

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
DISTRICT: BHARUCH

EXTRAORDINARY ORIGINAL JURISDIDCTION

WRIT PETITION [PIL] NO. OF 2021

IN RE: Protection of Environment and Prevention of Air Pollution in the form of Chemical Emission that damages certain crops in the District Bharuch since many years.

In the matter of Articles 14, 19, 21, 226 and 300-A of the Constitution of India;

AND

In the matter of Directive Principles of State Policy;

AND

In the matter the Environment (Protection) Act, 1986, Notifications, Rules and Regulations framed thereunder;

AND

In the matter of Air [Prevention and Control of Pollution] Act, 1981 and the Rules framed thereunder;

AND

In the matter of Water [Prevention and Control of Pollution] Act, 1974 and the Rules framed thereunder;

AND

In the matter of the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989;

AND

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In the matter of the Hazardous Wastes
[Management and Handling] Rules, 1989;

AND

In the matter of PIL relating to Environment
Matters in the context of High Court rules;

AND

In the matter of PIL as per High Court Rules;

AND

In the matter between:

1. Khedut Samaj, Gujarat
A Registered Trust under the
Provisions of the Bombay Public Trusts Act,
Through its President
Jayeshbhai Shankarbhai Patel
Male, Aged 60 years
At: Khet Bhavan, Opp. Cargo Motors,
Near Gandhi Ashram, Ahmedabad-380027.

2. Brackish Water Research Centre
Through its President Mohammad Siddique Sheikh
Male, Aged 44 years
At: Kasha Mohalla, Mougul Street,
At Post Olpad, Surat-394540. ...Petitioners

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1. Union of India,
Ministry of Environment & Forest,
Notice through Joint Secretary,
Pariyavaran Bhavan, Jor Bagh,
Lodhi Colony, New Delhi – 110003.

2. Central Pollution Control Board
Union of India
Notice through its Chairman

At: Parivesh Bhawan, East Arjun Nagar, Delhi.

3. State of Gujarat,
Department of Forest
Environment & Climate Change,
Notice through the Principal Secretary,
Sachivalaya, Gandhinagar.
4. Department of Agriculture
State of Gujarat
Notice through Additional Chief Secretary/
Principal Secretary
Sachivalaya, Gandhinagar.
5. Gujarat Pollution Control Board,
Notice through its Chairman
Having office at: Paryavaran Bhavan,
CHH Road, Sector 10A,
Opp. Gujarat Rajya Beej Nigam Limited,
Gandhinagar, Gujarat 382010.
6. Anil V. Shah
Adult, Male
Postal address:
Member Secretary,
Gujarat Pollution Control Board
Having office at: Paryavaran Bhavan,
CHH Road, Sector 10A,
Opp. Gujarat Rajya Beej Nigam Limited,
Gandhinagar, Gujarat 382010
7. Falgun M. Modi
Adult, Male
Regional Officer
Bharuch Regional office of
Gujarat Pollution Control Board
Address: GIDC Estate, Narmadanagar,
Dist. Bharuch.
8. The District Collector,
Bharuch District, Jilla Seva Sadan,
Bharuch, Gujarat.

9. District Agricultural Officer,
District Bharuch, Agriculture Branch,
Opposite SBI Bank, District Panchayat,
Bharuch, Gujarat.
10. Meghmani Organic Ltd.
Notice through its Managing Director,
Plot no. CH1/A, Agro Division,
GIDC Dahej, Taluka Vagara,
District Bharuch, Gujarat. ...Respondents

To,
The Hon'ble the Chief
Justice and other Hon'ble
Judges of the High Court of
Gujarat at Ahmedabad

The humble petition of the
petitioners above named:

MOST RESPECTFULLY SHEWETH:

**1. The declaration, disclosure and statements as per the High Court
of Gujarat (Practice and Procedure for Public Interest Litigation)
Rules, 2010**

The present petition under Article 226 of the Constitution of India is being filed by way of a Public Interest Litigation and the petitioners do not have any personal interest in the present litigation.

The petitioner no. 1 is Khedut Samaj, Gujarat which represents lakhs of farmers across the State of Gujarat. It is a registered organization under the Bombay Public Trusts Act as a public charitable trust and has a history of more than 50 years. The petitioner no. 1 is one of the very active litigants representing cause of farmers in the State of Gujarat. Be it an acquisition for bullet train, express highway, National Highway, Bharat Mala, SEZ, SIR or other projects requiring land acquisition or requirement of irrigation water, pricing of urea and destruction of thousands of acres of agricultural crops on account of

water and air pollution caused by industries or even minimum wages for sugarcane workers or other agricultural workers, the Petitioner No.1 Organization is active in public as well as legal advocacy.

Petitioner no. 2 is an environmental organization also engaged in research and representations of causes relating to environment. It represents fishermen, farmers, tribals and others who are affected by environmental pollution/degradation in the NGT as well as before this Hon'ble Court.

The subject matter:

What is the industrial pollution about and why the petitioners have approached this Hon'ble Court?

The present petition raises a very serious issue of industrial pollution destroying or substantially or adversely affecting agricultural crops and in the process, thousands of farmers are deprived of their means of livelihood.

The air pollution is caused by a private industry based in GIDC, Vagra, Dist. Bharuch engaged inter-alia in Weedicide and Pesticide. And the very industrial pollution since 2011-12, lastly during the monsoon months of 2021, almost destroys or substantially or adversely affects susceptible crops and vegetation. The Cotton, vegetable and Pigeon Pea crops vulnerable to such air pollution are the worst affected among other crops, the statistics for the monsoon agricultural season of 2021 as per the Government record based on expert committee opinion is as under

- No. of talukas affected : 04
- No. of affected villages : 280
- No. of farmers affected : 18,315
- Hectors of land where loss of crop of less than 33% : 83,725 *(83,725 x 2.5 = 02,09,312 acres)*
- Hectors of land where loss : 30,274 *(30,274 x 2.5 =*

of crop is more than 33%

75,685 acres)

The complaint is that in the process of manufacturing 2-4-D and 2-4-DB, the particles of these highly hazardous chemicals, used for the manufacture of weedicide, pesticide and insecticide and other products by the company in question, are emitted from the plant. The emitted particles merge in the air. These chemical particles drift in the direction of air based on the wind velocity. Their concentration in the air after emission is not so much that once they settle down on certain crops and other vegetation, they get dry immediately. The presence of this particles on the leaves and other parts of the plant and vegetation triggers chemical and biological process and initiates the deformation. The physical injury to the plant and other vegetation starts as a result of the same. If the emission of these chemical particles continues, consistently and persistently for over days together, then on account of wind direction towards a particular geographical area and the wind velocity, the susceptible crops and the vegetation in the affected area will continue to receive such particles and they will gradually and regularly adversely affect the crops and the vegetation. Thus, chemical and biological process in such crops and vegetation continues for days together resulting into crystallization of deformities and distortion and they get adversely affected. In the process, either the complete crop is physically distorted and could not develop or grow further and no flowering is done and partially affected crop does not yield for obvious reasons. Farmers have to remove such crops and vegetables from their farms as it has of no use. Hence such air pollution destroys or substantially and adversely affect certain susceptible crops and vegetation causing tremendous loss of livelihood for the farmers.

In the month of July 2021, more than 15,000 farmers of Vagra, Amodh, Bharuch, Jambusar & Karjan Taluka of District Bharuch

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reported large scale distortion and subsequent destruction of their agricultural crops particularly cotton, vegetables and few other crops.

The farmers of Bharuch District of the aforesaid 5 Talukas had planted cotton and vegetables besides other crops in the Monsoon of 2021. From the month of July, 2021 the petitioner farmers realized that not on account on any deficiency of rain but for some unknown reasons particularly the crop of cotton and vegetables have started dying down. They also realized that the crops have developed deformation and distortions. Suddenly the growth of cotton crop and vegetables in particular stopped inspite of all bonafide efforts on part of farmers. It must be borne in mind that Bharuch District has water in abundance because of Narmada River and it is one of the most fertile districts as it is enjoying cluster of irrigation canals barring few areas in the northern part of Bharuch District.

The farmers reported to the district administration and the respondent collector Bharuch district and particularly the district agricultural officer working under the District Panchayat and the DDO Bharuch constituted an expert committee of scientists representing coming from Navsari Agricultural University, Cotton Research Centre, Surat, and engineers representing GPCB as scientists.

The Expert Committee consisting of 17 persons inquired thoroughly into the complaints of deformation and distortion of Cotton crop as well as other vegetables and consequential drying up of respective crops.

The expert committee submitted its report. The report categorically states that the Cotton crop as well as the crop of vegetables has been adversely affected because of discharge of 2-4-D and 2-4-DB chemicals and phenoxy compound in the air by the respondent Meghmani Organics Ltd. and such other private industries in Bharuch, Dahej Industrial Estate as well as Vilayat Industrial Estate manufacturing

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Because of emission of toxic chemical called **2-4-D** [2-4- Di chloro phenoxy acetic acid] and **2-4-DB** [2-4- Di chloro phenoxy butyric acid] by respondent private industry called Meghamani Organics Ltd. There is no other industrial unit in Bharuch District or in the neighbouring district which manufactures the very chemical which has ultimately destroyed or affected the cotton and vegetable crops.

It is noteworthy to mention at this juncture that 2-4-D and 2-4-DB are chemicals which are used as “Weedicide” [used for destroying the unwanted wild plants by spraying on it in liquid form. These chemicals have immediate effect on the crops and within 24 hours and unwanted vegetation gets dried up.

In the month of August, 2021 the respondent Collector, Bharuch appointed a survey team and the survey team. The survey team has in its report submitted it visited 290 villages and found that 280 are affected. Out of total 114568 hectares wherein Cotton and Pigeon Pea crops as well as other vegetables is grown, 113998 hectares land having Cotton and Pigeon Pea crops as well as other vegetables is affected.

Respondent Meghmani Organics Ltd. has been served with number of show cause notices for closure by respondent GPCB for violation of environmental norms and emission of toxic chemicals in the air beyond the permissible limits. The show cause notices and the reasons given as to why closure should not be effected are undisputed evidence of the fact that the respondent private industry in the process of manufacturing toxic chemicals in question have been guilty of emission of such chemicals in air for number of years.

The expert committee of agricultural and other scientists constituted by the district administration Bharuch in their report in July 2021 have in no uncertain words gave their categorical findings and the same are as follows:

That the distortion and deformation in the cotton crop and other crops which have been adversely affected is not because of deficiency of nutrients in the land and crops. As per the petitioners, the committee observed that (i) The deformation and distortion is not because of virus, bacteria or pests, (ii) The deformation and distortion is also not because of agricultural disease. (iii) Such distortions and deformation are generally not seen in such crops, (iv) **The deformation and distortion is seen not only in the crop of cotton, tuber but in all the vegetation as well as big trees Almonds, Acacias, Khijdo and Neem in the dicot weed like oca and dhatura, neem, khijdo.** (v) **In the surveyed area such distortions and deformation is not found in the crop of Jowar. [the obvious reason is that this is a monocote crop and dicote] [the distinction between the monocote and discote is that monocote cannot be broken about into two pieces while dicots can be broken into two pieces]** (vi) Pesticides, Herbicides and Vidicide used by the farmers during the field visit as well as chemical fertilizers which are used as per the approved label claim of the crop do not show the collective effect of such distortions on a large scale.

The effect of such deformation has been observed in almost all the plants in the cotton fields visited in the field.

The opinion of the diagnosis team

The deformation observed in the above field visit crops as well as in weeds especially in Cotton, Pigon pea and dicot weeds is similar to the deformation observed in the previous year by the diagnostic teams visiting the field crops in the industrial area during 2012-2020. The previous diagnosis team was of the opinion that the leaves deformation caused by the pollution of Phenoxy Compounds like 2-4-D and 2-4-DB etc.

The diagnosis team is also of the clear opinion that such deformation is due to the phenoxy compound in the area.

This question has been seen in the industrial area of Vagra taluka for the last ten years. So that the team believe that possibilities of presence of Phenoxy compounds present in air should be analyzed regularly by Gujarat Pollution Control Board.

Note: Although the members of Gujarat Pollution Control Board were present, they did not sign the opinion given by the diagnosis team.

The Gujarat Pollution Causing Board which is otherwise known as Gujarat Pollution Control Board has almost remained a mute spectator and in the process has established that it works for industries and not for sustainable development just as the GPCB is responsible for the pollution of Sabarmati river it is equally responsible along with respondent private industry for the emission of toxic chemical in air which has destroyed the crops in question.

As the GPCB was left with no other option it issued a show cause notice for violation of environmental norms to respondent private industries in August 2021. The show cause notice stipulates what are the violations according to GPCB. As the last show cause notice is nothing but creation of paper tiger on the part of respondent GPCB the petitioner farmer organization do not expect any further action from respondent GPCB to ensure that such emissions do not take place in future at all. Such notices have been given in past on several occasions but after every such show cause notice including closure the emissions have continued and they have in past in varying extent affected the agricultural crops. In spite of repeated requests on part of the petitioner farmers and personal meetings neither the district unit nor the state GPCB is ready and willing to provide report to petitioners. The representative of petitioner organization met Mr. A V Shah, Member Secretary of respondent GPCB who was kind enough not to give any reply.

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In other words, unlike expert committee, the respondent GPCB is of the opinion that the affected farmers use Weedicide and pesticide on the entire crop so as to deliberately damage them. That, more than 15,000 farmers have been sprinkling weedicide on the entire crop because they are so inefficient, and in the process they have destroyed or adversely affected in 280 villages in about 3,00,000 acres of land. The expert committee and particularly **scientists of agricultural universities have been reporting that even big trees like Almonds, Acacias, Khijdo and Neem also get adversely affected, face deformation and dries up. Who sprinkles a weedicide on such big trees and why is not stated by respondent GPCB.**

This shows that respondent GPCB is protecting the respondent private unit for reasons best known to them. The present secretary of respondent GPCB Mr. A.V Shah was there in Bharuch unit of GPCB for years together and so long he was there, nothing substantive or constructive happened towards curbing the very industrial pollution which otherwise is reoccurring on a regular basis. In fact, the pollution has been completely neglected by the respondents and premium is paid to the respondent private unit by allowing it to expand and enhance its production. The industrial pollution also in process is increasing and destroying the crops of farmers and in the process their means of livelihood is taken away.

It is now apparent that observations and conclusions of the Expert Committee constituted by respondent Collector Bharuch and the findings of respondent GPCB are at complete variance, in conflict of each other and inconsistent with each other. The findings and opinion of GPCB is on the face of it unbelievable, irrational, arbitrary and contrary to the facts on record. This finding and opinion is only to save skin at the cost of pollution and in the process the deliberate causing pollution by respondent private unit/industry is promoted. In fact the finding of GPCB is contrary to its own record based on scientific analysis of its own sample. The finding of respondent expert

committees or inspection committees consisting of experts of different fields followed by analysis of samples by respondent GPCB from 2011-12 till 2018-19 were not at variance but were in support of each other. Only after the pollution cause by respondent private unit in 2021 has reached at a humongous level and proportion that respondent GPCB now has started contradicting not only its own reports and findings but have started contradicting the report of expert committee constituted by the respondent Collector. Hence the intervention of this Hon'ble Court is required to prevent pollution and to protect livelihood of thousands of farmers of Bharuch District.

The petitioners say and submit that affected farmers (i) be compensated for the loss they have sustained on account of industrial pollution and (ii) that the respondent private industry be permanently restrained from manufacturing 2-4-D and 2-4-DB are chemicals which are used as "Weedicide".

Hence the Present Petition.

