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CRITICAL ANALYSIS OF VIZAG GAS LEAK CASE

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Case commentry: Lg Polymer Private limited v. Union of India Others 2020 SCC Online NGT 129

Citation: 2020 SCC Online NGT 129

Court: National Green Tribunal (NGT)

Bench:(*Adarsh kumar goel, chairperson And Sheo Kumar Singh, Judicial Member And Nagin Nanda, Expert Member*)

Date: 1 june 2020

Facts:

1. The matter of this case has been taken up the Suo motto cognizance before National Green Tribunal (NGT) on the account of gas leakage occur at lg polymer private ltd factory at Venkat Puram, near Vishakhapatnam, Andhra Pradesh.
2. The industrial tragedy at LG Polymers' chemical plant at R.R. Venkatapuram on the outskirts of Visakhapatnam, Andhra Pradesh, was a terrible event that took place on 7th May 2020. A huge release of toxic styrene monomer gas happened early in the morning as the facility was readying itself to re-open after the national lockdown in response to COVID-19.
3. Causes of the Leak Initial inquiry and expert groups blamed the tragedy on negligence on the part of humans and inadequate maintenance. Styrene is unstable at temperatures above 20°C. Auto-polymerization: This was due to failure of refrigeration unit and cooling systems in the unattended storage tanks which resulted in increase in the tank temperatures.

4. Vaporization: This heat caused the auto-polymerization, which generated a tremendous amount of pressure, and caused one of the valves to pop and tons of vaporized styrene to be released into the atmosphere.
5. Impact and Casualties. The gas cloud quickly spread out in three kilometer radius engulfing five neighboring villages while the residents were sleeping. Fatalities and Injuries: 12 people died due to the toxic fumes, and more than 1,000 people were injured. Symptoms: Victims had to have their eyes washed out and had to have airway support provided, as well as becoming unconscious.
6. Evacuation: Thousands of people have been evacuated to safe areas by the Emergency Responders including the National Disaster Response Force (NDRF). Legal Consequences and governmental action was swift as a consequence of the incident. Under the principle of absolute liability, the National Green Tribunal (NGT) took suo motu cognizance of the disaster and held the LG Polymers liable. Penalties: The NGT had imposed a fine of ₹50 crore on the company for the environmental damage and failure to meet basic safety standards, while the rest of the styrene was returned to South Korea to avoid any further disaster¹.

Issues:

- **The main issue in this case is regarding that does NGT has power in itself to take Suo Motto Cognizance of Environment cases**
- **Applicability of strict liability vs absolute liability involving the cause of highly dangerous substance that escapes**
- **Non-Compliance with the statutory environmental clearance**
- **Direct and Clear violation of Right to Life under article 21**

Contention of parties:

Petitioners' Argument: -

1. Applying to the National Green Tribunal (NGT) in the 2020 Vizag gas leak case, the applicants and impleading parties had appealed for full responsibility for the horrific leakage of toxic styrene gas be placed on LG Polymers.

¹ *In re* Gas Leak at LG Polymers Chem. Plant in R.R. Venkatapuram Vill., Visakhapatnam in A.P., O.A. No. 73/2020 (Nat'l Green Trib. May 8, 2020) (India).

2. Their main legal argument was based on the doctrine of Absolute Liability which was laid down in the landmark case of M.C. Mehta (Oleum Gas Leak). They claimed that the Company was involved in a business of inherently dangerous nature; therefore, all human and environmental harm caused by their business is theirs and there are no grounds for exception, such as "Act of God" or interference by third parties.
3. The petitioners pointed to the gross corporate negligence in maintaining the temperature of the chemical which required to be kept below 20°C while under lockdown during the COVID-19 pandemic, resulting in its auto-polymerization and eventual vaporization of the gas. Moreover they highlighted a glaring violation of the law, LG Polymers had been running and increasing its production capacity for many years without valid environmental clearance from Ministry of Environment, Forest and Climate Change.
4. Last but not least, the petitioners called upon the corporation to pay exemplary damages to the victims and the cost of long-term monitoring of their health; and restore the ecology of the affected areas, under the Polluter Pays principle.²

