National Green Tribunal
e-Journal 2025
(Volume II)

National Green Tribunal

e-Journal 2025 (Volume II)

Annual e-Journal consisting of landmark Judgments of National Green Tribunal

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Justice Arun Kumar Tyagi,

Hon'ble Judicial Member, National Green Tribunal

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Forward

It gives me great pleasure to present Volume II of the e-Journal of the National Green Tribunal of the year 2025. This edition comprises of the judgements and orders of NGT passed in the latter half of the year 2025.

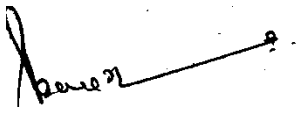
Environmental adjudication today stands at a point where the quality of reasoning is as significant as the outcome of the decision itself. The judgments compiled in this volume reflect the Tribunal's conscious effort to address environmental disputes with clarity, restraint, and a strong reliance on factual and scientific assessment.

This edition brings together decisions that engage with diverse and often competing interests—ecological protection, regulatory compliance, and legitimate developmental activity. The judgments demonstrate that environmental justice is not served through straight-jacket solutions, but through context-specific reasoning grounded in law, evidence, and fairness. They also reflect the Tribunal's emphasis on accountability of authorities, compliance with statutory frameworks, and timely remedial action where environmental harm is established.

The publication of this e-Journal is intended to facilitate deeper engagement with the reasoning adopted by the Tribunal, enabling readers to appreciate how legal principles are applied to complex environmental realities. It is hoped that these judgments will assist courts, regulators, practitioners, and scholars in refining their understanding of environmental governance and adjudicatory discipline.

The e-Journal serves not merely as a record of outcomes, but as a reflection of the Tribunal's evolving judicial approach and its commitment to reasoned, transparent decision-making.

I trust that Volume II of the year 2025 NGT e-Journal will prove valuable in advancing understanding, consistency, and respect for environmental adjudication, and will further reinforce our shared commitment to protecting the environment in accordance with the rule of law.



Justice Prakash Shrivastava

From the Desk of Editor-in-Chief

Justice Arun Kumar Tyagi,
Judicial Member, NGT

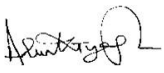
The present volume of the e-Journal has been curated with the objective of presenting the Tribunal's judgments in a manner that emphasizes precision, coherence, and ease of reference.

The judgments included in this volume address a wide spectrum of environmental issues and reflect varied procedural and substantive dimensions of adjudication. While compiling the judgements case notes have been prepared to assist readers in navigating complex legal and factual contexts. This approach is intended to make the e-Journal a practical and dependable resource for legal professionals, administrators, researchers, and students.

Editorial efforts have been directed toward maintaining consistency in formatting and presentation, but also enhancing accessibility for easy updation of environmental jurisprudence through the judgements compiled. In doing so, this volume seeks meaningful engagement with the Tribunal's work and to facilitate informed analysis of environmental jurisprudence.

In order to enhance accessibility and ensure convenience of the readers, new feature has been incorporated in the e-Journal. The index has been hyperlinked so that each entry directly redirects the reader to the relevant page or judgment, eliminating the need for manual searching. Additionally, bookmarks have been provided for all judgments to facilitate quick navigation within the e-journal. These features are intended to ensure seamless access, efficient reference, and an improved reading experience for all users.

It is hoped that Volume II of the 2025 e-Journal will serve as a useful reference and contribute significantly to ongoing discourse in environmental law and governance.



Justice Arun Kumar Tyagi

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RWA Sector Sigma 2 vs. Union of India & Ors.

(Original Application No. 734/2024)
(IA No 264/2024)
Decided on: 28th October, 2025 (PB)

CASE NOTE

The case originated from an application filed by the Residents Welfare Association of Sector Sigma-2, Greater Noida, alleging illegal encroachments, unauthorized constructions, cattle intrusion, and C&D waste dumping on the designated green belts (GB-9, GB-10, GB-11, and GB-13) as per the Master Plan. The grievance was directed against GNIDA and other authorities for failing to prevent occupation of green-belt land by adjoining villagers, misusing rooms inside the GB-10 pump house, and setting up an unauthorized temporary C&D waste collection centre in the green belt.

The primary issues were: (i) whether construction and encroachments inside notified green belts could be legally permitted; (ii) whether GNIDA had failed in its statutory obligation to protect and maintain green belts; (iii) whether a C&D waste collection centre could lawfully be located in a green belt under the 2016 Rules; (iv) whether GB-13 required proper demarcation and fencing; and (v) whether the GB-10 pump-house area was being misused beyond essential operational needs.

The Tribunal concluded that green belts serve as critical environmental buffers and must be strictly preserved, relying on Bangalore Medical Trust and Lal Bahadur. It found that GNIDA had admitted encroachments on GB-13 and taken no action despite notices, and UPPCB inspections confirmed unauthorized structures. The Tribunal held that the temporary C&D waste collection centre was impermissible in green areas, as the Rules do not authorize such facilities there and the Master Plan classifies storage as non-permissible. It also stressed that improper demarcation enabled continued violations and that the pump house could not justify additional occupation of green-belt land.

The Tribunal directed GNIDA to remove all encroachments from GB-10 and GB-13, discontinue and remove the temporary C&D waste centre, restore the green belt, demarcate GB-13 within three months and erect boundary fencing, repair boundary walls of all green belts, and restrict pump-house use to the minimum area necessary. With these directions, the matter was disposed of.

RWA Sector Sigma 2 vs. Union of India & Ors.

COUNSEL FOR APPLICANT(S):
Mr. Atul Kumar, Adv. for Applicant (Through VC)

COUNSEL FOR RESPONDENT(S):
Mr. Ravindra Kumar, Senior Advocate with Mr. Shivam Saksena, Advs. for GNIDA
Ms. Suhasini Sen & Ms. Supraja V., Advs. for MoEF& CC
Mr. Aditya Vaibhav Singh & Mr. Gautam Singh, Advs. for UPPCB
Mr. Atif Suhrawardy, Adv. for CPCB

CORAM:
HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE MR. SUDHIR KUMAR CHATURVEDI, EXPERT MEMBER
HON'BLE DR. SUJIT KUMAR BAJPAYEE, EXPERT MEMBER

RESERVED ON: 4th September, 2025
PRONOUNCED ON: 28th October, 2025

ORDER

BY HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON

1. In this original application, the Residents Welfare Association of Sector Sigma 2, Greater Noida has raised a grievance against illegal encroachment/construction on the green belts of Sector Sigma 2. The Applicant alleges that Sector Sigma 2 is a locality in Greater Noida City in Uttar Pradesh and the Green Belts in this sector are marked in the Master Plan as GB-9, GB-10, GB-11 and GB-13. The Applicant alleges that the persons from adjoining villages have encroached on the Green Belt, GB-13 and the cattle is entering the green belt and destroying the green area. It is further alleged that the illegal construction activities and dumping of waste is taking place in GB-9, GB-10, GB-11 and GB-13 of Sigma 2.

2. The Applicant has raised a specific objection to the two rooms built inside the green belt, GB-10 as pump house and has alleged that the horticulture contractor has repurposed these rooms to accommodate his employees whose activities are destroying the greenbelt, GB-10.

3. The Applicant has also raised objection against the broken wall of the greenbelt and dumping of construction & demolition waste on GB-10. The Applicant further alleges that the villagers in collusion with the respondents have made several rooms, concrete structures on GB-13 which have been rented to the migrant labourers and other persons. It is alleged that the Respondents have not constructed or installed any boundary or boundary marks

demarcating the green belt, GB-13, the village land and the land belonging to Block D of Sector Sigma 2.

4. In view of the above factual averments, the Applicant has prayed for a direction to Respondents No. 3 and 4 to remove all encroachments from the green belt, GB-10 and GB-13 and has sought a direction to the Respondent No. 4 to demarcate Village Kayampur boundaries and construct a tall and robust wall all around the village so that the green belts are not encroached upon. Similar relief of constructing a tall and robust wall on the periphery of green belt no. GB-9, GB-10 and GB-11 has been prayed. The Applicant has also sought a direction to the Respondents to regularly maintain the green belts.

5. Respondent No. 1, Central Pollution Control Board (for short, "CPCB") has filed the reply dated 23.09.2024 disclosing the regulatory mechanism contained in the C&D Waste Management Rules, 2016 and also the communication sent by the CPCB on 07.08.2024 to the Uttar Pradesh Pollution Control Board (for short, "UPPCB") and Greater Noida Industrial Development Authority (for short, "GNIDA") to examine the matter and take requisite action.

6. Respondent No. 7, UPPCB has filed the reply dated 19.09.2024 disclosing that on inspection, the encroachment on the green belt was found and the communication was sent to the GNIDA.

7. The Respondent No. 4, GNIDA has filed the reply taking the stand that the maintenance work of GB-9, GB-10 and GB-11 is being done and admitting that a part of GB-13 has been encroached upon. It is stated that GB-13 is partially developed and that the alleged liquor shop is not on the Khasra of GB-13. The Respondent No. 4 has also stated that the notices have been issued to the encroachers.In respect of pump house, the stand of Respondent No. 4 is that the pump house is essential.In respect of the C&D Waste Collection Centre, it has been stated that the same has been temporarily set up, but has not been used.

8. The Applicant has filed the rejoinder dated 01.09.2025 reiterating its stand about the broken fencing, inadequate greenery and encroachment on the green belt.

9. Having heard learned Counsel for the parties at length, we find that undisputedly GB-9, GB-10, GB-11 and GB-13 are the green belts in Sector Sigma 2, Gautam Budh Nagar as per the Master Plan. The green belts in the cities, urban bodies and residential area are essential as they act as lungs of that area and help in maintaining the air quality in the area.

10. The green belts in the residential colonies are required not only to protect the residents from the ill effects of urbanisation, but also for recreation and fresh air. Such green belts are required to be protected on the environmental point of view. The Hon'ble Supreme Court in the matter of ***Bangalore Medical Trust v. B.S. Muddappa & Ors.,*** reported in ***(1991) 4 SCC 54***, while considering the issue of diversion of the open space reserved for public park for constructing a hospital/nursing home had observed as under:

"xxx……xxx……xxx

24. Protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents, and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. It is that public interest which is sought to be promoted by the Act by establishing the BDA. The public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing or sell-ing such sites to private persons for conversion to some other user. Any such act would be contrary to the legislative intent and inconsistent with the statutory requirements. Furthermore, it would be in direct conflict with the constitutional mandate to ensure that any State action is inspired by the basic values of individual freedom and dignity and addressed to the attainment of a quality of life which makes the guaranteed rights a reality for all the citizens[2].

25. Reservation of open spaces for parks and playgrounds is universally recognised as a legitimate exercise of statutory power rationally related to the protection of the residents of the locality from the ill-effects of urbanisation[3].

26. In Agins v. City of Tiburon[4] *, the Supreme Court of the United States upheld a zoning ordinance which provided '... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant impacts, such as pollution, ... destruction of scenic beauty, disturbance of the ecology and the environment, hazards related to geology, fire and flood, and other demonstrated consequences of urban sprawl'. Upholding the ordinance, the Court said:(US pp. 261-62)*

> *"... The State of California has determined that the develop-ment of local open-space plans will discourage the 'premature and unnecessary conversion of open-space land to urban uses'.... The specific zoning regulations at issue are exercises of the city's police power to protect the residents of Tiburon from the ill effects of urbanization. Such governmental purposes long have been recog-nized as legitimate*
>
> *…The zoning ordinances benefit the appellants as well as the public by serving the city's interest in assuring careful and orderly development of residential*

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[2]See Kharak Singh v. State of U.P., (1964) 1 SCR 332: AIR 1963 SC 1295: (1963) 2 Cri LJ 329; Municipal Council, Ratlam v. Vardhichand, (1980) 4 SCC 162: 1980 SCC (Cri) 933: (1981) 1 SCR 97; Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608: 1981 SCC (Cri) 212: (1981) 2 SCR 516; Olga Tellis v. Bom-bay Municipal Corporation, (1985) 3 SCC 545; State of H.P. v. Umed Ram Sharma, (1986) 2 SCC 68: AIR 1986 SC 847 and Vikram Deo Singh Tomar v. State of Bihar, 1988 Supp SCC 734: 1989 SCC (Cri) 66: AIR 1988 SC 1782.

[3]See for e.g: Karnataka Town and Country Planning Act, 1961; Maharashtra Regional and Town Planning Act, 1966; Bombay Town Planning Act, 1954; the Travancore Town and Country Planning Act, 1120, the Madras Town Planning Act, 1920; and the rules framed under these statutes; Town and Country Planning Act, 1971 (England and Wales); Encyclopaedia Americana, Volume 22, page 240; Encyclopaedia of the Social Sciences, Volume XII at page 161; Town Improvement Trusts in India, 1945 by Rai Sahib Om Prakash Aggarawała, p. 35 et seq.; Halsbury's Statutes, 4th edn., p. 17 et seq. and Journal of Planning and Environment Law, 1973, p. 130 et seq. See also: Penn Central Transportation Company v. City of New York, 57 L Ed 24 631: 438 US 104 (1978); Village of Belle Terre v. Bruce Boraas, 39 L Ed 20 797: 416 US 1 (1974); Vil-lage of Euclid v. Ambler Realty Company, 272 US 365 (1926); Halsey v. Esso Petroleum Co. Ltd., (1961) 1 WLR 683

[4]447 US 255 (1980)

property with provision for open-space areas."[5]

xxx……xxx……xxx

36. Public park as a place reserved for beauty and recreation was developed in 19th and 20th century and is associated with growth of the concept of equality and recognition of importance of common man. Ear-lier it was a prerogative of the aristocracy and the affluent either as a result of royal grant or as a place reserved for private pleasure. Free and healthy air in beautiful surroundings was privilege of few. But now it is a, 'gift from people to themselves'. Its importance has multiplied with emphasis on environment and pollution. In modern planning and development it occupies an important place in social ecology. A private nursing home on the other hand is essentially a commercial venture, a profit-oriented industry. Service may be its motto but earning is the objective. Its utility may not be undermined but a park is a necessity not a mere amenity. A private nursing home cannot be a substitute for a public park. No town planner would prepare a blueprint without reserving space for it. Emphasis on open air and greenery has multiplied and the city or town planning or development Acts of different States require even private house owners to leave open space in front and back for lawn and fresh air. In 1984 the B.D. Act itself provided for reservation of not less than 15 per cent of the total area of the layout in a development scheme for public parks and playgrounds the sale and disposition of which is prohibited under Section 38-A of the Act. Absence of open space and public park, in present day when urbanisation is on increase, rural exodus is on large scale and congested areas are coming up rapidly, may give rise to health hazard. May be that it may be taken care of by a nursing home. But it is axiomatic that prevention is better than cure. What is lost by removal of a park cannot be gained by establishment of a nursing home. To say, therefore, that by conversion of a site reserved for low lying park into a private nursing home social welfare was being promoted was being oblivious of true character of the two and their utility."

11. In the matter of ***Lal Bahadur vs. State of Uttar Pradesh & Ors.,*** reported in ***(2018) 15 SCC 407***, while examining the action of change of an area reserved for green belt in the master plan to the residential in subsequent master plan has considered the importance of such green areas and observed as under:

"xxx……xxx……xxx

16. We have seen the photographs that are placed on record by the learned counsel for the respondents. It is a beautiful park that has come up, inter alia, in the area in question having a lake and a large number of trees. Though the park has been beautifully developed the very action of change of purpose was wholly uncalled for. The importance of the park is of universal recognition. It was against public interest, protection of the environment and such spaces reduce the ill-effects of urbanisation, it was not permissible to change this area into urban area as the garden/greenbelt is essential for fresh air, thereby protecting against the resultant impacts of urbanisation, such as pollution, etc. The provision of the 1973 Act and other enactments relating to environment could not be permitted to become statutory

[5] See comments on this decision by Thomas J. Schoenbaum, Environmental Policy Law, (1985) p. 438 et seq. See also Summary and Comments, (1980) 10 ELR 10125 et seq.

mockery by changing the purpose in the Master Plan from greenbelts to residential one. The authorities are enjoined with duty to maintain them as such as per the doctrine of public trust."

12. The Tribunal in the order dated 04.07.2024 passed **in OA No. 209/2023** in the matter of ***Kapil Dev &Anr. vs. Municipal Commissioner***, had considered the importance of protecting the green area after taking note of the earlier judgment on the point and had observed as under:

"xxx……..xxx……..xxx

17. This Tribunal in the matter in O.A No. 292/2023 in Dr. Amandeep Singh Bains v. The Municipal Commissioner of Ludhiana & Ors, has already taken a similar view and it has been held that no encroachment or construction can be allowed to be raised changing the nature of green belt/park in any manner. Relevant paras are quoted below:-

21. We find that the respondent no. 2 has clearly violated the law in erecting the statue, constructing structure and using the park for commercial purposes. Hence, we direct the Member Secretary, Punjab Pollution Control Board to duly consider the issue of imposition of environmental compensation for past violation by the respondent no. 2 and take action by duly complying with the principles of natural justice and submit an action taken report before the Registrar General of the Tribunal within three months.

22. In the facts and circumstances of the case noted above, we find that it is the responsibility of the respondent nos. 1 and 3 to ensure that the green cover in Rakh Bagh is maintained and no unauthorized construction, whether temporary/permanent in nature, is allowed to be erected and no illegal commercial activity is permitted in the park. Hence, we direct the respondent no. 1 to take appropriate remedial action, if any, unauthorized structure of temporary/permanent nature is still standing on the Rakh Bagh Park and, if any, illegal commercial activity is going on and submit action taken report before the Registrar General of the Tribunal within three months. If found necessary, the matter be listed before the bench."

18. In view thereof, we are clearly of the view that construction raised on the area comprising green belt (Leisure Valley) must be removed if necessary even by demolition of construction raised."

13. Thus, the law is well settled that the green areas, green belts and the parks are required to be protected and no encroachment should be allowed therein.

14. In the present case, admittedly, the encroachments on the green belt in Sector Sigma 2 have been made.

15. The Respondent – UPPCB had carried out inspection of Sector Sigma-2 and had found encroachment on some part of the green belt. The inspection report is as under:

"1. प्रश्नगतसेक्टरसिग्मा-2,ग्रेटर नोएडा औद्योगिक विकास प्राधिकरण द्वारा विकसित किया गया है।

2. उक्त ओ०ए० के साथ संलग्न पत्र के अनुसार ग्रेटर नोएडा औद्योगिक विकास प्राधिकरण के पत्रांक वरिष्ठ प्रबंधक / उद्यान /2022-23/794 दिनांक 19.11.2022 द्वारा सेक्टर सिग्मा-2, ग्रेटर नोएडा के अन्तर्गत ग्राम-क्यामपुर के चारो ओर कुछ भाग पर ग्रामवासियों द्वारा निर्माण कार्य किये जाने की सूचना दी गयी है।

3. निरीक्षण के दौरान ग्राम क्यामपुर के सामने ग्रीन बेल्ट एरियामें 01 टिन शेड की बाउन्ड्री स्थापित पायी गयी एवंयाचिकाकर्ता से दूरभाष पर वार्ता से प्रतीत होता है कि ग्रीन बेल्ट के दूसरी तरफ (ग्राम-क्यामपुर) अतिक्रमण कर दुकानों का निर्माण किया गया है।"

16. The Senior Manager, (Horticulture) of Respondent No. 4 had also sent the communication dated 19.11.2022 to the Sub-Divisional Officer (Land Record Department) of Respondent No. 4 disclosing the encroachments on the green belt by stating as under:

"कृपया उपरोक्त विषयक अवगत कराना है कि सैक्टर सिग्मा 2. ग्रेटर नोएडा के अन्तर्गत आने वाले ग्राम क्यामपुर के चारों ओर, प्राधिकरण द्वारा स्वीकृत ले-आउट प्लान के अनुसार कुछ भाग पर ग्रीन बेल्ट दर्शायी गई है। परन्तु उक्त ग्रीन बैल्ट में ग्रामवासियों द्वारा वृहद रूप से कई वर्ष पूर्व से निर्माण किया हुआ है। जिस कारण आज तक उक्त स्थल पर ग्रीन बैल्ट विकसित नहीं हुई है। सैक्टर सिग्मा-2 के आर० डब्ल्यू० ए० के प्रतिनिधियों द्वारा पूर्व में उक्त प्रकरण को मुख्य कार्यपालक अधिकारी महोदय के समक्ष प्रस्तुत किया था। यदि उक्त भूमि ग्रेटर नौएडा औद्योगिक विकास प्राधिकरण के स्वामित्व में है तो नियोजित तलपट मानचित्र के अनसार प्रश्नगत ग्रीन बेल्ट का उद्यानिक विकास कार्य कराया जाना प्रस्तावित है। इस सम्बन्ध में आपसे पूर्व प्रेषित पत्रांक वरिष्ठ प्रबन्धक / उद्यान /2021-222/89 दिनाँक 03.07.2021 के माध्यम से भी अनुरोध किया गया था कि प्रश्नगत भूमि की अद्यतन स्थिति उद्यान विभाग को उपलब्ध कराने का कष्ट करें, जो कि वर्तमान तक अपेक्षित है।"

17. The Respondent No. 4, GNIDA has admitted in its reply as under:

"(vi). As regard certain encroachment that have been made on Green BeltNo. 13, it is submitted that notice has been issued to the encroachers, copy of the notice is annexed hereto and marked as ***Annexure R-4/2****. Further legal action, in accordance with law shall be taken by the answering respondent Authority."*

18. The notice dated 15.01.2025 (page 308) Annexure R-4/2, was issued by GNIDA for removal of encroachment.

19. The Applicant has filed the rejoinder dated 01.09.2025 stating that no action in pursuance to the said encroachment removal notice has been taken by stating as under:

"12. ***Inaction on Admitted Encroachments****: Respondent No. 4's admission of encroachments on Greenbelt No. 13 is rendered meaningless by its subsequent, and total, failure to act. A Notice to remove the illegal structures was issued on 15.01.2025 with a 7-day compliance deadline. That deadline expired over seven months ago, yet the encroachments persist entirely unabated. This prolonged and unexcused inaction is not merely negligent; it signifies a lack of good faith*

and a conscious acquiescence to the destruction of environmentally sensitive land.

20. Learned Counsel for the Respondent No. 4 could not point out that any encroachment in pursuance to the notice dated 15.01.2025 has been removed.

21. Hence, we direct the Respondent No. 4 to take prompt expeditious steps in accordance with law to remove the encroachmentsfrom GB-10 and GB-13. The other official respondents are directed to extend full cooperation to Respondent No. 4 in the process of removal of encroachment.

22. So far as the allegation of dumping of C&D waste on the green belts is concerned, admittedly a temporary C&D waste collection centre has been set up in the green belt. Stand of Respondent No. 4 in this regard is as under:

"6. So far as the issue of temporary enclosure for C & D waste collection is concerned, it is submitted that the same is temporary in nature. The C & D waste collection centre is temporarily set in the area where such waste is generated. The enclosre is proposed on a small area and is away from the residential area. It is clarified that this enclosure is intended to be only a collection centre, where from the C & D waste is to be carried to the C & D waste plant located in Sector Eco Tech-3. It is further clarified that till date this enclosure has actually not been used at all for collection of the C & D waste. It is submitted that under the C & D Waste Management Rules, 2016, collection centers are permissible. Rule 5 envisages the setting up of a plant for disposal of the C & D waste. At this stage, it is pertinent to submit that Rule 4(4) of the said Rules clearly contemplate and provide for setting up of collection center of the C & D waste. Similarly, Rule 5(1) also talks of collection of the C & D waste. Collection is thus to be made at designated collection centers, wherefrom the waste so collected is periodically transferred to the C & D waste plant. Such centres are erected at places, where C & D waste is likely to be generated. The generation of C & D waste is a temporary phase and it is inevitable in the process of development. It may be noticed that even for collection of garbage from households, garbage collection centers are set up within the colonies, where from the garbage is taken to the dedicated site for disposal. The collection centers for garbage as also for C & D waste is a necessity and cannot be faulted with. The Master Plan does permit the setting up of collection centres in the green area which is the most appropriate place. Relevant page of the Master Plan is annexed hereto and marked as ***ANNEXURE R-4/3****. It is further submitted that the issue of having a temporary collection centre of C & D waste has come up before this Hon'ble Tribunal when it was pleased not to permit such use. However, appeal against that order is pending before the Hon'ble Supreme Court."*

23. The reply of Respondent – UPPCB also discloses that the notices dated 26.07.2024, 11.09.2024 and 12.09.2024 were issued by the UPPCB and District Magistrate, Gautam Budh

Nagar to the Respondent No. 4 for taking action for removal of the C&D Waste and encroachment from the green belt in Sector Sigma-2.

24. The Ministry of Environment, Forest and Climate Change (for short, "MoEF&CC") in exercise of the powers conferred under Sections 6 and 25 of the Environment (Protection) Act, 1986 has framed the Construction & Demolition Waste Management Rules, 2016. Under Rule 6, the local authority has been entrusted with the responsibility for the management and disposal of the C&D waste. Rule 4 fixes the responsibility upon the waste generator.

25. In support of its plea about permissibility to set up a temporary C&D waste collection centre in the green area, reliance has been placed by Counsel for the Respondent No. 4 upon Rule 4(4) of the C&D Waste Management Rules, but Rule-4(4) does not given any authority or power to the local authority to set up the temporary or permanent C&D waste collection centre in the green belt. Rule-4 in fact relates to the duties of the waste generator and fixes the responsibility under Rule-4(4) to keep the C&D waste within its premises or deposit it in the wate collection centre made by the local body. Rule-4(4) reads as under:

> ***"(4) Duties of the waste generator*** –
>
> *(1) to (3). xxx……xxx……xxx*
>
> *(4) Every waste generator shall keep the construction and demolition waste within the premise or get the waste deposited at collection centre so made by the local body or handover it to the authorised processing facilities of construction and demolition waste; and ensure that there is no littering or deposition of construction and demolition waste so as to prevent obstruction to the traffic or the public or drains."*

26. Similarly, a reliance has been placed by Counsel for the Respondent No. 4 upon Rule-5(i) of the Rules. But Rule-5 relates to the duties of service providers and their contractor concerning preparation of comprehensive waste management plan.

27. Rule-6 provides for the duties of the local authority for the collection and disposal of the C&D waste and reads as under:

> *"(6)* ***Duties of local authority****-The local authority shall,-*
>
> *(1) issue detailed directions with regard to proper management of construction and demolition waste within its jurisdiction in accordance with the provisions of these rules and the local authority shall seek detailed plan or undertaking as applicable, from generator of construction and demolition waste;*
>
> *(2) chalk out stages, methodology and equipment, material involved in the overall activity and final clean up after completion of the construction and demolition;*

(3c) seek assistance from concerned authorities for safe disposal of construction and demolition waste contaminated with industrial hazardous or toxic material or nuclear waste if any;

(4) shall make arrangements and place appropriate containers for collection of waste and shall remove at regular intervals or when they are filled, either through own resources or by appointing private operators;

(5) shall get the collected waste transported to appropriate sites for processing and disposal either through own resources or by appointing private operators;

(6) shall give appropriate incentives to generator for salvaging, processing and or recycling preferably in-situ;

(7) shall examine and sanction the waste management plan of the generators within a period of one month or from the date of approval of building plan, whichever is earlier from the date of its submission;

(8) shall keep track of the generation of construction and demolition waste within its jurisdiction and establish a data base and update once in a year;

(9) shall device appropriate measures in consultation with expert institutions for management of construction and demolition waste generated including processing facility and for using the recycled products in the best possible manner;

(10) shall create a sustained system of information, education and communication for construction and demolition waste through collaboration with expert institutions and civil societies and also disseminate through their own website;

(11) shall make provision for giving incentives for use of material made out of construction and demolition waste in the construction activity including in non-structural concrete, paving blocks, lower layers of road pavements, colony and rural roads."

28. In terms of Rule-6(4), the local authority is required to place appropriate containers for collection of waste and remove them at the regular interval and get the collected waste transported to appropriate site for processing and disposal. As per the disclosure made by Respondent No. 4, the C&D waste plant is located in Sector Eco Tech-3. Therefore, in terms of Rules, the Respondent No. 4 is required to get the C&D waste collected in containers and transport it to the C&D waste plant in Sector Eco Tech-3. Since loading and unloading of the C&D waste creates air pollution by emitting dust particles, therefore, setting up of a temporary waste collection centre in green belt even otherwise cannot be permitted.

29. The CPCB has also framed the Guidelines on Environmental Management of C&D Wastes in compliance of Rule-10, sub rule 1(a) of the C&D Waste Management Rules, 2016. These guidelines in Section -V, Clause-1(viii) provide for C&D waste collection centre.Though the rule is silent about places where C&D waste collection centre can be set up, but such collection centres cannot be permitted to be set up at places like green belts.In fact, the guidelines in Section-VI, Clause-2 itself provides:

> *"xxx ……xxx……xxx*
> *As per C & D Waste Rules (Rule 4 sub-rule (4)), there should be no littering or deposition of construction and demolition waste so as to prevent obstruction to the traffic or the public or drains."*

30. The sub clause-vi of the Clause-3 of Section-6 of the guidelines also in clear terms provides that: (vi) Roads sides and vacant plots could be freed from debris dumps thereby giving cities a better facelift.

31. When as per the guidelines, vacant plots could be freed from debris, dump, such debris and dumps cannot be allowed in the green belt as the same will not add to better facelift of the cities but will adversely affect it.

32. Both the parties have relied upon the chart on page 309 concerning use of the premises permitted and the use zones. The Applicant submits that C&D waste temporary storage falls under item 63 of the chart "Storage, Godowns and Warehousing, Cold Storage" hence, not permissible in the green areas.Whereas the Respondent No. 4 has relied upon Entry-48 "Public Utilities and Services/Facilities" and taken the stand that it is permissible in the green areas. We find substance in the submission that the temporary storage facilities of C&D waste falls under Entry No. 63 which specifically covers storage. Hence, not permissible in the green area. The chart is reproduced for ready reference:

"

S. No.	***Use premises***	***USE ZONES***										
		R	***C***	***M***	***I***	***Green areas***		***T1***	***T2***	***IG***	***Agri.***	***IIT***
						P1	*P2*					
1a	*Abadi Expansions Plots*	*P*	*NP*	*P*	*P*	*NP*	*NP*	*P*	*P*	*P*	*P*	*P*
1.	*Amusement and Entertainment Park*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
2.	*Bank*	*P*	*P*	*P*	*P*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*P*
3.	*Barat Ghat*	*P*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
4.	*Burial and Cremation*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*p*	*NP*

	ground, cemetics											
5.	*Bust depot and workshop*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*NP*
6.	*Bust terminal, LRT terminals / Metro Station and terminal*	*NP*	*P*	*P*	*P*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*P*
7.	*Cargo and booking office*	*NP*	*P*	*P*	*NP*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*P*
8.	*Cinema / Multiplex*	*NP*	*P*	*P*	*NP*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*P*
9.	*Clinical laboratory*	*P*	*P*	*P*	*P*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*	*P*
10.	*Community centre / Auditorium/ Banquet hall*	*P*	*P*	*P*	*P*	*P*	*NP*	*P*	*P*	*P*	*NP*	*P*
11.	*Convenient / Sector Shopping*	*P*	*NP*	*P*	*P*	*NP*	*NP*	*P*	*P*	*P*	*NP*	*P*
12.	*Courts*	*NP*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
13.	*Creche and Day Care Centre*	*P*	*P*	*P*	*P*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*P*
14.	*Dairy Farming / Poultry farms*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*
15.	*Dharamshala*	*P*	*P*	*NP*	*NP*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*NP*
16.	*Dispensary*	*P*	*P*	*P*	*P*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*P*
17.	*Drive in cinemas*	*NP*	*P*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
18.	*Educational institutions including Training Centre*	*NP*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*	*P*
19.	*Fair Ground*	*NP*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
20.	*Farm House*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*
21.	*Gas Godowns*	*NP*	*NP*	*P*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*
22.	*Golf Course*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
23.	*Higher Secondary school*	*P*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*P*
24.	*Hospital*	*P*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*P*
25.	*Hostel, Guest House, Boarding*	*P*	*P*	*P*	*P*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*P*

	House, Lodging house											
26.	*Hotel*	*NP*	*P*	*NP*	*P*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*P*
27.	*Hawkers area*	*P*	*P*	*P*	*P*	*P*	*NP*	*P*	*P*	*P*	*NP*	*P*
28.	*Industrial plot / flatted factory plot*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*P*
29.	*IT Park / unit enabled services*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*	*P*
30.	*Milk Chilling Centres*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*
31.	*Motel*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*P*	*P*	*NP*	*P*	*NP*
32.	*Motor garage and workshop*	*NP*	*P*	*P*	*NP*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*NP*
33.	*Museum, Art Gallery, Exhibition Centre.*	*P*	*P*	*P*	*P*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*	*P*
34.	*Night Shelter*	*P*	*P*	*P*	*NP*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*NP*
35.	*Nursery and Kindergarten School*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
36.	*Nursing Home*	*P*	*P*	*P*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*P*
37.	*Offices*	*P*	*P*	*P*	*P*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*P*
38.	*Oil depot*	*NP*	*NP*	*P*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*
39.	*Open air theatre*	*P*	*P*	*NP*	*P*	*P*	*NP*	*NP*	*NP*	*P*	*P*	*NP*
40.	*Orchard*	*P*	*NP*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*
41.	*Orphanage*	*P*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
42.	*Park*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*
43.	*Parking*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*
44.	*Petrol pump / fuel pump*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*
45.	*Plant nursery*	*P*	*NP*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*
46.	*Play ground*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*NP*	*P*
47.	*Police lines, civil Defense and Home Guards*	*NP*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
48.	*Public Utilities and Services / Facilities*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*
49.	*Railway freight godowns.*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*P*

50.	*Recreational club*	*P*	*P*	*P*	*P*	*P*	*NP*	*P*	*P*	*P*	*NP*	*P*
51.	*Religious premises*	*P*	*NP*	*P*	*P*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*	*P*
52.	*Research & Development Centres*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*	*P*
53.	*Residential group housing (flatted*	*P*	*NP*	*P*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*P*
54.	*Residential plot/plotted housing*	*P*	*NP*	*P*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
55.	*Restaurant*	*P*	*P*	*P*	*P*	*NP*	*NP*	*P*	*P*	*P*	*NP*	*P*
56.	*Rural Centre*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*
57.	*Shooting range*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
58.	*Shopping Centre*	*NP*	*P*	*P*	*P*	*NP*	*NP*	*P*	*P*	*P*	*NP*	*P*
59.	*Social and Cultural Centre*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*P*	*P*	*P*	*NP*	*P*
60.	*Specialised parks/theme parks and gardens*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*NP*
61.	*Sports City*	*NP*	*NP*	*P*	*P*	*P*	*NP*	*NP*	*NP*	*P*	*NP*	*NP*
62.	*Sports City*	*P*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*NP*	*P*	*NP*	*NP*
63.	*Storage, godowns and warehousing, cold storage*	*NP*	*P*	*P*	*NP*	*NP*	*NP*	*P*	*P*	*NP*	*P*	*NP*
64.	*Swimming Pool*	*P*	*NP*	*P*	*P*	*P*	*NP*	*NP*	*NP*	*P*	*NP*	*NP*
65.	*Transport booking office (rail, road and air)*	*NP*	*P*	*P*	*P*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*P*
66.	*Transport Nagar*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*P*
67.	*Vending Booth, Kiosks*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*P*	*NP*	*P*
68.	*Weekly Market*	*P*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*

69.	*Wholesale Trade*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*P*	*P*	*NP*	*NP*	*NP*
70.	*Women's Hostel*	*P*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
71.	*Zoo*	*NP*	*NP*	*NP*	*NP*	*P*	*NP*	*NP*	*NP*	*NP*	*NP*	*NP*
** P-Permitted, NP- Not Permitted, R-Residential, C-Commercial, M-Industrial, P1-Recreational Green, P2-Nurseries and Horticulture, T1-Transportation, T2-Multi Modal Transport Hub & Multi Modal Logistic Hun, Agri-Agricultural, IIT-Integrated Industrial Township*												
All use premises not covered in the above table, shall be permissible in various use zones after approval of the Authority's Board.												
Uses permissible in Multi Modal Transport Hub & Multi Modal Logistic Hub will be as per Activities and uses approved by Govt.												

"

33. The stand of Respondent No. 4 is that though the temporary C&D waste collection centre has been set up in the green area, but the said collection centre has actually not been used till now. Therefore, we direct the Respondent No. 4 not to operationalise the temporary C&D waste collection centre in the green area and restore the green beltafter removing the temporary C&D waste collection centre from there.

34. The Applicant has also raised the grievance that in GB-13, a liquor shop has been set up. This aspect has been clarified by the Respondent No. 4 by pointing out that the liquor shop has been set up in Khasra No. 122 located in Village Kayampur which is recorded as Abadi in the revenue record under Category-6(2) and the same is not part of the land acquired by the State. It is stated that the green belt, GB-13 is 60 meter long and 6 meter wide having an area of total 360 sqm. located on Khasra No. 121 of Village Kyampur.

35. There is an issue of demarcation of green belt-13, therefore, we direct the Revenue Authorities specifically the Respondent No. 3 to properly demarcate the green belt as per the Master Plan and revenue records, as expeditiously as possible, preferably within three months. On demarcation of GB-13, the Respondent No. 4 will ensure, without any delay, erection of boundary/fencing surrounding GB-13 if not already done.

36. The Applicant has also raised the issue that these green belts are not properly developed. In this regard, a reliance has been placed on the photographs, Annexure A-26, page 327 onwards. The Respondent No. 4 also in para 3(ii) of its replydated 18.01.2025has admitted alteast for GB-13 that it is partially developed. The notice dated 19.11.2022, Annexure-A13, page 81 sent by Senior Manager (Horticulture), GNIDA to Sub-Divisional Officer (Land Record), GNIDA mentions that on account of the encroachments, the green belt in Sigma-2 has not been developed. The responsibility of Respondent No. 4 to development and maintain the green belts in Sector Sigma-2 is not in dispute.Though the Respondent No. 4 has placed on record certain photographs from page 299 onwards in an

effort to show that the green belts are properly maintained, but from these photographs, complete picture of all the green belts cannot be ascertained.

37. Therefore, we direct the Respondent No. 4 to repair the boundary wall of all the green belts of Sector Sigma-2 and to take all possible steps to maintain and protect these green belts.

38. The Applicant has also raised a grievance that the Respondent No. 4 has built two rooms inside GB-10 as pump house and the Horticulture Contractor has repurposed these rooms to accommodate his employees which has resulted into the destruction of the green belt.

39. The Respondent No. 4 in paragraph-5 has not disputed the existence of a pump house and allotting the space to the persons managing the pump house by taking the plea in its reply that:

> *"5. The pump house cannot be removed from the green belt as pump house is essential. Certain space has to be allocated to the person managing the pump house. The prayer made by the applicant in regard to removal of pump house is unacceptable to the answering respondent."*

40. The need of pump house and the minimum space required to a person for the purpose of running the pump house has not been disputed, but in the garb of that the person managing the pump house cannot be permitted to capture a larger area of the green belt for his comforts.Therefore, the Respondent No. 4 will determine the minimum area which is required for the pump house and for the person managing the pump house and will ensure that the person managing pump house does not utilise an area of the green belt other than the area allotted to him.

41. In view of the above analysis, we dispose of the OA directing the Respondents to complete the exercise as per the direction contained in the earlier parts of this order expeditiously within the given timeframe.

❖

M/S Mother Dairy Fruit and Vegetable Pvt. Ltd Pilkhuwa vs.
Commission for Air Quality Management in NCR and Adjoining Areas & Ors.

(Appeal No. 66 of 2025)
Decided on: 11th November, 2025 (PB)

CASE NOTE

The case arose from an appeal under Section 18 of the CAQM Act, 2021 filed by M/s Mother Dairy Fruit and Vegetable Pvt. Ltd. challenging a closure order dated 28.10.2025 issued by the CAQM**,** which directed immediate shutdown of its Pilkhuwa milk processing unit for having three boilers despite the CTO recording only two, and for OCEMS emissions exceeding limits on 19.09.2025. Mother Dairy argued that the order was passed without a show-cause notice or hearing**,** that the third boiler was non-operational during inspection, and that its omission in the renewed CTO was a UPPCB clerical error for which correction had already been sought.

The Tribunal examined: (i) whether passing the closure order without notice violated natural justice; (ii) whether the third boiler's status could constitute non-compliance when it had been voluntarily shut months earlier; (iii) whether an immediate shutdown would cause disproportionate consequences, including spoilage of nearly one million litres of milk, disruption of Delhi-NCR supply, and hardship to 70,000–90,000 farmers; and (iv) whether parity with earlier decisions (*Ekdant Structure* and *Om Prakash Khetan*) justified interim relief.

The Tribunal held that the closure order was issued in violation of natural justice, especially given the severe civil consequences. It noted that the third boiler was already shut and that the appellant had submitted its reply promptly. Considering the significant public impact risk of milk spoilage, interruption of essential supply, and livelihood loss the Tribunal granted interim protection, treating the closure order as only provisional until CAQM conducts a fresh assessment.

The appellant was directed to file a supplementary reply within three days, and CAQM was directed to provide a hearing and pass a final order within ten days thereafter. Until then, Mother Dairy was permitted to operate subject to full environmental compliance, and PVVNL was ordered to restore electricity immediately**.** The matter was disposed of with these directions to ensure fairness, continuity of essential supply, and proper regulatory review.

M/S Mother Dairy Fruit and Vegetable Pvt. Ltd Pilkhuwa vs.
Commission for Air Quality Management in NCR and Adjoining Areas & Ors.

COUNSEL FOR APPELLANT (S):
Mr. Pinaki Misra, Senior Advocate with Mr. Sumeer Sodhi, Mr. Arjun Nanda & Ms. Vanshika Jhamb, Advs. for Appellant

COUNSEL FOR RESPONDENT(S):
Dr. Abhishek Atrey, Adv. for CAQM
Mr. Bhanwar Pal Singh Jadon, Mr. Shivansh Sharma, Ms. Gargi Chaturvedi & Ms. Anjali Sharma, Advs. for R - 2 to 5
Ms. Priyanka Swami, Adv. for R - 3 & 4

CORAM:
HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

HEARD ON: 11th November, 2025
PRONOUNCED ON: 11th November, 2025

ORDER

BY HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON

1. This appeal under Section 18 of the Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 has been filed by the Appellant challenging the closure order dated 28.10.2025 passed by the Commission for Air Quality Management (CAQM) under Section 12(2) (xi) of the Act directing the closure of all industrial operations/activities by the Appellant along with further consequential directions.

2. The submission of learned Senior Counsel for the Appellant is that the Appellant is a wholly owned subsidiary of the National Dairy Development Board and the daily production of the Appellant's unit is about 9 lacs litres of milk and milk products. The Appellant is operating since last several years and it collects milk from approximately 70,000 - 90,000 farmers on a daily basis having a robust collection and processing system. Further submission of learned Senior Counsel for the Appellant is that the Consent to Operate under the Air (Prevention and Control of Pollution) Act, 1981 was given to the Appellant on 27.12.2017 by the UPPCB taking into account all the three boilers and mentioning the same in the consent condition. On the expiry of the said consent, the Appellant had applied for renewal of the consent disclosing all the three boilers. But while issuing the fresh CTO dated 29.11.2024, the UPPCB had mentioned only two boilers and had left out the third boiler. Therefore, the applicant had submitted the representation dated 20.01.2025 to the RO, UPPCB pointing out this lapse and making a request for correction of Consolidated Consent and Authorization. He submits that the said issue remains pending, therefore, the operation of third boiler was

stopped from 29.05.2025 to 27.09.2025 and in the meanwhile, the Flying Squad of the CAQM had conducted the inspection on 20.09.2025 when the third boiler of was closed. He submits that on the basis of the said inspection, without issuing any show cause notice and without giving an opportunity of hearing, the impugned order has been passed.

3. The impugned order records the following violations:

> *"WHEREAS, it was reported after the inspection that Unit is operating on rice husk. CTO mentions two boiler but three boilers were found installed in the unit. The OCEMS readings recorded on 19.09.2025 were consistently observed to exceed the prescribed limit of 80 mg/Nm^3.*
>
> *WHEREAS, the Enforcement Task Force constituted by the Commission vide Order dated 08.01.2025, based on the report submitted by the flying squad, has examined the matter in its meeting held on 26.09.2025;*
>
> *WHEREAS, Industrial pollution is a major contributing sector towards deterioration of air quality in the NCR and the facts in this case are apparent and explicit, it is felt that issuing a show cause notice will be a mere empty formality and is likely to defeat the very purpose of the action being taken to control air pollution in the region;"*

4. In the impugned order dated 28.10.2025, the CAQM had issued the following directions under Section 12(2)(xi) of the Act:

> *"NOW, THEREFORE, in view of the above and in exercise of the powers of the Commission by the Enforcement Task Force, under Section 12(2)(xi) of the Act, read with explanation, the following directions are issued to the said unit for strict compliance:*
>
> *1. The unit shall immediately close down all its industrial operations / activities on receipt of this Direction.*
>
> *2. The unit shall immediately thereafter report the closure of the unit to the Commission and Uttar Pradesh Pollution Control Board (UPPCB).*
>
> *3. The unit, under no circumstances, shall resume operations without prior permission and an order of resumption from the Commission.*
>
> *4. The PVVNL shall, on receipt of this closure direction shall immediately initiate action towards temporary disconnection of electrical power supply to the site / unit and report the same to the UPPCB project proponent and the Commission, at the earliest but not later than 3 days after the issue of this Direction."*

5. The order of the CAQM provides for the condition of resumption of the activities by the Appellant on compliance of the following conditions:

"6. For consideration of resumption of operations in the unit, the following needs to be complied with:

(i) After taking due corrective and preventive measures, in respect of the non-compliances / violations as noted in the closure direction, the project proponent shall report the same to the Regional Officer Hapur of the Uttar Pradesh Pollution Control Board, also under advise to the headquarter office of the UPPCB.

(ii) The Regional Officer, UPPCB shall thereafter verify the corrective and preventive measures initiated by the unit / project proponent and submit a report in this context to the UPPCB headquarter office along with a recommendation for levying of EC charges, as per extant guidelines duly taking cognizance of Standard Schedule for EC charges issued by the Commission vide order dated 01.01.2025 & 05.06.2025.

(iii) The UPPCB shall review the report of the Regional Officer in this context to ascertain effectiveness of actions initiated for compliance, levy appropriate EC charges on the project / unit for all categories of violations as noted in this direction and realise the same, from the proponent. Thereafter, a recommendation towards resumption of activities at the site / industrial unit etc. may be made to the Commission by the HQ office of the UPPCB,

(iv) The Project Proponent shall thereafter also report compliance of all the requisites as above to the Commission, in the form of an affidavit. The indicative procedure and guidelines for processing of the cases for resumption, including the format for the affidavit may be accessed from the Commission's website www.caqm.nic.in >> Closures/Resumptions >> GUIDELINES FOR RESUMPTION OF OPERATIONS IN CLOSED UNITS.

(v) In exercise of powers of the Commission under Section 14 of the Act, the Member Secretary, UPPCB shall also initiate action for prosecution under section 14 of the Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 against the said unit."

6. Learned Senior Counsel for the Appellant has submitted that the impugned order dated 28.10.2025 was e-mailed on the wrong address which is mentioned in the first page of the order, therefore, the Appellant was not aware of the passing of the impugned order. He further submits that in compliance of the directions contained in the impugned order, the PVVNL has disconnected the electricity supply yesterday at 7:30 pm after a copy of this appeal was served upon them. He submits that atleast one million liters of milk is lying stored

in silos which will be spoiled and thousands of farmers from whom the milk is collected will be affected and the supply of milk in Delhi and NCR will also be affected. He has submitted that the Appellant will not operate third boiler till the issue is resolved and will also comply with all the requisite norms, especially concerning the stack emission.

7. It has been brought to our notice that in similar circumstances, Appeal No. 44/2025 in the matter of *M/s Ekdant Structure Pvt. Ltd. vs. Commission for Air Quality Management in National Capital Region and Adjoining Areas & Ors.* has been disposed of by the Tribunal by the order dated 30.05.2025 with certain directions and following the same another Appeal No. 50/2025 in the matter of *Om Prakash Khetan & Anr. vs. Commission for Air Quality Management in National Capital Region and Adjoining Areas & Ors.* was disposed of by the Tribunal by the order dated 16.07.2025.

8. Learned Senior Counsel for the Appellant has further submitted that after the impugned order came to the knowledge of the Appellant, the detailed reply dated 09.11.2025 along with all the supporting material was submitted to the CAQM. He has stated that the Appellant will submit the additional reply within a short time to the CAQM and the appeal be disposed of by treating the impugned order as provisional or interim and issuing a direction to the CAQM to consider the representation/reply of the Appellant and take a final decision within a time bound period and meanwhile, the Appellant may be permitted to operate on certain conditions till the decision is taken.

9. Having regard to the fact that the impugned order has been passed without issuing any show cause notice to the Appellant and without giving any opportunity of hearing and also the consequences which have been pointed by learned Senior Counsel for the Appellant which will result in the closure of the Appellant's plant and taking it into account the issue of parity and the statement made by learned Senior Counsel for the Appellant that it will not operate the third boiler and will comply with all the requisite norms, we dispose of the Appeal permitting the Appellant to file the detailed supplementary reply/representation before the CAQM within three days. The CAQM will give an opportunity of hearing to the Appellant and will take a decision in accordance with law within 10 days from the date of receipt of the Appellant's additional reply/representation. Till then, the order under challenge will be treated to be interim in nature and will be subject to the order passed by the CAQM after giving an opportunity of hearing to the Appellant. Till the fresh order is passed by the CAQM in terms of the above direction, the Appellant is permitted to operate the plant by complying with all the environmental norms and instructions issued by the CAQM from time to time.

10. The PVVNL – Respondent No. 3 is directed to restore the electricity connection of the Appellant's plant in the meanwhile.

11. The Appeal is disposed of accordingly.

❖

Ramdevbhai Samatbhai Sanjva vs. State of Gujarat & Ors.

(Original Application No. 616/2019)
Decided on: 17th November, 2025 (PB)

CASE NOTE

The case arose from a Public Interest Litigation transferred from the Gujarat High Court, wherein the applicant, Mr. Ramdevbhai Samatbhai Sanjva, raised concerns about severe pollution of the Bhadar River due to discharge of untreated sewage and industrial effluents from the Jetpur region. The grievance highlighted malfunctioning or inadequate sewage treatment systems, non-functional Primary Effluent Treatment Plants (PETPs) of several textile units, and deficiencies in the Common Effluent Treatment Plants (CETPs) at Bhat Gam and Gondra. Taking cognizance, the Tribunal directed multiple Joint Committee inspections, which confirmed widespread discharge of untreated domestic sewage from unconnected residential areas, past use of an illegal C-channel for industrial effluent disposal, and partial progress in establishing an underground sewage network.

The primary issues before the Tribunal included: (i) whether untreated sewage and industrial effluent continued to enter the Bhadar River due to deficiencies in municipal and industrial wastewater management; (ii) whether Jetpur-Navagadh Nagarpalika and the CETP operators had complied with the recommendations of the Joint Committee, including GPS-enabled tanker transport, demolition of the C-channel, and upgrading of sewage and effluent treatment systems; and (iii) whether further regulatory safeguards were required to prevent pollution of the river and ensure compliance with environmental norms.

The Tribunal held that although no industrial effluent discharge was observed during the 2025 joint inspection, untreated domestic sewage from residential areas not yet connected to the underground drainage network continued to pollute the river. It noted that only 70% of Jetpur city had been integrated into the underground sewerage system, while the remaining 30% was still dependent on open drains, leading to recurring discharge into stormwater drains and river stretches. The Tribunal emphasized that completion of the underground drainage system and strict regulatory oversight of CETPs and industries were essential to prevent further contamination of the Bhadar River.

The Tribunal directed Jetpur-Navagadh Nagarpalika to complete the remaining 30% underground drainage network within the timeline already disclosed (up to 22.12.2026) and ensure 100% household connectivity. It further mandated that no untreated sewage or industrial effluent be discharged into stormwater drains or the Bhadar River. The Tribunal also required compliance with the Supreme Court's buffer-zone directions in *Mantri Techzone Pvt. Ltd.*, and directed the GPCB to ensure that all CETPs and industries operate only with valid consents and meet prescribed discharge standards. The matter was disposed of with strict directions for completion of sewage infrastructure, continuous monitoring, and enforcement to prevent any future contamination of the Bhadar River.

Ramdevbhai Samatbhai Sanjva vs. State of Gujarat & Ors.

COUNSEL FOR APPLICANT:
Mr. Dharamvir Sharma, Advocate (Through VC)

COUNSEL FOR RESPONDENT(S):
Ms. Manisha Lavkumar, Senior Advocate with Ms. Aasthha Mehta & Ms. Prina Sharma, Advs. for R - 2
Dr. Purvish J. Malkan, Senior Advocate with Mr. A. Joseph, Ms. Dharita P. Malkan, Mr. Yashavi V. & Mr. Ryan Singh, Advs. for R – 7
Mr. Siddharth Rami & Mr. Nishant Yadav, Advs. for R - 6 (Through VC)

CORAM:
HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

RESERVED ON: 10th September, 2025
PRONOUNCED ON: 17th November, 2025

ORDER

BY HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON

1. This original application has been registered on transfer of the Writ Writ Petition (PIL) No 114/2018 in compliance of the order of the Division Bench of the High Court of Gujarat at Ahmedabad dated 09.05.2019.

2. In the PIL (now re-numbered as OA), the Applicant had raised the issue of pollution of river Bhadar on account of the discharge of untreated sewage and industrial units at Jetpur area. The Applicant had also raised the issue of improper sewage treatment facility at Jetpur and inadequate capacity of Common Effluent Treatment Plant (for short, "CETP") installed at the Bhat Gam and non-functioning of the CETP at Gondra, Jetpur. The Applicant had further alleged that 50% of the Primary Effluent Treatment Plant (for short, "PETP") installed by the industrial units were non-functional and had alleged other activities adopted by the industries resulting in pollution of river Bhadar.

3. The Tribunal had passed the detailed order on 06.12.2019 wherein the Tribunal, after considering the report of the Central Pollution Control Board (for short, "CPCB") dated 17th and 18th May, 2018, had directed the authorities to take action in accordance with the findings recorded in the report and file action taken report so as to prevent pollution, recover compensation for the damage caused and to initiate prosecution against the violators of law, including the CETP of Jetpur Dyeing and Printing Association (for short, "JDPA") by

following due process of law. The order dated 06.12.2019 was subject matter of challenge in Civil Appeal No. 1807/2020 before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court by order dated 18.03.2020 had issued notice and had granted stay of prosecution and recovery of any amount as penalty in the meanwhile.

4. The Tribunal by the order dated 14.12.2020 had disposed of the OA.

5. The Respondent No. 7 has disclosed that against the order of the Tribunal dated 22.06.2020, Civil Appeal No. 2901/2020 was filed before the Hon'ble Supreme Court and against the order dated 14.12.2020 passed by the Tribunal, Civil Appeal No. 55/2021 was filed before the Hon'ble Supreme Court and these Civil Appeals were tagged with the pending Civil Appeal No. 1807/2020.

6. The Hon'ble Supreme Court by common order dated 04.03.2024 had disposed of Civil Appeal Nos. 1807/2020, 2901/2020 and 55/2021 by directing as under:

> *"1. Heard the learned Senior Counsel appearing for the appellant(s).*
>
> *2. The grievance of the appellant(s) is that the orders impugned before us are passed without giving an opportunity of being heard. Following our earlier decisions[1], we are compelled to set aside the orders impugned and remand the matters back for reconsideration.*
>
> *3. We make it clear that we have neither examined nor are expressing any opinion on the merits of the case. The orders impugned are set aside only on the ground that opportunity is not given to the effected parties.*
>
> *4. The Tribunal shall take up the matters expeditiously and after giving opportunity to the concerned parties pass such orders as are necessary for disposal of the cases.*
>
> *5. The Civil Appeals are disposed of accordingly."*

7. The Tribunal by the order dated 12.08.2024 had issued notices to all the parties in the OA and by the order dated 17.10.2024 the parties were granted time to file reply on merits/objections to the report of the Joint Committee and the Applicant was also granted opportunity to file rejoinder. In the subsequent proceedings further opportunity was granted to the parties before the matter was heard finally.

8. The reports of the Joint Committee dated 18.02.2020 and 05.11.2020, as also affidavit of the Respondent No. 6 dated 16.12.2024, reply affidavits of Respondent No. 7

[1]Veena Gupta and Another vs. Central Pollution Control Board and Others (2024) SCC Online SC 103; Singrauli Super Thermal Power Station vs. Ashwani Kumar Dubey and Ors. (2023) 8 SCC 35

dated 08.10.2024, 10.12.2024 and sur-rejoinder/reply dt. 04.09.2025, the reply affidavits of Respondent No. 2-GPCB dated 10.03.2025 and 01.09.2025 and the rejoinder dated 31.08.2018, affidavit dated 01.03.2019 and objection dated 07.04.2025 of the Applicant have come on record.

9. Learned Counsel appearing for the Applicant submits that the untreated sewage is still flowing in the river and in this regard, he has referred to the compliance affidavit of the Respondent No. 2 and has relied upon the photographs on page 896 and 897. He has further submitted that the Respondent No. 6 in its affidavit dated 16.12.2024 has given the timeline of two years for converting remaining 30% waste water flowing through open nalas to underground drainage system which is a long timeline and the work should be expedited. Similarly, he has objected to the timeline of 22.12.2026 given for the remaining 30% work.

10. Learned Counsel for the Respondent No. 6 referring to its reply affidavit dated 16.12.2024 has submitted that the STP with the capacity of 23.5 MLD has already been constructed and remedial steps have been taken and steps are also taken to prevent the discharge of industrial effluent in domestic drainage line.

11. The GPCB has placed on record the status of compliance of the recommendations made by the Joint Committee and also referred to the verification report, Annexure R-1 filed alongwith the affidavit dated 01.09.2025.

12. The Respondent No. 7 has taken the stand that it is operating the CETP and complying with the parameters and has referred to the compliance status disclosed by the GPCB in the response affidavit dated 10.03.2025.

13. Having heard learned Counsel for the parties and on the perusal of the record, it is noticed that the Joint Committee appointed by the Tribunal had submitted the report dated 05.11.2020 making following recommendations:

> ***"4.0 RECOMMENDATION***
>
> *Based on the findings, it is recommended that;*
>
> *1. The construction work of 23.5 MLD STP by Jetpur-Navagadh Nagarpalika should be completed at the earliest and made operational so that the sewage from the entire Jetpur area is treated in this STP and thereby discharge of sewage in the C-channel should be stopped completely.*
>
> *2. GPCB and JDPA to ensure that industrial unit dispose their effluent only through tankers to the CETP of JDPA and no effluent is discharged in C-channel. CCA of individual textile units should be amended for disposal of primary treated effluent only through tankers in place of discharge through C-*

channel on priority. The tankers carrying effluent from member industries to CETP should be enabled with GPS tracking system and the tracking history should be submitted to GPCB on regular basis.

3. *The tanker disposal record of individual unit should also be maintained at the respective collection sump by the CETP operators and the record should be submitted to GPCB on regular basis. These records may be cross verified from time to time with records maintained by individual units.*

4. *JDPA should dismantle the existing C-channel, collection sump & pumping station located in the bed of River Bhadar and GPCB should monitor and ensure the same.*

5. *STP of JDPA which is presently treating the mix of sewage and effluent, should be converted to CETP for treating only the industrial effluent, once the STP being constructed by Jetpur-Navagadh Nagarpalika become operational and all sewage is diverted to this STP.*

6. *The analysis reports of the samples from all the operational CETPS (3 Nos.) and the STP shows that the concentration of one or the other monitored parameters are not meeting the prescribed outlet standards. Hence, it is recommended CETPS and STP should meet the prescribed discharge standards through proper operation and maintenance.*

7. *JDPA may be asked to explore the possibility of recycle/ reuse of the treated wastewater in the industrial process as the quantity of wastewater generated from CETPs and STP is huge compared to the land available for irrigation. This will reduce the consumption of fresh water resource and disposal load in the environment. This issue needs to be addressed jointly by GPCB and JDPA on priority.*

8. *Industrial units to ensure that the primary treated effluent meets the CETP inlet norms and also ensure timely disposal of ETP sludge and GPCB will continue the compliance verification of the same.*

9. *GPCB will continue the monitoring of natural drains, river stretches and industrial units to identify illegal discharges and polluters."*

14. The Respondent No. 6 – Jetpur Navagadh Nagarpalika has filed the affidavit dated 16.12.2024 disclosing the status of commissioning of sewage treatment plant and developing underground sewage system for domestic waste disposal and other steps taken to address the issue of pollution in the Nagarpalika area as under:

❖ ***"COMMISSIONING OF SEWAGE TREATMENT PLAN (STP) BY JETPUR-NAVAGADH NAGARPALIKA***

4. The construction work of Sewage Treatment Plant (STP), having capacity of 23.5 megalitres per day (MLD) started in the year 2017 and the same was completed in the year 2021. The Nagarpalika has also obtained Consent-to-Establish (CTE) and Consolidated Consent and Authorization (CCA) for the STP from Gujarat Pollution Control Board (GPCB) on 09.01.2023 and 08.05.2023 respectively. Annexed hereto and marked as ANNEXURE R1 (collectively) is the copy of CIE and CCA dated 09.01.2023 and 08.05.2023 respectively granted by GPCB to Jetpur-Navagadh Nagarpalika.

5. It is respectfully submitted that the Nagarpalika has ensured that the entire process of waste water processing from domestic supply of water to transport to processing and re-use is done in environment friendly manner, in consonance with the permission granted by GPCB:

i. Approximately 17 megaliters per day (MLD) water is supplied by Jetpur-Navagadh Nagarpalika to the households for domestic usage.

ii. Approximately 70% of the waste water generated by domestic consumption is transported to 3 different pumping stations located at Derdi road (near Bhadar river), Samakantha area (Rabarika road) and Navagdh (near Bhadar river) covering the entire Nagarpalika area through underground drainage line. The Nagarpalika is in the process of converting remaining 30% waste water flowing through open nalas to underground drainage system for which the Nagarpalika had issued tender and has subsequently awarded work order to M/s. Maruti Enterprise, Rajkot on 22.11.2024 and the same is likely to be completed within a period of two years.

iii. The waste water collected at the 3 pumping stations is thereafter directly transported to the Sewage Treatment Plant (STP) of the Nagarpalika through underground pipelines. The waste water is purified at the STP operated by Gujarat Water Supply & Sewerage Board (GWSSB) and the same is thereafter utilized and re-used in consonance CCA granted by Gujarat Pollution Control Board (GPCB).

6. It is therefore most respectfully submitted that it is the endeavour of the Jetpur-Nabagadh Nagarpalika that the entire domestic waste water generated is transferred, processed and re-used safely and in environmentally friendly manner in consonance with the authorization granted by GPCB. The Nagarpalika is striving to ensure that no water pollution is generated with respect to domestic usage of water.

❖ ***DEVELOPMENT OF UNDERGROUND SEWAGE SYSTEM FOR DOMESTIC WASTE DISPOSAL***

7. It is respectfully submitted that initially the transfer of waste water in Nagarpalika was done through open nalas.

8. With a view to ensure that waste water is transported efficiently and it does not create pollution, a project was envisioned by State Government to transform open nalas to underground drainage system. In Phase-I of the project, approximately 70% of the open nalas have been converted to underground drainage system in the year 2017.

9. With respect to remaining 30% of the Nagarpalika area, it is most respectfully submitted that the Nagarpalika had floated a tender on 08.07.2024 for conversion of open nalas to underground drainage system. Pursuant to the tender process, the Chief Officer, Jetpur-Navagadh Nagarpalka has issued work-order for amount of Rs. 26 Crore approximately to M/s. Maruti Enterprise, Rajkot on 22.12.2024 and the work in that regard is likely to be completed by 22.12.2026. Annexed hereto and marked as ANNEXURE R2 is the copy of work order dated 22.11.2024 issued by Chief Officer, Jetpur-Navagadh for construction of remaining 30% of drainage connection.

❖ ***OTHER STEPS TAKEN BY JETPUR-NAVAGADH NAGARPALIKA TO ADDRESS THE ISSUE OF POLLUTION IN NAGARPALIKA AREA***

10. With a view to ensure that the industrial units do not utilize the domestic drainage line and illegally dispose-off waste water in the sewage system of the Nagarpalika, the Nagarpalika has started the process of inspection of the drainage line and all manholes located in the industrial area are being completely closed by the Nagarpalika. The effective result of the action taken by the Nagarpalika is that the industrial units would not have any access to utilize the domestic drainage line for disposing-off industrial waste water.

11. In case of violation by industrial units in discharge of water, the Nagarpalika initiates action against the unit by issuance of notice and immediate closure of the connection with domestic drainage line. The said notice is also communicated by the Nagarpalika to GPCB for further action."

