

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE**

**M.A.NOS. 146, 150, 151, 152, 153, 154, 155,  
156,157,158,159,160,161,176 OF 2015**

**WITH  
APPLICATION NO.21 OF 2015**

**CORAM :**

**HON'BLE SHRI JUSTICE V.R. KINGAONKAR  
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE  
(EXPERT MEMBER)**

**In the matter of:**

**MR. BABUBHAI RAMUBHAI SAINI**

Having his address at:

Near State Bank Society,

Becharpura, Palanpur.

Gujarat.

**APPLICANT**

**VERSUS**

**1. GUJARAT POLLUTION CONTROL BOARD,**

Paryavaran Bhavan, Sector-10A,

Gandhinagar-382010.

**2. THE VIGILANCE OFFICER,**

Gujarat Pollution Control Board,

Race Course Ring Road,

Rajkot, Gujarat.

And also at  
Opp. Nava Bus Station  
Besides S. Patel Pan  
Sanal Road, Morbi,  
Gujarat.

**3. CENTRAL POLLUTION CONTROL BOARD,**

Parivesh Bhavan,  
CBD Cum Officers Complex,  
East Arjun Nagar,  
Delhi-110032.

**4. GSPC GAS CO.LTD.**

Regd. Office 2<sup>nd</sup> Floor,  
B.No.115, Udhyog Bhavan,  
Gandhinagar  
And also at:  
Plot No.47,48,55,56  
Shakti Industrial Estate, B'/h  
Shakti Chamber, Opp. Sun city  
Ceramic, Morbi/Wanaker Highway  
Morbi-363642.

**5. PASCHIM GUJARAT VIJ COMPANY LTD. (PGVCL)**

'Paschim Gujarat Vij Company Sadan'  
Off. Nana Mava Main road,  
Laxminagar, Rajkot-360 004.

**6. UNION OF INDIA**

Through its Secretary,  
MINISTRY OF ENVIRONMENT, FORESTS,  
Parivesh Bhavan, Arjun Nagar,  
New Delhi.

**AND:**

**M/s Gurukrupa Machtech Pvt. Ltd.**

A Company registered under the  
Companies act, having its office  
At Old Ghuntu Road,  
Near Suzuki Ceramics  
Morbi.

**(In MISC. APPLICATION NO.146/2015)**

**INTERVENER**

**AND:**

**MORBI INDUSTRIAL GREEN ENVIRONMENT  
SERVICES CO-OPERATIVE SOCIETY LIMITED.**

Through Chairman  
Its managing Director  
Shri. Jivrajbhai Dharamashibhai Shaniyara  
Male, Aged-adult.  
Having its office situated at  
47, Ceramic Plaza-2, 8A,  
National Highway, Morbi-2,  
Rajkot.

**(In MISC. APPLICATION No.150/2015)**

**APPLICANT**

**AND:**

**Shaym Ceramic,**

A Company registered under the  
Companies Act, 2013, having its office at  
Morbi, Dist.Morbi.

**(In MISC. APPLICATION No.151/2015)**

**APPLICANT**

**AND:**

**Lexo Ceramic,**

A Company registered under the Companies Act, 2013, having its office at Morbi, Dist.Morbi.

**(In MISC. APPLICATION No.152/2015)**

**APPLICANT**

**AND:**

**Lexo Plus Ceramic,**

A Company registered under the Companies Act, 2013, having its office at Morbi, Dist.Morbi.

**(In MISC. APPLICATION No.153/2015)**

**APPLICANT**

**AND:**

**Fashion Ceramic,**

A Company registered under the Companies Act, 2013, having its office at Morbi, Dist.Morbi.

**(In MISC. APPLICATION No.154/2015)**

**APPLICANT**

**AND:**

**Sion Ceramics Private Limited,**

A Company registered under the Companies Act, 2013, having its office at Morbi, Dist.Morbi.

**(In MISC. APPLICATION No.155/2015)**

**APPLICANT**

**AND:**

**Kaveri Ceramic,**

A Company registered under the Companies Act, 2013, having its office at

National Highway No.8.

