedule 6, Schedule 7 and Schedule 8.

71. Sub-Clause (a) of rule 2 defines “chemical accident”. according to this provision an accident involving a fortuitous, or sudden or unintended occurrence while handling any hazardous chemicals resulting in continuous, intermittent or repeated exposure to death, or injury to, any person or damage to any property but does not include an accident by reason only of war or radioactivity. According to sub-clause (1) of Clause (b) “hazardous chemical” means any chemical which satisfies the criteria laid down in Part I of Schedule 1 or is listed in Part 2 of the said Schedule. According to Sub-Clause (c) “industrial activity” includes an operation or process- (I) carried out in an industrial installation referred to in Schedule 4 involving or likely to involve one or more hazardous chemicals. So far as chemical accidents are concerned the same are defined into two categories, sub-Clause (f) of rule 2 states” major chemical accident” means,-an occurrence including any particular major emission, fire or explosion involving one or more hazardous chemicals resulting from uncontrolled developments in the course of industrial activity or transportation or due to natural events leading to serious effects both immediate or delayed,

inside or outside the installation like to cause substantial loss of life and property including adverse effects on the environment. To say simply, fire/explosion involves one or more hazardous chemicals leading to serious effects inside or outside the installation causing substantial loss of life and property including adverse effects on the environment. It refers to involvement of hazardous chemicals, resulting from uncontrolled developments in the course of industrial activity (not necessarily in a factory) inside or outside the installation (not necessarily a factory) likely to cause substantial loss of life, property including adverse effects on the environment.

72. Sub-Clause (g) of rule 2 states **“Major Accident Hazards (MAH) installations”** means, isolated storage in industrial activity at a site, handling (including transport through carrier or pipeline) of hazardous chemicals equal to or, in excess of the threshold quantities specified in Column 3 of Schedule 2 and 3 respectively. In case of Major Accident Hazards Installations quantity of hazardous chemicals if, equal or in excess of the threshold quantities specified in Column 3 of Schedule 2 and 3 matters. Even if the quantity is less, the provisions of chemical accidents would be attracted.

73. A list of Major Accident Hazard installations and a list of major chemical accidents is required to be prepared looking to Rule 4 read with the definitions of Chemical Accident, major chemical accident, Major Accident Hazards (MAH), installations, industrial activity, site, and the inclusion of the Inspector of Factories in Schedule 6, Schedule 7 and Schedule 8. These clearly indicate that the installations, industrial activities or process or manufacturing activities which are involved with hazardous chemicals are divided into two groups, (1) Major Accident Hazard (MAH) Installation handling hazardous chemicals equal to or, excess of the threshold quantities specified in column 3 of schedule 2 and 3 respectively, for which the rule-making authority have used the words “Major Accident Hazards (MAH) Installations; and (2) major chemical accident where occurrence has taken place involving hazardous chemicals without indicating the quantity of handling the hazardous chemicals. Obviously, it would mean that the installations which are not covered by clause (g) of rule 2 will fall in category (f) of rule 2, namely major chemical accident.

74. As per rule 6 there is a mandate to constitute a State Crisis Group for management of chemical accidents within 30 days from the date of commencement of these rules. Functions of State Crisis Group are prescribed in rule 7. 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. Rule 8 mandates to constitute (1) District Crisis Groups; and (2) Local Crisis Groups. The composition of these groups shall be as per Schedule 7 and 8

**respectively. Rule 9 and rule 10 refer to the functions of the District Crisis Group and Local crisis Group. It is very clear that the State crisis Group shall have to 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 for a report to the Central Crisis Group once in 3 months.** It has to discharge the functions as indicated in rule 7.

75. Keeping the aforesaid provisions, one has to examine the communication addressed by the office of the District Industrial Safety and Health (DISH) dated 18th December, 2020 which is annexed herewith Mark Annexure-8. In view of what is discussed above, it is clear that the authority has to discharge its duties in accordance with the rules, which in our opinion, the authority has failed.

XXX.....XXX.....XXX.....

78. Hon'ble Tribunal, by an interim measure assessed the interim compensation for death at ₹15 lakh each (taking into account multiplier of around 16 and loss of earning of about 1 lakh a year, apart from conventional sums) and for injuries of persons hospitalised at ₹5 lakh per person. In the present case the persons died or some sustained injuries when they were working at their workplace. The incident of blast or explosion took place in the neighbouring Godown. They did not sustain injuries or the persons did not die in an accident arising out of and in the course of employment. (Except one) Considering this aspect, we thought it fit to follow the decision in case of **Sunita Tokas & Anr. Versus New India Insurance Co. Ltd. & Anr**, and to apply the ratio of the same case. Accordingly, considering the average daily wage rates applicable in the state of Gujarat, or income per month whichever is higher, deducting 50% towards expenses, and multiplying that figure by 12 months, yearly compensation is arrived and multiplying that amount with an appropriate multiplier, the amount of compensation is arrived.