15. The GPCB has also filed the report dated 10.03.2025 disclosing the compliance status of the recommendation made by the Joint Committee as under:

"

Sr.	***Recommendations of Joint Committee***	***Compliance Status***
1	*The construction work of 23.5 MLD STP*	• *Jetpur Navagadh Nagarpalika has*

	by Jetpur-Navagadh Nagarpalika should be completed at the earliest and made operational so that the sewage from the entire Jetpur area is treated in this STP and thereby discharge of sewage in the C-channel should be stopped completely.	*started the operation of 23.5 MLD Sewage Treatment Plant (STP).* • *Jetpur Navagadh Nagarpalika has obtained CTE and CCA of the Gujarat Pollution Control Board.* *1) In First phase, Nagarpalika has covered about 70% area of Jetpur city and 100% underground drainage system is established and is operational for household connection.* *2) In phase two, Nagarpalika will cover remaining 30% area of Jetpur city and for this work order has been accorded to M/s. Maruti Enterprise, Rajkot for household connection.* • *Disposal of industrial effluent through C channel has been stopped since the entire 'C' channel system is demolished.*
2	*GPCB and JDPA to ensure that industrial unit dispose their effluent only through tankers to the CETP of JDPA and no effluent is discharged in C-channel. CCA of individual textile units should be amended for disposal of primary treated effluent only through tankers in place of discharge through C-channel on priority. The tankers carrying effluent from member industries to CETP should be enabled with GPS tracking system and the tracking history should be submitted to on regular basis.*	• *Jetpur Dyeing and Printing Association (JDPA) has provided 4 No. of Effluent Collection Sumps and started its operation where industrial effluents from industrial units is received through GPS mounted tankers.* • *JDPA has provided total 164 tankers out of which GPS installation is done in 65 tankers and remaining in 99 tankers is ongoing.* • *Disposal of industrial effluent through C channel has been stopped since the entire 'C' channel system is demolished.*
3	*The tanker disposal record of individual unit should also be maintained at the respective collection sump by the CETP operators and the record should be submitted to GPCB on regular basis. These records may be cross verified from*	• *Record for wastewater collection of from member industries at collection sumps is found to be maintained manually on daily basis with unit's name, approximate quantity and pH by JDPA.*

<table>
<tr><td></td><td>time to time with records maintained by individual units.</td><td>Representatives of the CETP-JDPA at the collection sumps maintain records and submit same to CETP-JDPA at Narsang Tekri, Jetpur on daily basis.
During monitoring of individual industrial unit as well as the CETP of JDPA, GPCB - Jetpur office verifies the number of tankers sent to the CETP of JDPA by the industries and receipt of tankers by CETP of JDPA.</td></tr>
<tr><td>4</td><td>JDPA should dismantle the existing C-channel, collection sump & pumping station located in the bed of River Bhadar and GPCB should monitor and ensure the same.</td><td>CETP JDPA has dismantled existing C-channel, collection sump & pumping station located in the bed of River Bhadar for collection of industrial wastewater and verified by Regional Office, GPCB Jetpur on 28/02/2022.</td></tr>
<tr><td>5</td><td>STP of JDPA which is presently treating the mix of sewage and effluent, should be converted to CETP for treating only the industrial effluent, once the STP being constructed by Jetpur-Navagadh Nagarpalika become operational and all sewage is diverted to this STP.</td><td>STP of JDPA is presently collecting & treating the sewage generated from Bhadar Samakantha area as household connection of remaining 30% area of Jetpur city is still under process by Nagarpalika.</td></tr>
<tr><td>6</td><td>The analysis reports of the samples from all the operational CETPS (3 Nos.) and the STP shows that the concentration of one or the other monitored parameters are not meeting the prescribed outlet standards. Hence, it is recommended CETPs and STP should meet the prescribed discharge standards through proper operation and maintenance.</td><td>Average Result (Jan-2024 to Dec-2024) in mg/lit<table><tr><th>Sr</th><th>Name of CETP</th><th>COD Limit = 250</th><th>BOD Limit = 100</th></tr><tr><td>1</td><td>CETP of JDPA</td><td>284.60</td><td>91.66</td></tr><tr><td>2</td><td>CETP of Bhatgam</td><td>201</td><td>62</td></tr><tr><td>3</td><td>STP of JDPA</td><td>166.5</td><td>53.8</td></tr></table>CETP of Dhareshwar is merged with CETP of JDPA</td></tr>
<tr><td>7</td><td>JDPA may be asked to explore the possibility of recycle/ reuse of the treated wastewater in the industrial process as the quantity of wastewater generated</td><td>M/S. Common Industrial Facilities for Jetpur Dyeing and Printing Association has obtained CTE and CCA for Recovered Caustic lye (35%)</td></tr>
</table>

	from CETPs and STP is huge compared to the land available for irrigation. This will reduce the consumption of fresh water resource disposal and load in the environment. This issue needs to be addressed jointly by GPCB and JDPA on priority.	*(from w/w containing caustic of mercerizing units) and hence, there is a reduction in the well as hydraulic load as pollution load on CETP-JDPA.* • *As per record CETP JDPA has carried out Nilgiri plantation in 269 Vigha (4,34,725 m^2) land for utilization of treated wastewater for irrigation purpose.* • *Fatal Talav at present is storage cum holding tank of CETP JDPA for treated effluent.*
8	*Industrial units to ensure that the primary treated effluent meets the CETP inlet norms and also ensure timely disposal of ETP sludge and GPCB will continue the compliance verification of the same.*	• *Board is monitoring industrial units on regular interval and taking action based on non-compliance observed.*
9	*GPCB will continue the monitoring of natural drains, river stretches and industrial units to identify illegal discharges and polluters.*	• *The Gujarat Pollution Control Board is monitoring natural drains, river stretches and industrial units on regular interval and taking action based on non-compliance observed.* • *Result of PRS sampling point located at Dublipat on River Bhadar is shows improvement.*

”

16. The Tribunal had considered the above compliance status disclosed by the GPCB in the proceedings dated 09.05.2025 and had also considered the photographs placed on record along with the rejoinder dated 07.04.2025 by the Applicant and the plea of the Applicant that there was a drain which was polluting Bhadar River. Accordingly, the GPCB was directed to file a fresh action taken report.

17. In compliance of the aforesaid direction, the GPCB had filed the fresh report dated 01.09.2025 on the basis of the fresh joint inspection conducted on 20.05.2025. The details of the said joint inspection are as under:

“xxx……xxx……xxx

2.1 The first place that was visited by the Officers of the deponent is located besides Mazare Hakimi Drain. The applicant had taken the photographs of the said site on 15.04.2025. During joint inspection on 22.05.2025, it

was observed that a nala was passing besides Mazare Hakimi. It was also observed that domestic sewage was passing through the said nala. During joint inspection it was noticed that the said domestic sewage was discharged from residential societies located within the Jetpur City and are not yet connected Municipal drainage network. One sample was also collected from the said nala for analysis. During inspection, no discharge of any industrial effluents or coloured effluent discharge was observed.

2.2 The second place that was visited by the Officers of the deponent is Derdi Drain. The applicant had taken the photographs of the said site on 26.04.2025. During inspection the flow of muddy / rain water was observed. It appears that due to the heavy rainfall in the upstream village, the rain water was flowing through the drain. No discharge of any industrial effluent or coloured effluent was observed during inspection. The drain eventually connects with River Bhadar and is opening near Vajusagar Check dam. One sample was also connected from the drain for the analysis. It appears that the applicant in the rejoinder dated 07.04.2025 has placed on record latitude/longitude of the same drain with the difference of one minute each. However, the submission of the applicant of discharge of pollution at three different locations at Derdi Drain is incorrect. The present deponent has placed on record photographs with Geo Co-ordinates in order to submit that the muddy / rain water was flowing from the Derdi Drain.

2.3 The third place that was visited by the Officers of the deponent is upstream at Derdi, Derdi Road. During inspection, it was noticed that there are many drains/nalas/Tributaries other than mentioned by the applicant in the rejoinder dated 07.04.2025. The Officers of the deponent carried out joint inspection and it was observed that there was no discharge of any industrial effluent / coloured effluent in the River Bhadar at Derdi Road. One sample was also collected from the said point for further analysis.

2.4 The next site that was inspected by the officials of the deponent was located at Hansrajnagar, Jetpur. The applicant had placed on record the photographs of the said site that was taken on 15.04.2025. During inspection, it was noticed that the drain was passing above Derdi Road towards old pumping station. It was noticed that domestic sewage of the residential houses located in Bhadar Sama Kathe Area of Jetpur City is discharged from the said drain. It appears that the said localities are yet not connected to the Municipal drainage network.

2.5 The next site that was inspected by the officials of the deponent located at Patel Industries Area, Jetpur. The applicant has placed on record the

photographs of the said site that was taken on 28.02.2025. During inspection, the drain was dry and no flow of any water was observed. Upon verification of the records, it was noticed that the said drain was involved in the maintenance work of cleaning of Municipal Solid Waste (MSW) on 28.02.2025. It appears that the work of underground pipeline resulted in leakage in seeping of domestic sewage around the area. The officials of the present deponent immediately inspected the site in the afternoon at around 03:05 p.m. and the air valve was repaired and the seepage of domestic sewage was stopped. During inspection on 22.05.2025, no flow of any domestic or industrial sewage was observed.

2.6 The next site that was inspected by the officials of the deponent is located at Bhadar Same Kathe (as per Geo Co-ordinates). During inspection, the officials of the deponent noticed that the point shown by the applicant in the affidavit dated 07.04.2025 were on the upstream side of Jetpur City and from the old pumping station the River flows in the downward directions towards Bhadar-2 Dam located at Village: Bhukhi. Therefore, it was necessary for the officials of the deponent to check and verify the quality of water in the river from this place. Hence one sample was connected from the said point for further analysis. During inspection, near the old pumping station, no discharge of any industrial effluent/coloured effluent was noticed. However, the domestic sewage was aligning into the River on account of pending drainage work to be carried out by the Jetpur – Navagadh Nagarpalika

2.7 The next location that was inspected by the officials of the deponent was located at Dublipat at River: Bhadar. The said point is the most downward point of the Jetpur City limits and is identified by the present deponent as well as by the CPCB under the National Water Quality Monitoring Program (NWQM). The said point is also monitored under the Bhadar River action plan. During inspection, one sample was collected for further analysis. However, no industrial effluent/coloured effluent was observed at the said point. But the aspect of the domestic sewage getting mixed with the river cannot be ignored on account of pending drainage work of the Jetpur – Navagadh Nagarpalika.

*Copy of the Joint Inspection Report dated 22.05.2025 is annexed hereto and marked as **ANNEXURE R1** for kind consideration of this Hon'ble Tribunal.*

3. In this regard, as already submitted hereinabove during inspection on many drains, the discharge of domestic sewage was noticed as the residential societies located around drains are not yet connected to the Municipal drainage network of Jetpur Navagadh Nagarpalika. Therefore, the present deponent has issued show cause notice to the Jetpur – Navagadh Nagarpalika on 21.06.2025.

In the said show cause notice, the discharge of domestic sewage near Mazare Hakami and Bhadar Sama Kathe Area were brought to the notice of the Nagarpalika. The issue of the residential localities not being connected with the Municipal drainage network was also flagged by the deponent. Copy of the show-cause notice dated 21.06.2025 is annexed hereto and marked as ***ANNEXURE R2****. The said show-cause notice dated 21.06.2025 was responded to by the Jetpur – Navagadh Nagarpalika letter dated 22.08.2025. In the said letter dated 22.08.2025, the Municipality informed the present deponent that one M/s. Maruti Enterprise, Rajkot who is entrusted the work of underground gutter pipeline has been instructed to finish the work at the earliest. Copy of the letter dated 22.08.2025 along with other documents is annexed hereto and marked as* ***ANNEXURE R3 (COLLY)****.*

4. *It is further submitted before this Hon'ble Tribunal that the Test Report of the sample taken from drain behind Kabristan leading to River Bhadar near Mazare Hakimi has already been received by the present deponent on 02.06.2025. If the parameters of the sample are compared with the range of testing, it would reveal that most of the parameters are within the acceptable range. Copy of the Test Report dated 02.06.2025 is annexed hereto and marked as* ***ANNEXURE R4****.*

5. *In light of above facts and circumstances, it is submitted that the present deponent has inspected all the sites that were placed on record by the applicant vide rejoinder dated 07.04.2025. As already submitted hereinabove in none of the sites there is a discharge of any industrial effluent / coloured effluent into Bhadar River. The issue with regard to discharge of domestic sewage into Bhadar River has already been brought to the notice of the Jetpur – Navagadh Nagarpalika. Moreover, the JetpurNavagadhNagarpalika has also instructed the concerned agency to complete the work of underline gutter pipeline at the earliest. Hence, the grievance raised by the applicant in the captioned Original Application has been addressed to a great extent. Moreover, the present deponent is also continuously monitoring the situation and is taking all the necessary steps in order to control the discharge of any kind of effluents into Bhadar River. The deponent further affirms that all actions are being undertaken in accordance with the prevailing environmental acts and rules for the abatement and control of pollution."*

18. The above report reveals that the nala passing besides Mazare Hakimi was carrying the domestic sewage discharged from the residential societies located within the Jetpur city which were not connected to the municipal drainage network. In respect of Derdi drain, it was found that the Muddy/rain water was flowing through the drain and there was no discharge of industrial effluent. On inspection of the site at Hansrajnagar, Jetpur, the drain passing above Derdi road towards the old pumping station was found to be carrying domestic sewage of the residential houses located in Bhadar Sama Kathe area of Jetpur city and the

location was not found to be connected to the municipal drainage network. Similarly, in paragraph 3, the GPCB has disclosed that on inspection of many drains the discharge of domestic sewage was noticed as the residential societies located around the drain are not yet connected to the municipal drainage network of Jetpur Navagadh Nagarpalika. Accordingly, the action has been initiated by the GPCB.

19. In the report dated 16.12.2024, the Respondent No. 6 – Jetpur Navagadh Nagarpalika had admitted that the Nagarpalika has covered 70% of the nagarpalika area through underground drainage line and for remaining 30% the tender has been issued and the work has been awarded and the work is likely to be completed in two years. It is also disclosed that in Phase-I of the project approximately 70% of the open nalas have been converted to underground drainage system and for remaining 30% of the nagarpalika area the tender has been floated and the work order has been issued on 22.12.2024 and the work is likely to be completed by 22.12.2026.

20. In view of the above analysis, we dispose off the OA with the following directions:-

(A). Since the Respondent No. 6 has already initiated the action to remediate the problem, therefore, the Respondent No. 6 is directed to complete the above work of laying the underground sewage network as expeditiously as possible, but not later than the timeline disclosed in the affidavit dated 16.12.2024.

(B). The Respondent No. 6 will ensure that no untreated sewage is discharged in the storm water drains and will ensure 100% household connectivity with the sewage drainage network and will also ensure that no untreated sewage or industrial effluent is discharged in river Bhadar.

(C). Hon'ble Supreme Court of India by order dated 05.03.2019 passed in Civil Appeal No. 5016 of 2016 in the matter of *Mantri Techzone Pvt. Ltd* had directed to maintain following distance from Rajkulewas, waterbodies and wetlands:-

(i) in case of Lakes, 75 m from the periphery of water body.
(ii) 50 m from the edge of the primary Rajkulewas,
(iii) 35 m from the edge of Secondary Rajkulewas and
(iv) 25 m from the edge of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. Rajkulewas means a large storm water drain. Hence, the respondents will ensure compliance of aforesaid order of the Hon'ble Supreme Court.

(D). The GPCB will also ensure that both the CETPs (7.0 MLD of JDPA and 30.0 MLD at Bhat Gam) are duly consented with the condition of preventing discharge of effluents in river Bhadar or any storm water drain.

(E). GPCB will also ensure that no industry and STP/CETP operates illegally/without CTO and discharges effluents into river or in storm water drains located on either side of the river.

21. The OA is accordingly disposed of.

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Bhaskar Rao Vemuri vs. State of Andhra Pradesh & Ors.

(IA No. 226/2021, IA No. 227/2021 &IA No. 228/2021)
In
(Original Application No. 144/2020)
Decided on: 18th November, 2025 (PB)

CASE NOTE

The case originated from a letter petition concerning violations of environmental norms by M/s Venkata Narayana Active Ingredients Pvt. Ltd., a bulk drug unit in Nellore District, Andhra Pradesh. The violations had resulted in two fatal industrial accidents on 29.07.2020 (two deaths) and 11.05.2021 (three deaths). A Joint Committee report filed on 04.10.2021 confirmed non-compliances. During the proceedings, the industry filed IA No. 226/2021 (intervention/impleadment), IA No. 227/2021 (dismissal of the OA or reduction of compensation), and IA No. 228/2021 (exemption from filing legible annexures). The NGT's earlier order dated 07.12.2021 imposed environmental compensation calculated at 5% of the unit's annual turnover. The industry challenged that order before the Supreme Court, which held that these IAs had not been decided and directed the NGT to consider them afresh.

The primary issues were: (i) whether the applicant-industry was entitled to impleadment in the OA; (ii) whether the Tribunal could sustain environmental compensation based on 5% of annual turnover; (iii) whether the Joint Committee's assessed amount of ₹73,50,000 was the correct compensation; and (iv) whether earlier directions on environmental restoration needed modification in view of the Supreme Court's order.

The Tribunal concluded that the pending IAs required adjudication as mandated by the Supreme Court. IA No. 226/2021 for intervention was allowed since the unit was the defaulting entity and compensation had been imposed upon it. IA No. 228/2021 was allowed as legible annexures were already on record. On IA No. 227/2021, the Tribunal held that the turnover-based method (5% of ₹7.5 crore) was unsustainable in view of the Supreme Court's decisions in *Benzo Chem Industrial Pvt. Ltd.* and *C.L. Gupta Export Ltd.* It therefore modified paragraph 8 of the order dated 07.12.2021 and held that the correct compensation was ₹73,50,000 as assessed by the Joint Committee, in addition to ₹37.20 lakh already deposited.

The Tribunal directed M/s Venkata Narayana Active Ingredients Pvt. Ltd. to deposit the environmental compensation of ₹73,50,000 within four weeks, to be utilized for restoration and improvement of the environment as per the earlier directions. With these modifications, all three IAs were disposed of.

Bhaskar Rao Vemuri vs. State of Andhra Pradesh& Ors.

COUNSEL FOR APPLICANT (S):
None for the Applicant

COUNSEL FOR RESPONDENT(S):
Mr. Anshuman Shrivastava & Ms. Ananya Sahu, Advs. for Venkata Narayana Active Ingredients Pvt. Ltd.
Mr. TVS Raghuvendra Sreyas & Mr. Siddharth Vasudev, Advs. for APPCB
Mr. Mukesh Kumar & Mr. Neeraj Kumar, Advs. for CPCB

CORAM:
HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

HEARD ON: 3rd November, 2025
PRONOUNCED ON: 18th November, 2025

ORDER

BY HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON

1. In this original application, registered on the basis of the letter petition, the issue of compliance of environmental norms by the M/s Venkata Narayana Active Ingredients Private Limited operating a bulk drug chemical unit near Chandrapid Village, Vinjamur Mandal, Nellore District, Andhra Pradesh was raised. The violations of the norms had also resulted in two fatal accidents on 29.07.2020 and 11.05.2021 resulting in five deaths – two in first incident and three in the second incident.

2. Tribunal had constituted the Joint Committee which had filed its report on 04.10.2021 reflecting compliance status found on inspection conducted on 10.08.2021. In that OA, M/s Venkata Narayana Active Ingredients Private Limited - the defaulting industry had filed IA No. 226/2021 for intervention and impleadment as respondent, IA No. 227/2021 for dismissal and rejection of OA and IA No. 228/2021 – an application for exemption from filing dim annexures.

3. The Tribunal by the order dated 07.12.2021 had disposed of the OA after considering the report of the Joint Committee and reaching to the conclusion that M/s Venkata Narayana Active Ingredients Private Limited had committed violation of the environmental norms which had resulted in two fatal accidents first on 29.07.2020 in which two workers had died and two had received burn injury and second on 11.05.2021 in which three employees had died due to inhalation of Thionyl chloride gas and other three were affected. The Tribunal noted that apart from the environmental compensation paid earlier, the Committee had further

assessed the additional compensation of Rs. 73,50,000/- for causing damage to the environment. The Tribunal considering the fact that there was loss of five lives within one year apart from injuries to others, held that atleast 5% of the annual turnover, i.e., Rs. 7.5 crores was to be calculated under the head of loss of environment. Accordingly, the environmental compensation payable by the above defaulting unit was calculated. The Tribunal directed that the amount of environmental compensation calculated on the basis of the annual turnover be deposited by the unit with the State Pollution Control Board within three months. The other directions were also issued by the Tribunal relating to restoration/improvement of the environment in the area by preparing an action plan by a five Member Expert Committee constituted by that order.

4. The order of the Tribunal dated 07.12.2021 was challenged by the defaulting unit - M/s Venkata Narayana Active Ingredients Private Limited before the Hon'ble Supreme Court in Civil Appeal Nos. 1940-1941 of 2022. These Civil Appeals were disposed by the Hon'ble Supreme Court by the following order dated 21.03.2025:

"ORDER

1. These appeals are directed against the order dated 17.02.2022 passed by the National Green Tribunal, Principal Bench, New Delhi[1] in Review Application No.3 of 2022 and the parent judgment and order dated 07.12.2021 in Original Application No. 144 of 2020.

2. The Tribunal noted in paragraph 7 of the impugned order dated 17.02.2022 that the appellant had filed various applications being I.A. Nos. 226, 227 and 228 of 2021, including an application for intervention as well as for an order to reduce compensation as levied. It is not disputed at the Bar that such applications were not disposed by the Tribunal. The appellant considers itself aggrieved because an order has been passed to its detriment and prejudice without reasonable opportunity of hearing being granted to it.

3. We are satisfied that the grievance of the appellant has some substance the sense that no adverse order ought to have been passed without consideration of such applications.

4. The directions contained in the impugned parent order are kept in abeyance for three months. The Tribunal is directed to consider the applications filed by the appellant being I.A. Nos. 226, 227 and 228 of 2021, in accordance with law, as expeditiously as possible, preferably within a period of eight weeks.

5. Should the application for intervention be allowed, it shall be open to the appellant to raise all other points available to it in law and seek revocation of the directions.

6. Needless to observe, enforcement of the directions issued by the Tribunal will depend on the fate of such applications.

7. No opinion is expressed on the merits of the interim applications filed by the appellant.

8. The appeals are disposed of on the aforesaid terms. Pending application(s), if any, shall also stand disposed of."

5. Before the Hon'ble Supreme Court, a plea was raised that though I.A. Nos. 226/2021, 227/2021 and 228/2021 filed by the defaulting unit in the OA were noted in para 7 of the order dated 07.12.2021, but they were not decided by the Tribunal. Hence, in terms of the order of the Hon'ble Supreme Court, these I.As are now required to be decided.

6. We have heard learned Counsel for the parties in I.A. Nos. 226/2021, 227/2021 and 228/2021.

7. So far as IA No. 228/2021 is concerned, it is only an application seeking exemption from filing the legible copies of dim annexures. The legible copies of the relevant annexures are already on record. Hence, the IA No. 228/2021 is allowed.

8. So far as IA No. 226/2021 is concerned, this IA has been filed by the Applicant for intervention and impleadment in the OA and for placing on record the relevant facts and documents. This IA has not been opposed by Counsel for the PCB.Even otherwise in these proceedings and by the order already passed by the Tribunal, the Applicant in the IA has been found to be a unit defaulting in compliance with the environmental norms and environmental compensation has been imposed on it, therefore, the prayer made in the IA is granted and IANo. 226/2021 is accordingly disposed of.

9. With the consent we have also heardIA No. 227/2021 an application seeking disposal of the OA in terms of the report of the Andhra Pradesh Pollution Control Board (APPCB) and also with alternate prayer to reduce the environmental compensation.

10. Learned Counsel for the Applicant in IA has objected to the imposition of environmental compensation on the basis of the annual turnover of the unit and has submitted that the Applicant is ready to pay the environmental compensation of Rs. 73,50,000/- calculated by the Joint Committee. In support of such a submission, learned Counsel for the Applicant has relied upon two orders of the Hon'ble Supreme Court.

11. Learned Counsel for the APPCB has not opposed the prayer made in this IA.

12. Tribunal in the order dated 07.12.2021 had calculated the environmental compensation at the rate of 5% of the annual turnover of Rs. 7.5 crores. The argument advanced by Counsel for the Applicant in the IA is covered by the orders of the Hon'ble Supreme Court in the matter of Benzo Chem Industrial Private Limited vs. Arvind Manohar Mahajan & Ors., reported in 2024 SCC OnLine SC 3543 and in the matter of C.L. Gupta Export Ltd. vs. Adil Ansari & Ors., reported in 2025 SCC OnLine SC 1812.

13. Keeping in view the above orders of the Hon'ble Supreme Court, paragraph 8 of the order dated 07.12.2021 is modified snd part of this paragraph relating to imposition of environmental compensation at the rate of 5% of the annual turnover of Rs. 7.5 crores is deleted and it is directed that the unit - M/s Venkata Narayana Active Ingredients Private Limited is liable to pay environmental compensation of Rs. 73,50,000/- as calculated by the Joint Committee in addition to the environmental compensation of Rs. 37.20 lakhs already paid.

14. Hence, we dispose of this IA No. 227/2021 by directing M/s Venkata Narayana Active Ingredients Private Limited to deposit the environmental compensation of Rs. 73,50,000/- within four weeks. This amount will be utilised for restoration and improvement of environment as per the direction contained in paragraph 8 of the order dated 07.12.2021.

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News Item titled "२२ साल से बंद कंपनी में काट दिए १ हज़ार से ज्यादा पेड़, नॉएडा में वन विभाग ने जब्त किया कटे पेड़ो से भरा ट्रक" appearing in Navbharat Times dated 11.06.2024 & connected matter

(Original Application No. 820/2024 & connected matter)
Decided on: 25th November, 2025 (PB)

CASE NOTE

The Original Application No.820/2024 and Original Application No.896/2024 pertains to illegal cutting of a large number of trees on a piece of industrial land in Greater Noida. The issue first came to light through a news report appeared in Navbharat Times dated 11.06.2024 concerning the illegal cutting of over a thousand trees on the Greater Noida land of DCM Company, which had been closed for 22 years. The connected OA No. 896/2024 was filed by an applicant raising the same grievance regarding illegal felling of trees at the Daewoo Factory in Greater Noida. Since both cases involved the same issue, the Tribunal consolidated the matters. Upon directions of the Tribunal, concerned authorities filed affidavits revealing that 980 trees of various species, including three Neem trees, were illegally felled, and the timber was seized. Criminal proceedings were also initiated against the alleged violators.

The issues before the Tribunal were: (i) identification of persons responsible for illegal felling of trees and adequacy of action taken against them; (ii) safeguarding and forfeiture of seized timber under the Uttar Pradesh Protection of Trees Act, 1976; (iii) prevention of further illegal felling on the subject land; and (iv) obligation to undertake compensatory plantation for the illegally cut trees.

The Tribunal observed that the Forest Department had conducted thorough investigations and identified M/s Shakuntalam Land Craft Pvt. Ltd., its directors, and a few other individuals as being involved in the illegal felling. The criminal complaints are currently pending before the competent criminal court, where the guilt or otherwise of the accused will be determined. The Tribunal was satisfied that substantial steps had already been taken, including seizure of timber, sealing of premises, and initiation of prosecution, and that the Forest Department had the legal authority to seek forfeiture of the wood at the appropriate stage.

The Tribunal disposed of the Original Applications No. 820/2024 and 896/2024 holding that adequate action had been taken regarding past violations, and issued directions to Uttar Pradesh State Industrial Development Authority (UPSIDA) to erect a proper boundary around the subject land within three months to prevent future illegal felling. The Tribunal further directed the concerned Divisional Forest Officer to ensure adequate compensatory plantation for the 980 illegally felled trees within one year.

News Item titled "२२ साल से बंद कंपनी में काट दिए १ हज़ार से ज्यादा पेड़, नॉएडा में वन विभाग ने जब्त किया कटे पेड़ो से भरा ट्रक" appearing in Navbharat Times dated 11.06.2024 & connected matter

COUNSEL FOR APPLICANT(S):
Mr. Sameer Sharma, Applicant in Person in OA 896/2024 (Through VC)

COUNSEL FOR RESPONDENT(S):
Mr. Bhanwar Pal Singh Jadon, Ms. Disha Tiwari, Ms. Gargi Chaturvedi & Ms. Anjali Sharma, Advs. for R - 1, 2 & 4 in OA 820/2024
Ms. Suhasini Sen & Ms. Raushni Kaura, Advs. for MoEF & CC
Mr. Utkarsh Sharma, Adv. for R - 6 in OA 820/2024 & for R - 1 in OA 896/2024
Mr. Akash Vashishtha, Adv. with Mr. Vikrant Tongad, Applicant in I.A No. 494-495/2024

CORAM:
HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

HEARD ON: 25th November, 2025
PRONOUNCED ON: 25th November, 2025

ORDER

BY HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON

1. These Original Applications (OAs) are being disposed of by the common order as the issue involved in these applications is the same.

2. The OA No. 820/2024 was registered *suo-Moto* on the basis news item titled '२२ साल से बंद कंपनी में काट दिए १ हज़ार से ज्यादा पेड़, नॉएडा में वन विभाग ने जब्त किया कटे पेड़ो से भरा ट्रक' appearing in Navbharat Times dated 11.06.2024 disclosing the illegal cutting of more than thousand trees in Greater Noida DCM Company land that was shut for last 22 years.

3. In the connected OA No. 896/2024, the Applicant had pleaded the same issue by complaining about the illegal felling of trees in the Daewoo Factory, Greater NOIDA. The Tribunal in the *suo-Moto* No. 820/2024 by the orders dated 12.07.2024, 14.10.2024 and 03.02.2024 had impleaded the concerned Respondents and issued Notices to them. The reply on behalf of the Respondents have been received.

4. Learned counsel appearing for the State of UP has pointed out the action taken to trace out the persons responsible for the illegal feeling of trees, the criminal prosecution initiated against by the violators and also seizure of the timber obtained from illegally cut trees. In this regard, he has drawn attention of the Tribunal to the reply affidavit of the Respondent No. 2-PCCF, UP dated 09.05.2025 wherein it is stated that the Committee was constituted and a

fact-finding report was obtained. A copy of the report submitted by the Chief Conservator of Forest, Western Zone, Meerut dated 08.05.2025 has been placed on record along with this Affidavit. This report discloses in detail the factual background, the number and nature of trees which were cut and the timber which has been seized and also the names of the violators and the Authority responsible to protect the area. The relevant extract of the report is as under:-

> *"1. **FACTS AND BACKGROUND***
>
> *1.1 That on 10.06.2024, information was received regarding illegal tree felling within the compound of M/s Shakuntalam Land Craft Pvt. Ltd., Greater Noida (formerly leased to Daewoo Company, Surajpur by UPSIDA).*
>
> *1.2 The Range Forest Officer, Dadri, Gautambuddh Nagar, along with other forest officials, promptly visited the site of the offence on 10.06.2024 itself, to conduct a field investigation/enquiry into the information received by the Forest Department. Thereafter, the information regarding the illicit tree felling activity was confirmed. At the above-mentioned site, one Eicher 409 Vehicle No. UP 14 HT 0303 and one tractor trolley without number plate, were found, laden with wood weighing approximately 60 quintals. The vehicles along with the wood were duly seized by the forest officials.*
>
> *1.3 While the seized wood is still under the custody of the Forest Department, the vehicles were released, after the deposit of a surety worth Rs. Thirteen Lakhs in the Hon'ble Chief Judicial Magistrate, Gautambuddh Nagar, in compliance with its order dated 02.12.2024. The photographs of the site and seized wood (Annexure No.-1) and a copy of order dated 02.12.2024 (Annexure No.-2) are attached.*
>
> *1.4 That, Forest Offence Report (H-2 Case No. 16/2024-25) dated 10.06.2025 (Annexure No.-3) was registered against two persons viz., Waseem Khan and Mujahid Khan, under Section-4 and 10 of the "UP Tree Protection Act, 1976" and Section-3 and 28 of the "U.P Transit of Wood and other Forest Produce Rules, 1978."*
>
> *1.5 That, Range Forest Officer, Dadri, Gautambuddh Nagar was appointed as Enquiry Officer in H-2 Case No. 16/2024-25 on Divisional forest officer letter no 7133/2-1 dated 11-06-2024. (Annexure No.-4)*
>
> *1.6 That, for enumeration of the illegally felled trees, a combing committee was formed vide letter dated 18.06.2024 (Annexure No.-5) by the Range Forest Officer, Dadri, Gautambuddh Nagar.*

1.7 That, during the enquiry into the first offence, another complaint was received on 25.06.2024 about further illegal tree felling in the same compound. Forest Offence Report (H-2 Case No. 21/2024-25) dated 25.06.2024 (Annexure No.-6) was registered under Section 4, 10 and 11 of the UP Tree Protection Act, 1976.

1.8 That, Range Forest Officer, Dadri, Gautambuddh Nagar was appointed as Enquiry Officer in H-2 Case No. 21/2024-25 on Divisional forest officer letter no 7365/2-1 dated 26-06-2024. (Annexure No.-7)

1.9 That, for enumeration of the illegally felled trees, Combing Committee was again formed vide letter dated 29.06.2024 (Annexure No.-8) by the Range Forest Officer, Dadri, Gautambuddh Nagar w.r.f. to case no 21/2024-25.

1.10 The above-mentioned Combing Committee submitted its combined Final Report dated 09.07.2024 (Annexure No.-9) confirming the illegal felling of 980 trees, comprising of 02 Eucalyptus, 03 Neem and 975 Subabool trees.

1.11 The illegally felled 980 trees are of only three species namely Subabool, Eucalyptus and Neem. Out of these, Neem (3 in nos.) is the only species which is prohibited as per the Government Notification dated 07.01.2020 (Annexure No.-10).

2. DETAILS OF FELLED TREES

S. No.	***Species***	***Girth Class of Strumps of felled Trees***	***No. of Trees***	***Remarks***
1.	*Subabool*	*0-1 (0.00-31.42 cm)*	*184*	*Exempted Species under UP Trees Protection Act, 1976 (as amended)*
2.	*Subabool*	*1-2 (31.43-62.85 cm)*	*358*	
3.	*Subabool*	*2-3 (62.86-94.28 cm)*	*262*	
4.	*Subabool*	*3-4 (94.29-125.71 cm)*	*138*	
5.	*Subabool*	*3-4 (94.29-125.71 cm)*	*33*	
6.	*Eucalyptus*	*20-25 (62.73-78.44 cm*	*2*	
7.	*Neem*	*20-25 (62.73-78.44 cm*	*3*	*Prohibited species*

3. ***Action Taken by Gautam Budh Forest Division-***
3.1 REGISTRATION OF FOREST OFFENCES

(i) Forest Offence Report (H-2 Case No. 16/2024-25) was registered on 10.06.2024 against Waseem Khan and Mujahid Khan under Sections 4 and 10 of the U.P. Tree Protection Act, 1976 and Sections 3 and 28 of the U.P. Transit of Timber and Other Forest Produce Rules, 1978.

(ii) Forest Offence Report (H-2 Case No. 21/2024-25) was registered on 25.06.2024 against M/s Shakuntalam Land Craft Pvt. Ltd. under Sections 4, 10 and 11 of the U.P. Tree Protection Act. 1976.

3.2 IDENTIFICATION OF OFFENDERS

A- Based on the investigation/enquiry in case no 16/2024-25 the following persons/entities were identified for violation of Section-4, 10 & 11 of UP Tree Protection Act, 1976 (as amended) and Sections 3 & 28 of the U.P. Transit of Timber and Other Forest Produce Rules, 1978.

i. M/s Shakuntalam Land Craft Pvt. Ltd., New Delhi
ii. Yash Gupta, Director, Shakuntalam Land Craft Pvt. Ltd.
iii. Pallavi Gupta, Director, Shakuntalam Land Craft Pvt. Ltd.
iv. Ashish Gupta, Director, Shakuntalam Land Craft Pvt. Ltd.
v. Deepak Gupta, Authorized Signatory, Shakuntalam Land Craft Pvt. Ltd.
vi. Waseem Khan
vii. Mujahid Khan

B- Based on the investigation/enquiry in case no 21/2024-25 the following persons/entities were identified for violation of Section-4, 10 & 11 of UP Tree Protection Act, 1976 (as amended).

i. M/s Shakuntalam Land Craft Pvt. Ltd., New Delhi
ii. Yash Gupta, Director, Shakuntalam Land Craft Pvt. Ltd.
iii. Pallavi Gupta, Director, Shakuntalam Land Craft Pvt. Ltd.
iv. Ashish Gupta, Director, Shakuntalam Land Craft Pvt. Ltd.
v. Deepak Gupta, Authorized Signatory, Shakuntalam Land Craft Pvt. Ltd.

3.3 SEALING OF MAIN GATE OF THE COMPANY PREMISES

(i) That due to repeated occurrence of illicit tree felling at the premises of M/s Shakuntalam Land Craft Pvt. Ltd. (previously leased to Daewoo Company, Surajpur, Greater Noida), Divisional Forest Officer, Gautambuddh Nagar, Noida, after

getting the approval from the District Magistrate, Gautambuddh Nagar, directed the Range Forest Officer, Dadri vide his letter dated 09.07.2024 (Annexure No.-11) to seal the main gate (gate no.1) of the Company premises. The gate no. 1 of the Company premises was sealed on 09.07.2024 by the Range Forest Officer, Dadri in presence of Officials from UPSIDA, Revenue and Police Departments of Gautambuddh Nagar.

(ii) That, the sealed gate (Gate No. 1) at M/s Shakuntalam Land Craft Pvt. Ltd. Gautambuddh Nagar was stolen. Consequently, an F.I.R. no. 0392 dated 21.10.2024 (Annexure No.-12) was registered by Police Department on the request of UPSIDA and Forest Department.

3.4 ISSUANCE OF NOTICES

A number of notices (combined as Annexure No.-13) have been issued to all the above-mentioned offenders and concerned individuals/entities under relevant forest laws and rules from time to time (between June 2024 to March 2025).

3.5 STATEMENT OF OFFENDERS

(i) Both Waseem Khan and Mujahid Khan, during the enquiry, admitted to transportation of illegally felled wood, without permission from the Forest. Department.

(ii) It was also admitted and affirmed by the above-mentioned offenders that the felling was done at the behest of M/s Shakuntalam Land Craft Pvt. Ltd.

(iii) M/s Shakuntalam Land Craft Pvt. Ltd. in its written response dated 19.02.2025 (Annexure No.-14), denied any responsibility for illegal felling of trees.

3.6 VOLUME OF SEIZED WOOD

The illegally felled wood found on site was seized immediately and at present, in the custody of the Forest Department at the Surajpur Nursery. The volume of seized wood was calculated to a total of 52.359 CUM (approximately).

S. No.	*Species of Tree*	*Stump Girth Class (CM)*	*Approx. Girth Class at Breast Height (cm)*	*No. of illegally felled trees*	*Estimated volume of wood (cubic meters-CUM)*	*Seized volume of wood (cubic meters CUM)*	*remarks*
1.	*Subabool*	*0-10*	*0-10*	*184*	*0.000*	*52.060*	***Exempted** species under UT Tree Protection Act, 1976 (as amended)*
2.	*Subabool*	*10-20*	*0-10*	*358*	*0.000*		
3.	*Subabool*	*20-30*	*10-20*	*262*	*0.000*		
4.	*Subabool*	*30-40*	*20-30*	*138*	*35.190*		
5.	*Subabool*	*40-50*	*30-40*	*33*	*19.635*		
6.	*Eucalyptus*	*20-25*	*15-20*	*2*	*0.252*	*0.251*	*Prohibited species*
7.	*Neem*	*20-30*	*10-20*	*3*	*0.048*	*0.048*	
Total				***980***	***55.135 CUM***	***52.359***	

100% volume of wood prohibited species and about 95% volume of wood from exempted species is still under custody of Forest Department.

3.7 ENQUIRY REPORT

(i) The Range Forest Officer, Dadri (Enquiry Officer) conducted the enquiry and concluded that M/s Shakuntalam Land Craft Pvt. Ltd. was involved in the illegal felling of 980 trees.

(ii) It was also concluded that Waseem Khan and Mujahid Khan were only working on the orders of the M/s Shakuntalam Land Craft Pvt. Ltd.

3.8 FILING OF COMPLAINT CASE

(i) Criminal complaints, having case no.(s) 2274/2025 and 2276/2024 under Section-223 of the BNSS dated 24.03.2025 have been filed before the Hon'ble Additional Chief Judicial Magistrate-I (ACJM-I), Gautambuddh Nagar against (i) M/s Shakuntalam Land Craft Pvt. Ltd., (ii) Yash Gupta, (Director); (iii) Pallavi Gupta, (Director); (iv) Ashish Gupta, (Director); (v) Deepak Gupta, Authorised Signatory of M/s Shakuntalam Land Craft Pvt. Ltd., (vi) Waseem Khan and (vii) Mujahid Khan seeking the strictest punishment for the offences made by them.

(ii) It is pertinent to mention that on 24.03.2025, notice has been issued in the aforementioned complaints (CNR Nos. UPGB040186652025 and UPGB040186622025) filed before the Hon'ble ACJM-1, Gautambuddh Nagar. Furthermore, the complainant and the accused have been summoned to be examined under oath by the Magistrate at the next date of hearing. The notices issued by the Hon'ble ACJM Court and Status Report (Annexure No.-15) of the cases are attached.

(iii) The cases are next listed for hearing in the court of the Hon'ble ACJM on 18.05.2025.

3.9 ADDITIONAL FACTS AND ACTION TAKEN

1- *It is worthwhile to mention that the aforesaid site was initially leased to Daewoo Company, Surajpur vide lease deed dated 18.11.1987, which was subsequently obtained by M/s Shakuntalam Land Craft Pvt. Ltd.*

   Subsequently UPSIDA vide its Letter No. UPSIDA/1236 dated 07.08.2024 (Annexure No.-16) has cancelled the lease deed dated 18.11.1987 and has obtained the physical possession of the leased land in question.

2- *A letter dated 18.06.2024 (Annexure No.-17) to Deputy Commissioner of Police, Gautambuddh Nagar was sent by DFO, Gautambuddh Nagar for directing the concern SHO to necessary action on request of DMIL Employee Union (Regd.).*

3- *A letter dated 10.07.2024 (Annexure No.-18) to Regional Manager UPSIDA, Greater Noida was sent by DFO, Gautambuddh Nagar for providing the details of action taken by them in this matter of illicit felling of trees on the UPSIDA land.*

4- A letter dated 27.07.2024 (Annexure No.-19) to Regional Officer UP Pollution Control Board, Greater Noida was sent by DFO, Gautambuddh Nagar for providing the information regarding action. taken by UPPCB under Environment Protection Act-1986. A reminder dated 06.05.2025 (Annexure No.-20) for the same was sent.

5- Site inspection was done by the DFO, Gautambuddh Nagar and enquiry was made. Furthermore, a letter dated 11.02.2025 was sent to the UPSIDA by the DFO regarding the security of the area so that no further illegal felling occurs in the future. (Annexure No.-21)."

3. Learned counsel appearing for the Respondent No. 6 has submitted that originally the land was allotted to M/s DCM Toyta Ltd. for the industrial purpose and a joint venture was entered into between the M/s DCM Toyta Ltd. in Daewoo Motors India Ltd. but by virtue of order dated 08.08.2022 passed by the Debt Recovery Tribunal (DRT), Mumbai directing the sale of immovable property of Daewoo Motors India Ltd including the subject property to recover the dues of the bank and financial institutions, further process on the land was held up. He has pointed out that subsequently the possession of the land was taken over by the official liquidator and the sale conducted by the DRT was confirmed in favour of the Respondent No. 6 and sale certificate was directed to be issued on 30.04.2024. He has also submitted that the possession of the land in question was handed over to the Respondent No. 6 on 24.05.2024 but thereafter, the lease was cancelled by the Uttar Pradesh State Industrial Development Authority (UPSIDA) on 06.08.2024. He submits that in the meanwhile the Respondent No. 6 had approached the UPSIDA for issuing the transfer certificate needed for electricity connection. But same was not given therefore steps for protecting the land could not be taken. The stand of the Respondent No. 6 is that since the boundary surrounding the land is broken at several places, therefore, some unscrupulous persons have illegally cut the trees.

4. So far as the issue of persons responsible for illegal felling of trees is concerned, the criminal proceedings have already been initiated details of which are disclosed in the report filed along with the affidavit of the PCCF, UP. Therefore, in those criminal proceedings the culpability of the accused will be decided on basis of the evidence produced.

5. In the fact-finding report enclosed along with the affidavit of the PCCF, it has been disclosed that total 980 trees were cut out of which three were Neem trees falling in prohibited specie. It has further been disclosed that 100% volume of wood of prohibited species and 95% volume of wood from the exempted species is obtained from the illegally cut trees has been seized and it is in the custody of the Forest Department of the State. Therefore, the Forest Department of the State is required to protect the said timber. Learned

counsel appearing for the State referring to the Section 12 of the UP Protection of Trees Act, 1976 has submitted that at the appropriate stage the Court will be passing the forfeiture order for the trees which have been seized by the Forest Department of the State.

6. Thus, we find that adequate action has already been taken against illegal felling of trees which has taken place.

7. The next issue is to ensure that no further illegal felling of trees takes place in the subject land. The fact-finding report enclosed with the affidavit of the PCCF reveals that a communication dated 11.02.2025 has already been sent by the DFO, Gautam Budh Nagar to UPSIDA to ensure the security of the area so that further illegal felling of trees in future does not take place.

8. The Respondent No. 5-UPSIDA is served in this OA but is not represented today. The responsibility of the UPSIDA to protect the land in the meanwhile is not in dispute in these proceedings. Hence, we direct the UPSIDA to ensure erection of proper boundary around the subject land within three months and to take all possible steps so that no illegal felling of trees takes place within the said area.

9. Learned counsel for the applicant in I.A. No. 494/2025 and 495/2025 has also raised the issue of compensatory plantation. Since undisputedly more than 980 trees have been illegally cut therefore it is the responsibility of concerned DFO to ensure that adequate compensatory plantation is done within one year against the trees which have been illegally cut.

10. The OAs are accordingly disposed.

11. All the pending IAs also stand disposed of.

Mahendra Singh vs. State of Haryana & Ors. & Connected matters

(Original Application No. 667/2018 & connected matters)
Decided on: 03rd July, 2025 (PB)

CASE NOTE

The Original Applications (Original Applications No. 667/2018, 679/2018, 599/2019 and 1385/2024) originated from grievances against stone crushing and mineral grinding operations in Mahendragarh District, Haryana, due to serious violations of the Air (Prevention and Control of Pollution) Act, 1981, and the Water (Prevention and Control of Pollution) Act, 1974. The Tribunal observed that unchecked industrial expansion near the Aravalli range led to severe dust emissions and a systemic failure of state regulatory oversight. Initial reports indicated 158 units, of which 72 did not comply with required siting standards, and many units were illegally drawing groundwater from restricted "dark zones" without appropriate permits. Public health statistics highlighted the emergency, showing a 100% rise in respiratory illnesses among community members from 2011 to 2019.

The Tribunal examined several issues, including the reliability of the carrying capacity assessment for Mahendragarh District, environmental impacts from stone crusher operations, compliance with siting guidelines and Consent to Operate (CTO), collection of environmental compensation from defaulting units, use of such funds for pollution control and restoration, and enforcement effectiveness by Central Pollution Central Board (CPCB), Haryana State Pollution Control Board (HSPCB), and the District Administration.

The Tribunal concluded that the carrying capacity of District Mahendragarh must be independently verified and strictly enforced. It found the need for joint inspection to ensure stone crushers comply with siting criteria and CTO conditions, with action against defaulters.

In its final disposition, the Tribunal directed submission of the carrying capacity report of District Mahendragarh to the CPCB for expert verification and final determination, to be enforced by HSPCB and other authorities. Furthermore, it constituted a joint committee of CPCB, HSPCB and the District Magistrate, Mahendragarh to verify compliance with siting criteria and CTO conditions by stone crushers and recommend action against defaulters. It also upheld the levy of environmental compensation and directed its recovery and use for restoration measures and directed filing of compliance reports within stipulated timelines, with liberty to relist if necessary and disposed of all OAs and pending IAs.

Mahendra Singh vs State of Haryana & Ors. & connected matters

COUNSEL FOR APPLICANT(S):
Mr. Devesh Kumar Agnihotri, Adv. for Applicant in OA 679/2018

COUNSEL FOR RESPONDENT(S):
Mr. Rahul Khurana, Adv. for R -1 to 8 with Mr. Vijay Chaudhary, RO, HSPCB, Mahendra & Mr. Anju, AEE, HSPCB, Mahendra in OA.667/2018 & OA 679/2018
Mr. Rahul Khurana, Adv. for the State of Haryana & HSPCB with Mr. Vijay Chaudhary, RO, HSPCB, Mahendra & Mr. Anju, AEE, HSPCB, Mahendra in OA 599/2019
Mr. Tarun Gupta & Mr. Hirday Virdi, Advs.
Mr. Aman Bhalla, Adv. for CPCB in OA 599/2019 (Through VC)
Mr. Saurabh Rajpal, Adv. for R - 33 in OA 667/2018
Mr. Kapil Sagar, Adv. in I.A No. 143/2025
Mr. Somvir Singh Deswal & Mr. Abhishek Deswal, Advs. in I.A No. 120/2023
Ms. Pallavi Singh, Adv.
Mr. Rahul Khurana, Adv. for R - 1 & 4 with Mr. Vijay Chaudhary, RO,
HSPCB, Mahendra & Mr. Anju, AEE, HSPCB, Mahendra in OA 1385/2024
Mr. Anuj Bhandari, Adv. for CPCB in OA 1385/2024

CORAM:
HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

HEARD ON: 03rd July, 2025
UPLOADED ON: 21th July, 2025

ORDER

BY HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON

1. These original applications relate to violation of environmental norms under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 by the stone crushers operating in Mahendragarh District in Haryana. There is an allegation that the air quality in the area does not have the assimilative capacity to sustain them resulting in serious environmental harm and ill effect on public health.

2. In **OA No. 667/2018**, the allegation of the Applicant is as against the setting up of a stone crusher unit in Village Karota, Tehsil Narnaul, District Mahendragarh, Haryana by Respondents No. 9 and 10 in violation of the siting criteria in the range of Aravali hills and its plantation. The Applicant has also alleged violation of environmental norms by Respondents No. 9 and 10. The Applicant has *inter-alia* prayed for imposition of the environmental compensation against the Respondents No. 9 and 10 for causing air pollution by emitting dust in the air and setting up the stone crusher in violation of the norms.

3. In **OA No. 679/2018**, the grievance of the Applicant is as against the alleged illegal setting up of stone crusher by Respondent No. 9 in Village Khatoli Jat, Nangal Choudhary, District Mahendragarh in violation of the siting criteria. The Applicant had alleged that the distance of Respondent No. 9, stone crusher from the Aravali Plantation Kila No. 8 is approximately 85 meters as against the required 100 meters as per the siting criteria. The Applicant had also alleged the violation of the environmental norms by Respondent No. 9. The Applicant had *inter-alia* prayed for imposition of the environmental compensation against the Respondent No. 9 for causing air pollution by emitting dust in the air and setting up the stone crusher in violation of the norms.

4. In **OA No. 599/2019**, the allegation of the Applicant was in respect of setting up of the mineral grinding industry by the Respondent No. 5 and running of several such industries near Village Bayal, District Mahendragarh in violation of the norms and causing air and dust pollution. The Applicant had *inter-alia* prayed for imposition of the environmental compensation against the Respondent No. 5 for causing air pollution by emitting dust in the air and setting up the stone crusher in violation of the norms.

5. **OA No. 1385/2024** was registered *suo motu* on the basis of the news item titled "living under a dust blanket" appearing in 'The Hindu' dated 05.12.2024 disclosing the grim reality of pollution in Mahendragarh, Haryana and alleging unchecked stone crushing operations in the area which had created severe health, environmental and social challenges.

6. In the above four original applications, the Tribunal had issued directions from time to time, had formed joint Committees and examined the reports of the joint Committee.

7. The Tribunal by order dated 20.09.2018 passed in OA No. 667/2018 had formed a joint Committee and had called for its report. The report of the joint Committee was considered by the Tribunal in the proceedings dated 12.12.2018 and certain anomalies were noticed. Hence, by order dated 12.12.2018 the joint Committee was directed to carry out the inspection of the stone crushers in District Mahendragarh as under:

> *"xxx ……xxx……xxx*
> *5. We also direct joint inspection of the stone crushers in the District of Mahendragarh by a Joint Committee of District Magistrate Mahendra, representatives of Central Pollution Control Board and HSPCB. The HSPCB will be nodal agency. The inspection will be with reference to the sitting criteria as well as the legality of the source of the water used. All precautions are necessary as the location of the stone crushers is within the sensitive zone of Aravali range, as well as in the vicinity of the residential area and educational institution".*

8. The Tribunal in the proceedings dated 24.07.2019 had considered the report of the joint Committee dated 23.07.2019 and had noticed violation of the norms and inadequate action by the authorities. Accordingly, the Deputy Commissioner, Mahendragarh was

directed to ensure immediate closure of all illegally operating polluting stone crushers in the area by observing as under:

"xxx ……xxx……xxx

3. Today third report has been submitted which is also inadequate to deal with the matter. According to the report dated 23.07.2019, the observations and action taken are as follows:

"

a. Siting criteria

1. *There are total 158 Nos. of stone crushers; out of these 118 Nos. are installed/operational and remaining 40 Nos. of stone crushers are under installation at various stages after obtaining CTE from HSPCB on the basis of siting norms reports submitted by the Tehsildar and DFO as per Notification 11.05.2016. Out of 118 Nos of installed/ operational stone crushers, 46 Nos. of stone crusher are not meeting the siting criteria, as mentioned in Table-2 (Sr. no.1 to 46). Out of 40 Nos. of stone crushers which are under installation at various stages, 26 Nos. of stone crushers are not meeting the siting criteria as per notification dated 11.05.2016 & Notification date 04.04.2019 as mentioned in Table-2(Sr. No. 47 to 72). Brief details of total 72 Nos. non complying stone crushers is described as below in Table-4:*

Table-4

Sr. No.	*Remarks*	*Nos.*
1.	*Total non-complying stone crushers as per siting criteria*	*72*
2.	*Action already taken* *CTE Revoked* *Closed by Board due non compliances under Air Act, 1981* *CTE Revocation under process* *Closure and CTO Revocation under process*	*31*
3.	*Show cause notices issued non complying units identified after DGPS measurement*	*29*
4.	*No Action required at this stage* *Operational stone crushers granted time for shifting (Annexure II &III)* **Already closed by Board described above at Sr. No. 2 =04+01** *Under process stone crusher shifting policy w.r.t. notification 07.11.2017 = 08*	*12*

2. *HSPCB has already revoked consent to establish of following 03 Nos. (as mentioned in Table-2, at Sr. No. 70 to 72) stone crushers which are also individual respondents in OA No. 667 of 2018 titled as Mahendra Singh Vs. State of Haryana and Ors. and OA No. 679 of 2018 titled as Tejpal Vs. State of Haryana and Ors. filed before Hon'ble National Green Tribunal respectively: -*

   i) *M/s. DEV SHRI KRISHNA STONE CRUSHER Khewat No. 45, Khatoni No. 53, M.No. 12, Kila No. 25/2 (3-13) M. No. 15, Kila No. 5 min East (7-0) Total 10 Kanal 13 Marla, Village-Karota, Tehsil-Narnaul, Distt. Mahendragarh.*
   ii) *M/s Unique Stone Crusher, Khewat No. 15, Khatoni No. 15, M. No. 11, Kila no. 11/2(2-15), 20(7-12) & 21/1 (6-9) Total 16 Kanal 16 Marla, Vill-Karota, Narnaul, Distt. Mahendragarh.*
   iii) *M/s. KSY BUILDCON, Khewat No. 47, Khatoni No. 68, M. No. 9, Kila no. 15/2(3-16), 16(7-19), 24/1/1(0-16), 25/1/1(0-18) Total 13 Kanal, 09 Marla at Vill- Khatoli Jat, Nangal Chaudhary, Distt. Mahendragarh. Copies of CTEs revocation order is attached as Annexure-XIII to XV.*

3. *HSPCB has initiated action for closure and revocation of CTE/CTO as applicable against all those 29 stone crushers (mentioned in Table -2, at Sr. No. 1 to 24 & 68 to 72) whose parameters were not accordance with measurement done earlier through Shazra & also are not meeting siting criteria as per the fresh measurement report with DGPS.*

4. *HSPCB has also issued show cause notices for closure and revocation of CTE/ CTO on 23.07.2019 as applicable under provisions of sub section 4 of section 21 of Air (Prevention and Control of Pollution) Act, 1981 against all other 29 stone crushing units (as mentioned in Tablke-2, at Sr. No. 31 to 42 & 51 to 67) which were found non-complying with the report (submitted by Tehsildar on 27.07.2019) after DGPS measurement and further action shall be taken accordingly.*

5. *Two stone crushers (as mentioned in Table-2, at Sr. No. 29 to 30) have already been closed & sealed by Board due to non-compliance under Air Act, 1981.*

6. *Five stone crushers (as mentioned in Table-2, at Sr. No. 25 to 29) have already been granted time for shifting/relocation as per notification 11.05.2016 and Govt. Order 11.06.2019, out of this one stone crusher mentioned in Table -2 at Sr. No. 29 has already been closed & sealed by Board due to non-compliance under Air Act, 1981.*

7. *Eight stone crushers (as mentioned in Table-2, at Sr. No. 43 to 50) are not meeting siting criteria only by the municipal limits notification dated 07.11.2017 of Urban Local Bodies. If draft Urban Local Bodies Notification, dated 08.03.2019 will be finalised as such, then all these 8 stone crushers will fulfil the siting criteria. Further, decision of Govt. of Haryana regarding policy for shifting such stone crushing units as proposed by HSPCB is yet to be finalised by the Govt. of Haryana.*

b. Mechanism for drawl of Water

1. *Twenty Nos. of operating stone crushers are not taking treated water from STP of PHED as per detailed list provided by PHED (Annexure-XVI). HSPCB had issued show cause notices to submit the source of water being used and permission from any other permitted source. Only five unit have submitted reply which was not found satisfactory. HSPCB has initiated action for closure and revocation of CTO against all these twenty stone crushers.*

2. *Eighteen Nos. of stone crushers falling in dark zone have installed illegal bore-well/tube-well in their premises without any permission from the GWC and illegal bore-well/tube-well has been sealed by the GWC, Narnaul as mentioned in Table3.*

3. *Joint Committee in coordination with CGWA shall make an assessment of environmental compensation for illegal extraction of ground water by these stone crushers, in accordance with order of this Hon'ble Tribunal dated 30.11.2018 in Harinder Singh & Ors. Vs. Prateek Build tech (India) Pvt. Ltd. & Ors and order dated 30.04.2019 in Ramkmar Vs. State of Haryana & Ors. (OA No. 1032/2018)."*

4. ***The report shows the State Administration in poor light. The State Administration is the guardian of environment and public health. In this case it appears to be oblivious of its responsibility to check the damage to the environment and to act against the polluters. There is no explanation as to how potable water has been continued to be drawn without any restriction by the State Administration even though the area is critical in terms of ground water and in spite of such illegality brought to notice. It is also not clear as to how blatant violation of air quality norms is being allowed for permitting operation of stone crusher units at the cost of public health and environment. The report does not clarify as to how many stone crushers, if any, are legitimate which do not conflict with the environment. It appears that the State Administration has not cared to fully verify the compliance of environment norms while permitting continuation of the stone crushers, even after proceedings before this Tribunal.*** *Though the Deputy Commissioner and many officers are available, none of them is in a position to give precise information about the number of stone crushers still operating and on what basis they are being allowed.*

5. In view of the above unsatisfactory state of affairs, we require the Deputy Commissioner, Mahendra to ensure immediate closure of all illegally operating polluting stone crushers in the area and initiation of action by way of prosecution and recovery of compensation which must be deterrent and relatable to the cost of restoration so that illegal activity is not profitable. The compliance of environment norms including the siting criteria, the ambient air quality, the carrying capacity of the area for permitting such polluting activity and health impact on the inhabitants may also be assessed. Such further compliance report be filed before the next date of hearing by email at judicial-ngt@gov.in."

9. In the proceedings dated 03.12.2020, the Tribunal took note of the larger issue of air pollution in NCR in winter months and also examined the carrying capacity of Mahendragarh District to sustain brick kilns and invoked the precautionary principle by observing as under:

"xxx ……xxx……xxx
16. It is seen from above, that there was no carrying capacity in Mahendragarh District to sustain brick kilns. Thus, stone crushers can also not be allowed inabsence of carrying capacity in terms of air quality to sustain operation of stone crushers. Precautionary principle has to be applied having regard to impact of air pollution on health. Right of citizens to breathe fresh air cannot be denied and right of operating stone crushers cannot get preference over and above right to life on specious plea that the stone crushers were set up as per siting parameters allowed by the State without study of impact of the carrying capacity. As already noted, the siting norms is

only one of the issues and even if this issue is to be ignored for the time being, there has to be carrying capacity in terms of air quality.

17. Accordingly, we direct that the joint Committee with the addition of the CPCB to take further steps in terms of order of this Tribunal dated 24.07.2019, quoted earlier for compliance of environmental norms in the light of the carrying capacity of the area and the health impact of the operation of stone crushers on the inhabitants. The joint Committee may go by the order of the High Court and the State Government as far as siting criteria is concerned but close illegally polluting stone crushers in terms of all other environmental norms, including the air quality, illegal water extraction. The joint Committee may also study the health impact on the inhabitants and take remedial action. The State PCB will be the nodal agency for coordination and compliance. The statutory authorities taking coercive measures may ensure due process of law."

10. The action taken report dated 27.09.2021 was filed before the Tribunal by the State PCB on behalf of the joint Committee disclosing as under: -

"xxx……xxx……xxx

7. In pursuance of above, action taken report dated 27.09.2021 has been filed by the State PCB on behalf of the joint Committee. The report mentions 18 clusters where these stone crushers were mainly operating. The health impact as per letter of the CMO dated 16.06.2021, showing 100% increase in diseases, is mentioned. The carrying capacity has been found to be in the negative due to existing high pollution load. It has been recommended that new stone crushing units and non-compliant units may not be allowed. The remaining may be allowed subject to safeguards such as water sprinkling, covering of the conveyor belt to minimize dust generation, paving of the roads to minimize pollution during transportation and undertaking regular health survey. The report also mentions need for further study to ascertain the number and capacity of stone crushers which could be allowed in the light of ambient air quality and also source apportionment study. The operative part of the report is reproduced below:

"A. Status of Stone Crushing Units

(i) A report mentioning the consent and operating status of the stone crushing units in the District Mahendergarh was filed before the Hon'ble NGT, vide dated 23.07.2019.

(ii) The status of the stone crushing units has further been modified as on date (at the time of reporting), wherein the consent to establish and consent to operate were revoked by the Board and the same is enclosed. ***(Annexure-I)***.

*(iii) The stone crushing units which were found using ground water without obtaining requisite permission from Central Ground Water Authority (CGWA) have also issued Show Cause Notice for imposing Environmental Compensation (**Annexure- II**).*

(iv) The stone crushing units are mainly operating in different clusters and the detail of the same is given below:

Table- I

Tehsil	*Name of the Clusters/ Villages*	*No. of Stone Crushing Units*
Mahendergarh (34)	*Village Garhi*	*21*
	Village Zerpur	*13*
Narnaul (21)	*Village Kultajpur*	*6*
	Village Lutufpur	*9*
	Village Faizabad	*1*
	Village Mandlana	*1*
	Village Raghunathpura	*1*
	Village Karota	*3*
Nangal Chaudhary (107)	*Village Gangutana*	*19*
	Village Bakhrija	*17*
	Village Begopur	*24*
	Village Dholera	*15*
	Village Jainpur	*12*
	Village KhatoliAhir	*13*
	Village Berundla	*3*
	Village Panchnota	*2*
	Village KhatoliJat	*1*
	Village Bayal	*1*

*(v) It is also placed on record by the Committee that out of 162 Nos. stone crushing units, the HSPCB has monitored 48 Nos. stone crushers for verification of the compliance prior to order Hon'ble NGT order dated 03.12.2020 and status of the same is also enclosed (**Annexure- III**). Out of 48 Nos. units it is submitted that only 05 Nos. found non-compliant in*

regards to installation of non-adequate air pollution control devices and with the prescribed emission standards. The detail is attached with Annexure- III.