Kandla Road,

Morbi, Dist. Morbi.

**(In MISC. APPLICATION No.156/2015)**

**APPLICANT**

**AND:**

**Axiom Ceramic Pvt. Ltd.**

A Company registered under the  
Companies Act, 2013, having its office at  
Sr. No.790, Village Ghontu,  
Tal. & Dist. Morbi.

**(In MISC. APPLICATION No.157/2015)**

**APPLICANT**

**AND:**

**Wallmark Ceramic Industry,**

A Company registered under the  
Companies Act, 2013, having its office at  
Morbi, Dist.Morbi.

**(In MISC. APPLICATION No.158/2015)**

**APPLICANT**

**AND:**

**Welcome Tiles Pvt. Ltd,**

A Company registered under the  
Companies Act, 2013, having its office at  
Lalapur,  
Morbi, Dist.Morbi.

**(In MISC. APPLICATION No.159/2015)**

**APPLICANT**

**AND:**

**Alient Ceramics Private Limited,**

A Company registered under the

Companies Act, 2013, having its office at  
Jetpar Road Rangpar,  
Morbi, Dist.Morbi.

**(In MISC. APPLICATION No.160/2015)**

**APPLICANT**

**AND:**

**Platina Vitrified Pvt. Ltd.**

A Company registered under the  
Companies Act, 2013, having its office at  
Sr. No.67/P1/2/3  
8-A, National Highway  
Kandla Highway at Pimpli,  
Village: Lilapar  
Tal & Dist.Morbi.

**(In MISC. APPLICATION No.161/2015)**

**APPLICANT**

**AND:**

**Bhulabhai Motibhai Public Charitable  
Trust.**

Having its office at Village Bakrol  
Bujrang, Ta.Daskroi,  
Dist. Ahmedabad.  
State: Gujarat.

**(In MISC. APPLICATION No.176/2015)**

**APPLICANT**

**Counsel for Applicant(s):**

**Mr. Mihir Thakore Senior Counsel a/w Mr. Dhaval M. Barrot,  
Abhishek Singh**

**Counsel for Respondent(s):**

**Mr. Mr. Viral K. Shah a/w Falgun MoDI for Respondent No.1**

**Mr. S.D. Jawalgekar for Respondent No.2**

**Manda Gaikwad for Respondent No.3**

**Mr. Aspi M. Kapadia for Respondent No.4**

**Mr. Parth H. Bhatt for Respondent No.6**

**Mr. Pritosh B. Khambholja for Applicant (In MA No.150/15).**

**Mr. B.M.Mongukiye a/w Bela Alrejapati for Applicants (In other Misc Applications).**

**DATE : SEPTEMBER 8<sup>th</sup>, 2015**

**1**

**ORAL JUDGMENT**

By filing this Application, Applicant –Babubhai, seeks certain directions, which are stated as below:

a) Direct the Respondents to ensure that the Ceramic, Silicate and Frit industries operating in the Morbi town do not cause any pollution and further direct the respondents to close all polluting industrial units in the City of Morbi.

b) Direct the Respondents to close and dismantle all Coal based gasifiers being illegally used by the industrial units in and around the town of Morbi.

c) Direct the Respondents to ensure that all the ceramic, silicate and frit industries operating in and around Morbi strictly and fully follow

the terms of CCA and the directions issued by the Central Pollution Control Board vide its letter dated 21.06.2014.

d) Pending the hearing and final disposal of the application, direct the Respondents to ensure that the Ceramic, Silicate and Frit industries operating in and around Morbi do not cause any pollution and further direct the Respondents to close all polluting industrial units in the city of Morbi.

**2.** Intervener - Bhulabhai Motibhai – Public Charitable Trust also joined- Original Applicant Babubhai to espouse the same cause.

**3.** Respondent Nos. 1 to 3, are Authorities dealing with pollution control, whereas Respondent No.4, is GSPC Gas Co. Ltd, having its office at Gandhinagar, (Gujarat). Respondent No.5 Paschim Gujarat Vij Company Ltd (PGVCL), is the supplier of electricity to Morbi Industrial area and distributes electricity (transmission of power) to the said industrial area on payment basis. The Respondent No.6, is State of Gujarat and Respondent No.7 is Union of India, through MoEF.