The amount towards 1) the love and affection; 2) expenses for shifting the deceased; 3) the amount to be spent for burial or funeral expenses etc, have been added to the amount calculated by applying an appropriate multiplier. In all 13 persons died including a person who was working with M/S Sahil Enterprise. Considering the actual entitlement as calculated is reflected in the chart against the name of a person with other details. The Statement or the Chart indicating the entitlement (Compensation) and other details of the deceased persons (13 nos.) as provided by District Administration are annexed herewith and collectively **Mark Annexure-27**. The compensation calculated is shown in following Table-

<b>Sr No</b>	<b>Name of Deceased Person</b>	<b>Compensation (in Rs)</b>
1	Kalua Bundu (M)	19,73,000.00
2	Yunusbhai Malek (M)	8,86,096.00
3	Shaikh Najmunisha Moirfan (F)	11,31,040.00
4	Nitinbhai Ashokbhai Parmar (M)	13,14,748.00
5	Rajanben Vishunath Dodiya (F)	13,14,748.00
6	Hiteshbhai Manubhai Parmar (M)	13,14,748.00
7	Mustufa Alibhai Saiyed (M)	14,82,500.00
8	Jacqualina Rajubhai Chrishtian (F)	13,14,748.00
9	Ragini Yunusbhai Chrishtian (F)	10,08,568.00
10	Ramaram Devaram Devashi (M)	24,53,000.00
11	Mathurbhai Harjibhai Chavda (M)	19,73,000.00
12	Anjelinaben Mathurbhai Chavda (F)	10,69,804.00
13	Nareshbhai Vinodbhai (M)	13,14,748.00
	<i>Total</i>	1,85,50,748.00

*By way of an interim order an amount as directed was required to be deposited and disbursed. It is informed that communication dtd 09.11.2020 was sent from Collector, Ahmedabad to Relief Director, Office of Relief Director, Revenue Department, Sachivalaya, Gandhinagar for sanctioning amount to deceased and injured person as per rules from CM Relief Fund. After sanction from Relief Director, District Administration disbursed Rs. 4 lakh to kin of deceased person during the period 11.11.2020 to 21.11.2020. The one person succumbed to injury on 13.11.2020 and for his kin the ex-gratia amount (Rs. 4 lakh) has been disbursed on 05.01.2021 as informed by District Administration through letter dated 07.01.2021. The summary of action taken by the District Administration and disbursement of ex-gratia amount is annexed herewith collectively Mark Annexure-28. However, the relief amount is not sanctioned for injured persons and therefore not disbursed till date.*

*It is clear from the material placed on record that the amount as directed by the Hon'ble Tribunal has not been paid to all the victims and to the persons amount paid is not to the extent to which they are entitled. The Collector is required to take much more initiative in the matter of disbursement of the amount as directed.*

79. *There are 09 workers, injured in the accident. All the injured were taken to Sheth L G Municipal General Hospital of Ahmedabad Municipal Corporation. All the injured persons were discharged from hospital and two persons incurred*

hospitalization expenses for their treatment. The information of injured persons in tabular form provided by District Administration, Ahmedabad where details including name of person, name of the employer, no of days of hospitalization, nature of injury etc are provided as **Mark Annexure- 29**.

As per letter dated 23.12.2020 from Medical Superintendent, Sheth L G Municipal General Hospital, Maninagar, Ahmedabad to Resident Additional Collector, Ahmedabad, three persons are taking treatment for reconstructive surgery for which their disability certificate can/shall be issued later on. For four persons no disability certificate has been issued having no disability. Remaining two out of nine injured persons, one did not turn up for follow up/check-up and another person got discharged against advice. Five persons got discharged within 1-4 days whereas other four persons were hospitalized for 22 days.

So far as injured persons are concerned, there is no report by the District Collector conveying the information about the payment made to injured who were hospitalized. Merely because the treatment was free in the hospital is no ground to deny the benefit of the order of the Hon'ble Tribunal. As a matter of fact, on account of injuries the persons were admitted in the hospital and therefore, the injured who was admitted and treated in the hospital is entitled to get the sum of Rs. 5 Lakhs.

**LIABILITY OF THE DEFAULTER AND OF THE STATE, IN CASE OF FAILURE. CAUSES OF FAILURE AND PERSONS AND AUTHORITIES RESPONSIBLE**

80. The Hon'ble Tribunal specifically called upon the committee for the steps to be taken for compensation of victims and restitution of the damaged property and environment, and the cost involved. This is coupled with submitting the report about causes of failure and persons and authorities responsible.

- (i) The Owner of the Unit M/s Sahil Enterprise - Shri Sutariya, without obtaining permission from competent authority and without taking any precaution was storing and handling hazardous chemicals. In view of the nature of chemicals, it is to be presumed that he had knowledge about the process and preservation of the chemicals. The Committee members have seen the remaining godowns and all construction are substandard in nature. Essentially, the building was erected for storage of material only which need not have safety switches known as spark free switches or Spark Shield Switches and sockets used in industries. This indicates that he has not taken precautions during the activities and he has not taken on rent a premises suitable for the manufacturing hazardous chemicals.



*Clandestinely as he was doing the work without conveying the authorities in a space unfit for storage and manufacturing purposes, he cannot escape from his liability to make good to the people who have suffered.*

- (ii) *That the land which was agricultural land could not have been used for any other purpose without obtaining the permission from the Collector and payment of the conversion charges. Even for the sake of argument, the plot having been included in the town planning scheme, the occupier of the land can use the land for the bonafide industrial purpose which is permissible, but that is only after payment of conversion tax leviable under Section 67-A is paid. The agriculturalist being aware that if the permission is taken for use of the land for non-agricultural purposes, he will have to pay the handsome amount to the government for conversion etc. Despite erecting a number of godowns and collecting rents from the tenants, the landowner has continued to show the land as agricultural land in the revenue record. This is not merely an illegality but is a fraud with the statute and therefore, it must be taken very seriously. Even, the office of the collector was absolutely careless, negligent and therefore, responsible in allowing the erection of Godown and use of the same contrary to the provisions of law. How is it possible that for a number of years the farmer has not approached the revenue officer, namely the Talati for payment of revenue and copies of revenue records? **Is it possible to believe that the Talati would not know about the construction carried out? In view of development not only on the land in question but surrounding lands were seen with construction and no cultivation was seen. The revenue officers are required to be presumed that they were aware about the construction and yet recorded as agricultural land in revenue records which are public documents. It appears that the office of the collector issued notice on 11.11.2020 for illegal construction made in 2000-2001 only after the blast (04.11.2020) to show that the office of the Collector has taken action and also to avoid responsibility.***
- (iii) ***After the erection of the Godown, when the area merged in the city limits of Ahmedabad Municipal Corporation, the staff of the AMC did not bother to find out the use of the premises and whether any permission was required or not to make use of the particular Godown. The law mandates to have permission from the Commissioner, AMC to***