(vi) *HSPCB has established 02 Nos. Ambient air Quality Monitoring Stations (Manual) at Nangal Chaudhary and Mahendergarh. The monitoring of PM 2.5 and PM 10 is undertaken as per the guidelines prescribed by CPCB. The Ambient Air monitoring network was commissioned from February, 2020, however sufficient data could not be gathered for its analysis due to pandemic.*

B. Health Impact on the inhabitants

(i) *The concerned CMO vide letter No. PH/2021/72 dated 16.06.2021 has forwarded Air Borne Disease Report, District Mahendergarh for the period 2011 to 2020 (**Annexure- IV**).*

(ii) ***The report suggests that the number of cases were 21329 in the year of 2011 which has increase to 42309 in the year of 2019, an increase of 100 % cases in the span of 8 to 9 years.***

(iii) *The report however has not indicated the cause of air borne Disease as neither has identified any specific reason of increasing the air borne disease.*

C. Assessment of Carrying Capacity

i) *This refers to the Table 1, mentioned at Para No. A (iv) and which identifies the three clusters of stone crushing units in the District Mahendergarh. The minimum distance between two clusters is found approx. 5 km and the maximum distance is approx. 40 km.*

ii) *The maximum stone crushing units are operating in the Tehsil of Nangal Chaudhary and considered to be within the area of 15 Sq. km. Further, the maximum number of stone crushing units operating in Villages Bakhrija (17), Begopur (24) and Dholera (15) and therefore becomes the prominent source of air pollution.*

iii) *The data of ambient air quality for assessment of carrying capacity are gathered as follows:*

Table- II (Stone Crusher Operational)

Pre-Monsoon			
Particulars	***Tehsil-Nangal Choudhary***	***Tehsil-Narnaul***	***Tehsil-Mahendergarh***
Study Area (km^2)	*225*	*49*	*225*
Mixing height (km)	*0.6362*	*0.6362*	*0.6344*

Volume of air in the study area (km^3)	*143*	*31*	*143*
PM10 ($\mu g/m^3$)	*669*	*298*	*Monitoring not undertaken due to non-operation of Stone crushing units*
Total Estimated load of Particulate matter in Ambient air in the study area during study period (kg)	***95667***	***9238***	
Assimilative Carrying Capacity (kg)	***14300***	***3100***	
Supportive Carrying Capacity (kg)	***-81367***	***-6138***	

Table- III (Stone Crusher Operational)

Post-Monsoon			
Particulars	***Tehsil-***	***Tehsil-Narnaul***	***Tehsil-Mahendergarh***
Study Area (km^2)	*225*	*49*	*225*
Mixing height (km)	*0.4483*	*0.4483*	*0.4483*
Volume of air in the study area	*101*	*22*	*101*
PM10 ($\mu g/m^3$)	*427*	*273*	*299*
Total Estimated load of particulate matter in ambient air in the study area during study period (kg)	***43127***	***6006***	***30199***
Assimilative Carrying Nangal Choudhary Capacity (kg)	***10100***	***2200***	***10100***
Supportive Carrying Capacity (kg)	***-33027***	***-3806***	***-20099***

Table- IV (Stone Crusher Non-Operational)

Pre-Monsoon			
Particulars	***Tehsil-Nangal Choudhary***	***Tehsil-Narnaul***	***Tehsil-Mahendergarh***
Study Area (km^2)	*225*	*49*	*225*
Mixing height (km)	*0.555*	*0.555*	*0.6344*
Volume of air in the study area	*125*	*27*	*143*
PM10 ($\mu g/m^3$)	*499*	*241*	*493*

Total Estimated load of particulate matter in ambient air in the study area during study period (kg)	***62375***	***6507***	***70499***
Assimilative Carrying Capacity (kg)	***12500***	***2700***	***14300***
Supportive Carrying Capacity (kg)	***-49875***	***-3807***	***-56199***

Table- V (Stone Crusher Non-Operational)

Post-Monsoon			
Particulars	***Tehsil-Nangal Choudhary***	***Tehsil-Narnaul***	***Tehsil-Mahendergarh***
Study Area (km^2)	*225*	*49*	*225*
Mixing height (km)	*0.463*	*0.463*	*0.463*
Volume of air in the study area (km^3)	*104*	*23*	*104*
PM10 ($\mu g/m^3$)	*380*	*220*	*411*
Total Estimated load of particulate matter in ambient air in the study area during study period (kg)	***39520***	***5060***	***42744***
Assimilative Carrying Capacity (kg)	***10400***	***2300***	***10400***
Supportive Carrying Capacity (kg)	***-29120***	***-2760***	***-32344***

Note:- As there is no Sound Detection and Ranging (SODAR) station in district Mohindergarh, so atmospheric mixing height of Delhi (i.e. SODAR station located at CPCB, East Arjun Nagar, New Delhi) is considered for calculation.

iv) ***The above data have been prepared basis on the Ambient Air Quality Monitored by HSPCB on 18 locations on dated 05.03.2021 to 08.03.2021 (Pre-Monsoon) and 24.08.2021 to 27.08.2021 (Post-Monsoon) covering the cluster, the village phirni and distance from the stone crushing units.*** *The data revel that the supporting carrying capacity in all the Tehsils of District Mahendergarh found to be negative. This implies that the total pollution*

generation due to industrial and domestic activities including transportation (auto emission and road dust etc.) is over the assimilative carrying capacity of the study region.

Recommendation

The following recommendations are made considering the status of stone crushing units and assessment of carrying capacity.

a. ***No new stone crushing units of any capacity shall further be allowed to establish & operate in the region including any expansion of the existing units.***

b. ***The stone crushing units which were reported not confirming to the notified siting criteria shall remain close and be shifted as per the Notification dated 11.05.2016 and amended 04.04.2019.***

c. ***The stone crushing units shall provide water sprinkling system and cover the conveyer the belt to ensure minimum dust generation from their operation for further improvement of air quality. It is also recommended that the units shall provide telescoping chute at the level of loading/un-loading of the finished crushed material to avoid any suspension of the same.***

d. ***The stone crushing unit may provide concrete/pacca road to assess the crushing and transport area and provide adequate water sprinkling arrangement so as to minimise the dust formation.***

e. ***The Department of Health shall undertake regular survey of the workers and nearby inhabitants to ascertain the impact on inhabitants especially due to operation of stone crushing units besides other air polluting activities.***

A detailed study needs to be undertaken for ascertaining the number and capacity of stone crushing units that can be allowed to operate so as to bring the ambient air quality of the region within the notified standard. A source apportionment study may suffix the need."

11. The Tribunal in the proceedings dated 15.11.2021 had considered the above report dated 27.09.2021 and stand of the unit undertaking mineral grinding or stone crushing including association of the crusher owners and employees and noticed the negative carrying capacity and observed about closure of polluting units unless it is ensured that there are adequate safeguards enabling operation of stone crushers without adding to the pollution. The observation of the Tribunal in this regard in the order dated 15.11.2021 was as under:

"xxx ……xxx……xxx

15. In view of above the report and showing negative carrying capacity not only non-complying but also other polluting units may have to be closed unless it is ensured that there are adequate safeguards enabling operation of stone crushers without

adding to the pollution load. In respect of units grinding minerals other than stones, same approach has to be adopted if they add to the existing pollution load. Safeguards can be maintaining distance from habitation and educational/health care institutions, inter se distance, limiting the number to sustainable level, afforestation/development of a green belt around the periphery of the area upto 25 meters from location of stone crushers and in any pockets of land available nearby to improve the micro climate and to act as barrier against air pollution. The District Administration may also undertake paving the roads in and around the crushing area in additional water sprinkling on regular basis in the interest of public health of the citizens affected by the air pollution generated in the process."

12. In the aforesaid background, the Tribunal had constituted a six member Committee by the order dated 15.11.2021 by directing as under:

"xxx ……...xxx……xxx
16. Let a six-member joint Committee of CPCB, State PCB, District Magistrate, Mahindragarh, jurisdictional Conservator of Forest, nominee of IIT Delhi with expertise on the subject of air pollution and a Pulmonologist, nominated by DG Health, Haryana meet within two weeks and ponder over the issue. The CPCB and the State PCB will be nodal agency for coordination and compliance. They may interact with the stake holders, including the representatives of the stone crushers, who may be informed about proceedings before this Tribunal by the State PCB, in coordination with any other concerned authorities, in an appropriate manner by e-mail or otherwise. Any expenses to be incurred will be borne by the State PCB, subject to further orders. The District Magistrate may provide logistics for execution of the order. The Committee may give a report about the number of stone crushers and mineral grinding units which can be allowed and subject to what conditions, having regard to air pollution load and adverse impact on public health. The report may be furnished within three months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF which may also be uploaded on the website of the State PCB for information of all the affected stone crushers who will be at liberty to file their comments, if any, to the report before this Tribunal within 15 days of uploading of the report."

13. In the proceedings dated 18.01.2023, the Tribunal had considered the subsequent reports and had directed remedial action for recovery of compensation for past violation prohibiting illegally operating stone crushers till compliance and to the extent of carrying capacity. The Tribunal in the proceedings dated 18.01.2023 also took note of the order passed on the same day in the matters concerning stone crushers illegally operating in adjoining Charkhi Dadri District of Haryana. Accordingly, the Tribunal observed as under:

"xxx ……xxx……xxx
8. It is disappointing to note flagrant violation of law and attempt of authorities to

cover up the same in violation of earlier orders of this Tribunal. It is difficult to understand reason for such blatant attempt on the part of concerned officers to help violators, who need to be dealt with as per law for sustainable development and protection of environment and public health, ignoring economic interest of violators. Inspite of negative carrying capacity of the area in terms of air quality, large number of stone crushers are being permitted to continue. Air quality monitoring stations at Secretariat of Narnaul and STP of Mahendra have no relevance for determining air quality of the area where stone crushers are functioning. Giving irrelevant data from such stations only helps violators to take false plea that air quality in the area is good while data from area where stone crushers may show different picture. There is nothing to show that requisite green belts have been developed nor action has been taken against such blatant violations.

9. Dealing with similar situations of stone crushers illegally operating in adjoining Charkhi Dadri District of Haryana, the Tribunal by separate order passed today, observed:

> ***"10. In the light of above discussion, we direct remedial action for recovery of compensation for past violations, prohibiting illegally operating stone crushers till compliance and to the extent of carrying capacity.***
>
> ***11. To capture Robust data to the area, CPCB may install at least 5 more CAAQMS at suitable locations. It will be open to CPCB to install more, if found necessary. Pending setting up of CAAQMS, manual stations may be installed. The number of operating stone crushers be suitably reduced as directed earlier so as to be within the carrying capacity, maintaining appropriate inter-se distance as may be suggested by CPCB. Consistent with order dated 26.10.2021, from November to February, no stone crushing unit be allowed to operate in the area unless the air quality index is moderateand above i.e. below 200. 12. We also fix interim compensation at the rate of Rs. 20 Lakhs against each of the stone crushers operating in the area on 'Polluter Pays' principle. Compensation will cover the period from 5 years prior to filing of this Application and till date. The amount is being fixed at floor level on conservative basis even if particular stone crushers may have operated for shorter period. This will apply to all 343 identified stone crushers as mentioned in para 5 of the report of the joint Committee dated 17.01.2023. The amount may be collected by the State PCB by coercive action on failure of deposit within one month. The amount be used for restoration of environment in the area. Final compensation be fixed by joint Committee of District Magistrate, Charkhi Dadri, Member Secretary, State PCB, CPCB, Forest Department and DFO. CPCB and State PCB will jointly act as nodal agency for coordination and compliance. The Committee may put all the stone crushers to notice of this order and if any stone crusher is aggrieved by order of this Tribunal may be at liberty to move this Tribunal. The units which have been identified as non-compliant may be closed***

forthwith. The units which are not identified but are operating in violation of norms may also be proceeded against for closure till compliance forthwith. The numbers of units which are to be allowed to operate should be fixed having regard to the carrying capacity. The exercise may be overseen by ACS Environment, Haryana.

13. Action taken report with compliance status as on 30.04.2023 may be filed by 15.05.2023.

List for further consideration on 22.05.2023.

Member Secretary, State PCB and District Magistrate, Charkhi Dadri may remain present in person by Video Conferencing on the next date."

10. Following the above, we direct that remedial action for recovery of compensation for past violations, prohibiting illegally operating stone crushers till compliance and to the extent of carrying capacity. To capture Robust data to the area, CPCB may install at least 5 more CAAQMS at suitable locations. It will be open to CPCB to install more, if found necessary. Pending setting up of CAAQMS, manual stations may be installed. The number of operating stone crushers be suitably reduced as directed earlier so as to be within the carrying capacity, maintaining appropriate inter-se distance as may be suggested by CPCB. Consistent with order dated 26.10.2021, from November to February, no stone crushing unit be allowed to operate in the area unless the air quality index is moderate and above i.e. below 200. We also fix interim compensation at the rate of Rs. 20 Lakhs against each of the stone crushers operating in the area on 'Polluter Pays' principle. Compensation will cover the period from 5 years prior to filing of this Application and till date. The amount is being fixed at floor level on conservative basis even if particular stone crushers may have operated for shorter period. The amount may be collected by the State PCB by coercive action on failure of deposit within one month. The amount be used for restoration of environment in the area. Final compensation be fixed by joint Committee of District Magistrate, Mahindergarh, Member Secretary, State PCB, CPCB, Forest Department and DFO. CPCB and State PCB will jointly act as nodal agency for coordination and compliance. The Committee may put all the stone crushers to notice of this order and if any stone crusher is aggrieved by order of this Tribunal may be at liberty to move this Tribunal. The units which have been identified as non-compliant may be closed forthwith. The units which are not identified but are operating in violation of norms may also be proceeded against for closure till compliance forthwith. The numbers of units which are to be allowed to operate should be fixed having regard to the carrying capacity. The exercise may be overseen by ACS Environment, Haryana. Action taken report with compliance status as on 30.04.2023 may be filed by 15.05.2023."

14. The detailed order passed by the Tribunal on 18.01.2023 in OA No. 607/2018 relating to the same issue concerning the adjoining District of Charkhi Dadri in Haryana is reproduced below:

> *"1. The issue for consideration is the remedial action for enforcement of the environmental norms under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 by the stone crushers in District Charkhi Dadri, Haryana. According to the applicant, as per the RTI response of Haryana State PCB, dated 18.06.2019, 260 stone crushers are in operation in the District Charkhi Dadri. According to the applicant, the air quality in the area does not have assimilative capacity to sustain the same, resulting in violation of air and water pollution norms, adversely affecting the environment and public health. In view of subsequent reports showing violations in the adjoining District Bhiwani also, scope of these proceedings has been extend to the stone crushers in the said area also.*
>
> *2. The matter has been considered by several orders in the last more than four years, including orders dated 05.09.2019, 19.08.2020, 02.02.2021 and 26.10.2021.*
>
> *3. Vide order dated 05.09.2019, the Tribunal considered the report of the Chief Secretary, Haryana dated 02.08.2019 to the effect that action was taken against nineteen (19) non-compliant stone crushers and action was in process against twelve (12) more non-compliant stone crushers. The Tribunal found that the action taken was not adequate as admitted violation of norms of air quality was continuing and there was no adequate monitoring mechanism to enforce right of citizens to clean environment. Accordingly, the Tribunal directed the Chief Secretary, Haryana to take further action for enforcement of law for protection of environment and public health. The Tribunal also directed the Central Pollution Control Board (CPCB) to constitute a three-member team to give a composite report on the subject of air pollution and compliance of siting criteria. The Tribunal also directed establishment of air quality monitoring stations and to assess efficacy of pollution control devices by the stone crushers.*
>
> *4. Vide order dated 19.08.2020, the matter was considered in the light of the reports of CPCB and Chief Secretary, Haryana, which clearly depicted serious violations of environmental norms and inadequacy of the action taken. The Tribunal accordingly constituted a seven Member joint Committee comprising three members team of CPCB (senior level), Member Secretary, State PCB, Member Secretary, SEIAA, Haryana, Divisional Forest Officer, Charkhi Dadri and the Additional District Magistrate, Charkhi Dadri.*
>
> *5. Vide order dated 02.02.2021, the matter was considered in the light of the report dated 31.01.2021, filed by the seven-Member Committee finding that there was*

no carrying capacity of the ambient environment to sustain the activities of the stone crushers, without adequate mitigation measures and without following the siting norms. Accordingly, the Tribunal directed remedial measures for enforcing the environmental norms and the Rule of Law. The Tribunal directed that polluting activities beyond the carrying capacity of the environment may be stopped and only such activities may be allowed which can be sustained on the principle of Sustainable Development. The statutory Authorities were directed to exercise their jurisdiction, following due process of law.

6. By last order dated 26.10.2021, there was further review in light of action taken report has been filed on 27.09.2021 by the State PCB. It was observed: -

> *"5. In pursuance of the above, an action taken report has been filed on 27.09.2021 by the State PCB.* ***The status report gives the list of 339 stone crushers to whom the consent was granted.*** *It gives list of 22 stone crushers which were inspected along with the Monitoring Committee constituted by this Tribunal out of which 5 were found to be non-compliant and were closed. The remaining were found to be individually compliant. On 2nd inspection of 14 stone crushers, 10 were found to be non-complaint, which included 4 units which were earlier non-compliant and 6 units which were found to be non-complaint later. Four were found to be compliant. 10 units were closed/ recommended to be closed accordingly. On 3rd inspection on 17.06.2021 and 01.07.2021, 2 more units were found to be non-compliant and were closed. Assessment of compensation against 14 units was in progress. Compensation had already been assessed against 40 non-compliant units amounting to Rs. 4.76 Crores. 27 units out of them have deposited the compensation while proceedings have been initiated for recovery against the remaining. Prosecution has been filed/proposed against 35 units.* ***Compensation has also been assessed for illegal extraction of ground water amounting to Rs. 31.66 Crores approximately against 278 units. We note that for such assessment the area has been taken to be safe category even though it is critical.*** *34 units have been found to be not meeting the siting criteria and action has been taken for withdrawal of the CTE/CTO. It is further stated that even 339 stone crushers in District Charkhi Dadri 246 were in operation and the remaining have been identified for dismantling. 4 have been closed.*
>
> *6. In view of the report, we are concerned with the issue of permissibility of functioning of the said 246 stone crushers which are said to be in operation. The list is as follows: -*
>
> > ***"****List of CTO of Stone Crusher units in operation at present: -*
> > *xxx……xxx……xxx*

7. The conclusion in the report is as follows: -

"Conclusion: -

1. *The inspection of stone crusher zone Charkhi Dadri have been conducted by Monitoring Committee headed by Justice Pritam Pal, Smt. Urvashi Gulati, Rtd. IAS, Sh. Baburam Ex. MS PPCB along with District administrative, Charkhi Dadri on dated 17.03.2021 and 18.03.2021 during visit the committee inspected 22. Nos. of stone crushing units in various cluster. The detailed report of this inspection has already been noted above.*

2. *The inspection of stone crusher zone Charkhi Dadri have been conducted by Monitoring Committee headed by Justice Pritam Pal, Smt. Urvashi Gulati, Rtd. IAS, Sh. Baburam Ex. MS PPCB along with District administrative, Charkhi Dadri on dated 23.07.2021 and 24.07.2021. The detailed report of this inspection has already been noted above.*

3. *The Regional office, Bhiwani has requested the 03 Nos. instate namely TERI (The Energy and Resource Institute, Lodhi Road, New Delhi) and NEERI (National Environmental Engineering Research Institute, Delhi Zonal Centre, Naraina, New Delhi and Dr. Vivek Narayan Singh, Head of Department, Environment Protection Division (EPD), Shri Ram Institute for Industrial Research, 19, University Road, New Delhi. However ,the proposal has been received from TERI and NEERI only & to complete the procedure for allotment of the work of study of apportionment, minimum 03 nos. of quotations are required. Once the procedure is complete the work will be allotted to the institute.*

4. *No new stone crusher of any capacity has been allowed to established in District Charkhi Dadri."*

8. We have considered the report dated 27.09.2021 in pursuance of order dated 02.02.2021. ***The report does not mention status of compliance of directions in para 7 of the said order requiring stopping of polluting activities beyond carrying capacity and also requiring that only such activity may be allowed which the environment can sustain irrespective of date of setting up of the stone crushers. Needless to say, that mere compliance by individual stone crusher is not enough if the environment does not have capacity to sustain the polluting activity in question. on account of pre-existing pollution load. In such situation, stone crushers can be allowed only if they do not contribute further to the pollution load by taking such***

mitigation measures, as viable. Standard laid down for an individual units are subject to assimilative capacity of the environment to sustain additional air pollution load *as laid down by this Tribunal vide order dated 17.02.2021 in O.A. No. 1016/2019, Utkarsh Panwar v. CPCB & Ors., dealing with the issue of prohibiting/regulating brick kilns in NCR, having regard to the absence of carrying capacity of the environment. Contrary to that, report merely mentions that no new stone crushers have been allowed.* ***Action taken against stone crushers beyond carrying capacity which environment cannot sustain, has not been mentioned. Further, legality of measurement of raw material for the stone crushers needs to be ascertained and remedial action taken****. The Committee being constituted may look into the aspect.* ***Thus, in view of absence of carrying capacity and unsustainability of the stone crushers prima-facie the stone crushers may be liable to be closed to the extent the same are not sustainable. The list of operating stone crushers also mentions District Bhiwani at many places, apart from Charkhi Dadri, which was initially the subject matter of consideration. Thus, the said District will also, to the extent necessary, have to be covered by the remedial action.*** *The report dated 31.01.2021 relates to the study period of 250 days from 04.03.2020 to 08.11.2020. The relevant table has been quoted earlier and is reproduced below for ready reference: -*

> ***"****The carrying capacity assessment of ambient air environment, of District Charkhi Dadri as estimated by the Joint Committee based on the available data of Continuous Ambient Air Quality Monitoring Station (CAAQMS) located in the district, for time period of 250 days i.e. 04.03.2020 to 08.11.2020 for the predominant air quality parameter i.e. PM_{10}, is as follows:*

Particulars	***Values***	***Summer Season***	***Monsoon Season***	***Post Monsoon Season***
Area of District (km^2)	*1370*	*1370*	*1370*	*1370*
Mixing height (km)	*0.691*	*0.745*	*0.672*	*0.643*
Volume of air in thedistrict (km^3)	*946*	*1021*	*921*	*882*
PM10 (kg/m^3)	*265*	*246*	*177*	*409*
Total Estimated load of particulate matter in ambient air in the district in a study period (kg)	***250815***	***251508***	***162671***	***360369***
AssimilativeCarrying Capacity (kg)	***94647***	***102073***	***92112***	***88153***
Supportive Carrying Capacity (kg)	***-156168***	***-149435***	***-70558***	***-272216***

9. It is well known fact that from the period from November to February, which has not been taken into account, the air quality is certainly inferior to the rest of the year. ***In view of negative carrying capacity, only those stone crushers can be permitted which do not add to the pollution load by adopting appropriate technology or methodology enabling functioning without deterioration to the air quality, during the operation of the stone crushers or during the transportation of raw material and finished product.***

10. Number of stone crushers to be permitted may have to be suitably reduced to maintain adequate distance inter-se, as per formula suggested in above report of the Expert Committee which is reproduced below:-

> "*(ii)* ***Considering the stone dust settlement behaviour, the inter-se distance between two stone crushing units may be kept as:***
>
> ***$d = (h_i * N. + h2 * p2)/100$***
>
> ***Where, d = inter-se distance between two stone crushing units (in meter)***
>
> ***h_l & h_2 = height of highest nodes for unit 1 & 2, respectively (in meter)***
>
> ***Pi& P2 = production capacity for unit 1 & 2, respectively (in MTD)***

11. There is also need to implement the recommendations in the report of the Expert of the Committee dated 31.01.2021. ***Further solution to be considered for permitting operation of stone crushers can be development of a green belt around the periphery of the area where stone crushers are located of the width ranging from 25 meters to 50 meters, wherever viable. Any other pockets of land available may also be considered for afforestation within the crushing zone to improve the micro climate. The District Administration may also undertake paving the roads in and around the crushing area in additional water sprinkling on regular basis in the interest of public health of the citizens affected by the air pollution generated in the process.***

12. ***Let a joint Committee of CPCB, State PCB, District Magistrates Charkhi Dadri and Bhiwani, jurisdictional Conservator of Forest, nominee of IIT Delhi who may be expert on the subject of air pollution and a Pulmonologist nominated by DG Health, Haryana meet within two weeks and ponder over the issue. They may interact with the stake holders including the representatives of the stone crushers, who may be informed about the proceedings before this Tribunal by the State PCB in coordination with any other concerned authorities in an appropriate manner by e-mail or otherwise. The CPCB and the State PCB will be nodal agency for coordination and compliance. Any expenses to be incurred will be borne by the State PCB subject to further orders. The District Magistrate***

may provide logistics for execution of the order. The report may be furnished within three months *by email by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF which may be also be uploaded on the website of the State PCB for information of all the affected stone crushers who will be at liberty to file their comments, if any, to the report before this Tribunal within 15 days of uploading of the report."*

7. It is a matter of regret that the Committee failed to give report as expected within three months. We record our disapproval for such conduct on the part of the members of the Committee in a matter of such urgency.

8. We may now refer to the reports filed. The first report was filed by the State PCB on 08.11.2022, after more than one year of order dated 26.10.2021. Such delay itself has greatly prejudiced the environment and public health as the Tribunal has already found that there was no carrying capacity for continued operations of stone crushers without additional equipments ensuring that there is no addition to air pollution. The authorities have failed to take adequate remedial action in the light of observations of this Tribunal. The report dated 08.11.2022 merely mentions that first meeting was held on 28.12.2021 wherein road map for implementation of recommendations in report dated 31.01.2021 was discussed. Second report filed on 17.01.2023 refers to status of obtaining plantation plans, as reported by the DFO, Charkhi Dadri. The report shows that most of the stone crushers have not even obtained plantation plans. What to talk of undertaking plantations. Surprising, learned Counsel for State PCB has stated that action has been proposed only against those who have not sought plans and those who have sought plans are not being proceeded against even when they have failed to undertake plantations and are continuing in violation of law. He has given list of 24 stone crushers who have not undertaken plantation and against whom merely show cause notices has been issued though failure is since more than one year. ***We fail to understand what is the compulsion before the authorities in ignoring such large-scale violations.*** *Let Chairman, State PCB take remedial action, including action against erring officers involved in the process, coordinating with all concerned State authorities.*

9. The report further mentions that air quality was monitored at three locations with manual AAQ machines in October, 2022 which show the level of PM_{10} to be 361, 281 and 393 which is much in excess of the laid down standards. No remedial action has been taken by the State PCB for revoking consents under the Air (Prevention and Control of Pollution) Act, 1981 when there is no assimilated carrying capacity of the air quality in the area and stone crushers and adding to air pollution and not even complying with requirement of plantations. No compensation on polluter pays pr9inciple has been assessed and recovered. It is further stated that the District Administration is in the process of paving the roads around the stone crushing zones and undertaking water sprinkling to control the dust emissions at State expense without requiring the violators to remedy their wrong. The report further mentions comments of nominee of IIT as follows: -

> *"1)* ***We notice that $PM_{1}o$ were very high during the monitoring time. Long-term monitoring of PM_{10} and PM_{25} are required regularly inside the crusher zone, so that reliable data can be established for operating and non-operating periods***
>
> ***2) Dispersion modelling needs to be carried out to estimate the dispersion of PM generated by the crushing units in contrasting meteorological conditions. Carrying capacity analysis will allow us to generate data to decide on the optimum number of units based on the meteorological conditions.***
>
> ***3) Whenever the PM_{10} Values exceed 'high' levels, the number of running crusher units needs to be reduced and the operating period should be shortened.***
>
> ***4) Movement of heavy- duty vehicles need to be restricted while crushers are running. Specific timing should be allotted to transport material from crusher zones while the crusher units entirely shut down.***
>
> ***5) In the winter, local activities like wood fires and the burning of angithi etc. should not permitted or need to reduce."***

15. The above comments show rampant violation of the air quality norms, PM_{10} being very high with no remedial action by authorities. Thus, consideration of prayer for seeking further time will only help continuing violations and damage and cannot be accepted as bonafide after more than one year of earlier order. Such prayer may only covering up the failure of the authorities in not doing their duties as expected by this Tribunal. The prayers will stand declined.

16. We may note some relevant observations in earlier order of this Tribunal in connected matters order dated 03.12.2020, O.A. No. 667/2018, ***Mahendra Singh vs. State of Haryana & Ors.,*** *in the context of permissibility of Stone Crushers in NCR as follows: -*

> *"9. It is well known that NCR Is facing air pollution issues and, in winter months, the problem is further aggravated. Polluting activities, even if otherwise legitimate, are required to be stopped/regulated to avoid adverse health impact on account of air pollution.* ***Stone crushers add to air pollution.*** *On that account as per Graded Response Action Plan for Delhi & NCR (GRAP), the stone crushers in*

NCR have to be automatically closed when the air quality is 'severe'. Relevant portion of the Graded Response Action Plan is as follows: -

Severe (ambient PM2.5or PM10concentration value is more than 250 µg/m3 or 430µg/m3 respectively)	*Agency responsible/ Implementing Agency*
Close brick kilns, Hot Mix plants, ***Stone Crushers***	*Chairpersons Delhi Pollution Control Committee, State Pollution Control Boards of Haryana, Rajasthan, and Uttar Pradesh*
	Superintendent of Police and Deputy Commissioner of respective districts

"

10. GRAP is self-operating but does not exclude assessment-based restrictions. ***Permissibility of stone crushers depends on the available air quality and impact of operation of such stone crushers on the environment and public health in a particular area****. In this regard, we may notice the observations of the Hon'ble Supreme Court in some matters. In* ***M.C. Mehta v. Union of India, (1992) 3 SCC 256, at page 257,*** *it was observed:*

".... Utter disregard to environment has placed Delhi in an unenviable position of being the world's third grubbiest, most polluted and unhealthy city as per a study conducted by the World Health Organisation. ***Needless to say, that every citizen has a right to fresh air and to live in pollution-free environments.***

3. *For the reasons to be recorded and pronounced at a later stage we order and direct as under:*

1) ***The mechanical stone crushers established/operating in Lal Kuan, Anand Parbat, Rajokri, Tughlakabad and in any other area of the Union territory of Delhi shall stop operating/functioning with effect from August 15, 1992. No stone crusher shall operate in the Union territory of Delhi from August 15, 1992 onward.***
2) ***The mechanical stone crushers established/operating in Suraj Kund, Lakhanpur, Lakkarpur, Kattan, Gurukul, Badkhal, Pallinangla, Saraikhaja, Anangpur and Ballabgarh areas of Haryana shall stop operating/functioning with effect from August 15, 1992. No stone crusher shall operate in the above-said area from August 15, 1992 onward.***

11. Again, in ***M.C. Mehta v. Union of India, (2006) 11 SCC 582, at page 586,*** *it was observed****:***

"While conducting a study of environmental problems of the Aravalli hills and preparation of action plan for restoration of environmental quality in Gurgaon district, ***the Central Mine Planning and Design Institute Limited (CMPDI), had inter alia noted that in the Aravalli hills, large number of activities, operations of stone crushers and deforestation besides other activities are causing environmental degradation****. These mines are usually located in clusters in remote mineral-rich districts/areas where living standards are lower and understanding of people towards environmental impact is also poor****. In the past, the mine operators took no note of environmental damage. In fact, they were not even conscious about it. The attitude of the mining community is to ignore the environmental concerns. In the majority of the cases, the environmental concerns are ignored for making quick profits. The small mines (less than 5 hectares) and the mining of minor minerals which are no doubt small individually but have damaging characteristics when in clusters e.g. the* ***mines of granite, marble, slates, quartzite, etc. (falling under minor minerals) are no less damaging than the others****, especially when the processing is taken into consideration.* ***The mining activities result in disturbance of land surface, altering drainage pattern and land use, besides the pollution problems, which may lead to the environmental problems of air, water and noise pollution and solid waste pollution****."*

12. In People Right and Social Responsibility Centre v UoI, (2010) 14 SCC 769, it was noted that ***persons at and close to stone crushers suffer from Silicosis disease against which safeguards are to be adopted.***

13. In Arjun Gopal & Ors. v. UOI & Ors.[1]*, the Hon'ble Supreme Court noted the* ***adverse impact of unsatisfactory air quality on health*** *and air quality grading as follows:*

"5. In India, air quality standards are measured in terms of the Air Quality Index (hereinafter "AQI"). The AQI was launched in India on 17-10-2014 by the Ministry of Environment and Forests. According to the press release of the Press information Bureau of the same date, it consists of a comprehensive set of parameters to

[1] (2017) 1 SCC 412

monitor and asses the air quality. The AQI considers eight pollutants (PM_{10}, $PM_{2.5}$, NO_2, SO_2, CO, O_3, NH_3, and Pb), and based on the levels of these pollutants six categories of AQI ranging from "Good" to "Severe" have been prescribed. The index also suggests the health effects of the pollution category wise. The gradation of AQI and its health impact is extracted below:

Table 1

AQI	*Associated Health Impacts*
Good (0-50)	*Minimal impact.*
Satisfactory (51-100)	*May cause minor breathing discomfort to sensitive people.*
Moderately polluted (101-200)	*May cause breathing discomfort to people with lung disease such as asthma, and discomfort to people with heart disease, children and older adults.*
Poor (201-300)	*May cause breathing discomfort to people on prolonged exposure, and discomfort to people with heart disease.*
Very Poor (301-400)	*May cause respiratory illness to the people on prolonged exposure. Effect may be more pronounced in people with lung and heart diseases.*
Severe May (401-500)	*May cause respiratory impact even on healthy people, and serious health impacts on people with lung/heart disease. The health impacts may be experienced even during light physical activity.*

Table 2

AQI Category, Pollutants and Health Breakpoints								
AQI category (Range)	**PM_{10} 24-hr**	**$PM_{2.5}$ 24-hr**	**NO_2 24-hr**	**O_3 8-hr**	**CO 8-hr (mg/m^3)**	**SO_2 24-hr**	**NH_3 24-hr**	**Pb 24-hr**
Good (0-50)	**0-50**	**0-30**	**0-40**	**0-50**	**0-1.0**	**0-40**	**0-200**	**0-0.5**
Satisfactory (51-100)	**51-100**	**31-60**	**41-80**	**51-100**	**1.1-2.0**	**41-80**	**201-400**	**0.5-1.0**
Moderately polluted (101-200)	**101-250**	**61-90**	**81-180**	**101-168**	**2.1-10**	**81-380**	**401-800**	**1.1-2.0**

Poor (201-300)	**251-350**	**91-120**	**181-280**	**169-208**	**10-17**	**381-800**	**801-1200**	**2.1-3.0**
Very poor (301-400)	**351-430**	**121-250**	**281-400**	**209-748***	**17-34**	**801-1600**	**1200-1800**	**3.1-3.5**
Severe (401-500)	**430+**	**250+**	**400+**	**748+***	**34+**	**1600+**	**1800+**	**3.5+**

”

12. This Tribunal vide order dated 15.10.2010 in O.A. No. 1016/2019, ***Utkarsh Panwar Vs. CPCB*** *considered the issue in the context of closing/restricting the brick kilns in absence of carrying capacity of the air quality in the NCR. Relevant observations are as follows: -*

> ***“17.*** *In Arjun Gopal & Ors. v. UOI & Ors.[2], it was observed that the residents of NCR faced severe air quality standards which were worst in the World. It had serious adverse health impact. Life of citizens in NCR had been brought to virtual standstill. The Capital was smoked into an environmental emergency of unseen proportions. It will be appropriate to extract some observations from the judgment: -*
>
> > *“4. The onset of winter and the festival/marriage season this year, presented to the residents of NCR severe concerns regarding the air quality standards. According to reports, the air quality standards in early November of this year were the worst in the world.* ***It is reported that the $PM_{2.5}$ levels recorded were “beyond scale” values (see India's Air Quality Among World's Worst Over Diwali Weekend: Report. 4-11-2016, Hindustan Times). The report indicates that 24-hour average of $PM_{2.5}$ levels in South Delhi in 2016 were 38% higher than on the Diwali night of 2015. The day after Diwali, these levels were twice as high as the day after Diwali in 2015, crossing 650 $\mu g/m^3$, which is 26 times above the WHO's standards or levels considered safe. Shockingly, on the morning of 1-11-2016, Delhi woke up to an average $PM_{2.5}$ level of over 700 $\mu g/m^3$ — some of the highest levels recorded the world over and 29 times above WHO standards. The report further states that the WHO guideline for 24-hour average $PM_{2.5}$ levels is 25 $\mu g/m^3$ and with an annual average $PM_{2.5}$ level of 122 $\mu g/m^3$, Delhi's air is the worst among global megacities with dense populations. We have particularly referred to the PM 2.5 levels because of the extreme effects and near invisibility of this type of particulate***

[2] (2017) 1 SCC 412

matter. $PM_{2.5}$ or particulate matter 2.5 ($PM_{2.5}$), refers to tiny particles or droplets in the air that are two-and-one-half microns or less in width. It may be noted that the widths of the larger particles in the $PM_{2.5}$ size range would be about thirty times smaller than that of a human hair. These particles primarily emanate from vehicle exhausts and other operations that involve the burning of fuels such as wood, heating oil or coal, and of course, use of fire crackers.

5.

xxx……xxx……xxx

6. Reports indicate that AQI in Delhi was much above the severe standard, shooting off the AQI 500 mark on many days this November. On the day after Diwali, it was more than 14 times the safe limits (see Delhi's Pollution Levels Peaks at 14-16 Times Safe Limits, 31-10-2016, The Hindu). The adverse health effects of these hazardous levels of pollution are only too evident from the table given above. We do not intend to refer to the multiplicity of reports and data on this front.

7. The hazardous levels of air pollution in the last few weeks has spared very few from its ill effects. The life of the citizens of NCR was brought to a virtual standstill, not to speak about the plight of the thousands of mute flora and fauna in NCR. Schools were declared shut, denizens of the city advised to stay indoors, construction activities stopped, power stations shut and ban imposed on burning of garbage and agricultural waste. The fall in air quality has had a significant impact on people's lifestyle as well. The rising costs to protect against air pollution are substantial. It has come to our notice that people are queuing up to purchase protective masks and air purification systems in the wake of dense smog all over the NCR. In short, the capital was "smogged" into an environmental emergency of unseen proportions.

8. The adverse effects of these extreme levels of air pollution spare no one — the young, the old, the infirm and even the future generations. A study of the data of the Global Health Depository of the World Health Organisation reveals that India has the world's highest death rate from

chronic respiratory diseases and that about 1.5 million people in India die annually due to indoor and outdoor pollution (see Delhi Wakes up to an Air Pollution Problem it cannot Ignore, 15-2-2015, The New York Times). The Kolkata-based Chittaranjan National Cancer Institute (CNCI), in a study commissioned and handed over to the Central Pollution Control Board, found that key indicators of respiratory health, lung function to palpitation, vision to blood pressure, of children in Delhi, between four and 17 years of age, were worse off than their counterparts elsewhere. It also found that more than 40% of the school children suffer from lung damage (see Landmark Study Lies Buried, 2-4-2015, The Indian Express). We note with apprehension that there are nascent studies that suggest that pollution can lower children's IQ, hurt their test scores and increase the risks of autism, epilepsy, diabetes and even adult-onset diseases like multiple sclerosis (see Holding Your Breath in India, 29-5-2015, The New York Times).

9. It has been brought to our notice that the severe air pollution in the NCR is leading to multiple diseases and other health related issues amongst the people. It is said that the increase in respiratory diseases like asthma, lung cancer, bronchitis, etc. is primarily attributable to the worsening air quality in the NCR. The damage being caused to people's lungs is said to be irreversible. Other health related issues like allergies, temporary deafness are also on the rise. Various experts have pointed towards multiple adverse effects of air pollution on human health like premature deaths, rise in mortality rates, palpitation, loss of vision, arthritis, heart ailments, cancer, etc.

10. When we refer to these extreme effects, we are not merely referring to the inconvenience caused to people, but to abject deprivation of a range of constitutionally embedded rights that the residents of NCR ought to have enjoyed. Needless to state, the grim situation of air quality adversely affected the right to education, work, health and ultimately, the right to life of the citizens, and this Court is constitutionally bound to address their grave concerns. May we remind ourselves, that this is not the first time that this Court was impelled into ensuring clean air for the citizens of the capital region (see M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (1998) 6 SCC 60]' [M.C.

Mehta v. Union of India, (1998) 9 SCC 589] , M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (1998) 8 SCC 648] and M.C. Mehta v. Union of India [M.C. Mehta v. Union of India, (1998) 8 SCC 206]).”

18. In the context of banning sale of crackers having adverse impact on the air quality, it was held that ***even if there were several sources of pollution, a particular polluting activity could be prohibited****. No equality could be pleaded in this regard. Right to trade was not absolute and could be restricted for protection of Environment which was a specific Directive Principle of State Policy enforcement of which was a reasonable restriction on fundamental right to trade. The 'Precautionary Principle' of environmental law allows prohibition of a polluting activity even in absence of scientific certainty. …….”*

19. Carrying capacity is a facet of sustainable development. It is inherent in 'Precautionary Principle' as well as in 'Inter-generational Equity'. In MC Mehta v. UOI & Ors., construction activity in the catchment area of Badkhal were directed to be restricted/regulated to the level of Carrying capacity. It was observed that: -

“Preventive measures have to be taken keeping in view of the carrying capacity of the ecosystem operating in the environmental surroundings under consideration.”

20. In Vellore Citizens' Welfare Forum v. UOI & Ors.[3]*, it was observed that quality of human life is to be improved within the carrying capacity to supporting ecosystem. Relevant extract is as follows: -*

> ***“****10……* ***During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems****. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". We have no hesitation in holding that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the international law jurists.****”***

[3] (1996) 5 SCC 647

21. These observations are reiterated in (2006) 6 SCC 371.[4]

22 to 23 xxx…… xxx…… xxx

24. The Tribunal has a mandate to follow these principles under Section 20 read with Section 15 of the National Green Tribunal Act, 2010 and can issue appropriate directions for enforcement of these principles, as laid down in Mantri Techzone Pvt. Ltd. v. Forward Foundation and Ors.,[5] *and the Director General (Road Development) NHAI v. Aam Aadmi Lok Manch.*[6] *Environmental rule of law requires strict enforcement of these principles as laid down in Hanuman Laxman Aroskar v. UOI).*[7]

25. This Tribunal in O.A. No. 681/2018, vide order dated 21.08.2020, dealt with the remedial measures for restoration of air quality in 122 non-attainment cities, including Delhi where air quality is generally beyond norms. The Tribunal directed stopping polluting activities, including brick kilns and assessment of carrying capacity of urban areas to take policy decisions to control polluting potential activities beyond carrying capacity. The Tribunal observed: -

> *"3. The Tribunal noted the concern arising from such large scale air pollution which grapples the country in spite of statutory mechanism under the Air Act, directions of the CPCB under section 18(1)(b), dated 29.12.2015 and directions of the Hon'ble Supreme Court for control of* ***vehicular pollution***[8]***, industrial and construction sector pollution***[9]***, power sector pollution***[10] ***and agricultural sector pollution***[11] *and orders of*

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[4] Para 66 to 76

[5] 2019 SCC online SC 322, Para 43-47

[6] AIR 2020 (SC) 3471, Para 75

[7] (2019) 15 SCC 401

[8] Rural Litigation and Entitlement Kendra, Dehradune and Others Vs State of U.P. Others (1985) 2 SCC 431, M.C. Mehta v. Union of India (2001) 3 SCC 756, M.C. Mehta v. Union of India (1998) 6 SCC 63, M.C. Mehta v. Union of India (2002) 4 SCC 356, M.C. Mehta v. Union of India (1998) 6 SCC 60

[9] M.C. Mehta v. Union of India (1997) 2 SCC 353, M.C. Mehta v. Union of India and Shriram Foods and Fertilizer Industries and Anr. (1986) 2 SCC 176, Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P. (1985) 2SCC 431, Mohd. Haroon Ansari v. District Collector (2004) 1 SCC 491, Union of India v. Union Carbide Co. (1989) 1 SCC 674, M.C. Mehta v. Union of India (1992) 3 SCC 256, Sterlite Industries (India) Ltd. etc. v. Union of India & Ors.(2013) 4SCC 575 , M.C. Mehta v. Union of India (2004) 6 SCC 588, M.C. Mehta v. Kamal Nath (2000)6 SCC 213

[10] Consumer Education and Research Centre v. Union of India (1995)3 SCC 42, Dahanu Taluka Environment Protection group and Ors. v. Bombay Suburban Electricity Supply Company Ltd. and Ors (1991) 2SCC 539

[11] Arjun Gopal and Ors v. Union of India and Ors (2017) 16 SCC 280, Dr. B.L Wadhera v. Union of India and Ors (1996) 2 SCC 594

this Tribunal dealing with the said issues[12]*. The Tribunal also referred to a Comprehensive Action Plan (CAP) for air pollution control for NCR prepared in pursuance of order of the Hon'ble Supreme Court dated 06.2.2017 by the Environment Pollution (Prevention and Control) Authority (EPCA) in consultation with the CPCB and Delhi Pollution Control Committee (DPCC) on 05.04.2017*[13] *and Graded Response Action Plan (GRAP) notified by the MoEF&CC on 12.01.2017 stipulating specific steps for different levels of air quality such* ***as improvement in emission and fuel quality and other measures for vehicles, strategies to reduce vehicle numbers, non-motorised transport network, parking policy, traffic management, closure of polluting power plants and industries including brick kilns, control of generator sets, open burning, open eateries, road dust, construction dust, etc.***[14]

4. Implementation of prescribed norms in the light of legal provisions and court directions remains a challenge. The consequence is that India is being ranked high in terms of level of pollution compared to many other countries with enormous adverse impact on public health. Most victims are children, senior citizens and the poor.[15]

5. The GRAP categorises levels of pollution as severe plus, severe, very poor, moderate to poor. The action to be taken in such situations includes ***stopping entry of trucks, stopping construction activities, odd and even scheme of private vehicles, shutting of schools, closing of brick kilns, stone crushers, hot mix plants, power plants, intensifying public transport services, mechanized cleaning of road, and sprinkling of water, stopping the use of diesel generator sets, enhancing parking fees, etc****.*

6. The MoEF&CC has by various notifications put restrictions on activities in Coastal areas, Flood plains, Taj

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[12] Vardhman Kaushik v. Union of India and Ors. O.A no. 21 of 2014, Vikrant Kumar Tongad v. Environment Pollution (Prevention and Control) Authority and Ors, O.A No. 118 of 2013, Satish Kumar v. Union of India and Ors, O.A. No. 56 (T_{HC}) OF 2013, Smt. Ganga Lalwani V. Union of India and Ors. O.A No. 451 of 2018

[13] Report No.71, EPCA-R/2-17/L-21, Comprehensive Action Plan for air pollution control with the objective to meet ambient air quality standards in the National Capital Territory of Delhi and National Capital Region, including states of Haryana, Rajasthan and Uttar Pradesh.

[14] S.O.118(E), Notification, Ministry of Environment, Forest and Climate Change

[15] https://www.thehindu.com/sci-tech/energy-and-environment/india-ranks-177-out-of-180-in-environmental-performance-index/article22513016.ece, https://www.ndtv.com/delhi-news/delhis-air-pollution-has-caused-of-death-of-15-000-people-study-1883022.

corridor Eco-sensitive zones, etc. in view of ecological sensitivity and impact of such activities on environment if such activities are carried out in unregulated areas. This needs to be extended to the NACs in view of impact on public health and environment to give effect to the 'Precautionary' and 'Sustainable Development' principles."

7to13...xxx…… xxxx……...xxx

*14. According to the CPCB, draft framework has been prepared and SA study completed in four States (for 05 cities). Study was under progress in 14 States (for 54 cities), and at proposal stage in 10 States (for 37 cities). Methodology for carrying capacity has been shared with State PCBs/PCCs. Twelve (12) States/UTs have given the details of the carrying capacity and the remaining have yet to take necessary steps. CC/SA studies are pre requisite for meaningful planning to enforce environmental law. This pre-requisite should have been undertaken long ago. Air quality norms have been statutorily laid down under the Air (Prevention and Control of Pollution) Act, 1981 as well as the Environment (Protection) Act, 1986 and such norms are being flagrantly violated, which has been made by the Parliament a criminal offence. If the rule of law has to have meaning and guilty are to be punished, the policies of the State have to be based on scientific studies to contain polluting activities within the scope of Carrying Capacity.***"***

26. Dealing with the issue of air pollution in manufacture of tiles at Morbi in Gujrat, vide order dated 6.3.2019 OA 20/17 Babubhai v GPCB, this Tribunal directed closure of industries operating with coal unless they shifted to natural gas. This was referred in the earlier order of this Tribunal in the present matter. It was further observed that while under the orders of the Hon'ble Supreme Court, ***GRAP was laid down providing for closing of specified activities on crossing of air quality norms as laid down in the GRAP, the same did not debar consideration of further situations requiring closure/regulation****…."*

13. In the light of above discussion, we direct remedial action for recovery of compensation for past violations, prohibiting illegally operating stone crushers till compliance and to the extent of carrying capacity.

14. To capture Robust data to the area, CPCB may install at least 5 more CAAQMS at suitable locations. It will be open to CPCB to install more, if

found necessary. Pending setting up of CAAQMS, manual stations may be installed. The number of operating stone crushers be suitably reduced as directed earlier so as to be within the carrying capacity, maintaining appropriate inter-se distance as may be suggested by CPCB. Consistent with order dated 26.10.2021, from November to February, no stone crushing unit be allowed to operate in the area unless the air quality index is moderate and above i.e. below 200.

15. We also fix interim compensation at the rate of Rs. 20 Lakhs against each of the stone crushers operating in the area on 'Polluter Pays' principle. Compensation will cover the period from 5 years prior to filing of this Application and till date. The amount is being fixed at floor level on conservative basis even if particular stone crushers may have operated for shorter period. This will apply to all 343 identified stone crushers as mentioned in para 5 of the report of the joint Committee dated 17.01.2023. The amount may be collected by the State PCB by coercive action on failure of deposit within one month. The amount be used for restoration of environment in the area. Final compensation be fixed by joint Committee of District Magistrate, Charkhi Dadri, Member Secretary, State PCB, CPCB, Forest Department and DFO. CPCB and State PCB will jointly act as nodal agency for coordination and compliance. The Committee may put all the stone crushers to notice of this order and if any stone crusher is aggrieved by order of this Tribunal may be at liberty to move this Tribunal. The units which have been identified as non-compliant may be closed forthwith. The units which are not identified but are operating in violation of norms may also be proceeded against for closure till compliance forthwith. The numbers of units which are to be allowed to operate should be fixed having regard to the carrying capacity. The exercise may be overseen by ACS Environment, Haryana.

16. Action taken report with compliance status as on 30.04.2023 may be filed by 15.05.2023.

List for further consideration on 22.05.2023.

Member Secretary, State PCB and District Magistrate, Charkhi Dadri may remain present in person by Video Conferencing on the next date.

A copy of this order be forwarded to District Magistrate, Charkhi Dadri, Member Secretary, State PCB, CPCB, Forest Department and DFO by e-mail for compliance."

15. The Tribunal by the above orders concerning District Manhendragarh and District Charkhi Dadri had fixed the interim compensation of Rs. 20 lakhs against each of the Stone crusher operating in the area by invoking the principle of "Polluter Pays" giving liberty to the aggrieved stone crusher to move the Tribunal. The joint Committee was directed to fix the final compensation.

16. The above orders of the Tribunal dated 18.01.2023 were subject matter of challenge before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 24.02.2023 had disposed of the Civil Appeal No. 1407/2023 by directing as under:

> *"Having heard learned Counsel for the respective parties and considering the impugned order(s) passed by the NGT, we are of the opinion that if any of the individual stone crusher has any objection against the order passed by the NGT, they may approach the NGT as per the liberty reserved by the Tribunal in the impugned order itself. As and when such applications are made, the Tribunal to consider the same in accordance with law and on its own merits and considering the individual cases to be put forward before the NGT. If such applications are made within aperiod of two weeks from today, the learned NGT to consider the same in accordance with law and on merits and to take into consideration the individual cases to be brought to the knowledge of the NGT at the earliest and preferably within a period of six weeks from the date of receipt of such applications.*
>
> *Till the applications are filed, no coercive action shall be taken.*
>
> *The present Appeals are accordingly disposed of.*
>
> *Pending applications including the applications for impleadment shall stand disposed of."*

17. The above order of the Tribunal dated 18.01.2023 was also challenged in another Civil Appeal and Hon'ble Supreme Court vide order 06.11.2023 passed in C.A. No. 5550/2023 in matter of M/s Chander Stone Crusher Vs. State of Haryana had set aside the direction contained in the paragraph 15 of the impugned order dated 18.01.2023 only in relation to the said appellant on the ground of violating the principles of natural justice by holding as under:

> "*Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent-State of Haryana. The other respondents have been served with the notice. The respondent No.8 who is the original complainant before the National Green Tribunal has been served with the notice. But he is not represented.*
>
> *The grievance of the appellant is about the directions issued in the paragraph 15 of the impugned judgment. This direction is against 343 identified stone crusher*

units, as mentioned in the report of the Joint Committee dated 17th January, 2023. Further direction issued by the Tribunal is that the Joint Committee will issue notice to the stone crusher units and if any stone crusher unit is aggrieved by the order of the Tribunal, that unit will be at liberty to move the Tribunal.

A drastic order was passed by the National Green Tribunal fixing the interim compensation of Rs.20,00,000/- (Rupees twenty lakhs) payable by each of the stone crusher operating units, including the present appellant. Admittedly, the present appellant was not a party to the complaint filed by the eighth respondent. Thus, in our view, the Tribunal has committed a breach of elementary principles of natural justice. The impugned order shows that the Original Application is still kept pending.

We, therefore, set aside the directions contained in the paragraph 15 of the impugned judgment only in relation to the appellant.

If the respondent No.8 wants any direction to be issued by the Tribunal against the appellant, he is free to implead the appellant and seek appropriate relief in the pending Original Application.

We make it clear that we have not made any adjudication on the merits of the controversy.

The appeal is accordingly allowed on the above terms."

18. After the aforesaid orders of the Hon'ble Supreme Court, a number of applications for impleadment have been filed and those applicants - stone crushers were impleaded and have been heard. We have also heard the stone crusher owners whose application for impleading, if any, is pending.

19. On 01.02.2024, the Tribunal had considered the issue of fixing the final compensation and accepted the submission of the impleaded stone crushers about fixing the final compensation by the joint Committee after giving them opportunity of hearing. Accordingly, on 01.02.2024, the Tribunal had directed as under:

"xxx ……xxx……xxx

4. So far as the issue of fixing final compensation is concerned, counsel for all the impleaded Stone Crushers have submitted that they have no objection if the Joint Committee fixes the final compensation after giving them an opportunity of hearing. Hence, we direct the Joint Committee comprising of District Magistrate, Charkhi Dadri and Mahendragarh, Representative of Member Secretary of State PCB and CPCB, concerned DFO and RO MoEF&CC, to fix the final compensation after determining the extent and period of violation and after giving opportunity of hearing

to all the concerned stone crushers and after duly complying with the principles of natural justice. RO will act as nodal agency for coordination and compliance. The joint committee will also ascertain the source of raw material and compliance of all the requisite norms by these stone crushers and carrying capacity of that area and make recommendations in respect of the closure of the defaulting stone crusher, if any. We make it clear that report of the joint committee will be treated to be recommendatory in nature.

5. The joint committee will make an endeavor to complete the above exercise within three months and will submit a detailed report before the Tribunal."

20. In compliance of the above direction, the joint Committee has submitted its report dated 25.04.2024. The joint Committee has considered the baseline dated 01.02.2024 and has calculated the compensation. The joint Committee has imposed final environmental compensation of Rs. 6,01,75,000/- as against 94 units.

21. Learned Counsel appearing for the HSPCB has submitted that subsequently one more unit has been added and the amount of environmental compensation has increased to Rs. 6,09,56,250/-.

22. The action taken report dated 25.04.2025 is extracted below:

"Action Taken Report in compliance with Hon'ble National Green Tribunal, Principal Bench, New Delhi vide order dated 01.02.2024 in the matter of OA No. 667/2018 (Mahendra Singh Versus State of Haryana and Ors.) with OA No. 679/2018 (Tejpal Versus State of Haryana and Ors.), in OA No. 599/2019 (Bishamber Singh Versus State of Haryana and Ors.).

The stone crushers are located in the district of Mahendragarh, Haryana in the various villages of 03 Nos. of Tehsil namely i) Mahendragarh ii) Narnaul and iii) Nangal Chaudhary. There are total 133 Nos. stone crushing units in district Mahendragarh as per order of Hon'ble NGT since 2013.

Hon'ble NGT passed the following directions in order dated 01.02.2024 in OA NO. 667/2018, 679/2018 & 599/2019: -

> *"4. So far as the issue of fixing final compensation is concerned, counsel for all the impleaded Stone Crushers have submitted that they have no objection if the Joint Committee fixes the final compensation after giving them an opportunity of hearing. Hence, we direct the Joint Committee comprising of District Magistrate, Charkhi Dadri and Mahendragarh, Representative of Member Secretary of State PCB and CPCB, concerned DFO and RO MoEF&CC, to fix the final compensation after determining the extent and period of violation and after giving opportunity of hearing to*

all the concerned stone crushers and after duly complying with the principles of natural justice. RO will act as nodal agency for coordination and compliance. The joint committee will also ascertain the source of raw material and compliance of all the requisite norms by these stone crushers and carrying capacity of that area and make recommendations in respect of the closure of the defaulting stone crusher, if any. We make it clear that report of the joint committee will be treated to be recommendatory in nature.

5. The joint committee will make an endeavor to complete the above exercise within three months and will submit a detailed report before the Tribunal".

The Action Taken Report in compliance with the above directions, passed by Hon'ble National Green Tribunal, New Delhi, is as under: -

1. *The joint committee meeting held at Charkhi Dadri on 11.03.2024 at 11.30 AM and it was decided that*

   (a) The date 01.02.2024 will be considered as the base line date for providing record data by HSPCB to joint committee for consideration regarding levy of environment compensation.

   (b) The recommendation regarding imposing of environment compensation for the violating period of environmental norms by the stone crusher units from 01.01.2013 to 01.02.2024 will be calculated as per methodology prepared by the Central Pollution Control Board (CPCB) and adopted by Haryana State Pollution Control Board (HSPCB) vide order no. 6073 dated 29.04.2019 & HSPCB/PLG/2021/2343-2350 dated 22.12.2021.

   The environmental compensation for violations is determined using the following formula:

   EC = PI x N x R x S x LF

   Where,

   EC: Environmental Compensation in
   PI: Pollution Index of industrial sector
   N: Number of days of violation took place
   R: Factor in Rupees (₹) for EC
   S: Factor for scale of operation
   LF: Location factor

Pollution Index (PI):

Red: 80
Orange: 50
Green: 30

Number of days (N):

N is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by the Regional office.

***Factor in Rupees (R)**:*

The CPCB recommends R as 250 for the calculation of Environmental Compensation in cases of violation.

Factor for scale of operation (S):

Small/micro: 0.5
Medium: 1.0
Large: 1.5

***Location factor (LF)**:*

Value of Location Factor will be based on population of the city/town and location of the industrial activity. LF will be 1.0 in case unit is located at a distance> 10 Km. from the municipal boundary.

The Joint 'Committee has recommended the final environment compensation based of above-mentioned methodology.

2. The compliance status of stone crushing units located in District Mahendragarh as on 01.02.2024 is summarized below in table: -

A.	*Units found Complying as per provision of notification dated 11.05.2016*	*81*
B.	*Units found non-complying as per provision of notification dated 11.05.2016 and details are as under: -*	*52*
	(i) Units closed by Board	*17*
	(ii) CTE/CTO revoked by Board	*06*
	(iii) Units found dismantled	*11*
	(iv) Closed of its own	*18*

*3. The data of AQI from period i.e. April 01, 2023 to March 31, 2024 captured by already installed 01 No. CAAQM station at Mini Secretariat, Narnaul is enclosed in **Annexure-1**. Monitoring the Ambient Air Quality was done following the norms prescribed by CPCB. HSPCB has setup 05 manual monitoring stations and started operating at the 05 identified locations of District Mahendragarh for monitoring of air quality nearby the stone crushing clusters until CAAQMS stations are installed by CPCB. The status of the air quality at these five locations is placed in **Annexure-2**.*

4. Based on the above methodology, the final environment compensation is calculated are given in below: -

*The joint committee has recommended levy of final environment compensation against **94 units**, amounting **Rs. 6,01,75,000/-** for period 01.01.2013 to 01.02.2024 (as per methodology formulated by CPCB & adopted by HSPCB).*

*HSPCB and Hon'ble NGT vide order dated 18.01.2023 has imposed environment compensation (including interim environmental compensation) against **14** units, amounting Rs. **1,95,00,000/-**. Out of these 14 units, **10** units has deposited EC of amount Rs. **1,59,87,500/-** and the remaining **04** units, amounting to Rs. **35,12,500/-** are balance to be recovered.*

Further, Joint Committee constituted by Hon'ble NGT has issued notice for personal hearing to all the stone crushing units on dated 28.02.2024 and on dated 22.012024. The constituted joint committee has heard the individual unit on dated 06.03.2024, 04.04.2024 and 05.04.2024 at Canal Rest House, Irrigation Department, Singhana Road, Narnaul as per direction of Hon'ble NGT.

*The details of Final Environmental Compensation recommendation by Joint Committee for period 01.01.13 to 01.02.2024 with details of violation, period of violation, EC already imposed, EC recovered, EC pending for recovery and final amount of EC after given personal hearing to individual unit is attached as **Annexure-3**.*

It is humbly prayed that the above Action Taken Report may be considered please."