**4.** By filing Intervention Applications, some of the industries which are using coal as fuel for production of Ceramic/Vetrified/Silicate products, have also been joined as Respondents. We permitted intervention by some of the industries, including Applicant in Misc. Application No.146 of 2015, namely; M/s Gurukrupa Machtech Pvt. Ltd to submit written submissions and argue the matter, though did not permit it to join as Respondent. The cause of industries, which are using coal gasifiers, are thus mostly represented in the instant Application.

**5.** Before we proceed to deal with nature of controversy, let it be noted that this is the second round of litigation. The first round of litigation was fought, tooth and nail, before the Hon'ble High Court of Gujarat by filing several Writ Petitions and Special Civil Applications by the industrial units located within industrial area of Morbi, particularly, those which are coal gasifier operated units. The dispute triggered when the Central Pollution Control Board (CPCB), gave direction that all the industries, which were using coal gasifier i.e. coal gas as fuel for production of ceramic wall tiles and like other products as such frit, shall be closed down. This

direction was issued as per communication dated August 23<sup>rd</sup>, 2012. The direction was not only for closure of such industries situated in industrial area of Morbi, but it was for dismantling of coal gasifier units, stock and barrels, through the agency- GPCB. Needless to say, GPCB was at the flack as executing agency, when it started taking steps to execute such direction of CPCB.

**6.** The industries which were affected by such directions, approached to the Hon'ble High Court of Gujarat by filing various Writ Petitions and Special Civil Applications. A group of Writ Petition (PIL) No.165 of 2013 with Civil Application No.12538 of 2013 in Writ Petition (PIL) No.165 of 2013 with Civil Application No.12536 of 2013 in Writ Petition (PIL) No.165 of 2013 with Civil Application No.12740 of 2013 in Writ Petition (PIL) No.165 of 2013 with Civil Application Nos.18066, 18207 of 2013 with Civil Application Nos.2003,2005,2007,2008,2009, 2011,2132 of 2014 in Special Civil Application No.2008 of 2014 with Civil Application No.213 of 2014 in Special Civil Application No.2003 of 2014 with Civil Application No.2135 of 2014 in Special Civil Application No.2005 of 2014 with Civil Application

No.2136 of 2014 in Special Civil Application No.2007 of 2014 with Civil Application No.2137 of 2014 in Special Civil Application No.2009 of 2014 with Civil Application No. 2138 of 2014 in Special Civil Application No.2011 of 2014 with Civil Application No.3967 of 2014 in Writ Petition (PIL) No.165 of 2013 and all Special Civil Applications were taken up together for common hearing along with Intervention Application (s) made by some of the industries.

**7.** It appears that during course of hearing Hon'ble High Court of Gujarat passed certain interim orders, including directions to GPCB to implement recommendations, which were recorded at Article 9.0 shown at Page Nos. 100-101 of the paper book and directions contained in the letter dated 23<sup>rd</sup> August, 2012 (Annexure-A) and Application at page No.12, which were part of the record of High Court. The Hon'ble High Court further directed vide order dated October 25<sup>th</sup>, 2013, that in case of GPCB would find any other unauthorized coal based gasifier it will also take action for removal of the same. In other words, liberty was granted to GPCB to remove unauthorized gasifier units, irrespective of recommendation, which were reportedly contained in the paper book and

directions dated 23<sup>rd</sup> August, 2012. Thus, the wings of GPCB were not clipped by the Hon'ble High Court and GPCB was free to take action against any non-complying unit or unauthorized units, which could have been found as gasifier unit run without consent. Thus, if any unit had been established without consent of GPCB and was using coal gasifier as fuel, then GPCB could have closed it down by exercising powers available under the Air (Prevention and Control of Pollution) Act, 1981, as the case may be.