2. About the Petitioners and Respondents

The petitioner no. 1 is Khedut Samaj, Gujarat which represents lakhs of farmers across the State of Gujarat. It is a registered organization under the Bombay Public Trusts Act as a public charitable trust and has a history of more than 50 years. The petitioner no. 1 is one of the very active litigants representing cause of farmers in the State of Gujarat. Be it an acquisition for bullet train, express highway, National Highway, Bharat Mala, SEZ, SIR or other projects requiring land acquisition or requirement of irrigation water, pricing of urea and destruction of thousands of acres of agricultural crops on account of water and air pollution caused by industries or even minimum wages for sugarcane workers or other agricultural workers, the Petitioner No.1 Organization is active in public as well as legal advocacy.

Petitioner no. 2 is an environmental organization also engaged in research and representations of causes relating to environment. It represents fishermen, farmers, tribals and others who are affected by environmental pollution/degradation in the NGT as well as before this Hon'ble Court.

The respondent no. 1 is Union of India, Ministry of Environment and Forest, respondent no. 2 is Central Pollution Control Board, respondent no. 3 is State of Gujarat, Department of Forest and Environment, respondent no. 4 is Department of Agriculture, State of Gujarat, respondent no. 5 is Gujarat Pollution Control Board, respondent no. 6 is Anil Shah as a member secretary of GPCB, respondent no. 7 is Falgun Modi, regional officer of Bharuch regional office of GPCB, respondent no. 8 is District Collector Bharuch, respondent no. 9 is District Agricultural officer Bharuch, respondent no. 10 is Meghmani Organic Ltd.

The respondent no. 1 to 9 comes within purview of "the State" as defined in Article 12 of the Constitution of India and hence writ petition under Article 226 for enforcement fundamental rights, statutory rights and other established rights is maintainable against them and respondent no. 10 is the private industry.

3. **The petition in public interest and the costs of litigation**

The present petition is being filed in public interest for protection of Environment and Prevention of Air Pollution in the form of Chemical Emission that damages certain crops in the District Bharuch since many years, which is in the larger public interest.

The petitioners are going to bear the necessary expenditure towards the present litigation. The petitioners are not facing any contempt or criminal proceedings at the time of the filing of present petition.

4. **FACTS**

- 4.1. In the month of July 2021, more than 15,000 farmers of Vagra, Amodh, Bharuch, Jambusar & Karjan Taluka of District Bharuch suffered large scale distortion and subsequent destruction of their agricultural crops particularly cotton, vegetables and few other crops.
- 4.2. They also realized that the crops have developed deformation and distortions. Suddenly the growth of cotton crop and vegetables in particular stopped inspite of all bonafide efforts on part of farmers. It must be borne in mind that Bharuch District has water in abundance because of Narmada River and it is one of the most fertile districts as it is enjoying cluster of irrigation canals.
- 4.3. Not only the crop of cotton, vegetable and other few crops developed distortion and deformities but it was simultaneously realized that trees such as Almonds, Acacias, Khijdo and Neem also have developed similar kind of deformities. By virtue of experience and use of certain pesticide, herbicide and weedicide besides chemical fertilizer, the farmers could make out that their crops have deformations and distortion similar to those which are seen on wild and unwanted plants after weedicide is used to dry them up and remove them in interest of crop grown.
- 4.4. It is noteworthy to mention at this juncture that 2-4-D and 2-4-DB are chemicals which are used as “Weedicide”. Weedicide is defined as under:

“Weedicides are the chemicals which are sprayed over the fields to get rid of weeds. 2, 4-D (2, 4 dichlorophenoxy acetic acid) acts as a dicot weedicide. Weeds are those plants which grws in between the crops. Weedicides are the chemicals which are sprayed over field to get rid of weeds. They will not show any effect on crop plants.”

4.5. Due to collective and large scale impact of distortion and deformities developed in more than 5 talukas of Bharuch district, the affected farmers reported to the district administration and the respondent Collector Bharuch district and particularly the respondent District Agricultural Officer. MLAs and MPs of the area also made representations to the statutory authorities. The petitioner no. 1 organization who has a very vast representation in Bharuch District also on being approached by the affected farmers made representations to the respondent district administration accompanying the farmers on 10th and 12th of July, 2021.

4.6. The respondent District Administration, District Collector as well as District Agricultural Officer constituted an Expert Diagnoses Committee consisting of agricultural scientists, environmental engineers, researchers, scholars and subject experts from within the agricultural department, Gujarat Pollution Control Board [GPCB], Cotton Research Centre, Surat, Navsari Agricultural University, College of Forestry, Navsari. Following are the name of the Expert Diagnoses Committee:

- i. Dr. K.G Patel
- ii. Dr. H.R Desai
- iii. Dr. D.H Patel
- iv. Dr. M.M Patel
- v. Dr. G.B Kalriya
- vi. Dr. Kiti Bardan
- vii. Dr. S.V Vichol
- viii. Dr. P.B Sandipan
- ix. Bhimsinh Yashvantsinh Solanki
- x. Sima B. Bhadoriya
- xi. Patel Tapankumar H.
- xii. Dhaval P. Brambhatt
- xiii. Raj Ajitsinh Balvantsinh

- xiv. Shaileshbhai A. Vasana
- xv. B.D Prasad
- xvi. N.D Patel

4.7. **The Expert Diagnoses Committee visited Vagra and Bharuch Taluka of Bharuch district to begin with and submitted its report consisting of Rojkam and opinion so expressed, based on its visit of the affected areas, to the respondent District Collector, Bharuch on 22/07/2021.**

Copy of the Report consisting of Rojkam as well as opinion expressed by the Committee so submitted to the respondent Collector, Bharuch on the subject of deformities and distortion seen in the agricultural crop due to pollution dated 22/07/2021 is annexed hereto as **ANNEXURE-A.**

4.8. The translation of the Observations and the opinion of the Expert Diagnoses Committee is as under:

“Observations made by the Diagnosis Team

- 1) *According to the survey conducted by the Expert Diagnosis Team, the leaves on the top as well as in the middle portion of the cotton crop have been found to be elongated and distorted, and distortion in pigeon peas crop is less compared to cotton crop.*
- 2) *These crops do not appear to be deformed due to disease, pests or nutrients.*
- 3) *Such distortion in cotton crop and pigeon pea crop usually do not occur at the time of its development.*
- 4) *Apart from agricultural crops, distortion is found in periphery of agriculture filed and non-cultivated lands, in some dicot weeds like Thorn apple, Calotropis*
- 5) *Moreover, sign of deformity is also found in the trees such as Almonds, Acacias, Khijdo and Neem etc. located on the agricultural and non-agricultural land.*
- 6) *According to the response from the farmers, no special pesticide or herbicide has been used by the farmers for their crop.*
- 7) *According to the farmers, similar problems are existing in cotton and other crops from last eight to ten years.*
- 8) *No such deformation is seen in crops like Sorghum in the surveyed area.*

- 9) *During the field visit, substance such as Pesticides, **Herbicides and Vidicide** used by the farmers as well as chemical fertilizers which are used as per the approved label claim of the crop do not show the effect of such distortions on a large scale.*
- 10) *During the field visit, the effect of such deformation is observed in almost all the plants/crops in the cotton fields.*

The opinion of the diagnosis team

During the field visit, the deformation observed in the crops especially in Cotton, Pigeon pea and dicot crops during the visit is similar to the deformation observed in the previous year by the diagnosis team who visited the field in the industrial area during the year 2012 to 2020. The previous diagnosis team was of the opinion that the deformation on leaves is caused by the effluence of Phenoxy Compounds like 2-4-D and 2-4- DB.

The diagnosis team is also of the firm opinion that such deformation is caused only due to the phenoxy compound present in the area.

This problem exists in the industrial area of Vagra taluka from the last ten years. Therefore the team is of the opinion that the potentials of Phenoxy compounds in air should be examined regularly by the Gujarat Pollution Control Board.

Note: Although the members of Gujarat Pollution Control Board were present, they refused to sign the opinion given by the diagnosis team.”

- 4.9. According to the petitioners, the expert committee has observed and opined as under:

The Expert Committee consisting of 17 persons inquired thoroughly into the complaints of deformation and distortion of Cotton crop as well as other vegetables and consequential drying up of respective crops.

The expert committee submitted its report. The report categorically states that the Cotton crop as well as the crop of vegetables has been adversely affected because of discharge of 2-4-D and 2-4-DB chemicals and phenoxy compound in the air by the respondent Meghmani Organics Ltd. and such other private industries in

Bharuch, Dahej Industrial Estate as well as Vilayat Industrial Estate manufacturing

Because of emission of toxic chemical called **2-4-D** [2-4- Di chloro phenoxy acetic acid] and **2-4-DB** [2-4- Di chloro phenoxy butyric acid] by respondent private industry called Meghamani Organics Ltd. There is no other industrial unit in Bharuch District or in the neighbouring district which manufactures the very chemical which has ultimately destroyed or affected the cotton and vegetable crops. It is noteworthy to mention at this juncture that 2-4-D and 2-4-DB are chemicals which are used as “Weedicide” [used for destroying the unwanted wild plants by spraying on it in liquid form. These chemicals have immediate effect on the crops and within 24 hours and unwanted vegetation gets dried up.]

In the month of August, 2021 the respondent Collector, Bharuch appointed a survey team and the survey team. The survey team has in its report submitted it visited 290 villages and found that 280 are affected. Out of total 114568 hectares wherein Cotton and Pigeon Pea crops as well as other vegetables is grown, 113998 hectares land having Cotton and Pigeon Pea crops as well as other vegetables is affected.

Respondent Meghamani Organics Ltd. has been served with number of show cause notices for closure by respondent GPCB for violation of environmental norms and emission of toxic chemicals in the air beyond the permissible limits. The show cause notices and the reasons given as to why closure should not be effected are undisputed evidence of the fact that the respondent private industry in the process of manufacturing toxic chemicals in question have been guilty of emission of such chemicals in air for number of years.

- 4.10. The expert committee of agricultural and other scientists constituted by the district administration Bharuch in their report in July 2021 have in no uncertain words gave their categorical findings and the same are as follows:

That the distortion and deformation in the cotton crop and other crops which have been adversely affected is not because of deficiency of nutrients in the land and crops.

(ii) The deformation and distortion is not because of virus, bacteria or pests.

(iii) The deformation and distortion is also not because of agricultural disease.

(iv) Such distortions and deformation are generally not seen in such crops.

(v) The deformation and distortion is seen not only in the crop of cotton, tuber but in all the vegetation as well as big trees in the dicot weed like oca and dhatura, neem, khijdo.

(vi) In the surveyed area such distortions and deformation is not found in the crop of Jowar. [the obvious reason is that this is a monocote crop and dicote] [the distinction between the monocote and discote is that monocote cannot be broken about into two pieces while dicots can be broken into two pieces]

(vii)) Pesticides, Herbicides and Vidicide used by the farmers during the field visit as well as chemical fertilizers which are used as per the approved label claim of the crop do not show the collective effect of such distortions on a large scale.

The effect of such deformation has been observed in almost all the plants in the cotton fields visited in the field.

4.11. On 04/08/2021, an MLA of Vagra taluka, District Bharuch made representation to Hon'ble the Chief Minister of Gujarat on the issue of poisonous chemical polluting air by the companies causing enormous damage to the standing agricultural crop and environment.

The representation states that Bharuch, Vagra, Amod, Jambusar, Ankleshwar and Jagadya taluka of Bharuch District are engaged in substantial cultivation of agricultural crops such as cotton, cereals and vegetables. Many companies in Bharuch District are emitting

poisonous chemicals in the air as well as in the water causing enormous loss in lacks of hectars of agricultural land owned by the farmers besides causing serious damage to the environment. This pollution has caused substantial economic loss to the farmers inspite of repeated representation to the respondent GPCB, no actions are taken against polluting industries. The farmers of the districts are furious and are tending towards public agitation. Therefore, proper inquiry may be carried out against the companies forthwith and those found guilty must be strictly punished. The chemical emitted by the companies and the polluted water must be stopped and issues faced by the farmers of the district be resolved at the earliest.

Copy of the representation dated 04/08/2021 by MLA of Vagra Taluka, District Bharuch is annexed hereto as **ANNEXURE-B**.

- 4.12. The petitioner no. 1 organization on 09/08/2021 made representation to Hon'ble the Prime Minister of India on the subject matter and copy of the very representation was sent to the respondent Gujarat Pollution Control Board, Central Pollution Control Board, Ministry of Environment, Forest and Climate Change, Department of Agriculture, Gujarat besides District Collector, Bharuch and others.

Copy of the representation on the subject matter dated 09/08/2021 is annexed hereto as **ANNEXURE-C**.

- 4.13. On 13/08/2021 under the chairmanship of respondent Collector, Bharuch a meeting was held at the Collectorate on the subject matter of air pollution by industrial unit causing deformities in the agricultural crop and on other trees and vegetation. The meeting was attended inter-alia by following persons:

- i. Shri M.D Modiya, Collector, Bharuch
- ii. Shri Yogesh Chaudhary, District Development Officer, District Panchayat, Bharuch

- iii. Shri M.M Patel, Joint Director of Agriculture, Vadodara division, Vadodara
- iv. Shri Jigar J. Bhatt, District Agricultural Officer, Bharuch
- v. Shri Dr. G.B Kalariya, Assistant Trainer (Crop Conservation), Navsari Agriculture University, Navsari
- vi. Shri H.R Desai, Co-Research Scientist, Chief Crop Research Centre, Navsari Agriculture University, Surat
- vii. Shri Y.M Patel, Assistant Director, Industrial Safety and health, Bharuch
- viii. Shri Kirti Bardhan, Assistant Professor, Navsari Agriculture University, Navsari
- ix. Shri Vijaysinh Y. Solanki, Deputy Agricultural Director (V.), Bharuch
- x. Shri Falgun Modi, R.O, G.P.C.B Bharuch
- xi. Shri Amu Dave, Jr. EE GWSSB, Bharuch
- xii. Shri B.S Panchal, Assistant Agricultural Director (Gu.Ni.), Bharuch
- xiii. Smt. Simaben Bhadoriya, Assistant Agricultural Director (V.), Sub-division, Ankleshwar
- xiv. Miss Sejal D. Muniya, Agricultural Officer, District Panchayat, Bharuch

The minutes of the meeting inter-alia observes as under:

- i. Written complaint has been received from the farmers with regard to deformities developed in the crop of cotton and in other vegetation on account of air pollution caused by industrial units in the villages of Vagra, Amod, Jambusar, Bharuch and other talukas of Bharuch district.
- ii. Diagnosis team visited affected areas and samples were taken of affected crops of cotton as well as other vegetation and report of samples taken is presented. The main conclusion of the report is that the crops and other vegetation have developed

deformities on account of air pollution caused by industrial units manufacturing Weedicide. The chemical air pollution contains Phenoxy compound such as 2-4-D.

- iii. The District Agriculture Officer has taken samples of seeds of the crops sown in the area and has secured the report of the same and presented before the Committee. This report shows that there is no issue with regard to cultivation of the crop.
- iv. The deformities in the crop is not because of pests. The visits to the agricultural farms by the expert team finds no pests on cotton and other crops affected by deformities. If the damage is due to pests then it can be in the entire district but other Taluka of Bharuch District such as Jagadya, Valiya, Netrang growing cotton crops have no complaints about deformities or even damage to the crop due to pests.
- v. The deformities are not due to any disease on account of virus or bacteria or other similar organisms. If it is so then the disease develop progressively in all the area at a time. However in the present instance, the deformities are not in all the areas and together at the same time. The deformities are seen in the specific air direction.
- vi. Specific air direction from the month of May onwards based on the online data suggests that the air passing from the manufacturing units at Dahej and spreading in specific taluka is the area where cotton and other crops are damaged on account of deformities.
- vii. It is deliberated by scientists of the team that the particles of pollution from the atmosphere settles on the plants and occurs the auxin mimic effect in the plant followed by immediate disintegration of compounds into the air. As a result, it is difficult to know the presence of pollution in the laboratory test of the crops. However, samples have been taken from the field by the university team during the visit dated 20/07/2021 is

given in the laboratory for testing. The same shall be submitted as and when the report is received.