23. Along with the report, the details of the units and environmental compensation imposed are enclosed as Annexure A-3 which is as under:

"Annexure-3

Sr No.	***Respondent No. (IA No.)***	***Present / Absent in Personal Hearing***	***Name and address of the unit***	***Status of unit (CTO valid up to)***	***Past violation details***	***Period of violation (in days) from the period i.e. 01.01.2013 to 01.02.2024*** *(period of violation is considered between the day of violation observed and the day of compliance verified/unit closed)*	***Calculation of EC amount by Joint Committee for past violations***	***EC already imposed by HSPCB and as per NGT order dated 18.01.2023***	***EC already deposited***	***Previous EC amount pending to be recovered***	***Final EC recommendation amount by Joint Committee***
1	*12 (94-95 of 2023)*	*Present*	*SHREE BALAJI GRIT UDYOG M.No. 23, Kila No. 9 (8-0), 2 min South (4-0), 8/2 min West (6-0), 13/1 min West (2-0), 12/1 (2-0), 12/2 (6-0) Total 28 Kanal 0 Marla at Village-Gangutana, Tehsil-Nangal, Chaudhary, Distt-Mohindergarh*	*31.03.2029*							
2	*13 (96-97 of 2023)*	*Present*	*SHREE RAM STONE CRUSHER, M.No. 62, Kila No. 3 (7-12), 2/3 (1-17), 2/1 (1-12), 2/4 (2-16) and 2/2 (0-11) Total 14 Kanal 8 Marla at Village-Dholera, Tehsil-Nangal Chaudhary, Distt-Mohindergarh*	*31.03.2026*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
3	*14 (98-99 of 2023)*	*Present*	*Shree Balaji Stone Crusher, M.No./Kila No 62//9(4-0), 7/2 (2-3)& 8(6-18), Village-Dholera, Tehsil-Nangal Choudhary, Distt-Mohindergarh*	*31.03.2027*							
4	*15 (106-107 of 2023)*	*Present*	*ASHA STONE CRUSHING CO, Khwat No. 110, Khatoni No. 128, Mustil & Kila No. 62 / / 5/2(6-16), 6 Min west(5-18), 343/1 min west (0-14) total 13 Kanal 8 Marla VILLAGE DHULEDA NARNAUL MAHENDERGARH*	*31.03.2028*							
5	*16 (119 of 2023)*	*Present*	*GANESH STONE CRUSHER Khewat No. 75, Khatoni No. 81, M.No. 8, Kila No. 23 (8-0) At Village-*	*31.03.2028*	*Not adequate plantation reported by DFO,*	*186 from 08.05.2023 to 09.11.2023*	*1162500*	*2000000*	*2000000*	*-*	*(-) 837500*

			Khatoli Ahir, Tehsil-Nangal Chaudhary, Distt-Mohindergarh		Mahendragarh						
6	17 (121-122 of 2023)	Present	SHRI RAM STONE CRUSHER PLANT 2, Khewat No. 23, Khatoni NO. 25, M./Kila No. 46//21 (8-0), 22(8-16), 48//1(7-7) & 2(2-11) total 26 Kanal 14 Marla at Village Panchnota, Nangal Chaudhary, Distt- Mohindergarh	31.03.2029							
7	18 (123-124 of 2023)	Present	Baba Kheta Nath Stone Crusher, Kila No. 109/2/1, 9/1, 98/22/2, 8 kanal 16 marla 98/22// 5 kanal 0 marla total 13 kanal 16 marla Vill. - Zerpur, M/garh	31.03.2027							
8	19 (271-272 of 2023)	Present	SATYA STONE CRUSHER UNIT II MUSTKIL NO 57 KILLA NO. 12/2/1 & 19/2, VILLAGE BEGOPUR TEHSIL NARNUAL	31.03.2026	Not adequate plantation reported by DFO, Mahendragarh	95 from 08.05.2023 to 10.08.2023	593750				593750
9	20 (273-274 of 2023)	Present	Siddhi Vinayak Stone Crusher Vill-Dholera, Narnul, Distt- Mohindergarh Khewat No. 361, Khatoni No. 400, M.No. 51, Kila No. 19/2 (6-12) & Khewat No. 365, Khatoni No. 409, M. No. 51, Kila No. 22 (1 -15) total measuring 8 K 7 M MAHENDRAGARH	31.03.2026	Non-compliance w.r.t. APCM as per notification dated 11.05.2016	94 from 26.08.2015 to 27.11.2015	587500				587500
10	21 (275-276 of 2023)	Present	Mahalaxmi Stone Crusher, Khewat No. 197, Khatoni No. 231, Kila No. 50/16/2, 6/15, Vill-Dholera, Nangal Chaudhary, Mohindergarh	31.03.2027	Non-compliance w.r.t. APCM as per notification dated 11.05.2016 Not adequate plantation reported by DFO, Mahendragarh	163 from 08.05.2017 to 17.10.2017 95 from 08.05.2023 to 10.08.2023	1612500				1612500
11	22 (277-278 of 2023)	Present	Rajokari Stone Cr. (Kontech Crushing Co.,) Khewat no. 16, khatoni no. 46 & 48, rakba 140 kanal & 16 Marla, khasra no. 7//21 (8-0), 22 (7-1) & 8//25/2 (5-12) Vill-Bakhrija, Narnaul, Distt-Mohindergarh	31.03.2027	Non-compliance w.r.t. APCM as per notification dated 11.05.2016 Non-compliance w.r.t. APCM as per notification dated 11.05.2016	09 from 26.08.2015 to 03.09.2015 17 from 25.04.2017 to 11.05.2017	162500				162500
12	23	Present	JAI BHARAT STONE	31.03.2025	Non-	85 from	1431250	531250	531250		900000

	(279-280 of 2023)		*CRUSHER Khewat No. 107, Khatoni No. 121, M.No. 53, Kila No. 23 Min East (4-0) & 24 (8-0) Total 12 Kanal 0 Marla at Village-Begopur, Nangal Chaudhary, Distt-Mohinergarh*		*compliance w.r.t. APCM as per notification dated 11.05.2016* *Not adequate plantation reported by DFO, Mahendragarh* *Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*30.06.2020 to 22.09.2020* *95 from 08.05.2023 to 10.08.2023* *49 from 14.10.2023 to 01.12.2023*					
13	*24 (281-282 of 2023)*	*Present*	*Nirvaan Infrastructure At Khewat No. 143, Khatoni No. 170, M.No. 13, Kila NO. 17(8-0), 18(8-0), 19(5-14) & 24/1 (2-0) (Total 23K-14M), Vill-Lutafpur, Terhsil-Narnaul Distt-Mohindergarh*	*31.03.2028*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*34 from 07.03.2019 to 09.04.2019*	*212500*				*212500*
14	*25 (283-284 of 2023)*	*Present*	*Sheran Wali Stone Crusher, Khewat No. 25, Khatoni No. 54, total 45 kanal 9 marla Vill- Bakhrija, Narnaul, Distt. Mohindergarh*	*31.03.2028*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
15	*26 (285-286 of 2023)*	*Present*	*Shree Shyam Stone Crusher, Khewat No. 237, Khatoni No. 269, Kila No. 51 / / 13, (8-0), 17/3/3 (3-16), 18(8-0), 19/1 (0-2) Vill-Dholera, Nangal Chaudhary, Distt-Mohindergarh*	*31.03.2027*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
16	*27 (287-288 of 2023)*	*Present*	*Satyam Stone Crusher, Khewat no. 182, khatoni no. 209, Kila no. 57/12/2, 13/2, 18,19/1, 19/2 (19 kanal) Vill-Begopur, Narnaul, Distt-Mohindergarh*	*31.03.2027*							
17	*28 (320-321 of 2023)*	*Present*	*SHRI RADHEY MINES PRIVATE LIMITED, Khewat No. 10, Khatoni NO. 13, M.No. 8, Kila No. 23 (2-0), 24 Min South (2-18) & M.No. 13, Kila No. 4/1 (7-2) total 12 Kanal 0 Marla at Village-Gangutana, tehsil-Nangal Chaudhary, Distt-Mohindergarh*	*31.03.2029*							
18	*29 (393-394 of 2023)*	*Present*	*SHRI RAM STONE CRUSHER, Khewat No. 11, Khatoni NO. 11, M.No. 49, Kila No. 3 (7-11)*	*31.03.2029*							

			& 4 (7-11) total 15 Kanal 02 Marla at Vill- Panchnota, Nangal Chaudhary Distt- Mohindergarh								
19	*30 (694-695 of 2023)*	*Present*	*Haryana stone crusher Kila NO. 25//19,20, Vill: garhi distt. Mahendergarh*	*31.03.2027*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
20	*31 (696-697 of 2023)*	*Present*	*Shree Baba Jairamdass Grit Udyog, Khewat No. 5, Khatoni No. 15, Kila No. 35, total 206 kanal 4 marla Vill- Garhi, Distt- Mohindergarh*	*31.03.2027*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
21	*32 (713 of 2023)*	*Present*	*Karan Stone Cr., Khasra no. 109/12 (7-8), 19/(7-16) Vill- Zerpur, Mohindergarh*	*Closed of its own*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*104 from 14.04.2014 to 26.07.2014*	*650000*				*650000*
22	*33 (718 of 2023)*	*Present*	*Shiv Sunder Grit Udyog, Kila No. 71/6, Vill-Lutafpur, Narnaul, Mohindergarh*	*Closed of its own*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016* *Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*31 from 18.09.2013 to 18.10.2013* *12 from 04.09.2015 to 15.09.2015*	*268750*				*268750*
23	*324 of 2023*	*Present*	*Lakshmi Stone Crusher, Khasra No. 268, Kila No. 70/1, Khatoni No. 322 to 324 (25 Kanal 14 marla) Kultajpur Road, Lutufpur, Narnaul, Distt- Mohindergarh*	*Closed of its own*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*26 from 06.02.2020to 02.03.2020*	*162500*				*162500*
24	*325 of 2023*	*Present*	*Laxmi Stone Crusher Khewat No. 190, Khatoni No. 256, M.No. 44, Kila No 14/2 (3-4), 15/2(3-19), 16/2(2-0), 17/1(3-0) at Village Kultajpur, Narnaul District- Mohindergarh*	*31.03.2027*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*18 from 29.10.2019to 15.11.2019*	*112500*				*112500*
25	*326 of 2023*	*Present*	*Bajrang Stone Crusher Khewat No. 362, Khatoni No. 403, M.No. 50, Kila No. 24/1 (1-16) & 24/2 (6-12) Total 8 Kanal 08 Marla at Village Dholera, Nangal Chaudhary District Mohindergarh*	*31.03.2027*							
26	*327 of 2023*	*Present*	*Bajrang Stone Crusher, Khewat No. 121, Khatoni No. 148, Khasra No. 53 total 260 kanal 15 marla Vill.-Faizabad,*	*Closed by Board*	*Non-compliance w.r.t. APCM as per notification dated*	*176 from 04.03.2022 to 26.08.2022*	*1100000*				*1100000*

			Narnaul		*11.05.2016*						
27	*328 of 2023*	*Present*	*M J ENTERPRISES, Khewat No. 6, Khatoni No. 6, M.No. 41, Kila No. 24 (6-3), 25/1 (1-14), 16/2 (0-8), 17 (1-13), Village-Kultajpur, Tehsil-Narnaul, District-Mohindergarh*	*31.03.2028*							
28	*329 of 2023*	*Present*	*Balaji Stone Crushing Company Khasra No. 44//6(7-8), 7 (8-0) 15/1 (1-13) Vill Garhi, PO-Khudana, Distt-Mohindergarh*	*31.03.2028*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
29	*330 of 2023*	*Present*	*Mahashiv Stone Crusher (DDR Stone) Khewat No. 9, Khatoni No. 21 & 22, Kila No. 19//25, 8-0, 31//5, 8-0, 30//1, 3-0 Vill-Jainpur, Narnaul, Distt-Mahendragarh*	*31.03.2028*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*50 from 17.08.2015 to 05.10.2015*	*312500*				*312500*
30	*331 of 2023*	*Present*	*Banshi Stone Crusher, Rect/Kila No. 95//2, 3min east 8 min east total measuring 21 Kanal 18 marla Vill-Bayal, Narnaul, Distt-Mohindergarh*	*31.03.2025*	*Not adequate plantation reported by DFO, Mahendragarh*	*186 from 08.05.2023 to 09.11.2023*	*1162500*	*2000000*	*2000000*	-	*(-) 837500*
31	*332 of 2023*	*Present*	*Maman Grit Udyog, Khasra no. 182/209 Vill- Begopur, Tehsil-Narnaul,* *Mohindergarh*	*Closed of its own*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
32	*333 of 2023*	*Present*	*Pooja Stone Crusher, Kila no. 53/9, 10, khewat no. 2, khatoni no. 6* *Vill-Garhi, Mohindergarh*	*31.03.2027*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*63 from 21.08.2015 to 20.11.2015*	*393750*				*393750*
33	*334 of 2023*	*Present*	*Bhagwati Grit Udyog, Khewat No. 110/13/8, 13/3 14-17, 18/1, 18/2* *Vill-Zerpur, Mohindergarh*	*31.03.2027*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*10 from 22.08.2015 to 31.08.2015*	*62500*				*62500*
34	*335 of 2023*	*Present*	*Parkash Stone Crusher, Khewat no. 173, 178, khatoni no. 198, 203* *and Kila no. 57//7-8, 13/1, 14/1/1, Vill-Begopur, Narnaul*	*31.03.2027*	*Not adequate plantation reported by* *DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
35	*336 of 2023*	*Present*	*BHAWANI GRIT UDYOG Khewat No. 58, Khatoni No. 62, M.No. 8, Kila No. 17/1(7-11), 18/1 min East (4-09) Total 12 Kanal 0 Marla At Village-Khatoli Ahir, Tehsil-nangal Chaudhary, Distt-Mohindergarh*	*31.03.2028*	*Not adequate plantation reported by DFO, Mahendragarh*	*186 from 08.05.2023 to 09.11.2023*	*1162500*	*2000000*	*2000000*	-	*(-) 837500*
36	*337 of 2023*	*Present*	*Rohit Stone Crusher Company, Khewat no. 16, Khatoni no. 46,48, kila no. 8/15, 16 (16 kanal 12 Marla) Mohindergarh*	*31.03.2027*							
37	*338 of 2023*	*Present*	*Sheetla stone Crusher, Khewat no.*	*Closed by Board*	*Non-compliance*	*26 from 16.07.2015 to*	*162500*				*162500*

			16, khatoni no. 46, 48 kila no. 8/15, 16) 16 kanal 12 marla Vill. Bakhrija, Narnaul, Distt. Mohindergarh		*w.r.t. APCM as per Notification dated 11.05.2016*	*10.08.2015*					
38	*339 of 2023*	*Present*	*Dev Shri Krishna Stone Crusher, Khewat No. 31, Khatoni No. 34, M.No. 98, Kila No. 20/3 & 21 (8-16) Khewat No. 68, Khatoni No. 83, M.No. 98, K.No. 15/2 & 16(13-6), Khewat No. 70, Khatoni No. 85, M.No. 99, Kila No. 24/2 & 25 (12-0) Total 32 Kanal 12 Marla Vill-Zerpur, Distt-Mohindergarh*	*31.03.2027*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*173 from 05.03.2022 to 25.08.2022*	*1081250*	*1081250*	*1081250*	*-*	*0*
39	*340 of 2023*	*Present*	*Shiv Grit Udyog, Khasra no. 44, kila no. 24, (4-6), 2597-8) total 11 kanal 14 marla Village-Garhi, Tehsil & District-Mohindergarh*	*Closed of its own*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*46 from 10.07.2018 to 24.08.2018*	*287500*				*287500*
40	*341 of 2023*	*Present*	*SHIV SHAKTI STONE CRUSHER UNIT II, Khewat No. No. 250, Khatoni No. 277, M.No. 52, Kila No. 24 min East (7-8) & 25 min West (0-12) Total 8 Kanal 0 Marla at Village-Begopur, Nangal Chaudhary, Distt-Mohinergarh*	*31.03.2029*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
41	*342 of 2023*	*Present*	*Shivalya Stone Crusher, Kila no. 57//9/2, 10/1, 10/2, 12/1 & 13/1 Vill-Begopur, Narnaul, Distt-Mohindergarh*	*31.03.2027*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*28 from 16.07.2015 to 12.08.2015*	*175000*				*175000*
42	*343 of 2023*	*Present*	*Shivalik Stone Crusher Co., Khewat no. 19, Khatoni no. 22, kila no. 13//3, 4/2, (4-11), (0-18) Vill-Gangutana, Nangal Chaudhary,Narnaul*	*31.03.2027*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
43	*344 of 2023*	*Present*	*Jai Shree Shyam Stone Crusher (Formely Shivam Stone Crusher), Khewat no. 8, khatoni no. 10, kila n. 109/6/2/1(2-11)/15 (9-16), 16 (8-0) Vill-zerpur, Mohindergarh*	*Closed by Board*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016 Not adequate plantation reported by DFO, Mahendragarh*	*63 from 22.08.2015 to 23.10.2015 65 from 09.11.2023 to 12.01.2024*	*800000*				*800000*
44	*345 of 2023*	*Present*	*SHREE BALAJI GRIT UDYOG M.No. 56, Kila No. 13/3 (5-2), 18(2-4), 13/1 (2-15) & 13/2 (2 Marla 4 sarsai) Total 10 Kanal 3 Marla 4 Sarsai at Village-Begopur, Tehsil-Nangal Chaudhary, Distt-Mohindergarh*	*31.03.2028*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*

45	*346 of 2023*	*Present*	*DHARAM GRIT UDYOG M.No. 56, Kila No. 7/1 (7-8), 7/3 & 8/1/2 (4 – 12) & 7/2, 7/4, 8/1/1 (6 marla 5 sarsai) Total 12 Kanal 6 Marla 5 Sarsai at Village-Begopur, Nangal Chaudhary, Distt-Mohindergarh*	*31.03.2029*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
46	*347 of 2023*	*Present*	*SHREE GANPATI STONE CRUSHER, Kh. No 66, Khatoni No 70, M.No. 7, Kila No 10/2 min West-South (2-10) & M.No. 8 Kila No 6(8-0), 7 min East-South (2-0) Total 12 K.10 M. at Vill-Khatoli Ahir, Nangal Chaudhary,Distt-Mohindergarh*	*31.03.2028*							
47	*348 of 2023*	*Absent*	*Shree Ganpati Stone Crusher, Khewat No. 12, Khatoni No. 41, Mustkil & Kila No. 8//2/2 (4-8) & 8//3/1 (5-4) Vill. Bakhrija, P.O Dholera, Narnaul Distt-Mohindergarh*	*Closed by Board*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*84 from 01.07.2020 to 22.09.2020*	*525000*				*525000*
48	*349 of 2023*	*Present*	*HINDUSTHAN STONE CRUSHER, M.No. 11, Kila No. 9/2(4-0), 12/1(4- 0), 12/2(3-11) & 13/1(3-11) Total 15 Kanal 02 Marla at Vill-Khatoli Ahir, Nangal Chaudhary, Distt-Mohindergarh*	*31.03.2028*							
49	*350 of 2023*	*Present*	*SHREE NARAYAN STONE CRUSHER, Khewat No. 18, Khatoni NO. 20, M.No. / Kila No. 24//24 Min East (6-0) & 27//4 Min North (6-0) total 12 Kanal 0 Marla AT Vill-Khatoli Ahir, Nangal Chaudhary Distt-Mohindergarh*	*31.03.2027*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
50	*351 of 2023*	*Present*	*Ishwar Stone Crushing Co., Khewat No. 24, Khatoni No. 53, Kila No. 7/11/1(2-19, 11/2(4-5), 12, Vill. Bakhrija, Narnaul*	*31.03.2027*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*28 from 16.07.2015 to 12.08.2015*	*175000*				*175000*
51	*352 of 2023*	*Present*	*Jai Durga Maa Stone Crusher, Kila no. 44/4, 5,8, 7, 8 khewat no. 87, khatoni no. 156 Vill Garhi, Mohindergarh*	*Closed of its own*							
52	*353 of 2023*	*Present*	*SHREE OM INFRASTRUCTURE COMPANY, Khewat No. 46, Khatoni NO. 48, M.No. 23, Kila No. 21/1 Min East (2-18), 22/1/1 (4-16), 22/2/1 (10) & 23/1 (4-8) total 13 Kanal 02 Marla at Village Berundla, Nangal Chaudhary, Distt-Mohindergarh*	*Closed by Board*							

53	354 of 2023	Present	Jai Hanuman Stone Crusher Company Kila No. 19//16(7-11), 20//11(2- 8), 20(2-17) Vill-Jainpur, Tehsil-Narnaul, Distt Mohindergarh	31.03.2025							
54	355 of 2023	Present	JAI HIND STONE CRUSHER Khewat No. 173, Khatoni No. 202, M.No. 16, Kila No. 19 (5-12), 20/1 (0-4), 21 (0-5) & 22 (5-19) Total 12 Kanal 0 Marla at Village Lutafpur, Narnaul, District Mohindergarh	31.03.2026	Not adequate plantation reported by DFO, Mahendragarh	95 from 08.05.2023 to 10.08.2023	593750				593750
55	356 of 2023	Present	Shree Shyam Stone Crusher Khewat No. 177, Khatoni No. 243, M.No. 43, Kila No. 9 (5-2) & 12 (3-18) at Vill-Kultajpur, Tehsil-Narnaul Distt-Mohindergarh	31.03.2028	Non-compliance w.r.t. APCM as per notification dated 11.05.2016	16 from 03.05.2022 to 18.05.2022	100000				100000
56	357 of 2023	Present	Jai Stone Crusher Co., Khewat no. 16, Khatoni no. 46- 48, Kita no. 35, Tadadi rakba 145 kanal 9 marla Vill- Bakhrija, Narnaul, Mohindergarh	31.03.2029	Not adequate plantation reported by DFO, Mahendragarh	95 from 08.05.2023 to 10.08.2023	593750				593750
57	358 of 2023	Present	Karota Stone Grinding, Khewat no. 32, khatoni no. 64, kila no. 12//20 (9-0), khewat no. 33, Khatoni no. 65, kila no. 13//16(6-12) Vill- Karota, Narnaul, Distt-Mohindergarh	Closed by Board	Non-compliance w.r.t. APCM as per notification dated 11.05.2016	174 from 05.03.2022 to 26.08.2022	1087500	1087500	-	1087500	1087500
58	359 of 2023	Present	SHREE SHYAM BABA STONE CRUSHER M.No. 11, Kila No. 20/2 min East (2-0), 19/2 min West (2-0), 21/1/1 min East (1-11), 22 min West(2-11) & 21/1/2(1-16) Total 9 Kanal 18 Marla at Vill-Khatoli Ahir, Nangal Chaudhary, Distt-Mohindergarh	31.03.2027	Not adequate plantation reported by DFO, Mahendragarh	95 from 08.05.2023 to 10.08.2023	593750				593750
59	360 of 2023	Present	Krishna Stone Crusher Khewat No. 365, Khatoni No. 409 (51/22) 2/19, 410 (51/23/2),1/18, 411 (51/23/1) 2/5, 412(51/23/2) 413 (51/23/2) at Vill-Dholera, Narnaul, Distt-Mohinergarh	31.03.2027	Non-compliance w.r.t. APCM as per notification dated 11.05.2016 Not adequate plantation reported by DFO, Mahendragarh Non-compliance w.r.t. APCM as per notification	163 from 08.05.2017 to 17.10.2017. 95 from 08.05.2023 to 10.08.2023 35 from 28.10.2023 to 01.12.2023	1831250				1831250

60	*361 of 2023*	*Present*	*VINAYAK CONSTRUCTION COMPANY Khewat No. 173, Khatoni No. 202, M.No. 16, Kila No. 20/1/2 (3-19) & 21/1 (4-1) VillLutafpur, Narnaul, District-Mohindergarh*	*31.03.2027*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
61	*362 of 2023*	*Present*	*ARIHANT STONE CRUSHER Khewat No. 235, Khatoni No. 262, M.No. 57, Kila No. 2/2 (8-0) Total 8 Kanal 0 Marla at Village-Begopur, tehsil-Nangal Chaudhary, Distt-Mohindergarh*	*31.03.2028*							
62	*363 of 2023*	*Present*	*Yaduvanshi Stone Crusher, Khewat No. 98//10 (8-0), 98/11 (7-11), 99/6 (8-0), 15/1 (3-16) Vill-Zerpur, Distt-Mohindergarh*	*CTO Revoked*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*63 from 22.08.2015 to 23.10.2015*	*393750*				*393750*
63	*364 of 2023*	*Present*	*Bajrang Bali Stone Crusher, Khasra No. 98//17/2/2, 24, 109//4/1, 3/2, 18/3/2 Vill-Zerpur, Narnaul, Mohindergarh*	*Closed by Board*	*Not adequate plantation reported by DFO, Mahendragarh*	*274 from 08.05.2023 to 05.02.2024*	*1712500*				*1712500*
64	*365 of 2023*	*Present*	*DEV SHRI KRISHNA STONE CRUSHERKhewat No. 234, Khatoni No. 261, M.No. 52, Kila No. 19 (8-0) & 18 min East (4-0) at Village- Begopur, Tehsil-Nangal Chaudhary, Distt-Mohindergarh*	*31.03.2027*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*38 from 18.09.2018 to 25.10.2018*	*237500*				*237500*
65	*365 of 2023*	*Present*	*JAI BABA SHYAM STONE CRUSHER M.No. 51, Kila No. 16/2/2/2 (1-1) & 25/3 (5-19), M.No. 52 Kila NO. 21/1/1(5-0) Total 12 Kanal 0 Marla at Village-Dholera, Tehsil-Nangal Chaudhary, District-Mohindergarh*	*31.03.2028*							
66	*365 of 2023*	*Present*	*JAI SHREE SHYAM STONE CRUSHER M.No. 51, Kila No. 23/3 (1-10), 24(7-11), 16/2/2/1(0-6), 17/2/2(0-10), 17/3/2(0-3), 25/1(1-18) & 25/2 (0-2) Total 12 Kanal 0 Marla at Vill-Dholera, Distt-Mohindergarh*	*31.03.2028*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*

67	*365 of 2023*	*Present*	*SHREE GANESH STONE CRUSHER, Khewat No. 73, Khatoni No. 80, M.No. 52, Kila No. 20/1 Min North (4-15), 11/1 Min South (0-12), 11/2 Min South (2-15) at Village-Begopur, Tehsil-Nangal Chaudhary, Distt-Mohindergarh*	*31.03.2028*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
68	*366 of 2023*	*Present*	*HARE KRISHNA STONE CRUSHER Khewat No. 14, Khatoni No. 43, M.No. 3, Kila No. 24/1(7-0), M.No. 8, Kila No. 4/1/1 (1- 19) at Village-Bakhrija, Tehsil-Nangal Chaudhary, District-Mohindergarh*	*CTO Revoked*							
69	*367 of 2023*	*Present*	*SHRI HARI STONE CRUSHER Khewat No. 157, Khatoni No. 185, M.No. 16, Kila No. 9/3(2-0), 11/3 (2-01), 12 (8-0) at Village-Lutafpur, Tehsil-Narnaul, District-Mohindergarh*	*31.03.2028*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
70	*368 of 2023*	*Present*	*Maa Durga St. Cr. (Dalal Construction Co.), Kila no. 110-1/2 (6-0), 2//(2-0), 2(8-0) Vil l-zerpur, Mohindergarh*	*31.03.2027*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*81 from 02.03.2023 to 21.05.2023*	*506250*				*506250*
71	*369 of 2023*	*Present*	*Shree Ram Stone Crusher, Khewat no. 13, khatoni no. 26, kila no. 19//6 (4-5), 7 (1-8), 14(1-4), 15/1 (5-0) total land (11 kanal 17 Marla) Vill.-Jainpur, Narnaul, Distt. Mohindergarh*	*31.03.2025*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*47 from 03.06.2019 to 19.07.2019*	*293750*				*293750*
72	*370 of 2023*	*Present*	*Jai Hanuman Stone Crusher, Kila no. 110//11(6-11) 110//19(7-16), 110//20(8-0) Vill-zerpur Mandola, Mohindergarh*	*Closed of its own*							
73	*371 of 2023*	*Present*	*Jai Hind Stone Crusher, Kila no. 50 (25 kanal 3 marla) VPO- Jainpur, Narnaul, Distt. Mohindergarh*	*31.03.2027*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*30 days from 29.05.2019 to 27.06.2019*	*187500*	*187500*	*187500*	-	*0*
74	*372 of 2023*	*Present*	*Jai Shree Krishna Stone Crusher, Khewat No. 11, Khatoni No. 25, Mustil & Kila No. 16/23 (1-0), 19/3(7-14) total 16 Kanal 14 marla Vill- Jainpur, Narnaul, Mohindegarh*	*31.03.2028*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*

75	373 of 2023	Present	Shree Shyam Grit Udyog, Khasra No. 24, Kila No. 16 & 17, total 16 Kanal, Vill.-Garhi, Mohindergarh	Closed of its own							
76	374 of 2023	Present	JC STONE CRUSHER Khewat No. 63, Khatoni No. 67, M.No. 8, Kila No. 14 min East (6-0) & 15 Min West(6-0) total 12 Kanal 0 Marla at Vill-Khatoli Ahir, Nangal Chaudhary, Distt-Mohindergarh	31.03.2026	Not adequate plantation reported by DFO, Mahendragarh	92 from 10.08.2023 to 09.11.2023	575000				575000
77	375 of 2023	Present	JAI DURGA STONE CRUSHER, Khewat No. 5, Khatoni NO. 5, M.No. 56, Kila No. 14 (8-0) total 8 Kanal 0 Marla at Village Begopur, Nangal Chaudhary, Distt-Mohindergarh	31.03.2026	Not adequate plantation reported by DFO, Mahendragarh	95 from 08.05.2023 to 10.08.2023	593750				593750
78	376 of 2023	Present	SHREE GANESH STONE CRUSHER, M.No. 7, Kila NO. 1/1 Min West (4- 06-1), ½ Min West (0-13-8) & 10 min West (5-0) 10 Kanal 0 Marla at Vill-Bakhrija, Nangal Chaudhary, Distt-Mohindergarh	31.03.2025							
79	378 of 2023	Present	Om Grit Crusher, Khewat no. 15, Khatoni no. 45, kila no. 7//8 (4-8) & 9 (9-13) total 14 Kanal 1 Marla	31.03.2026	Non-compliance w.r.t. APCM as per notification dated 11.05.2016	21 from 17.04.2018 to 07.05.2018	131250				131250
80	379 of 2023	Present	JMD Stone Crushing Company Part I Khewat No. 5, Khatoni No. 5, Kila NO. 16//20, 21 Min Vill-Jainpur, Narnaul, Distt-Mohindergarh	31.03.2026	Not adequate plantation reported by DFO, Mahendragarh	186 from 08.05.2023 to 09.11.2023	1162500	2000000	2000000	-	(-) 837500
81	380 of 2023	Present	JMD Stone Crushing Company Part II Khewat No. 5, Khatoni No. 5, Kila NO. 16//21 Min,19//1 VillJainpur, Narnaul Distt-Mohindergarh	Closed by Board	Not adequate plantation reported by DFO, Mahendragarh	137 from 08.05.2023 to 21.09.2023	856250	2000000	2000000	-	(-) 1143750
82	381 of 2023	Present	Raj Stone Crusher, Khewat no. 178, hatoni no. 203, kila no. 56/15 & 57 //1 (14 kanal 8 marla) Vill.-Begopur, Narnaul, Distt. Mohindergarh	31.03.2027	Non-compliance w.r.t. APCM as per notification dated 11.05.2016	35 from 18.09.2018 to 22.10.2018	218750				218750
83	382 of 2023	Present	Jayoti Stone Crusher, Khewat no. 7, Khatoni no. 36, kila no. 8//5/ 2(3- 3), 6/1(3-3) & 7 (7-11) Vill-Bakhrija, Narnaul, Distt-Mohindergarh	31.03.2027	Not adequate plantation reported by DFO, Mahendragarh	95 from 08.05.2023 to 10.08.2023	593750				593750

84	*383 of 2023*	*Present*	*SHIKOHPUR STONE CRUSHER COMPANY, Khewat No. 288, Khatoni No. 319, M.No. 62, Kila No. 7/1/2 (6-10), 15/1(1-10) at Village-Dholera, tehsil-Nangal Chaudhary, Distt-Mohindergarh*	*31.03.2028*							
85	*384 of 2023*	*Present*	*Shiv Stone Crusher Khewat No. 362, Khatoni No. 402, M. No. 50, Kila No. 17 At Vill-Dholera, Nangal Chaudhary, Narnaul, Distt-Mohindergarh*	*31.03.2027*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*54 from 08.05.2017 to 30.06.2017*	*337500*				*337500*
86	*385 of 2023*	*Present*	*Mahadev Stone Crusher Khewat No. 190, Khatoni No. 256, M.No.44, Kila No. 6/4 (4-04), 7/1(3-8), 14/2/1(0-4), 15/1(0-5) Total 8 kanal 01 Marla at Village-Kultajpur, Narnaul District-Mohindergarh*	*31.03.2026*	*Not adequate plantation reported by DFO, Mahendragarh*	*95 from 08.05.2023 to 10.08.2023*	*593750*				*593750*
87	*386 of 2023*	*Present*	*SHREE KRISHNA STONE CRUSHING MILLS, Kila No. 98(20/1), 19,18(2/2), 23(2/1) VILLAGE ZERPUR, DISTRICT-MOHINDERGARH*	*31.03.2029*							
88	*387 of 2023*	*Present*	*New Haryana Stone Crusher, Khasra no. 57//8, 9/1, 13/1, Vill-Begopur, Narnaul, Distt-Mohindergarh*	*31.03.2027*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*12 from 16.07.2015 to 27.07.2015*	*75000*				*75000*
89	*388 of 2023*	*Present*	*Yaduvanshi Grit Udyog, Khewat No. 98, Khatoni No. 165, Kila No. 8, total 58 kanal 15 Marla Vill-Garhi, Mohindergarh*	*31.03.2028*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*92 from 21.08.2015 to 20.11.2015*	*575000*				*575000*
90	*389 of 2023*	*Present*	*Nihal Stone crusher, Kila no. 56//6, 15 Min (15 kanal 11 Marla) Vill-Begopur, Narnaul, Distt-Mohindergarh*	*31.03.2027*							
91	*390 of 2023*	*Present*	*Jai Bajrang Bali Stone Crusher, Khasra no. 23/1/2, 10 Vill-Gangutana, Narnaul*	*31.03.2027*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*50 from 17.08.2015 to 05.10.2015*	*312500*				*312500*
92	*391 of 2023*	*Present*	*DEV STONE CRUSHER, M. No. 53, Kila No. 16/1(4-8), 16/2(3-4) & M.No. 52, Kila No. 20/2(1-12) Total 9 Kanal 4 Marla at Village-Begopur, Nangal Chaudhary, Distt-Mohinergarh*	*31.03.2028*							

93	391-392 of 2023	Present	DEVA STONE CRUSHER, Khewat No. 6, Khatoni NO. 6, M.No. / Kila No. 7//22/1 (7-04) & 22//2/2/1 (4-16) total 12 Kanal 0 Marla at Vill- Berundla, Nangal Chaudhary Distt-Mohindergarh	31.03.2027	Not adequate plantation reported by DFO, Mahendragarh	95 from 08.05.2023 to 10.08.2023	593750				593750
94	395 of 2023	Present	NEW SIDDHI VINAYAK STONE CRUSHER, Khewat No. 37, Khatoni No. 41, M.No. 25, Kila No. 17 (8-0), 24(2-16) & 25 min West (1-4) Total 12 Kanal 0 Marla, Vill- Khatoli Ahir, Nangal Chaudhary, Distt-Mohindergarh	31.03.2028							
95	396 of 2023	Present	SHREE VINAYAK STONE CRUSHER Khewat No. 8, Khata No. 8, M.No. 42, Kila No. 19/2(5-6), 20/1 (4-12), 21/2 (4-11) 22/1 (4-11) At Village-Kultajpur, Tehsil-Narnaul, District-Mohindergarh	31.03.2025	Not adequate plantation reported by DFO, Mahendragarh	95 from 08.05.2023 to 10.08.2023	593750	2000000	2000000	-	(-) 1143750
96	436 of 2023	Present	LAXMI VISHNU STONE CRUSHING COMPANY, Khewat No. 10, Khatoni NO. 22, Kila No. 31//5(8-0) & 30//1(1-10), At Village-Jainpur, Tehsil- Nangal Chaudhary, District-Mohindergarh	31.03.2028	Non-compliance w.r.t. APCM as per notification dated 11.05.2016 Not adequate plantation reported by DFO, Mahendragarh	30 from 29.05.2019 to 27.06.2019 186 from 08.05.2023 to 09.11.2023	1350000	2187500	2187500	-	(-) 837500
97	438 of 2023	Present	Shree Shyam Stone Crusher, KHEWAT NO. 36, KHATONI NO. 88, M.NO. 43, KILA NO. 16/2 (6-0) & 17(6-0), AT VILLAGE-GARHI, DISTRICT-MOHINDERGARH	31.03.2028	Not adequate plantation reported by DFO, Mahendragarh	95 from 08.05.2023 to 10.08.2023	593750				593750
98	674 of 2023	Present	Baba Jethu Ji Stone Crusher, Khasra/ kila no. 18/19, Vill. Gangutana, Mohindergarh	Closed of its own	Non-compliance w.r.t. APCM as per notification dated 11.05.2016	11 from 17.08.2015 to 27.08.2015	68750				68750
99	739 of 2023	Absent	RAO STONE CRUSHER, Khewat No. 5, Khatoni NO. 5, M.No. / Kila No. 23//10/2 min West South(0-2), 23//11 Min West South (2-6), & 24//15 Min East South(7-9) total 9 Kanal 17 Marla at Vill-Khatoli Ahir, Nangal Chaudhary,Distt-Mohindergarh	31.03.2027							

100		*Absent*	*Baba Jamna Giri Stone Crusher Khewat No. 121, Khatoni No. 190, M.No. 49, Kila No. 18 at Vill-Garhi, Distt Mohindergarh*	*Dismantled*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*78 from 23.03.2016 to 08.06.2016*	*487500*				*487500*
101		*Absent*	*Balaji Stone Crusher Khewat No. 23, Khatoni No. 57, M.No. 49, Kila No. 17(8-0) at Vill-Garhi, Distt-Mohindergarh*	*CTO Revoked*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*78 from 23.03.2016 to 08.06.2016*	*487500*				*487500*
102	*797 of 2023*	*Present*	*Bhagwati Stone crusher, Kita no. 45//8/2/2, 9/1, 10/1, Vill. Mandlana, Distt-Mohindergarh*	*Closed by Board*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*174 from 05.03.2022 to 26.08.2022*	*1087500*	*1087500*	*-*	*1087500*	*1087500*
103		*Absent*	*Bharat Stone Crusher, Khasra/ kila no. 44//14/1, 15/2/1 Vill-Garhi, Mohindergarh*	*Dismantled*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*92 from 21.08.2015 to 20.11.2015*	*575000*				*575000*
104		*Absent*	*Chhawri Stone Crusher, Khewat No. 9, Khatoni NO. 38, M.No. 8, Kila No. 7/2 & 8/1 at Vill-Bakhrija, Narnaul, Distt-Mohindergarh*	*Closed by Board*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*81 from 04.07.2020 to 23.09.2020*	*506250*	*506250*	*-*	*506250*	*506250*
105		*Present*	*Deepak Construction Co., Khasra No. 211, Vill Raghunathpura, Distt. Mohindergarh*	*Closed by Board*							
106		*Absent*	*Godara Stone Crusher Rect/Kila Nos. 14, 15, 6 total 17 Kanal 6 Marla Vill-Garhi, Distt-Mohindergarh*	*Closed by Board*							
107		*Absent*	*Hydel Construction Pvt. Ltd & Mobile Drill Master (Joint Venture) – HMJV Khewat No. 171, Khatoni No. 232 & 235, Mustil No. 43/1/1 (616), 44/4(7-11) 5 (7-11), 7/2 total 26 kanal Village-Kultajpur, Narnaul Distt-Mohindergarh*	*Closed of its own*							
108		*Absent*	*Jai Hanuman Stone Crusher Khewat No. 23, Khatoni NO. 56, Kila No. 49//6/2(8-0) at Village Garhi, District Mohindergarh*	*Dismantled*							

109		*Absent*	*Jai Maa Kamakhaya Industries (Superb Star Promoters Private Limited), Khewat No. 20, Khatoni No. 22, Kila No. 30//3 (5-16) & 4(3- 16) Vill-Gangutana, Nangal Chaudhary Distt-Mohindergarh*	*Closed by Board*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*175 from 05.03.2022 to 26.08.2022*	*1093750*				*1093750*
110		*Absent*	*Jai Mata Di Stone Crusher (FormelyJagdamba Stone Crusher), Khewat no. 16, khatoni no. 48, kila no. 7/19,20 Vill. Bakhrija, Narnaul Distt- Mohindergarh*	*Closed by Board*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*79 from 24.06.2020 to 10.09.2020*	*493750*				*493750*
111		*Absent*	*K S Y BUILDCON, Khewat No. 50, Khatoni NO. 72, M.No. 9, Kila No. 15/2/2 (2-17), 16/2 Min West (5-14) & 17/1 (0-9) total 9 Kanal 0 Marla at Village Khatoli Jat, Nangal Chaudhary, Distt-Mohindergarh*	*CTE Revoked*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*124 from 06.10.2018 to 06.02.2019*	*775000*				*775000*
112		*Absent*	*Karni Maa Stone Crusher, Khewat No. 144, Khatoni No. 217, M.No.71, Kila No. 3(6-9) & 8(1-11) at Village Garhi, Distt-Mohindergarh*	*Closed of its own*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016 Non-compliance w.r.t. APCM as per notification dated*	*78 from 23.03.2016 to 08.06.2016 164 from 20.03.2018 to 30.08.2018*	*1512500*				*1512500*
113		*Absent*	*Keshav Stone Crusher Formely Yograj Infrastructure, Plant-III, Kila no. / Khasra no. 23//11,20, Vill. Gangutana, Narnaul*	*CTO Revoked*	*Not adequate plantation reported by DFO, Mahendragarh*	*186 from 08.05.2023 to 09.11.2023*	*1162500*				*1162500*
114		*Present*	*Krishna Arjun Buildtech Pvt. Ltd., Khewat No. 14, Khatoni No. 43, 44, Mustil & Kila No. 14 / / /11/2(3-15), 19(2-10), 22(2-18), 12(5-4), 13/2(3-1) Vill-Bakhrija, Narnaul, Distt-Mohindergarh*	*CTO Revoked*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*28 from 16.07.2015 to 12.08.2015*	*175000*				*175000*
115		*Absent*	*KSY Grit Udyog, Khewat no. 182, khatoni no. 209, 57//14-1(0-17), 15/1(4-5), 15/2 (1-5), Total 6 kanal 7 Marla & 57//14/2(3-2), 57//7(5- 18) total 9 kanal 0 marla Vill.-Begopur, Narnaul*	*Dismantled*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*28 from 16.07.2015 to 12.08.2015*	*175000*				*175000*

116		*Absent*	*Maa Durga Stone Crusher, Khasra No. 11/1/2(3-8), 11//2 (7-11) Vill- Khatoli Ahir, Distt-Mohindergarh*	*Dismantled*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*171 from 18.07.2018 to 04.01.2019*	*1068750*				*1068750*
117		*Absent*	*Maa Sherawali Stone Crushing Co Khewat No. 163, Khatoni No. 228, Kila no. 24/23, 25/3,4, 58/2/2,3,18/4/2 Vill Zerpur, Distt-Mohindergarh*	*Closed of its own*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*79 from 12.07.2013 to 28.09.2013*	*493750*				*493750*
118		*Absent*	*Mungipa Stone Crusher, Khewat No. 18, Khatoni No. 20, Kila No. 12/2, 110/3, 18/3/9 village Zerpur, Mohindergarh*	*Dismantled*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*153 from 11.04.2014 to 10.09.2014*	*956250*				*956250*
119		*Absent*	*Pooja Milling And Crushing Unit Mustil No-23, Kila No.16, Village- Gangutana, Nangal Choudhary, Distt.Mohindergarh*	*Dismantled*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*153 from 07.06.2018 to 17.09.2018*	*956250*				*956250*
120		*Present*	*Rathi Stone Crusher Co., Khasra no./ kila no. 30//18 Vill-Gangutana, Mohindergarh*	*Closed of its own*							
121	*893 of 2023*	*Present*	*Sadashiv Stone Crusher, Kila no. 76/5, 70/21, 77/1,2 khewat no. 6, khatoni no. 18 Vill-Garhi Khudana, Distt-Mohindergarh*	*31.03.2026*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016 Non-compliance w.r.t. APCM as per notification dated*	*57 from 30.10.2013 to 25.12.2013 58 from 03.08.2015 to 29.09.2015*	*718750*				*718750*
122		*Absent*	*Shivam Stone Crushing Company, Khewat No. 19, Khatoni No. 21, Mustil & Kila No. 30//8/1(9-18), 9/1(0-17) Village Ganautana Tehsil*	*Dismantled*							
123		*Absent*	*Shree Balaji Stone Crusher, Kila no. 19/2, 9, 10, 11/1, khewat no. 4,5,6 Village Jainpur, Narnaul Distt.-Mohindergarh*	*Closed by Board*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016 Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*122 from 23.01.2014 to 24.05.2014 138 from 09.02.2017 to 26.06.2017*	*1625000*				*1625000*

124		*Present*	*Shree Ganesh Stone Crusher, Khasra no. / kila no. 18/21 (7-4) & 23/1 (1-4) Vill-Gangutana, Narnaul, Distt. Mohindergarh*	*Closed by Board*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*212 from 07.06.2018 to 04.01.2019*	*1325000*				*1325000*
125		*Absent*	*Shree Shyam Stone Crusher, Khewat no. 19, khatoni no. 21, kila no. 109/14/2, 17 (2-0) (7-9) Vill.- Zerpur Madola, Mohindergarh*	*Dismantled*							
126		*Absent*	*SHRI VINAYAK STONE CRUSHER, Khewat No. 10, Khatoni No. 10, M.No. 28, Kila No. 1 (8-0) & 10 min North (4-0) Total 12 Kanal 0 Marla at Vill-Berundla, Tehsil-Nangal Chaudhary, Distt-Mohindergarh*	*Closed by Board*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*133 from 14.02.2020to 26.06.2020*	*831250*	*831250*	*-*	*831250*	*831250*
127		*Absent*	*SURYA STONE CRUSHER Khewat No. 23, Khatoni No. 56, M.No. 50, Kila No. 10/2/2(7-6), 11/1(7-01), 9/3/2(0-14), 12/1/1(0-8) Total 15 Kanal 09 Marla at Village-Garhi, District-Mohindergarh*	*Dismantled*							
128	*159/160 of 2024*	*Present*	*T & R Milling and Crushing Unit Mustil No. 23, Kila No. 3, Vill Gangutana, Narnaul Mohindergarh*	*Closed of its own*							
129	*161/162 of 2024*	*Present*	*T & R STONE CRUSHER, Mustil No. 23, Kila No. 2, VILLAGE-GANGUTANA, NAGAL CHODHARY, NARNUAL, Mohindergarh*	*Closed of its own*							
130		*Absent*	*Universal Stone Crusher, Khewat No. 16, Khatoni No. 29, Kila No. 19//4(2-16), 6(4-5), 7(8-0), 14(8-0), 15/1(5-0), 17(7-11) Vill- Jainpur, Distt-Mohindergarh*	*Closed of its own*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*50 from 17.08.2015 to 05.10.2015*	*312500*				*312500*
131		*Absent*	*Vinayak Stone Crusher, Khasra no. 82 Min (24-0)*	*Dismantled*	*Non-compliance w.r.t. APCM as per notification*	*50 from 17.08.2015 to 05.10.2015*	*312500*				*312500*
132	*683 of 2023*	*Present*	*Vishal Stone Crusher, Khewat no. 13, khatoni no. 26, Kila no. 19//14, min (4-5) & 17(7-11) Vill.- Jainpur, Narnaul, Distt. Mohindergarh*	*Closed of its own*							

133		*Absent*	*Yog Milling And Crushing Unit Mustil no.-23,Kila no.-15,Village-Gangutana, Nangal Choudhary, Narnaul Mahendragarh*	*Closed of its own*	*Non-compliance w.r.t. APCM as per notification dated 11.05.2016*	*103 from 07.06.2018 to 17.09.2018*	*643750*				*643750*
Total							***6017500***	***19500000***	***15987500***	***3512500***	***44375000***

24. It is not disputed before the Tribunal that all the stone crusher units against whom the compensation has been calculated by the joint Committee were given opportunity of hearing by the joint Committee. None of the stone crusher has raised any objection in respect of calculation of the environmental compensation done by the joint Committee. Hence, the environmental compensation calculated by the joint Committee is accepted by the Tribunal and environmental compensation upon the defaulting stone crushers is accordingly levied.

25. The HSPCB has filed report regarding estimation of the carrying capacity of the Ambient Air Environment of District Mahendergarh on 05.08.2024. The carrying capacity report of Mahendergarh is as under :-

"xxx ……xxx……xxx

Based on the geographical location of stone crushing units/clusters in Mahendragarh district, the Board has identified majorly ten clusters for ambient air quality assessment and selected one location for manual monitoring in each cluster. It is to mention here that the source monitoring of stone crushing operation and ambient air quality monitoring at one location in each cluster were carried out by Regional Office, HSPCB, Mahendragarh and analysis report issued by HSPCB Laboratory, Gurugram. The locations of the manual monitoring stations are selected as per windrose diagram data considering the wind speed and wind directions. A copy of the windrose pattern is enclosed as ***Annexure-1****.*

The results of parameters i.e. particulate matter (PM10) as per manual air quality monitoring stations installed in District Mahendragarh are tabulated below: -

Sr. No.	***Cluster Name (Nearby)***	***Location Coordinates (Lat. Long.)***	***Parameter (d) PM10 (ug/m3)***	***Notified standards***
1	*Village Kultajpur*	*28.050533, 76.042583*	*70*	*100*
2	*Village Lutufpur*	*28.046244, 76.059081*	*72*	*100*
3	*Village Bakhrija-Begopur*	*27.909294. 76.046117*	*66*	*100*
4	*Village Zerpur*	*28.322266, 76.085589*	*68*	*100*
5	*Village Garhi*	*28.426940, 76.111398*	*75*	*100*
6	*Village Gangutana*	*27.877754, 76.057323*	*78*	*100*
7	*Village Bayal-Panchnota*	*27.863005, 75.984712*	*76*	*100*
8	*Village Dholera*	*27.935156, 76.064774*	*81*	*100*
9	*Village Khatoli Ahir*	*27.965187, 76.083171*	*68*	*100*
10	*Village Jainpur*	*27.904036, 76.091706*	*74*	*100*
		Average	***72.80***	***100***

The concentration of PM10, in ambient air assessed via continuous ambient air quality monitoring station installed at Mini Secretariat, Narnaul, District Mahendragarh (28.059756, 76.113412) and the results for the period from January, 2024 to July, 2024 are attached as Annexure-2 and the same is reproduced in the table as under.

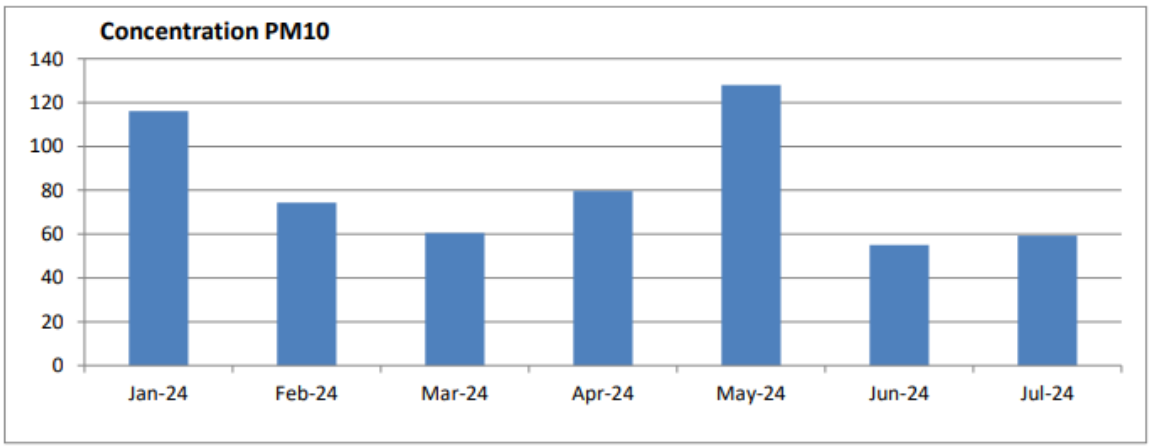


Table depicting PM10 concentration from January, 2024 to July, 2024.

The following formulae/equations were used to arrive at the conclusion with regard to available supportive carrying capacity: -

Estimation of total existing PM10 load:

Total area in ***Km2 : a; 1859 Km^2***

Average Atmospheric Mixing Height/Depth during a particular period in ***Km: b= 0.4483 Km.***

Total Volume of Air in the district during a particular period in ***Km3*** *: a x b = c,*

C= 1859 x 0.4483 = 833.3897 Km3

Average PM10 Concentration of Ambient Air in the area for a particular period in ***Kg/Km3*** *: d*

Therefore, Total estimated load of particulate matter (PM10) in ambient air of the area during a particular period (x): c x d= ***x Kg***

X (90 percentiles) = 78.30 x 833.3897= 65254.41 kg.

X (average PM10 manual) = 72.80 x 833.3897= 60670.77 kg.

X (average PM10 CAAQMS) = 82.11 x 833.3897= 68429.63 kg.

Estimation of Assimilative Carrying Capacity w.r.t. PM10*:*

Total Volume of Air in the area during a particular period in ***Km3: c***

NAAQS Standard for Particulate Matter (PM10) : 100 µg/m3 i. e. 100 Kg/Km3

Therefore, Assimilative Capacity w.r.t PM10 in ambient air of the area in a particular period (y): c x 100= ***y Kg***

Y= 833.3897x100= 83338.97 kg

Estimation of Supportive carrying Capacity w.r.t. PM10:

*Supportive Carrying Capacity (**z**) = Assimilative Carrying Capacity (**y**) - Total Estimated Load (**x**)*

The average of PM_{10} concentration are used to calculate the total load of PM10 load in the district, as a product of predominant PM_{10}, particulate matter concentration and volume of the ambient air upto mixing height, in the district Mahendragarh. In order to estimate the carrying capacity PM_{10} is considered to be a critical parameter being the prime contributor in Air Quality Index and greatly emitted by those various stone crushing units.

It is also recommended statistically to consider the most prevailing value by determining the 90 percentile when such data of Ambient Air Quality which are spatial in nature with regard to time and space and therefore used for assessment of carrying capacity of Air Environment. The Board has felt the need of estimating the carrying capacity considering the average value of PM_{10} monitored through manual stations & continuous monitoring system already installed

- *The 90-percentile value of PM_{10} of 10 clusters is found to be 78.30 $\mu g/m^3$.*
- *While the average PM10 concentration is 72.8 µg/m3.*
- *Considering the CAAQMS Data the Average PM_{10} Concentration is 82.11 µg/m3.*
- *Thus, pollution load with regard to PM10 concentration of manual monitoring stations taking into account most prevailing 90 percentile concentrations is 65254.41 Kg while with average PM_{10} concentration is estimated to be 60670.77 Kg.*
- *Thus, pollution load with regard to PM10 concentration of continuous monitoring stations taking into account average PM_{10} concentration is estimated to be 68196.28 Kg.*
- *The above estimates are based on the average mixing height is between 0.4483 Km to 0.6362 Km, the meteorological variable i.e. mixing height is considered from the previous study is taken as 0.4483 Km is used for analysis.*
- *Total area of the Mahendragarh district is taken as 1859 Km2. (Reference: District Statistical-abstracts, Mahendragarh). Copy of the same is enclosed as **Annexure-3**.*
- *The national ambient air quality standard (NAAQS) for PM_{10} i.e. 100 µg/m3 and when multiplied by the volume of air in the district Mahendragarh, it provided the average assimilative capacity of the district for the study period.*
- *The existing pollution load (PM_{10}) estimated for determining the supportive carrying capacity is the sum total of the PM_{10} emissions from all known and unknown activities/sources having pollution potential.*

Supportive carrying capacity of the district Mahendragarh was computed by taking the difference of assimilative carrying capacity of the area & total estimated load of PM_{10} in the district.

Therefore, on the basis the above, the following is the estimation of the carrying capacity:-

Basis	***Pollution Load (kg of PM_{10}) (x)***	***Assimilative Capacity (kg of PM_{10}) (y)***	***Supportive Capacity (kg of PM_{10}) (z)***
90 percentiles of PM_{10} concentration manual clusters	*65254.41*	*65254.41*	*18084.56*
Average of PM_{10} concentration manual clusters	*60670.77*	*83338.97*	*22668.2*
Average of PM_{10} concentration continuous monitoring system (Period January, 2024 to July, 2024)	*68429.63*	*83338.97*	*14909.34*

Therefore, the resultant supportive carrying capacity is dependent on various factors and may not be attributed to a single source. As a result, the criteria governing the setting up of stone crushing units is based on sitting norms and the emission standards as per notification dated 11.05.2016 and amended thereafter.

It may be concluded from the above table, as such there is positive supportive carrying capacity available in the ambient air environment with reference to PM_{10} for the district Mahendragarh."

26. The above carrying capacity report requires to be cross checked by an expert body, therefore, we direct the District Magistrate, Mahendragarh to submit the carrying capacity report alongwith all the supporting document to the Member Secretary, CPCB within two weeks. The member secretary CPCB will get the carrying capacity report cross-checked by an expert body and ascertain the correct carrying capacity of District Mahendragarh within three months. The HSPCB and other regulatory agencies of District Mahendragarh will ensure that the carrying capacity so determined by the CPCB through the expert body is not exceeded or violated.

27. It is necessary that the stone crusher set up in District Mahendergarh comply with the siting criteria and CTO condition. Hence, we constitute a joint Committee comprising of representatives of Member Secretary, CPCB, HSPCB and District Magistrate, Mahendergarh, where District Magistrate, Mahendergarh will be the nodal agency. The joint Committee will ascertain the compliance of siting criteria and CTO conditions in respect of each of the stone crushers set up/operating in the District Mahendergarh within in three months and will submit the report to the Registrar General of the Tribunal through e-mail at judicial-ngt@gov.in. On

the basis of the report of the joint Committee, the Member Secretary, HSPCB will ensure remedial and punitive action against the defaulting stone crushers after following the principles of natural justice and will submit report before the Registrar General of the Tribunal through email at judicial-ngt@gov.in within six months.

28. Against levy of final environmental compensation by the joint Committee by the report dated 25.04.2025, none of the stone crusher units have raised any objection. Hence, we have levied the EC accordingly. The HSPCB is directed to recover the environmental compensation calculated by the joint Committee from the stone crusher units which have not deposited the same till now. It will be open to the HSPCB to take coercive measures to recover the same as expeditiously as possible preferably within a period of three months. The recovered environmental compensation shall be used for implementation of the recommendations of the carrying capacity study and other restoration measures to mitigate air pollution. HSPCB shall oversee this implementation.

29. The action taken report will be submitted by the HSPCB about recovery of EC and by the CPCB about carrying capacity by 03.10.2025 before the Registrar General of the Tribunal via email at judicial-ngt@gov.in preferably in the form of a searchable PDF/OCR-supported PDF and not in the form of an Image PDF. In respect of siting criteria the report by the joint Committee and HSPCB will be submitted in terms of direction in previous paragraph. If deemed necessary, the matter will be listed for consideration before the bench again.

30. The OAs are accordingly disposed of.

31. All the pending IAs will also stand disposed of.

❖

Sardar Satnam Singh & Ors. vs. Central Pollution Control Board & Ors

(Original Application No. 602/2023)
(I.A. No. 58/2024)
Decided on: 06th November, 2025 (PB)

CASE NOTE

The applicants, Sardar Satnam Singh, Sarpanch, Gram Panchayat Maksudapur and other local residents submitted a letter petition dated 30.06.2023 alleging serious environmental violations by the 90 MW power plant operated by M/s Bajaj Energy Pvt. Ltd. (BEPL) at village Maksudapur, District Shahjahanpur. The allegations pertained to the absence of the required green belt, illegal disposal of fly ash near the Sharda Canal and public roads, damage to agricultural crops, and discharge of untreated or inadequately treated wastewater into the Khannot River. Applicant No. 1 later sought to withdraw the complaint by filing I.A. No. 58/2024 claiming the allegations were baseless, but the Tribunal, considering the gravity of the environmental issues involved, examined the matter on merits and issued directions while disposing of the Original Application.

The Tribunal examined whether Respondent No. 7 (BEPL) had breached conditions of its Environmental Clearance (EC) and Consent to Establish (CTE) / Consent to Operate (CTO) regarding (i) management and disposal of fly ash, (ii) prevention and control of water pollution, (iii) prevention and control of air pollution, and (iv) development of the mandated green belt.

The Tribunal held BEPL liable for serious statutory violations, including illegal and unauthorized storage of fly ash at open temporary sites without valid CTO, and non-compliance with CTE conditions. It further observed that Central Pollution Control Board (CPCB) and Uttar Pradesh Pollution Control Board (UPPCB) had failed to discharge their statutory duties by neither initiating enforcement action nor imposing environmental compensation, thereby undermining the effective implementation of environmental laws.

The Tribunal disposed of the Original Application and issued several directions. It directed BEPL to implement the Joint Committee's recommendations, manage and dispose of fly ash in accordance with MoEF&CC and UPPCB norms, and refrain from storing fly ash at temporary sites near water bodies, canals, roads, or residential areas without valid CTE/CTO. UPPCB was directed to impose and recover environmental compensation for the violations and to utilize the same for environmental restoration through an action plan prepared with the District Environment Committee, finalize the draft mechanism for the proper utilization of fly ash by all coal-based industries, conduct periodic inspections of BEPL's 90 MW plant, and verify compliance regarding effluent treatment and reuse. The Divisional Forest Officer, Shahjahanpur, was directed to verify whether BEPL had developed the mandated 33% green belt and submit a report within six months detailing deficiencies, remedial measures, and budgetary requirements, following which BEPL was required to rectify all deficiencies and file a compliance report within four months. All reports were to be submitted within one month after the respective timelines to the Registrar General, who could place the matter before the Bench for further directions if necessary.

Sardar Satnam Singh & Ors. vs. Central Pollution Control Board & Ors

COUNSEL FOR APPLICANT:
Mr. Prabhjot Singh, Advocate for the Applicant.

COUNSEL FOR RESPONDENT(S):
Mr. Atif Suhrawardy, Advocate for respondent no. 1-CPCB (Through VC).
Ms. Sthavi Asthana, Advocate for respondent no. 2-UPPCB (Through VC).
Mr. Alok Agarwal, Mr. Sanjeev Kr. Singh, Mr. Ankur Kashyap and
Mr. Bhishm Pratap Singh, Advocates for respondent no. 7-BEPL.
None for respondents no. 3, 4, 5 and 6.

CORAM:
HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

RESERVED ON: 19th May, 2025
PRONOUNCED ON: 06th November, 2025

JUDGEMENT

BY HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER

1. Sardar Satnam Singh, Sarpanch, Gram Panchayat Maksudapur, MajraKuiya Maholia Block Banda, District Shahjahanpur, Uttar Pradesh made complaint on public grievances portal of this Tribunal enclosing there with copy of letter petition dated 30.06.2023 signed by him and other residents of Maksudapur, MajraKuiya Maholia Block Banda, District Shahjahanpur, Uttar Pradesh.

2. The above said letter petition has been treated and registered as O.A. No. 602/2023 for exercise of suo motu jurisdiction in accordance with **law laid down by Hon'ble Supreme Court in *Municipal Corporation of Greater Mumbai V/s. Ankita Sinha and others 2021 SSC Online SC 897.***

3. The applicants have raised the grievances regarding causing of air pollution by 90MW power plant of respondent no. 7-M/s. Bajaj Energy Pvt. Ltd.,set up at village Maksudapur. The relevant part of the letter petition enumerating grievances of the applicant is reproduced as under:

> *"**विषयः बजाज पावर प्लांट की प्रदूषित राख के सम्बन्ध में।***
>
> *मकसूदापुर में बजाज एनर्जी प्राइवेट लिमिटेड मकसूदापुर के नाम से 90 मेगावाट का पावर प्लांट गांव मकसूदापुर, थाना बंडा, तहसील पुवायां, जनपद शाहजहाँपुर उत्तर*

प्रदेश में स्थापित हैं। बजाज एनर्जी प्राइवेट लिमिटेड से निकलने वाली राख से अत्यंत प्रदूषण हो रहा है और प्रदूषित राख (फ्लाई ऐश) को शारदा नहर के पूर्वी पटरे पर डाला जा रहा हैं। फ्लाई ऐश (राख) डालने के लिए पावर प्लांट के पास अपनी ऐशडाईक (तालाब) नहीं हैं। हरियाली की व्यवस्था नहीं की गई हैं। जनता का जीना रहना मुश्किल कर दिया हैं। शारदा नहर के पटरे पर गांव के लोगो के निकलने के लिए सरकारी खड़ंजा डाला गया था। जो राख ले जाने वाले ट्रकों द्वारा खराब कर दिया गया हैं। आने जाने वालों को निकलने में परेशानी हो रही हैं। प्रदूषित राख से किसानों की फसलें बर्बाद हो रही हैं। गांव सडिया को जाने वाले मार्ग पर राव डाली जा रही हैं। उड़ रही राख से लोगों का निकलना मुश्किल हैं। बिलसंडा बंडा रोड़ स्थित गांव मकसूदापुर गांव के पास रोड पर राव डालकर पहाड़ बना दिया है।

गांव के लोगो का रहना दुभर कर दिया है।

पावर प्लांट के पास रह रहे लोगों का जीना मुश्किल कर दिया है। गांव के लोग बाहर बैठ नहीं सकते सौ नहीं सकते खाने में बजाज पावर प्लांट जहरीली राख मिल रही है और कपड़ों में प्रदूषित राख से लोग बीमार हो रहे हैं।

1- बजाज पावर प्लांट की प्रदूषित राख का गंदा पानी खन्नौत नदी में डाला जा रहा है जिससे गांव के लोगों के पशु, जंगली पक्षी, मछली, कीड़े मकोड़े पानी पीकर मर रहे हैं।

2- पावर प्लांट की चिमनी से निकलने वाले प्रदूषण और प्रदूषित राख से किसानों की फसलें बर्बाद हो रही हैं। पशुओं के खाने वाले चारे में प्रदूषित राख गिर रही पशु चारा खाकर बीमार हो रहे हैं पशुओं में तरह तरह की बीमारियां फैल रही है

3- बजाज एनर्जी पावर प्लांट की चिमनी से निकले वाली राख को रात में बाईपास कर प्रदूषित राख उड़ा दी जाती है। जिससे सांस, दमा, कैंसर, आंखों आदि रोग तरह-तरह की बीमारियां पनप रही हैं।

4- बजाज पावर प्लांट मकसूदापुर के पास के गांव मकसूदापुर, अजोधापुर, भांभी, उदरा टिकरी, कुरैया कलां, ईसापुर आदि गांवों में प्रदूर्शित राख उड़कर जा रही है।

5- बजाज पावर प्लांट से निकलने वाली राख को ट्रकों में भरकर तिरपाल से ढका नही जाता खुली राख ले जाते समय रोड पर फैल जाती हैं। निकलने वालें लोगों के आंखों में पड़ने से लोगों का एक्सीडेंट हो जाता है।

6- शारदा नहर के पूर्वी पटरे पर राख डालकर कर सैलाब के पानी का नाला बंद कर दिया गया है। पानी न निकलने से पानी का भारी भराव हो जाने से किसानों की फसलें बर्बाद हो जाती हैं।

7- फ्लाई ऐश (राख) डालने के लिए ऐशडाईक (तालाब) नहीं बनाया गया है। राख डालने के लिए किसी भी तरह का कोई भी व्यवस्था नहीं की गई हैं। खुली जगह में राख डाली जा रही हैं।

8- बजाज पावर प्लांट ने हरियाली के लिए किसी भी तरह की व्यवस्था नहीं की हैं।

9- बजाज पावर प्लांट के कैम्पस में बजाज पब्लिक स्कूल है जिसमें क्षेत्र के कई गाँव के सैकड़ो बच्चे पढ़ने आते है। राख के प्रदूषण होने से बच्चे बीमार हो रहे हैं।

अतः श्रीमान जी से निवेदन है कि बजाज पावर प्लांट की राख से प्रदूषण फैल रहा है व पर्यावरण प्रदूषित होने के कारण जनता की जिंदगी से खिलबाड़ कर रहे हैं बजाज पावर प्लांट के प्रति जांच करा कर उचित कार्यवाही करने की कृपा करें।"

4. English Translation by the Registry of the above quoted part of the letter petition reads as under:-

*"**Subject: Regarding polluted ash from Bajaj Power Plant.***

A 90 MW power plant in the name of Bajaj Energy Private Limited Maksudapuris located in village Maksudapur, Thana Banda, Tehsil Puwaiyan, District Shahjahanpur, Uttar Pradesh. The ash coming out of Bajaj Energy Private Limited is causing severe pollution and the polluted ash (fly ash) is being dumped on the eastern bank of Sharda Canal. The power plant does not have its own ash dyke (pond) to dump the fly ash. There is no arrangement for greenery. Life of people has become difficult. A government road was laid on the bank of Sharda Canal for the people of the village to pass through which has been damaged by trucks carrying ash. People are facing problem in passing through. The crops of the farmers are getting ruined due to the polluted ash. Rav is being dumped on the road leading to village Sadiya. It is difficult for people to pass through because of the flying ash. A mountain has been created by dumping Rav on the road near village Maksudapur on Bilsanda Banda Road.