**8.** The matter does not stop here. The Hon'ble High Court of Gujarat heard the contesting parties and decided the Writ Petitions and Special Civil Applications as well as other Civil Applications (Bunch of all connected matters) vide common Judgment dated June 23<sup>rd</sup>, 2014. The Hon'ble High Court categorically stated that since certain new norms were adopted by CPCB, earlier norms of CPCB, under which all the gasifier units were directed to be dismantled due to wholesale prohibition could be revisited and relooked and, therefore, CPCB new norms shall be followed by all the concerned ceramic units with the new guidelines, which were annexed with the affidavit of CPCB. The Hon'ble High Court

held that *“in view of fixation of new norms, as per guidelines of CPCB, there was no further need to go into nitty-gritties of the earlier standards/norms and, particularly, guidelines thereof”*. As a result of such findings the Hon’ble High Court passed following order:

*“In view of disposal of main Applications, all connected Civil Applications have become infructuous and are disposed of accordingly”*.

**9.** The Application was disposed of, of course, in view of change of norms by the CPCB.

**10.** The main thrust of arguments advanced by learned Senior Counsel Mr. Mihir Thakore appearing for the Applicant and learned Advocate for Charitable Trust (Intervener), is that if the coal gasifiers are used for running the industrial units then pollution load will increase and instead of abatement of the pollution, there will be increase in the pollution, because of unbridled increase in number of industries, which are being sprouted in the area. It is argued that various industries are unauthorizedly being allowed to run without proper verification of effluent discharge standards, air emission standards and discharge standards of hazardous waste like coal

tar, generated from such units. It is argued that only after LNG or CNG is used as a fuel then units in Morbi area will achieve zero discharge standards and, therefore, CPCB and GPCB must compel the units to use such fuel instead of coal and gasifiers. This is gist of the contentions put forth by learned Senior Counsel Mr. Mihir Thakore for the Applicants and learned Advocate for Charitable Trust- (Organization).

**11.** The contention of learned Advocate for Industries, is that the industrial units situated in Morbi area have now adopted a modified and improved technology based on coal gasifiers, where it is possible to achieve zero standard, because end product of the entire coal gasification process is only ash and there remains nothing at the end where discharge is outlasted. It is argued that earlier monitoring conducted by GPCB as shown with use of coal as fuel, has now been, not a reason for causing any kind of pollution due to adoption of new technology. Learned Advocate for the Industries, would point out that new technology provides two (2) additional chambers in the coal gasifiers like Oxidation chamber and tar catcher chamber, which nullify the adverse impact of coal tar, which is used

to be generated earlier and now, there is recycling method due to oxidation chamber, as well as tar catcher chamber. Resultantly, there is 100% ash discharged, which is also without any kind of pollutants and thus, use of coal gas as fuel for such industries is now safe, eco-friendly and there is no need to compel them to use LNG or CNG as fuel.

**12.** Let it be noted that before the Hon'ble High Court, five (5) Industries were allowed to be run as gasifier industries on trial basis for a period of one year and consent was granted to examine whether new norms/standards of CPCB may be achieved. The consent was not, however, revived, but it is reported that there is no adverse impact and there is no impact on environment and there is no substantial non-compliance by five (5) such gasifier industries, which were allowed to run on trial basis.

**13.** The scope of instant Application lies in narrow compass, due to the Judgment of Hon'ble High Court of Gujarat, which was confirmed by the Apex Court, though liberty was granted by the Hon'ble Supreme Court to the present Applicants to seek appropriate redressal, in accordance with Law to appear before the appropriate Forum. Such order was passed by the

Apex Court on July 22<sup>nd</sup>, 2014 and thereafter on February 14<sup>th</sup>, 2015, the Applicants filed instant Application.

**14.** We find it difficult to comprehend as to why there was considerable delay in approaching this Tribunal, after granting liberty by the Apex Court and normally, the Writ Petition, in discretion exercised by the Hon'ble High Court, if so would have been filed, might have been dismissed on the ground of laches and delay. Still, however, we entertain the Application under Section 14(1) read with Section 18(1) of the National Green Tribunal Act, 2010, for the reason that it relates to substantial question relating to environment and that the present Application is not to be termed as 'Writ Petition' as such. We are conscious of the fact that proceedings of the Tribunal are regulated under Section 19 of the NGT Act, 2010 and reliefs can be moulded, in accordance with requirement of the need, notwithstanding the fact that the Applicant has claimed certain specific reliefs.