- viii. Same effects on the crops were observed in the year 2015-16. As per the report of Gujarat Pollution Control Board dated June 2016, the amount of particles emitted from the stack of spin flash dryers of 2-4-D plant of respondent M/s. Meghmani Organics Limited (Unit-3) was found to be more than 104 mg / cubic meter which is higher than the consent norms 20 mg/cubic meter given by the Gujarat Pollution Control Board. Based on which the unit is asked to upgrade the air pollution control measures of the spin flash dryer as well as ordered to close the 2-4-D unit. After that the unit has upgraded air pollution control measures as per the recommendation of the GETCO company.
- ix. The statistics of the weedicide production has been obtained from the companies of the current year 2021-22, in which the statistics of the production are follows:

Sr. No.	Year 2020	2-4D Acid reading (kg)	Sr. No.	Year 2021	2-4D Acid reading (kg)
1.	April-2020	269000	1.	April-2021	1142400
2.	May-2020	600400	2.	May-2021	1144800
3.	June-2020	615000	3.	June-2021	1148600
4.	July-2020	697600	4.	July-2021	1103000

As per the table, it is stated that the respondent M/s. Meghmani Organics Limited has increased its production of 2-4-D than the previous year. In the year 2020, the unit had received approval from the competent authority to increase the production of 2-4-D. Based on this, the GPCB had given the CCA amendment for the increase of 2-4-D production.

- x. Scientists have stated that as per the CICR paper [Central Institute for Cotton Research] the particles of 2-4-D weedicide

in the air can effect upto 80 kms depending upon the air velocity and air direction. Therefore Amod and Karjan talukas also have been affected. Disintegration of oxygen in plants occurs when particles fall on plants and these symptoms appear in 10-15 days. More information can be gathered by obtaining daily pollution statistics from the Meteorological Department during 15th April to 15th August.

- xi. The GPCB informed that as the meteorological station has been set up by the GNFC unit at Dahej, it can obtain meteorological data to know the direction and speed of the wind for study purposes.
- xii. The GPCB has given the consent to the 2-4-D production unit for the emission of the particulate matter 20 mg/cubic meter from the stack. However, no norms are given by GPCB and CPCB for 2-4-D parameters in terms of air quality. The local laboratory at GPCB Bharuch did not have necessary equipment to measure 2-4-D particles in the air and therefore the Central Laboratory Team at Gandhinagar was informed in this regard. On 11/08/2021 and 12/08/2021, Central Laboratory of Gandhinagar as well as the local team together carried out an investigation in the villages of Vagara taluka in the proximity of the unit in question as well as in Karjan and Hansot area of district Bharuch to measure whether particles of 2-4-D are there in the air and to what extent and for that ambient air quality monitoring system was placed in 13 places. The analysis report is currently in progress.
- xiii. An in-depth technical study like the air dispersion modelling is required for the study of how far these 2-4-D particles can travel. It is also necessary to conduct a thorough study by the Department of Agriculture to arrive at factors which are responsible for the loss of cotton crop.
- xiv. The Collector has directed the Department of Agriculture to conduct an in-depth study of the affected crop and analyse it

on the basis of the required scientific basis as well as to conduct the necessary technical study to the GPCB which should inform the competent authority pertaining to that department.

- xv. In addition, the Collector has suggested that a detailed survey of crops be carried out in the affected areas by the District Agriculture Department. This operation must be completed in 7 days including holidays. The latest report of the operation shall be submitted to the District Development Officer.

Copy of the minutes of the meeting dated 13/08/2021 held under the chairmanship of respondent Collector, Bharuch is annexed hereto as **ANNEXURE-D**.

- 4.14. As stated in the minutes of meeting dated 13/08/2021 the details were being collected from affected villages of taluka of District Bharuch. The details have been chartered out on 22/08/2021.

Copy of the chart of the survey of deformities in the cotton and other crops found in the villages of about 4 talukas of Bharuch District is annexed hereto as **ANNEXURE-E**.

- 4.15. The statistics speaks as under:

• No. of talukas affected	:	04	
• No. of affected villages	:	280	
• No. of farmers affected	:	18,315	
• Hectors of land where loss of crop of less than 33%	:	83,725	(83,725 x 2.5 = 02,09,312 acres)
• Hectors of land where loss of crop is more than 33%	:	30,274	(30,274 x 2.5 = 75,685 acres)

4.16. In the year 2015-16, several villages of taluka Vagra, district Bharuch complained about deformities and distortion in the cotton crop. It is important to mention at this juncture that respondent M/s. Meghmani Organic Ltd is situated in the GIDC at Vagra and as stated earlier by the office of respondent District Agricultural Officer as well as respondent Gujarat Pollution Control Board that since 2011-12 time and again farmers of Vagra and other talukas of Bharuch district have been complaining about development of deformities in the cotton crop on account of air pollution. Apparently the air pollution is caused by respondent Meghmani Organic Ltd in the process of manufacturing of emission of 2-4-D (Dichloro Phenoxy Acetic Acid) and 2-4-DB (Choloro Phenoxy Butyric Acid) at its plant at Vagra GIDC, Vagra, Bharuch.

The complaint is that in the process of manufacturing 2-4-D and 2-4-DB, the particles of these highly hazardous chemicals, used for the manufacture of weedicide, pesticide and insecticide and other products by the company in question, are emitted from the plant. The emitted particles merge in the air. These chemical particles drift in the direction of air based on the wind velocity. Their concentration in the air after emission is not so much that once they settle down on certain crops and other vegetation, they get dry immediately. The presence of this particles on the leaves and other parts of the plant and vegetation triggers chemical and biological process and initiates the deformation. The physical injury to the plant and other vegetation starts as a result of the same. If the emission of these chemical particles continues, consistently and persistently for over days together, then on account of wind direction towards a particular geographical area and the wind velocity, the susceptible crops and the vegetation in the affected area will continue to receive such particles and they will gradually and regularly adversely affect the crops and the vegetation. Thus, chemical and biological process in such crops and vegetation continues for days together resulting into

crystallization of deformities and distortion and they get adversely affected. In the process, either the complete crop is physically distorted and could not develop or grow further and no flowering is done and partially affected crop does not yield for obvious reasons. Farmers have to remove such crops and vegetables from their farms as it has of no use. Hence such air pollution destroys or substantially and adversely affect certain susceptible crops and vegetation causing tremendous loss of livelihood for the farmers.

- 4.17. In the year 2015-16, the respondent District Administration also constituted a diagnosis team and their observations and conclusions are found in the report submitted by them.

Copy of the report dated 03/11/2015 submitted by diagnosis team on the large scale complaint of deformities developed by the crop of cotton in the villages of taluka Vagra, District Bharuch of the year 2015-16 is annexed hereto as **ANNEXURE-F**.

The opinion and the conclusion are as under:

- i. Earlier also in the year 2012-13 for the same area and for the same complaint, diagnosis team was constituted and it has stated in its report that deformities are seen in the cotton crop on account of 2-4-D Phenoxy chemical as the cotton crop is very susceptible to such chemical. The primary observation is that no disease or insects are seen on the crop.
- ii. During the initial inquiry, it was intimated by the farmers that they use DMP and Urea for the cotton crop as a fertilizer.
- iii. Earlier they used Monocrotophos-acephate as informed by farmers, no weedicide has been sprinkled on the crop.
- iv. During the previous, advice was given at initial stage of deformities to avoid certain methods to remove the impact of deformities.

- v. Earlier also efforts were made to save the crop by resorting to certain method using urea for meeting with the deformities and its impact but of no avail.
- vi. The discussion with the farmers has been revealed that such deformities are developed in the cotton for last more than 4-5 years and it has been a very serious concern and a problem for the farmers in the area. Such deformities in the cotton crop are seen in the villages. Initially the farmers were of the belief that such deformities are developed due to poor monsoon. However, this time even when the monsoon is strong and inspite of adequate rain, such deformities are seen. And therefore, the farmers have complained that the extent of loss and the damage has increased multi-fold. Recoveries were found after rainfall which now is not visible. And therefore farmers have not option but to destroy the crop of cotton.
- vii. As informed by farmers, the damage due to such deformities are substantive in the area of 30-40 kms around Dahej Industrial Area.
- viii. The common observation of farmer is as you travel close to industrial units, the extent of deformities and its resultant effect and the loss of crop or damage to the crop is more intensified. The committee is to an extent in agreement with the farmers. The farmers have demanded solution to this problem and are interested in knowing the reason behind such deformation in the crops.

Conclusions

The deformation observed in the cotton crop in the farms of the farmers is similar to the characteristics and effect of 2-4-D (Phenoxy) or like on the cotton crop. However, the analysis report suggested that it did not show the presence of Below Detectable Level. Effects of chemicals such as 2-4-D (Phenoxy) are also seen in gaseous form but after deformation

in plants it is possible that the presence of chemicals like 2-4-D (Phenoxy) in crop residues cannot be determined (the research papers of John Madison and J.R Hay confirm this). Therefore, the Gujarat Pollution Control Board determines the presence of such harmful elements in the environment to find out the root cause and if the observations are recorded for 8 hours and a whole year, there is a possibility of crop damage.

- 4.18. On 15/01/2016, respondent Gujarat Pollution Control Board issued a show cause notice to respondent Meghmani Organic Ltd based on the visit dated 06/10/2015 and inspection of officers of the Gujarat Pollution Control Board.

The show cause notice as per petitioners observes as under:

- i. As per CCA (Consolidated Consent and Authorization) given to the industrial unit, only one stack is shown between 2-4-D plant and 2-4-D Sodium plan (SFD). However, during inspection two stacks instead of one were found to be in operation for which no permission has been obtained.
“Note: stack means a chimney, especially one on a factory, or a vertical exhaust pipe on a vehicle.”
- ii. 315 MT ETP Sludge is found to have been stored in the unit.
- iii. Housekeeping is found to have been weak in the filter press area of 2-4-D Acid Plant.

Copy of a show cause notice dated 15/01/2016 issued by Gujarat Pollution Control Board to respondent Meghmani Organic Ltd is annexed hereto as ANNEXURE-G.

- 4.19. On 19/02/2016, another show cause notice was issued to respondent Meghmani Organic Ltd based on the visit of the officers of respondent GPCB dated 19/01/2016. The show cause notice states that during the visit, following irregularities were found:

(The irregularities are reproduced along with comments and explanation by the petitioners)

- i. Samples collected during the visit from 2-4-D SFD Stack shows result that particulate matters are 43 mg/Nm³ which is excessive than permissible as per Rules.
 - (The permissible extent of particulate matter being emitted from the stack (chimney) which is known as process emission containing particulate matter in the form of 2-4-D Acid (Phenoxy) is 20 mg/Nm³. This emission of Phenoxy Acid in the air travels in the wind direction based on the wind velocity and spreads in the area accordingly and ultimately settles down on the surface of the land on vegetation, water and so and so forth).
- ii. Spillage is seen in the ETP area.
- iii. Housekeeping is found to have been weak near SFD Plant.

If the cause is not sufficiently explained and if the action plan is not submitted with a period of 15 days then action would be taken under the provision of sec. 33A of the Water Act and 31A of the Air Act 1981.

Copy of another show cause notice dated 19/02/2016 issued by Gujarat Pollution Control Board to respondent Meghmani Organic Ltd is annexed hereto as ANNEXURE-H.

- 4.20. On 16/06/2016, respondent Gujarat Pollution Control Board gave a reply to MLA of Vagra constituency who had complained on behalf of affect farmers in the year 2015-16 about deformation of cotton crop on account of industrial pollution in villages of Bhadra Taluka in Bharuch district.

Copy of reply given by respondent Gujarat Pollution Control Board dated 16/06/2016 to MLA of Vagra constituency is annexed hereto as **ANNEXURE-I**.

4.21. Respondent Gujarat Pollution Control Board passed a closure order on 28/06/2016 u/s. 31 (a) of the Air (Prevention and Control of Pollution) Act, 1981 calling upon respondent Meghmani Organic Ltd as under:

- i. To immediately stop the production of 2-4 D Acid, 2-4 D Ester and derivatives 2-4 D in your industrial unit.
- ii. To stop the production of 2-4 D Act and 2-4 D Ester even if they are produced with the help your own (Captive) Power Plant or D.G Set.

Copy of the closure order passed by Gujarat Pollution Control Board against respondent Meghmani Organic Ltd dated 28/06/2016 along with accompanying papers are annexed hereto as **ANNEXURE-J**.

The closure order was passed based on following observations and conclusions based on scientific test/s:

- i. That you are running industrial unit for manufacturing agro-chemicals at GIDC Estate, Dahej Taluka Vagra, District Bharuch.
- ii. That, Gujarat Pollution Control Board has granted you permission to run this unit by an order dated 04/12/2015.
- iii. That, personal visit by the officers of the respondent Gujarat Pollution Control Board on 09/06/2016 and inspection carried on by them u/s. 24 of Air (Prevention and Control of Pollution) Act, 1981. The observations after inspection are as under:
 - a. Though Spain Flash Dryer was working for 2-4 Acid but Scrubbing System (Ventury waste scrubber & Alkali

scrubber) was bypassed due to which emissions were found. According to the analysis report, the proportion of PM (Particulate Matter) was 104 mg/NM², was found from sample of air taken from the chimney, was excessively higher as against permissible limit in the (environmental) consent (20 mg/NM³).

b. Gaseous flow is seen to have been passing from bypass line (lane) instead of Spray Dryer.

c. As seen above, APCM (Air Pollution Control Measure) was found to be inadequate and is not working as per the capacity.

d. Housekeeping of the plant was found to be weak

iv. The air pollution at the industrial unit of respondent Meghmani Organic Ltd was excessively higher than what is provided in the Rules and is of the magnitude which can cause serious damage to the environment.

v. So often, the Gujarat Pollution Control Board has been receiving complaints and representations with regard to pollution caused by the industrial undertaking unit from the nearby areas.

4.22. On 02/08/2016, respondent GPCB gave directions to respondent Meghmani Organic Ltd u/s. 31A of Air (Prevention and Control of Pollution) Act, 1981 as under:

- i. That, you are running industry namely Meghmani Organics Ltd. (Agro division) plot no. C H/1/A, Dahej, Taluka Vagra, District Bharuch and are producing Agrochemical products.
- ii. That you were permitted to run the unit/industry by order no. AWH-74339 of the Board dated 04/11/2015.

- iii. That, you were directed to immediately stop the production of 2-4 D Acid, 2-4 D Ester and derivatives 2-4 D in your industrial unit by order of the board dated 28/06/2016 u/s. 31A of Air (Prevention and Control of Pollution) Act, 1981.
- iv. By letter dated 30/06/2016 you have made a representation that there is no generation of particulate matter during the process manufacturing of 2-4-d acid upto the level of Vatcake. Moreover you have represented that manufacturing of 2-4-D acid derivatives is only a formulation and till the time dryer upgradation of 2-4-D Acid plant is not undertaken, the dryer shall not be utilized.

In view of above, the directions given earlier dated 28/06/2016 is modified based on prior approval so received.

- i. 2-4-D Acid plant dryer shall not be utilized till before prior permission of the GPCB.
- ii. The manufacturing process of 2-4-D acid and 2-4-D Ester and 2-4-D derivatives will be undertaken upto the stage of vatcake.