It has made life difficult for the people of the village.

It has made life difficult for the people living near the power plant. The people of the village cannot sit outside and cannot sleep. Poisonous ash from the Bajaj Power Plant is getting mixed in their food and people are getting sick due to the polluted ash in their clothes.

1- The dirty water of polluted ash of Bajaj Power Plant is being dumped in Khannaut river due to which animals, wild birds, fish, insects of the villagers are dying after drinking the water.

2- The pollution and polluted ash coming out of the chimney of the power plant is ruining the crops of the farmers. Polluted ash is falling in the fodder given to the animals, animals are getting sick after eating the fodder. Various diseases are spreading among the animals.

3- The ash coming out of the chimney of Bajaj Energy Power Plant is bypassed at night and the polluted ash is blown away. Due to which various diseases like breathing problems, asthma, cancer, eye problems etc. are developing.

4- The polluted ash is flying away to the villages near Bajaj Power Plant Maksudapur, Ajodhapur, Bhambhi, Udra Tikri, Kuraiya Kalan, Isapur etc.

5- The ash coming out of Bajaj Power Plant is not covered with tarpaulin after loading it in trucks. The loose ash gets spread on the road while being transported. People get into accidents when it fallsin the eyes of the people passing by.

6- The flood water drain has been blocked by dumping ash on the eastern side of Sharda Canal. Due to water not being drained out, there is heavy waterlogging and the crops of the farmers get destroyed.

7- Ashdyke (pond) has not been built to dump fly ash. No arrangements have been made for dumping ash. Ash is being dumped in open spaces.

8- Bajaj Power Plant has not made any arrangements for greenery.

9- Bajaj Public School is situated in the campus of Bajaj Power Plant in which hundreds of children from many villages of the area come to study. Children are falling ill due to ash pollution.

So, it is requested that pollution is spreading from the ash of Bajaj Power Plant and due to environmental pollution, people's lives are being played with. Please investigate get Bajaj Power Plant investigated and take appropriate action."

5. Vide order dated 23.11.2023 this Tribunal impleaded (i) Member Secretary, Central Pollution Control Board (CPCB), (ii) Member Secretary, Uttar Pradesh Pollution Control Board (UPPCB), (iii) Regional Officer, Ministry of Environment, Forest and Climate Change (MoEF&CC), Lucknow, (iv) Representative from Ministry of Power, Govt. of India, (v) Representative from Ministry of Coal, Govt. of India. (vi) Pradhan, Gram Panchayat Maksudapur, MajraKuiya Maholiya, Block Banda, District Shahjahanpur, Uttar Pradesh and(vii) Bajaj Energy Pvt. Limited through its Plant In-charge, Maksudapur, District Shahjahanpur, Uttar Pradesh as respondents no. 1 to 7 and ordered issuance of notices to them.

6. By the above said order this Tribunal alsodirected the Member Secretary, CPCB to get the spot inspection done and ascertain the correct position in respect of compliance of the environmental laws by the Project Proponent and the truthfulness of allegations made in the letter petition about violation of environmental norms by the Project Proponent and to submit a report before this Tribunal within a period of 8 weeks.

7. In compliance of order dated 23.11.2023 inspection of Respondent No.7-BEPL was carried out on 25.01.2024 by a team from Regional Directorate, CPCB, Lucknow along with

officials from Regional Office, UPPCB Bareilly and Interim Inspection Report dated 01.02.2024 wasfiled by CPCB.

8. When the matter came up for hearingbefore this Tribunal on 02.02.2024,learned Counsel for CPCB submitted that since water sample analysis result was awaited final report has not been filed and sought six weeks time for filing of final report. Learned Counsel for the applicant also sought time to file objections against the Interim Inspection Report filed by CPCB by submitting that correct picture has not been presented in the same.The prayers were allowed accordingly.

9. In compliance of order dated 02.02.2024, Final Report was filed by the CPCB by e-mail dated 12.04.2024. The relevant part of the Report is reproduced below:-

B. Factual Status in perspective of Hon'ble NGT order dated 23.11.2023:

S.No.	Hon'ble NGT Order (issues)	Factual Status as on 25.01.2024
1	As per first para "throwing the fly ash by the side of Sharda Canal and that there is no collection pond near the power plant for collecting the fly ash and there is no provision for the greenery"	i. There are two temporary fly ash storage sites having 1.5 acres acre each and during visit it was observed that approx. 1800¬2000 MT ash found at site no 1. Picture 10: Temporary ash storage location I (Latitude: 28.245529, Longitude: 80.002771) Whereas other site was also having approx. 3800-4000 MT storage of ash. Both sites were found located approx. 50 m distance from left side of Sharda canal. During visit it was found that fly ash was being lifted using trucks for NHAI project.

			 Picture 11: Temporary ash storage location 2 (Latitude: 28.237002, Longitude: 80.00355) Picture 12: No spillage around the Location-I Picture 13: No spillage around the location-2 over the agriculture field. ii. The unit has one ash dyke with having area of 6000 MT for storage of the ash. In case of low demand or no demand condition. The fly ash is mostly is being utilize for road making, cement industry, brick manufacturing, filling low lying area as per demand etc. A detail of the fly ash utilization by the industry for the year 2022-23 is attached as Annexure –XII.
	2	As per second para "It is further alleged that on account of pollution caused by the power plant the crops are being damaged and fly ash is thrown on the road leading to Village Sadiya.	i. During visit, visual evidence of crop damage was not observed by the team around the industry. However, in adverse weather conditions possibility of damage of crops around the temporary storage site can't be ruled out.

Picture 14: No crop damage around the site 2

Picture 15: No crop damage around the site I

ii. The team has also visited village Sadiya to ascertain the status of dumping of ash on the either side of road. Ash dumping was not observed by the team during the visit.

Picture 16: No ash either side of road to Sadiya Village

Picture 17: Discussion with residents of Sadiya village

iii. One storm water drain is outside of industry with meager flow meeting to River Khannot. Samples were collected from the drain before the confluence of the river as well as river Khannot upstream and downstream of this

It is also alleged that the polluted water from the

			plant is discharged in river Khannot which is affecting aquatic life and the health of cattles drinking the said water.	drain to ascertain the pollution level in the river. Test of dissolved oxygen (DO) were performed by the team at both location of River Khannot. DO found 9.0 mg/l and 8.9 mg/l at upstream and downstream, respectively which are above 4 mg/l for propagation of wildlife and fisheries as per river water quality criteria under DBU class-D. Picture 18: River Khannot after mixing with the drain
			There is also an allegation of air pollution being caused by the power plant.	iv. The unit has installed air pollution control devices for stack emission as well as fugitive emission control. The team has performed stack emission monitoring (point source) and ambient air quality monitoring to ascertain the air pollution status in referenced area. The analysis results are referred in observation number 14 and 15.
			Further allegation is that the rain water drain is blocked by throwing the fly ash as a result of which the water logging takes place and the crops are destroyed	v. Seepage from Sharda canal was found in the nearby area along with the canal. To maintain the free flow of seepage as well as rain water across the ash storage sites humes pipes were provided at both the sites. However, in adverse weather conditions possibility of water logging around the temporary storage site can't be ruled out. Picture 19: Hume pipe to maintain the free flow vi.During visit, no visual evidence of crop damage was found around the temporary ash storage sites. However, in adverse weather conditions possibility of damage of crops sown around the temporary storage site can't be ruled out.

		 Picture 20: No water logging and no crop destroyed vii.Adverse impact was not found on aquatic life, health of cattles and crop damage as per information provided by Chief Veterinary Officer, Additional Director, Fisheries, District Agriculture Officer, Sahjahanpur. Letter attached as Annexure no. XVI.

Recommendation:

1. As the unit does not have valid Consent to Operate (CTO) under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 form State Pollution Control Board for storage of ash (fly ash and bottom ash) in temporary sites, appropriate direction may be given to the unit.
2. The unit should lift the ash stored in temporary site to the end user on priority basis under the supervision of State Pollution Control Board.
3. The unit should utilize their captive ash dyke/pond for storage purpose and optimize the utilization of ash as per notification F.No. 22-13/2019-IA-III, dated August 28th 2019.
4. The unit should ensure that handling ash must be done in compliance of guideline prepare by CPCB in March, 2019.

10. The applicants filed I.A. No. 58/2024 on 30.01.2024 for permitting filing of copies of Consent under Section 21/22 of the Air (Prevention and Control of Pollution Act,) 1981 to M/s Bajaj Energy Pvt. Ltd. Maksudapur, Conditions of Consent dated 04.02.2020, Environment clearance dated 09.07.2016 annexed and marked as Annexure-P-2 (Colly) and copies of letters dated 25.10.2023, 28.01.2023, 02.03.2023, 25.01.2023, 25.11.2023, 25.10.2023, 25.01.2023, 03.11.2023, 02.03.2023,25.01.2023. The true copies of letters dated 25.10.2023, 28.01.2023,02.03.2023, 25.01.2023, 25.11.2023, 25.10.2023, 25.01.2023, 03.11.2023, 02.03.2023,25.01.2023 annexed and marked as Annexure-P-3 (Colly) made by Applicant No.2 to the various Government Authorities and photographs and videos annexed and marked as Annexure-P-4(Colly).

11. Pursuant to service of notice respondent no. 7-BEPL filed reply dated 15.04.2024. In its reply respondent no. 7-BEPL denied the allegations made in the Application and pleaded that respondent no. 7-BEPL follows a robust ash management system at the said power plant for the control of pollutants as mentioned in the reply. In order to meet any exigency due to low/no ash demand in the market, an ash pond with capacity of 6000MT ash storage is also constructed near the said power plant. The unit has already developed green belt covering an

area of 13.85 acres in and around the power plant and has also developed Miyawaki Forest within the plant premises. In order to ascertain whether there is any impact of power plant operation on nearby crops, aquatic life and animals / cattle's, Respondent no.7-BEPL had also approached Agriculture Dept., Fishery Department and Veterinary Department of District Shahjahanpur and all the said departments have confirmed that there is no report of any adverse impact of operations in the power plant on crops, aquatic life and animals / cattle's in the nearby areas. There is no dumping of fly ash on any side of the road leading to village Sadiya. The same was also evidenced during the site visit conducted by the Joint Committee appointed by this Tribunal. There is no discharge of any polluted water from the power plant. In fact, treated water from the power plant is totally reused for firefighting, coal dust suppression, ash conditioning, dust quenching, and horticulture. Furthermore, the Fishery Department and veterinary Department of District Shahjahanpur have also confirmed that there is no report of any adverse impact of operation of power plant on the aquatic life and animals/cattle's in the nearby areas. The environmental monitoring parameters are well within the permissible limits. There is no blockage of rainwater drains by throwing the ash generated at the Power Plant.Infact, for maintaining the free flow of water seepage from the Sharda canal, hume pipes have been installed. Pertinently, the District Agriculture Officer, Shahjahanpur has also confirmed that there is no crop damage on account of the operation of the Power Plant. Respondent no.7-BEPL has accordingly prayed for the dismissal of the Application with exemplary costs.

12. This Tribunal considered the CPCB report dated 12.04.2024 on 15.04.2024 and observed in order dated 15.04.2024 as under:-

> *"2. In terms of the direction of the Tribunal, the report on behalf of the CPCB has been filed. In paragraph 26 and 29, the status of the dumping of fly ash and utilization is disclosed as under:-*
>
> > *"26. Bottom ash and fly ash are being utilize up to 99.2 % (as per format III submitted by unit to Ministry of Power). The detail of ash utilization provided by unit is attached as Annexure-XII.*
> >
> > *29. During the visit to the temporary storage site, it was found that dumping of ash in temporary storage site was carried out mechanically in moist condition."*
>
> *3. The report also annexes Annexure-15, the undertaking of the Project Proponent dated 29.01.2024 about lifting of the fly ash to be completed by March, 2024. There is no material on record that in term of the said undertaking, the fly ash has been lifted and cleared from the spot.*
>
> *4. Para 14 of the report states:-*

> *"14. A storm water drain flows in front of the unit gate containing wastewater from urban area. The drain ultimately meets to R. Khannot."*

5. In respect of the samples collected from storm water drain, meeting to river Khannot and its analysis report, the parameters taken into account are disclosed to be as under:-

> *"16. The above analysis result of different relevant parameter indicates that their values are in accordance with the prescribed General Standard for discharge in Inland Surface Water as per the E(P)A, 1986, Schedule-VI, no abnormalities were recorded."*

6. It needs to be clarified as to how the prescribed general standard for discharge in Inland Surface Water in terms of E(P)A, 1986, Schedule-VI has been applied to ascertain the abnormalities. We also find that the report records that the unit does not have CTO under the relevant enactment to operate both temporary storage site for storage of ash and the report of the CPCB in this regard is as under:-

"32. The unit does not have Consent to Operate (CTO) under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 form State Pollution Control Board to operate the both temporary storage sites for storage of ash."

7. The report of CPCB also states that the unit has not complied with the condition of CTE and the findings of the CPCB in this regard are as under:-

> *"The unit has obtained Consent to Establish (CTE) but does not comply with conditions (green belt development, boundary wall/wind braking wall, leachate proof surface area etc.) laid down in the CTE issued by State Pollution Control Board."*

8. The EC conditions in respect of fly ash management and setting up of green belt is as under:-

> *"13. Fly ash management shall be done as per fly ash notification of Govt. of India.*
>
> *14. Appropriate safeguard measures to guard against fire hazards shall be undertaken.*

> *15. A green belt of adequate width and density shall be developed around the plant periphery covering at least 33% of the project area."*
>
> *9. Hence, the Project Proponent is required to place on record the status of compliance of all the EC conditionsspecially the conditions relating to management of fly ash and development of green belt. The CPCB is required to clarify the anomalies which have been observed in the earlier part of this order, by filing a fresh report. Let the same be filed within a period of four weeks by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.*
>
> *10. The UPPCB is also directed to file the report at least one week before the next date of hearing by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF."*

13. In compliance thereof, CPCB filed report dated 23.07.2024 that the project proponent has lifted the ash from the temporary ash pond/sites as informed by UPPCB vide letter dated 18.05.2024.

14. Respondent no. 7-BEPL filed reply dated 23.09.2024. The relevant part of the reply reads as under:-

> *"4. Reply with regard to the issue at paragraph 2 (a) above.*
> *It is submitted that all the compliance of the Specific EC Condition dated 09.07.2010 (refer pg. 64 of this paper book for the list of specific conditions) have been duly complied with. The Respondent no. 7 is filling herewith a comprehensive chart showing against each specific condition the Compliance status of the same. The chart also refers to the compliance being noted/referred*
> · *in the first interim CPCB report dated 01.02.2024 (Pg. 47-145 of this PBK)*
> · *in the second CPCB report dated 12.04.2024 (Pg. 146-246 of this PBK)*
> · *in Reply filed by R-7 Bajaj Energy Limited dated 12.04.2024 (Pg. 247-303 of this PBK)*
> · *in the six-monthly EC Compliance report regularly filed by R-7 Bajaj Energy Limited. (A latest such reportfor period October 2023 to March 2024 is separately being filled herein)*
>
> *A Copy of the comprehensive chart showing against each specific condition the Compliance status of the same is being annexed herewith and marked as ANNEXURE-A-1.*

A copy of the six-monthly EC Compliance report for period October 2023 to March 2024 filed by the Respondent No.7 is being annexed herewith and marked as ANNEXURE-A-2."

15. In compliance of Order dated 15.04.2024 inspection of Respondent no.7-BEPL was carried out by officials of Regional Officer, UPPCB, Bareilly on 30.09.2024 and on the basis thereof report dated 21.10.2024 was filed by Regional Officer, UPPCB, Bareilly.

16. For the sake of brevity and avoiding repletion, the submissions made in replies filed by respondent no. 7-BEPL and report filed by UPPCB are not reproduced and will be referred to, discussed and adjudicated upon in the later part of this judgment at appropriate places.

17. The Applicant Sardar Satnam Singh, Sarpanch, Gram Panchayat Maksudapur, MajraKuiya Maholia Block Banda, District Shahjahanpur, Uttar Pradesh has sent application by speed post which was received by this Tribunal on 20.04.2025 for withdrawal/filing of the complaint/letter petition dated 30.06.2023 treated and registered as O.A. No.602 of 2023.

18. We have heard submissions made by Mr. Prabhjot Singh, learned Counsel for the Applicant and Mr. Atif Suhrawardy, learned Counsel for respondent no. 1-CPCB, Ms. Sthavi Asthana, learned Counsel for respondent no. 2-UPPCB, Mr. Alok Agarwal, Mr. Sanjeev Kr. Singh, Mr. Ankur Kashyap and Mr. Bhishm Pratap Singh, learned Counsels for respondent no. 7-BEPL and we have gone through the material on record carefully.

19. In their respective submissions learned Counsels for the parties have reiterated their factual and legal submissions made in the application and replies filed to the same.

I.A. No. 58/2024

20. In view of the reasons given I.A. No. 58/2024 is allowed and the documents mentioned therein are taken on record.

Grievances of the applicants

21. In the present case the applicants have raised the following grievances in the original application:-

(i) the dirty water of polluted ash of Bajaj Power Plant is being dumped in Khannaut river and animals, wild birds, fish, insects are dying after drinking the same.

(ii) ash coming out of the chimney of the power plant is ruining the crops of the farmers and is also falling on the fodder and the animals are getting sick after eating the fodder.

(iii) Ash coming out of the chimney of the Plant is bypassed at night and blown away which flies over to nearby villages Maksudapur, Ajodhapur, Bhambhi, Udra Tikri, Kuraiya Kalan, Isapur etc. due to which various diseases like breathing problems, asthma, cancer, eye problems etc. are developing.

(iv) while being transported out of the Plant,ash is not covered with tarpaulin after loading the same in the trucks and the loose ash gets spread on the road and also falls in the eyes of the persons travelling nearby resulting in accidents.
(v) The flood water drain has been blocked by dumping ash on the eastern side of Sharda Canal due to which the water is not being drained out which causes heavy waterlogging and destroys the crops of the farmers.
(vi) Ashdyke (pond) has not been builtand no arrangements have been made for dumping ash in the Plant due to which ash is being dumped in open spaces.
(vii) Bajaj Power Plant has not made any arrangements for greenery.
(viii)Pollution is spreading from the ash and children studying in Bajaj Public School situated in the campus of the Plant and people living nearby are falling ill due to environmental pollution.

Application of Sardar Satnam Singh for withdrawal/filing of the complaint without taking cognizance

22. It may be observed here that Applicant No.1 Sardar Satnam Singh, Sarpanch, Gram Panchayat Maksudapur, MajraKuiya Maholia Block Banda, District Shahjahanpur, Uttar Pradesh has sent application by speed post which was received by this Tribunal on 20.04.2025 for withdrawal/filing of the original application without taking cognizance thereof on the grounds that the allegations made through various points in the complaint letter made through him were not true; that he has verified and there is no such problem of pollution in BEPL Power Plant and that some people had lodged a complaint through him to get some benefit from the company for their personal interest. The relevant part of the application reads as under:-

*"**विषय: बजाज पावर प्लांट की प्रदूषण राख के संबंध में मेरे द्वारा शिकायती पत्र दिनांक 30.06.2023, की वापसी के संबंध में।***

X X X X

हम आपको सादर अवगत करना चाह रहे हैं कि मेरे द्वारा दिनांक 30.06.2023 को बजाज एनर्जी लिमिटेड मकसूदापुर पावर प्लांट के खिलाफ प्रदूषण होने के संबंध में शिकायत की गई थी, जोकि आसपास के कुछ लोगों द्वारा जानबूझ कर मौखिक रूप से की गई थी और मुझे कंपनी के खिलाफ शिकायती पत्र लिखने के लिए कहा गया था।

अतः जन् प्रतिनिधि होने के कारण मैंने उनकी शिकायतो को संज्ञान में लिया और शिकायती पत्र के माध्यम से मैंने सूचना आप तक पहुंचाई। पत्र में कही गई बातों का संज्ञान लिया और जाकर के मौके पर उसकी सच्चाई का पता लगाया तो मुझे ऐसा प्रतीत हुआ कि शिकायती पत्र में विभिन्न बिंदुओं के माध्यम से कही बातें असत्य पाई गई और पूर्वाग्रह से प्रतीत होती हैं और दुर्भावना बस उनके निजी हितों को साधने के लिए कही गई है, जो की असत्य और निराधार है।

'बजाज पावर प्लांट के अधिकारियों द्वारा यह भी बताया व दिखाया गया गया कि जल एवं वायु प्रदूषण के रोकथाम के लिए उनके यहां ईटीपी एवं ईएसपी लगा हुआ है जो प्रभावी रूप से संचालित होता हुआ पाया गया और खन्नौत नदी में पावर प्लांट द्वारा जनित प्रदूषित जल बहता हुआ नहीं पाया गया ।

अतः श्रीमान जी से निवेदन है कि बजाज पावर प्लांट में प्रदूषण की ऐसी कोई समस्या नहीं है और न हीं मौके पर पाई गई। कुछ लोगों ने निजी स्वार्थ के लिए कंपनी से कुछ लाभ लेने के लिए मेरे द्वारा शिकायत करवाई थी जो की निराधार एवं असत्य है।

अतः कोई समस्या नहीं है कृपया शिकायतों को संज्ञान में ना लें ।"

23. English Translation by the Registry of the above quoted part of the letter reads as under:-

> *"**Subject: Withdrawal of my complaint letter dated 30.06.2023, regarding the pollution of Bajaj Power Plant.***
> *X X X X*
> *I would like to respectfully inform you that on 30.06.2023 a complaint was made by me against Bajaj Energy Limited Maksudapur Power Plant regarding pollution, which was deliberately made verbally by some people in the vicinity and I was asked to write a complaint letter against the company.*
> *Therefore, being people's representative, I took cognizance of their complaints and conveyed the information to you through the complaint letter. I took cognizance of the things said in the letter and went to the spot and found out the truth of it, then it seemed to me that the things said through various points in the complaint letter were not true and appear to be based on prejudice and ill will. It has been said to serve their personal interests.*
> *It was also told and shown by the officials of Bajaj Power Plant that for prevention of water and air pollution, they have ETP and ESP installed which were found to be operating effectively and polluted water generated by the power plant was not found flowing into the Khannaut river.*
> *Therefore, I request you that there is no such problem of pollution in Bajaj Power Plant and neither was it found on the spot. Some people had lodged a complaint through me to get some benefit from the company for their personal interest, which is baseless and untrue.*
> *So there is no problem, please do not take cognizance of the complaints."*
>
> *(Emphasis added)*

24. It may be observed here that the letter petition treated as original application was signed and filed by number of villagers besides Applicant no.1 Sardar Satnam Singh and the same cannot be permitted to be withdrawn or filed without any action on the application made by Applicant No.1 Sardar Satnam Singh alone which is liable to be discarded/dismissed on this ground alone.

25. Further, above said letter petition is based on public injury/cause of action and has been made/filed in public interest seeking remediation of environmental grievances raised to serve the cause of protection and improvement of environment and in the facts and circumstances of the case applicant No.1 Sardar Satnam Singh cannot be permitted to withdraw the same and application sent by applicant No.1 Sardar Satnam Singh for permitting

withdrawal thereof is liable to dismissed on this ground also. Reliance in this regard may also be placed on observations made by **Hon'ble Supreme Court of India in Sheela Barse Vs. Union of India: AIR 1988 SC 2211: (1988) 4 SCC 226: Law Finder Doc Id # 89691** and by this Tribunal in para no. 29 of order dated 27.04.2023 passed in**Appeal no. 07/2022 titled as GhanaiVs. SEIAA, Uttar Pradesh and others**.

26. Further, as held in **Municipal Corporation of Greater Mumbai Vs. Ankita Sinha (SC) : AIR 2021 Supreme Court 5147 : Law Finder Doc Id # 1890858** this Tribunal has been conferred power to take suo motu cognizance in discharge of its functions under the National Green Tribunal Act, 2010 and has to enquire into and adjudicate upon the substantial environmental questions raised in the Original Application. Even though in the subsequent application sent by speed post Applicant no. 1 Sardar Satnam Singh has submitted that the allegations made through various points in the complaint letter made through him were not true; that he has verified and there is no such problem of pollution in BEPL Power Plant and that some people had lodged a complaint through him to get some benefit from the company for their personal interest but this statement cannot be accepted on face value.In consonance with its statutory obligations under the National Green Tribunal Act, 2010, this Tribunal has to respond to the duly verified factual position in the present case with requisite remedial/ameliorative measures for protection of environment and this Tribunal cannot take refuge under any technical dispensation by dismissal of present application as withdrawn on the basis of above said application sent by applicant no. 1.

27. The grievances raised by the applicants have to be considered, enquired into and adjudicated upon in the light of the verification of the factual position and material produced by the applicants and the respondents before this Tribunal.

28. In view of the grievances raised by the applicants following substantial environmental questions arise for adjudication in the present case:-

(i) Whether Respondent no.7-BEPL has violated EC/CTO/CTE Conditions and environmental norms regarding management and disposal of fly ash;

(ii) Whether Respondent no.7-BEPL has violated EC/CTE/CTO Conditions and environmental norms for prevention and control of water pollution;

(iii) Whether Respondent no.7-BEPL has violated EC/CTE/CTO conditions and environmental norms for prevention and control of air pollution; and

(iv) Whether Respondent no. 7-BEPL has violated EC/CTE/CTO Conditions and environmental norms regarding development of green belt.

About BEPL Power Plant

29. However, before proceeding further with the same, salient observations regarding BEPL Power Plant made in reports filed by the CPCB and the UPPCB on the basis of

inspection of M/s Bajaj Energy Limited at Village Maksudapur, PO. Maksudapur, Tehsil - Powayan, District Shahjahanpur (U.P.)and available records may be noticed as under:-

1	Name of the industry & Address		Bajaj Energy Limited Unit-Maqsoodapur Village & Post- Maqsoodapur, Tehsil-Powyan, District-Shahjahanpur, Uttar Pradesh Pin- 242042			
2	Name of Contact person with designation Phone & Fax No:		Sh. Sameer Sabat, Unit Head Mob. No. 9675501913 Ram Prakash Singh, Sr. Manager-EHS Mob. No. 9536908462			
3	Year of commissioning		2011-12			
4	Category of Industry		Large			
5	Installed Capacity		2x 45 MW= 90 MW			
6	Electricity Generated & raw material requirement					
			Raw material requirement per KWH			
	Description	**Electricity**	**Coal (Kg)**	**Oil (KL)/Gas**	**Water (KL)**	
		Generated (MW)				
	2023-24	286682	238109.26	-	790750	
	(till Dec.23)					
	2022-23	291559	238784	-	800642	
	2021-22	198382	156463	-	586494	
7	Process details with Material Balance: Bajaj Energy Limited Unit- Maqsoodpur, Boiler-2x190 TPH CFBC boilers with fuel as Indian Coal from Central Coal field /National coal field Ltd. Make of boiler are Thysan Krupp (Single drum, Cold Cyclone with natural circulation & Balance draft) with operation steam pressure & temp at 110 kg/cm2 & 540 degree centigrade. Turbine- 2x45 MW is Siemens make with rated Input pressure & Temp of 105 Kg/cm2, 535°C DM Plant- Make Ion Exchange- Capacity of 24 m3/Hours CHP- Make Techpro having capacity 160 TPH Cooling Tower- Make Paharpur, Holding Capacity- 16,200 KL					
8.	Fuel Consumption					
	Sr No	Type of Fuel	2023-24 (upto 25.01.2024)	2022-23	2021-22	
	1.	Coal	238109.26	238784	156463	
	2.	Furnace oil	29.348	44.511	56.7	
	Details of Coal being utilized:					
	Year	Coal Consumption, (in Ton)	Grade of coal	% Ash	% Sulphur	Calorific Value (kcal/kg)
	2023-24 (upto 25.01.2024)	238109.26	Indian (CCL/NCL)	38.66	0.34	3802
	2022-23	238784		38.36	0.35	3761
	2021-22	156463		34.86	0.43	3626
	2020-21	143237		31.27	0.41	3943

Statutory Permissions

30. The unit obtained Environmental Clearance dated 09.07.2010 (at pages no. 64 to 67 of the paper book) from SEIAA, UP for the installation of 90 MW Power plant based on coal as fuel in the name of M/s Hindusthan Limited (Sugar unit) further renamed as M/s Bajaj Energy Pvt. Limited. The unit has obtained NOC dated 23.09.2022 (at pages no. 70 to 79 of the paper book) from Ground Water Department, Ministry of Jal Shakti, Govt. of Uttar Pradesh, which is valid up-to 17.06.2026. The unit has obtained Consolidated Consent to Operate and Authorization (CCA) dated 02.12.2023(at pages no. 83 to 87 of the paper book) under the Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974 from UPPCB, which is valid up-to 31.12.2025. Unit has also obtained authorization dated 29.01.2021(at pages no. 88 to 89 of the paper book) for handling of Hazardous and other wastes (Management and Transboundary Movement) Rules, 2016 from UPPCB, which is valid up-to 29.01.2026.

Question (i) Whether Respondent no.7-BEPL has violated EC/CTO/CTE Conditions and environmental norms regarding management and disposal of fly ash?

31. The applicants raised the grievances in the original application that that Respondent no. 7-BEPL is throwing fly ash by the side of Sharda Canal and on the road leading to village Sadiya; that there is no collection pond near the power plant for collecting the fly ash; and that rain water drain is blocked by throwing the fly ash as a result of which the water logging takes place and the crops are damaged.

32. In its reply Respondent no. 7-BEPL has submitted that the allegations made in the original application that the Power Plant is causing pollution by throwing the fly ash by the side of Sharda Canal is false in as much as the quantity of fly ash generated in the power plant is very low because the generation capacity of the said power plant is only 2 X 45 MW (90 MW). The said plant operates for 230-240 days in a year because of frequent demand based reserve shutdowns give by the Uttar Pradesh Power Corporation Limited (UPPCL). The said power plant operates at very low annual Plant Load Factor (PLF). The Annual PLF for FY 2023-2024 was only 44.21%.

33. The explanation furnished as mentioned above by Respondent no.7-BEPL is devoid of any merit as whatever the quantity of fly ash, low or high, Respondent no. 7-BEPL has to manage and dispose of the fly ash in accordance with the notifications issued by MoEF & CC, and EC/CTE/CTO conditions and directions issued by Hon’ble Supreme Court and this Tribunal as the case may be.

34. In EC No. 1077/SEAC/366/209 dated 09.07.2010 following conditions were imposed regarding disposal and management of fly ash:-

> *"13Fly ash management shall be done as per fly ash notification of Govt. of India.*
> *14.Appropriate safeguard measures to guard against fire hazards shall be undertaken."*

35. Para A(1) and Para A(2) of the Ash Notification dated 31.12.2021 (as subsequently amended on 30.12.2022 and 01.01.2024) prescribe that every coal or lignite based thermal power plant (including captive or co-generating stations or both) shall be primarily responsible to ensure 100 per cent utilization of ash (fly ash, and bottom ash) generated by it in an eco-friendly manner only for the ecofriendly avenues/purposes prescribed at A(2) (i) to (xi) which reads as under :-

i. Fly ash based products viz. bricks, blocks, tiles, fiber cement sheets, pipes, boards, panels,
ii. Cement manufacturing, ready mix concrete;
iii. Construction of road and fly over embankment, Ash and Geo-polymer based construction material;
iv. Construction of dam;
v. Filling up of low lying area;
vi. Filling of mine voids;
vii. Manufacturing of sintered or cold bonded ash aggregate;
viii. Agriculture in a controlled manner based on soil testing;
ix. Construction of shoreline protection structures in coastal districts;
x. Export of ash to other countries;
xi. Any other eco-friendly purpose as notified from time to time.

36. Vide order dated 02.02.2024 this Tribunal directed CPCB to get the spot inspection done and ascertain the correct position in respect of compliance of the environmental laws by the Project Proponent and the truthfulness of the allegations made in the letter petition about violation of environmental laws by respondent no. 7-BEPL.

37. In compliance of order dated 23.11.2023 inspection of Respondent No.7-BEPL was carried out on 25.01.2024 by a team from Regional Directorate, CPCB, Lucknow along with officials from Regional Office, UPPCB Bareilly. CPCB filed Interim Inspection Report dated 01.02.2024 and sought time as water sample analysis result was awaited and thereafter CPCB filed Final Report by email dated 12.04.2024.The relevant part of the final report reads as under:-

17. Ash Management
Fly Ash Generation: 82134 TPA
Bottom ash generation/disposal practiced: 9481 TPA
Measures taken for ash handling /collection/disposal: 03 No's Silo Installed.
Details of silos-Number & capacity: Fly Ash Silo-01=200 MT, Fly Ash Silo-02=200 MT, Silo (Bottom Ash)-03=150 MT

18. Fly Ash Utilisation / Disposal (FY - 2023-24 Up to December 2023)

Sr No	Utilization for	Quantity (MT)
1	Brick manufacturing	8693.72
2	Cement Industries	37440.52

X X X X X

26. Bottom ash and fly ash are being utilize up to 99.2 % (as per format III submitted by unit to Ministry of Power). The detail of ash utilization provided by unit is attached as Annexure-XII.

27. The unit has installed two silos of 200 MT capacity each for fly ash and one silo with 150 MT capacity for storage of bottom ash.

28. The transportation of fly ash to cement industry from the unit is carried out by ash truck bulker

29. During the visit to the temporary storage site, it was found that dumping of ash in temporary storage site was carried out mechanically in moist condition.

30. The unit has one permanent ash dyke in vicinity of unit. Two temporary storage sites were also seen at left bank of Sharda canal. However, no Consent to Operate (CTO) was obtained from State Pollution Control Board for these temporary storage sites.

31. The unit has obtained Consent to Establish (CTE) dated 28.09.2021 (attached as Annexure-XIII) for one site of Latitude: 28.245529, Longitude: 80.002771, but does not comply with conditions (green belt development, boundary wall/wind braking wall, leachate proof surface area etc.) laid down in the CTE issued by State Pollution Control Board. The other temporary storage site i.e. at Latitude: 28.237002, Longitude: 80.00355 was not obtained Consent to Establish (CTE).

32. The unit does not have Consent to Operate (CTO) under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 form State Pollution Control Board to operate the both temporary storage sites for storage of ash.

33. Ash from the both temporary sites was being lifted by the M/s SRSC Infra Private limited for NHAI project Shahjahanpur bypass of NH 731 (PKG1). (Letter attached as Annexure-XIV for reference). Under taking for clearing ash stored at both sites submitted by the unit. (undertaking attached as Annexure-XV)

Picture 7: Permanent ash dyke for storage of ash (Latitude: 28.247362, Longitude: 79.995065)

Picture 8: No spillage around the site over the agriculture field

Picture9: Ash lifted by NHAI for utilization using trucks

X X X X X

B. Factual Status in perspective of Hon'ble NGT order dated 23.11.2023:

S.No.	Hon'ble NGT Order (issues)	Factual Status as on 25.01.2024
1	As per first para "throwing the fly ash by the side of Sharda Canal and that there is no collection pond near the power plant for collecting the fly ash and there is no provision for the greenery"	i. There are two temporary fly ash storage sites having 1.5 acres acre each and during visit it was observed that approx. 1800¬2000 MT ash found at site no 1. Picture 10: Temporary ash storage location I (Latitude: 28.245529, Longitude: 80.002771) Whereas other site was also having approx. 3800-4000 MT storage of ash. Both sites were found located approx. 50 m distance from left side of Sharda canal. During visit it was found that fly ash was being lifted using trucks for NHAI project.

Picture 11: Temporary ash storage location 2 (Latitude: 28.237002, Longitude: 80.00355)

Picture 12: No spillage around the Location-I

Picture 13: No spillage around the location-2 over the agriculture field.

ii. The unit has one ash dyke with having area of 6000 MT for storage of the ash. In case of low demand or no demand condition. The fly ash is mostly is being utilize for road making, cement industry, brick manufacturing, filling low lying area as per demand etc. A detail of the fly ash utilization by the industry for the year 2022-23 is attached as Annexure –XII.

	2	As per second para "It is further alleged that on account of pollution caused by the power plant the crops are being damaged and fly ash is thrown on the road leading to Village Sadiya.	i. During visit, visual evidence of crop damage was not observed by the team around the industry. However, in adverse weather conditions possibility of damage of crops around the temporary storage site can't be ruled out. Picture 14: No crop damage around the site 2 Picture 15: No crop damage around the site I ii. The team has also visited village Sadiya to ascertain the status of dumping of ash on the either side of road. Ash dumping was not observed by the team during the visit. Picture 16: No ash either side of road to Sadiya Village

Picture 17: Discussion with residents of Sadiya village

iii. One storm water drain is outside of industry with meager flow meeting to River Khannot. Samples were collected from the drain before the confluence of the river as well as river Khannot upstream and downstream of this drain to ascertain the pollution level in the river. Test of dissolved oxygen (DO) were performed by the team at both location of River Khannot. DO found 9.0 mg/l and 8.9 mg/l at upstream and downstream, respectively which are above 4 mg/l for propagation of wildlife and fisheries as per river water quality criteria under DBU class-D.

v. Seepage from Sharda canal was found in the nearby area along with the canal. To maintain the free flow of seepage as well as rain water across the ash storage sites humes pipes were provided at both the sites. However, in adverse weather conditions possibility of water logging around the temporary storage site can't be ruled out.

Picture 19: Hume pipe to maintain the free flow

vi. During visit, no visual evidence of crop damage was found around the temporary ash storage sites. However, in adverse weather conditions possibility of damage of crops sown around the temporary storage site can't be ruled out.

			It is also alleged that the polluted water from the plant is discharged in river Khannot which is affecting aquatic life and the health of cattles drinking the said water.	 Picture 20: No water logging and no crop destroyed vii. Adverse impact was not found on aquatic life, health of cattles and crop damage as per information provided by Chief Veterinary Officer, Additional Director, Fisheries, District Agriculture Officer, Sahjahanpur. Letter attached as Annexure no. XVI.

38. This Tribunal considered the Final Report and observed in its order dated 15.04.2024 as under:-

> *"2. In terms of the direction of the Tribunal, the report on behalf of the CPCB has been filed. In paragraph 26 and 29, the status of the dumping of fly ash and utilization is disclosed as under:-*
>
> *"26. Bottom ash and fly ash are being utilize up to 99.2 % (as per format III submitted by unit to Ministry of Power). The detail of ash utilization provided by unit is attached as Annexure-XII. 29. During the visit to the temporary storage site, it was found that dumping of ash in temporary storage site was carried out mechanically in moist condition."*
>
> *3. The report also annexes Annexure-15, the undertaking of the Project Proponent dated 29.01.2024 about lifting of the fly ash to be completed by March, 2024. There is no material on record that in term of the said undertaking, the fly ash has been lifted and cleared from the spot."*

39. Vide order dated 15.04.2024 this Tribunal directed CPCB to clarify the abovesaid anomalies.

40. **In compliance thereof,CPCB filed report dated 23.07.2024 thatthe project proponent has lifted the ash from the temporary ash pond/sites as informed by UPPCB vide letter dated 18.05.2024.**

41. In its reply dated 12.04.2024 Respondent No.7-BEPLhas submitted that Respondent no.7-BEPL follows a robust ash management system at the said power plant as mentioned below:

> *"a. For collection of the ash generated during plant operation, 3 nos of dry ash collection siloes are installed.*
> *b. No wet ash disposal system is installed at the power plant.*
> *c. In order to meet any exigency due to low/no ash demand in the market, an ash pond with capacity of 6000MT ash storage is also constructed.*
> *d. The Power Plant has achieved 100% Ash utilisation. Bed ash, which is primarily used as sand replacement/brick making in construction activities is taken by the vendors. During low demand, this bed ash, in very small quantity, is temporarily stored by such vendors at their land and once demand increases, it is used immediately.*
> *e.* ***There is no throwing of ash by the side of canal, but is kept temporarily on a secured land with side bunds and regular water sprinkling to avoid any slippage into adjacent land or fugitive emissions.***
> *A Photograph of the dry ash collection silos at the answering Respondent's Power Plant is annexed hereto as ANNEXURER-7/1.*
> *A Photograph of the Ash pond of the answering Respondent is annexed hereto as ANNEXURE-R-7/2.*
> *A copy of the monthly abstract of Ash Generation and utilisation for the period 01.04.2023 till 31.03.2024 is annexed hereto as ANNEXURE-R-7/3.*
> *Copies of the Photograph showing bed ash temporarily stored by vendors at their land before sale/disposal is annexed hereto as ANNEXURE-R-7/4 (Colly)."*

42. Vide order dated 15.04.2024 this Tribunal directed Respondent no. 7-BEPL to place on record the status of compliance of all the EC conditions relating to management of fly ash.

43. In compliance thereof reply dated 23.09.2024 has been filed by respondent no. 7-BEPL. The relevant part of the reply filed by respondent no. 7-BEPL is reproduced below:-

> *"5. Reply with regard to the issue at paragraph 2 (b) above.*
>
> *i. It is submitted that the Project Proponent has fully complied with all the condition relating to fly ash management and development of green belt.*
> *ii. It is submitted that with regard to the conditions related to the fly ash it is specified in the Environmental Clearance dated 09.07.2010*

that "Fly Ash management shall be done as per the fly ash notification of Government of India"

iii. It is submitted that, fly ash is being managed in line with the fly ash Notifications issued from time-to-time. Pertinently the said Notifications were periodically issued on the dates being 14.09.1999, 28.07.2003, 03.11.2009, 28.08.2019 and 31.12.2021 (issued in suppression of notification dated 14.09.1999 and its subsequent amendments)

iv. It is submitted that under the said Notification 100% utilization of fly ash is required to be achieved in the manner as set out in the said Notifications. The same is already achieved by Project Proponent.

v. It is submitted that in line with statutory requirements, a fly ash utilization report is also submitted to the Central Pollution Control Board (CPCB) on an annual basis and Central Electricity Authority on six-monthly and annual basis. A true copy of the monthly generation and utilisation of the fly ash for year 2022¬2023, and 2023-2024 is being annexed herewith and marked as ANNEXURE-A-3.

vi. It is submitted that the fly ash report is also uploaded on the online portal especially made for the same by the Central Pollution Control Board. Screenshot of the report updated on the CPCB portal are being annexed herewith and marked as ANNEXURE-A-4.

vii.It is submitted that in accordance with Ash Utilization Notification dated 31.12.2021, ash generation and disposal at power plant is also required to be audited by the Central Pollution Control Board (CPCB) approved auditors. Ash audit for FY 2022-23 for the Project Proponent has been carried out by Prof. Arun Prasad, Department of Civil Engineering, Indian Institute of Technology (BHU), Varanasi and report is directly sent to CPCB, New Delhi. A true copy of the Audit Completion Certificate, as issued by Prof. Arun Prasad is being annexed herewith and marked as ANNEXURE-A-5."

44. Vide order dated 15.04.2024 this Tribunal also directed Respondent no.2- UPPCB to file report.

45. In compliance thereof Regional Officer, UPPCB Bareilly, Uttar Pradesh has filed report dated 18.10.2024. In the Inspection Report status of pollution control measures has been given as under:-

11	*Ash Management* *A)Fly Ash Generation: 97969.35 MT/Anumn* *B)Bottom ash generation/disposal Practiced: 10601.91 MT/Anumn* *C)Measure taken for ash handling/collection/disposal: 03 no's Silo installed*

	D)Details of silos-Number & capacity: *Fly Ash Silo-01=200MT, Fly Ash Silo-02=200MT, MT/Anon.*	
12	*Fly Ash utilization/disposal (FY March 2023-March 2024)*	
Sr. No.	*Utilization for*	*Quantity (MT)*
1	*Brick Manufacturing*	*10398.73 MT/Anumn.*
2	*Cement industries*	*49664.00 MT/Anumn.*

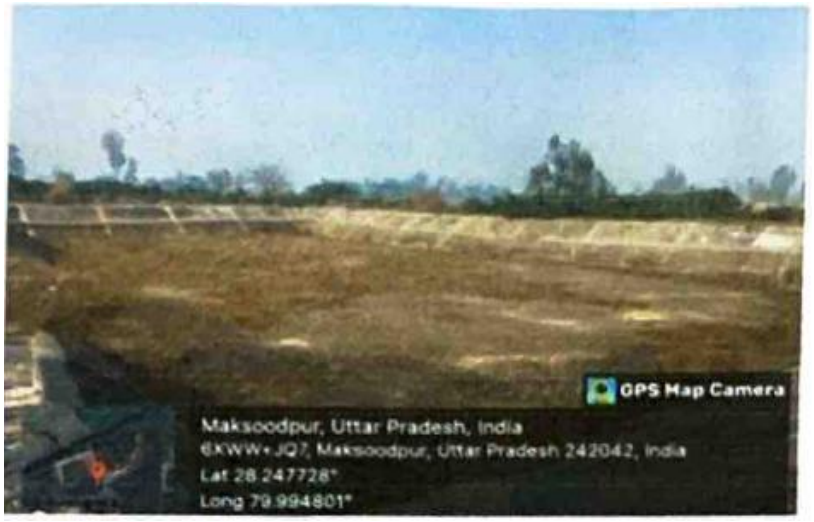
X X X X X

- *The unit has installed two silos of 200MT capacity each for fly ash and one silo with 150 MT capacity for storage of bottom ash.*

- *The transportation of fly ash to cement industry from the unit is carried out by ash truck bulker.*

Status of Ash Dumping Area/Site :-

1. Permanent ash dyke:-*The unit has one permanent ash dyke with having area of 6000 MT for storage of the ash. In case of low demand or no demand condition. The fly ash is mostly is being utilize for mad making, cement industry, brick manufacturing, filling low-lying area as per demand etc.*



2. Temporary Ash storage site-1:- *During the visit one temporary storage site was in operation, it was found that dumping of ash in*

temporary storage site was carried out mechanically in moist condition. The unit has obtained Consent to Establish (CTE) for temporary storage site via vide letter dated 16.05.2024 (Attached as Annexure-A5) for one site of Latitude: 28.242389, Longitude: 79.996493. but it was found that green belt development is not sufficient, boundary wall/wind braking wall was not there at the site. (Notice issued for development of green belt and construction of boundary wall via vide letter dated 30.09.2024).

3. Temporary Ash storage site-2:-

· *During the visit it was observed that two closed temporary Ash storage sites were also located at left bank of Sharda canal. One has Area of about 1.5 acres, in village MaksudapurtehseelPowayan District-Shahjahanpur GPS Coordinate 28.237595, 80.003324, earlier, the industry was used to store the fly ash. During the inspection, it was noticed that no fly ash is being stored. The industry representative informed that the stored fly ash has been used for the construction of highways by M/s SRSC Infra Pvt. Ltd. Mathura. At the time of inspection, the above mentioned site was found to be at hydraulic level and no dust emission was found. It was found in normal condition.*

4. Temporary Ash storage site*-3:- Other one has Area of about 1.5 acres, in village MaksudapurtehseelPowayan District-Shahjahanpur GPS Coordinate 28.237583, 80.003388 total area approx 1.5acre. earlier, the industry was used to store the fly ash at the site. At the time of inspection no fly ash storage was found. The industry representative informed the UPPCB team that the stored fly ash has been used for the construction of highways by M/s SRSC Infra Pvt. Ltd. Mathura. At the time of inspection, the above mentioned site was found to be at hydraulic level and no dust emission was found. It was found in normal condition.*

X X X X"

46. In compliance with order dated 23.11.2023 team from CPCB Regional Directorate, Lucknow carried out the inspection on 25.01.2024 and in compliance with order dated

15.04.2024 Officials from Regional Office, UPPCB, Bareilly carried out inspection on 30.09.2024.In their reports CPCB and UPPCB have mentioned that respondent no. 7-BEPL has one ash dyke having capacity of 6000 MT for storage of ash in case of low demand or no demand condition. However, during the inspection CPCB and UPPCB did not observe any storage of ash in permanent ash dyke and due to that reason did not mention any quantity of fly ash stored in permanent ash dyke.

47. It may be observed here that in its report dated 12.04.2024 CPCB has mentioned that the unit has **two temporary storage sites** while in its report dated 18.10.2024 UPPCB has mentioned that the unit has **three temporary storage sites**. CPCB and UPPCB have mentioned that **the unit had obtained consent to establish for one temporary storage site** as referred above but **CPCB found that one temporary storage site was unauthorized while UPPCB found that two temporary storage sites were unauthorized as the unit had not obtained CTE/CTO from UPPCB with respect to the same**.

48. As per CPCB report, CPCB found that approximately 1800-2000 MT ash was lying at site no 1 **(Latitude: 28.245529, Longitude: 80.002771).** The unit had obtained CTE dated 28.09.2021 for above said site (**Latitude: 28.245529, Longitude: 80.002771)** but did not comply with **conditions regarding green belt development, boundary wall/wind breaking wall, leachate proof surface area etc. laid down in the CTE issued by** UPPCB.

49. UPPCB found during its visit that one temporary storage site (**Latitude: 28.242389, Longitude: 79.996493)** was in operation, it was found that dumping of ash in temporary storage site was carried out mechanically in moist condition. The unit had obtained CTE for temporary storage site (**Latitude: 28.242389, Longitude: 79.996493)** vide letter dated 16.05.2024 **but it was found that green belt development was not sufficient, boundary wall/wind breaking wall was not there at the site.**

50. It may be observed here that the temporary storage sites regarding which respondent no. 7-BEPL is stated by CPCB and UPPCB to have obtained CTE from UPPCB **have different geo-coordinates**(geo-coordinates given in CPCB report are **Latitude: 28.245529, Longitude: 80.002771** andgeo-coordinates given in UPPCB report are **Latitude: 28.242389, Longitude: 79.996493).** Geo-coordinates of one unauthorized temporary storage site found by CPCB and two unauthorized temporary storage sites found by UPPCB are different (geo-coordinates of unauthorized temporary storage site found by CPCB are **Latitude: 28.237002, Longitude: 80.00355** and geo-coordinates of unauthorized temporary storage site found by UPPCB are **GPS Coordinate 28.237595, 80.003324 and GPS Coordinate 28.237583, 80.003388**).

51. Respondent no. 7-BEPL is stated by CPCB and UPPCB to have obtained CTE from UPPCB for temporary storage sites but both the CTEs are of different dates and site mentioned by CPCB was granted CTE by UPPCB on 28.09.2021 and site mentioned by UPPCB was granted CTE by UPPCB on 16.05.2024.

52. **However, both CPCB and UPPCB found that respondent no. 7-BEPL had not** complied **with conditions imposed by both CTE dated 28.09.2021 and 16.05.2024.**

53. In its report CPCB has mentioned that respondent no. 7-BEPL had not obtained CTO from UPPCB regarding one temporary storage site in respect of which it had obtained CTE dated 28.09.2021 and in its report UPPCB has mentioned that respondent no. 7-BEPL had obtained CTE dated 16.05.2024 in respect of one temporary ash storage site but UPPCB has not mentioned about obtaining of CTO by respondent no. 7-BEPL from it regarding above said site.

54. It may also be observed here that in its report UPPCB has mentioned that notice was issued to respondent no. 7-BEPL vide letter dated 30.09.2024 for development of green belt and construction of boundary wall **but UPPCB has not submitted any further report to mention about action taken by respondent no. 7-BEPL for compliance or reply submitted by respondent no. 7-BEPL and further action taken by UPPCB on the basis of reply submitted.**

55. CPCB found approximately 1800-2000 mt fly ash at site no. 1 and approximately 3800-4000 mt ash at site no. 2. In its report filed vide affidavit dated 18.10.2024 (pages no. 382 to 397) UPPCB has mentioned about temporary ash storage site no. 1 being in operation in which dumping of ash was carried out mechanically in moist condition but in its report UPPCB has not mentioned about the quantity of fly ash stored in temporary ash storage site no. 1.

56. **Since respondent no. 7-BEPL did not obtain CTO from UPPCB regarding any temporary ash storage site, storage of fly ash by respondent no. 7-BEPL in the temporary ash storage sites found by CPCB and UPPCB was illegal/unauthorized.**

57. In the present case CPCB, UPPCB and respondent no. 7-BEPL have not produced any material before this Tribunal to show that the land of the temporary ash storage sites found by **CPCB** and UPPCB belonged to respondent no. 7-BEPL. Consequently, factual position regarding ownership/possession of the land of temporary ash storage sites found by CPCB and UPPCB cannot be ascertained.

58. However, non-production of material regarding ownership of the land of temporary ash storage site is not of much significance as the allegations made by the applicants that respondent no. 7-BEPL was not storing fly ash in permanent ash dyke and was storing fly ash in unauthorized sites near Sharda canal in violation of environmental norms are proved.

59. **In its report CPCB has mentioned that both the temporary storage sites were found located approximately 50 meters distance from left side of Sharda canal. In its**

report UPPCB has also mentioned that two closed temporary Ash storage sites were located at left bank of Sharda canal.

60. It may be observed here that UPPCB had granted CTE dated 28.09.2021 in respect of one of the temporary ash storage site which was admittedly located approximately at the distance of 50 meters from left side of Sharda canal.

61. We are of the considered view that grant of CTE for temporary ash storage site at the distance of 50 meter from left side of Sharda canal was not proper as the same involved the possibility of pollution of canal water due to strong wind/heavy rain.

62. **It may also be observed here that UPPCB had granted CTE dated 28.09.2021 and 16.05.2024 but in CTE details of the land and also geo-coordinates thereof were not mentioned and the CTE did not specifically mention that the same were granted for temporary ash storage sites and the CTE were granted without due application of mind in format used for grant of CTE for production units. UPPCB has not produced copies of the application submitted by respondent no. 7-BEPL for grant of CTE to disclose the reasons given for such temporary storage of ash in open spaces outside the premises of the Power Plant. We are of the considered view that respondent no. 7-BEPL has sufficient permanent ash dyke and silos and could not store fly ash outside the premises of the Power Plant without authorization in this regard in the EC and also without any lawful/valid justification for the same and UPPCB could not grant CTE simply on the ground of respondent no. 7-BEPL applying for the same without taking into consideration adverse environmental impact of such temporary storage.**

63. We find that despite noticing violations on the part of respondent no.7-BEPLin storage of ash in unauthorized temporary sites, the CPCB did not issue any directions to the UPPCB and did not initiate any enforcement action concerning the unauthorized establishment and operation of the fly ash storage sites. The UPPCB also failed to exercise its statutory mandate and did not issue any directions to respondent no. 7-BEPL **and** did not take appropriate remedial measures to abate the environmental pollution arising from unauthorized storage of fly ash near the canal and agricultural land. UPPCB has also not taken any action against respondent no. 7-BEPL for violation of environmental norms and non-compliance of CTE conditions and has not imposed any environmental compensation on respondent no. 7-BEPL in accordance with **"Polluter Pays Principle"** to meet the costs to be incurred for remediation of environmental damage thereby caused.

64. Hon'ble Supreme Court has, in its Judgment dated 04.08.2025 passed in **Civil Appeal No(S). 757-760 of 2013 titled as Delhi Pollution Control Committee Vs. Lodhi Property Co. Ltd. etc. alongwith connected Civil Appeal No.(S)1977-2011 Of 2013,**held that the State Pollution Control Board can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an ex-ante measure towards potential environmental damage in exercise of powers under Sections 33A and 31A

of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 but the power to impose or collect restitutionary or compensatory damages or the requirement to furnish bank guarantees as an ex-ante measure under Sections 33A and 31A of the Water and Air Acts shall be enforced only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation.

65. **UPPCB is directed to take appropriate action for imposition of environmental compensation on respondent no. 7-BEPL for violation of EC/CTE/CTO** conditions **and environmental norms and also for realization thereof and thereupon for utilization of the same for remediation of environmental damage caused by preparing and implementing an action plan in consultation with District Environment Committee, District Shahjahanpur.**

66. In its report UPPCB has mentioned that respondent no. 7-BEPL is utilizing ash for road making, cement industry, brick manufacturing, filling low lying area as per demand etc.

67. Respondent no. 7-BEPL has produced copies of statements for the period from 01.04.2022 to 31.03.2023 and from 01.04.2023 to 31.03.2024 and the relevant part of the statements is reproduced below:-

Period of Report : 1st April, 2022 to 31st March, 2023						
SL no	**ASH GENERATION AND UTILIZATION (in LMT)**					
	Month	**Coal consumed**	**Ash Content of Coal**	**Ash generation**	**Ash Utilized**	**% Ash Utilization**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**
1	April-22	0.26809	27.32	0.07325	0.07017	95.8
2	May-22	0.16833	37.73	0.06351	0.06681	105.2
3	June-22	0.21887	42.09	0.09213	0.09295	100.9
4	July-22	0.31626	43.00	0.13600	0.12875	94.7
5	August-22	0.34257	41.15	0.14096	0.13553	96.1
6	September-22	0.20438	41.40	0.08461	0.08715	103.0
7	October-22	0.05461	41.39	0.02261	0.02994	132.5
8	November-22	0.00000	0.00	0.00000	0.00000	0.0
9	December-22	0.03335	38.31	0.01278	0.00780	61.0
10	January-23	0.37268	36.90	0.13751	0.14218	103.4
11	February-23	0.17900	38.41	0.06875	0.06257	91.0
12	March-23	0.22970	36.60	0.08406	0.08496	101.1
TOTAL		**2.38784**	**38.37**	**0.91616**	**0.90881**	**99.20**

Period of Report : 1st April, 2022 to 31st March, 2023											
SL no	MODE OF ASH UTILIZATION AND UTILIZATION IN EACH MODE (in LMT)										
	Month	In making of Fly Ash based Bricks/ Blocks/ tiles etc.	In Manufacture of Portland Pozzolana Cement	In construction of Highways & Roads Including Flyovers	Part replacement of cement in concrete	In Hydro sector in RCC Dam Construction	In Ash Dyke Raising	In Reclamation of Low Lying area	In Mine Filling	In Agriculture/ Waste Land Development	Others
(1)	(2)	(*)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)
1	April-22	0.00406	0.06611					0.00000			
2	May-22	0.00780	0.05901					0.00000			
3	June-22	0.00959	0.08336					0.00000			
4	July-22	0.01197	0.11677					0.00000			
5	August-22	0.01411	0.12142					0.00000			
6	September-22	0.00810	0.00820					0.07085			
7	October-22	0.00273	0.00632					0.02090			
8	November-22	0.00000	0.00000					0.00000			
9	December-22	0.00068	0.00058					0.00654			
10	January-23	0.01614	0.02816					0.09788			
11	February-23	0.00617	0.01395					0.04245			
12	March-23	0.00976	0.06466					0.01054			
TOTAL		**0.09111**	**0.56854**	0	0	0	**0**	**0.24915**	**0**	0	0

	Period of Report : 1st April, 2023 to 31st March, 2024					
	ASH GENERATION AND UTILIZATION (in LMT)					
SL.NO.	Month	Coal consumed	Ash Content of Coal	Ash generation	Ash Utilized	% Ash Utilization
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	April-23	0.187	33.199	0.062	0.062	100.0
2	May-23	0.222	38.956	0.087	0.087	100.0
3	June-23	0.308	38.908	0.120	0.120	100.0
4	July-23	0.309	38.315	0.118	0.118	100.0
5	August-23	0.404	43.778	0.177	0.177	100.0
6	September 23	0.360	39.142	0.141	0.141	100.0
7	October-23	0.361	36.924	0.133	0.133	100.0
8	November-23	0.119	37.773	0.045	0.045	100.0
9	December- 23	0.111	33.826	0.038	0.038	100.0
10	January-24	0.264	31.850	0.084	0.084	100.0
11	February-24	0.132	37.325	0.049	0.049	100.0
12	March-24	0.092	34.667	0.032	0.032	100.0
TOTAL		**2.869**	**37.839**	**1.086**	**1.086**	**100.000**

	Period of Report : 1st April, 2023 to 31st March, 2024
	MODE OF ASH UTILIZATION AND UTILIZATION IN EACH MODE (in LMT)

Sl.NO.	Month	In making of Fly Ash based Bricks/ Blocks/ tiles etc.	In Manufacture of Portland Pozzolana Cement	In construction of Highways & Roads Including Flyovers	Part replacement of cement in concrete	In Hydro sector in RCC Dam Construction	In Ash Dyke Raising	In Reclamation of Low Lying area	In Mine Filling	In Agriculture/ Waste Land Development	Others
(1)	(2)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)
1	April-23	0.005	0.012					0.046			
2	May-23	0.008	0.025					0.053			
3	June-23	0.011	0.057					0.052			
4	July-23	0.012	0.030					0.077			
5	August-23	0.016	0.034					0.127			
6	September-23	0.012	0.055					0.074			
7	October-23	0.016	0.094					0.023			
8	November-23	0.005	0.040					-0.001			
9	December-23	0.003	0.027					0.008			
10	January-24	0.008	0.056					0.020			
11	February-24	0.005	0.039					0.006			
12	March-24	0.004	0.027					0.000			
TOTAL		**0.104**	**0.497**	**0.000**	**0.000**	**0.000**	**0.000**	**0.485**	**0**	**0**	**0**

68. A perusal of statement for the period from 01.03.2022 to 31.03.2023 shows that out of 0.91616 LMT, respondent no. 7-BEPL utilized 0.09111 LMT in making of fly ash based bricks/blocks/tiles etc., and utilized 0.56854 LMT in manufacture of Portland Pozzolana Cement and 0.24915 LMT in reclamation of low lying area.

69. A perusal of statement for the period from 01.03.2023 to 31.03.2024 shows that out of 1.086 LMT, respondent no. 7-BEPL utilized 0.104 LMT in making of fly ash based bricks/blocks/tiles etc., and utilized 0.497 LMT in manufacture of Portland Pozzolana Cement and 0.485 LMT in reclamation of low lying area.

70. It may be observed that as per the above referred statements there was no utilization of fly ash in construction of highways and roads including flyovers, part replacement of cement in concrete, in Hydro Sector, in RCC dam construction, in Ash Dyke raising, in mine filling and in agricultural waste land development.

71. Management of huge quantity of ash (fly ash, bottom ash and pond ash) generated from coal fired Thermal Power Plants (TPPs) is a serious environmental challenge and there are concerns regarding potential for release of toxic chemicals in the leachates from the fly ash. Therefore, scientifically sound fly ash management is needed so that environmental concerns can be adequately and reliably identified and addressed.

72. This Tribunal has observed in number of cases that the project proponents enter into agreements with the third parties for disposal of fly-ash which report compliance by

submitting that the fly-ash is being disposed of in low lying areas without following the prescribed guidelines.

73. In **O.A. No. 744/2022 disposed of with O.A. No. 277/2021 Moharram Ali Vs State of UP and Liyakat Ali Vs State of Uttar Pradesh**, this Tribunal held that the storage and use of fly ash for landfill through contractor is unscientific and not legally permissible and passed directions for proper disposal of the fly ash.

74. In **O.A. No. 369/2022 Sachin Tomar Vs. State of Uttar Pradesh and others** this Tribunal observed in its order dated 06.10.2023 that fly-ash generated by coal based industries contains harmful heavy metals and it will be appropriate that the same is not utilized for filling of any agricultural areas and is utilized by cement or brick making industry. Accordingly this Tribunal directed UPPCB to file affidavit mentioning the mechanism evolved for verifying disposal of fly ash. In compliance thereof copy of draft mechanism for proper utilization of fly ash generated by coal based industries was placed before this Tribunal by UPPCB. The relevant part of the draft mechanism reads as under:-

> *"**Draft Mechanism for proper utilization of fly ash generated by coal based industries in compliance to directions issues by Hon'ble NGT in OA No. 369/2022 Sachin Tomar Vs State of U.P.***
>
> *Issues relating to disposal of fly ash from coal based industries in State of U.P.*
>
> *I. It has been a general practice by several industries using coal as fuel in boilers, to dispose the fly ash by filling in low lying areas. However, as a general practice adopted by the industries, collection and disposal of the fly ash from the industries is carried out through local contractors.*
>
> *II. Industries/Contractors some time execute an agreement with the owners of lands for disposal of the fly ash. However, instead of usage of fly ash for filling up the low lying areas, the land is used as an open storage/dumping site for fly ash.*
>
> *III. The lands, being an open area with no adequate cover at the boundaries and water sprinkling systems, the dispersion of fly ash causes air pollution in the nearby areas.*
>
> *IV. Further, there are possibilities of degradation of top soil by storage/dumping of coal based fly ash on lands.*

V. Hon'ble NGT has also considered the disposal of fly ash in low lying areas as an unscientific mechanism and have passed directions for proper disposal of the fly ash. In the matter of O.A. No. 744/2022 with OA No. 277/2021 Moharram Ali Vs State of UP and Liyakat Ali Vs State of UP, Hon'ble NGT has issued directions dated 22.03.2023as below:

,,

.....7. It is established that plastic waste and fly ash are being unscientifically stored and disposed of in violation of Rules and to the detriment of environment. Such storage and use of landfill through contractor is not legally permissible. Stand that waste is being used for cement plants does not appear to be factually correct as no name of cement plant has been given and needs to be verified by manifest system. Compensation determined does not take into account financial capacity of the units to determine the deterrent element nor the value of the extent of damage and the cost of restoration ……

Draft Mechanism for proper disposal of Fly ash by Lame air polluting industries:-

Practice of disposal of fly ash through contractors at nearby low lying areas is not an effective and environmental friendly mechanism for disposal of fly ash because generally it is observed that the fly ash is usually being dumped on the agriculture land without having sprinklers and covering the agriculture land boundary by green covers for arresting the fly ash from traversing in nearby residential areas.