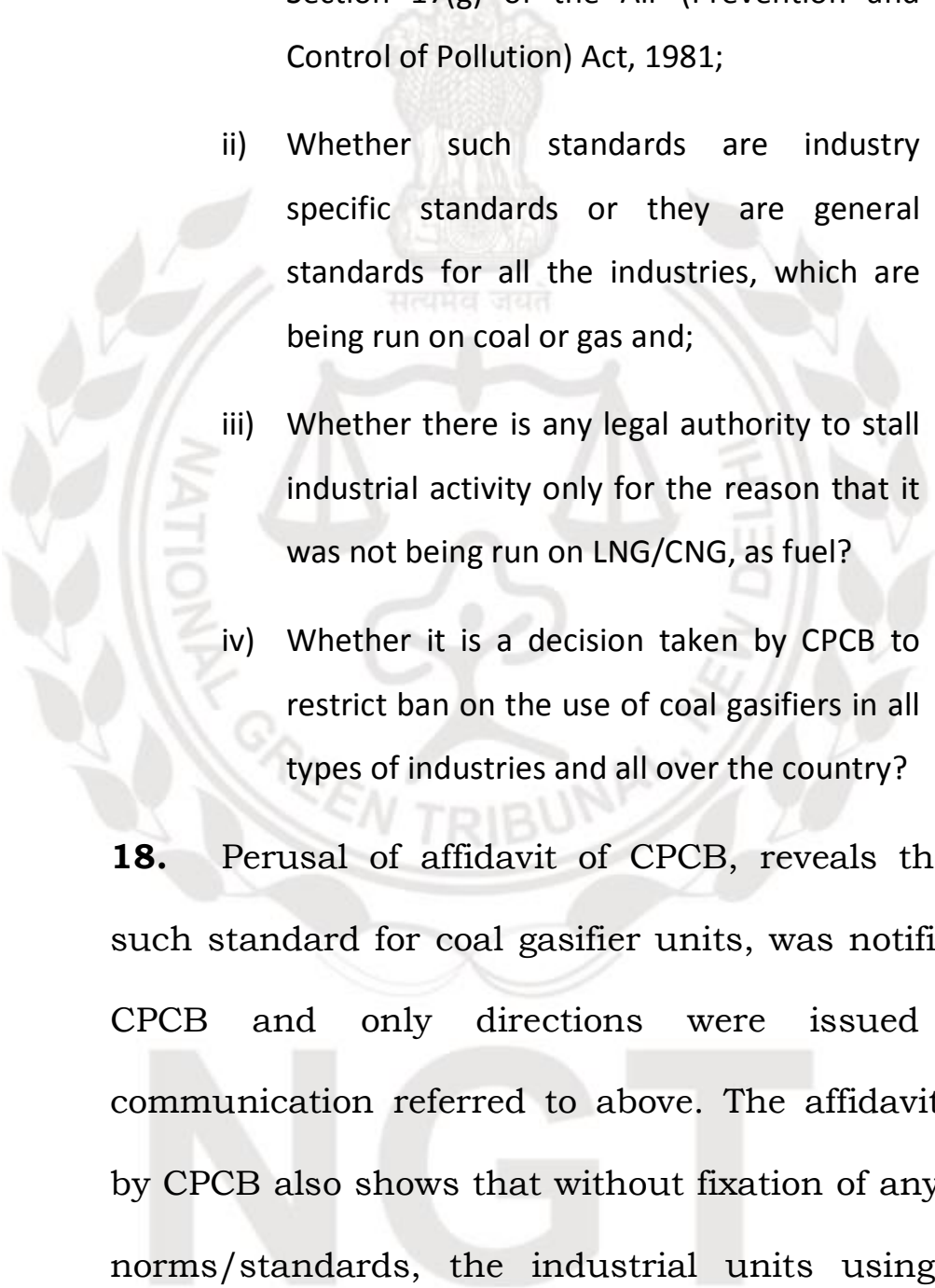
**15.** Perusal of the Application and entire record, would indicate that the main purport of the Application is to ensure ceramic, Silicate and Frit industries operating in Morbi town, shall not cause



any pollution by using coal based gasifiers and that all such industries shall be closed down by the authorities concern. The Applicant has further sought restoration of CPCB communication dated 21<sup>st</sup> June, 2014, for withdrawal of recommendations contained in that letter and to re-impose, declamp directions dated August 23<sup>rd</sup>, 2012. In other words, the present Applicant is to again clamp the moratorium and dismantle coal gasification activities of all the industrial units, which are unauthorized.