**run the workshop or workplace with the use of energy, namely electricity or mechanical power or water. Thus, to some extent the staff of the AMC is also responsible.**

**(iv) The duty of the DISH which is discussed in detail in earlier part clearly indicates that the officers did not make any enquiry.**

81. The committee constituted by the State Government recommended as under: -

1. No person shall store hazardous chemicals in Godown without obtaining Fire NOC.
2. For storage of hazardous chemicals in Godown, permission shall have to be obtained from the local authority.
3. The supplier of electrical energy shall supply power only after ascertaining that Godown for storage of hazardous chemical have obtained the permissions indicated hereinabove at Sr. No. 1 and 2.
4. Storage of hazardous chemicals should be prohibited in the residential areas.
5. In the Godown where hazardous chemicals are stored be prohibited for any type of manufacturing process.

82. Taking into consideration the above facts it is clear that the: -

- I. Land occupiers erected Godown in the agricultural land contrary to the provisions of law, illegally and without obtaining permission from the competent authority.
- II. The occupier of the Godown commenced the manufacturing process without obtaining permission from authorities in Godown knowing fully well that the same was not fully ventilated and stored the hazardous chemicals and some were incompatible. Most of the hazardous chemicals were flammable, highly flammable and even were able to explode. The premise was not fit for the storage or process of hazardous chemicals.
- III. The officers of the Collectorate despite the land being agricultural did not bother for the illegal act of the land occupier and did not remove the structure erected illegally. Only after the occurrence of the incident of blast, cognizance was taken about illegal

*construction in agricultural land and within a period of 10 days the case was disposed off by imposing fine and that reflects the interest taken to avoid the responsibility by asking AMC to remove the structure. The law permits to remove the occupier of the land. Under the land laws, the persons who constructed Godown, they are the occupiers only and not the owners of the land. The Collector must exercise the powers under Section-66 of the Revenue Code to evict the occupiers summarily and dispose of the land at market price so that victims are not deprived of their entitlement and the state exchequer may not suffer.*

- IV. *The neighbouring Godown occupier in view of the agreement was permitted to store the goods, however, regularly operated the work as a packer employing more than 20 persons on the day of the accident. Had he used the Godown for the purpose leased, the life of innocent people would not have been at the stake.*
- V. *Officers of the AMC after the area where the Godown were constructed merged in the area of the City of Ahmedabad, never visited the area to find out whether the construction was legal or not and never bothered to verify the same. Even it was the duty of the staff of the AMC not to allow anyone to operate any workplace or workshop without requisite permission granted by the Commissioner under Section-313 of the GPMC Act. A permission is a must when a person is operating a workplace or workshop with the aid of electrical energy or any mechanical power. It appears that the provision has been ignored and no attention is given to this provision.*
- VI. *Officers of the DISH did not inspect the site of the occupier. According to them the rules were not applicable to the installation of the occupier as the same is not covered under the Factories Act, 1948 and they were of the view that the unit being not a factory and using the hazardous chemicals less than the prescribed under Schedule- 3 of MSIHC Rules 1989, the rules were not attracted and hence, they were not obliged to visit the installation of the occupier. The view expressed is contrary to the provisions indicated hereinabove. The provision is made not only for the safety of the persons working in the installation but for the safety of others too.*

## **RECOMMENDATIONS**

- *Considering the facts and the report submitted by the High Power Committee to the State Government, this Committee is of the opinion that the following provisions are required to be made by the State Government for inclusion of hazardous*

*chemicals in Chapter-XVIII, Part-I of Schedule-A of the GPMC Act. Provisions required for proper implementations of the rules.*

- *Section-376A of the Gujarat Provincial Municipal Corporation (GPMC) Act, should empower the Commissioner to seal the premises where the hazardous Chemicals are stored without prior permission of the Commissioner.*
- *The hazardous chemicals as per Manufacture, Storage and Import of Hazardous Chemical (MSIHC) Rules, 1989 be added in Part-I of chapter-XVIII of Schedule-A of the GPMC Act. The Schedule-A to the GPMC Act, provides Rules. Chapter-XVIII, Part-I prohibits the possession of Dynamite, Blasting Powder, Nitro-glycerine, Phosphorus, Gun-cotton and Fulminate of mercury in or upon any premises without the licence issued by the Commissioner.*
- *Considering the nature of the Hazardous Chemicals, the possession or storage in or upon any premises, within the limits of the Corporation under the Gujarat Provincial Municipal Corporation (GPMC) Act, or similar Acts for the Local Authorities, be prohibited in any area other than the Industrial area/zone.*
- *No permission should be granted to store hazardous chemicals by the licensing authority for which the applicant has not produced the building use permission for storage of hazardous chemicals in the industrial zone/area.*
- *Considering the nature of the hazardous chemicals, (which are used only in industries or installations using such chemicals) the possession and storage of the same in the Industrial area/Zone be regulated by issuance of permissions/licences. Without FIRE SAFETY no such permission, be granted. While issuing the permits/licences. The application for installation/storage of such chemicals, its incompatibility with other hazardous chemicals and quantity for storage and adequacy of the area with good ventilation to store such chemicals should be taken into consideration besides safety provisions/guidelines to be followed under various Acts/Rules.*
- *For the protection of life, no electric supply should be provided to the industrial installation or industrial activities as provided in the Manufacture, Storage and Import of Hazardous Chemical (MSIHC) Rules, 1989 in the area other than the Industrial zone. In the Industrial Zone only on production of Building Use Permission issued by the competent authority, the power supply should be provided*