1. With respect to effective disposal of fly ash, MoEF&CC vide notification dated 31.12.2021 has issued guidelines for utilization of fly ash generated in coal based Thermal Plants. Similar directions/mechanisms can also be adopted by other coal based industries. Further, CPCB has Issued OM dated 06.03.2023 authorizing auditors from recognized institutions for regular auditing of disposal of fly ash as per the guidelines. Hence, taking in consideration the general on site mechanism adopted by coal based industries, the following mechanisms can be adopted by other industries in line with the notifications issued by MoEF&CC and OM issued by CPCB for coal based Thermal Plants, to ensure that industries are disposing all the fly ash generated by environmental friendly mechanism :

i) There should be no involvement of a third party/contractor for collection and disposal of fly ash generated by the industries to ensure proper disposal of the fly ash being done by industries as per the agreements. Instead of disposing/dumping the fly ash on land at several agriculture land/low lying areas on day to day basis, every coal based large units may install dedicated silos for storage of dry fly ash silos for at least sixteen hours of ash based on installed capacity and it shall be reported upon to the UPPCB from time to time.

ii) Proper agreements / MOU needs to be signed between industries directly with the Cement industry/brick kilns/fly ash manufacturing units etc. The industry shall also submit the total quantity of fly ash being sent to users which shall then be verified by U.P. Pollution Control Board cross verifying the quantity utilized by the users.

iii) As per CPCB OM date 6 March 2023, CPCB has authorized auditors from various technical and recognized institutions for carrying out fly ash audits and submission of reports to CPCB and UPPCB. Industries may involve the authorized auditors for carrying out fly ash audit and submit the audit report to CPCB and UPPCB on regular basis (Quarterly/Half yearly/ Yearly) Scope of Work to carry out the audit may contain the following important mechanism: -

a. Verification of ash generation data pertaining to the financial year based on inspection of records of coal receipt/consumption and average ash content in coal and comparison of this data with the information provided by the industries.

b. Verification of fly ash and bottom ash utilization data pertaining to the financial year based on inspection of records of ash supplied to the user agencies covered under permitted uses/avenues, and comparison of this data with the information provided by the industries

c. The compliance audit for ash disposal by the industry and the user agency shall be conducted by auditors, authorised by Central Pollution Control Board (CPCB) and audit report shall be submitted to Central Pollution Control Board (CPCB) and UPPCB on regular basis. UPPCB shall initiate action against non-compliant industries within fifteen days of receipt of audit report.

iv) UPPCB after scrutiny of auditor's reports may, if required re-verify the quantity of fly ash being generated by the generators

and quantity being utilized by the users under agreement with the generators.

v) On the mechanism of filling of low lying areas with ash, shall be only be carried out only on the construction sites, Road Laying etc. (Govt, Semi Govt, Private) which have been approved by UPPCB, CPCB or other authorized departments.

vi) Non-compliant industries shall be imposed with an environmental compensation on per ton basis on unutilized ash during the end of financial year based on the annual reports submitted

vii)Major responsibilities of industries to dispose fly ash and bottom ash.-

The ash generated from coal shall be utilized only for the following eco-friendly purposes, namely:-

a) Fly ash based products viz. bricks, blocks, tiles, fibre cement sheets, pipes, boards, panels;
b) Cement manufacturing, ready mix concrete;
c) Construction of road and fly over embankment, Ash and Geo-polymer based construction material;
d) Construction of dam;
e) Filling up of low lying area on the construction sites, Road Laying etc (Govt, Semi Govt, Private) after the approval by UPPCB, CPCB or other authorized departments
f) Filling of mine voids;
g) Manufacturing of sintered or cold bonded ash aggregate;
h) Agriculture in a controlled manner based on soil testing;
i) Export of ash to other countries;

viii) The compliance audit for ash disposal by industries and the user agency shall be conducted by auditors, authorized by Central Pollution Control Board (CPCB) and audit report shall be submitted to Central Pollution Control Board (CPCB) and UPPCB on regular intervals. Central Pollution Control Board (CPCB) and UPPCB shall initiate action against non-compliant industries within fifteen days of receipt of audit report.

(ix) The above mechanism shall be uploaded on the website of UPPCB seeking responses from the stakeholders, after which the mechanism shall be finalized and directions shall be issued to all coal based industries in the State of U.P/ Specific conditions shall be included in the CT0 issued by UPPCB.

The above draft report is put up for perusal and necessary action please."

75. In that case this Tribunal, vide order dated 18.01.2024 directed UPPCB to finalize mechanism for proper disposal of fly ash by all air polluting industries within six months and submit report.

76. However admittedly, UPPCB has not complied with the directions given by this Tribunal in O.A. No. 369/2022 Sachin Tomar Vs. State of Uttar Pradesh and others so far.

77. **UPPCB is directed to finalize the draft mechanism for proper utilization of fly ash generated by coal based industries and also ash generated by other industries and file compliance report within six months positively.**

78. It may be observed here that Thermal power plants were granted Environmental Clearance by the MOEF&CC /State Environment Impact Assessment Authorities (SEIAAs) from time to time, subject to compliance of certain terms and conditions as environmental safeguards, which also included the condition for backfilling of mines voids, use/disposal of fly ash in low lying areas, etc. An Expert Committee was constituted for developing a focussed strategy for best utilization of flyash to manufacture end products. The Committee made recommendations for enhanced utilization of flyash in various sectors viz. mines, roads, bricks manufacturing, cement manufacturing, etc. During an Inter-ministerial consultation held on 21.01.2019 under the Chairmanship of Secretary, MOEF&CC, recommendations of the Expert Committee were accepted. The matter was examined in MOEF&CC and was referred to the EAC (Thermal Power Projects) in its meeting held on 28.5.2019 and 12.7.2019. The EAC mentioned that though the Flyash Notification, 1999 and subsequent amendments allow the unrestricted use of flyash in abandoned mines, low lying areas, soil conditioner in agriculture, there were no specific guidelines/**methodology** available for safe disposal of flyash so as to minimize the damage to the environment. MoEF & CC vide letter dated 01.03.2019 asked CPCB to come out with guidelines based on Odisha Pollution Control Board experience for reclamation of low lying areas and abandoned quarries with ash as recommended by the Expert Committee that was constituted by Niti Aayog vide O.M. No. 25 (11)/2014-Minerals dated 12.06.2018 for developing a focus strategy for best utilisation of fly ash to manufacture end products recommended. Accordingly, CPCB prepared in March2019 **Guidelines for disposal/utilisation of flyash for reclamation of Low Lying Areas and in stowing of Abandoned mines/Quarries** (CPCB Guidelines, 2019)**.** The scope of guidelines covers- 4.0 loading/unloading and transportation of flyash, 5.0 reclamation of low lying area using ash, 6.0 disposal of fly ash in voids of abundant mines, 7.0 precaution, 8.0 regulatory procedure for processing the application for consideration of grant of permission for reclamation of low lying areas/abandoned quarries.

79. **In the present case respondent no. 7-BEPL utilized 0.24915 LMT fly ash in reclamation of low lying area during the period from 01.03.2022 to 31.03.2023 and 0.485 LMT fly ash in reclamation of low lying area the period from 01.03.2023 to 31.03.2024.**

80. The CPCB Guidelines 2019 contain the detailed procedure for utilization of ash for filling low lying areas and the relevant part is reproduced as under:-

> *"Filling of Low lying areas inside the plant premises and outside within 300 km. of power plant may be taken up using ash. Low lying area reclamation with ash should be taken up adopting standard practices as per 2015 technical specification mentioned in NTPC Policy. Following steps should be taken up prior to initiate low lying area developmental activities.*
>
> *5.1 Preconditions:*
>
> *5.1.1 Consent from land owner: Consent/ permission should be obtained in writing from the land owner before start of work.*
> *5.1.2 Permission from Regulatory authority: Power plant/ land owner/ agency shall obtain statutory permission from regulatory authorities such as SPCB as per the requirement.*
> *5.1.3 Prevention of pollution: Suitable methods should be adopted and necessary arrangement should be made to prevent pollution during excavation of pond ash at ash pond, filling area and during transportation of ash.*
> *5.1.4 Soil Cover on the top of ash fill: As per the MOEF&CC gazette notification of ash utilization dated 14-09-1999 and as amendment on dated 27-08-2003 and 03-11-2009, the soil required for soil cover shall be excavated from land fill site itself and kept separately before taking for ash filling. If it is not possible to do so, only the minimum quantity of soil required for the purpose of cover shall be excavated from the soil borrow area. The voids so created due to removal of soil shall be filled up with ash with proper compaction and covered at top with soil cover. About 300-500 mm thick soil layer shall be placed over the ash fill area. This should be done as an integral part of low lying area development work.*
>
> *5.1.6 Restrictions :*
>
> *Reclamation of area by ash shall not be permitted in the following areas:*
> *i. Flood plain area/Ecologically Sensitive Areas.*
> *ii. Agriculture land / area.*

iii. Reclamation of Forest land / area is permissible only if clearance from MoEF&CC as per Forest Conservation Act, 1980 is available. iv. Gochar Kisan Land.

5.2 Preparation of filling area

5.2.1 The entire area meant to receive the ash and earth filling shall be stripped by minimum 150 mm. The exact depth of stripping shall be decided by the Engineer-in-Charge depending upon nature of top soil and the vegetation present. All organic matter, vegetation, roots, stumps, bushes, rubbish, swamp materials, etc. shall be removed from the site. The stripping material and other unsuitable materials as referred above shall be kept away from the area to be filled up so that these do not get mixed up with filling material and disposed off to a place as decided by the Engineer-in-Charge.

5.2.2 Levelling All existing undulations, holes, cavities and excavations made for plate load rests and other soil investigations, etc. shall be filled with pond ash having requisite moisture content. The ash thus filled shall be compacted with the help of vibratory rollers so as to achieve dry density of not less 95% as per I.S–2720 (Part-VII). This would result in a levelled surface upon which layer wise filling of compacted ash can be done."

81. The CPCB Guidelines 2019 also contain the regulatory procedure for processing the application for consideration of grant of permission for reclamation of low lying areas/abandoned quarries which reads as under:-

"8.1 The activity of reclamation of Low Lying Areas / Abandoned Quarries will be regulated under the provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air Water (Prevention and Control of Pollution) Act, 1981. The stipulations specified in this guideline is consistent with the provisions of Fly Ash Notification, 1999 and amended thereafter which should be a special condition mentioned in consent order issued under the Water (Water (Prevention and Control of Pollution) Act,1974 and the Air Water (Prevention and Control of Pollution) Act, 1981. Thereafter any deviations from the guidelines shall be treated as violation of both Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 and action as deemed proper shall be taken under Consent Administration by the Board.

8.2 Necessary clearances shall be obtained from the concerned agencies such as DGMS, SPCB, IBM, MoC, etc ."

82. In para 5 (vii) of its reply respondent no.7-BEPL has mentioned that ash audit for FY 2022-2023 was carried out by Prof. Arun Prasad, Department of Civil Engineering, Indian Institute of Technology (BHU), Varanasi who is stated to have submitted report to CPCB but copy of audit report has not been produced by CPCB.

83. In the present case CPCB and UPPCB have not looked into the aspect of compliance with the prescribed procedure and have not made any observations in this regard.

84. On the other hand, in its final report the CPCB made the following recommendations :-

"Recommendation:

1. As the unit does not have valid Consent to Operate (CTO) under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 form State Pollution Control Board for storage of ash (fly ash and bottom ash) in temporary sites, appropriate direction may be given to the unit.

2. The unit should lift the ash stored in temporary site to the end user on priority basis under the supervision of State Pollution Control Board.

3. The unit should utilize their captive ash dyke/pond for storage purpose and optimize the utilization of ash as per notification F.No. 22-13/2019-IA-III, dated August 28th 2019.

4. The unit should ensure that handling ash must be done in compliance of guideline prepare by CPCB in March, 2019."

85. **Respondent no. 7-BEPL is directed (i) to implement the recommendations made by the** Joint **Committee, (ii) to ensure management and disposal of fly ash in accordance with notifications issued by MoEF & CC and directions issued by UPPCB and (iii) not to store any fly ash in any temporary ash storage site without obtaining CTE/CTO from UPPCB and at places near to canal/waterbodies, public road and residential area.**

86. The UPPCB is directed (i)to take appropriate action for imposition of environmental compensation on respondent no. 7-BEPL for violation of EC/CTE/CTO conditions and environmental norms and also for realization thereof and thereupon for utilization of the same for remediation of environmental damage caused by **preparing** and implementing an action plan in consultation with District Environment Committee, District Shahjahanpur;(ii) to finalize the draft mechanism for proper utilization of fly ash generated by coal based

industries and also ash generated by other industries and file compliance report within six months positively; and (iii) to periodically inspect the 90 MW power plant of respondent no. 7-BEPL to verify compliance of the conditions regarding storage and transportation of fly ash in accordance with environmental norms/directions by Hon'ble Supreme Court and this Tribunal and to promptly take appropriate action in case of environmental violations**.**

Question (ii) Whether Respondent no.7-BEPL has violated EC/CTE/CTO Conditions and environmental norms for prevention and control of water pollution?

87. The applicants have raised the grievances that rain water drain is blocked by throwing the fly ash as a result of which the water logging takes place and the crops are destroyed. The polluted water from the plant is discharged in river Khannaut affecting aquatic life and the health of cattle drinking water from the same.

88. In EC No. 1077/SEAC/366/209 dated 09.07.2010 following conditions were imposed regarding disposal and management of fly ash:-

> *"3. Proposed Water consumption is 6984 kid which shall be sourced from ground water.*
> *X X X X*
> *6. Water requirement of 6984 metre3 /day shall be met from ground water. Necessary prior permission for drawl of requisite quantity of ground water for the project shall be obtained from the competent authority.*
> *7. Close cycle cooling system with cooling towers shall be provided.*
> *8. The treated effluents conforming to the prescribed standards shall be recalculated and re-used within the plant. There shall be no discharge outside the plant boundary except during monsoon for storm water. Arrangements shall be made that effluents and storm water do not get mixed.*
> *9. A suitable sewage treatment facility shall be provided and the treated sewage shall be used for raising green belt/plantation.*
> *10. Rain water harvesting should be adopted. Central Ground Water Authority/Board shall be consulted for finalization of appropriate rain water harvesting technology.*
> *11. Regular monitoring of ground water in and around the project area shall be carried out; records maintained and six-monthly reports shall be submitted to the competent authorities.*

89. In CTO No. 194853/UPPCB/Bareilly (UPPCBRO)/CTO/Both/ SHAHJAHANPUR/2023 dated 02.12.2023 following conditions was imposed regarding disposal and management of fly ash:-

"2. Conditions under Water(Prevention and Control of Pollution) Act - 1974 as amended :-

(i) *The daily quantity of effluent discharge (KLD)*

Kind of Effluent	*Quantity(KLD)*	*Treatment*	*Discharge point*
Domestic	*48 KLD*	*STP*	*Irrigation*
Industrial	*980 KLD*	*ETP*	*Partially used in Process and rest used in ash quenching*

(ii) Trade Effluent Treatment and Disposal :-The applicant shall operate Effluent Treatment Plant consisting of primary/secondary and tertiary treatment as is required with reference to influent quantity and quality. In case of stoppage of functioning of ETP, production has to be stopped immediately and this Board has to be intimated by fax/phone/email with a report in this regard to be dispatched immediately.

(iii) The treated effluent shall be recycled to the maximum extent and should be reused within the premises for gardening etc. Quality of the treated effluent shall meet to the following general and specific standards as prescribed under Environment (Protection) Rules, 1986 and applicable to the unit from time-to-time :-

Industrial Effluent Quality Standard

S.No.	Parameter	Standard
1	**pH**	**5.5-9.0**
2	**BOD ^{n}**	**30 mg/I**
3	**COD**	**250 mg/I**
4	**TSS**	**100/I**

(iv) Sewage Treatment and Disposal :- The applicant shall provide comprehensive STP as is required with reference to influent quantity and quality. In case of stoppage of functioning of STP, production has to be stopped immediately and this Board has to be intimated by fax/phone/email with a report in this regard to be dispatched immediately.

(v) The treated sewage shall be reused in gardening as far as possible. The STP shall be maintained continuously so as to achieve the quality of the treated sewage to the following standards.

S No.	Parameters	Standards
1	pH	5.5 to 9.0

2	BOD (mg/L)	30
3	TSS (mg/L)	100

General Conditions

1. The applicant shall get analysed the samples of effluent/emission/hazardous wastes at least once in a three month from the laboratory recognized by the MoEF and shall report to the UPPCB.
2. The applicant shall however, not without the prior consent of the Board bring into use any new or altered outlet for the discharge of effluent or gases emission or sewage waste from the unit.
3. Treated Industial waste water and domestic waste water shall be disposed jointly at one disposal point. The applicant shall provide discharge measurement equipment at final disposal point.

Specific conditions

2.Industrial effluent of 980 KLD shall be treated in 1000 KLD ETP and treated effluent shall be partially used in Process and rest shall be used in ash quenching.
3. Domestic sewage 48 KLD shall be treated in STP of 50 KLD capacity and treated sewage shall be used in irrigation in unit premises.
4. No treated or untreated effluent is allowed to discharge outside the premises of the unit.
6. Unit shall identify recipient drains/ rivulets and their u/s & d/s location in consultation with UPPCB and shall carry out monthly monitoring of identified recipient drains at u/s & d/s location through lab recognized under Environment (Protection) Act, 1986 and shall submit the analysis report on monthly basis by 10th of every month to CPCB and UPPCB.
7. Process effluent / any waste water shall not be allowed to mix with storm water. Storm water drain shall be passed through guard pond."

Discharge of effluent in River Khannaut

90. In compliance of order dated 23.11.2023 passed by this Tribunal, inspection of Respondent no.7-BEPL was carried out by a team from Regional Directorate, CPCB, Lucknow along with officials from Regional Office, UPPCB Bareillyon 25.01.2024. In its report CPCB has observed as under:-

8.	Water Consumption &Waste Water Generated (Avg. for 2022-23)				
			Water	Wastewater	Specific Water
	S. No.	Area of use	Consumption	Generated	Consumption
			In KLD	In KLD	(KL Per KWH)
	01	Process	67	168.93	--
	02	Cooling	3283.23		2.75
9.	Effluent Treatment facilities provided & Disposal Details: - Plant Wastewater: ETP Capacity: 1000 KLD		Effluent reuse practice: treated water is used in Ash quenching, Coal handling system, fire fighting for hot work and horticulture within the premises as well as green belt developed by unit.		
10.	Whether ETP facilities adequate to achieve		"Yes"		
	Standards		Effluent sample collected to check performance –		
			Analysis results are attached in Table No.1.		

X X X X X

5.The unit has presently three bore wells to meet its fresh water requirement. Electromagnetic water meter is installed in each bore wells. Log book of fresh water consumption is maintained. Copy attached as Annexure-IV.

X X X X

7. The unit has installed two rain water harvesting pit within premises for recharge of ground water. Copy of the design is attached as Annexure- VII.

8. The unit has established Effluent Treatment Plant (ETP) of capacity 1000 KLD (attached as Annexure- VIII), which comprises of following:

a. Bar Screen,

b. Mechanical Oil and Grease Trap,

c. Equalization Tank,

d. Coagulation and chemical mixing tank

e. Tube settler Filter feed tank

f. Pressure Sand Filter

g. Activated Carbon Filter

h. Sludge Drying Beds

9. Electromagnetic flow meter was installed at ETP outlet.

10. The unit has installed Online Continuous Effluent Monitoring System (OCEMS) at the outlet of ETP and it was informed that OCEMS is connected with UPPCB and CPCB server. Login credentials of the OCEMS and ETP logbook attached as Annexure-IX.

Picture 1: OCEMS at ETP outlet 'Operational'

11. The unit informed that it has got monitored particulate matter in stack emission and wastewater characteristics by the third party once in a year. Copy of the third-party analysis report and calibration certificate of OCEMS installed for online monitoring of stack emission and ETP is attached as Annexure-X.

12. The samples were collected from Inlet and outlet of ETP to analyse the characteristics of wastewater at CPCB laboratory, Regional Directorate, Lucknow. The analysis results are tabulated below:

Table No. 1: Analysis result of ETP

S. No.	*Parameter*	*ETP inlet*	*ETP outlet*	*Standard as per consent issued by UPPCB*
	pH	*7.96*	*8.61*	*5.5-9.0*
	TSS (mg/L)	*32.1*	*23.5*	*100*
	COD (mg/L)	*24.7*	*6.65*	*250*
	BOD (mg/L)	*10.5*	*<5*	*30*
	Oil & grease (mg/L)	*--*	*5.27*	*10*

13. The above analysis result shows that the values of consented parameter were found well within the prescribed standard stipulated by UPPCB.

14. A storm water drain flows in front of the unit gate containing wastewater from urban area. The drain ultimately meets to R. Khannot

Picture 2: Storm water drain meets to River Khannot
(Latitude: 28.245961, Longitude: 79.98828)

15. The sample was collected from storm water drain before meeting to River Khannot to analyse the characteristics of wastewater at CPCB laboratory, Regional Directorate, Lucknow. The analysis results are tabulated below:

Table No. 2: Analysis result of Storm Water Drain

Parameter	*pH*	*Colour (Hazen)*	*TSS (mg/L)*	*TDS (mg/L)*	*SAR*	*COD (mg/L)*	*BOD (mg/L)*
Drain	*7.06*	*10*	*11.3*	*713*	*1.86*	*101*	*23.9*
General Standard for dischargein Inland Surface Water as per The E(P)A, 1986, Schedule-VI	*5.5-9.0*	--	*100*	--	--	*250*	*30*

16. The above analysis result of different relevant parameter indicates that their values are in accordance with the prescribed General Standard for discharge in Inland Surface Water as per the E(P)A, 1986, Schedule-VI, no abnormalities were recorded.

17. The sample were collected from upstream and downstream of River Khannot from the industry in question to find out the impact of industrial discharge in to River in case of any. The samples were got analysis for different relevant parameter at CPCB Regional Directorate, Lucknow. The characteristics of river water is as under:

Table No. 3: Analysis result of River Khannot

S. No.	Parameter	U/s of River Khannot before mixing with storm water drain	D/s of River Khannot after mixing with storm water drain
1	pH	7.59	7.74
2	Temperature (^0C)	11	11
3	Colour (Hazen)	05	05
4	Conductivity (µS/cm)	377	372
5	TDS (mg/L)	257	251
6	Chloride as Cl^- (mg/L)	<3.0	<3.0
7	Sulphate as $SO4^{2-}$ (mg/L)	6.31	7.24
8	Phosphate ($PO4^{3-}$) (mg/L)	<0.06	<0.06
9	Nitrate ($NO3^-$) (mg/L)	3.21	3.34
10	Ammonical Nitrogen (NH3-N) (mg/L)	<0.1	<0.1
11	DO (mg/L)	9.0	8.9
12	COD (mg/L)	<5	<5
13	BOD (mg/L)	<1	<1

18. As per the analysis report of the samples collected from river Khannot at upstream and downstream from industry, no significant variation with respect to water quality of river Khannot, observed as the water quality at both locations were found almost same.

Pitchure3: River Kannot Before mixing with drain (Latitude:28.245878, Longitude: 80.988980)

Pitchure4: River Khannot after mixing with drain (Latitude:28.242404, Longitude: 79.989794)

19. The sample collected from Groundwater of industry premises to verify the water quality. The analysis results are tabulate below:

Table No. 4: Groundwater Quality of industrial Premises

S. No.	Parameter	Groundwater within the premises of Industry	Drinking water standard as per BIS-IS 10500:20212 (Acceptable limit)

1	*pH*	*7.78*	*6.5-8.5*
2	*Colour (Hazen)*	*<5*	*05*
3	*TDS (mg/L)*	*153*	*500*
4	*Total Hardness (mg/L)*	*177*	*200*
5	*Calcium as Ca^{2+} (mg/L)*	*61*	*75*
6	*Magnesium as Mg^{2+} (mg/L)*	*25*	*30*
7	*Sodium (Na^{+}) (mg/L)*	*16.3*	--
8	*Potassium (K^{+}) (mg/L)*	*<1.0*	--
9	*Floride as F^{-} (mg/L)*	*<0.5*	*1.0*
10	*Alkalinity (mg/L)*	*120*	*200*
11	*Chloride as Cl^{-} (mg/L)*	*<3.0*	*250*
12	*Sulphate as $SO4^{2-}$ (mg/L)*	*7.75*	*200*
13	*Phosphate ($PO4^{3-}$) (mg/L)*	*0.062*	--
14	*Nitrate ($NO3^{-}$) (mg/L)*	*2.81*	*45*
15	*COD (mg/L)*	*<5.0*	--

20. The characteristics of the groundwater were found in accordance with the Drinking water standard as per BIS-IS 10500:20212 (Acceptable limit).

91. In compliance of order dated 15.04.2024 passed by this Tribunal UPPCB inspected the Power plant on 30.09.2024 and made the following observations in its report:-

6	*Effluent Treatment facilities & Disposal . Details: -*	*Plant have ETP of Capacity: 1000 KLD* *Treated water is used in Ash quenching, Coal handling system, fire fighting for hot work and horticulture within the premises as well as green belt developed by unit*

92. In its report UPPCB mentioned that the sample were collected from upstream and downstream of River Khannot from the industry in question to find out the impact of industrial discharge in to River in case of any. The samples were gotanalyzed for different relevant parameterat Regional Office, UPPCB laboratory, Bareilly. UPPCB has mentioned the characteristics of river water as Annexure-A2 and Annexure-A3 and submitted the analysis result of river Khannot as under:-

Table No. 3: Analysis result of River Khannot

S. No.	Parameter	U/s of River Khannot before meeting drain	D/s of River Khannot after meeting drain
1	pH	8.0	7.9
2	Temperature (^{0}c)	32	32
3	Colour(Hazen)	20	25
4	Conductivity(µS/cm	389	392
5	TDS(mg/L)	254	260
6	Chlorides Cr(mg/L)	18.0	16.0
7	DO(mg/L)	7.9	8.1
8	COD(mg/L)	24	24
9	BOD(mg/L)	2.7	2.8

- *As per the analysis report of the samples collected from river Khannot at upstream and downstream from industry, no significant variation with respect to water quality of river Khannot, observed as the water quality at both locations were found almost same.*

93. In its report CPCB has mentioned that the unit is using treated waste water for dust suppression in cold handling plant and for horticulture developed by the unit and the unit has installed the water hydrant system to control the fugitive emission in cold handling plant.

94. It may be observed here that CPCB and UPPCB got samples taken from (i) storm water drain before meeting to river Khannot, (ii) up stream and downstream of river Khannot from the unit in question and (iii) ground water from the unit premises and got the same analyzed as per the analysis reports (i) the samples taken from storm water drain were found to meet parameters/values in accordance with the prescribed General Standard for discharge in Inland Surface Water as per the Environment (Protection) Act, 1986, Schedule-VI no abnormalities were recorded; (ii) no significant variation with respect to water quality of river Khannot was observed as water quality at both the locations were found almost same and (iii) the characteristics of the ground water were found in accordance with the drinking water standard as per BIS-IS 10500:20212 (Acceptable limit).

95. **Vide order dated 15.04.2024 this Tribunal directed CPCB to clarify as to how** the **prescribed general standard for discharge in Inland Surface Water in terms of E(P)A, 1986, Schedule VI has been applied to ascertain the abnormalities.**

96. In compliance thereof CPCB has filed report dated 23.07.2024 that the drain was passing nearby the industry boundary wall. There is no other identified possible wastewater source in this drain (either industrial or domestic) near M/s Bajaj Energy Private **Limited**, Maksudapur, District:-Shahajahpur, U.P. The drain ultimately meets into inland surface water body (Khannot River).Sample was collected from the drain for verification of any untreated industrial wastewater discharge including domestic sewage in the drain and the analysed parameters were compared with the General Standard for discharge in Inland Surface Water notified under the Environment (Protection) Act, 1986 for the stated purpose.

97. Respondent no. 7-BEPL has filed a map ANNEXURE-A-7 alongwith its reply dated 23.09.2024 showing the origin of subject drain, its route alignment and final meeting point at Khannaut river and made the following submissions with regard to the subject matter drain:-

> *"· The factual position is that the storm water drain under subject, originates from the Maqsoodapur village located at the upstream of the power plant.*
> *· As per the Census data Of 2021, the Maqsoodapur village has a total of 249 households with a total population of 1416 persons.*
> *· The referred drain originating from Maqsoodapur village carries wastewater /storm water from this village, passes adjacent to the power plant and discharge this village wastewater / storm water into the Khannaut River located about 1.2 kms away from the source of its origin.*
> *· In report, it is already mentioned that there is no other identified waste-water source in this drain (either industrial / domestic) near BEL plant. Hence there is no discharge of any wastewater from the industry.*
> *· No discharge from the industry was also cross verified during the site visit by collecting water samples from the drain and analysing against the parameters as per General Standard for discharge in Inland Surface Water notified under the Environment (Protection) Act, 1986.*
> *· As the water parameters of collected sample were well within the limits of discharge standards, it was concluded that there is no industrial discharge in the said stormwater drain."*

98. However, it may be observed that in the present case CPCB and UPPCB have not conducted any study regarding utilization of ETP treated effluent in the industrial processes and ash quenching and also regarding utilization of STP treated waste water for horticulture/irrigation and respondent no. 4-BEPL has also not produced any report regarding the same to show that there is no discharge of industrial effluent or domestic sewage in the

drain during non-monsoon periods and these aspects need to be looked into by UPPCB during periodical inspections of the industry.

99. UPPCB is directed to verify factual position regarding treatment of effluent and utilization of ETP treated effluent in the industrial processes and ash quenching and treatment of sewage and utilization of STP treated sewage for horticulture/irrigation.

100. In its report CPCB has mentioned that in adverse weather conditions possibility of damage of crops and water logging around the temporary storage site cannot be ruled out.

101. In case of damage of crops and water logging caused by adverse weather conditions, respondent no. 7-BEPL will be liable to pay appropriate compensation to persons suffering any loss due to the same.

102. It may be observed here that the applicants have not produced any cogent material before this Tribunal regarding suffering of loss by them or any other person due to damage of crops and water logging caused by adverse weather conditions.

103. Respondent No.7-BEPL has submitted that on account of robust environment control and monitoring steps taken by plant, the environmental monitoring parameters are well within the permissible limits as set by the CPCB and no pollution is caused because of power plant operation. In order to ascertain whether there is any impact of power plant operation on nearby crops, aquatic life and animals/cattles, Respondent No.7-BEPL had also approached Agriculture Dept., Fishery Department and Veterinary Department of District Shahjahanpur and all the said departments have confirmed to Respondent No.7 that there is no report of any adverse impact of operations in the power plant on crops, aquatic life and animals / cattles in the nearby areas. Copies of letters issued by Agriculture Dept., Fishery Department and Veterinary Department of District Shahjahanpur have been annexed hereto with reply as Annexure R-7/12 (Colly). There is no discharge of any polluted water from the power plant. In fact, treated water from the power plant is totally reused for firefighting, coal dust suppression, ash conditioning, dust quenching, and horticulture. The Fishery Department and veterinary Department of District Shahjahanpur have also confirmed that there is no report of any adverse impact of operation of power plant on the aquatic life and animals/cattles in the nearby areas. There is no blockage of rainwater drains by throwing the ash generated at the Power Plant. Infact, for maintaining the free flow of water seepage from the Sharda canal, hume pipes are installed by the answering Respondent. Pertinently, the District Agriculture Officer, Shahjahanpur has also confirmed that there is no crop damage on account of the operation of the Power Plant of the answering Respondent.

104. The authenticity and correctness of the reports submitted by the above mentioned government functionaries have not been challenged by the applicants or any other person by filing objections to the same with requisite particulars and have also not been rebutted by the applicants by producing any cogent material to substantiate their claim.

105. In these facts and circumstances the present case respondent no. 7-BEPL is not liable to pay any compensation to the applicants or any other persons for loss suffered due to its past environmental violations.

Question (iii) Whether Respondent no.7-BEPL has violated EC/CTE/CTO condition sand environmental norms for prevention and control of air pollution?

106. The applicants have raised the grievances that Respondent no. 7-BEPL is causing air pollution posing serious health hazards to school children and residents living nearby.

107. In CTO No. 194853/UPPCB/Bareilly (UPPCBRO)/CTO/Both/ SHAHJAHANPUR/2023 dated 02.12.2023 following conditions were imposed regarding prevention and control of air pollution:-

> *"**3. Conditions under Air (Prevention and Control of Pollution) Act - 1981 as amended :-***
>
> ***i)** The applicant shall use following fuel and install a comprehensive control system consisting of control equipment as required with reference to generation of emissions and operate and maintain the same continuously so as to achieve the level of pollutants to the following standards.*

Air Pollution Source Details

S No.	***Air Pollution Source***	***Type of fuel***	***Stack no***	***Control Device***	***Height of Stack***
1	*Boiler 190 TPH*	*Coal*	*02*	*Particulate Matter*	*Electrostatic precipitator as APCS & Stack height of 110 meters from ground level*
2	*Boiler 190 TPH*	*Coal*	*01*	*Particulate Matter*	*Electrostatic precipitator as APCS & Stack height of 110 meters from ground level*

Emmission Quality Standards

S No.	***Stack no***	***Parameters***	***Standards***

1	*01*	*Particulate Matter*	*50 mg/Nm3*
2	*02*	*Particulate Matter*	*50 mg/Nm3*

In case of stoppage of functioning of air pollution control equipment, production has to be stopped immediately and this Board has to be intimated by fax/phone/email with a report in this regard to be dispatched immediately

(ii) The unit will not use any type of restricted fuel.

iii) Noise from the D.G. Set and other source(s) should be controlled by providing an acoustic enclosure as is required for meeting the ambient noise standards for night and day time as prescribed for respective areas/zones (Industrial, Commercial, Residential, Silence) which are as follows Day time : from 6.00 a.m. to 10.00 p.m., Night time: from 10.00 p.m. to 6.00 a.m.

Standards for Noise level in db(A) Leq	***Industrial Area***		***Commercial Area***		***Residential Area***		***Silence Zone***	
	Day Time	*Night Time*	*Day Time*	*Night Time*	*Day Time*	*Night Time*	*Day Time*	*Night Time*
	75	*70*	*65*	*55*	*55*	*45*	*50*	*40*

5. Unit shall maintain and operate the Air pollution control system i.e. Electrostatic precipitator in the 02 boilers of 190 TPH each regularly and ensure that stack emissions shall always meet the norms specified in Rule 25 of Environment (Protection)Rules 1986."

108. In compliance with the order dated 02.02.2024 final report was filed by email dated 12.04.2024 and in its final report the CPCB made the following observations:-

13	*Stack and emission control system details:*	*110 meters, Air Pollution Control Device (Electro Static Precipitator) installed.*
14	*Whether APCDs provided are adequate to achieve standards*	*"Yes"* *Emission sample of stack monitoring was collected to check performance and Particulate Matter concentration was found 41.58 mg/Nm3.*

15	*Pollution Control Measures adopted for fugitive emission control and status* *(Near coal handling area, coal crusher area, ash disposal area and other plant areas)* ➢ *At Coal Handling Plant, Dust Suppression & Dust Extraction System installed* ➢ *At Coal Crusher, Dust Suppression & Dust Extraction System available* ➢ *At Ash Yard, Water Sprinkling Available. Arrangement - Water Meter -07 No's* *- Hydrant Valve- 30 No's*

X *X* *X* *X*

21. Stack emission monitoring has been jointly (CPCB and UPPCB) carried out by team to verify the compliance with respect to Particulate Matter emission through stack. The particulate emission found 41.58 mg/Nm3, which is well within the prescribed standard that is 50 mg/Nm3.
22. During inspection, it was found that the unit has installed Scaffold ladder for the flue gas emission monitoring form the stack emission as per CPCB guideline.

Picture 5: Scaffold stair at stack for flue gas monitoring

23. Ambient air quality monitoring has also been jointly (CPCB and UPPCB) carried out by team at industry premises, near main gate of M/s Bajaj Energy Pvt. Ltd. to ascertain the air quality in referenced area. The results are PM10- 88.34 µg/m3, SO2- 14.22 µg/m3 and NO2- 26.15 µg/m3. The parameter monitored for ambient air quality were found within the prescribed norms that is PM10- 100 µg/m3, SO2- 80 µg/m3 and NO2- 80 µg/m3.

24. For the air pollution prevention and control the unit has installed dust suppression and dust extraction system at coal handling plant covering the transfer points. Details of dust suppression system and dust extraction system are attached as Annexure- XI.
25. The unit has installed two ESP having four active fields, for the dust emission control from flue gas."

109. In compliance of order dated 15.04.2024 UPPCB inspected the Power plant on 30.09.2024 and made the following observations:-

8	*Stack and emission control system details:*	*110mtr, Air Pollution Control Device (Electro Static Precipitator) installed*
9	*Whether APCS provided are adequate to achieve standards*	*"Yes"* *Unit's stack monitoring was conducted during inspection by the team of lab R0, UPPCB, Bareilly. Particulate Matter (PM10) concentration was found 44.06pg/m3. (Attached as Annexure-A1)*
10	*Pollution Control Measures adopted for fugitive emission control and status* *(Near coal handling area, coal crusher area, ash disposal area and other plant areas)* ➢ *At Coal Handling Plant, Dust Suppression& Dust Extraction System installed* ➢ *At Coal Crusher, Dust Suppression & Dust Extraction System available* ➢ *At Ash Yard, Water Sprinkling Arrangement Available.* *-Water Meter -07No's, -Hydrant Valve — 30 No's*	

X X X X

- *Stack emission monitoring has been conducted to verify the compliance with respect to Particulate Matter emission through stack. The particulate emission found 44.06 pg/m3, which is well within the prescribed standard that is 50 pg/m3. (Attached as Annexure-1)*
- *Ambient air quality monitoring has also been conducted by team at industry premises, near main gate of M/s Bajaj Energy Pvt. Ltd. to ascertain the air quality in referenced area. The results are PM10-86.2 pg/m3, SOx-12.07 pg/m3 & NOx-22.41 pg/m3. The parameters monitored for ambient air quality were found within the prescribed norms that is PM10-100pg/m3. (Attached as Annexure-A4)*

- *For the air pollution prevention and control the unit has installed dust suppression and dust extraction system at coal handling plant covering the transfer points."*

110. In its report CPCB and UPPCB have submitted that respondent no. 7-BEPL has installed 110 meter stack and air pollution control devices (electrostatic precipitator) air pollution control devices are adequate to achieve the standards. CPCB has mentioned that dust suppression and dust extraction systems are available at coal handling plant and coal crusher and pollution control measures have been adopted for fugitive emission control near coal handling area, coal crusher area, ash disposal area and other plants areas and water sprinkling is available at ash yard.

111. In their report UPPCB and CPCB have also mentioned (i) that stack emission monitoring was carried out to verify the compliance with respect to Particulate Matter emission through stack which was found to be within the prescribed standard and (ii) that ambient air quality monitoring has also been conducted by team at industry premises, near main gate of M/s Bajaj Energy Pvt. Ltd. to ascertain the air quality and the parameters monitored for ambient air quality were found to be within the prescribed norms.

112. In its reply Respondent no.7-BEPL has submitted that Respondent No.7-BEPL has made robust arrangements for the control of pollutants as follows:

"a. The answering Respondent has installed State of the Art high efficiency Electrostatic Precipitators (ESPs) at the power plant for the control of Particulate Matter from the stack.
A Photograph showing Electrostatic Precipitators at the answering Respondent's Power Plant is annexed hereto as ANNEXURE-R-7/6.
b. The answering Respondent has installed 110 mt. high stack at the power plant for better dispersion of pollutants
A Photograph showing 110 Mt. High Stack at the answering Respondent's Power Plant is annexed hereto as ANNEXURE-R-7/7.
c. The answering Respondent has installed closed pipeline based ash conveying system for the transport of ash from ESP to the dry ash siloes.
A photograph showing closed pipeline based ash conveying system at the answering Respondent's Power Plant is annexed hereto as ANNEXURE-R-7/8.
d. The Dry ash from the silo is transported to be used in road construction, cement industries, brick making etc.
e. Furthermore, Ash pond is constructed within the plant premises to temporarily store the ash in the case of low / no demand.
f. Also, Effluent Treatment Plant of capacity 1000KLD and Sewage treatment Plant of capacity 50KLD are installed for the treatment of process and domestic effluent generated at the power plant.

A Copies of the Photographs showing Effluent Treatment Plant and Sewage Treatment Plant at the answering Respondent's Power Plant are annexed hereto as ANNEXURE-R-7/9. (Colly)

g. Dense plantation is also carried out by the answering Respondent within and at the periphery of the plant premises to work as the greenbelt to curb emissions, if any from the power plant.

h. In addition to the above, regular environmental monitoring of stack, ambient air, ground /surface water, effluents quality etc is carried out by the independent NABL Accredited and MoEF&CC approved agency. As per the analysis reports, monitored parameters are well within the permissible limits.

A Copies of the Test Reports issued by independent NABL accredited labs in respect of the answering Respondent's Power Plant, from time to time are annexed hereto as ANNEXURE-R-7/10.

i. The answering Respondent has also installed Continuous Emission Monitoring System in stack and Online Effluent Monitoring System at ETP outlet and the data is connected to the PCB server for continuous vigilance.

A Copies of the Photographs showing Continuous Emission Monitoring System in stack and Online Effluent Monitoring System at ETP outlet at the answering Respondent's Power Plant is annexed hereto as ANNEXURE-R-7/11."

111. However, CPCB and UPPCB have not looked into the adverse impact of storage of fly ash in unauthorized/illegal temporary storage sites without any boundary wall, green belt etc. and air pollution caused by the same and have not taken appropriate remedial measures regarding the same. CPCB and UPPCB did not look into the photographs and videos submitted by the applicant and have ignored serious environmental violations and have unjustifiably attempted to portray compliances. This Tribunal has given appropriate directions in this regard as part of discussion under question (i) which are not repeated/ reproduced here.

Question (iv) Whether Respondent no. 7-BEPLhas violated EC/CTE/CTO Conditions and environmental norms regarding development of green belt?

113. The applicants have raised the grievance regarding there being no greenery and that there is no provision for the greenery.

114. In EC No. 1077/SEAC/366/209 dated 09.07.2010 following conditions were imposed regarding development of green belt:-

"15. A green belt of adequate width and density shall be developed around the plant periphery covering at least 33% of the project area."

X X X X X

21. plantation at the point of maximum impact should be under taken.

22. Separate funds shall be allocated for implementation of environmental protection measures along with item wise breakup. These costs shall be included as part of the project cost. The funds earmarked for the environmental protection measures shall not be diverted for any other purposes and year wise expenditure should be reported to the Govt. of India/CPCB/SPCB and to this authority."

115. In CTO No. 194853/UPPCB/Bareilly (UPPCBRO)/CTO/Both/ SHAHJAHANPUR/2023 dated 02.12.2023 (Pages no. 83 to 87 of the paper book) following conditions were imposed regarding disposal and management of fly ash:-

"7. In compliance to the G.O 1011/81-7-2021-09 (Writ)/2016 dated.13.10.2021 issued by Department of Environment, Forest and Climate Change, Uttar Pradesh. You are directed to develop Miyawaki Forest as per the SOP available at URL:- http://www.upecp.in/TrainingSession.aspx for ensuring timely compliance of this direction, you are hereby directed to submit a bank guarantee with minimum validity of one year of the amount equivalent to the sum of initial consent fees (Air and Water) or Rs. 50,000/- (Rs. Fifty Thousand Only) whichever is more, within 30 days from the date of issuance of this certificate. In case of noncompliance of this direction, your consent will be revoked by the Board.

13- Unit shall develop Green Belt in minimum 33 percent area of Industrial Premises as per the provisions laid down in office order no. H16405/220/2018/02 dated 16-02-2018 of U.P. Pollution Control Board. The copy of said office order is available on the website of U.P. Pollution Control Board www.uppcb.com."

116. In the Inspection Report dated 12.04.2024 CPCB mentioned that the Unit has not complied with EC/CTE condition regarding green belt development.

117. Vide order dated 15.04.2024 this Tribunal directed the respondent no. 7-BEPL to place on record the status of compliance of all the EC conditions relating to development of green belt.

118. In compliance thereof Report dated 23.09.2024 has been filed by respondent no. 7-BEPL. The relevant part of the report filed by respondent no. 7-BEPL is reproduced below:-

"viii. With regard to the Green Belt Development, it is submitted that the specific condition relating to the same in the Environmental Clearance Certificate reads as under: -

"A greenbelt of adequate width and density shall be developed around the plant periphery covering at least 33% of the project area."

ix. It is submitted that there is a full and total compliance of the Green Belt Developmental Condition.

x. It is submitted that the unit has already developed a thick greenbelt at the power plant covering an area of 13.85 Acres (Total plant land of 30.855 Acres) equals to approx. 45% of total plant land as greenery. This greenbelt is corroborating with the minimum 33% greenbelt requirement of MoEF&CC.

xi. It is submitted that, the unit has also developed Miyawaki Forest within the plant premises, which ensures plant growth 10 times faster and with 30 times higher density. Geotagged photographs of greenery in plant area are being annexed herewith and marked as ANNEXURE-A-6."

119. Respondent no. 7-BEPL has enclosed plantation report with its reply and the relevant part of the plantation report reads as under:-

Sl.No.	***Area Name***	***Name of plant***	***Survival plan upyo March. 2024***	***Plantation from Oct. 2023 to March.2024***	***Total***
1	*Main Plant Side*	*Ashok*	*273*	*22*	*295*
	(1.66 Acer)	*Kaner*	*76*	*22*	*98*
		Ficus	*109*	*13*	*122*
		Mango	*5*	*5*	*10*
		Chandani	*22*	*7*	*29*
		Kanji	*55*	*7*	*62*
		Akeshia	*57*	*6*	*63*
		Hibiscus	*55*	*11*	*66*
		Rose	*109*	*13*	*122*
		Jungle Jaleby	*33*	*6*	*39*
		Alstonia	*22*	*3*	*25*

		Chamba	*109*	*11*	*120*
		Rat Rani	*2*	*5*	*7*
		Palm	*33*	*7*	*40*
		Neem	*4*	*8*	*12*
		Tulsi	*5*	*11*	*16*
		Marry Gold	*765*	*20*	*785*
2	*Main Plant along with boundary*	*Ashok*	*137*	*23*	*160*
	(1.98 Acer)	*Kaner*	*16*	*5*	*21*
		Ficus	*55*	*6*	*61*
		Semal	*5*	*6*	*11*
3	*CHP*	*Ashok*	*24*	*9*	*33*
	(1.61 Acer)	*Kaner*	*61*	*11*	*72*
		Ficus	*0*	*13*	*13*
		Mango	*2*	*1*	*3*
		Akeshia	*229*	*20*	*249*
		Hibiscus	*44*	*11*	*55*
		Champa	*33*	*5*	*38*
		Popular	*5*	*0*	*5*
		Peepal	*1*	*0*	*1*
		Guava	*5*	*5*	*10*
		Casurina	*191*	*12*	*203*
		Sheesam	*90*	*20*	*110*
		Semal	*3*	*1*	*4*
4	*Coal yard out side*	*Kanji*	*55*	*3*	*58*
	(0.6 Acer)	*Siveroak*	*66*	*22*	*88*
		Akeshia	*115*	*22*	*137*
		Amaltash	*49*	*13*	*62*
		Ficus	*23*	*5*	*28*
		Casurina	*22*	*7*	*29*
		Guava	*7*	*7*	*14*
		Mango	*5*	*6*	*11*
5	*Switch yard*	*Alstonia*	*33*	*11*	*44*
	(0.9 Acer)	*Ficus*	*44*	*13*	*57*
		Kaminy	*22*	*6*	*28*
		Tuisl	*22*	*3*	*25*
		Guava	*11*	*11*	*22*
6	*Ash Yard Area*	*Guava*	*16*	*5*	*21*
	(1.5 Acer)	*Sheesam*	*33*	*7*	*40*
		Jamun	*123*	*8*	*131*

6	*Plant outside neibhour villages (Natura, Makqsoodapur, Aozdhapur*	*Guwava*	*1831*	*11*	*1842*
	5.6 Acer	*Jamun*	*1847*	*20*	*1867*
		Arjun	*1805*	*23*	*1828*
		Sheesam	*1825*	*5*	*1830*
		Teak	*1455*	*6*	*1461*
		Lemon Tree	*840*	*6*	*846*
		Eucalyptus	*1333*	*9*	*1342*
		Grand Total	*14218*	*554*	*14772*

120. It is surprising that respondent no. 7-BEPL has included roses, marigold, lemon and tulsi in the list of the plants for inflating the number of the trees reported to have been planted.

121. Vide order dated 15.04.2024 this Tribunal directed Respondent No.2 UPPCB to file report. In compliance of order dated 15.04.2024, the officials of UPPCB, Bareilly inspected the premises of respondent no. 7-BEPL on 30.09.2024 and submitted Inspection Report Annexure A enclosed with the report dated 18.10.2024 filed by Regional Officer, UPPCB, Bareilly. In the inspection report it has been mentioned that "*it was found that green belt development is not sufficient, boundary wall/wind braking wall was not there at the site. (Notice issued for development of green belt and construction of boundary wall via vide letter dated 30.09.2024)".*

122. UPPCB has not filed any further report mentioning as to what further action was taken on notice dated 30.09.2024.

123. Vide letter no. H16405/220/2018/02 dated 16.02.2018 Uttar Pradesh Pollution Control Board issued protocols regarding development of green belt for air pollution control and carbon offsetting. Standard Operating Procedure (SOP) was developed by Uttar Pradesh Pollution Control Board with a view to planting trees on Miyawaki Method. Vide Uttar Pradesh Government file no. 81-7005 (099)/216/2020-07, letter no. 1011/81-7-2021-09 (Writ)/2016 dated 13.10.2021it was directed that plantation based on Miyawaki Method should be done compulsorily on the available sites in the premises of the units and the concerned Divisional Forest Officer were required to closely monitor the plantation based on Miyawaki method in the industries and to also provide technical guidance to the industries as per requirement. It was also directed therein that in case the industries do not comply with the conditions of consent and the above instructions, on the recommendation of the Divisional Forest Officer, action should be taken to revoke the consent of the industry as per the

procedure prescribed by the UPPCB through the concerned regional officer so that it can be ensured that trees are planted for air pollution control and carbon offsetting as per the prescribed conditions. The Divisional Commissioner and District Magistrate were also directed to regularly review compliance of the above said instructions.

124. **No report has** been **submitted by the concerned Divisional Forest Officer, the Divisional Commissioner and the District Magistrate.**

125. In these facts and circumstances, we consider it necessary to verify the factual position regarding green belt raised by respondent no. 7-BEPL.

126. **Accordingly, we direct the Divisional Forest Officer, Shahjahanpur to verify the factual position and submit report as to whether respondent No. 7-BEPL has** developed **green belt over 33 % of project area as mandated by EC and CTE/CTO consent conditions and to submit report within six months specifying the deficiencies of green belt/plantation in terms of area, location, number and nature of species of trees and suggesting measures required to be taken by respondent no. 7-BEPL for remedying deficiencies of green belt/plantation and the budget amount required for the same.**

127. **Respondent no. 7-BEPL is directed to ensure that such deficiencies of green belt/plantation so mentioned in the report of the Divisional Forest Officer, Shahjahanpur are remedied so that requisite green belt/plantation of requisite width around the periphery of both the plants and over 33 % of the project area is raised and to file compliance report in this regard within next four months.**

Directions by the Tribunal

128. In view of the above discussed facts and circumstances of the case and relevant **statutory** provisions and environmental norms, the present original application is disposed of with the following directions:-

(i) **Respondent no. 7-BEPL is directed (i) to implement the recommendations made by the Joint Committee, (ii) to ensure management and disposal of fly ash in accordance with notifications issued by MoEF & CC and directions issued by UPPCB and (iii) not to store any fly ash in any temporary ash storage site without obtaining CTE/CTO from UPPCB and at places near to canal/waterbodies, public road and residential area.**

(ii) **The UPPCB is directed (i) to take appropriate action for imposition of environmental compensation on respondent no. 7-BEPL for violation of EC/CTE/CTO conditions and environmental norms and also for realization thereof and thereupon for utilization of the same for remediation of environmental damage caused by preparing and implementing an action plan in consultation with District Environment Committee, District Shahjahanpur; (ii) to finalize the draft mechanism**

for proper utilization of fly ash generated by coal based industries and also ash generated by other industries and file compliance report within six months positively; and (iii) periodically inspect the 90 MW power plant of respondent no. 7-BEPL to verify compliance of the conditions regarding storage and transportation of fly ash in accordance with environmental norms/directions by Hon'ble Supreme Court and this Tribunal and to promptly take appropriate action in case of environmental violations and (iv) to verify factual position regarding treatment of effluent and utilization of ETP treated effluent in the industrial processes and ash quenching and treatment of sewage and utilization of STP treated sewage for horticulture/irrigation.

(iii) **The Divisional Forest Officer, Shahjahanpur is directed to verify the factual position and submit report as to whether respondent No. 7-BEPL has developed green belt over 33 % of project area as mandated by EC and CTE/CTO consent conditions and to submit report within six months specifying the deficiencies of green belt/plantation in terms of area, location, number and nature of species of trees and suggesting measures required to be taken by respondent no. 7-BEPL for remedying deficiencies of green belt/plantation and the budget amount required for the same.**

(iv) **Respondent no. 7-BEPL is directed to ensure that such deficiencies of green belt/plantation so mentioned in the report of the Divisional Forest Officer, Shahjahanpur are remedied so that requisite green belt/plantation of requisite width around the periphery of the plant and over 33 % of the project area is raised and to file compliance report in this regard within next four months.**

129. Reports as directed above may be filed within one month next to the expiry of the specified period before the Ld. Registrar General of this Tribunal who may, if necessary, put up the matter before the Bench for further directions.

130. A copy of this order may be sent by email to the applicants for information and the Member Secretary, CPCB, Member Secretary, UPPCB, Divisional Forest Officer, Shahjahanpur and respondent no. 7-BEPL for requisite compliance

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Dr. Raja Singh vs. Union of India Ministry of Environment Ministry of Environment Forest & Climate Change (Government of India)

(Original Application No. 298/2023)
Decided on: 30th October, 2025(PB)

CASE NOTE

The Original Application No. 298/2023 was filed by Dr. Raja Singh before Principal Bench of the Tribunal, seeking directions for a nationwide ban on the use of asbestos cement roofing (ACR) sheets in schools and for phased replacement of existing sheets. The applicant alleged serious public health risks to school children due to non-occupational exposure to asbestos fibers released from weathered ACR sheets. The applicant's plea relied on scientific studies and international health advisories identifying asbestos as a carcinogen. The Fibre Cement Products Manufacturers Association (respondent no.4) opposed the application, asserting that chrysotile asbestos used in India remained bound within cement and that its regulated use had already been upheld by Hon'ble Supreme Court.

The Tribunal adjudicated upon the issue of whether the alleged non-occupational health risks justified invoking the precautionary principle to order an immediate pan-India ban on ACR sheets, despite Hon'ble Supreme Court's earlier approval of controlled use. It also examined the issue whether asbestos fiber release from roofing sheets amounted to air and environmental pollution and whether the Tribunal possessed jurisdiction to issue directions in what was argued to be a policy domain.

The Tribunal upheld its jurisdiction, holding that asbestos fibers released into indoor air fell within the statutory definitions of air and environmental pollutants. However, it declined to impose a blanket ban on ACR sheets, finding that scientific evidence showed non-occupational exposure levels from intact sheets were far below prescribed occupational limits. While recognizing asbestos as a hazardous carcinogen, the Tribunal concluded that the material on record did not justify judicially overriding the existing regulatory framework and binding Hon'ble Supreme Court precedent.

The Tribunal vide its judgment dated 30.10.2025 disposed of the Original Application with comprehensive directions. The Ministry of Environment, Forests and Climate Change (MoEF&CC) was directed to review scientific evidence and frame an action plan for gradual minimization and phase-out of asbestos use. The Central Pollution Control Board (CPCB) was directed to issue Standard Operating Procedures (SOPs) for safe disposal of asbestos waste, and the Ministry of Education was directed to issue advisories for maintenance, monitoring, and safe removal of damaged ACR sheets in schools. Action Taken Reports were directed to be filed by respondents no.1 to 3 and CPCB within one month next to the expiry of the period of six months before the Ld. Registrar General of this Tribunal.

Dr. Raja Singh vs. Union of India Ministry of Environment Ministry of Environment Forest & Climate Change (Government of India)

COUNSEL FOR APPLICANT:
Applicant in person.

COUNSEL FOR RESPONDENT(S):
Mr. Narender Pal Singh, Adv. for MOEFCC.
Mr. Gi Gi C George and Mr. Sunil Kumar, Advs. for Respondents no. 2 and 3.
Ms. Rashmi Virmani, Mr. Ankit Virmani and Mr. Hrithik Sharma, Advocates for Respondent no. 4.
Mr. Srinivas Vishven, Advocate for CPCB.

CORAM:
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

RESERVED ON**:** 23rd April/ 10th October, 2025
PRONOUNCED ON: 30th October, 2025

JUDGMENT

BY HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER

1. The applicant, a visiting faculty in the Department of Architecture, School of Planning and Architecture, New Delhi, has filed the present application under the provisions of the National Green Tribunal Act, 2010 for issuance of directions for stopping the use of Asbestos roof sheets for schools as a measure of public health and safety and environmental health under the Environment (Protection) Act, 1986 and the Air (Prevention and Control of Pollution) Act, 1981 at the pan-India level.

2. The applicant has raised grievances regarding adverse impact of asbestos cement roofing sheets in schools on children and the relevant part of the original application enumerating grievance of the applicant reads as under:-

> *"7. That the humble relief seeker wants to respectfully and humbly assist the Hon'ble Tribunal by stating that Asbestos roofing composes of a mixture of asbestos fibres and cement. Many times, schools buildings use these asbestos sheets, especially in the rural areas. Over time, the asbestos sheets become friable or crumbly and asbestos fibres are released from these sheets which can become airborne in the indoor air of the school and be inhaled by the occupants of the school who may be small school going children. These buildings also have higher dust pollution.*
>
> *8. The major problem with the inhalation of the asbestos fibres is that it causes lung diseases which may turn fatal. The peculiar character of diseases related to asbestos fibre inhalation istheir*

high latency period and any student who is exposed at a young age will only get the manifestations of the diseases after decades during his/her breadwinning or family raising period.

9. That the more specific issue that the humble relief seeker wants to bring to the Hon'ble Tribunal's attention a new cause of action with respect to a research study published in the most reputed Nature journal titled 'The natural reduction of threat in selected systems of old buildings containing asbestos' recently in 2022. The paper in its conclusion states as follows:
'Active behavior in buildings with asbestos is a cause of above-normal dust pollution. For this reason, children and young people should not use buildings with asbestos, regardless of their physical condition'
The research paper published in Nature Scientific Reports Journal has been attached as Annexure A.

10. In India, this issue has been discussed before from the point of view of asbestos, a non biodegradable material as being a health hazard to school children. Further stating that if the schools buildings are roofed with asbestos sheets, any damage, if, caused to asbestos can result in release of small asbestos fibres that become airborne and can be inhaled. These inhaled fibres can remain in lungs for long periods and can cause serious lung damage."

3. The applicant has referred to information on landing page of WHO and advocated phasing out of asbestos roofing in schools at pan India level and the relevant part of the original application reads as under:-

"15. That the World Health Organisation in its landing page https://www.who.int/teams/environment-climatechange-and health/chemical-safety-andhealth/health-impacts/chemicals/asbestos on asbestos also states that 'all types of asbestos cause lung cancer, mesothelioma, cancer of the larynx and ovary, and asbestosis (fibrosis of the lungs). It also highlights exposure of asbestos through inhalation 'in indoor air in housing and buildings containing friable (crumbly) asbestos materials. The screenshot of the website of the World Health Organisation is attached as Annexure G."

4. The applicant has also submitted that switch from asbestos will not affect livelihood of manufacturers and workers and the relevant part of the original application reads as under :-

"16. That the switch from asbestos sheets for roofing in schools at the national level will not have a major impact to the livelihoods of asbestos sheet manufacturers and workers as the manufacturers themselves have shifted to other fibres and there are plenty of

roofing alternatives available like country roof tile which is sustainable and can be a source of livelihood for the same workers who manufacture the asbestos sheets."

5. In support of the submissions made in the original application, the applicant has relied on order dated 31.01.2009 passed by Hon'ble Kerala State Human Rights Commission in HRMP No. 126/2007,Government order number 162/2019/GEDN dated 09.10.2019 issued by Government of Kerala, order dated 03.09.2019 passed by Hon'ble Kerala High Court in Writ Petition (Civil) no. 22457/2019 and order dated 21.07.2017 passed by Hon'ble Calcutta High Court in Writ Petition (Civil) no. 14729 of 2016.The relevant part of the original application reads as under:-

"11. The Hon'ble Kerala State Human Rights Commission in Order, HRMP No. 126/2007 passed on 31st January 2009 has also taken notice of the same and recommended the ban of use of asbestos roofing in new schools and recommended replacing existing asbestos roofing in government and private schools with country tiles in phased manner. The Certified copy of the Order passed by the Hon'ble Kerala State Human Rights Commission in HRMP No. 126/2007 passed on 31st January 2009 has been attached at Annexure B.

12. That the above stated order of the Kerala Human Rights Commission was implemented by the Government of Kerala and an order to this effect was passed on 9th October 2019 vide number 162/2019/GEDN. The original order is in Malayalam Language and is attached as Annexure C. The translation of the order in English has been put on record by the Hon'ble Kerala High Court in the judgment passed in a related matter WPC 23846 of 2021 in para 9. A certified copy of the Judgment in WPC 23846/2021 passed by the Kerala High Court on 2nd November 2021 has been attached as Annexure D.

13. That this government order based on the recommendations of the Kerala Human Rights Commission to ban the use of asbestos roofing in schools in Kerala was challenged by some petitioner in the Kerala High Court, but the Hon'ble Court in its wisdom reinstated the government order and passed an order in W P C 22457/2019 dated 3rd September 2019 which stated as follows:

'The first respondent, ie the State of Kerala 'shall therefore file an affidavit as to why no action is taken for prohibiting such roof for buildings of schools in the state and why no action is taken to see

that asbestos roof of class rooms in all the schools are replaced. The respondents shall also state why no action is taken to incorporate appropriate provisions providing for specifications for the roof also of the classrooms. There shall be a direction to the respondents to see that the asbestos roof of the classrooms of all the schools are replaced in a time bound manner.'

This order passed on 3rd September 2019 passed by the Hon'ble Kerala High Court in WPC 22457/2019 is attached as Annexure E.

14. That this concern of use of asbestos sheets was also raised in WPC 14729 of 2016 before the Hon'ble Calcutta High Court where such sheets were being used in the main building of the Court. On this the Hon'ble Calcutta High Court ordered that it will be ensured that: 'the asbestos-sheets, which have been used for roofing, would be replaced by any other materials which are non-carcinogenic' The order dated 21st July 2017 in WP No 14729 (W) of 2016 has been annexed as Annexure F"

6. The applicant has submitted that the above facts may be seen in the light of the precautionary principle embodied in Section 20 of the National Green Tribunal Act, 2010,which makes it mandatory for the State to anticipate, prevent and attack the cause of environmental degradation as held in **M C Mehta v. Union of India (1997) 3 SCC 715**, and Articles 21, 47 and 48-A of the Constitution of India and also Right to Health under Article 21 of the Constitution of India as held in **State of Punjab v. Mahinder Singh Chawla (1997) 2 SCC 83**.The applicant has submitted that in view of precautionary principle in the case of asbestos roof sheets the benefit of the slightest doubt that may arise may be given to the environmental health and public health of the children who may be using the school buildings and the onus of the proof as stated in **Vellore Citizens Welfare Forum v. Union of India (1996)5 SCC 647**may be shifted to the respondents to show that continuous use of asbestos roofing is benign from the environmental health point of view. The applicant has further submitted that under Section 3 (2) (i), (ii),(iii),(xiv)and Sections 5 and 6, of the Environment (Protection) Act, 1986 the Central Government is empowered to deal with the environmental and health effects of asbestos in school buildings and that under the Air (Prevention and Control of Pollution) Act 1981, there is no statutory bar to regulation of indoor air quality as held by this Tribunal in order dated 19.04.2022 passed in O.A. No. 206/2022 to guard against risks caused by airborne asbestos or dust particles in the schools.