Copy of directions by the respondent GPCB to respondent Meghmani Organic Ltd u/s. 31A of Air (Prevention and Control of Pollution) Act, 1981 dated 02/08/2016 is annexed hereto as **ANNEXURE-K.**

4.23. On 25/10/2016, inspection was carried out by respondent Gujarat Pollution Control Board of the industrial unit of respondent Meghmani Organic Ltd. Following is the site observation during inspection:

- i. Unit is visited with regard to parties letter submitted to this office for verification upgraded APCM provided with SFDs of

2-4-D Acid plant and 2-4-D sodium plant. Unit has provided inbuilt two stage water scrubber having ventury scrubber and in third stage alkali scrubber. Unit has provided common APCMs and stack with SFDs of 2-4-D Acid plant and 2-4-D Sodium plant. PH of water scrubber was @ 2 on PH strip and alkali scrubber having more than 10 on PH strip. Unit has installed APCMs on the terrace of 2-4-D plant; height of terrace from ground level is @ 25 metre. Total stack height from ground level is @ 5 metre.

- ii. During inspection SFDs of 2-4-D Acid plant and 2-4-D Sodium plant are observed in operation. Sampling of stack attached to SFDs of 2-4-D Acid plant and 2-4-D Sodium plant (dryer) is carried out. Unit has provided primary, secondary and tertiary ETP units. ETP units are observed in operation during inspection. One waste water sample is taken from final outlet ETP. Treated waste water is discharged into GIDC underground drainage line. ETP sludge observed stored in Hazardous waste storage area, backside of Hazardous waste storage area in open, and near filter press. Brownish colored stagnant alkaine waste water observed into storm water drain within premises near 2-4-D plant. They are instructed to lift waste water from storm water drain and transfer into ETP for treatment.
- iii. Production of this unit as per details provided by unit:
 - July 2016 (1) 2-4-Di Chlorophenoxy acetic acid – 218.310 MT (2) 2-4-D Dimethylamine – 147.8 KL (3) MPB – 146.925 MT (4) 2-4-D sodium salt – 24.0 MT (5) Cypermethrin Tech – 98.721 MT (6) Potasium chloride – 275.490 MT (7) Aluminium Chloride – 631.56 MT.
 - August 2016 (1) 2-4-Di Chlorophenoxy acetic acid – 151.8 MT (2) 2-4-D Dimethylamine – 146.8 KL (3) MPB – 130.275 MT (4) Cypermethrin Tech – 93.585 MT (5)

II

Potassium chloride – 254.00 MT (6) Aluminium Chloride – 626.39 MT.

- September 2016 (1) 2-4-D Dimethylamine – 144.0 KL (2) MPB – 134.1 MT (3) Cypermethrin Tech – 93.35 MT (4) Potassium chloride – 287.64 MT (7) Aluminium Chloride – 592.5 MT. [590]-09-11-2016

- iv. **Reply: Industry has applied for upgradation for APPCM 10/11/2016**

Copy of inspection report dated 25/10/2016 carried out by respondent Gujarat Pollution Control Board of the industrial unit of respondent Meghmani Organic Ltd is annexed hereto as **ANNEXURE-L.**

From the compliance observed as reflected in the inspection memo, it is borne out, subject to correction, inspite of closure order and a subsequent modification, the production of 2-4-D and 2-4-DB have continued in metric tonnes and the respondent GPCB categorically observes that their earlier directions have not been complied with by writing “still pending” in the category instruction status. This shows that respondent Meghmani Organic Ltd went on to produce 2-4-D and 2-4-DB all throughout the closure and respondent Gujarat Pollution Control Board did not take any action for such flagrant violation of such closure order.

This leads the petitioners to believe that respondent private company and respondent Gujarat Pollution Control Board are hand in glove in pollution and allowing pollution to flourish at the cost of severe damage to agricultural crops and other environmental damages.

- 4.24. **On 27/03/2017, subject to correction, the closure order passed on 28/06/2016 ‘on paper’ which was never implemented upon inspite of repeated inspection was lifted.**

On 27/03/2017, respondent GPCB declared analysis of report of 2-4-Di Chlorophenxy ascetic acid of air samples collected from different places of Vagra taluka on 08/06/2016 to 09/06/2016. The sample analysis categorically finds the concentration of 2-4-D in the air samples collected from five different villages of Vagra taluka. This shows beyond reasonable doubt that in June 2016, respondent Meghmani Organic Ltd in the process of manufacturing 2-4-D and 2-4-DB did emit in the air and its presence was found out in the air samples collected from 5 villages of Vagra taluka namely Jhaniyadara, Vahiya, Akhod, Pakhajan and Pipalia.

Copy of analysis of report by respondent GPCB declared 27/03/2017 is annexed hereto as **ANNEXURE-M.**

The reason why sample report came late was that even the respondent GPCB wanted, for the reasons best known to it, polluting unit to start its production again for obvious reasons no matter what could be the impact of such hazardous production and subsequent emission of chemical particles in the air is on flora and fauna.

- 4.25. Immediately after 27/03/2017, the respondent GPCB sent its sample analysis to the respondent Collector, Bharuch with following observation amongst others:

“ That the analysis of samples collected from 5 different villages of Vagra taluka categorically shows the presence of 2-4-D acid in the air. What is the effect of such air pollution on cotton crop is for department of agriculture to decide and their opinion may be sought”

Copy of the letter written by respondent GPCB immediately after 27/03/2017 to the respondent Collector is annexed hereto as **ANNEXURE-N.**

4.26. In May 2017, based on the application of respondent Meghmani Organic Ltd (*hereinafter referred as 'MOL'*) dated 15/11/2016 for change in product mix and thereby seeking amendment to Consent to Establish (CTE) u/s. 25 of the Water Act 1974 and sec. 21 of the Air Act 1981, on 31/03/2017 the respondent GPCB amended the CTE dated 22/02/2013 and amended CTE was thereafter read as under:

Note: Reading the amended CTE would clearly lead to believe that it is not the change in product mix for which the application was primarily made. It was actually for increase in the production capacity also into 2-4-Di Chloro Phenoxy acetic acid and other pollution causing chemicals. Why in the guise of amendment in the product mix increase in the production of pesticides and related ingredients should be granted in the backdrop of closure for causing serious air pollution is a question with an obvious answer. The very unit was closed down though the closure order was consistently ignored by the respondent unit, subject to correction.

In other words, premium was paid by permitting multifold increase in the production of pesticide and weedicide which have in the manufacturing process at the respondent MOL caused serious air pollution affecting agricultural crops besides flora and fauna.

This means if you cause more pollution, respondent GPCB would grant permission for increase in the production capacity.

Sr. No.	Description	Quantity (MT/Month)		
		Existing	Proposed	Total
A) 2-4 D Plant				
1.	2, 4 D Ester	50	00	50
2.	2,4 D Amine	150	00	150

3.	2,4 Di Chloro Phenoxy Acetic Acid	450	250	700
4.	2,4 D Sodium	200	(-)100	100
Other Plant				
5.	MCA (Mono Chloro Acetic Acid)	1000	(-)600	400
6.	Cypermethrin	100	100	200
7.	MPB	150	00	150
8.	Permethrin	50	00	50
Sub-Total (A)		2150	-350	1800
B) NEW ADDITIONAL PRODUCTS				
9.	Profenophos	0	200	200
10.	Zeta Cyper	0	50	50
11.	Diafenthuron	0	100	100
Sub-Total (B)		0	350	350
Total (A+B)		2150	00	2150
C) POWER PLANT				
12.	Electricity through gas based power plant	2 MW	-	2 MW
13.	Steam generation as based power plant	8 Ton/hr	-	8 Ton/hr

Copy of Order dated 31/05/2017 of respondent GPCB amending the Consent to Establish in the name of change in the product mix is annexed hereto as **ANNEXURE-O**.

4.27. In August 2017, respondent Ministry of Environment, Forest and Climate Change, Govt. of India issued Term of Reference to respondent MOL for proposed expansion in production capacity of existing products and addition of new products.

Copy of Terms of Reference (TOR) issued by Ministry of Environment, Forest and Climate Change, Govt. of India dated 24/08/2017 is annexed hereto as **ANNEXURE-P**.

4.28. In the year December 2017, Respondent CPCB issued a direction u/s. 5 of Environment (Protection) Act 1986, based on the inspection carried on by its officers in October 2017.

Following non-compliance were observed by the inspection team:

- I. *Treated effluent discharge is exceeding norms (BOD – 242 > 200 Mg/l & NH₃-N-161.5 > 50 mg/l)*
- II. *Emission from boiler stack exceed the prescribed limit for PM (125 > 100 mg/Nm³)*
- III. *The unit has leaching reactor in the process area. Wastewater logging was observed in several locations. Low COD effluent was spread in all four manufacturing division and flowing to drain near main gate. At some place drainage observed chocked leading to overflow.*
- IV. *Near captive MEE, leachate was found accumulated.*
- V. *Large amount of ETP sludge was kept inside shed & outside (the shed) within premises.*
- VI. *It is also evident from photographs enclosed with report that the unit is improperly storing hazardous wastes including ETP sludge, fly ash etc. in open area*

Based on the aforesaid observations, direction was given in November 2017 to close down all operational activities till compliance of the directions issued is achieved, and the directions were:

1. *The unit shall upgrade its ETP & submit ETP adequacy report from any government institution, so that treated effluent conforms to prescribed standards.*
2. *The unit shall upgrade Air Pollution Control System of boiler stack so that emission may not exceed prescribed limit.*
3. *The unit shall ensure that there should be no leakage in process area.*
4. *The unit shall ensure that there should be no leakage of effluent and shall take necessary steps to prevent mixing of storm water with trade effluent.*
5. *The unit shall store & dispose hazardous waste in scientific manner and maintain the record as per Hazardous and other Wastes (Management & Transboundary Movement Rules), 2016.*

Thereafter respondent MOL gave an undertaking of the compliance with regard to direction issued by CPCB and also acknowledged that if its plant is found non-compliance during verification by the officers of respondent CPCB, the unit accepts that it will close down its operations immediately and shall not operate till full compliance is achieved.

After further inspection was carried out, revocation of closure order was recommended. Based on such recommendations, closure order by respondent CPCB in November 2017 was revoked on 22/12/2017 subject to conditions.

Copy of the revocation of a closure order dated 22/12/2017 passed by Central Pollution Control Board (CPCB) is annexed hereto as **ANNEXURE-Q.**

4.29. The monitoring of the respondent unit in November 2017, monitoring of the implementation of environmental safeguards and the descriptive report on status of compliance between May 2017 to October 2017, was disclosed by way of monitoring report in April 2018.

Copy of the monitoring of the implementation of environmental safeguards and the descriptive report on status of compliance between May 2017 to October 2017 are annexed hereto as **ANNEXURE-R.**

Relevant extract of status compliance is as under:

v.	The gaseous emission (So ₂ , NO _x , HCl, VOC and HC) along with RSPM and SPM from various process units and work environment shall be monitoring regularly and shall conform to the	The PP vide letter dated 30.01.2018 submitted that “We are regularly monitoring gaseous emission like HCL, CL and PM through NABL accredited laboratory and quality of emission is conform the permissible limit, Analysis, Reports
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	<p>standard prescribed by the concerned authorities from time to time.</p> <p>At no time the emission levels shall go beyond the stipulated standards.</p> <p>In the events of failure of pollution control system adopted by the unit, the respective unit shall not be restarted until the control measures are rectified to achieve the desired efficiency.</p>	<p>are enclosed as Annexure O in the main report. Summary of emission quality is as under:</p> <p>Analysis Reports of gaseous, emission samples collected during Jan-2017 to Oct-2017 shows that concentration of parameters are not exceeding the prescribed standards. Summary of emission quality is as under. Annexure O in the main report.</p> <p>No failure occurred in APAM during last three years. We are operating and maintain pollution control measures regularly in order to achieve prescribed norms. We assure that in the event of failure of pollution control system, we will not restarted process unit control measures are rectified to achieve desired norms. We have provided auto control system. Annexure O in the main report.</p>
vi.	<p>The proponent shall upload the status of compliance of stipulated environment clearance conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Officer of MOEF, the respective zonal office of CPCB and the State Pollution Control Board.</p> <p>The criteria pollutant levels namely SP, RSPM, and SO₂, NO_x (ambient levels as well as stack emission) or critical sectorial parameter, indicate for the project shall be monitoring and displayed at a convenient location near the main gate of the company in the public domain.</p>	<p>The PP vide letter dated 30.01.2018 submitted that – “We have submitted compliance report to MOEF Bhopal on dated 16.6.2017. Now onward, we assure that we will upload status of compliance of stipulated environment Clearance conditions, including results of monitored data on its website and will update the same periodically and simultaneousl be sent to the Regional Officer of MOEF, the respective zonal office of CPCB and the State Pollution Control Board.</p> <p>The criteria pollutant levels namely SPM, RSPM and SO₂, NO_x (ambient levels as well as stack emission) or critical sectorial parameter lie HCL & CL indicate for the project are monitored every month through NABL accredited laboratory and displaed at a convenient location near the main gate of the company. A photograph of display board is enclosed as ANNEXURE: S in the main report. Analysis Report of AAQ enclosed as ANNEXURE N in the main report. Summary of Ambient air quality is as under:</p>
vii	<p>The company shall provide monitoring arrangement with all the vents for monitoring of (SO₂, NO_x, HCL, VOC,</p>	<p>The PP vide letter dated 30.01.2018 submitted that – “we have provided stack monitoring system with all the vents for monitoring of (SO₂,</p>

PP

	<p>HC) along with PM, RSPM and SPM and</p> <p>Reports shall be submitted to the SPCB/CPCB and Ministry's Regional office at Bhopal</p>	<p>NOx, HCL, VOC and HC) along with RSPM and SPM. We also provided online emission monitoring system. Photographs of stack monitoring facility and continuous online monitoring system are enclosed as Annexure A6 in the main report.</p> <p>We have submitted to the Ministry's Regional officer at Bhopal on dated 16.6.2017. We also submitted analysis reports to GPCB on dated 1.12.2017. Copy of acknowledgment enclosed herewith. Now onward we will submit periodically analysis reports to SPCB and MoEF Bhopal. Annexure T & U in the main report.</p> <p>In view of the above information furnished by the PP, the condition is considered as complied subject to submission of PM2.5 monitoring results.</p>
x.	<p>The heights of stacks shall be as per the CPCB guidelines.</p> <p>For control of process emission like HCL and CL2 etc. High efficiency alkali scrubbers shall be provided with each reactor.</p>	<p>The PP vide letter dated 30.01.2018 submitted that – “We have provided adequate stacks heights as per the CPCB guidelines. Details of Stack heights are as under:</p> <p>We have provided High efficiency alkali scrubbers with each reactor For control of process emission like HCL and CL2etc Details of scrubber are given as Annexure I in the main report.</p>
Xiii	<p>Fugitive emission in the work zone environment, product, raw material storage area etc shall be regularly monitored.</p> <p>The emission shall be conforming to the limits imposed by SPCB</p>	<p>The PP vide letter dated 30.01.2018 submitted that – “Work zone monitoring has been conducted by external agency under Factory Act. Analysis Reports are enclosed as Annexure Y in the main report.</p> <p>The result of work zone monitoring are as shown in following table. Result indicates that the emission quality is conforming to the limits imposed. Annexure Y in the main report.</p> <p>In view of the submission by the PP, the condition is considered as complied.</p> <p>COMPLIED</p>
xiv	<p>All venting equipment shall have vapour recovery system. All the pumps and other equipments where there is a</p>	<p>The PP vide letter dated 30.01.2018 submitted that – “All venting equipments are attached with vapor recovery system. All the pumps and other</p>