*for industrial activity in industrial installation and/or for the storage/dealing in hazardous chemicals.*

- *Under the MSIHC Rules directions should be issued to the authority exercising the powers to make visit to all industrial installation engaged in industrial activity in which a hazardous chemical, which satisfies any of the criteria laid down in Part-I of Schedule-1 or listed in Column-2 of Part-II of the Schedule is, or may be involved, at least once in a year and submit the report to the State Government.*
- *The Manufacturer, Distributor, or Dealer should not vend in hazardous chemicals without verifying the permission of competent authority issued to the buyer or supplier. (As per Rule-17 of MSIHC Rules 1989, one has to supply the data).*
- *Interdepartmental (GST with DISH/GPCB) link should be developed to identify the Manufacturer, Distributor, or Dealer of hazardous chemicals. Regular checks on unauthorised development of HAZCHEM industries need to be maintained. Efforts need to be made to control development of such industries in unauthorised developed areas in the State.*
- *The State Government issued Gujarat Comprehensive Development Control Regulations-2017 (GCDCR). Section-C refers to planning regulations where Zone-For D1-D7, D8 and D9 categories are indicated. Table-7.2.1 indicates permitted use in each category. So far as the industrial zone is concerned, the same is divided into Industrial-1, Industrial-2, Industrial-3 & Industrial-4. In view of different types of industries, i.e. small factories, querying, warehouse, newspaper printing press etc are indicated as special in Industrial-1, 2 &3. Industrial-4 is an area where the premises can be used for fuel storage, storage of inflammable material, thermal power plant, power plant, gas plant, storage of hazardous materials, hazardous industries, chemical industries, obnoxious and hazardous uses, dyeing house. Thus, the storage or use of hazardous chemicals is made permissible only in the Industrial-4 Zone. In view of this, specific direction should be issued to all the authorities concerned with industries to strictly implement the same.*
- *In view of the visits made by AMC, GPCB, DISH & other departments, numbers of persons were found storing hazardous chemicals without any permission from Authorities. These aspects have been referred to in earlier parts in much detail. There is a report submitted by the High Power Committee to the Govt of Gujarat. From the report, it is very clear that if frequent surprise inspections are made, the authorities will be in position to find out activities carried out by the person without the permissions. It is recommended*

*that appropriate direction is required to be issued to all the authorities on this behalf.”*

4. No objection has been raised from any quarter to the report of the Committee. There is no reason for not accepting the report. Accordingly, the same is accepted except for minor modification as per last part of this order. The recommendations of the Committee need to be duly implemented and overseen by the statutory regulators. From the report, it is clear that M/s Sahil Enterprise operated in Godown No. 12 at Revakaka Estate, Pirana-Pipaja Road, Shahwadi, Ahmedabad. The owner Shri Hetal Girishbhai Sutariya took the godown on rent from Owner Shri Maldevbhai Pradeepbhai Bharwad and Shri Manishbhai Pradeepbhai Bharwad. The operator was doing chemical trading and manufacturing activities. This resulted in explosion on 04.11.2020 at 11:30 am due to chemical activity resulting in generation of heavy smoke, fire causing deaths and injuries. 13 persons died and 09 were injured. The premises did not have ventilation and other requisite safeguards. There was no permission of statutory authorities for storing and handling hazardous chemicals, as required under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 requiring onsite and off-site emergency plans, mock drills and safety audit, including permission for the location from the Chief Inspector of factories. **There is violation of revenue law in construction on agricultural land and also of Municipal law. Revenue Department, District Administration, Municipal Corporation, Industries Department as well as Environment Departments of Gujarat are certainly failure in preventing the incident by not implementing the necessary statutory precautions.**

Compensation of Rs. 4 lakhs each was given as ex-gratia out of the Chief Minister Relief Fund which does not meet the mandate of earlier orders of this Tribunal, including the interim order in the present case. The land was agriculture land and illegally used as godown in violation of Land Revenue Code, 1879. The Tribunal directed payment of interim compensation of Rs. 15 lakhs for the deceased and 5 lakhs for the injured which has not been disbursed. The Committee has recommended safeguards in terms of statutory provisions of the 1989 and 1996 Rules. M/s Sahil Enterprise was operating in an unauthorized area without a proper license to operate, required under the law. No safety audit of the factory was done. There is no implementation of building bye-laws and no provision of fulfilment of building code requirements for construction of buildings in the locality. The godown was not designed for the chemical factory. There were no 'on-site'/'offsite' protocols for management of emergencies established in the locality. There is no fire control mechanism available at site or in the vicinity of the incident /accident site. Necessary safeguards and critical evaluation and review pertaining to simultaneous storage of non-compatible hazardous and toxic are required, which has not been done.. There was violations of the provisions of the Gujarat Town Planning and Urban Development Act, 1979, Gujarat Tenancy and Agricultural Lands Act, 1948 and the Bombay Land Revenue Code. **Thus, the statutory authorities in the State of Gujarat failed to perform their statutory obligations. Though primary responsibility is of the persons engaged in illegal hazardous activities, without following requisite safeguards, there is also failure in compliance of the statutory oversight authorities.**

**Thus, the vicarious liability of the State for serious negligence renders the State vicariously liable**, as held in *Municipal Corporation of Delhi v. Uphaar Tragedy Victims Association & Ors.* (2011) 14 SCC 481 and *Vadodara Municipal Corporation v. Purshottam V. Murjani & Ors.* (2014) 16 SCC 14.