Respondent's Arguments: -

1. During the incident of 2020, the Gas Leak in Visakhapatnam, the respondent, in this case, LG Polymers India Pvt. Ltd., primarily contended against the jurisdiction and proceedings of the National Green Tribunal (NGT). Absence of Suo Motu Jurisdiction: LG Polymers argued that the NGT, a statutory body under the National Green Tribunal Act, 2010, has only the powers that are expressly granted in the statute.
2. The company contended that the tribunal was not vested with legal powers in suo motu action as the same was not specifically mentioned in the Act. Duplicate Proceedings: The respondent noted that the Andhra Pradesh High Court and National Human Rights Commission have already taken cognizance of the disaster and started their own probe. So they said the parallel enquiry being conducted by the NGT was unnecessary and duplication of effort in the light of the constitution of an additional fact-finding committee.
3. LG Polymers' Review Application: In response to a Supreme Court order given in the interim, the company had filed a review application to set aside the NGT's first order requiring payment of an immediate money deposit of ₹50 crore. They contended that

² *In re* Gas Leak Liability Disaster at LG Polymers Chem. Plant in Visakhapatnam, Andhra Pradesh, O.A. No. 73 of 2020 (Nat'l Green Trib. June 1, 2020) (India)

the tribunal must first determine maintainability of its jurisdiction under the law in order to decide on strict/absolute liability before determining the substantive issue³.

Judgment: -

1. The National Green Tribunal (NGT) in its final order on the gas leak in Visakhapatnam in 2020, found LG Polymers India to be 100 per cent responsible for the disaster. The NGT reiterated the "absolute liability" principle laid down in Oleum Gas Leak, and denied that the non negligence defence could be raised.
2. The Tribunal pointed out that the toxic styrene plant was operating without any **environmental** clearance and contravening the rules of chemical storage completely. As such, the NGT ordered the company to spend ₹50 crore on its ecological restoration plans and victim compensation.
3. NGT directed and addresses the issue that it has absolute power to take suo motto cognizance of environmental cases whether any other court taken it or not because it is solely for this purpose only⁴.

Ratio Decidendi

The doctrine of Absolute Liability was at the heart of the NGT's finding, or ratio decidendi. The Tribunal, eschewed the relaxed strict liability standard laid down by the case of Rylands v. Fletcher, and instead relied on a precedent binding it, namely in the Oleum Gas Leak case (M.C. Mehta v. Union of India). The NGT held that "LG Polymers India was doing an inherently dangerous business of storing volatile styrene monomer and thus was absolutely liable for the loss of life, public health emergencies, environmental damage etc. caused by it. This liability is not delegable and cannot be waived or defended, including by the act of God or third party negligence. Further, Tribunal has carved out a secondary ratio, which is its suo motu jurisdiction under the National Green Tribunal Act, 2010, thus giving it statutory power to take suo moto cognizance of serious environmental violations.

Obiter Dicta

In its incidental remarks, or *obiter dicta*, the Tribunal issued a scathing critique of the systemic regulatory apathy that precipitated the disaster. The NGT observed that the facility had shockingly operated without requisite environmental clearances for over two decades. The Tribunal opined on the urgent necessity to overhaul industrial safety protocols and strongly

³ <https://www.livelaw.in/columns/vizag-gas-leak-incident-a-case-for-absolute-liability-156745>

⁴ *In re* Gas Leak at LG Polymers Chem. Plant in Vishakhapatnam, 2020 SCC OnLine NGT 129 (India).

rebuked statutory pollution control boards for their dereliction of duty, noting that robust compliance mechanisms are essential to safeguard constitutional civil liberties against corporate negligence⁵.

The impact and significance of the Judgement.

In the case of the gas leak incident at Visakhapatnam in 2020, the NGT's judgement further strengthens the environmental jurisprudence of the country, and forthrightly restated the principle of absolute liability. The Tribunal had laid down a precedent that there is no defence by statutory rules for environmental degradation or the resulting public harm in cases of non-delegable, strict accountability being placed on corporate bodies involved in inherently hazardous activities. Notably, the judgment affirmed the NGT's suo motu jurisdiction and granted it the authority to take action to alleviate ecological disasters. Moreover, it provides a strong disincentive against running businesses without proper environmental permits and creates a firm principle that business must comply before it can protect the constitutional rights to a healthy environment.

⁵ *n re* Gas Leak at LG Polymers Chem. Plant in Vishakhapatnam, 2020 SCC OnLine NGT 129 (India).

Conclusion

The principle of Absolute liability once again saved society from catastrophic devastation occurred at lg polymer plant at vishakapatnam the NGT strenthened its role in Indian enviornmental jurisprudence since its making purpose was of solely for protecting enviornmenatl right and specific tribunal for their role to handle cases. Both supreme court and NGT recognized the power of absolute liability with no defences and relaxation. Finally after delivering verdict after bhopal and oleum gas leak case this case also set precedent for next generation cases