	<p>likelihood of HC leakage shall be provided with Leak Detection and Repair (LDAR) system and LEL indicators and hydrocarbon detectors.</p> <p>Provision for immediate isolation of such equipment. In case of a leakage will also be made.</p> <p>The company shall provide a well defined Leak Detection and Repair (LDAR) programme for quantification and control of fugitive emission. The detectors sensitivity will be in ppm levels.</p>	<p>equipments where there is a like hood of HC leakage are also provided with Leak Detection and Repair (LDAR) system and LEL indicators.</p> <p>Provisions for immediate isolation of such equipment, in case of a leakage also made. All the mechanical seals of pumps and reactor are monitored and maintain periodically as per preventive maintenance schedule.</p> <p>We have a well defined Leak Detection and Repair (LDAR) programme for qualification and control of fugitive emission. We have provides LDAR and LEL Detector at various places in plant. Details are as under.</p>
B.	General Condition	
iii.	<p>At no time the emissions shall exceed the prescribed limits.</p> <p>In the events of failure of any pollution control system adopted by the unit. The unit shall be immediately put out of operation and shall not be restarted unit the desired efficiency has been achieved.</p>	<p>The PP vide letter dated 30.01.2018 submitted that – “We are operating pollution control measures efficiency in order to achieve prescribed norms. Emission concentration has not been exceeding the prescribed norms. Analysis Reports enclosed as Annexure N & O in the main report.</p> <p>No failure in EMS has not been occurred during Jan-2017 to October 2017. We undertake that in case of any failure in pollution control measures, we will stop the process and will restart only after rectification of system under intimation to the GPCB.</p> <p>In view of the above submission, the condition is considered as complied subject to submission of monitoring results of PM 2.5.</p>
iv	<p>The gaseous emission (NOx, SO2 and SPM) and particular matter along with RSPM levels from various process units shall conform to the standards prescribed by the concerned authorities from time to time.</p> <p>At no time the emission levels shall go beyond the stipulated standards. In the event of failure of pollution control system (S) adopted by the unit. The respective unit shall not be restarted unit</p>	<p>The PP vide letter dated 30.01.2018 submitted that – “The gaseous emissions HCL, Cl, and particular from various process unit are conform to the standards prescribed by the concerned authorities from time to time. Summary of Analysis Reports details are as under Annexure O in the main report</p> <p>During Jan 2017 to October 2017, emission concentration has not been exceeding the prescribed norms. No failure in EMS has not been occurred. We are regularly monitoring</p>

	<p>the control measure are rectified to achieve the desired efficiency.</p>	<p>gaseous emissions like HCL, PM, and CL through NABL accredited laboratory and confirm that all the parameter. Summary of Analysis Reports details are as under Annexure O in the main report.</p>
	<p>Stack monitoring for SO₂, NO_x and SPM shall be carried</p>	<p>The PP vide letter dated 30.01.2018 submitted that – “We are regularly monitoring gaseous emission like HCL, PM and CL through NABL accredited laboratory and confirm that all the parameter summary of Anaylsis Reports details are as under:</p>
v.	<p>The location of ambient air quality monitoring stations shall be decided in Consultation with the State Pollution Control Board (SPCB) and it shall be ensured that atleast one stations is installed in the up wind and downwind direction as well as where maximum ground level concentration are anticipated</p>	<p>The PP vide letter dated 30.01.2018 submitted that – “We have selected the location for the ambient air monitoring point as covers major manufacturing activities of the site. 3 locations have been identified for monitoring of ambient air quality. Annexure N in the main report.</p> <p>We have started monitoring of PM 2.5 from Nov 2017 and summary of analysis reports are as under.</p>
vi.	<p>Dedicated scrubbers and stacks of appropriate height as per the Central Pollution Control Board guidelines shall be provided to control the emissions from various vents</p> <p>The scrubbed water shall be sent to ETP for further treatment.</p>	<p>The PP vide letter dated 30.01.2018 submitted that – “We have provided dedicated scrubber and stacks as per the Central Pollution Control Board guidelines for control of flue gas emission. Details of Scrubber and stacks are as under. Annexure I in the main report.</p> <p>Generated scrubbed media is unstable by-products (HCL and Hypochlorite therefore We are selling it to actual end-users as per Authorisation granted by GPCB.</p>
viii	<p>The Project proponent shall also comply with all the environmental protection measures and safeguards proposed in the project report submitted to the Ministry.</p> <p>All the recommendations made in respect of environmental management and risk mitigation measures to the project shall be implemented</p>	<p>The PP vide letter dated 30.01.2018 submitted that – “We complying with all the environmental protection measure and safeguards proposed in the project report submitted to the Ministry.</p> <p>All the recommendations made in respect of environmental management and risk mitigation measures relation to the project are implemented.</p> <p>However the recommendation to develop green belt is not fully complied by the PP. So the condition is considered as partly complied.</p>

xi	A separate Environmental Management cell equipped with full fledged laboratory facilities shall be set up to carry out the Environmental Management and Monitoring functions	<p>The PP vide letter dated 30.01.2018 submitted that “We have made separate environmental management cell with full-fledged laboratory facility for the analysis of pH, COD, BOD, SS, TDS, Ammonical Nitrogen parameters in the waste water, Organogram of environment management cell enclosed as Annexure A14. In the main report</p> <p>List of equipment provided in Laboratory as under</p> <p>1) Hot Air Oven Make Palel scientific instrument Size: 18” x 18” x 18” Volts 230 Watts 2000</p> <p>(2) Muffle Furnace Make Tempo Instruments Pvt Ltd Volts 230 KW 1.8 Amps: 7.5</p> <p>(3) Weighing Balance Make Shimaozu Max: 200 gms Min 10mg</p> <p>(4) Conductivity TDS Meter 308 Make Systronics</p> <p>(5) Dessicator – GLASSWARE</p> <p>(6) Heating Mantle Make Jay Scientific Instruments, Baroda</p> <p>(7) COD Digester 2015 M Make Spectralab Total 15 tubes capacity at one time</p> <p>(8) pH meter Make Digital Instruments Corporation</p> <p>(9) UV – 1800 UV Spectrophotometer Make Shimadzu</p> <p>Process/flue gas monitoring, noise monitoring, fugitive emission, VOC monitoring are monitored through NABL accredited laboratory on monthly basis.</p> <p>We have below personal are regularly carried out analysis of water in our own laboratory and reported to director.</p>
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4.30. In October 2019, Environmental Clearance (EC) was granted to respondent Meghmani Organic Ltd for setting up agro-chemical and intermediate manufacturing unit of capacity of 4600 TPM at GIDC Dehej to Vagra, Bharuch .

Relevant conditions are reproduced as under:

3. The details of products are as under:

Group	S. No	Product	Capacity
A	1.	2,4 D Dichloro Phenoxy Acetic Acid	1000
	2.	2,4 D Amine	
	3.	2,4 D Ester	
	4.	2,4 D Sodium	
	5.	Triclopy-Acid	
	6.	Triclopy-Ester	

10. Based on the proposal submitted by the project proponent and recommendations of the EAC (Industry-2) Ministry of Environment, Forest and Climate Change hereby accords environmental clearance to the project for Setting up agrochemicals and intermediates manufacturing unit of capacity 4600 TPM by M/s. Meghmani Organics Ltd. (Unit-V) at plot no. D-2/CH/10, GIDC Dahej-2, Taluka Vagra, District Bharuch (Gujarat), under the provisions of the EIA Notification, 2006 subject to the compliance of terms and conditions as under:

(v) **National Emission Standards for Pesticides Manufacturing Industry issued by the Ministry vide GSR 446 (E) dated 13th June, 2011 as amended from time to time shall be followed.**

(vi) **No pesticide/chemicals banned by the Ministry of Agriculture and Farmers Welfare, or having LD50<100 mg/kg shall be produced. Also no raw material/solvent prohibited by the concerned regulatory authorities from time to time, shall be used for production of pesticides.**

(vii) To control source and the fugitive emissions, suitable pollution control devices shall be installed to meet the prescribed norms and/or the NAAQS. The gaseous emissions shall be dispersed through stack of adequate height as per CPCB/SPCB guidelines.

(xii) The company shall strictly comply with the rules and guidelines under Manufacture, storage and import of Hazardous Chemicals (MSIHC) Rules 1989 as amended time to time. All transportation of Hazardous Chemicals shall be as per the Motor Vehicle Act 1989.

(xxi) Continuous online (24x7) monitoring system for stack emissions shall be installed for measurement of flue gas discharge

and the pollutants concentration, and the data to be transmitted to the CPCB and SPCB server. For online continuous monitoring of effluent, the unit shall install web camera with night vision capability and flow meters in the channel/drain carrying effluent within the premises.

(xxii) Mitigating measures suggested during process safety and risk assessment studies shall be carried out.

10.1 The grant of environmental clearance is further subject to compliance of other generic conditions as under:-

(ii) No further expansion or modification in the plant shall be carried out without prior approval of the Ministry of Environment, Forest and Climate Change. In case of deviations or alterations in the project proposal from those submitted to this Ministry for clearance, a fresh reference shall be made to the Ministry to assess the adequacy of conditions imposed and to add additional environmental protection measures required, if any.

(iii) The locations of ambient air quality monitoring stations shall be decided in consultation with the State Pollution Control Board (SPCB) and it shall be ensured that at least one station each is installed in the upwind and downwind direction as well as where maximum ground level concentrations are anticipated.

(viii) The company shall comply with all the environmental protection measures and safeguards proposed in the documents submitted to the Ministry. All the recommendations made in the EIA/EMP in respect of environmental management, risk mitigation measures and public hearing shall be implemented.

(x) A separate Environmental Management Cell equipped with full-fledged laboratory facilities shall be set up to carry out the Environmental Management and Monitoring functions.

(xi) The company shall earmark sufficient funds towards capital costs and recurring cost per annum to implement the conditions stipulated by the Ministry of Environment, Forest and Climate Change as well as the State Government along with the implementation schedule for all the conditions stipulated herein. The funds so earmarked for environment management/pollution control measures shall not be diverted for any other purpose.

(xiii) The project proponent shall also submit six monthly report on the status of compliance of the stipulated Environmental Clearance conditions including results of monitored data (both in hard copies as well as by email) to the respective Regional Office of MoEF&CC, the respective Zonal Office of CPCB and SPCB. A copy of

Environmental Clearance and six monthly compliance status report shall be posted on the website of the company.

(xiv) The environmental statement for each financial year ending 31st March in Form-V as is mandated shall be submitted to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules 1986 as amended subsequently, shall also be put on the website of the company along with the status of compliance of environmental clearance conditions and shall also be sent to the respective Regional office of the Ministry.”

- 4.31. **In the year 2020, one Raj Ajitsinh on 08/10/2020 made complaint about damage his crop on account of 2-4-D manufacturing industry in Vagra taluka. Thereafter, inspection was carried out on 30/10/2020 by respondent GPCB of the industrial unit of respondent Meghmani Organic Ltd, at Dahej, Taluka Vagra. The instruction in the previous visits in compliance with instruction status are reflective of the condition of the plant of the respondent company there at Dahej Vagra.**

The principal observations made after site inspection of industrial unit Meghmani Organic Ltd is as under:

*“ In 2-4-D plant, manufacturing of 2-4-D acid and 2-4-D amine is observed going on. Unit has provided one stack with chlorination reaction vessel in 2-4-D plant. **Two stage water scrubber followed by alkali scrubber and ventury is provided as APCM with stack attached to chlorination reaction vessel.** In reaction vessel, chlorination observed going on and provided APCM are observed in operation. One stack sample is carried out from stack attached to chlorination reactor in 2-4-D plant to check the emission of HCl and Cl₂. Unit has provided one SFD (dryer) in 2-4-D plant. **Unit has provided two stage water scrubber followed by alkali scrubber and ventury as APCM with stack attached to SFD of 2-4-D acid in 2-4-D plant.** During visit, SFD and provided APCM are observed in operation. One stack sample is carried out from stack attached to SFD of 2-4-D acid to check the emission of PM, HCl.”*

Copy of the inspection report dated 30/10/2020 is annexed hereto as **ANNEXURE-S.**

- 4.32. Based on inspection dated 30/10/2020 by respondent GPCB, a show cause notice was given on 09/02/2021 to respondent Meghmani Organic Ltd. The show cause notice states that during the inspection, “huge foaming was observed in aeration tank-1 of ETP”. The show cause notice further calls upon the respondent company to explain why legal action should not be initiated as per the provisions of Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act 1981 and Hazardous Waste (Management, Handling & Transboundary Movement) Rules 2008 and it may include rejection of application of Meghmani Organic Ltd and suspension/closure of its unit.

Copy of show cause notice dated 09/02/2021 is annexed hereto as **ANNEXURE-T.**

- 4.33. Pursuant to large scale complaint of air pollution causing damage to the cotton crop in more than 4 talukas of Bharuch District, few inspections were carried out of the industrial plant of respondent Meghmani Organic Ltd. One of the inspection was carried out on 30/07/2021.

The inspection report is as under:

- i. The unit is inspected with reference to complaint of air pollution from 2-4-D plant. During inspection, unit is found working and drying operation of 2-4-D Acid is going on in old plant of 2-4-D plant through Spin Flash Dryer (SFD).
- ii. The APCM provided with SFD is observed in operation. During inspection, it was observed that unit has shifted some of chlorination reactors from old plant to new plan and

installation of some reactors for chlorination is going in new plant of 2-4-D plant.

- iii. Unit has been instructed for same and also instructed to submit Chartered Engineer certificate for product wise production. In new plant of 2-4-D, unit has newly installed two process stack (existing one process stack with chlorination reactor is removed) with reactors of chlorination, unit has installed two stage water scrubber followed by alkali scrubber & ventury as APCM.
- iv. During inspection, chlorination section is found in operation.
- v. During inspection intense odour of phenol is felt in chlorination section, unit has been instructed to rectify the same. Unit has provided one SFD of 2-4-D Acid/2-4-D sodium in new plan of 2-4-D plant and during inspection this SFD is found not in operation.
- vi. Unit has not installed APCM with this SFD as per CCA condition no. 4.2 (Sr. 8).
- vii. Unit has been instructed for same and also instructed to increase stack height of process stack.
- viii. During inspection, wind direction in from South-west to North-east and ambient air quality found normal.”

Specific instructions were given and they are:

- i. That, clarification is required as to why two process stacks are set-up in chlorination section of the 2-4-D plant whereas there is only one process stack in CCA. Further clarification is required as to why the height of process stack is more than what is permitted.
- ii. To provide certificate of chartered engineer with regard to product wise production capacity in your production unit.
- iii. According to CCA obtained by you and as per the process stack no. 8, SFD of 2-4-D Acid/2-4-D Sodium along with APCM two stage water scrubber followed by Alkali scrubber

and ventury is not established for which a clarification is required

- iv. If the odour increases in the Chlorination section, then take necessary action
- v. During inspection, it was observed that, unit has shifted chlorination reactors from old plant from old plant to new plant and installation of some reactors for chlorination is going on in new plant of 2-4-D plant. Kindly clarify the same.

Copy of the inspection report dated 30/07/2021 is annexed hereto as **ANNEXURE-U**

That on 30/07/2021, the inspection was carried out of the respondent Meghmani Organic Ltd by the authorized officers of the Board, following things were noticed:

- i. Analysis report of sample collected from stack attached to SFD (Spray dryer) of 2-4-D Acid/2-4-D sodium (old plant) shows PM: 33.3 mg/nm³ which is higher than norms (i.e. 20mg/nm³)
- ii. Unit has not installed APCM with SFD of 2-4-D Acid/2-4-D sodium in new plant of 2-4-D plant as per CCA condition no. 4.2 (sr. 8)
- iii. Intense odour of phenol is felt in chlorination section.
- iv. It is observed that unit has shifted ome of chlorination reactors from old plant to new plant and installation of some reactors for chlorination is going on in new plant of 2-4-D plant. Unit has not submitted any clarification for the same

Therefore, the Dy. Environment engineer of the respondent GPCB issued a notice dated 11/08/2021 to the respondent Meghmani Organics Ltd. u/s. 31A of the Air Act as under:

- a. Why not to issue direction under section 31A of the Air (Prevention and control of pollution) Act 1981 to prohibit you from manufacturing activity?
- b. Why not to direct to concern authority for disconnection of Power supply & Water supply of power supply of your industrial plant?