**16.** Perusal of affidavits filed by the CPCB and GPCB are significant, inasmuch as it is the policy of CPCB, which triggered entire litigation in 2012. Had CPCB not directed dismantling of gasifier industrial units, particularly, illegally operating in Morbi town, which gave rise to Writ Petitions (PIL), there was no reason for industrial units to rush to the Hon'ble High Court of Gujarat for seeking any remedy by way of Writ of Mandamus or any other relief as well as discretion of Special Civil Applications, which were clubbed together for common hearing.

**17.** Upon hearing learned Counsel for GPCB and CPCB, we had put specific quarries:

- 
- i) Whether any particular standards were drawn and notified for the coal gas based industries and particularly in respect of industries which are ceramic/ Frit/ Vitrified, monitoring industries, in accordance with Section 17(g) of the Air (Prevention and Control of Pollution) Act, 1981;
  - ii) Whether such standards are industry specific standards or they are general standards for all the industries, which are being run on coal or gas and;
  - iii) Whether there is any legal authority to stall industrial activity only for the reason that it was not being run on LNG/CNG, as fuel?
  - iv) Whether it is a decision taken by CPCB to restrict ban on the use of coal gasifiers in all types of industries and all over the country?

**18.** Perusal of affidavit of CPCB, reveals that no such standard for coal gasifier units, was notified by CPCB and only directions were issued vide communication referred to above. The affidavit filed by CPCB also shows that without fixation of any legal norms/standards, the industrial units using coal gasifiers were directed to be dismantled. It is also submitted that Morbi has not been notified as critically polluted area under the Comprehensive Environmental Pollution Index (CEPI) list. There

cannot be any duality of opinion that CPCB and GPCB are the Statutory Environmental Regulatory Authorities and are required to ensure that there shall be abatement of pollution and industrial activities must not, in any case, be allowed to generate air or water pollution in the area. We are of the opinion that there are about 1000 industrial units in Morbi. Out of these 1000 industrial units, only 220 units have been given consent to establish and the Applications of remaining units are under consideration. While considering such Applications, it shall be duty of the GPCB to first ensure whether excessive number of units can be permitted at Morbi. It cannot be overlooked that Morbi is a small town and area is likely to be polluted, if more such industrial units are allowed to operate. Though, it is stated that coal based industrial units do not add to pollution load, yet data is not verified by the GPCB or CPCB or any independent agency. We have also noticed that the regular environmental monitoring in terms of ambient air quality has not been placed on record by GPCB/CPCB, which is necessary for fixation of standards and also, to assess the assimilative capacity of Morbi area. Moreover, there is

no authentic report about analysis of ash, which is produced and allegedly said to be a simple waste product after processing through two chambers, like oxidation and of catcher chamber, which are integral systems of the coal gasifier. Moreover, the GPCB/CPCB have not fixed norms of stack emissions, in accordance with production capacity of each unit.

**19.** It is pertinent to note that provisions of Ss. 17(g) and 19(3) of the Air (Prevention & Control of Pollution) Act, 1981, which regulate the above issues referred to GPCB/CPCB. CPCB and GPCB could not produce any document/notification issued under both these relevant provisions, which are as under:

**17. Functions of State Boards.**

(1) subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), the functions of a State Board shall be-

(a) \*\*\*

(b)\*\*\*

(c) \*\*\*

(d) \*\*\*

(e) \*\*\*

(f) \*\*\*

(g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft:

**19. Power to declare air pollution control areas,**

(1) \*\*\*

(2) \*\*\*

(3) If the State Government, after consultation with the State Board, is of opinion that the use of any fuel, other than an approved fuel, in any air pollution control area or part thereof, may cause or is likely to cause air pollution, it may, by notification in the Official Gazette, prohibit the use of such fuel in such area or part thereof with effect from such date (being not less than three months from the date of publication of the notification) as may be specified in the notification.