5. In *Uphaar Tragedy Victims Association, supra*, it was observed:

“96.<sup>\*1</sup> Courts have held that due to the action or inaction of the State or its offices (officials ?) if the fundamental rights of a citizen are infringed then the liability of the State, its officials and instrumentals is strict. Claim raised for compensation in such a case is not a private law claim for damages, under which the damages recoverable are large. Claim made for compensation in public law is for compensating the claimants for deprivation of life and personal liberty which has nothing to do with a claim in a private law claim in tort in an ordinary civil court.

97. This Court in *Union of India v. Prabhakaran*<sup>42</sup>, extended the principle to cover public utilities like the railways, electricity distribution companies, public corporations and local bodies which may be social utility undertakings not working for private profit. In *Prabhakaran (supra)* a woman fell on a railway track and was fatally run over and her husband demanded compensation. Railways argued that she was negligent as she tried to board a moving train. Rejecting the plea of the Railways, this Court held that her "contributory negligence" should not be considered in such untoward incidents - the railways has "strict liability". A strict liability in torts, private or constitutional do not call for a finding of intent or negligence. In such a case highest degree of care is expected from private and public bodies especially when the conduct causes physical injury or harm to persons. The question as to whether the law imposes a strict liability on the state and its officials primarily depends upon the purpose and object of the legislation as well. When activities are hazardous and if they are inherently dangerous the statute expects highest degree of care and if someone is injured because of such activities, the State and its officials are liable even if they could establish that there was no negligence and that it was not intentional. Public safety legislations generally falls in that category of breach of statutory duty by a public authority. To decide whether the breach is actionable, the Court must generally look at the statute and its provisions and determine whether legislature in its wisdom

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\* Ed.: Para 96 corrected vide Official Corrigendum No. F.3/Ed.B.J./33/2012 dated 7.6.2012.

<sup>42</sup> (2008) 9 SCC: (2008) 3 SCC (Cri) 813



*intended to give rise to a cause of action in damages and whether the claimant is intended to be protected.*

98. *But, in a case, where life and personal liberty have been violated the absence of any statutory provision for compensation in the Statute is of no consequence. Right to life guaranteed under Article 21 of the Constitution of India is the most sacred right preserved and protected under the Constitution, violation of which is always actionable and there is no necessity of statutory provision as such for preserving that right. Article 21 of the Constitution of India has to be read into all public safety statutes, since the prime object of public safety legislation is to protect the individual and to compensate him for the loss suffered. Duty of care expected from State or its officials functioning under the public safety legislation is, therefore, very high, compared to the statutory powers and supervision expected from officers functioning under the statutes like Companies Act, Cooperative Societies Act and such similar legislations. When we look at the various provisions of the Cinematographic Act, 1952 and the Rules made thereunder, the Delhi Building Regulations and the Electricity Laws the duty of care on officials was high and liabilities strict.*

#### **CONSTITUTIONAL TORTS - MEASURE OF DAMAGES**

99. *Law is well settled that a Constitutional Court can award monetary compensation against 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. Quite often the courts have a difficult task in determining damages in various fact situations. The yardsticks normally adopted for determining the compensation payable in a private tort claims are not as such applicable when a constitutional court determines the compensation in cases where there is violation of fundamental rights guaranteed to its citizens.*

100. *In D.K. Basu v. Union of India<sup>43</sup>, a Constitution Bench of this Court held that there is no strait jacket formula for computation of damages and we find that there is no uniformity or yardstick followed in awarding damages for violation of fundamental rights. In Rudal Shah's case<sup>15</sup> this Court used the terminology "Palliative" for measuring the damages and The formula of "Ad hoc" was applied in Sebastian Hongary's case<sup>34</sup> the expression used by this Court for determining the monetary compensation was "Exemplary" cost and the formula adopted was "Punitive" . In Bhim Singh's case<sup>35</sup>, the expression used by the Court was "Compensation" and method adopted was "Tortious formula". In D.K. Basu v. Union of India D.K. Basu v. Union of*

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<sup>43</sup> (1997)1 SCC 416

<sup>15</sup> (1983) 4 SCC 141

<sup>34</sup> (1984) 3 SCC 82

<sup>35</sup> (1985) 4 SCC 677

*India (supra) the expression used by this Court for determining the compensation was "Monetary Compensation". The formula adopted was "Cost to Cost" method. Courts have not, therefore, adopted a uniform criteria since no statutory formula has been laid down.*

*101. Constitutional Courts all over the world have to overcome these hurdles. Failure to precisely articulate and carefully evaluate a uniform policy as against State and its officials would at times tend the court to adopt rules which are applicable in private law remedy for which courts and statutes have evolved various methods, such as loss earnings, impairment of future earning capacity, medical expenses, mental and physical suffering, property damage etc. Adoption of those methods as such in computing the damages for violation of constitutional torts may not be proper.*

*102. In Delhi Domestic Working Women's Forum v. Union of India Domestic Working Women's Forum v. Union of India (supra) the apex Court laid down parameters in assisting the victims of rape including the liability of the State to provide compensation to the victims and held as follows :-*

*"15. (7) It is necessary, having regard to the directive principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incurred substantial financial loss. Some, for example were too traumatized to continue in employment.*

*(8) Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of the child but if it is occurred as a result of rape."*

*103. Legal liability in damages exist solely as a remedy out of private law action in tort which is generally time consuming and expensive and hence when fundamental rights are violated claimants prefer to approach constitutional courts for speedy remedy. Constitutional courts, of course, shall invoke its jurisdiction only in extraordinary circumstances when serious injury has been caused due to violation of fundamental rights especially under Article 21 of the Constitution of India. In such circumstances the Court can invoke its own methods depending upon the facts and circumstances of each case.*

### **Constitutional Torts and Punitive Damages Constitutional Torts and Punitive Damages**

*104. Constitutional Courts' actions not only strive to compensate the victims and vindicate the constitutional rights, but also to deter*