Copy of Notice dated 11/08/2021 by respondent GPCB is annexed hereto as **ANNEXURE-V**.

4.34. It is stated and submitted that there are serious contradiction between the report submitted in the year 2020 and report submitted in the year 2021. This further justifies the claim of the petitioners that the authorities of respondent GPCB were hand in glove with the respondent Meghmani Organics Ltd.

That, following contradictions are seen on the face of the report submitted by the GPCB:

<u>2020</u>	<u>2021</u>
<u>Report submitted by inspection team Ajaybhai Harshanbhai Vasava- R P Buha, SSA</u>	<u>Report submitted by Niraj Patel, Patel Nancy, A, AEE-R P Buha, SSA</u>
- APCM are in operation - During visit, SFD are observed in operation	- Unit has not installed APCM - During inspection SFD is found not in operation

Note:

APCM – Air Pollution Control Measure

SFD – Spin Flash Dryer

In view of aforementioned, contradiction on the face of two inspection report is amply clear that the report of the year 2020 is false and/or frivolous and same is prepared by a government officer exercising statutory power coupled with duty under the respective environment legislations working for respondent GPCB. However, the fact suggests that the concerned officers are actually working hand in glove with respondent Meghmani Organic Ltd facing serious allegations of constant and persistent environmental pollution. In other words, the concern officer working with respondent GPCB at Bharuch district has infact failed to control the pollution but has contributed in increasing the pollution that has very wide and serious ramification on the agricultural crops and livelihood of thousands of farmers.

Generally motivation for preparing of such false and frivolous report is corruption or some sort of gratification but in any form same is in violation of provisions of Prevention of Corruption Act 1988. However, it is a matter of investigation. Perhaps, in 2020 if such false and frivolous report had not been prepared, the disastrous air pollution causing havoc of the agricultural crops affecting thousands of farmers in hundreds of village across the talukas of Bharuch district would not have **happened** or could have been prevented.

- 4.35. The respondent Ministry of Environment, Forest and Climate Change [MoEF] accorded environmental clearance in the year 2009 to the respondent Meghmani Organic Ltd unit no. 3 Agro division.

Copy of the Environmental Clearance dated 13/04/2009 is annexed hereto as **ANNEXURE-W**.

The Environmental clearance was accorded in the year 2009 for following products:

BBB

<u>Sr.</u> <u>No.</u>	<u>Product</u>	<u>Capacity</u>
1.	2-4-D Esters	50
2.	2-4-D Amine	150
3.	Mono Chloro Acetic Acid	1000
4.	2-4-Di Chloro Phenoxy Acetic Acid	800
5.	Tri Chloro Acetyl Chloride	300
6.	5 Chloro Ortho Hydroxy Benzoic Acid	300
7.	Chlorinated Rubber	150
8.	Di Methyl Phosphoro Amino Thioate (DMPAT)	300
9.	Mono Chloro Benzene (MCB)	900
10.	Polly Aluminum Chloride	750
11.	Sulphur Mono Chloride (SMC)	600
12.	Thionyl Chloride	600
13.	Carboxy Methyl Cellulose Sodium Salt	300
Total		6200
By Products		
1.	HCl	9675
2.	Hypo	1450
3.	Sodium Sulphite	350

Some of the relevant aspects and specific and general condition of the Environmental clearance granted to respondent Meghmani Organic Ltd are as under:

- i. The manufacturing activity of respondent Meghmani Organic Ltd in so far as pesticide and weedicide are concerned, they fall within Schedule 5(b) of EIA Notification, 2006. Clause 5 is relating to manufacturing and fabrication. 5(a) is with regard to chemical fertilizer. 5(b) is about pesticide industry and pesticide specific intermediates (excluding formulation). As

per the EIA Notification and in schedule 5(b), all units producing technical grade pesticide have to get environmental clearance from respondent Ministry of Environment, Forest and Climate Change. Therefore, respondent Meghmani Organic Ltd in so far as it produces pesticides and other technical grade pesticide is “A” category project.

ii. Specific Condition (relevant):

- “(v) The gaseous emissions (SO₂, NO_x, HCl, HC and VOC) along with SPM and RSPM from various process units and work environment shall be monitored regularly and shall conform to the standards prescribed by the concerned authorities from time to time. At no time, the emission levels shall go beyond the stipulated standards in the event of failure of pollution control system(s) adopted by the unit, the respective unit shall not be restarted until the control measures are rectified to achieve the desired efficiency.*
- (vi) The proponent shall upload the status of compliance of the stipulated environmental clearance conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional office of MOEF, the respective Zonal office of CPCB and the State Pollution Control Board. The criteria pollutant levels namely; SPM, RSPM, SO₂, NO_x (ambient levels as well as stack emissions) or critical sectoral parameters, indicated for the project shall be monitored and displayed at a convenient location near the main gate of the company in the public domain.*
- (vii) The company shall provide the monitoring arrangement with all the vents for monitoring of (SO₂, NO_x, HCl, HC and VOC) along with PM, SPM and RSPM and reports shall be submitted to the SPCB, CPCB and Ministry’s Regional Office at Bhopal.*
- (viii) Chilled Brine Secondary Condensers shall be provided for control of evaporation of low boiling solvents.*
- (ix) Standards notified for pesticides unit under the Environment (Protection) Act 1986 and amended time to time shall be followed by the Unit.*
- (x) The height of stacks shall be as per the GPCB guidelines. For control of process emissions like HCl and Cl₂ etc*

DDD

high efficiency skill scrubbers shall be provided with each reactor.

- (xiii) Fugitive emissions in the work zone environment, product, raw materials storage area etc shall be regularly monitored. The emissions shall conform to the limits imposed by MPPCB.*
- (xiv) All venting equipment shall have vapour recovery system. All the pumps and other equipment's where there is a likelihood of HO leakages shall be provided with Leak Detection and Repair (LDAR) system and LEL indicators and Hydrocarbon detectors. Provision for immediate isolation of such equipment in case of a leakage will also be made. The company shall provide a well defined Leak Detection and Repair (LDAR) programme for quantification and control of fugitive emissions. The detectors sensitivity will be ppm levels."*

iii. General Condition (relevant):

- "ii. No further expansion or modifications in the plant shall be carried out without prior approval of the Ministry of Environmental and Forests. In case of deviations or alterations in the project proposal from those submitted to this Ministry of clearance, a fresh reference shall be made to the Ministry to assess the adequacy of conditions imposed and to add additional environmental protection measures requires, if any.*
- iii At no time, the emissions shall exceed the prescribed limits. In the event of failure of any pollution control system adopted by the unit, the unit shall be immediately put out of operation and shall not be restarted until the desired efficiency has been achieved.*
- iv The gaseous emissions (NO_x, SO₂ and SPM) and Particulate matter along with RSPM levels from various process units shall conform to the standards prescribed by the concerned authorities from time to time. At no time, the emission levels shall go beyond the stipulated standards. In the event of failure of pollution control system(s) adopted by the unit, the respective unit shall not be restarted until the control measures are rectified to achieve the desired efficiency. Stack monitoring for SO₂, NO_x and SPM shall be carried.*

EEE

- v. *The locations of ambient air quality monitoring stations shall be decided in consultation with the State Pollution Control Board (SPCB) and it shall be ensured that at least one stations is installed. In the up wind and downwind direction as well as where maximum ground level concentrations are anticipated.*
 - vi. *Dedicated scrubber and stacks of appropriate height as per the Central Pollution Control Board guidelines shall be provided to control the emissions from various vents. The scrubbed water shall be sent to ETP for further treatment.*
 - viii. *The project proponent shall also comply with all the environmental protection measures and safeguards proposed in the project report submitted to the Ministry. All the recommendations made in respect of environmental management and risk mitigation relating to the project shall be implemented.*
 - xi. *A separate Environmental Management cell equipped with full fledged laboratory facilities shall be set up to carry out the Environmental Management and Monitoring functions.*
 - xiii. *The implementation of the project vis-à-vis environmental action plans shall be monitored by the concerned Regional Office of the Ministry/SPCB/CPCB. A six monthly compliance status report shall be submitted to monitoring agencies and shall be posted on the website of the Company.*
 - xv. *The project proponent shall also submit six monthly reports on the status of compliance of the stipulated EC conditions including results of monitored date (both in hard copies as well as by email) to the respective Regional Office of MoEF, the respective Zonal Office of CPCB and the State Pollution Control Board.*
- 8.0 *The Ministry may revoke or suspend the clearance, if implementation of any of the above condition is not satisfactory.*
- 9.0 *The Ministry reserves the right to stipulate additional conditions, if found necessary. The company in a time bound manner will implement these conditions.*

11.0 The above conditions will be enforced, inter-alia, under the provisions of the Water (Prevention & Control of Pollution) Act 1974, Air (Prevention & Control of Water Pollution) Act 1981, the Environment (Protection) Act 1986, Hazardous Wastes (Management and Handling) Rules 2003/2008 and the Public Liability Insurance Act 1981 along with their amendments and rules.”

4.36. It is stated and submitted that from the show cause notices issued by respondent Gujarat Pollution Control Board to the respondent Meghmani Organic Ltd, reports of agriculture department, analysis of samples taken by respondent GPCB and consistent complaints on the part of farmers facing air pollution due to deliberate process emission by the respondent Meghmani Organic Ltd from 2011-12 till date, the respondent unit has been knowingly and consciously violating the conditions of Environmental Clearance resulting into serious air pollution which has affected agricultural crops over a period of one decade taking away livelihood of thousands of farmers year after year. It is also borne out that respondent Gujarat Pollution Control Board and particularly District unit of respondent GPCB has failed to take prompt and effective steps to prevent such air pollution. In fact, there is a statutory dereliction of duty of respondent GPCB and its Bharuch District unit in particular. The problem of air pollution caused by respondent unit year after year inspite of so many show cause notices, inspections, inquires, scientific analysis of sample and reports of agricultural department suggests that the regional officers, former and present, of Bharuch unit of respondent GPCB namely A.V Shah who at present is a Member Secretary at Gujarat Pollution Control Board sitting at Gandhinagar looking after entire State of Gujarat and respondent F.M Modi have chosen to allow air pollution to continue at the cost of environment and the livelihood of farmers besides other and further serious impact of such air pollution on flora and fauna, surface water as well as on the human kind. They have chosen not to take preventive, redressive and

correctional steps not only stipulated in the Environmental clearance but in the respective environmental legislations namely Air Act, Environmental (Protection) Act and so and so forth. This dereliction of duty or failure to take effective and meaningful preventive, redressive and correctional steps suggests that these officers are intellectually corrupt and committing misconducts as government servants. Their inaction or lack of adequate action is malicious. Whether they have taken financial benefits from respondent Meghmani Organic Ltd is a matter of investigation for their inaction or lack of adequate action.

- 4.37. That, to the utter shock of farmers, on 16/10/2021, unit head of Bharuch unit of GPCB addressed a letter to the Dy. Secretary, Department of Environment and Forest, State of Gujarat, stating that the damage and destruction to the crops as complained is not because of industrial pollution caused by the private unit in question but because of inadequate rain and use of 2-4-D and 2-4-DB are chemicals as Weedicide by the farmers. The very communication was provided after about a month under RTI to the petitioners.

Copy of the communication dated 16/10/2021 is annexed hereto as ANNEXURE-X.

- 4.38. That, unlike expert committee, the respondent GPCB is of the opinion that the affected farmers use Weedicide and pesticide on the entire crop so as to deliberately damage them. That, more than 15,000 farmers have been sprinkling weedicide on the entire crop because they are so inefficient, and in the process they have destroyed or adversely affected in 280 villages in about 3,00,000 acres of land. The expert committee and particularly scientists of agricultural universities have been reporting that even big trees like Almonds, Acacias, Khijdo and Neem also get adversely affected,

face deformation and dries up. Who sprinkles a weedicide on such big trees and why is not stated by respondent GPCB.

This shows that respondent GPCB is protecting the respondent private unit for reasons best known to them. The present secretary of respondent GPCB Mr. A.V Shah was there in Bharuch unit of GPCB for years together and so long he was there, nothing substantive or constructive happened towards curbing the very industrial pollution which otherwise is reoccurring on a regular basis. In fact, the pollution has been completely neglected by the respondents and premium is paid to the respondent private unit by allowing it to expand and enhance its production. The industrial pollution also in process is increasing and destroying the crops of farmers and in the process their means of livelihood is taken away.

4.39. The Gujarat Pollution Causing Board which is otherwise known as Gujarat Pollution Control Board has almost remained a mute spectator and in the process has established that it works for industries and not for sustainable development just as the GPCB is responsible for the pollution of Sabarmati river it is equally responsible along with respondent private industry for the emission of toxic chemical in air which has destroyed the crops in question.

4.40. As the GPCB was left with no other option it issued a show cause notice for violation of environmental norms to respondent private industries in August 2021. The show cause notice stipulates what are the violations according to GPCB. As the last show cause notice is nothing but creation of paper tiger on the part of respondent GPCB the petitioner farmers do not expect any further action from respondent GPCB to ensure that such emissions do not take place in future at all. Such notices have been given in past on several occasions but after every such show cause notice including closure the emissions have continued and they have in past in varying extent

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affected the agricultural crops. In spite of repeated requests on part of the petitioner farmers and personal meetings neither the district unit nor the state GPCB is ready and willing to provide report to petitioners. The representative of petitioner organization made Mr. A V Shah, Member Secretary of respondent GPCB who was kind enough not to give any reply.

4.41. In the facts and circumstances stated herein above, the petitioners say and submit that affected farmers (i) be compensated for the loss they have sustained on account of industrial pollution and (ii) that the respondent private industry be permanently restrained from manufacturing 2-4-D and 2-4-DB are chemicals which are used as “Weedicide”.

4.42. Pollution going on at present:

The petitioner states that the pollution is going on at present. The record of respondent GPCB may say anything otherwise but even the winter crop of the farmer is being affected depending upon wind velocity and other material and relevant factor which are responsible for taking the process emission and production emission not only to the surrounding areas but to the distant places. The winter crop therefore also will be affected for sure. The respondent state authorities after the conclusion of respondent GPCB dated 16/10/2021 has stopped paying attention even to the aspect to payment of compensation for which the process had already been started with the office of respondent Collector. Moreover, the respondent private unit is no longer worried about not causing the pollution. The respondent state authority particularly respondent GPCB at Bharuch unit and the office of respondent Collector, Bharuch are not paying attention at all for the concern of the farmers. Therefore, interference of this Hon'ble Court is warranted and necessary. It is extremely necessary to mention at this juncture that

the extent of pollution including the ongoing pollution is varying in extent depending upon the factors that contribute in the spread of the air pollution. The severity of the pollution therefore is not constant but depends on various and variable factor and therefore the statement of petitioner that ongoing pollution also affects the farmer may be considered and construed depending upon what is stated herein above.

4.43. It is now apparent that observations and conclusions of the Expert Committee constituted by respondent Collector Bharuch and the findings of respondent GPCB are at complete variance, in conflict of each other and inconsistent with each other. The findings and opinion of GPCB is on the face of it unbelievable, irrational, arbitrary and contrary to the facts on record. This finding and opinion is only to save skin at the cost of pollution and in the process the deliberate causing pollution by respondent private unit/industry is promoted. In fact the finding of GPCB is contrary to its own record based on scientific analysis of its own sample. The finding of respondent expert committees or inspection committees consisting of experts of different fields followed by analysis of samples by respondent GPCB from 2011-12 till 2018-19 were not at variance but were in support of each other. Only after the pollution cause by respondent private unit in 2021 has reached at a humongous level and proportion that respondent GPCB now has started contradicting not only its own reports and findings but have started contradicting the report of expert committee constituted by the respondent Collector. Hence the intervention of this Hon'ble Court is required to prevent pollution and to protect livelihood of thousands of farmers of Bharuch District.