**20.** The perusal of communication dated June 21<sup>st</sup>, 2014, issued by the Chairman of CPCB to the Chairman of GPCB, purports to show that directions are rather remarks or difficult to be apprehended and practically are so slippery in the use of phraseology. We wonder as to how such an authority give directions which amount to abdication of responsibility. For example; the Chairman of CPCB gave direction Nos. 1 to 8, of which direction No.1 may be reproduced as below:

1. If GPCB feels satisfied and confident that the ceramic units of Morbi-Wakaner industrial cluster will install all necessary equipments in gasifiers as recommended by the Expert Committee of Government of Gujarat and ensure zero pollution, they are permitted to modify the conditions in their consent order suitably for a period of one year. Direction No.1 issued earlier on 23/08/2012 in respect of stoppage and dismantling of gasifiers will stand suspended in this period of one year.

**21.** It is difficult to gather as to what kind of subjective “satisfaction” of GPCB is permitted by using expression “If GPCB feels satisfied and confident”. How confidence level of GPCB was to be analyzed and objective methodology or criteria thereof, was to be assessed by CPCB, is rendered in obscurity. This kind of direction is rather a tool given to some other authority to exercise power with arbitrariness or to allow exercise of power in wilderness, so that delegatory authority would lurch in dark and is exposed to the flak and criticism from all. We are dissatisfied with such kind of communication and direction of CPCB and disprove the same.

**22.** Notwithstanding whatever observations, we have made earlier, instead of going into merits and indicating all the observations in the report of analysis- industry-wise as per GPCB's Expert Committee, we deem it proper to direct that a Committee comprising one officer each nominated by the Chairman of CPCB and Chairman of GPCB along with concern Head of Department (HoD), Environment Engineering Department of M.S. University, Baroda, shall hold a meeting within two weeks of which Zonal Officer of CPCB, Baroda (Vadodara), would act as convener with following mandate:

i) The Committee shall evolve parameters and standards for the purpose of coal-gasifiers that can be used for production of ceramic/Frits/Silicate products, which may be model not only for Gujarat State, but may be adopted for other places.

ii) The Committee shall consider whether use of particular quality of fuel is required as per capacity of production by the industry or that

gasifiers would be permissible, having regard to certain production capacity of the industry.

iii) The Committee also shall evolve monitoring system, and mechanism in order to ensure proper implementation of standards/norms.

**23.** The 'action plan' in the context of monitoring system and standards which need to be adopted be prepared by the said Committee and submitted for approval of GPCB within period of four (4) weeks and be notified by GPCB without any delay. We allow only industrial units, which are granted consent to operate for the coal gasifier to be run on coal-gas in Morbi and Wakaner for the present, until the above Committee's action-plan/parameters are prepared / approved by the GPCB and notified and that no further Application for coal-gasifier be considered till then by GPCB.

**24.** The gasifiers installed by industrial units with necessary consent of GPCB, shall be operated strictly in compliance with conditions of consent issued by GPCB in the entire Morbi-Wakaner industrial cluster and no unauthorized gasifier unit shall be allowed/permitted to operate by GPCB.



**25.** The GPCB is at liberty to take necessary action, including that of closure against unauthorized industrial units situated in Morbi-Wakaner, which are non-complying industries or they are being run without consent.

**26.** With these directions, the Application along with all the Misc. Applications are disposed of with liberty to approach the Tribunal for any further clarification, if so, necessary. In the meanwhile, Applications seeking consent may be processed by the GPCB, but no final decision may be taken. No costs.

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(Justice V. R. Kingaonkar)

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(Dr.Ajay A. Deshpande)

**DATE: SEPTMBER 8<sup>th</sup>, 2015.**  
**PUNE.**

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