7. The applicant has further submitted that the applicant sent representations to the Secretaries of the Ministry of Environment, Forests and Climate Change (MoEF & CC), the Ministry of Housing and Urban Affairs (MoHUA) and the Ministry of Education (MoE) for phasing out of asbestos roofing in schools at pan India level but no action has been taken on the same and the applicant has accordingly prayed that suitable directions may be given as this Tribunal deems fit.

8. Vide order dated 02.05.2023 notices were ordered to be issued to the respondents no. 1 to 3requiring them to file their responses/replies within one month. Pursuant to service of notice, replies were filed by respondent no. 2- MoHUA vide email dated 16.09.2023 and respondent no. 3-MoE vide email dated 07.08.2023. Vide order dated 26.09.2023 notice was ordered to be issued again to respondent no.1-MoEF & CC requiring it to file its reply /response to the averments made in the application within two months. Pursuant to service of notice, reply affidavit was filed by respondent no. 1-MoEF & CC vide email dated 26.12.2023.

Reply filed by respondent no. 1-MoEF&CC.

9. In its reply respondent no.1-MoEF&CC has submitted that Asbestos is a hydrated mineral silicate, which is generally fibrous & brittle. It has a variety of industrial applications due to its resistance to heat and chemicals, high tensile strength, and lower cost compared to man-made minerals. Asbestos is mainly used in a wide range of manufactured goods mostly in building materials (roofing shingles, ceiling and floor tiles, paper products, and asbestos cement products), friction products (automobile clutch, brake, and transmission parts), heat-resistant fabrics, packaging, gaskets, and coatings. Asbestos in the building does not spontaneously release fibres, but it can enter the air, water, and soil from the weathering, renovation, or demolition of manufactured asbestos products. People are likely to be exposed to asbestos through inhalation of airborne fibres. The waste asbestos generated from the Production of asbestos or asbestos-containing materials is regulated under the Hazardous and Other wastes (Management & Transboundary Movement) Rules, 2016 (HOWM Rules, 2016), and has been classified as Hazardous Waste under S. No 15 of Schedule I of the HOWM Rules, 2016 which includes (i) Asbestos-containing residues; (ii) Discarded asbestos and (iii) Dust or particulates from exhaust gas treatment. Also, as per schedule-II, Class B of HOWM Rules, 2016 any waste containing Asbestos Total Threshold Limit Concentration (TTLC) of asbestos of 10,000 mg/Kg or above is considered hazardous waste. Further, the import of waste Asbestos (dust and fibres) is prohibited in the country under Schedule-VI of the HOWM Rules, 2016. The waste containing asbestos shall be handled and managed in an environmentally sound manner as per the provisions outlined in the HOWM Rules, 2016, and be sent to Treatment, Storage, and Disposal Facilities (TSDF) for final disposal. The Central Pollution Control Board (CPCB) had issued a report titled "Human Health Risk Assessment Studies in Asbestos Based Industries in India" 2008. In the report, various recommendations have been made to reduce the human risk of asbestos exposure.

Reply filed by respondent no. 2 MoHUA

10. In its reply respondent no. 2-MoHUAhas submitted that as per latest Delhi Schedule of Rates2021 (DSR 2021), a comprehensive technical document for execution of civil works published by the Central Public Work Department (CPWD),no item based on Asbestos material has been provided and therefore, the Asbestos materials are not considered to be used in the works being executed by CPWD or any other works associated with MoHUA.

Respondent no.2-MoHUA has accordingly prayed for dismissal of the application while undertaking to comply with directions issued to it by this Tribunal.

Reply filed by respondent no. 3 MoEF

11. In reply filed by the Department of School Education and Literacy on behalf of respondent no. 2 MoEF, it has been submitted that the proposals under Strengthening of infrastructure in Schools, have been mainly for Additional Class Rooms and Toilets for Boys & Girls and these proposals were formulated based upon the civil works norms decided by PWD, GNCT of Delhi. There had been no use of Asbestos Roof Sheets for schools in Delhi in the construction of Additional Class Room & Toilets for Boys & Girls so far. Hence, necessary measures for public health & environmental health have already been taken into account in Delhi under Samagra Shiksha Scheme being implemented by the Department of School Education and Literacy.

I.A. No. 67 of 2024 filed by Fiber Cement Products Manufacturers Association

12. The Fiber Cement Products Manufacturers Association (FCPMA) filed I.A. No. 67 of 2024 for its impleadment as respondent to the present original application which was allowed vide order dated 19.02.2024 and FCPMA was impleaded as respondent no. 4.

Reply filed by respondent no. 4 FCPMA vide email dated 03.04.2024

13. Reply has been filed by respondent no. 4-FCPMAvide email dated 02.04.2024.

Rejoinder dated 11.12.2023 filed by the applicant

14. Rejoinder dated 11.12.2023 was filed by the applicant praying for directions for stopping the use of asbestos roofs in schools.

Rejoinder dated 01.05.2024 filed by the applicant

15. Rejoinder dated 01.05.2024 to reply dated 03.04.2024 filed by respondent no. 4-FCPMA was filed by the applicant vide email dated 02.05.2024.

Sur-rejoinder dated 17.09.2024 filed by respondent no. 4

16. Sur-rejoinder dated 17.09.2024 to rejoinder dated 01.05.2024 filed by the applicant was filed by respondent no. 4-FCPMA vide email dated 18.09.2024.

Reply dated 18.11.2024 to Sur-rejoinder filed by the applicant.

17. Reply dated 18.11.2024 to sur-rejoinder dated 18.09.2024 filed by respondent no. 4-FCPMAwas filed by the applicant.

Additional documents filed by the applicant.

18. Additional documents were filed by the applicant by application dated 15.02.2024 with prayer for directions for stopping the use of asbestos roofs in schools.

19. Vide order dated 18.07.2024 respondent no. 1-MoEF & CC was required to find out whether in respect of user of asbestos sheets in Educational Institutions, there are some different kinds of health hazards to students i.e. non-occupational health hazards, comparing to health hazards applicable to workers in Industrial Sector, and if there is a distinction, the matter be given a scientific study and report of such scientific study be submitted along with reply.

Affidavit dated 24.09.2024 filed by MoEF & CC

20. Affidavit was filed by MoEF & CC vide email dated 24.09.2024 relying on **"Study of Health Hazards/Environmental Hazards resulting from use of variety of asbestos in the country"** conducted in May 2012.

Response by the applicant to affidavit dated 24.09.2024

21. The applicant submitted his response to affidavit dated 24.09.2024 filed by MoEF&CC in his reply to sur rejoinder filed by respondent no. 4-FCPMA.

22. This Tribunal considered the matter on 25.09.2024 and observed that though an affidavit dated 24.09.2024 has been filed by MoEF& CC but no specific reply has been given in respect of scientific study on the question posed by Tribunal in para 6 of order dated 18.07.2024. This Tribunal further observed in order dated 26.11.2024 that by order dated 25.09.2024 MoEF & CC was again directed to get study conducted by constituting an expert committee comprising of specialist of multidiscipline and submit report but the above said orders were not complied with and ordered personal appearance of officer of MoEF & CC not below the rank of Joint Secretary.

Affidavit dated 13.12.2024 filed by MoEF & CC

23. In compliance of orders dated 18.07.2024, 25.09.2024 and 26.11.2024, besides appearance of the concerned officers, compliance affidavit/report dated 13.12.2024 was filed by MoEF&CC.

24. Vide order dated 17.12.2024 the applicant was granted opportunity to file objections/suggestions to the report dated 13.12.2024 filed by MoEF & CC.

Objections/suggestions by the applicant to Additional Study Report filed by MoEF&CC

25. In compliance thereof, response to the affidavit dated 13.12.2024 of MoEF & CC was filed by the applicant vide email dated 20.02.2025.

26. Vide order dated 17.12.2024 this Tribunal directed the Multi-Disciplinary Experts Committee to look into the aspect of desirability or otherwise of future use of asbestos as part of roof material in the schools and also explore the possibility of use of alternative in place of asbestos in manufacturing of roof sheets etc.

Additional status report dated 22.02.2025 filed by MoEF & CC

27. In compliance thereof Additional Status Report dated 22.02.2025 was filed by MoEF & CC.

28. In the Additional Status Report dated 22.02.2025 MoEF&CC has further submitted that during hearing on 17.12.2024, this Tribunal desired a comment/response from the Indian Institute of Toxicology Research (CSIR-IITR) but CSIR-IITR through its email dated 29.01.2025 and subsequent email dated 18.02.2025 apprised that at present CSIR-IITR, Lucknow does not have expertise in the desired area for the said Expert Committee.

Response dated 04.04.2025 filed by the applicant to the MoEF&CC Expert Committee Additional Report dated 21.02.2025

29. The applicant filed response dated 04.04.2025 to the MoEF&CC Expert Committee Additional Report dated 21.02.2025.

30. For the sake of brevity and avoiding repetition the submissions made in reply filed by respondent no. 4, rejoinders filed by the applicant, sur-rejoinder filed by respondent no. 4, reply to sur-rejoinder filed by the applicant, additional documents filed by the applicant vide application dated 15.02.2024, responses/reports filed by MoEF & CC and responses to the same filed by the applicant are not reproduced herein and the same will be referred to/discussed in later part of the Judgment.

31. Vide order dated 24.03.2025 MoEF & CC and CPCB were directed to file additional response as to whether any SOP has been formulated regarding installation and dismantling/disposal of asbestos roof sheets/wall sheets and to file copy of the SOP if already framed and to formulate such SOP if not already framed and file additional response.

32. However, MoEF&CC and CPCB did not file any additional response in this regard.

33. We have heard submissions made by the applicant-Mr. Raja Singh and Mr. Narender Pal Singh, learned Counsel for respondent no. 1; Mr. Gi. Gi. C. George and Mr. Sunil Kumar, learned Counsels for respondents no. 2 and 3; Ms. Rashmi Virmani, Mr. Ankit Virmani and Mr. Hrithik Sharma, learned Counsels for respondent no. 4 and Mr. Srinivas Vishven, learned Counsel for CPCB and we have gone through the material on record carefully.

34. In their arguments the applicant and learned Counsels for the respondents have reiterated the factual and legal submissions made in the application and respective replies.

Whether this Tribunal has jurisdiction to entertain the present application and grant the relief s prayed for by the applicant?

35. Respondent no. 4-FCPMA has taken the objection that the present original application is not maintainable as it does not relate to implementation of any law mentioned in the Schedule I to the National Green Tribunal Act 2010, and instead seeks relief which are purely in the realm of policy.

36. In rejoinder filed to the reply of respondent no. 4-FCPMA, the applicant has pleaded the objection to be wrong and misconceived as the same totally disregards the Air (Prevention and Control of Pollution) Act, 1981 as well as the Environment (Protection) Act, 1986. The applicant has submitted that the issue is about release of asbestos fibres from weathered asbestos cement sheets which have been used in school buildings. These fibres are released into the air of the school and the surroundings and become an “air pollutant” as defined in Section 2 (a) of the Air (Prevention and Control of Pollution) Act, 1981 and cause “air pollution” as defined in Section 2 (b) of the Air (Prevention and Control of Pollution) Act, 1981. As admitted by MoEF & CC, asbestos fibres released can enter water as well as soil from weathering, renovation, or demolition of manufactured asbestos products. This clearly indicates that not only can the Air (Prevention and Control of Pollution) Act, 1981be violated, but also the Water (Prevention and Control of Pollution) Act, 1974.With respect to the issue of indoor pollutant this Tribunal in Raja Singh v. Union of India & Ors. (OA 206/2022 judgment dated 19.04.2022) has ruled that ‘indoor air quality can be regulated in respect of public places’ and that ‘there is no statutory bar to regulation of indoor air quality under the Air (Prevention and Control of Pollution) Act, 1981 or the Environment (Protection) Act,1986 and the Rules framed under the same. The same judgement in paragraph 10 also listed sources of indoor air pollutants as including building materials, formaldehyde, volatile organic compounds, radon, asbestos, particulate matter, gaseous pollutants and biological pollutants. Asbestos fibre pollution in the air caused by use of asbestos cement roofing is well within the scope and mandate of the Air (Prevention and Control) of Pollution Act, 1981 read along with the Environment (Protection) Act, 1986 and rules framed under the same.

37. On the issue of the use of the phrase ‘realm of policy making’ the applicant has submitted that NGT is not merely an adjudicatory body, but a regulatory body in essence. In this regard, the applicant has referred to the observations made by the Hon’ble Supreme Court

in **Municipal Corporation of Greater Mumbai v. Ankita Sinha & Ors (C.A. No. 12122 of 2018)** and **Director General (Road Development) National Highways Authority of India vs Aam Aadmi Lokmanch and Others (2021) 11 SCC 566**.

38. So far as the objection as to jurisdiction of this Tribunal and also as to the relief sought being in the realm of policy making, we find force in the submissions made by the applicant. While submitting that asbestos in the building does not spontaneously release fibres, respondent no. 1-MoEF & CC has admitted in its reply that asbestos can enter the air, water, and soil from the weathering, renovation, or demolition of manufactured asbestos products and people are likely to be exposed to asbestos through inhalation of airborne fibres. Asbestos fibers will fall within the definition of "air pollutant" under section 2 (a) of the Air (Prevention and Control of Pollution) Act, 1981 and "environmental pollutant" under section 2 (b) of the Environment (Protection) Act, 1986 and air, water and soil pollution caused by asbestos fibres will fall within definition of "environmental pollution" under Section 2 (c) of the Environment (Protection) Act, 1986 and within definition of "pollution" under section 2 (e) of the Water (Prevention and Control of Pollution) Act, 1974 and "air pollution" under section 2(b) of the Air (Prevention and Control of Pollution) Act, 1981.

39. This Tribunal has held in **order** dated 19.04.2022 passed in O.A. No. 206/2022 Raja Singh v. Union of India & Ors. that 'indoor air quality can be regulated in respect of public places' and that 'there is no statutory bar to regulation of indoor air quality under the Air (Prevention and Control of Pollution) Act, 1981 or the Environment (Protection) Act 1986 and the Rules framed under the same.

40. In view of sections 14 and 15 of the National Green Tribunal Act, 2010 this Tribunal has jurisdiction to entertain and decide the present case involving substantial questions relating to environment arising out of the implementation of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

41. This Tribunal was conceived as a specialized forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were prior to the enactment of the National Green Tribunal Act, 2010 dealt with by the Hon'ble High Court and the Hon'ble Supreme Court. The Tribunal is expected to proceed with the environmental matters with the under standing that environment and environment principles are part of Article 21 of the constitution. **[See Vellore Citizens' Welfare Forum Vs. Union of India (1996) 5 SCC 647 and M.C. Mehta (Taj Trapezium Matter) Vs. Union of India (1997) 2 SCC 353].** This Tribunal is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report. In ***Municipal Corporation of Greater Mumbai V/s. Ankita Sinha and others 2021 SSC Online SC 897***Hon'ble Supreme Court noticed the uniqueness of this Tribunal vis-à-vis other Tribunals and observed that this Tribunal has sui generis characteristic with the special and all-encompassing jurisdiction to

protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment.

42. In view of the above the present original application is not liable to be dismissed on the ground of lack of jurisdiction or the relief sought being in the realm of policy.

43. The material facts emerging from the material on record may be referred to before adverting to and adjudicating upon the substantial environmental questions involved in the case.

About Asbestos and its varieties

44. The mineralogical classification divides asbestos into two groups-(a) the Amphibole group which includes Actinolite, Amosite, Crocidolite, Tremolite, Anthophyllite and (b) the Serpentine group which includes Chrysotile.

45. The Crocidolite, Actinolite, Anthophylite, Amostile, Tremolite varieties of asbestos are listed in Annexure-III (List of certain hazardous Chemicals and Pesticides) of the Rotterdam Convention and are subject to Prior Information Consent (PIC) procedure by the exporting country for the imports to India. However, the Chrysotile asbestos is not included in Annexure-Ill of the Rotterdam Convention and is imported without any prior consent.

46. During the recent Conference of Partiesheld from 1st May -12thMay 2023 at Geneva (COP 11), India has along with other countries categorically opposed a move to insert chrysotile in Annexure III to the Rotterdam Convention as most of the asbestos industries in India followed the wet processes which minimize the dispersion of asbestos fibers in the air.

Use of Asbestos

47. In its reply filed vide email dated 26.12.2023 respondent no. 1-MoEF & CC has mentioned that asbestos is a hydrated mineral silicate, which is generally fibrous & brittle. It has a variety of industrial applications due to its resistance to heat and chemicals, high tensile strength, and lower cost compared to man-made minerals. Asbestos is mainly used in a wide range of manufactured goods mostly in building materials (roofing shingles, ceiling and floor tiles, paper products, and asbestos cement products), friction products (automobile clutch, brake, and transmission parts), heat-resistant fabrics, packaging, gaskets, and coatings.

Adverse impact of Asbestos on human health.

48. In “Study of health hazards/Environmental hazards resulting from use of chrysotile variety of asbestos in the country” conducted by National Institute of Occupational heath,

(Indian Council of Medical research), Meghani Nagar, Ahmedabad. Adverse impacts of asbestos on human health are noticed as under:-

> *"Asbestos fibers when breathed in may get trapped in the lungs and may remain there for a long time. Over time, these fibers can accumulate and cause scarring and inflammation, which can affect breathing and lead to serious health problems. Asbestos has been classified as a known human carcinogen (a substance that causes cancer) by the U.S. Department of Health and Human Services, the EPA, and the international Agency for Research on Cancer Studies have shown that exposure to asbestos may increase the risk of lung cancer and mesothelioma (a relatively rare cancer of the thin membranes that line the chest and abdomen). Although rare, mesothelioma is the most common form of cancer associated with asbestos exposure. In addition to lung cancer and mesothelioma, some studies have suggested (though inconclusively) an association between asbestos exposure and gastrointestinal and colorectal cancers, as well as an elevated risk for cancers of other organs like esophagus, gallbladder etc. Asbestos exposure may also increase the risk of asbestosis (a chronic lung disease that can cause shortness of breath, coughing, and permanent lung damage) and other non-malignant lung and pleural disorders, including pleural plaques (changes in the membrane surrounding the lung), pleural thickening, and pleural effusions (abnormal collections of fluid between the thin layers of tissue lining the lung and the wall of the chest cavity). Although pleural plaques are not precursors to lung cancer, evidence suggests that people with pleural disease caused by asbestos exposure may be at increased risk for lung cancer.*
>
> *The occurrence of health effects of asbestos exposure also depends upon the type of asbestos used. While the occurrence of asbestosis, lung cancer and mesothelioma is widely reported with the use of amphibole variety there are inconclusive reports about the serpentine variety. The serpentine variety is a thin-walled sheet silicate while the amphiboles are double chain silicates. These different chemistries result in chrysotile clearing very rapidly from lungs (11 days) while amphiboles are among the slowest clearing fibres (500 days. Due to these reasons some of the studies carried out among groups exposed to chrysotile asbestos concluded that it does not appear to contribute to the lung cancer burden or excess mortality'. The dose and duration of exposure also plays an important role in the occurrence of clinical effects. A median exposure of 10-20 fibre years does not seem to cause an increased risk of lung cancer, particularly when chrysotile is used. Moreover,*

progressive improvement in occupational hygiene in a developing country is likely to reduce the risk of non-malignant consequences of dust inhalation in chrysotile miners and millers.
Asbestos exposure when combined with exposure to other toxicants may increase risk of carcinogenesis. Adsorption of components of cigarette smoke onto the surface of chrysotile fibres has been suggested to play a role in the etiology of lung cancer in fibre-exposed cigarette smokers."

49. In O.A. No. 649/2022- Narender Pratap Singh Vs. Central Pollution Control Board & Anr., this Tribunal also noticed adverse health impact of asbestos and observed in para no.26 of its Judgment dated 17.07.2023 as under:-

"However, we consider it necessary to observed the exposure to Asbestos is risk factor for developing disabling & deadly lung diseases years after the exposure. Inhaling asbestos fibers can lead to scarring of the lung tissues, which can result in the loss of lung function, disability & death. Asbestos exposure can also cause cancer in the lungs & cancer (known as Mesothelioma) in the lining of the lungs or stomach. There is no safe level of asbestos exposure."

No Safe limit of asbestos exposure

50. As pointed out by the applicant, asbestos is an issue directly related to the causation of cancer as a Group 1 carcinogen. In 'Environmental Health Criteria 203: Chrysotile Asbestos', in its recommendation section, it has been clearly mentioned that 'No threshold has been identified for carcinogenic risks' (Page no. 1543 of the paper book).The Expert committee in report dated 13.12.2024 has submitted that 'even low dose exposure to asbestos can result in a disease' after several years (Page no. 1738 of the paper book). In **OA 649/2022 Narender Pratap Singh vs CPCB & Ors** this Tribunal also observed in para no.26 of judgment dated 17.07.2023 that there is no safe level of asbestos exposure.

Import and use of Asbestos is not banned in India

51. Even though the Government of India has banned mining of asbestos in the Country since 1996 but Government of India has not banned the import and use of asbestos in the country.

Question as to whether or not use of asbestos should be prohibited in India.

52. The question as to whether or not use of asbestos should be prohibited in India has already been decided by the Hon'ble Supreme Court in **Kalyaneshwari vs, UOI and Ors,**

(2011) 3 SCC 2871 wherein the Hon'ble Supreme Court was pleased to decline the prayer for ban on use of asbestos by holding inter alia as under:

> *"21. As already noticed, there is no law banning the use of asbestos in various manufacturing processes despite its adverse effects on human health. It is not for this Court to legislate and ban an activity under relevant laws. Every factory using or manufacturing asbestos, obtains a licence under the Factories Act as well as permission from the competent authorities including permission under the Environmental Laws. Once all the laws in force have been complied with and directions of this Court as contained in the case of Consumer Education and Research Centre (supra) are carried out in their true spirit, we see no reason as to why this Court, in exercise of its extraordinary jurisdiction under Article 32 of the Constitution, should ban such an activity when admittedly large number of families are dependent upon such processes. What has to be ensured is that proper precautions are taken. The Court had already made ILO guidelines as one of the safety measures to be complied with by the industries and it is expected of each State Government and the Union Government to ensure safe and controlled use of asbestos. What is required is better supervision and regulatory control rather than banning of the activity."*

53. Even though the use of asbestos is not banned in India but use of asbestos in India is regulated by the following measures:-

(i) Emission standards for Asbestos Based Products Manufacturing Industries' notified in March, 2006 by Ministry of Environment, Forest & Climate Change under Environmental (Protection) First Amendment Rules, 2006.

Revised emission standards for `Asbestos Based Products Manufacturing Industries' were notified in March, 2006 by MoEF & CC under Environmental (Protection) First Amendment Rules, 2006.Item 27 under Schedule I of the Environment (Protection) Rules, 1986 provides for standards for emission for all types of asbestos manufacturing units (including all processes involving the use of asbestos). These are fixed at "0.5 fibre /cc for one year from the date of notification 0.2 fibre /cc [after one year from the date of notification] 2 mg/m3 (normal).

(ii) Concentration limits of asbestos in air are provided under the Environment (Protection) Rules, 1986.

The 'General Emission Standards — Part D' notified under the Environment (Protection) Rules, 1986 also prescribe concentration-based limits of asbestos. These are "4 Fibres/cc and dust should not be more than 2 mg/Nm3".

(iii) Standards for asbestos cement roof sheets are laid down by Bureau of Indian Standards.

The Bureau of Indian Standards ("BIS") has laid down a large number of standards for asbestos-cement products and their safe use and handling (details @ pp.481-484 of Reply of R4). For laying down specifications for asbestos cement corrugated and semi-corrugated roof sheets, BIS has laid down Indian Standard (IS) 459:1992.3.

(iv) Compliance with BIS has been made mandatory w.e.f 07.09.2024

Recently, the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry has notified the 'Asbestos or Fibre Cement based Products (Quality Control) Order, 2024' in the Official Gazette on 07.03.2024 which came into force w.e.f. 07.09.2024. This order, passed under S.16 of the Bureau of Indian Standards Act, 2016, mandates compliance with relevant BIS standards including IS 459:1992 and provides for penalty for contravention of its provisions.

(v)Enforcement through SPCBs/PCCs and Monitoring by MoEF&CC

All these standards are enforced through the State Pollution control Boards/Pollution Control Committees and are monitored by MoEF & CC.

(vi) Requirement of prior Environment Clearance for setting up asbestos manufacturing plant.

The MoEF&CC requires any industry seeking to engage in manufacture of asbestos-based products to apply for and obtain a prior Environmental Clearance (EC) under the Environment Impact Assessment Notification, 2006 (Item 4(c) in the Schedule). EC is granted subject to environmental safeguards.

(vii) Regulation under the Factories Act, 1948.

The Factories Act, 1948 contains significant regulations governing the asbestos industry.

(i) As per the provisions contained under Section 2(cb) of the Factories Act, 1948 the "Manufacture, handling and processing of Asbestos and its products" is declared as a hazardous process and the same is listed in the First Schedule of the Act and accordingly provisions of Chapter IV-A of the Act relating to hazardous processes are applicable to such factories.

(ii) The permissible levels of asbestos fibre in work environment are given in Second Schedule of the Factories Act,1948 (0.1 fibres/cc).

(iii) Section 7A of the Factories Act,1948 provides that every occupier shall ensure, so far as reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory registered under the Factories Act,1948.

(iv) Further, Section 89 of the Factories Act,1948 prescribes that where any worker in a factory registered under the Act contracts any notifiable disease, including Asbestosis, specified under the Act, the manager of the factory shall report the same to the Chief Inspector of Factories and other authorities in their State Factories Rules which is enforced by the State Governments who are empowered under the Act to initiate penal action under Section 92 of the Act for violation of any of the provision of the Act and the Rules framed thereunder.

(viii) Guidelines issued for Safe Use of Products Containing Asbestos

Bureau of Indian Standards adopted "Indian Standards Guidelines for Safe Use Of Products Containing Asbestos. Part-I Asbestos Cement products". (Copy at pages no. 1211 to 1231 of the paper book) on 30.04.1987. The relevant part of the Forward in the guidelines reads as under:-

> *"0.2 In recent years there has been a growing awareness that exposure to asbestos dust can have harmful effects on the health of workers. In order to give guidance on how the risk of exposure to asbestos dust can be prevented, controlled or minimized, it was felt necessary to lay down some standards regarding safe use of different products containing asbestos, improving conditions in workplaces, preventive measures, protection and supervision of the health of workers, packaging and transport, disposal of asbestos waste, etc. This standard laying down guidelines for safe use of products containing asbestos has been prepared in three parts. This part of the standard lays down guidelines for safe use of asbestos cement products. Guidelines for safe use of friction materials containing asbestos and non-cement asbestos products other than friction materials are covered in Parts 2 and 3 respectively.*
>
> *0.3 Asbestos cement products generally contain 10 to 15 percent asbestos fibres in a cement matrix that comprises the rest of the material and are termed as 'locked-in' asbestos products as these products have the asbestos fibres bound in cement. There is very little possibility of generation of airborne asbestos fibres during any reasonable handling, transport, storage and use of such products. However, during storing and installation, recommended work practices shall be followed to avoid harmful dust exposures.*
>
> *0.4 In the formulation of this standard, due weightage has been given to international co-ordination among the standards and practices pre-vailing in different countries in addition to relating it to the practices in the field in this country. This has been met by deriving assistance from 'ILO Codes of practice: Safety in the use of asbestos', 1984 published by the International Labour Office,*

Geneva and ISO 7337 Asbestos reinforced cement products-Guidelines for on-site work practices, published by the International Organization for Standardization."

The above said guidelines contain specific provisions with respect to (i) receiving and storing of asbestos cement products, (ii) work on site, (iii)working processes and recommended tools, (iv) tools specification, (v) waste disposal, (vi)warning and (viii) safety rules sheet.

(ix) Measures for regulating safe use of Asbestos

Safe use of Asbestos is regulated by the following measures :-

"(i) The First Schedule under Section 2 (cb) of the Factories (Amendment) Act, 1987 enlists Industries involving hazardous process wherein the asbestos fibre related work in asbestos cement product industries is identified as "Hazardous Process.

(ii) Under Section 41C of the Factories (Amendment) Act, 1987 the Occupier of the factory is assigned specific responsibility in relation to hazardous process. It involves: (a) Maintenance and update of health record of workers; (b)Medical examination of every worker and (c)Appointment of competent person.

(iii)According to the Third Schedule and section 89 of the Factories Act, Asbestosis comes under the list of Notifiable Occupation Diseases. It is also compensable under the Employee's Compensation Act, 1923 and Employees' State Insurance Act, 1948.

(iv) The occupier of the factory carrying a 'Hazardous Process' shall provide and maintain in good order in Occupational Health Centre with the service and facilities as per scale laid down under Factories Act.

(v) Model Rules are framed by Directorate General. Factory Advice Service and Labour Institutes (DGFASLI) under the Factories Act. Schedule XIV of Model Rules under Section 87 on "Handling and Processing of Asbestos, Manufacture of any Article or Substance of Asbestos and any other Processes of Manufacture or otherwise in which Asbestos is used in any Form", provides the detailed guidelines on various aspects ofsafety and health for asbestos handling. The Factories Act, 1948 and the State Factories Rules framed thereunder are enforced by the respective State Governments.

Recommendations made by CPCB to reduce the human risk of asbestos exposure.

54. The Central Pollution Control Board had issued a report titled "Human Health Risk Assessment Studies in Asbestos Based Industries in India" 2008. In the report, various recommendations have been made to reduce the human risk of asbestos exposure.

Occupational and non occupational exposure to asbestos

55. There are two broad types of exposures to asbestos occupational and non- occupational which may be described as follows:-

> *"**a. Occupational Exposure to the asbestos fibres**: This can happen during mining of asbestos, transportation of asbestos, processing and manufacturing of asbestos products, dismantling of ships containing asbestos and installation of asbestos materials. This may also include para occupational exposure where the allied persons directly or indirectly to the above get exposed.*
> ***b. Non occupational exposure to asbestos**: This happens when a person is exposed to asbestos fibres when using a building, or utility service containing asbestos. This may also include the exposure when the building materials after use are demolished and not disposed of properly and is available in the vicinity of non-occupational users."*

Directions given by Hon'ble Supreme Court

56. In **Consumer Education and Research Center and others vs. Union of India and others (1995) 3 SCC 42** Hon'ble Supreme Court gave directions and the relevant para of the judgment is reproduced as under:-

> *"31. The writ petition is, therefore, allowed. All the industries are directed (1) To maintain and keep maintaining the health record of every worker up to a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of the employment whichever is later; (2) The Membrane Filter test, to detect asbestos fibre should be adopted by all the factories or establishments at par with the Metalliferrous Mines Regulations, 1961; and Vienna Convention and Rules issued thereunder; (3) All the factories whether covered by the Employees State Insurance Act or Workmen's Compensation Act or otherwise are directed to compulsorily insure health coverage to every worker; (4) The Union and the State Governments are directed to review the standards of permissible exposure limit value of fibre/cc in tune with the international standards reducing the permissible content as prayed in the writ petition referred to at the beginning.*

The review shall be continued after every 10 years and also as an when the I.L.O. gives directions in this behalf consistent with its recommendations or any Conventions; (5) The Union and all the State Governments are directed to consider inclusion of such of those small scale factory or factories or industries to protect health hazards of the worker engaged in the manufacture of asbestos or its ancillary products; (6) The appropriate Inspector of Factories in particular of the State of Gujarat, is directed to send all the workers, examined by the concerned ESI hospital, for re-examination by the National Institute of Occupational Health to detect whether all or any of them are suffering from asbestosis. In case of the positive Ending that all or any of them ant suffering from the occupational health hazards, each such worker shall be entitled to compensation in a sum of rupees one lakh payable by the concerned factory or industry or establishment within a period of three months from the date of certification by the National Institute of Occupational Health."

Directions given by this Tribunal in Original Application No. 649/2022 titled Mr. Narender Pratap Singh v. Central Pollution Control Board and Ors.

57. In Original Application No. 649/2022 titled **Mr. Narender Pratap Singh v. Central Pollution Control Board and Ors.** keeping in view the hazards of exposure associated with the handling of asbestos the Project Proponent was directed to implement the following measures for protecting worker, their family members/persons coming in contact with them and residents of the locality:-

(i) Protecting Workers:

The employers are required to protect workers by assessing asbestos levels, marking of regulated areas, posting hazard signs, engineering controls (ventilation systems with appropriate filters) and appropriate green belt and other technological measures to reduce level of asbestos in the air. The proper use of Personal Protective Equipment (PPE), need to be made mandatory for the workers.

(ii) Measures for Controlling Exposure:

- Smoking, eating or drinking in areas where asbestos exposure is possible should be prohibited.
- Dry sweeping, shoveling or other dry cleanup of dust & debris containing asbestos should be avoided.
- Wearing protective outer clothing that can be removed & cleaned or discarded should be made mandatory.
- Washing exposed parts of the body with soap and water should be mandatory.

➢ All precautions need to be taken to avoid carrying asbestos fibres out of worksite where they can later be inhaled by others (Viz. family members at home).

(iii) Medical Monitoring:

Periodical exposure monitoring & medical surveillance of workers should be made mandatory.

(iv) Training:

➢ The workers, who may be exposed to airborne concentration of asbestos at or above Permissible Exposure Limit (PEL),need to be trained prior to initial assignment and at least annually thereafter.

➢ The training programme must include information on the following:-

- The Health Effects associated with asbestos exposure
- The relationship between smoking and asbestos exposure in producing lung cancer.
- The quality, location, manner of use, release, and storage of asbestos, and the specific nature of operations which could result in exposure to asbestos.
- The engineering controls and work practices associated with the worker's job assignment.

58. In that case this Tribunal also directed CPCB to issue appropriate guidelines covering similar asbestos based industries operating in the Country to strictly ensure compliance with EC and consent conditions as well as to follow the measures suggested in para 26 above for mitigating adversarial impacts of asbestos exposure on human health and environment.

Non-occupational exposure to asbestos in the Schools.

59. In the present case, the applicant has himself clarified and emphasized that **this application is not about a blanket ban of asbestos in the country and that this application pertains to the non-occupational exposure to asbestos in Schools and is about phasing out asbestos roofing in schools under Air (Prevention and Control of Pollution) Act 1981 read with the Environmental (Protection) Act, 1986 and precautionary principle embodied by Section 20 of the National Green Tribunal Act, 2010 as an issue of health of the children.**

60. The applicant has raised the issue of non-occupational exposure to asbestos in Schools due to its use as roofing materials and the applicant has submitted that non-occupational damage caused due to the asbestos in the Schools as raised in his application has not been considered earlier in any matter by the Hon'ble Supreme Court or this Tribunal.

61. In rejoinder filed vide email dated 12.12.2023 and application for filing additional documents the applicant has mentioned that the applicant sought information from the States, Central Agencies Kendriya Vidyalaya Sangathan, Atomic Energy Board Schools and CPWD and other departments and mentioned number and other details of the schools in States of Goa, Kerala, Odisha and NCT of Delhi and also schools under Kendriya Vidyalaya Sangathan and

Atomic Energy Board having asbestos containing material/cement asbestos roofs and the applicant has submitted that it may be full of risk to neglect the presence of the asbestos roofs in the schools, especially when schools in other parts of the world have shown the harmful effects of the presence of asbestos in the schools' buildings to the health of the students and the manifestation of the disease occurs many years after exposure during the students' lives. The applicant has further submitted that the commercial interests cannot be protected at the cost of health and that in view of the precautionary principle if there are potential irreversible damages, the lack of scientific certainly should not be a reason for postponing measures to prevent environmental degradation.

63. In its reply and sur rejoinder respondent no. 4-FCPMA has submitted that Actinolite, Amosite, Crocidolite, Tremolite and Anthophyllite are not used by its members who use Chrysotile (or white asbestos) which constitutes 95% of the world production and commercial use and its controlled use is considered safe.

63. The applicant has submitted that the existing schools and other buildings in the country which have asbestos cement roofing for more than 8 decades, as claimed by the respondent no. 4-FCPMA may have used all varieties of asbestos, apart from Chrysotile, in the past.

About Asbestos cement products

64. In its reply Respondent no. 4-FCPMA has submitted that asbestos cement products are different from friable or crumbly asbestos which was earlier used in Western countries, including in buildings for insulation etc. The latter form of asbestos, when dry, was reduced to powder by applying hand pressure. Such products were used in the Western countries when harmful effects of such asbestos were not known. The asbestos varieties and products used in western countries were different and distinct from asbestos cement products that are manufactured by members of respondent no.4-FCPMA and are used in India. Members of respondent no.4-FCPMA use the chrysotile variety of asbestos in the manufacture of asbestos cement products, including roofing sheets. Chrysotile variety can be used safely under controlled conditions (and safety of the product is, in any case, further reinforced when chrysotile is firmly bound with cement).

The key ingredients of asbestos cement

65. In its reply respondent no. 4-FCPMA has submitted that the key ingredients of asbestos cement (also known as `fibre cement') products, including roofing sheets, manufactured by the members of respondent no.4 are (concentration by weight) (a)Chrysotile (white asbestos) fibres - 7-9%; (b)Cement - about 40%;(c)Fly Ash - about 30%; and (d) the rest comprising of pulp and water.

Whether Asbestos cement roof sheets are safe

66. In its reply and sur rejoinder respondent no. 4-FCPMA has submitted that during the manufacturing process, the asbestos fibres are firmly 'locked' into the cement matrix and cannot be emitted into the atmosphere under normal use. Asbestos cement roof sheets are a high-density material having density of 1.4 gram per cc and chrysotile fibre is firmly locked in Fibre Cement matrix with cement. As such, even after fixing of the sheet on the roof, there is virtually no chance of fibre being air borne even on weathering or breakage.

67. In its reply respondent no. 4-FCPMA has also mentioned that precautions and safety measures are taken by its members during the manufacturing process to ensure inter alia that directions of Hon'ble Supreme Court of India given in **Consumer Education and Research Centre v. Union of India, (1995) 3 SCC 42** as well as all relevant laws in this regard are rigorously followed and implemented.

68. Respondent no. 4-FCPMA has mentioned that following measures are taken by its members to adhere to the guidelines set down by the Hon'ble Supreme Court at para 31 of the above judgment:-

> *"i. Members of the answering Respondent maintain health records of every worker up to a minimum period of 40 years from start of employment or 15 years after retirement or cessation of employment, whichever is later.*
> *ii. Members of the answering Respondent conduct Membrane Filter Test in all factories to detect asbestos fibre at par with Metalliferrous Mines Regulation 1961 and Vienna Convention and Rules thereunder.*
> *iii. Every worker is given health insurance coverage — irrespective of whether or not such worker is covered by Employees' State Insurance Act, 1948 Act or Workmen's Compensation Act, 1923.*
> *iv. Members of the answering Respondent strictly adhere to the permissible exposure limit (0.1 fibre/cc).*
> *b. the exposure of workers to asbestos fibre is minimized and is below the prescribed standard of 0.1 fibre/cc;*
> *c. emissions from the units are below prescribed standards."*

69. In its reply respondent no. 4-FCPMA has mentioned other safety measures taken by its members which include regular monitoring of stack emissions, ambient air quality, workplace air conditions, noise levels, and effluents. The results are submitted to the SPCB/PCCs whenever required by the SPCB/PCCs. The Bureau of Indian Standards (BIS) has issued 16 recommendations concerning the "Safety in Handling and Use of Asbestos." and the members of respondent no.4-FCPMAdiligently adhere to these recommendations to ensure safety and compliance. Further, the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry has passed an order dated 06.03.2024 published *in* the official gazette of India titled as `**Asbestos or Fibre Cement based Products (Quality Control)**

Order, 2024' in order to regulate quality of asbestos/fibre cement products. This order also provides for penalty for contravention in case of violation of its provision. Even the authorities are proactive in implementing the regulations for safe use of asbestos. This includes ensuring that conditions of all permits, clearances etc. are duly adhered to by the industry, the permissible exposure limits are not breached, etc.

70. Respondent no.4-FCPMA has submitted that Asbestos cement sheets (a)are strong and durable (b) are non-corrosive, fire resistant and insulating (c)are economical (d)do not entail depletion of natural resources and (e) are major consumers of fly ash— an industrial waste material and environmental pollutant. Asbestos cement roof sheets have been in use in India for more than eight decades, and to the knowledge of respondent no.4-FCPMA there have been no health hazards issues connected with the use of these sheets.

71. Respondent No. 4-FCPMA has submitted that the asbestos-cement products (including roof sheets) manufactured by the members of Respondent no. 4-FCPMA strictly conform to the applicable BIS specifications. In compliance with IS 459:1992, the members of respondent no. 4-FCPMA provide the safety rules sheet at the time of delivery of every asbestos cement sheet as per clause 13 of the said standard.

72. The Applicant has alleged that IS 11769 (Part I) -1987,4 being the relevant BIS standard for safe use of asbestos roof sheets in schools, does not consider the weathering of such roofing and talks about manual methods for cutting and drilling of asbestos cement roofing.

73. Respondent no.4 has submitted that IS 11769 (Part 1) -1987 (a) categorically recognizes that asbestos fibres are bound in cement and "there is very little possibility of generation of airborne asbestos fibres during any reasonable handling, transport, storage and use of such products ..."; and (b) recommends inter alia the following measures for avoiding dust exposure during handling and installation: (a) hand tools or slow running tools that produce only coarse dust or chips may be preferred over high-speed machines which generate inhalable dust; (b) When high speed tools are used, they shall be fitted with efficient dust extraction equipment designed for the purpose and (c)use of power operated drills for drilling.

Scientific evidence regarding adverse health impact of non- occupational exposure to asbestos relied upon by the applicant

74. In para 9 of the original application the applicant referred to a research study published in the most reputed Nature Journal titled **"The natural reduction of threat in selected systems of old buildings containing asbestos"** (copy attached as Annexure A with the original application) recently in 2022. The paper in its conclusion states as follows:-

> *"Active behaviour in buildings with asbestos is a cause of above-normal dust pollution. For this reason, children and young people*

should not use buildings with asbestos regardless of their physical condition."

75. In para 15 of the original application the applicant has referred to information on landing page of WHO which reads as under:-

"15. That the World Health Organisation in its landing page https://www.who.int/teams/environment-climatechange-and-health/chemical-safety-andhealth/healthimpacts/chemicals/asbestos on asbestos also states that 'all types of asbestos cause lung cancer, mesothelioma, cancer of the larynx and ovary, and asbestosis (fibrosis of the lungs). It also highlights exposure of asbestos through inhalation 'in indoor air in housing and buildings containing friable (crumbly) asbestos materials. The screenshot of the website of the World Health Organisation is attached as Annexure G."

76. In rejoinder filed to the reply of respondent no. 4-FCPMA the applicant has referred to the following scientific studies/material in support of submissions made in the original application:-

*"**POSITION OF THE WORLD HEALTH ORGANISATION ON THE USE OF CHRYSOTILE ASBESTOS CEMENT ROOFING SHEET AND ITS EFFECT ON HEALTH***

16. The World Health Organisation came out with a publication called 'Chrysotile Asbestos' in 2014. In this document it is stated as follows:

'Bearing in mind that there is no evidence for a threshold for the carcinogenic effect of asbestos, including chrysotile, and that increased cancer risks have been observed in populations exposed to very low levels, the most efficient way to eliminate asbestos-related diseases is to stop using all types of asbestos. Continued use of asbestos cement in the construction industry is a particular concern, because the workforce is large, it is difficult troll exposure, and in-place materials have the potential to deteriorate and pose a risk to those carrying out alterations, maintenance, and demolition. In its various applications, asbestos can be replaced by some fibre materials and by other products that pose less or no risk to health.' For the sake of schools, the use of asbestos cement sheets, learning from the above, may be phased out in India. The publication titled 'Chrysotile Asbestos' by the World Health Organisation is attached as Annexure F

RECENT SCIENTIFIC EVIDENCE OF TOPICS RELATED TO THE RELEASE OF ASBESTOS FIBRES FROM ASBESTOS CEMENT SHEETS OVER TIME DUE TO WEATHERING, DETIORATION AND DECAY

17. The humble applicant, most respectfully prays to assist this Hon'ble Tribunal and states the following scientific studies:

a. In the study titled 'Releasability of asbestos fibers from weathered roof cement' by Andrew F Oberta, Lee Poye and Steven P Compton from 2018, it has been stated that: 'Chrysotile asbestos fibers were added to roofing products, including roof cement, for several decades. The fibers were described as "encapsulated" and therefore incapable of being released, an assertion that is disproved by the study therein.'

The study also went on to state that the disturbance also increases the chance of release and inhalation. The study is attached as Annexure G.

b. In the study titled 'Surface of Asbestos-cement (AC) Roof Sheets and Assessment of the Risk of Asbestos Release by Jerry Dyczek it was stated follows:

'...corrugated roof sheets were investigated on the older (40 years old) roof of a building in an industrialised area in Southwest Poland, were acid rain is rather frequent. Acid rain wears down the matrix and asbestos fibres ae exposed.' 'Fibres are clean, uncovered by calcium carbonated or calcium silicate hydrates and specifically not connected to the matrix. Here, calcium carbonates or calcium silicate hydrates and specifically not connected to the matrix. Here, calcium compounds reacted with acid to produce more soluble chemical compounds which were dissolved. As a result of this, on the sheet surface are found asbestos fibres, which can rather easily break away. Risk of asbestos dust release is high. The study is attached as Annexure H."

77. In the rejoinder the applicant has also referred to the position of other countries and relevant para 44 and 46 read as under:-

*"**ON THE STAND OF THE ENVIRONMENTAL PROTECTION AGENCY OF UNITED STATES WITH THE LATEST UPDATE***

44. At the fore, it must be respectfully brought to the notice of the Hon'ble Tribunal that the most latest regulation by the US Environmental Protection agency dated 18th March 2024 under the Biden-Harris Administration under President Biden's Cancer Moonshot program to end cancer, the United States Environmental

Protection Agency has finalised the ban on asbestos under the Toxic Substance Control Act. The information is available here: https://epa.gov/newsreleases/biden-harris-administration-finalizes-ban-ongoing-uses-asbestos-protect-people-cancer

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46. Even in other countries like the UK, there is a great threat in school buildings as highlighted by the article titled: 'The hidden danger of asbestos in UK schools: 'I don't think they realise how much risk it poses to students': https://theconversation.com/the-hidden-danger-of-asbestos-in-uk-schools-i-dont-think-they-realise-how-much-risk-it-poses-to-students-203582"

Vision statement of the Ministry of Environment, Forests and Climate Change

78. The applicant has relied on the vision Statement as the most relevant to the phasing out of asbestos from roofs of schools in India. MoEF&CC has in its 'Vision Statement on Environment and Human Health' stated in para 4.3.1 that 'Alternatives to asbestos may be used to the extent possible and the use of asbestos may be phased out'.

79. In Sur Rejoinder, respondent no. 4-FCPMA has submitted its response to studies and publications cited by the applicant which reads as under:-

"STUDIES AND PUBLICATIONS CITED BY THE APPLICANT ARE IRRELEVANT, INAPPLICABLE AND ALSO UNRELIABLE

27. The emphasized portion of the WHO publication titled "Chrysotile Asbestos', which claims that "in-place materials have the potential to deteriorate and pose a risk to those carrying out alterations, maintenance and demolition", as relied upon by the Applicant, is not a scientific risk assessment and is not based on any evidence whatsoever of exposure to asbestos fibres in India on account of use of asbestos cement roof sheets over time. This document cites `Environmental Health Criteria 203: Chtysotile asbestos. Geneva: World Health Organisation, International Program on Chemical Safety: 1998' (at footnote 5) as the source for this above said claim. It is evident from a perusal of this source document that this document was identifying risk in demolition on account of presence of large quantities of materials containing friable asbestos (both chrysotile and amphibole) in buildings (para 9.1 as well as para 10 (c) of the aforesaid Environmental Health Criteria 203); and not on account of asbestos-cement roof sheets where the asbestos is firmly locked with the cement matrix. It is

therefore, submitted that the extract mentioned in the paragraph under sur-rejoinder is not relevant to the present case, which relates to asbestos-cement roof sheets.

A copy of Environmental Health Criteria 203: Chrysotile asbestos. Geneva: World Health Organisation, International Program on Chemical Safety: 1998 downloaded from https:\\www.inchem.org/documents/cje/che/che203_Lumpart_num:10 on 29.08.2024 is annexed hereto as Annexure- B.

In this regard it is submitted that the World Health Assembly ("WHA") — the apex decision-making body of WHO, in its 60th meeting, passed a resolution being WHA 60.26 on 23.05.2007 endorsing the Global Plan of Action on Workers' Health 2008-2017, which advocates a differentiated approach to regulating the various forms of asbestos. As already submitted, India has adopted a differentiated approach to various forms of asbestos — while all other forms of asbestos are prohibited in India, import and use of chrysotile asbestos is permitted. The manufacture of asbestos-based products is highly regulated, requires environmental clearance, and the maximum permissible exposure levels to asbestos fibres are set at 0.1 fibre/cc under the Factories Act, 1948. BIS has laid down standards which give the detailed specifications of asbestos-based products including asbestos-cement roof sheets. These standards must mandatorily be complied with. India has opposed the attempts by certain other countries to place chrysotile asbestos in Annex III of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998.

A copy of the World Health Assembly resolution being WHA 60.26 dated 23.05.2007 is annexed hereto as Annexure- C.

28. As regards the study titled Releasability of asbestos fibres from weathered roof cement6' relied upon by the Applicant, it is submitted that:

i. the study is not an independent and impartial study as it acknowledges that the said study was funded by a law firm representing a plaintiff alleging asbestos exposure.

ii. The said study also does not discuss, airborne fibre concentrations resulting from release of airborne dust, nor does it discuss the health effects of inhaling the fibres.

iii. The samples as analysed in the said study were exposed to extreme conditions, as it was heated at 480 degrees for at least 6 hours and later acid washed and therefore the conditions in which this study has been done, does not correspond to natural weathering of asbestos roof sheets.

29. As regards the study titled `Surface of Asbestos-cement (AC) Roof Sheets and Assessment of the Risk of Asbestos Release', relied upon by the Applicant, it is submitted that the said study is also not applicable to India inter alia for the following reasons:

i. Study states that asbestos cement products contain 8¬16% of asbestos (as opposed to chrysotile fibres in the range of 6.5 - 7% as used in asbestos cement products by members of answering Respondent)

ii. The study does not mention the density of the sheets nor the type of asbestos fibre used.

iii. The samples analysed in the said study were taken from roofs of buildings in a small village, different downs and industrial centres located in Poland, most of these samples were exposed to acid rains and the study also highlights that acid rains accelerated corrosion.

iv. It is submitted that the climatic conditions in India are different from the climatic conditions in Poland and other Eastern European countries where acid rains are more prevalent. Acid rains are not prevalent or common in India.

Further, the answering Respondent craves leave to refer and rely upon the said studies for their true and correct meaning, and interpretation, at the time of hearing.

30. As regard the publication relied upon by the Applicant, titled "Vision Statement on Environment and Human Health" by the Ministry of Environment, Forests, and Climate Change it is submitted that the said publication is not a scientific risk assessment of health impact of use of asbestos cement roof sheets in schools, nor is this publication based on any other such risk assessment.

31. As regards the study titled `Asbestos in Indian Talc'8, relied upon by the Applicant, it is submitted that the said study has been cited out of context for the following reasons:

a. The study pertains to the presence of asbestos in commercial talc. it bears no relevance to the context of OA 298/2023, which the Applicant has filed seeking directions to stop the use of asbestos roof sheets in schools across India.

b. The study deals with tremolite' variety of asbestos. It is reiterated that the Respondent only uses the `chrysotile' variety of asbestos.

c. The applicant highlighted that the study states Further, it has been shown that as little as 0.001% of asbestos in loose clay soil can produce around 0.1 fiber/cc of asbestos in air with respirable dust concentration around 5 mg/m3.1 In this regard, it is

submitted that 0.1 fibre/cc is the Permissible exposure limit (PEL) in India. Further, during the manufacture of asbestos roofing sheets, chrysotile fibre is firmly locked in Fibre Cement matrix with cement. As such. even after fixing of the sheet on the roof, there is virtually no chance of fibre being, air borne even on weathering or breakage.

Further, the answering Respondent craves leave to refer and rely upon the said study for its true and correct meaning, and interpretation, at the time of hearing.

32. As regards the study titled `The natural reduction of threat in selected systems of old buildings containing asbestosi relied upon by the Applicant, it is submitted that under the head of 'Research material: building systems tested':

a. this study focuses on typical Eastern European buildings ftom 1970 to 1990. It is submitted that the said research study also does not mention the types of asbestos that were being used in these old buildings. That the harmful variety of asbestos are no longer utilized in either Western countries or India, and only Chrysotile is used, that too only 7-9% which is firmly bound in the cement matrix.

b. It is submitted that building material as mentioned in the said study deals with Asbestos containing material ("ACM") in friable form and these ACMs contained 20% asbestos.

c. These friable ACMs were used as insulation products which were applied to walls and ceiling where the asbestos was loosely bound. Such products are not used in India due to the weather conditions. It is further reiterated that asbestos cement products as manufactured by the members of answering Respondent are different from friable or crumbly asbestos which was earlier used in western counties and these products as used in western countries, when dry, are reduced to power by applying hand pressure. It is also submitted that schools in India use Asbestos Cement sheets that contain only around 7% of chrysotile asbestos which is firmly bound in layers of cement and fly ash matrix, leaving no scope of release of asbestos fibres ordinarily into the environment_ Further, it is respectfully submitted that the said research

study also encompasses the following conclusions: -

"3. If there is no evidence of an increase in the concentration of asbestos in the air, the removal of ACM from such .facilities should be postponed until the building is no longer used.

5. The reduction of asbestos dust in buildings can be a normal and natural process after proper and long service life (if the operation is not accompanied by the destruction of asbestos). Such conditions

are met by many buildings with non-friable ACM. in which asbestos is insulated from the internal air. An .example of this construction is- BISTY P."

Further, the answering Respondent craves leave to refer and rely upon the purported study cited in this paragraph for its true and correct meaning, and interpretation, at the time of hearing.

33. As regards the study titled `Cancer mortality in chrysotile miners and millers, Russian Federation: main results (Asbestos Chrysotile Cohort-Study)'J0, the Applicant has highlighted that the study states, `we observed an increased risk of mesothelioma with high exposure to chrysotile fibres' It is submitted that the said statement has been cited wholly out of context, as the said statement is in reference to chrysotile miners and millers in the world's largest active chrysotile mine, and does not relate to weathering of asbestos cement roof sheets.

Further, the answering Respondent craves leave to refer and rely upon the purported studies cited in this paragraph for their true and correct meaning, and interpretation, at the time of hearing."

Scientific material/studies relied upon by respondent no. 4-FCPMA

80. In reply filed to the original application respondent no.4-FCPMA has submitted that there is no evidence to support the allegation of applicant that use of asbestos cement sheets for roofing poses any public health or safety issue in schools or otherwise. In support of its submissions respondent no. 4-FCPMA has referred to extracts from scientific papers and the studies relating to safety of chrysotile and specifically, chrysotile cement products, as set out below:-

"30. The answering Respondent is producing some extracts from scientific papers and the studies relating to safety of chrysotile and specifically, chrysotile cement products, as set out below.

31. The following abstracts from a study titled as `A Survey of the Health problems associated with the Production and Use of High Density' Chrysotile Products' by K. Browne, J.A. Hoskins, J. Lange', is relevant: - "Asbestos cement products have a cement-rich surface with the asbestos fibres encapsulated within. In products used outdoors for weatherproofing a small amount of fibres may be released during natural weathering although greater amounts of fibre can be released if the products are subject to any abrasive cleaning or working. However, chrysotile is chemically altered to a greater or lesser degree within the cement matrix and also most of the fibres breakdown with the cement as part of the weathering process. The degree to which this latter effect occurs depends

largely on the acidity of the rain. Acid rain removes magnesium from the surface of the chrysotile fibres. Examined under a microscope many fibres can be seen to be coated with small crystals of calcite." A copy of study titled `A Survey of the Health problems associated with the Production and Use of High Density Chrysotile Products' by K. Browne, J.A. Hoskins, J. Lange is annexed hereto as Annexure- N.

STUDIES PERTAINING TO OCCUPATIONAL HEALTH AND SAFETY OF EMPLOYEES WORKING IN ASBESTOS CEMENT INDUSTRY

32. The Director General Factory Advice Service and Labour Industries (DGFASLI), Ministry of Labour and Employment, Government of India carried out a `National Study on Occupational Safety, Health and Working Environment in Asbestos Cement Product Industries in 2019 with the objective of assessing the levels of airborne concentration of asbestos fibres in work environment in different Asbestos Cement Product Industries with a view to determine the status of workplace environment with regard to safety and health measures. The study concluded at page 14 under the head of Results, Discussions & Finding of the Study inter alia at paragraph 11.1.4 "... the level of air-borne asbestos in various industries indicate that the concentration of airborne asbestos fibres in Asbestos Cement Product Industries where in-built environmental control measures are in place and good work practices followed, are quite low as compared to those units where such measures are unavailable."

A copy of study titled `National Study on Occupational Safety, Health and Working Environment in Asbestos Cement Product Industries' is annexed hereto as Annexure- O.

33. Based on a request from the Department of Chemicals and Petrochemicals, Ministry of Chemicals and Fertilizers, the National Institute of Occupational Health in consultation with the Ministry of Chemicals and Fertilizers decided to carry out a study titled `Study of Health hazards / Environmental hazards resulting from use of Chrysotile variety of Asbestos in the country' in 2012. Various studies and their conclusions and been captured in the Literature Review conducted in the course of the said study, few of which are as follows: -

i. A cohort study of 1176 Swedish asbestos cement workers did not indicate any asbestos related excess mortality. Possible explanations of the negative outcome are relatively low exposure

levels and the predominant use of chrysotile in production. A median exposure of 10-20 fibre years does not seem to cause an increased risk of lung cancer, particularly when only chrysotile is used.6

ii. According to WHO Environmental Health Criteria 203 the overall relative risks for lung cancer are generally not elevated in the studies of workers in asbestos cement production and in some of the cohorts of asbestos-cement production workers.?

The significance of the 2012 study is underscored at page 22, in the section titled 'Importance of this Study.' wherein it was stated that "a comprehensive information of environmental/ human health status in relation of asbestos handling is much needed in our country, so this study will form background national information in this area, which may be useful in future."

Further, detailed studies were conducted at multiple locations across the county wherein asbestos products are manufactured, these included three locations wherein asbestos roof sheets were being manufactured. The ambient air in these locations were analyzed for presence of asbestos fibres, and it was found that in all the three locations wherein asbestos roof sheets were being manufactured, the fibre concentration at these locations were much lower than the permissible exposure level (PEL) in India i.e, 1 fibre/ml (PEL level in India was 0.1 rec. It is wrongly quoted as 1 f/cc) and was thus complaint with the PEL. (Relevant conclusions are at page 67 and 82 of the said research)

The study concluded inter alia as under: -

· The literacy levels of the workers in most of the industries was found to be good.

· On medical examination, majority of the workers were found to be in a good state of health.

· The asbestos fibres monitoring in the workplace showed that the fibre levels in the workplace were well below the national standards of 1 fibre/ml. Also, the dust levels in the ambient air as well under the asbestos sheet roof was also found to be much lower than these standards.

A copy of the study titled `Study of Health hazards / Environmental hazards resulting from use of Chrysotile variety of Asbestos in the country' is annexed hereto as Annexure- P.

34. Report titled Report on the National Study on Health Status of Workers in the Asbestos Industry' conducted by the Directorate General Factory Advice Service and Labour Institutes (DGFASLI), Ministry of Labour and Employment, Government of India in the year 2004. The general objective of the study was to assess the

health hazard posed by occupational exposure during the manufacture, handling and storage of asbestos products on the workers to develop strategies for the prevention and control of asbestos exposure-related morbidity. This study aimed to detect the morbidity related to asbestos exposure and to relate the radiological chest findings and pulmonary function test results with the present morbidity. The report concluded at page 30 inter alia as follows: -

· *"Radiologically, though there was no established case suggestive of asbestosis."*

· *"As no established cases of asbestosis were detected during the study, an attempt was not made to correlate the duration of exposure with asbestos cases."*

A copy of report titled `Report on the National Study on Health Status of Workers in the Asbestos Industry' is annexed hereto as Annexure- Q."

81. In Para 6,8 and 9 of reply on merit respondent no. 4-FCPMA has submitted as under:-

6. That the contents of paragraph 6 of the OA are unfounded, misconceived, and incorrect, and therefore, vehemently denied. It is emphasized that in the preliminary submissions of this reply, the answering Respondent has thoroughly demonstrated that asbestos cement products pose no harm to either the environment or the health of individuals. It is submitted that in a scientific paper authored by W.J. Nicholson and F.L. Pundsack, titled "Asbestos in the environment"9 it was observed inter alia that asbestos-cement products do not constitute a significant source of asbestos to the environment under normal conditions of use since the asbestos fibres are firmly locked-in'. The relevant extract is reproduced herein below: -

"Once an asbestos-containing product has been manufactured, whether or not it constitutes a source of asbestos in the environment will depend to a great extent on whether or not the asbestos is firmly "locked-in" the product with a binder, saturant, coating or bonding agent such that normal handling, application and use do not release it. Asbestos cement products are a good example of "locked-in" products which probably do not constitute a significant source of asbestos to the environment under normal conditions of use." (emphasis supplied)

A copy of the scientific paper authored by W.J. Nicholson and F.L. Pundsack, titled `Asbestos in the environment' is annexed hereto as Annexure- R.

Further, in a study titled `Biological effects of mineral fibres' Volume 110 by J.C. Wagner it has been concluded that the association of asbestos in asbestos-cement dust behave differently from pure asbestos fibres as regards movement and settlement in fluids and that their physico-chemical behavior may also be different. The relevant extract of the said study is reproduced herein below: -

"The investigation reported here shows that in asbestos-cement dust most of the asbestos fibres form aggregates with cement particles that are larger than the fibre diameter. Those which do not form aggregates, the 'optically pure' fibres, appear to be coated with a calcium containing layer which probably consists of discrete but closely spaced, very small particles. The association of asbestos fibres with large or small particles may cause these fibres to behave differently from pure asbestos fibres as regards movement and settlement in fluids; their physico-chemical behaviour may also be different, as is suggested by adsorption experiments. Therefore, conclusions which have been reached for pure asbestos dust should not automatically be applied to asbestos cement dust."

(emphasis supplied) A copy of a study titled `Characterization and Properties of Asbestos-Cement Dust' by A Deruyttere, J Helsen and J Baeten is annexed hereto

as Annexure- S.

8. As regards the contents of paragraph 8 of the OA, all that is stated herein above is reiterated and anything inconsistent thereto is denied. It is denied that the peculiar character of diseases related to asbestos fibre inhalation is their high latency period and any student who is exposed at a young age will only get the manifestations of the diseases after decades during his/her breadwinning or family raising period. It is humbly submitted that a scientific research was conducted by Dr. David M. Bernstein, and the following extract of the research are relevant with regard to this aspect: -

"ABSTRACT: Recent publications have shown for synthetic mineral fibers that if a fiber dissolves rapidly and disappears from the lung, it does not cause a carcinogenic effect. With asbestos, chrysotile asbestos is often included with other asbestos materials. However, chrysotile is a serpentine mineral with markedly different mineralogical characteristics than amphibole asbestos (e.g. amosite, tremolite). These differences are mirrored in the differences in biopersistence between these two minerals. Chrysotile clears very rapidly from the lung with half-times ranging

from 0.3 to 11 days and produces no inflammatory reaction. In contrast, the amphiboles clear with half-times in the range of 500 days or longer and produce a pronounced inflammatory response leading to mild interstitial fibrosis. These findings provide an important basis for substantiating both kinetically and pathologically the differences between chrysotile and amphiboles. In contrast to amphiboles, the toxicology of chrysotile can be understood in comparison to non-fibrous mineral dusts. These results fully support the differentiation of chrysotile from amphiboles reported in recent evaluations of available epidemiological studies."
(emphasis supplied) A copy of scientific research was conducted by Dr. David M. Bernstein is annexed hereto as Annexure- T.

9. As regards the contents of paragraph 9 of the OA, all that is stated herein
above is reiterated and anything inconsistent thereto is denied. The answering Respondent seeks permission of this Hon'ble Tribunal to refer to the purported research study cited in this paragraph for its correct interpretation as the same has been cited by the applicant out of context. It is submitted that under the head of `Research material: building systems tested' the study Cleary points out that this study focuses on typical Eastern European buildings from 1970 to 1990. It is submitted that the said research study also does not mention the types of asbestos that were being used in these old buildings. That the harmful variety of asbestos are no longer utilized in either Western countries or India and Chrysotile Asbestos is the only variety of asbestos that is not included in Annexure-III of the Rotterdam Convention. It is submitted that building material as mentioned in the said study deals with Asbestos containing material ("ACM") in friable form and these ACMs contained 20% asbestos. These friable ACMs were used as insulation products which were applied to walls and ceiling where the asbestos was loosely bound. Such products are not used in India due to the weather conditions. It is further reiterated that asbestos cement products as manufactured by the members of answering Respondent are different from friable or crumbly asbestos which was earlier used in western counties and these products as used in western countries, when dry, are reduced to power by applying hand pressure. It is also submitted that schools in India use Asbestos Cement sheets that contain only around 7% of chrysotile asbestos which is firmly bound in layers of cement and fly ash matrix, leaving no scope of release of asbestos fibres into the

environment. Further, it is respectfully submitted that the said research study also encompasses the following conclusions: -

"3. If there is no evidence of an increase in the concentration of asbestos in the air, the removal of ACM from such facilities should be postponed until the building is no longer used."