5. **Source of information:**

All the information as stated in the present petition is primary in nature and is firsthand information.

6. **Representation/s:**

Representations and reminders were sent to the concerned authorities time and again drawing their attention with regard to protection of Environment and Prevention of Air Pollution in the form of Chemical Emission that damages certain crops in the District Bharuch since many years, however all have fallen to deaf ears and nothing has been done till date. The representation/s and reminder/s addressed to concerned respondent authorities have been annexed to the present petition.

7. **Other public interest litigations on same/similar subject matter:**

That to the best of the knowledge of the Petitioners, no public interest litigation by way of petition raising similar issue is filed before this Hon'ble Court or before any other Court.

8. That main grounds of the present Writ Petition (PIL), are as under:

GROUNDS

- (a) The petitioners state and submit that industrial pollution in question has as stated in the petition, destroyed or substantially affected certain susceptible crops grown by farmers of 4 taluka of District Bharuch. The pollution in question has adversely affected their livelihood. Therefore, right to life and dignity and freedom of occupation respectively guaranteed in Article 21 and 19 of the Constitution of India are violated and therefore pollution caused by respondent private industry/unit is unconstitutional.

- (b) The petitioner state and submit that the respondent Gujarat Pollution Control Board has failed to take effective steps against industrial pollution in question. In fact, the respondent GPCB by not taking action in accordance with law to curb the pollution or to prevent the pollution from occurring, over a period of many years, that too after several expert committee reports and after issuance of so many show cause notices including closure notice, has promoted re-occurrence of such industrial pollution in violation of the Air Act 1981, the Environment (protection) Act 1986, the Water Act 1974 as well as in violation of law established by Hon'ble Apex Court in this regard particularly after tragic incident of 'Bhopal Gas'. Therefore, the respondent GPCB and together with respondent department of Forest and Environment, Govt. of Gujarat besides other respondents are responsible for dereliction of constitutional and statutory duties and obligations. The inaction or failure to take effective and preventive action with respect to pollution in question is absolutely arbitrary, irrational, unfair, unjust, mala fide in law and mala fide in fact, colourable exercise of power, grossly discriminatory, actuated out of extra legal and extra constitutional considerations and therefore violative of Article 14 of the Constitution of India and hence illegal and unconstitutional.
- (c) It is stated and submitted that the industrial pollution in question and its reoccurrence is in violation of Air Act 1981, the Environment (protection) Act 1986, the Water Act 1974, Mnuufacture, Storage and Import of Hazardous Chemicals Rules 1989 and Hazardous Wastes Rules 1989 and is therefore illegal and unconstitutional.
- (d) It is stated and submitted that the basic principle of sustainable development being the foundation of the Environment law established by the Hon'ble the Apex Court is that polluter has to

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pay for the damage it has done. The law has stepped forward and is expanded to the effect that the pollution is caused also because of dereliction of duty on the part of concerned state authorities and therefore the compensation will have to be paid by the State which can be recovered from the private industry causing pollution. The petitioners therefore state and submit that the affected farmers have legal and fundamental right also under the public policy for being compensated by the State for the loss of livelihood sustained by them on account of the industrial pollution caused by the respondent private industry/unit.

- (e) The petitioner states that the pollution is going on at present. The record of respondent GPCB may say anything otherwise but even the winter crop of the farmer is being affected depending upon wind velocity and other material and relevant factor which are responsible for taking the process emission and production emission not only to the surrounding areas but to the distant places. The winter crop therefore also will be affected for sure. The respondent state authorities after the conclusion of respondent GPCB dated 16/10/2021 has stopped paying attention even to the aspect to payment of compensation for which the process had already been started with the office of respondent Collector. Moreover, the respondent private unit is no longer worried about not causing the pollution. The respondent state authority particularly respondent GPCB at Bharuch unit and the office of respondent Collector, Bharuch are not paying attention at all for the concern of the farmers. Therefore interference of this Hon'ble Court is warranted and necessary. It is extremely necessary to mention at this juncture that the extent of pollution including the ongoing pollution is varying in extent depending upon the factors that contribute in the spread of the air pollution. The severity of the pollution therefore is not constant but depends on various and variable factor and therefore the statement of

petitioner that ongoing pollution also affects the farmer may be considered and construed depending upon what is stated herein above.

- (f) It is now apparent that observations and conclusions of the Expert Committee constituted by respondent Collector Bharuch and the findings of respondent GPCB are at complete variance, in conflict of each other and inconsistent with each other. The findings and opinion of GPCB is on the face of it unbelievable, irrational, arbitrary and contrary to the facts on record. This finding and opinion is only to save skin at the cost of pollution and in the process the deliberate causing pollution by respondent private unit/industry is promoted. In fact the finding of GPCB is contrary to its own record based on scientific analysis of its own sample. The finding of respondent expert committees or inspection committees consisting of experts of different fields followed by analysis of samples by respondent GPCB from 2011-12 till 2018-19 were not at variance but were in support of each other. Only after the pollution cause by respondent private unit in 2021 has reached at a humongous level and proportion that respondent GPCB now has started contradicting not only its own reports and findings but have started contradicting the report of expert committee constituted by the respondent Collector. Hence the intervention of this Hon'ble Court is required to prevent pollution and to protect livelihood of thousands of farmers of Bharuch District.
- (g) It is stated and submitted that the increase in pollution and its expansion in length and breadth affecting more and more farmers, flora and fauna is simultaneous with the permission to expand and increase the production of 2 4 D and 2 4 DB by the respondent private industry/unit by the respondent GPCB, Department of Forest and Environment, Govt. of Gujarat besides Ministry of Environment, Forest and Climate change, Govt. of

India as well as Central Pollution Control Board being granted to the respondent private unit causing the pollution in question. This is despite so many adverse report against the respondent private unit by respondent GPCB and the expert committee is constituted time to time by the respondent Collector to look into the complaints of farmers. Therefore, respondent state authorities and the respective departments are equally responsible for pollution and consequent loss of livelihood.

- (h) It is stated and submitted the Hon'ble the Apex Court in a recent judgment reported in 2021 (4) SCC 309 between Himachal Pradesh Bus-Stand Management and Development Authority vs. Central Empowered Committee explained, inter-alia, the Environmental Rule of law. The relevant paragraphs are as under:

1.1. Environmental rule of law

48. In a constitutional framework which is intended to create, foster and protect a democracy committed to liberal values, the rule of law provides the cornerstone. The rule of law is to be distinguished from rule by the law. The former comprehends the setting up of a legal regime with clearly defined rules and principles of even application, a regime of law which maintains the fundamental postulates of liberty, equality and due process. The rule of law postulates a law which is answerable to constitutional norms. The law in that sense is accountable as much as it is capable of exacting compliance. Rule by the law on the other hand can mean rule by a despotic law. It is to maintain the just quality of the law and its observance of reason that rule of law precepts in constitutional democracies rest on constitutional foundations. A rule of law framework encompasses rules of law but it does much more than that. It embodies matters of substance and process. It dwells on the institutions which provide the arc of governance. By focussing on the structural norms which guide institutional decision making, rule of law frameworks recognise the vital role played by institutions and the serious consequences of leaving undefined the norms and processes by which they are constituted, composed and governed. A modern rule of law framework is hence comprehensive in its sweep and ambit. It recognises that liberty and equality are the focal point of a just system of governance and without which human dignity can be subverted by administrative discretion and absolute power. Rule of law then dwells beyond a compendium which sanctifies rules of law. Its elements comprise of substantive principles, processual

guarantees and institutional safeguards that are designed to ensure responsive, accountable and sensitive governance.

49. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools — conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges — of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi-disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognises that the “law” element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and Judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts. There are significant linkages between concepts such as sustainable development, the polluter pays principle and the trust doctrine. The universe of nature is indivisible and integrated. The state of the environment in one part of the earth affects and is fundamentally affected by what occurs in another part. Every element of the environment shares a symbiotic relationship with the others. It is this inseparable bond and connect which the environmental rule of law seeks to explore and understand in order to find solutions to the pressing problems which threaten the existence of humanity. The environmental rule of law is founded on the need to understand the consequences of our actions going beyond local, State and national boundaries. The rise in the oceans threatens not just maritime communities. The rise in temperatures, dilution of glaciers and growing desertification have consequences which go beyond the communities and creatures whose habitats are threatened. They affect the future survival of the entire eco-system. The environmental rule of law attempts to weave an understanding of the connections in the natural environment which make the issue of survival a unified challenge which confronts human societies everywhere. It seeks to build on experiential learnings of the past to formulate principles which must become the building pillars of environmental regulation in the present and future. The environmental rule of law recognises the overlap between and seeks to amalgamate scientific learning, legal principle and policy intervention. Significantly, it brings attention to the rules, processes and norms followed by institutions which provide regulatory governance on the environment. In doing so, it fosters a regime of open, accountable and transparent decision making on concerns of the environment. It fosters the importance of

participatory governance — of the value in giving a voice to those who are most affected by environmental policies and public projects. The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we conserve, protect and regenerate the environment today.

50. *In its decision in Hanuman Laxman Aroskar v. Union of India [Hanuman Laxman Aroskar v. Union of India, (2019) 15 SCC 401] , this Court, speaking through one of us (D.Y. Chandrachud, J.) recognised the importance of protecting the environmental rule of law. The Court observed: (SCC pp. 462 & 466, paras 142-43 & 156)*

“142. Fundamental to the outcome of this case is a quest for environmental governance within a rule of law paradigm. Environmental governance is founded on the need to promote environmental sustainability as a crucial enabling factor which ensures the health of our ecosystem.

143. Since the Stockholm Conference [Ed.: The reference appears to be to the “Declaration of the United Nations Conference on the Human Environment”, Stockholm, 16-6-1972.] , there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement — both in developed and developing countries alike. ...

156. The rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the rule of law. Public access to information is, in similar terms, fundamental to the preservation of the rule of law. In a domestic context, environmental governance that is founded on the rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution. Proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution.”

51. *In its first global report on environmental rule of law in January 2019, the United Nations Environment Programme (“UNEP”) has presciently stated [UNEP, “Environmental Rule of Law First Global Report” (January 2019), pp. viii and 223.] :*

“If human society is to stay within the bounds of critical ecological thresholds, it is imperative that environmental laws are

widely understood, respected, and enforced and the benefits of environmental protection are enjoyed by people and the planet. Environmental rule of law offers a framework for addressing the gap between environmental laws on the books and in practice and is key to achieving the sustainable development goals.

Successful implementation of environmental law depends on the ability to quickly and efficiently resolve environmental disputes and punish environmental violations. Providing environmental adjudicators and enforcers with the tools that allow them to respond to environmental matters flexibly, transparently, and meaningfully is a critical building block of environmental rule of law.”

*52. The need to adjudicate disputes over environmental harm within a rule of law framework is rooted in a principled commitment to ensure fidelity to the legal framework regulating environmental protection in a manner that transcends a case-by-case adjudication. Before this mode of analysis gained acceptance, we faced a situation in which, despite the existence of environmental legislation on the statute books, there was an absence of a set of overarching judicially recognised principles that could inform environmental adjudication in a manner that was stable, certain and predictable. In an article in *Asia-Pacific Journal of Environmental Law* (2014), Bruce Pardy describes this conundrum in the following terms [Bruce Pardy, “Towards an Environmental Rule of Law”, 17 *Asia Pacific Journal of Environmental Law* 163 (2014).] :*

“Environmental regulations and standards typically identify specific limits or prohibitions on detrimental activities or substances. They are created to reflect the principles and prohibitions contained in the statute under which they are promulgated. However, where the contents of the statute are themselves indeterminate, there is no concrete rule or set of criteria to apply to formulate the standards. Their development can therefore be highly political and potentially arbitrary.

Instead of serving to protect citizens' environmental welfare, an indeterminate environmental law facilitates a utilitarian calculus that allows diffuse interests to be placed aside when they are judged to be less valuable than competing considerations.”

53. However, even while using the framework of an environmental rule of law, the difficulty we face is this — when adjudicating bodies are called on to adjudicate on environmental infractions, the precise harm that has taken place is often not susceptible to concrete quantification. While the framework provides valuable guidance in relation to the principles to be kept in mind while adjudicating upon environmental disputes, it does not provide clear pathways to determine the harm caused in multifarious factual situations that fall for judicial consideration. The determination of such harm requires access to scientific data which is often times difficult to come by in individual situations.

*54. In an article in *Georgetown Environmental Law Review* (2020), Arnold Kreilhuber and Angela Kariuki explain the manner*

in which the environmental rule of law seeks to resolve this imbroglio [Arnold Kreilhuber and Angela Kariuki, “Environmental Rule of Law in the Context of Sustainable Development”, 32 Georgetown Environmental Law Review 591 (2020).] :

“One of the main distinctions between environmental rule of law and other areas of law is the need to make decisions to protect human health and the environment in the face of uncertainty and data gaps. Instead of being paralyzed into inaction, careful documentation of the state of knowledge and uncertainties allows the regulated community, stakeholders, and other institutions to more fully understand why certain decisions were made.”

The point, therefore, is simply this — the environmental rule of law calls on us, as Judges, to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law. We cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law violations, an absence of clear evidence of consequences notwithstanding.

55. In the case before us, it is not possible for us to determine in quantifiable terms the exact effect of the construction of the hotel-cum-restaurant structure by the appellant and the second respondent on the ecology of the area. Both of them have tried to argue that the number of trees felled by them, in the case of the present construction, is what it would have been, had they only built a bus-stand and a parking space. However, what we can record a determination on is the way in which the appellant and second respondent have gone about achieving this object. Specifically, the parties have engaged in the construction without complying with the plans drawn by the appellant's third-party consultants, which were agreed to by them in the RFP. The construction proceeded even when the TCP Department tried to halt it, refusing to approve its plans. Even the post facto refusal by the MoEF for changing the nature of the diverted forest land was not enough to stop the parties. Ultimately, when they were forced to halt the construction by CEC, they proceeded with it under the guise of an order of this Court which permitted only legal construction. A combination of these circumstances highlights not only conduct oblivious of the environmental consequences of their actions, but an active disdain for them in favour of commercial benefits. While the second respondent was a private entity, they were actively supported in these efforts by the appellant. Hence, it is painfully clear that their actions stand in violation of the environmental rule of law. Whatever else the environmental rule of law may mean, it surely means that construction of this sort cannot receive our endorsement, no matter what its economic benefits may be. A lack of scientific certainty is no ground to imperil the environment.

1.2. Role of courts in ensuring environmental protection

56. *In a recent decision of this Court in BDA v. Sudhakar Hegde [BDA v. Sudhakar Hegde, (2020) 15 SCC 63] , this Court, speaking through one of us (D.Y. Chandrachud, J.) held: (SCC pp. 112-13, paras 94-95)*

“94. The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth.

...

Professor Corker draws attention to the idea that the environmental protection goes beyond lawsuits. Where the State and statutory bodies fail in their duty to comply with the regulatory framework for the protection of the environment, the courts, acting on actions brought by public-spirited individuals are called to invalidate such actions. ...

95. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision-making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution, proper structures for environmental decision-making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place.”