*future constitutional misconduct without proper excuse or with some collateral or improper motive. Constitutional courts can in appropriate cases of serious violation of life and liberty of the individuals award punitive damages. However, the same generally requires the presence of malicious intent on the side of the wrong doer, i.e. an intentional doing of some wrongful act.*

*105. 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 wrong doer 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 wrong doer's conduct was egregiously deceitful.*

*106. Lord Patrick Devlin in leading case on the point *Rookes v. Barnard*, [1964] All England Reporter 367 *Rookes v. Barnard*, [1964] All England Reporter 367 delineated certain circumstances which satisfy the test for awarding punitive damages such as the conduct must have been oppressive, arbitrary, or unconstitutional, the conduct was calculated to make profit for the wrong doer and that the statute expressly authorizes awarding of punitive damages. Above principles are, however, not uniformly followed by English Courts though the House of Lords in a decision in *Attorney-Attorney General v. Blake*, [2001]1 AC 268, *General v. Blake*, [2001]1 AC 268, awarded punitive damages when it was found the defendant had profited from publishing a book and was asked to give an account of his profits gained from writing the book. In this case where the wrong doer was made to give up the profits made, through restitution for wrongs, certainly the claimant gained damages.*

*107. In United States, in a few States, punitive damages are determined based on statutes. But often criticisms are raised because of the high imposition of punitive damages by courts. The Supreme Court of United States has rendered several decisions limiting the awards of punitive damages through the due process of law clauses of the Fifth and Fourteenth Amendments. In *BMW of North America Inc. v. Gore* 517 U.S. 559 (1996) of *North America Inc. v. Gore* 517 U.S. 559 (1996) the Court ruled that the punitive damages must be reasonable, as determined based on the degree of reprehensibility of the conduct, the ratio of punitive damages to compensatory damages and any criminal or civil penalties applicable to the conduct. In *Philip Morris USA v. Williams* 549 U.S. 346 (2007), *Philip Morris USA v. Williams* 549 U.S. 346 (2007), the Court ruled that the award of punitive damages cannot be imposed for the direct harm that the misconduct caused to others, but may*

consider harm to others as a function of determining how reprehensible it was. There is no hard and fast rule to measure the punitive damages to determine such a claim. In United States in number of cases the Court has indicated that the ratio 10:1 or higher between punitive and compensatory damages is held to be unconstitutional.”

6. In *Vadodara Municipal Corporation, supra*, it was observed:

“14. On due consideration, we do not find any ground to interfere. It is not in dispute that the boat was carrying 38 passengers as against the capacity of 22 passengers. Neither any life guards were deployed nor any life saving jackets were provided to the passengers. The finding of negligence concurrently recorded by the State Commission and the NCDRC does not call for any interference. Primary liability of the contractor stands established. The victims were consumers and the contractor was service provider. Deficiency of service stood established. The stand of the Insurance Company based on second policy dated 1st December, 1992 limiting its liability is untenable. Having issued policy dated 1st November, 1992 covering loss to the extent of L 20 lakhs per accident with L 80 lakhs as maximum in one year, the Insurance Company could not avoid its responsibility, as rightly held concurrently by the State Commission and the NCRDC. Risk was required to be statutorily covered under the Public Liability Insurance Act, 1991. The Insurance Company was bound by The Insurance Regulatory and Development Authority (Protection of Policyholders' Interest) Regulation, 2002 framed under the Insurance Regulatory and Development Authority Act, 1999 and the law laid down in *M.J.K. Corporation, Pushpalaya Printers and Asha Goel (supra)*, rightly referred to by the NCDRC in its order.

15. We do not find any ground to exonerate the Corporation. **Admittedly, the activity in question was covered by the statutory duty of the Corporation under Sections 62, 63 and 66 of the Bombay Provincial Municipal Corporation Act, 1949. Mere appointment of a contractor or employee did not absolve the Corporation of its liability to supervise the boating activities particularly when there are express stipulations in the contract entered into with the contractor. The Corporation was not only discharging its statutory duties but also was acting as service provider to the passengers through its agent. The Corporation had a duty of care, when activity of plying boat is inherently dangerous and there is clear foreseeability of such occurrence unless precautions are taken like providing life saving jackets.**

16. xxx.....xxx.....xxx.....

17. In view of above discussion, while upholding the liability of the Corporation, **we reiterate that not only Constitutional Courts have to, in suitable cases, uphold claims arising out of loss of life or liberty on account of violation of statutory duties of public authorities, in private law remedies, just and fair claims of citizens against public bodies have to be upheld and compensation awarded in Tort. Where activity of a public body is hazardous, highest degree of care is expected and breach of such duty is actionable.** This obligation is also referable to Article 21. We reiterate the need for a comprehensive legislation dealing with tortious liability of the State and its instrumentalities in such cases for certainty on the subject. We request the Law Commission to look into the matter and take such steps as may be found necessary.”

7. It is matter of serious concern that we have recently dealt with around 16 tragedies of deaths and injuries in the course of industrial activities conducted in violation of safety protocols and required the authorities to undertake review of compliance of safety protocols in such activities<sup>3</sup>. **This Tribunal has found that most of the accidents are**

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- i. Order dated 01.06.2020, relating to incident of gas leak dated 07.05.2020 in **LG Polymers India Pvt. Limited** at Vishakhapatnam, resulting in death of 11 persons and injuries to more than 100, apart from other damage (OA No. 73/2020, In re: Gas Leak at LG Polymers Chemical Plant in RR Venkatapuram Village Visakhapatnam in Andhra Pradesh);
- ii. Order dated 03.02.2021, relating to incident dated 03.06.2020 in a chemical factory, **Yashyashvi Rasayan Pvt. Ltd.** at Dahej, District Bharuch, Gujarat resulting in deaths and injuries and other damage (OA No. 85/2020) (Earlier OA 22/2020) (WZ), Aryavart Foundation through its President vs. Yashyashvi Rasayan Pvt. Ltd. & Anr.);
- iii. Order dated 06.08.2020, in relation to incident of **oil well blow out on 27.05.2020 at Baghjan in the Tinsukia District of Assam** resulting in deaths, injuries and damage to the environment (OA No. 43/2020(EZ), Bonani Kakkar vs. Oil India Limited & Ors.).
- iv. Orders dated 06.07.2020 and 22.12.2020, relating to incident dated 30.06.2020 on account of gas leakage at **Sainor Life Sciences** factory at Parawada in industrial area on the outskirts of Vishakhapatnam (OA No. 106/2020, 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...”);
- v. Orders dated 08.07.2020 and 22.12.2020, dealing with the incident dated 01.07.2020 resulting in death of 6 person and injury to 17 due to blast of boiler in **M/s Neyveli Thermal Power Station** (NLCIL), Cuddalore (OA No. 108/2020, News item published in the “Indian Express” dated 01.07.2020 titled “Tamil Nadu Neyveli boiler blast: 6 dead, 17 injured”) and;
- vi. Orders dated 23.07.2020 and 22.12.2020, in relation to incident of **fire engulfed the chemical plant of Visakha Solvents Ltd**, Vizag on 13.07.2020 at Ramky CETP Solvents building in Pharma City resulting in injuries (OA No. 134/2020, 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”).
- vii. Order **dated 18.12.2020**, in relation to incident of **explosion in a plastic recycling factory at Sujapur in Malda on 1.12.2020** resulting in death of six persons, including

**result of non-compliance of laid down safety norms under the 1989 Rules and the Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996 [1996 Rules]. There is, thus, need for the establishments handling hazardous chemicals to strictly follow the laid down norms, which need to be overseen by the statutory regulators.** Out of the said tragedies, one of the tragedies took place at Dahej in District Bharuch which was dealt with vide order of this Tribunal dated 03.02.2021 in OA 85/2020, *Aryavart Foundation through its President v. Yashyashvi Rasayan Pvt. Ltd. & Anr.* The Committee appointed by this Tribunal was also headed by Justice B.C.

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- two minors and serious injuries to four persons (OA 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").
- viii. Order dated **18.12.2020**, in relation to incident of **methane gas leak in a sugar factory** called Lokenete Bapurao Patil Agro Industries Ltd. in Mohol Taluka of Solapur District, Maharashtra on 21.11.2020 resulting in deaths and injuries and other damage (OA No. 274/2020, News item published in the "Indian Express" dated 23.11.2020 entitled "Maharashtra: Two Killed, eight injured in methane gas leak in sugar factory").
  - ix. Order dated 08.01.2021, in relation to **Gas Leak in Agro Company** (O.A No. 107/2020, 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")
  - x. Order dated 18.01.2021, in relation to News item published in Navbharat Times dated 24.12.2020 titled "**Gas leaks in IFFCO Plant, 2 Officers dead**" (O.A No. 04/2020, In re : News item published in Navbharat Times dated 24.12.2020 titled "Gas leaks in IFFCO Plant, 2 Officers dead")
  - xi. Order dated **11.02.2021**, in relation to accident of **toxic gas leak in Rourkela Steel Plant in Orissa**" (O.A. No. 09/2021, 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")
  - xii. Order dated **16.02.2021**, in relation to accident of **Virudhunagar firecracker factory blast** (O.A. No. 44/2021, 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")
  - xiii. Order dated **25.02.2021** in relation to accident of **quarry blast in Hiremagavalli, Chikkaballapu, Karnataka** (O.A. No. 59/2021, In re: News item published in Times Now News dated 23.02.2021 titled "Karnataka: Six killed in quarry blast in Hiremagavalli, Chikkaballapur")
  - xiv. Order dated **25.02.2021** in relation to accident of **fire at UPL plant, Jhagadia, District Bharuch, Gujarat** (O.A. No. 60/2021, In re: News item published in The Hindu dated 23.02.2021 titled "Two dead, 5 missing in fire at UPL Plant")
  - xv. Order dated **02.03.2021** in relation to accident of **massive fire broke out at an illegal factory at Pratap Nagar, North Delhi** (O.A. No. 65/2021, 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")
  - xvi. Order dated **16.03.2021** in relation to Incident of **explosion of 3,000 kg reactor at the production wing of Tyche Industries Limited, on the outskirts of Kakinada, Andhra Pradesh (AP) on March 11, 2021** (O.A. No. 79/2021, In re: News item published in The Hindu dated 14.03.2021 titled "Safety lapses led to reactor blast at pharma unit")

Patel, former Chief Justice of Delhi High Court. On consideration of the matter, following directions were inter alia issued:

*“21. The report of the MoEF&CC only mentions the statutory framework under the 1989 and 1996 Rules and the Red Book by the MoEF&CC updated in November, 1990. It is further stated that the MoEF&CC is taking following actions:-*

*“*

- Committees have been constituted for 'Preparation of Restoration Plan' through CPCB and District Administration, and 'Finalization of Compensation'*
- Action is being taken for revamping of industrial monitoring mechanism, in line with the previous directions of Hon'ble NGT O.A. No. 73/2020, Gas Leak at IG Polymers Chemical Plant in RR Venkatapuram Village, Visakhapatnam in Andhra Pradesh.*
- Consideration of the Technical and Administrative/Regulatory Framework Recommendations given by High Power Committee (HPC), which also include general recommendations on operation of hazardous industries/industries handling hazardous chemicals as well as industries operating in residential areas, is under examination.*