57. *In Lal Bahadur v. State of U.P. [Lal Bahadur v. State of U.P., (2018) 15 SCC 407] , this Court underscored the principles that are the cornerstone of our environmental jurisprudence, as emerging from a settled line of precedent: the precautionary principle, the polluter pays principle and sustainable development. This Court further noted the importance of judicial intervention for ensuring environmental protection. In a recent decision in State of Meghalaya v. All Dimasa Students Union [State of Meghalaya v. All Dimasa Students Union, (2019) 8 SCC 177] , this Court reiterated the key principles of environmental jurisprudence in India, while awarding costs of Rs 100 crores on the State of Meghalaya for engaging in illegal coal mining.*

58. *The UNEP Report (supra) also goes on to note [UNEP, “Environmental Rule of Law First Global Report” (January 2019), p. 213.] :*

“Courts and tribunals must be able to grant meaningful legal remedies in order to resolve disputes and enforce environmental laws. As shown in Figure 5.12, legal remedies are the actions, such

as fines, jail time, and injunctions, that courts and tribunals are empowered to order. For environmental laws to have their desired effect and for there to be adequate incentives for compliance with environmental laws, the remedies must both redress the past environmental harm and deter future harm.”

59. *In its Global Judicial Handbook on Environmental Constitutionalism, the UNEP has further noted [UNEP, Global Judicial Handbook on Environmental Constitutionalism (3rd Edn., 2019), p. 7.] :*

“Courts matter. They are essential to the rule of law. Without courts, laws can be disregarded, executive officials left unchecked, and people left without recourse. And the environment and the human connection to it can suffer. Judges stand in the breach.”

60. *The above discussion puts into perspective our decision in the present appeals, through which we shall confirm the directions given by NGT in its impugned judgment [T.N. Godavarman Thirumulpad v. Union of India, 2016 SCC OnLine NGT 1196] . The role of courts and tribunals cannot be overstated in ensuring that the “shield” of the “rule of law” can be used as a facilitative instrument in ensuring compliance with environmental regulations.*

62. *In Goel Ganga Developers (India) (P) Ltd. v. Union of India [Goel Ganga Developers (India) (P) Ltd. v. Union of India, (2018) 18 SCC 257] , this Court dealt with a situation in which the project proponent had engaged in construction that was contrary to the environmental clearance granted to it. Coming down on the project proponent, a two-Judge Bench, speaking through Deepak Gupta, J., held as follows: (SCC pp. 286-87, para 64)*

“64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more.”

64. *In the present set of appeals, the forest land was allowed to be used by the MoEF for the specific purposes of constructing a “parking space” and “bus-stand” in McLeod Ganj. MoEF made a conscious decision not to modify the terms of this permission, even when granted an opportunity to do so. Hence, any construction*

undertaken by the second respondent, even with the tacit approval of the appellant being a statutory authority under the H.P. Bus-Stands Act, will be illegal.”

.....

- (i) It is stated and submitted that this Hon'ble Court in a petition being SCA No. 21189 of 2018 between Vadodara Enviro Channel Ltd vs. State of Gujarat, discussed the principles of alternative remedy in the matter of environmental challenges. The relevant paragraphs are as under:

13. The National Green Tribunal Act has been enacted to provide for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including the enforcement of any legal right relating to the environment and giving relief and compensation for damages to the persons and property and for matters connected therewith or incidental thereto and which Act came into force on 18th October 2010. It provides for the establishment of a Tribunal, its composition and more particularly in terms of Section 16 that it shall have the appellate jurisdiction in respect of any direction issued on or after the commencement of the said Act under Section 5 of the Environment (Protection) Act, 1986 in terms of clause (g) thereof. This read with the Schedule I and Section 29 would clearly indicate that it is the National Green Tribunal alone which would have the jurisdiction to deal with and decide the matters in connection with any order or direction passed under Section 5 of the Environment (Protection) Act, 1986.

14. In Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India reported in (2012) 8 SCC 326, the Apex Court held at paragraphs no. 40 and 41 as below:

“40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the ‘NGT Act’) particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short ‘NGT’). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and the NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before the NGT. This will help in rendering expeditious and specialized

justice in the field of environment to all concerned. 41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.”

15. In M/s. Diana Buildwell Limited vs. Goa Coastal zone Management Authority and others [Writ Petition No.335 of 2016], the writ applicant challenged the revocation of the provisional permission granted by the Goa Coastal Zone Management Authority. A Division Bench of the Bombay High Court considered the submissions that the petitioner had an alternate remedy, both against the revocation of the permission as also against the order dated 9th February 2016 and that he could not justifiably question the order dated 9th February 2016 in a Writ Petition, in view of the availability of a statutory remedy of an appeal to the Supreme Court under Section 22 of the Act. In that context the Division Bench of the Bombay High Court considered the Judgment of the Apex Court in Cicily Kallarackal vs. Vehicle Factory [(2012) 8 SCC 524] where it was held at paragraph 3 that so far as the issue of jurisdiction is concerned, the learned counsel for the petitioner is right that the High Court had no jurisdiction to deal with the matter against the order of the Commission. The Division Bench further considered the observations in Nivedita Sharma Vs. Cellular Operators Association of India and Others[(2011) 14 SCC 337] which reads thus:

“However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

The Division Bench also considered the Judgment in Ram and Shyam Company Vs. State of Haryana and Others[(1985) 3 SCC 267] where the Apex Court has restated the principles, when a writ petition can be entertained, without exhausting the alternate remedy and finally held that the petition was not tenable and dismissed the same.

16. In Vellore Citizens Welfare Forums vs. Union of India [2016-3 L.W. 11], the Madras High Court had considered the

directions issued by the Apex Court in Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India [(2012) 8 SCC 326], which came to be stayed in Adarsh Cooperative Housing Society Limited vs. Union of India (SLP No.27327/2013) and which was subsequently withdrawn giving effect to the said directions. Latha Ramesh vs. Union of India and others [2016 SCC online Kar 6239], was a petition under Article 226 of the Constitution of India seeking a writ of mandamus. However, in view of the enactment of National Green Tribunal Act, 2010 empowering the Tribunal with the jurisdiction over all civil cases, where a substantial question relating to environment is involved, the Division Bench of the Karnataka High Court deemed it appropriate that the petitioner had an alternative and efficacious remedy and in that view of the matter disposed off the petition reserving the right of the petitioner to approach the National Green Tribunal for necessary orders.

17. *In Canara Plastics Manufacturers and Trades Association and others vs. The State of Karnataka [Writ Petition Nos.14314-14402 of 2016], the challenge was to the notification issued by the Government of Karnataka in exercise of the power conferred under Section 5 of the Environment (Protection) Act, 1986 imposing a ban on the manufacture, supply, sale and use of plastic carry bags, plastic banners, plastic buntings, flex, plastic flags, plastic plates, plastic cups, plastic spoons, cling films and plastic sheets used for spreading on dining table etc. in the State. A plea was taken by the learned Advocate General that the Writ Petitions were not maintainable as an alternative efficacious remedy was available under Section 5 of the Act, while it was submitted to the contrary on behalf of the petitioners. The Division Bench observed that when there was an alternative efficacious remedy before the Competent Tribunal constituted under a Statute, i.e., National Green Tribunal Act, 2010, it was desirable that the matter be placed before the National Green Tribunal for consideration and accepting the preliminary objection of the learned Advocate General, dismissed the Writ Petition on the ground that there exists an alternative and efficacious remedy before the National Green Tribunal.*

18. *In Abdul Jabbar vs. State of Kerala [WP(C) No.30809 of 2015(A)], the challenge was to the environmental clearance and various permits issued to the respondents No.7 to 9 respectively for extracting sand/ ordinary earth/ minerals from the area referred in the environmental clearance, permit, licence etc. situated in Kunnathunadu Village of Arackapady Taluka of Ernakulam District. An interim order was initially granted which was later modified permitting the respondents No.7 to 9 to extract minerals, strictly following the environmental clearance and which was challenged in the Writ Petition. Here again a plea was taken on behalf of the respondents that the petitioners were having an alternative remedy to challenge the environmental clearance before the National Green Tribunal and that the petition was filed without any bonafides. The Kerala High Court held that if there is any substantial issue related to the environment, it is a matter to be taken up before the National*

Green Tribunal and therefore the Court was of the view that the petitioners were free to approach the National Green Tribunal challenging the environmental clearance. Since there was an efficacious alternative remedy for the petitioners, there was no scope for interference in the matter and dismissed the petition.

19. *In the Authorised Officer, State Bank of Travancore and another vs Mathew K.C. [Civil Appeal No.1281 of 2016], the Apex Court observed that it was the solemn duty of the Court to apply the correct law without waiting for an objection to be raised by the party, especially when the law stands well settled. It earlier observed that the discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that the Writ Petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well defined exceptions as observed in the Commissioner of Income Tax and others vs. Chhabil Dass Agarwal [2014(1) SCC 603]. The appeal assailed an interim order passed in a writ petition under Article 226 of the Constitution, staying the further proceedings at the stage of Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short). In that context, the Apex Court observed that the SARFAESI Act was a complete Code in itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the respondent and that the writ petition ought to have been rejected at the threshold on the ground of maintainability but the Division Bench erred in declining to interfere with the same. The Two Judge Bench considered the judgment of Whirlpool Corporation [AIR 1995 SC 22], and held that the writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum was not sustainable in law.*

20. *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others [1999 AIR (SC) 22], the Supreme Court held that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose". Under Article 226 of the Constitution, the High Court, having regard to the*

facts of the case, has a discretion to entertain or not to entertain a Writ Petition. But the High Court has imposed upon itself certain the restrictions one of which is that if an effective & efficacious remedy is available, the High Court should not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely (1) where the Writ Petition has been filed for the enforcement of any of the Fundamental Rights or (2) where there has been a violation of the principles of natural justice or (3) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation. From a discussion of the Judgments in Bhopal Gas Peedith Mahila Udyog Sangathan, M/s. Diana Buildwell Limited, Vellore Citizens Welfare Forums, Latha Ramesh, Canara Plastics Manufacturers and Trades Association, Abdul Jabbar and Authorised officer of State Bank of Travancore (supra), it is borne out that where a issue pertains to an order or direction under Section 5 of the Environment (Protection) Act, the jurisdiction of the National Green Tribunal should be invoked as a matter of course. However, the judgment in Whirlpool (supra), holds that even in instances where an alternative efficacious remedy is available, the writ jurisdiction of this Court can be invoked in the three contingencies referred to above. It is therefore to be seen whether in the circumstances of the case the writ applicant has been able to show that his case falls within the ambit of any of these three predicates/ contingencies culled out in the Whirlpool (supra) or conversely whether the petition would stand barred in view of the alternative efficacious remedy available before the NGT.

- (j) Paragraphs 4.1 to 4.43 may be treated as grounds.
 - (k) On such other and further grounds that may be urged at the time of hearing.
9. That the grounds for seeking interim relief are as under:

Grounds for Interim Relief

The grounds for interim relief have been narrated in the present petition showing the required urgency.

If the pollution is permitted to continue then it would lead to serious damage to the thousands of farmers and their crops. In the present case, where the inequity is palpable, it would be in the interest of justice that an interim order of protection be granted.

The petitioners have a prima-facie case. Balance of convenience is in favour of the petitioners. No irreparable damage will cause to the respondents, if interim relief/s as prayed for are granted. On the contrary, grave and irreparable harm and injury will be caused to the environment in the event interim relief is not granted to the Petitioners. That would *inter alia* render the present Petition infructuous.

10. Petitioners have not filed any other petition on the present subject matter:

That Petitioners have not filed any other petition, appeal or application in Hon'ble the Supreme Court of India or before this Hon'ble Court or in any other Court with regard to the subject matter of the present petition.

11. No other alternative equally efficacious and adequate remedy:

The petitioners state that there is no other alternative equally efficacious and adequate remedy available to the petitioners, except to approach this Hon'ble Court under Article 226 and/or 227 of the Constitution of India.

At the risk of repetition it is stated and submitted that the dispute on hand cannot be cribbed, cabined or put in the small compass of "personal disputes" or "individual rights". The damage caused to the environment has to be looked from a holistic angle. The dispute

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on hand is thus significant not only in terms of the legal implications, but also in terms of impact on the environment, need to preserve ecological balance, duties of the State, public interest and wellbeing and hence the wide nature of reliefs sought can only be appropriately addressed and redressed under 226 petition by a constitutional court.

Moreover, it is stated that in the judgment of *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Others reported in [1998] 8 SCC 1*, it has been held that:

“Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the virus of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field”.

In the present instance it is not merely the Right to environment of the citizens that has been tossed by the respondent/s but also fundamental rights as enshrined under Articles 14 and 21 of the Constitution and the principles of natural justice.

In other words and to substantiate the above submission further, what can be discerned is that a writ of mandamus can be maintained by a citizen so as to compel an authority to discharge the functions under a statute or to assail the decisions or inaction of the state and its instrumentalities, if they are violative of the fundamental rights guaranteed under the Constitution of India or

principles of natural justice, or to compel the discharge of duty which is public in nature even if it cannot be traced to any particular provision.

12. Prayers:

The petitioners, therefore, pray that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction under Article 226 of Constitution of India and thereby be pleased:

- (A) To pass an order constituting independent expert committee consisting of Agricultural and other Scientists, Experts in the field of Environment and Pollution Control and Eminent Scholars, Researchers and Lawyers known for their expertise and contribution bearing in mind the subject matter of the present petition and be further pleased to direct the expert committee to look into the grievances of the farmers raised in the present petition, attend to the subject matter of the present petition and after hearing all the stake holders, submit a report within stipulated period of time giving specific findings as to whether respondent private unit is responsible for the industrial pollution or not and suggest action plan and measures to curb and prevent such pollution in future including interim measures till the final report is submitted;
- (B) To direct respondents and particularly respondent public authorities and statutory bodies to provide assistance to the expert committee that may be constituted by this Hon'ble Court and bear the cost that may be incurred by the expert committee in the process of preparation of the report and its submission;
- (C) In the alternative, be pleased to direct National Environmental Engineering Research Institute [NEERI] and Council of Scientific

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and Industrial Research [CSIR] to constitute a team of experts and submit a report within the stipulated period of time and give specific finding whether respondent private unit is responsible for the industrial pollution or not and suggest action plan and measures to curb and prevent such pollution in future including interim measures till the final report is submitted;

- (D) To direct respondent state authorities to take all action against respondent private industry/unit for causing industrial pollution in accordance with law and the action for compensating the state as well as the affected people at large for the pollution cause by it and the damage done to flora, fauna and other natural resources and be further pleased to direct the respondent state authorities to consider permanent closure of respondent private unit manufacturing 2 4 D and 2 4 DB chemicals and relocation in accordance with law;
- (E) To direct respondents to pay compensation to the affected farmers for the loss of crop sustained by them;
- (F) To direct respondent state authorities to take all corrective, departmental, penal and punitive action against the erring officers and other government employees of respondent Gujarat Pollution Control Board and other departments for the recurrence of industrial pollution cause by the respondent unit and for their failure to take all statutory action for preventing and curbing the pollution in question;
- (G) During the pendency and/or final disposal of the present petition, be pleased to grant interim/ad-interim relief in terms of prayer (A) to (F);
- (H) During the pendency and/or final disposal of the present petition, be pleased to direct respondents to ensure the respondent private industry/unit doesn't cause any industrial pollution whatsoever and be further pleased to direct respondents to consider that in the event

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of probability and possibility of respondent private industry/unit to cause industrial pollution in the process of manufacturing 2 4 D and 2 4 DB then to close down the very unit manufacturing 2 4 D and 2 4 DB till further direction by this Hon'ble Court;

- (I) During the pendency and/or final disposal of the present petition, be pleased to direct the respondent private industry/unit to close down its unit manufacturing 2 4 D and 2 4 DB till further direction of this Hon'ble Court
- (J) To pass such other and further order/s as this Hon'ble Court may deem fit and proper looking to the facts and circumstances of the case in the interest of justice.
- (K) Any other and further order as may be deemed fit in the interest of justice and equity.
- (L) To award the costs of this petition;

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE APPLICANT SHALL AS IN DUTY BOUND FOR EVER PRAY.

Place: Ahmedabad

Anand Yagnik

Date: 16.12.2021

Advocate for the Petitioners