**15. That in light of the actions already initiated by IA (Monitoring) division, MoEF&CC for compliance of Hon'ble Tribunal's directions with regard to 'Revamping of Industrial Monitoring Mechanism', a response on various actions undertaken is under formulation and the same shall be submitted for perusal of the Hon'ble Tribunal in the matter of OA No 837 of 2018 in the matter of Sandeep Mittal vs Union of India.”**

*XXX.....XXX.....XXX.....*

**32. In view of frequent accidents resulting in deaths and injuries, the Chief Secretaries of all the States/UTs may evolve a mechanism to ensure that the companies dealing with hazardous substance must forthwith pay compensation for deaths and injuries to the victims at least as per Workmen Compensation Act, 1923 wherever applicable or the principle of restitution laid down in Sarla Verma (supra), National Insurance Company Ltd. v. Pranay Sethi, (2017) 16 SCC 680 to the victims either directly or through the District Magistrate.**

**33. Conduct of safety audits of all establishments having potential for such accidents may be ensured. All States/UTs may also ensure availability of healthcare**

***facilities in the vicinity of such establishments. PCB and DM must assess cost of restoration of environment which should be recovered from company and spent on such restoration. The States and UTs in accordance with 1989 and 1996 Rules need to step up vigilance, surveillance and monitoring to avert such accidents. Preparedness to meet such eventualities be ensured. Regular mock drills may be ensured in respect of onsite and offsite emergency plans. We may also refer to the directions issued by this Tribunal to the MoEF&CC and all the States/UTs on the subject of strengthening regulatory and oversight measures, vide order dated 01.02.2021 in OA 837/2018, Sandeep Mittal vs. Ministry of Environment, Forests & Climate Change & Ors.”***

**We note with regret that the State of Gujrat is not shown to have followed the above directions either for following safety norms or for payment of compensation. We are not aware of compliance by other States. We wonder whether the welfare States have no concern for safety of citizens and are not concerned about compliance of laid down norms. It appears that the oversight statutory authorities are not being held accountable for their failure and they continue to neglect their duties. This needs to be checked by the Chief Secretaries of all States and the authorities in the Central Government so that governance deficit in this regard is bridged.**

8. The above observations are further fortified by neglect of another direction of the Tribunal vide order dated 18.12.2020 in OA 272/2020 dealing with the case of death of six persons, including two minors and serious injuries to four persons, due to explosion in a plastic recycling factory at Sujapur in Malda, in West Bengal on 1.12.2020. The Tribunal observed:

**“4. *Prima facie*, violation of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 [MSIHC Rules, 1989] and Chemical Accidents (Emergency Planning,**



Preparedness and Response) Rules, 1996 [CAEPPR Rules, 1996] is not ruled out. No adequate action has been taken in the matter of grant of compensation and against the management of the unit. There is certainly violation of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and also the provisions of the Environment (Protection) Act, 1986 and Rules framed thereunder, including Plastic Waste Management Rules, 2016, as no requisite consent to operate was issued.

XXX.....XXX.....XXX.....

***10. We also direct the West Bengal State Pollution Control Board, Secretaries, Departments of Industries and Urban Development, West Bengal to inventories similar plastic recycling factories/godowns in the State and plan and execute safety measures to prevent recurrence of such incidents in the State.”***

**9. Accordingly, we confirm the interim findings and hold that the victims are entitled to compensation for which primary liability is of the operator of the godown and the State of Gujarat is vicariously liable due to failure of its authorities in performing their responsibility of checking hazardous activities being conducted without requisite safeguards.** We direct that the heirs of deceased as well as the injured may be given compensation as already determined as an interim measure without prejudice to their remedies for claiming any higher compensation on any appropriate forum. The scale of interim compensation in terms of order dated 11.11.2020 will stand revised to the higher amount as per recommendations of the Committee but if the Committee has recommended lesser amount, the rate of interim compensation as per order dated 11.11.2020 will prevail. As directed in para 11 in the order dated 11.11.2020, this order is without prejudice to any criminal or other statutory liability in accordance with law. It is made clear that since one of the deceased was a partner of the firm

running the illegal godown (Mr. Mustufa Alubhai Saiyad, as mentioned in para 4.0 of the report quoted above) in respect of his death, the State cannot be held liable as he is himself to blame for his illegal hazardous actions. However, the State is not debarred from making any ex gratia payment. For death of all other persons and injured, the State will be liable to pay compensation, without prejudice to its right to recover the same from the violators of law or erring officers, following due process of law. The responsibility for compliance will be of the Chief Secretary, Gujarat, through the District Magistrate, Ahmedabad. In the light of directions already issued for preventive action by way of compliance of laid down safety norms, the State of Gujrat needs to take remedial measures to ensure that such incidents do not occur and hold accountable persons responsible for failure of the oversight. We also direct a joint Committee of Director, Industrial Safety and Health (DISH), Gujarat, and State PCB in coordination with respective Municipal Corporations and District Magistrates to conduct survey of the entire State to ascertain if any other such activities are going on, and if so to take remedial action by way of closing such illegal activities. The State PCB will be the nodal agency for coordination and compliance. The said Committee may give its report to the Chief Secretary, Gujarat within three months for further remedial action.

10. We place on record our appreciation for the task executed by the Committee. This observation may be conveyed to the members of the Committee by the CPCB. A copy of this report may be kept on the websites of CPCB as well as the State PCB for the purposes of reference for atleast six months.

11. All other States/UTs may also take action in terms of earlier directions quoted in paras 7 and 8 to prevent such tragedies and to take remedial action if such tragedies take place.

The application is disposed of.

A copy of this order be forwarded to the Chief Secretary, Gujarat, DISH Gujarat, CPCB and State PCB by e-mail for compliance.

A copy of this order be also sent to the Chief Secretaries of all States/UTs for compliance of observations in paras 7, 8 and 11.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. Nagin Nanda, EM

March 23, 2021  
Original Application No. 258/2020  
DV