"5. The reduction of asbestos dust in buildings can be a normal and natural process after proper and long service life (if the operation is not accompanied by the destruction of asbestos). Such conditions are met by many buildings with non friable ACM. in which asbestos is insulated from the internal air. An example of this construction is BISTYP." (emphasis supplied)

That it is evident from these conclusions that in buildings with non-friable ACM, asbestos fibers are isolated from the internal air, thereby posing no threat to individuals or the environment. It is further reiterated that the asbestos cement sheets as manufactured by the members of the answering Respondent are also non-friable, non-crumbly in nature.

Further, in a study titled `Guidance for Controlling Asbestos-Containing Materials in Buildings' it was summarized as follows:

"Asbestos may be found in cement products, acoustical plaster, fireproofing textiles, wallboard, ceiling tiles, vinyl floor tiles, thermal insulation, and other materials. EPA surveys estimate that 31,000 schools and 733,000 federal and commercial buildings have ACM in one form or another (USEPA 1984a, 1984b). ACM has been grouped into three categories: (1) sprayed- or troweled-on materials on ceilings, walls, and other surfaces; (2) insulation on pipes, boilers, tanks, ducts, and other equipment; and (3) other miscellaneous products. (Examples of ACM are shown in Figure 1.) Material in the first two categories can be friable, that is, it can be crumbled, pulverized, or reduced to powder by hand pressure. Most ACM in the third category is nonfriable."

A copy of a study titled `Guidance for Controlling Asbestos-Containing Materials in Buildings' is annexed hereto as Annexure-U.

82. In view of the above quoted scientific material respondent no. 4-FCPMA has submitted that there is no evidence of safety risk to children or others at schools or any other place where such roofing sheets are used and that the scientific evidence does not support ban on use of asbestos cement roofing sheets in schools as sought in the original application.

Response by the applicant to the studies relied upon by respondent no.4- FCPMA

83. In rejoinder to the reply of respondent no. 4-FCPMA the applicant has submitted his response to the Studies relied upon by respondent no. 4-FCPMA as under:-

> ***"ON THE STUDY BY NATIONAL INSTITUTE OF OCCUPATIONALHEALTH TITLED 'STUDY OF HEALTH HAZARDS/ENVIRONMENTAL HAZARDS RESULTING FROM USE OF CHRYSOTILE VARIETY OF ASBESTOS IN THE COUNTRY' ON CHRYSOTILE ASBESTOS AND ITS USE IN THE LITIGATION BEFORE THE NATIONAL HUMAN RIGHTS COMMISSION***
>
> *21. The applicant wants to most humbly and respectfully assist this Hon'ble Tribunal and state that the NIOH study that has been quoted is valid for the occupational settings only where it was performed. Therefore the validity of this study is not for the current question of asbestos cement roofs in schools as that is a matter related to the non-occupational exposure to asbestos by use of asbestos containing material. Further, the applicant wants to most humbly and respectfully state that the study has another two issues which the applicant urges this Hon'ble Tribunal to record, which are as follows: c. The study was funded by the Asbestos Cement Manufacturers Association in part and this may raise some questions.*
> *d. The NIOH in a reply to the applicant via the Right to Information Act 2005 has stated that 'No Information is held' about the validity of the study for non-occupational settings where there may be asbestos containing materials present. It may also be noted that the document containing the ethics approval for the study is 'not retrievable' by the NIOH. The above-mentioned reply duly signed by the NIOH is attached as Annexure I.*
> *It may be kindly recorded that the scope of the study does not include the use of asbestos cement roofing in the non-occupational environment and may not be relevant nor be admissible in this current matter. The humble applicant begs the Hon'ble Tribunal for consideration of the same.*
> *16. Moreover, the applicant most respectfully submits that the above report by NIOH was seemingly the only basis of the NHRC order that the respondent no.4 quotes. And, the applicant humbly reiterates that occupational exposure to asbestos was the scope of this report but it is not in the scope of the current application.*
>
> ***ON THE STUDY BY THE DIRECTORATE GENERAL FACTORY ADVICE SERVICE AND LABOUR INSTITUTES***

OR DGFASLI TITLED 'NATIONAL STUDY ON OCCUPATIONAL SAFETY, HEALTH AND WORKING ENVIRONMENT IN ASBESTOS-CEMENT PRODUCT INDUSTRIES' IN 2019

17. The applicant wants to most humbly and respectfully submit the following facts about this study by DGFASLI which is the most recent and most updated as far as the asbestos industries are concerned:

a. As the title and the contents suggest, this study is related to the Occupational environments related to industries where asbestos cement products are manufactured or processed. This mere fact makes the citation of this study in this current matter as irrelevant as it does not address the non-occupational exposure to asbestos which this application talks raises.

b. The study also records that only chrysotile is being used by the asbestos cement products industries in India in para 10.5 of the study which states that 'It has been seen that asbestos cement product industries are importing and using chrysotile asbestos (white variety) only for the manufacture of asbestos cement sheets and pipes.'

c. Then, the study states the asbestos-related diseases/disorders, the effect of asbestos on lungs is shown as follows:

'In the early stage, asbestos fibres accumulate in those alveoli which open directly off the bronchioles. They penetrate the wall and produce a low grade inflammatory response followed by fibrosis. This causes lung thickening and some narrowing of the terminal airways which is picked up as a reduction of gas transfer and compliance on lung function testing. Fibres migrate away from these centrilobular foci into the interstitial between the alveoli and towards the pleura, causing extension of the low-grade inflammatory response and interstitial fibrosis.

The inflammation and interstitial fibrosis interferes with ventilation by making the lung rigid and lead to shrinkage of the affected area with honeycomb change. The change affects only the periphery of the lung and leaves the central part undamaged, but this normal lung is of little functional value as it is held immobile by the surrounding damage. Lavage of airways yield increased numbers of polymorphs and other inflammatory cells and also asbestos fibres and asbestos bodies.

Asbestos gives rise to no specific symptoms or signs apart from the inspiratory crepitations on auscultation. The patient will complain of very gradually increasing breathlessness.' The

major cause, the study quotes, of death in individuals with asbestosis is malignancy, i.e., primary lung cancer or mesothelioma.

d. The above makes it clear that Indian industries use chrysotile asbestos which causes the above medical condition.

e. The one point, even though not directly related to the current application, but to assist the Hon'ble Tribunal is the fact that the study may not have considered the latency of 20-40 years that asbestos diseases may cause and that the examinations of the retired workers may have missed, which contravenes the order of the Hon'ble Supreme Court in Consumer Forum case where it was specifically mentioned that records after 15 years may be taken. This point is not an allegation on the respondent no. 4 and is not applicable to this matter directly, but is a question raised about the study mentioned.

ON THE STUDY BY THE DIRECTORATE GENERAL FACTORY ADVICE SERVICE AND LABOUR INSTITUTES OR DGFASLI TITLED 'REPORT ON THE NATIONAL STUDY ON HEALTH STATUS OF WORKERS IN THE ASBESTOS INDUSTRY' IN 2004

24. At the outset it may be humbly stated in regards to this study that it deals with the occupational exposure to asbestos and hence it is not relevant in this current application.

But, the study, may be quoted, under severability, as it highlights the four types of exposure to asbestos, which are as follows:

A. Industrial Processes
B. Para Occupational Exposure
C. Building Exposure
D. Environmental Exposure.

25. Apart from the acknowledgement of building exposure, it also, under the Environmental exposure states the source as 'Drinking water, apart from contribution from asbestos cement pipes'

26. In the same light, the asbestos fibres released from asbestos cement sheets on weathering may reach the drinking water and be a pertinent cause for water pollution under the Water (Prevention and Control of Pollution) Act, 1974.

27. Moreover, this water may evaporate and leave the non-soluble, non-biodegradable asbestos fibres behind and then immediately become a cause for soil pollution first and then air pollution as soon as there is a slightest of disturbance or breeze. The potential of asbestos in soil

becoming air pollution is stated in a study titled 'Asbestos in commercial Indian talc.' One of the authors of this study was from Ministry of Environment, Forests and Climate Change, Government of India. This study stated that 'Further, it has been shown that as little as 0.001% of asbestos in loose clay soil can produce around 0.1 fiber/cc of asbestos in air with respirable dust concentration around 5 mg/m3.'
The study titled 'Asbestos in commercial Indian talc' as attached as Annexure J"

84. In reply to the original application respondent no. 4-FCPMA has referred to the Publication by Australian Queensland Government and the relevant part is reproduced as under:-

"9....it is further submitted that a publication was issued by the Department of Health, Queensland Government, Australia on their website wherein, it was stated that inter-alia as follows:-

"…….After it is damaged, asbestos cement sheeting does not continue to release significant quantities of asbestos fibres into the air. This is because the asbestos continues to be bound in the cement...
"...Even if an asbestos cement roof is in poor condition, it is not likely to pose an increased risk to your health. Any released fibres rapidly disperse into the air and their concentration (the number of fibres in an amount of air) reduces within a short distance from the roof Air testing near the ground has shown the concentration of fibres is very low] — the same as if the asbestos cement roof was not there..." (emphasis supplied)

A copy of the said publication was issued by the Department of Health, Queensland Government, Australia is annexed hereto as Annexure- B."

85. The applicant has submitted his response to the Publication by Australian Queensland Government referred to by respondent no. 4-FCPMA as under:-

"ON PUBLICATION BY AUSTRALIAN QUEENSLAND GOVERNMENT
30. There is clear indication that in the document that 'over time, asbestos cement roofs will deteriorate. The cement slowly breaks down and asbestos fibres are washed down and blown away'.

> *31. This is the very big support of the fact that the cement slowly breaks down in asbestos cement roofing and is washed down and blown away. The term washed down means it will meet a water body and the term blown away means it will be suspended in the air. It may also reach the soil after evaporation of the water body or after settling down once suspended in the dust.*
>
> *32. It has been made clear in Narendra Pratap Singh vs Central Pollution Control Board (OA 649/2022) dated 17th July 2023 that 'There is no safe level of asbestos exposure' which automatically means that any number of fibres are an air pollutant. These same fibres when in soil will become a soil pollutant and when they reach the water become a water pollutant. This has been further shown by other studies as the applicant shows."*

86. The applicant has submitted that the study by Dr. David M Bernstein has the following flaws:-

> *42. Para 8: The contents in reply by respondent no.4 for para 8 are denied by the applicant as the study mentioned by Dr David M Bernstein has the following flaws:*
>
> *a. This matter related to the study by Dr David M Bernstein needs to be specially mentioned as this the study material in study itself has been corrected by the DGFASLI 2019 report as mentioned above, where industries have used chrysotile itself and the disease caused by asbestos in mentioned. Moreover, the disease mentioned, called mesothelioma, caused by asbestos exposure, is caused, as it is named in the mesothelium, i.e. the lining of the lung, and as it quoted by the DGFASLI study, where a change in the outer part makes the inside of the lung dysfunctional, as stated here: The change affects only the periphery of the lung and leaves the central part undamaged, but this normal lung is of little functional value as it is held immobile by the surrounding damage..*
>
> *b. Moreover, the latest study from Russia, which still actively mines chrysotile asbestos fibres, the applicant points our not to the occupational focus on the study, but focus on the medical portion where the effect of chrysotile fibre is involved. The study states that 'we observed an increased risk of mesothelioma with high exposure to chrysotile fibers.' The study is attached.*
>
> *c. Moreover, it may be most respectfully pointed out, that in a case from New York, the court in the US observed that there may be some conflict of interest in studies by the stated expert and the court did not admit the same as such. The order of the court is attached.*

The 2024 study on chrysotile from Russia is attached as Annexure L. The Court order from the US not admitting the study of Dr David M Bernstein is attached as Annexure M.

87. In reply to sur rejoinder the applicant has placed highlights and objections to the Sri Lankan Study tiled as Air Quality Study on Concentrations and Significance of Chrysotile Asbestos Fiber in Household Ambient Environment in Sri Lanka as under :-

"5. In order to assist the Hon'ble Tribunal, the applicant begs to bring to light the highlights and objections to the said Sri Lankan study, The study first of all acknowledges the following points:

a. The study acknowledges the fact that chrysotile asbestos fibres are released from asbestos cement roofing in some quantity and assertions made about the non-releasability of asbestos fibres from and "lock-in" may be untrue.

b. The study brings to light the standards for asbestos fibres in non occupational standards as 0.0009 fibres/cc according to US-EPA levels and lifetime exposure levels as 0.0005 fibres/cc as per WHO (where smoking use is also taken into consideration).

c. The study highlights the higher number of fibre levels in the indoors as compared to the ambient environment, which highlights that it is an indoor air quality issue.

d. The study highlights the need for incorporation of asbestos fibre measurements in national air quality monitoring programmes, to consider asbestos as one parameter for air quality standards, which enables it to be considered an indoor pollutant.

e. The study recommends further research, studies and assessments on asbestos usage, fiber concentration, as there may be some shortcomings in this study.

f. The study also brings to light an altogether new issue of asbestos fibres being released from automotive parts like linings (which though not directly relevant to this current issue, may be an environmental hazard for India too.)

6. As the highlights have been presented, at the same time, the said Sri Lankan Study has the following shortcomings and the objections are listed below:

a. The most important issue, with respect to exposure to asbestos, i.e. the latency period of diseases may not be addressed in this study. Asbestos Related diseases, especially mesothelioma, can have a latency period from 10/15-40 years or more after first exposure. Mesothelioma being a cancer also means that the limit of exposure may not be conclusive and small levels may also cause the

same. The safe permissible levels for exposure to carcinogens may not be defined.

b. The absence of actual medical investigations in the said Sri Lankan study, in comparison to the Indian study by NIOH, where end-users have been subjected to medical checks means the study, may not show the complete picture.

c. It is not clear in the study whether the criteria as to whether there was weathering and degradation in the roofs in the study, was included, specifically.

d. The issue of asbestos fibres released from asbestos cement roofing, entering soil and water may not have been addressed in the said Sri Lankan study."

88. In sur rejoinder with respect to the document titled Environmental Health Criteria 203: Chrysotile Asbestos the applicant has made the following submissions:-

"7. With respect to the Document titled 'Environmental Health Criteria 203: Chrysotile asbestos' (Annexure B, running pages 1479-1572) in order to assist the Hon'ble Tribunal, the following main points are brought to the kind attention of the Hon'ble Tribunal.

a. In the conclusions and recommendations section of the said report, the following is stated:

i. 'Exposure to Chrysotile asbestos poses increased risks for asbestosis, lung cancer and mesothelioma in a dose-dependent manner. No threshold has been identified for carcinogenic risks.' (Page 1543)

ii. 'Where safer substitute materials for chrysotile are available, they should be considered for use.'

b. The report being old, published in 1998, has the basic lack of newly performed studies on the issue of asbestos fibre release from asbestos cement roofing."

89. Vide order dated 18.07.2024 respondent no. 1-MoEF & CC was required to find out whether in respect of user of asbestos sheets in Educational Institutions, there are some different kinds of health hazards to students i.e. non-occupational health hazards, comparing to health hazards applicable to workers in Industrial Sector, and if there is a distinction, the matter be given a scientific study and report of such scientific study be submitted along with reply.

90. In compliance there of affidavit dated 24.09.2024 was filed by MoEF & CC vide email dated 24.09.2024. In its affidavit MoEF & CC has submitted that inputs were received from the Department of Chemicals and Petro-chemicals (DCPC) on the issue that a comprehensive

study has already been made on the issue of health effects of chrysotile asbestos in 2006 by National Institute of Occupational Health (NIOH), sponsored by DCPC. NIOH submitted its final consolidated report titled **"Study of Health Hazards/Environmental Hazards resulting from use of variety of asbestos in the country"** in May 2012. The NIOH report did not indicate any significant health/environment hazards resulting from the use of Chrysotile asbestos under proper conditions at workplace, hence no significant occupational health hazard has been noticed. With regard to the directions of this Tribunal for a scientific study on non-occupational health hazards, the above referred study has also made findings on health hazards on end users. In the said report, in chapter 6 on results, health impact of chrysotile asbestos on end users as well as on community in the vicinity of the factory is discussed, which is regarding non-occupational health effects. It has also been observed in the report that fiber levels in all work places and in the vicinity of the factory were below national and international standards. It is also noted that no subject was found to have radiographic features suggestive of interstitial lung fibrosis. Study has already been made on various health impacts of Chrysotile asbestos both occupational & non-occupational.

91. Copy of the study report made by NIOH has been enclosed with the affidavit. The conclusions and recommendations in the report are reproduced as under:-

> *"**Conclusions***
>
> *1. The study included a total of 1122 subjects, which comprise of 625 asbestos workers, 362 community subjects residing in the vicinity of asbestos sheet manufacturing factory and 135 end-users of chrysotile asbestos product.*
> *2. The mean age of the workers was found to be highest in the sheet workers of Hyderabad (42.98 ± 3.50 years) while in the sheet industry at Silvassa it was lowest (27.4 ± 6.5 years). The mean age of the community residing in the vicinity of sheet factory was 37.66 ± 9.5 years while that of end-users was 36.96 ± 9.4 years. Accordingly the mean duration of job was highest among sheet workers of Hyderabad (21.84 ± 2.43 years) while in the sheet industry at Silvassa it was lowest (4.5 ± 3.2 years).*
> *3. The literacy levels of the workers in most of the industries was found to be good. This helps in motivating the workers to use PPEs and in implementing the control measures such as health education for the prevention of diseases related to asbestos exposure.*
> *4. On medical examination majority of the workers were found to be in a good state of health.*
> *5. The pulmonary function test reveal that out of total 1122 subjects, 119 (10.6%) had restrictive abnormality, 99 (8.8%) had*

obstructive abnormality and 25 (2.2%) had combined (restrictive +obstructive) type of pulmonary function abnormality.

Rest of the subjects were normal. Further analysis showed that 9.6% asbestos workers had restrictive abnormalities as comparison to 11.6% community subjects. The difference was statistically non-significant (x2= 0.99, df=1, p>0.05).

6. On radiological examination, no subject was found to have findings suggestive of interstitial lung fibrosis. The common findings on radiological examination included suggested old pulmonary tuberculosis in 22(1.9%) subjects and pleural effusion and pleural thickening in one subject each.

7. The asbestos fibres monitoring in the workplace showed that the fibre levels in the workplace were well below the national standards of lfibre/ml. When comparison was made with the recommended international standards like OSHA, NIOSH or ACGIH, it was found that except at one process in the brake lining industry, the fibre levels were below the recommended levels. The dust levels in the ambient air as well as under the asbestos sheet roof was also found to much lower that these standards.

8. During the study it was found that most of the factories were using protective measures for the control of occupational and environmental health hazards in the workers as well as the surrounding communities.

Recommendations

1. In the present study the fibre levels were found to be much lower than the national permissible levels. However it requires regular monitoring of the workplace fibre levels to keep it below permissible levels.

2. At the present low fibre levels no subject was found to have radiological finding suggestive of interstitial lung fibrosis. However it is recommended that these subjects should be periodically monitored medically so as to detect any adverse health effects particularly those having restrictive and combined type of pulmonary function abnormalities.

3. Most of the industries were using protective measures like use of PPEs, pre-placement, periodic and post retirement medical examination, for the control and prevention of asbestos related health hazards, these measures are to be implemented by all the asbestos using industries to protect the health of the workers."

Response of the applicant

92. The applicant filed reply to affidavit dated 24.09.2024 filed by MoEF & CC in his reply to sur rejoinder which reads as under:-

"SHORT REPLY TO AFFIDAVIT FILED BY MoEFCC DATED 24TH SEPTEMBER 2024 LIMITED TO THE NON-OCCUPATIONAL PORTION OF THE STUDY WHERE EFFECTS ON END-USERS OF ASBESTOS ROOFING HAVE BEEN STUDIED.

8. Respondent No. 1, MoEFCC has submitted an affidavit dated 24 September 2024 in compliance of NGT order dated 18 July 2024, where the study by NIOH, or National Institute of Occupational Health titled 'Study of Health Hazards/Environmental hazards resulting from use of Chrysotile variety of asbestos in the country' has been submitted. The applicant requests to highlight some facts.

9. It must be kindly and respectfully noted that R-4 had also submitted a version of the same study in reply filed before this Hon'ble Tribunal on 2nd April 2024 (Running Page number 762 to 884), but that study version seems different as there was some difference in content and changed results. But the applicant will only rely on the study that has been submitted by MOEFCC in affidavit dated 24 September 2024.

10. It may kindly be noted that only a small portion of the study deals with non-occupational exposure by end-users of asbestos roofing in chapter titled 'Asbestos workers, end-users and community in the vicinity of asbestos factory, Hyderabad' (Running page 1680-1686). The rest is denied. In the highlights section at the conclusion of the chapter it is mentioned that 'In end-users 12.6% were having restrictive disorder, and 1.5% were having combined type of abnormality.'

11. It may be kindly noted that lung issues are either obstructive type or restrictive type, or a combination. The use of tobacco and smoke are linked to obstructive type of disease and restrictive disorders are attributed to mineral dusts like asbestos, etc. Therefore, end users of asbestos sheets having only restrictive disorder must be kindly noted and considered.

12. It is also humbly and respectfully highlighted that a study on the non-occupational exposure to asbestos, especially in schools, even though requires a perspective of Precautionary Principle, but also requires the following parameters to be considered:

a. The consideration of the long latency of disease caused by exposure to asbestos, as some exposed today may get

manifestations of the disease only after 10/15-40 or more years, and this may require one to see cases from other geographies where such similar use has happened and there mesothelioma (a cancer caused by asbestos) cases have peaked decades after use.

b. The inclusion of sampling of soil in and around the premises, as soil gets airborne and soil particles with asbestos fibres can enter the lungs.

c. The condition of the roofing sheets, whether new brand or weathered and degraded are considered. It is on weathering that asbestos fibres are of concern.

d. The check of levels of airborne fibres as well as medical checks of past users.

e. The permissible limit of carcinogenic materials like chrysotile under which cancers like mesothelioma may not be caused, may be specified."

93. Affidavit dated 24.09.2024 was considered by this Tribunal on 25.09.2024 and this Tribunal observed that there was no specific reply for scientific study in respect to question in para 6 of order dated 18.07.2024. Vide order dated 26.09.2024 this Tribunal directed the MoEF & CC to get a study conducted by constituting an Expert Committee comprising of specialist of Multidiscipline to study the aspect referred to above and submit reports within two months.

94. In compliance of order dated 25.09.2024 compliance affidavit/report dated 13.12.2024 was filed by MoEF & CC. In the compliance affidavit/report MoEF&CC has submitted that the delay in submitting the report of the Expert Committee was due to the process of identifying and inviting suitable experts from multiple specializations, such as environmental science, public health, toxicology, cancer prevention and research, civil engineering, and occupational health, was time-consuming due to the need for highly qualified professionals who possess the necessary expertise on asbestos. There were administrative challenges in coordinating among various departments and agencies to ensure that experts from diverse sectors (e.g., health, environment, and institutes) were adequately represented. There was extensive discussion in the Ministry regarding the structure and composition of the Expert Committee. In accordance with the direction of this Tribunal, the Ministry discussed the issues with the CPCB. Accordingly, the Ministry through its letter no. Q/18011/13/2023-CPA dated 23.10.2024 requested the CPCB to constitute an Expert Committee comprising of multi-discipline to study non-occupational health hazards due to the usage of Asbestos sheets. Expert Committee was constituted by CPCB through an Office order dated 07.11.2024 comprising 12 experts from prestigious institutes, such as environmental health, toxicology, cancer prevention and research, civil engineering, etc. Meetings of the Expert Committee were convened on 28.11.2024 and 05.12.2024 to discuss the issue addressed by this Tribunal. The Expert Committee completed its work, and presented a detailed report. The relevant part of the report is reproduced as under:-

"2. Constitution of the Expert Committee and meetings of the Expert Committee

In compliance with the order dated 25.09.2024 of Hon'ble NGT-PB, MoEF&CC vide letter no. Q-18011/13/2023-CPA, dated 23.10.2024, asked the CPCB to constitute an Expert Committee comprising a specialist of multi-discipline to study the reference in the order dated 25.09.2024 of Hon'ble NGT-PB (Annexure-I).

Accordingly, CPCB vide Office Order No. CM-13011/287/2024-AQMN-HO-CPCB-HO, dated 07.11.2024, constituted an Expert Committee to study the reference in the order dated 25.09.2024 of Hon'ble NGT-PB (Annexure-II) comprising of the following institutes:

S. No.	***Institution***
1	*All India Institute of Medical Sciences (AIIMS), New Delhi*
2	*Maulana Azad Medical College (MAMC), New Delhi*
3	*CSIR-Indian Institute of Toxicology Research (IITR), Lucknow*
4	*CSIR-National Environmental Engineering Research Institute (NEERI), Nagpur*
5	*ICMR- National Institute of Cancer Prevention and Research (NICPR), Noida*
6	*ICMR- National Institute for Research in Environmental Health (NIREH), Bhopal*
7	*ICMR- National Institute of Occupational Health (NIOH), Ahmedabad*
8	*CSIR-Central Building Research Institute (CBRI), Roorkee*
9	*IIT Delhi (Civil Engineering Department)*
10	*IIT Roorkee (Civil Engineering Department)*
11	*MoEF&CC (CP Division)*
12	*CPCB (IPC-II Division) Convenor*

The CPCB sent the Office Order dated 07.11.2024 regarding the constitution of the Expert Committee to concerned expert institutes by email dated 08.11.2024, requesting them to nominate their experts in the Expert Committee constituted to study the reference in the order dated 25.09.2024 of Hon'ble NGT-PB, which was followed up by email dated 11.11.2024 and 19.11.2024 (Annexure-III). The concerned expert institutes informed CPCB about the nomination of their experts in the Expert Committee (Annexure-IV). CPCB did not receive nominations from CSIR-IITR Lucknow and IIT, Delhi..

The Expert Committee held two meetings on 28.11.2024 and 05.12.2024 and deliberated on the following reference points in the order dated 18.07.2024 and reiterated in the order dated 25.09.2024 of Hon'ble NGT-PB:

whether in respect of user of asbestos sheets in Educational Institutions, there are some different kinds of health hazards to students i.e. non-occupational health hazards, comparing to health hazards applicable to workers in Industrial Sector, and

if there is a distinction, let the matter be given a scientific study and report of such scientific study be submitted.

Views of the Expert Committee on above reference points are subsequent paras.

3. Study of the reference from Hon'ble NGT-PB by the Expert Committee(i.e., whether there is a distinction between occupational health hazard to industrial workers and non-occupational health hazard from use of cement-asbestos sheets for roofing?)

(a) Cement-asbestos roof sheet while in good condition is in an immobilized state. There is little chance in this state of significant exposure to children at schools with such roof sheets. In this regard, the Indian Standard "IS:11769 (Part1)1987-"Guidelines for Safe Use of Products Containing asbestos, Part 1 - Asbestos Cement Products" (Annexure-V) mention the following:

"Cement-asbestos cement products generally contain 10 to 15 percent asbestos fibres in a cement matrix that comprises the rest of the material and are termed as 'locked-in' asbestos products as these products have the asbestos fibres bound in cement. There is very little possibility of generation of airborne asbestos fibres during any reasonable handling, transport, storage and use of such products."

(b) At the time of installing the roof sheets or during their dismantling, there is a chance of asbestos exposure. The above-mentioned BIS standard/guidelines prescribe work practices to mitigate the risk of harmful exposure to asbestos fibres. Most likely, children will not be present during such installation or dismantling activities in schools, so there is a very low likelihood of exposure.

(c) The applicant and the respondent association of cement-asbestos sheet manufacturers have referred to and submitted copy reports of several studies on health impacts due to asbestos fibre exposure in their submission in the present case. Asbestos fibre concentration in air observed in the reports of the three studies - i)Study of Health Hazard/Environmental Hazards resulting from use of chrysotile asbestos in the country-2012 of ICMR-National Institute of Occupational Health, Ahmedabad (NIOH), ii) National

Study on Occupational Safety, Health and Working Environment in asbestos-cement product industries-2019 of Directorate General Factory Advice Service & Labour Institute, Mumbai (DGFASLI), and iii) Air quality study on concentration and significance of chrysotile asbestos fibres in the household ambient environment in Sri Lanka-2021 of National Building Research Organisation, Sri Lanka, were compared by the Expert Committee. In the NIOH study, it was found that out of 427 observations in asbestos based industrial premises or areas near such industries, except for 80 observations i.e. is 18-19%, all other observations were within the 0.1 fibre/ce limit for the work environment, and in the DGFASLI study, it was found that out of 50 asbestos based industries, asbestos levels in 35 industries that were having good measures were found within the 0.1 fibre per ml limit, and asbestos levels in 15 industries were in the range of 0.2 to 0.4 fibre per ml. Whereas in the Sri Lanka study, the asbestos fibre concentrations observed in non-occupational buildings at all selected households in different environmental conditions were 0.00034 fibre/cc (average), 0.00077 fibre/cc (max), in one district and 0.00016 fibre/ce (average), and 0.00071 fibre/ce (max), in the second district, respectively.

(d) The vast difference in exposure levels in industrial settings and household use is clear from the above results. It is evident that non occupational exposure levels are far lower than occupational exposure levels because of the type of activities involved during occupational exposure.

(e) For school children asbestos cement sheets is not only the potential source of asbestos exposure. Other than cement sheets are also potential source for asbestos exposure. Hence, it is difficult to design and execute a study which excludes other risk factors for asbestos exposure and to conclude that health effects of asbestos is due to only cement sheet related asbestos exposure. It is true that even low dose exposure of asbestos can results in a disease but after several years (about 20 or more) and in many instances such disease represents in sub-clinical form (patient do not have any sign symptoms and only X-ray/HRCT will have opacities). To identify such early disease/ pathology longitudinal study design is required which takes several years to conclude. In such study, we will be unnecessarily exposing children to substantial high radiological dosage, through X-ray, HRCT, etc., and even though we might not come to any firm conclusions.

(1) The expert from IIT-Roorkee shared with the Expert Committee information on research/studies undertaken and steps being taken elsewhere in the developed world to regulate the use of asbestos

*(Annexure-VI). The expert from ICMR-NICPR also informed that the world over its use is being discouraged, and many countries are banning its use because of its health hazards. The Expert Committee noted that asbestos use in India was very different from that in the Western world. In the Western world, there are more harmful uses than sheet use in India. They used tospray tiles and walls with asbestos fibres to make them fire-resistant. In this regard, asbestos use data were noted. Asbestos is imported and presently not mined in India. According to the Indian Minerals Yearbook 2022 Vol-III of the Ministry of Mines, Government of India, the annual consumption of asbestos fibre was approximately 3 lakh ton during 2020-21 and approximately 4.4 lakh ton during 2021-22 (Annexure-VII). According to the information provided by the Fibre Cement Products Manufacturers Association (FCPMA), about ninety percent of the chrysotile asbestos is used in India for two main products cement asbestos sheets (85%) and cement asbestos pipes (5%), and the remaining 10% is used in other products (Annexure-VIII). FCPMA has further informed that 3.4 lakh ton asbestos was used for cement-asbestos sheet production, which contains 8%-9% asbestos, implying that approximately 40 lakh ton cement-asbestos sheets are being manufactured annually (3.4*100/8.5).*

4. Recommendation of the Expert Committee

(a) An advisory may be issued for schools through concerned supervising authorities: i) to maintain the existing cement-asbestos roofing sheets in good condition, and apply a protective coating of paint or lime on the sheets as a precautionary measure; ii) to follow the guidelines IS: 11769 (Part 1) during installation and handling of cement-asbestos roofing sheets; iii) to ensure disposal of the waste cement-asbestos roofing sheets when discarded or damaged at authorized disposal sites under HOWM Rules 2016.
(b) Awareness may be spread through concerned authorities and industry so as to ensure proper disposal of cement-asbestos waste at authorized disposal sites under HOWM Rules 2016 and prevent re-entrainment into air matrix on degradation. The waste disposal data and global best practices may be reviewed from time to time by Government to arrive at suitable policies to minimize asbestos waste generation and its proper disposal."

95. Vide order dated 17.12.2024 the applicant was granted opportunity to file objections/suggestions to the report dated 13.12.2024 filed by MoEF & CC.

Objections/suggestions by the applicant to Additional Study Report filed by MoEF&CC

96. In compliance thereof, response to the affidavit dated 13.12.2024 of MoEF & CC was filed by the applicant vide email dated 20.02.2025. In his response the applicant has submitted as under:-

> *"a. In point 3 (e) on page running page 1738, the report has acknowledged a very important scientific and medical fact that even low dose exposure of asbestos can result in a disease but after several years (about 20 or more) and in many instances such disease represents in sub-clinical form (patient do not have any sign symptoms and only X-Ray/HRCT will have opacities).*
>
> *b. In point 3 (f) on running page 1738, there have been observations by experts from IIT Roorkee which have not been included in the body of the report but have been included as annexure VI (running page 1778 to 1781) which may be considered by this Tribunal. Further, comments of the expert from National Institute of Cancer Prevention and Research (part of Indian Council of Medical Research) may be noted."*

97. The applicant has given suggestions on the Recommendations of the Expert Committee which are reproduced as follows:

> *"a. On whether the recommendations are mandatorily enforced or a mere guideline for schools may kindly be noted, and it is prayed before the Hon'ble Tribunal that mandatory enforceable directions by the MoEFCC may be given in this regard.*
> *b. On the recommendation given in point 4 (a), any step including maintaining of existing sheets in schools in good condition and application of protective coating as a precautionary measure may be the first important step.*
> *c. With respect to the installation of fresh asbestos sheets in schools or future use of asbestos as part of roofing material in schools, as it may not have been covered in the recommendations, the Hon'ble Tribunal may direct the MoEFCC to provide a suitable enforceable regulation.*
> *d. It has been admitted by MoEFCC that asbestos 'can enter the air, water and soil from weathering,*
> *renovation, or demolition of manufactured asbestos products.'And that 'people are likely to be exposed to asbestos through inhalation of airborne fibres'. Under this context, the issue of disposal of*

waste cement-asbestos sheets has been included in recommendations. It is prayed that the awareness and creation of policies on waste disposal may be given a strict time frame, as the Hon'ble Tribunal may deem correct. Further, the issue of asbestos waste disposal is second to the issue of minimizing of the asbestos waste generation itself as has been highlighted in the report. For this the industry with a spirit of reform, and with their enormous capability can lead by coming up with solutions.

e. India has had roofing for centuries, and for the sake of use in schools, many low-cost techniques which give power to local decentralized artisans and workers to create roofing solutions may be worked upon/innovated by the industry along with the government in face of their immense power, influence, and capability. This will enable actual Atmanirbhar Bharat and by not having schools use a Group 1 carcinogen will we contribute to Viksit Bharat, retaining worker jobs and health and safety for users at schools, waste handlers and others, etc. In this regard, the Government of India, Ministry of Home Affairs through its National Disaster Management Authority has come up with 'House Owner's Guide to Alternate Roof Cooling Solutions' where 16 techniques which can work for schools, have been used against heatwave action. This has already been placed on record (running pages 1078-1112). These may kindly be considered by the Hon'ble Tribunal."

Directions given by Government Department

98. The applicant has referred to directions given by the Kendriya Vidyalaya Sangathan and the Navodaya Vidyalaya Samitito their schools to ensure that in any ongoing or future school projects, asbestos may not be used and existing asbestos structure may be replaced in a phased manner to serve as beacon lights for other schools in India.

99. Vide order dated 17.12.2024 this Tribunal directed the Multi-Disciplinary Experts Committee to look into the aspect of desirability or otherwise of future use of asbestos as part of roof material in the schools and also explore the possibility of use of alternative in place of asbestos in manufacturing of roof sheets etc.

100. In compliance thereof Additional Status Report dated 22.02.2025 was filed by MoEF & CC. In the Additional Status Report dated 22.02.2025 MoEF&CC has submitted that in accordance with the direction of this Tribunal, the matter was further deliberated, and a meeting of the Expert Committee was held on 06.02.2025 at CPCB, Delhi. The Expert Committee has prepared and submitted the report to MoEF&CC on 20.02.2025. The relevant part of the report reads as under :-

"6. Response of the Expert Committee

In view of the above observation of Hon"ble Tribunal in order dated 17.12.2024 in O.A. No. 298/2023 the matter was further deliberated, and a meeting of the Expert Committee was held on 06.02.2025, at CPCB, Delhi in hybrid mode. IIT-Delhi could not participate during preparation of report dated 13.12.2024 but have participated during the meeting held on 06.02.2025. CSIR-IITR Lucknow did not participate and have responded that they do nothave expertise in the subject matter. The list of participants is attached as Annexure-I. Response of the Expert Committee is as below:

(i) desirability or otherwise of future use of asbestos as part of roof material in the schools

The experts from IIT Delhi and IIT Roorkee emphasised the importance to calculate the risk due to expected emission levels (amount of fibre per cc). If the risk is below the permissible limit, the use of asbestos sheet may be continued. Also, as India progresses and quality of life develops, obviously the standards have to be revisited and revised. On this, the expert committee noted that permissible fiber level for asbestos internationally is 0.1 per cc for the places in the industrial set up. So, it can be assumed that if it is below 0.1 fibre per cc, it may not be causing adverse health effect. In Sri Lanka study, it is in three decimal places. So, calculating the health risk related to so less of fiber will not yield anything on the health risk assessment. Also, the expert committee do not have evidence to say that the children sitting under the asbestos sheet are in excess risk of developing health conditions.

Asbestosis may be a problem in case of occupational exposure but during the use of cement- asbestos sheets we don't have any data to support that the sheets are causing harm.

The risk/hazard related to cement-asbestos sheets in the school can also be minimised if appropriate measures are taken during dismantling and installation. The expert committee have already recommended in the previous report that safe use, maintenance and safe handling of the asbestos sheet is more important rather than replacement.

The expert committee agreed that waste disposal data and global best practices may be reviewed from time to time by the government to arrive at suitable policies to minimize asbestos waste generation and its proper disposal and this applies not only to cement asbestos

sheets but also on other harmful chemicals or materials. Such decisions need some wider deliberation and assessment of their economic impact."

101. In the Additional Status Report dated 22.02.2025 MoEF&CC has further submitted that during hearing on 17.12.2024, this Tribunal desired a comment/response from the Indian Institute of Toxicology Research (CSIR-IITR) but CSIR-IITR through its email dated 29.01.2025 and subsequent email dated 18.02.2025 apprised that at present CSIR-IITR, Lucknow does not have expertise in the desired area for the said Expert Committee.

Response dated 04.04.2025 filed by the applicant to the MoEF&CC Expert Committee Additional Report dated 21.02.2025

102. The applicant filed response dated 04.04.2025 to the MoEF&CC Expert Committee Additional Report dated 21.02.2025. In the response the applicant has submitted that the representative of the National Institute of Cancer Prevention and Research under ICMR has not signed the additional report. The Expert Committee, which did not do any study on its own, has relied upon study from Sri Lanka titled 'Air Quality Study on Concentrations and Significance of Chrysotile Asbestos Fiber in Household Ambient Environment in Sri Lanka' The said Sri Lankan study did not consider medical investigations and has only looked into the level of asbestos in the air. The said Sri Lankan study does not consider the latency period of asbestos related diseases, especially cancers like mesothelioma which take decades to manifest. The study does not clearly mention whether weathering and degrading sheets were considered or the asbestos sheets under the study were mostly new.The study does show release of asbestos fibres in the indoors and further the study recommends inclusion of asbestos in air quality standards and in air quality monitoring programs The Expert Committee has mentioned about the cost and heat resistant properties of asbestos cement roofing. It must be reiterated that the Government of India, Ministry of Home Affairs through its National Disaster Management Authority has come up with 'House Owner's Guide to Alternate Roof Cooling Solutions' where 16 techniques (which can work for schools), have been used against heatwave action. This guide by the government of India focused on heat resistance of roofing and does not include asbestos cement roofing. The expert committee in its Additional Study Report dated 21.02.2025 has used 0.1 fibres/cc as the permissible levels of asbestos in the air (industrial occupational limits). But the said Sri Lankan Study clearly brings forward the non-occupational standards for asbestos of 0.0009 fibres/cc. Even for occupational exposure some countries have standards as low as 0.001fibres/cc. For the sake of asbestos in soils, the Indian standard of 10000 mg per kg may also be updated as in many countries with standards like 100 mg per kg. The Expert Committee has noted in report dated 21.02.2025 that as India progresses and quality of life develops, obviously the standards have to be revisited and revised and has deferred the issue. This Tribunal may refer to the 'Vision Statement on Environment and Human Health' by MoEF&CC especially its clause 4.3.1 ILO Position on safety in the use of asbestos for the issues of installation/maintenance may be considered.

103. Vide order dated 24.03.2025 MoEF & CC and CPCB was directed to file additional response as to whether any SOP has been formulated regarding installation and dismantling/disposal of asbestos roof sheets/wall sheets and to file copy of the SOP if already framed and to formulate such SOP if not already framed and file additional response.

104. However, MoEF & CC and CPCB did not file any additional response.

The various Indian Governmental Organisations and their dealing with asbestos cement sheets.

105. The applicant has submitted that the issue of stoppage of asbestos cement roofing or preventing the promotion of the same is not unprecedented in the world. In India itself this action has been touched upon by the following:-

> *"a. The Western Railways, a part of Indian railways in 2013 based on the advice of the Railway Design Standard Organisation guideline No. WKS/WS/05/FS dated 16th January 2013 has phased out the use of asbestos roofing. This has also been reported in the Hindustan Times and Mumbai Mirror Articles.*
>
> *b. The Central Public Works Department, which is under the Ministry of Housing and Urban Affairs, and has responded in this current matter, and has stated on record that the latest DSR does not include asbestos materials. This fact is in the favour of the applicant as even though some CPWD buildings are using asbestos roofing, the policy by a central government agency directly under a Ministry has stated on record that asbestos is no more part of the DSR, which is document to be used in government constructions and is also the benchmark for all private construction in the country.*
>
> *c. The National Disaster Management Authority working under Heat wave Action has come up with 'House Owner's Guide for Alternate Roof Cooling Solutions' has listed 16 roof technologies and have specifically excluded the roof containing asbestos fibre and have suggested a roof with alternate fibre. This is a guideline by a government agency that has suggested cheap and affordable methods for cool roofing in India. The 'House Owner's Guide for Alternate Roof' by NDMA is attached as Annexure D.*
>
> *d. The Minister of External Affairs of India had informed the parliament that the Indian cultural centre in Washington DC was delayed due to asbestos problems in the building that was a brownfield project and asbestos was still in the building. This is*

indicative of the strong caution that asbestos containing materials cause to the Indian government when in the US jurisdiction, but the same asbestos containing materials used in Indian buildings may be relooked at. The extract of statement of the Minister of External Affairs Shri S Jaishankar in Parliamentary Debates dated 9th February 2023 with Volume 259 No. 8 is attached as Annexure E.
e. In another case of a prison in Delhi, the renowned public figure and member of parliament, Late George Fernandes filed a case before the National Human Rights Commission on 11th August 1997 No. 693/30/97-98 for a Bhutanese National in Delhi Jail. The case was about use of asbestos containing roofing in the jail where the NHRC had directed the Delhi government to use roofing of some other material."

Response by respondent no. 4-FCPMA

106. Respondent no.4-FCPMA has submitted in its sur rejoinder as under:-

"49……*The purported decisions by the organizations/authorities mentioned in paragraph 15 of the Rejoinder to not use asbestos cement roofing sheets are not on account of any health risk posed by asbestos cement roofing nor are these purported decisions not supported by any scientific risk assessment regarding the likelihood or levels of exposure to asbestos fibers from such roofing. For instance, the Applicant has alleged at para 15(a) that a decision was taken by Western Railways to phase out the use of asbestos roofing' which was based on the recommendations in a guideline submitted by the Railway Design Standard Organisation (Annexure B of the Rejoinder @pp. 1039-1072). In the said Guidelines titled `Standardization of Specification of flooring, Roofing material for platform covering in Station Premises & Standardization of Specification of Workshop flooring', it is mentioned at page 1 of the said Guidelines (@pg. 1044 of the Rejoinder) that the "there is large variation in flooring, roofing standards in Railway and nothing has been laid down for different categories of stations. At Railway workshops type of flooring is also not spec(fied. Hence, need to standardize the different type of flooring, roofing at different category of stations and Workshop was felt."*
(emphasis supplied).
It is therefore clear that since there was use of different types of materials in flooring, walling, ceiling, etc. for various areas on the station premises that is why a need was felt to have standard materials. Further, there is nothing in the said Guidelines that show

that asbestos roofing is a health hazard. In fact, asbestos cement roofing. is widely used across the country, including by a host of governmental organisations and authorities.
As regards the contents of paragraph 15 (e), it is submitted that the Order dated passed by the Hon'ble National Human Rights Commission in case No. 693/30/97-98 is not supported by any scientific risk assessment regarding the likelihood or levels of exposure to asbestos fibers from asbestos cement roofing. The answering Respondent craves leave to refer and rely upon the ruling given by the Hon'ble National Human Rights Commission in case No. 693/30/97-98 for its true and correct meaning, interpretation, scope and legal effect thereof, at the time of hearing.

Developing Alternatives to use of asbestos in roofing sheets

107. The applicant has submitted that the companies that FCPMA represents have by themselves made an attempt to switch to new alternatives instead of asbestos, which is for reasons that there is a realization that asbestos has harmful health effects for human beings. If asbestos would have been the only option, the companies may never have shifted to other alternatives which they have also started as a vertical in their production plans. Switching to responsible alternatives is a step that will actually make the businesses future ready which will actually save employment and not risking health of Indians, especially Indian children. In rejoinder to the reply filed by respondent no. 4-FCPMA, the applicant has submitted about development of alternatives by its members as under:-

"53. Para 16: The applicant reiterates that the manufacturers who are members of respondent number 4 have themselves very vehemently pushed other fibres and have large scale manufacturing of the same. This is so much so that one of the members has even promoted Non-Asbestos Sheet before the Research Designs and Standards Organisation (Ministry of Railways, Government of India) in 'Trials of various new technology/products presented by industries/firms during 8th Works standard committee meeting with the following positive points:
a. Does not fade or degrade.
b. Protects against UV
c. Provides thermal insulation.
d. Lightweight & easy to install.
e. Weather resistant
The above-mentioned document by Railway Design Standards Organisation highlighting the promotion of qualities of non-asbestos roofing sheets by manufacturers is attached as Annexure O.

Another company promoted the non-asbestos cement sheet with the following qualities, among many include 'Excellent load bearing strength. And 5times more durable than metal roofs.
Another brochure of non-asbestos roofing states the quality and mentions high durability, strength, impact resistance in the brochure.
The brochures by manufacturers mentioned above are attached as Annexure P."

108. In its sur rejoinder, respondent no. 4-FCPMA has denied that there are viable alternatives to asbestos cement roofing sheets and that the industries have shifted to alternatives and submitted as under:-

" ...that while some companies had/ have come out with alternatives to asbestos-cement roof sheets, these alternatives are not viable alternatives for a variety of reasons. Everest Industries Ltd. (a member of the answering respondent) promoted polycarbonate sheets,, however, Everest Industries Ltd. has now stopped manufacturing these polycarbonate sheets since these sheets are not durable and only last for a couple of years and there is hardly any demand for the same. Further, these polycarbonate sheets let in at least 85% of light (Ref.: Annex u re-O of the. Rejoinder @pp. 1251-1255) and also lack the strength that asbestos cement roof sheets provide. Therefore, these polycarbonate sheets cannot be used as an alternative to asbestos cement roof sheets. Furthermore, Ramco Industries Ltd. (a member of the answering Respondent) manufactures polypropylene sheets, however, since these sheets are more expensive and less durable when compared to asbestos cement roof sheets, there is hardly demand for the same, the demand is comparable to 1% of total size of the asbestos cement sheet market. Itwould, therefore, be entirely incorrect to suggest that there are viable alternatives to asbestos cement roofing sheets or that the industry has switched to alternatives.
These alternatives have failed to match the performance standards set by chrysotile asbestos for inter alia the following reasons:
a) The roofing sheets require high strength levels which are provided by chrysotile fibers. These chrysotile fibers are integral to the cement matrix, providing the necessary structural integrity as both cement and chrysotile fibre are silicate mineral. When the industry tried using the alternative fibres and tested the strength of the roofing sheets, they found the strength to be lacking. The requisite strength levels cannot be maintained by using the alternative fibres because polyester fibre does not mix well with

cement and other raw materials. Therefore, without chrysotile fibers, desired strength levels cannot be achieved, and thus the products manufactured using alternative fibres cannot be used for roofing sheets as it compromises on safety of the persons who occupy the premises where the roofing sheets are installed.

b) Chrysotile fibers, being naturally occurring, are more cost-effective compared to their synthetic counterparts. Utilizing alternative fibers results in increased production costs for asbestos cement products, ultimately burdening consumers with significantly higher prices.

Therefore, in summary, the limitations of alternative fibers in replicating the performance and cost-effectiveness of chrysotile asbestos make them unsuitable substitutes in the fiber cement industry.

109. In its report submitted to MoEF & CC, the Expert Committee made following observations regarding possibility of use of alternative in place of asbestos in manufacturing of roof sheets etc.

"(ii) possibility of use of alternative in place of asbestos in manufacturing of roof sheets etc…

" As regard possibility of replacing asbestos in cement sheets with possible alternatives, the asbestos sheet manufacturers association have submitted in their reply in this matter that some substitutes have been tried but they were not successful in finding alternate for asbestos in cement sheets.

The expert committee opined that cement-asbestos roof sheets when used as a roof sheet, provides insulation against very high temperature, very low temperature at low cost. The low cost possible alternative is steel roof sheets but they do not have same properties hence not preferred for such use.

There are other alternatives to cement-asbestos sheets, including GI sheets, fibre cement sheets, PVC sheets, polycarbonate sheets and RCC roofs. The choice of material depends on environmental factors and budget constraints. Below is a concise comparison of viable roofing materials suitable, focusing on cost, lifespan, and protection against heat and rain:

Material	*Cost (INR/sq.m*	*Lifespan*	*Heat Protection*	*Rain Protection*

Cement-Asbestos Sheets	*200-250*	*25 to 40 years.*	*Thermal insulation is good*	*Durable*
Galvanized Iron (GI) Sheets	*250-500*	*Up to 30 years*	*Reflects heat; may increase indoor temperatures*	*Durable and long-lasting; requires proper installation to prevent leaks; can be noisy during heavy rain*
Fibre Cement Sheets	*500-1000*	*10-30 years*	*Non-toxic and durable; heavier than metal sheets*	*Resistant to weather and pests; requires skilled installation*
PVC Sheets	*500-1000*	*10-30 years*	*Versatile and fire resistant; offers moderate insulation*	*Durable; proper installation ensures effective rain protection*
Polycarbonate Sheets	*800-1500*	*Varies*	*Allows natural light; may require UV protection layer*	*Weather-resistant; suitable for areas requiring light transmission*
RCC roofs	*3000-3500*	*Up to 80 years*	*Absorbs heat; may require reflective coating for heat reduction*	*Most Durable*

Orders of the Kerala Human Rights Commission

110. In support of the submissions made in the original application, the applicant has relied on the orders passed by the Kerala State Human Rights Commission, Government of State of Kerala and Hon'ble High Court of Kerala and the relevant part of the original application is reproduced as under:-

> *"11. The Hon'ble Kerala State Human Rights Commission in Order, HRMP No. 126/2007 passed on 31st January 2009 has also*

taken notice of the same and recommended the ban of use of asbestos roofing in new schools and recommended replacing existing asbestos roofing in government and private schools with country tiles in phased manner. The Certified copy of the Order passed by the Hon'ble Kerala State Human Rights Commission in HRMP No. 126/2007 passed on 31st January 2009 has been attached at Annexure B.

12. That the above stated order of the Kerala Human Rights Commission was implemented by the Government of Kerala and an order to this effect was passed on 9th October 2019 vide number 162/2019/GEDN. The original order is in Malayalam Language and is attached as Annexure C. The translation of the order in English has been put on record by the Hon'ble Kerala High Court in the judgment passed in a related matter WPC 23846 of 2021 in para 9. A certified copy of the Judgment in WPC 23846/2021 passed by the Kerala High Court on 2nd November 2021 has been attached as Annexure D.

13. That this government order based on the recommendations of the Kerala Human Rights Commission to ban the use of asbestos roofing in schools in Kerala was challenged by some petitioner in the Kerala High Court, but the Hon'ble Court in its wisdom reinstated the government order and passed an order in W P C 22457/2019 dated 3rd September 2019 which stated as follows:

'The first respondent, ie the State of Kerala 'shall therefore file an affidavit as to why no action is taken for prohibiting such roof for buildings of schools in the state and why no action is taken to see that asbestos roof of class rooms in all the schools are replaced. The respondents shall also state why no action is taken to incorporate appropriate provisions providing for specifications for the roof also of the classrooms. There shall be a direction to the respondents to see that the asbestos roof of the classrooms of all the schools are replaced in a time bound manner.'

This order passed on 3rd September 2019 passed by the Hon'ble Kerala High Court in WPC 22457/2019 is attached as Annexure E.

14. That this concern of use of asbestos sheets was also raised in WPC 14729 of 2016 before the Hon'ble Calcutta High Court where such sheets were being used in the main building of the Court. On this the Hon'ble Calcutta High Court ordered that it will be ensured that: 'the asbestos-sheets, which have been used for

roofing, would be replaced by any other materials which are non-carcinogenic' The order dated 21st July 2017 in WP No 14729 (W) of 2016 has been annexed as Annexure F"

111. Respondent no. 4-FCPMA has relied on the orders passed by Hon'ble High Court of Kerala and the relevant part of its reply is reproduced as under:-

"26. Four petitions were filed by one Mr. Mukesh Jain before the Hon'ble Kerala State Human Rights Commission, Thiruvananthapuram ("KSHRC") bearing H.R.M.P Nos. 126/07, 1476/07, 1903/08, 5203/08 claiming inter alia that asbestos is non-biodegradable and a health hazard to school children and if any damage is caused to asbestos roof sheets used in schools, it can result in release of small asbestos fibres that become airborne and these fibres can cause serious lung diseases. In these petitions, KSHRC passed an order dated 31.01.2009 holding inter alia as under: -

"1. The State Government will replace asbestos roofs of all schools buildings under its control with country tiles in a phased manner."

"0. The Government should see that in the future no new school is allowed to commence its functions with asbestos roofing"

Copy of order dated 31.09.2009 passed by the KSHRC in H.R.M.P Nos. 126/07, 1476/07, 1903/08, 5203/08 is annexed hereto as Annexure- J.

27. Upon becoming aware of this order, M/s. Visakha Industries Ltd. (a member of answering Respondent) filed a petition being H.R.M.P No. 1792/2009, before the KSHRC seeking recall of the above order. It was submitted that the petitioner therein being a manufacturer of asbestos cement roofing sheets, would be adversely affected by the said order and the said order was passed without hearing him. In this petition, the KSHRC passed an order dated 07.05.2009 clarifying that the above order dated 31.01.2009 is only recommendatory in nature and that KSHRC has no jurisdiction to recall the order already passed by the Commission. Copy of order dated 07.05.2009 passed in H.R.MP No. 1792/2009 by the KSHRC is annexed hereto as Annexure- K.

28. In the circumstances, aggrieved by the order dated 31.01.2009 passed by the KSHRC, Visakha Industries Ltd. filed a writ petition [W.P(C) No. 25100 of 2009] before the Hon'ble High Court of Kerala. This writ petition was allowed by the Hon'ble High Court of Kerala vide order dated 07.08.2017, whereby it was held inter alia as under: -

> *`'5... There are no data available before the commission to arrive that the asbestos sheet is hazardous to the health of children. If it would pose a threat to the health of the children, certainly; that could have been a matter for a decision by the commission. On mere surmises and conjunctures. the commission could not have ordered recommendation for replacement of asbestos sheet. The Commission relied upon the report of the World Health Organization (WHO). All that could be seen that the asbestos sheet referred by WHO may depend upon the environmental setting it is used It is necessary to verify what is the nature of the mixture that is used for the asbestos sheet. The asbestos sheet as such is not a threat as revealed from the judgment of the Hon'ble Supreme Court in Kalvaneshwari v Union of India and Others [(2011) 3 5CC 3871 relied by the learned counsel for the petitioner. In the absence of any evidence to show that the asbestos sheet would cause a serious threat to the life of the children, the Commission could not have made such recommendation as referred above. It is to be noted that the industrial rivalry and competition sometimes used as a platform to settle a score_ The Commission should have been careful while entertaining such complaint especially when it appears that the complainant never appeared before the Commission and also before this Court. In view of the above, the impugned order is set aside: The writ petition is disposed of as above.-*
>
> *(emphasis supplied)*
>
> *38. The Applicant has, in fact, placed reliance on the above KSHRC order in support of his case without disclosing that the said order had been set aside by the Hon'ble High Court of Kerala."*

112. Respondent no. 4-FCPMA has submitted in its reply that judgments of the Hon'ble High Court of Kerala in WP (C) No. 23 846 of 2021 and in WP (C) No. 22457 of 2019 (F) are based on, and place reliance on, the order of Kerala State Human Rights Commission dated 31.01.2009 in HRMP No. 126/2007 but the above-said judgments did not notice that dated 31.01.2009 passed in HRMP No. 126/2007 by Kerala State Human Rights Commission had already been set aside by the Hon'ble Kerala High Court vide judgment and order dated 07.08.2017 in WP (C) No. 25100 of 2009 (F).

113. With reference to judgement of the Hon'ble Calcutta High Court dated 21.07.2017 in W.P. No. 14729(W) of 2016 relied on by the Applicant, respondent no. 4-FCPMA has submitted in its reply that the judgement:

a. was not based on any study conducted at the High Court premises on presence of asbestos fibres in the air in the rooms/ premises where the asbestos sheets were used,

b. did not consider the safety of asbestos cement sheets on account of the manufacturing process and the firm inter-locking of asbestos fibres with the cement,

c. was only a summary adjudication which did not ban asbestos sheets, but only directed that at the time of renovation, asbestos sheets should not be used in the High Court premises.

It is therefore humbly submitted that the said judgement does not lay down any law on the issue and would not have any application in this case.

114. The applicant has submitted that respondent no. 4-FCPMA has supressed order dated 03.09.2019 passed in Writ Petition (Civil)no. 22457/2019 and order dated 02.11.2021passed in Writ Petition (Civil)no. 23846 of 2021 in para 9.

Orders of the National Human Rights Commission

115. In his reply to the rejoinder filed by respondent no. 4 the applicant has relied on order passed by National Human Rights Commission in Case no. 693/30/97-98 where one Shri Rongthong Kuenley Dorji was detained in Delhi and the Director General (Investigation) DG (I) of the commission visited the same and prepared a report. On the basis of the report the commission ordered the following: "(i) Replace the asbestos sheets roofing with roofing made up of some other material that would not be harmful to inmates".

116. In its reply respondent no. 4 has relied on order passed by National Human Rights Commission in Case No. 2951/30/0/2011 and the relevant part is reproduced as under:-

> *"29. Before the Hon'ble National Human Rights Commission of India ("NHRC"), a complaint was filed by Sh. Gopal Krishna bearing case No. 2951/30/0/2011, claiming that 50,000 people die in India every year on account of Asbestos related diseases, and demanding a ban on asbestos usage. This complaint was disposed of by the NHRC vide order dated 08.08.2016 by holding inter alia as under: -*
> *"Pursuant to the directions of the Commission, Dr. Rohit Misra, Assistant Industrial Advisor Ministry of Chemicals & Fertilizers, Deptt of Chemicals and Petrochemicals, Govt. of India vide letter dated July, 2016 has informed the Commission that in order to take an appropriate and scientific stand in the International Forum on the issue related to health hazards posed by Chrysotile variety of Asbestos, Department of Chemicals and Petrochemicals had entrusted National. Institute of Occupational Health (NIOH) to carry out a study on Health Hazards/Environmental. Hazards resulting from the use of Chrysotile variety of sbestos in the country*

Later, with the approval of MoS (md Charge) Chemicals & Fertilizers, it was decided to set up an Inter-Ministerial Committee for considering the issue of continuance or otherwise of the use of Chrysotile variety of asbestos in India, taking into account of N1OH report and other related issues.

"...On 27.8.2014, a meeting was held under the Chairmanship of Minister (Chemicals & Fertilizer) to consider the NIOH report. It was decided in the meeting that the NIOH report does not indicate any significant health/environment hazards resulting from the use of Chrysotile asbestos under proper conditions, coupled with the fact that asbestos products are quite cost effective for use by the masses, India may not support the inclusion of Chrysotile in Annexure-Ill at the COP Meeting in 2015. In the light of the above report, no further action by the Commission is called for. The case is closed"
(emphasis supplied)"

117. We have gone through the orders passed by Hon'ble High Court of Kerala and Hon'ble High Court of Calcutta and also the orders passed by Hon'ble Kerala State Human Rights Commission and Hon'ble National Human Right Commission quoted above. However, we find that the same do not conclusively decide the questions regarding adverse health impact of asbestos cement roofing sheets and other asbestos contained material and permitting or prohibiting usage thereof with immediate replacement in schools or other buildings Pan India in other States and Union Territories (except State of Kerala) are concerned. In WP (C) No. 25100 of 2009 (F), the Hon'ble High Court of Kerala had mentioned in Judgment dated 07.08.2017 that there is no data available with Kerala Human Rights Commission to arrive that the asbestos sheet is hazardous to the health of the children and the Hon'ble High Court of Kerala also observed that the asbestos sheet as such is not a threat as revealed from the judgement of Hon'ble Supreme Court in the case of **Kalyaneshwari v. Union of India and Others [(2011) 3 SCC 287]**.Order dated 03.09.2019 passed by Hon'ble High Court of Kerala in Writ Petition (Civil)no. 22457/2019 is an interim order which directed compliance with order issued by Government of Kerala and order dated 02.11.2021 passed by Hon'ble High Court of Kerala in Writ Petition (Civil)no. 23846 of 2021is based on principle that no appeal lies after implementation of order appealed against and was passed in view of the fact that order issued by Government of Kerala had already been implemented and both the orders do not record any finding based on specific scientific evidence as to adverse health impact of asbestos cement roofing sheets used in schools so as to warrant replacement on the basis thereof. Order dated 21.07.2017 passed by Calcutta High Court in WP No. 14729 (W) of 2016 is also by way of summary adjudication without any decision of the questions involved on merits. Similarly, the orders passed by National Human Rights Commission also do not conclusively determine the environmental questions involved in the present case.

The Precautionary principle

118. Section 20 of the NGT Act, 2010 mandates this Tribunal to apply the precautionary principle and the same reads as under:-

> ***"20. Tribunal to apply certain principles.-*** *The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."*

119. The Precautionary Principle as applied by the Hon'ble Supreme Court in Vellore Citizen's Welfare Forum v. Union of India (AIR 1996 SC 2716) makes it obligatory to anticipate, prevent and attack causes of environmental damage and further stated that if there are potential irreversible damages, the lack of scientific certainty should not be a reason for postponing measures to prevent environmental degradation.

Protection of children

120. India is a signatory of the United Nations Convention on the Rights of the Child (signed in 1992), which not only ensures providing education to a child but also deals with taking care of the health of the child. Since in schools with asbestos cement roofing, the children may be exposed to a carcinogenic health impact of asbestos, the interest of the children has to be protected.

121. We have gone through the scientific studies/researches relied upon by the applicant and respondents particularly respondent no. 4-FCPMA in support of their respective submissions against and for continuing usage of asbestos cement roofing sheets and other asbestos contained material in schools from the view point of environmental health. We find that there is no specific study with reference to adverse health impact of asbestos cement roofing sheets in school buildings despite the fact that specific order was passed by this Tribunal in this regard. Even though in its reply respondent no. 1-MoEF & CC has submitted that asbestos in the building does not spontaneously release fibres but respondent no. 1-MoEF & CC has admitted that asbestos fibres can enter the air, water and soil from the weathering, renovation or demolition of manufactured asbestos products and people are likely to be exposed to asbestos through inhalation of asbestos airborne fibres. In view of this admission of MoEF & CC, the claim by respondent no. 4-FCPMA that there is no evidence that on weathering/breakage of asbestos cement roofing sheets, the asbestos fibres are released in the air and that this would not happen as the fibres are firmly locked with the cement matrix is not correct. However, we are of the considered view that in the absence of any positive specific scientific evidence/material, direction for immediate discontinuance of use of asbestos cement roofing sheets and replacement thereof in schools Pan India in all States and Union Territories except State of Kerala is not warranted at this stage by recourse to the "Precautionary Principle" and also by relying on the factum of India being signatory to the UN Convention

on Child Rights. It may be observed here that the prayer for immediate discontinuance of asbestos cement roofing sheets in schools and issuance of direction for replacement of the same ignores/overlooks the adverse impact of asbestos cement roofing sheets in residential houses or other buildings likely to be frequented by the children/students, where their stay may also be for equal or longer periods of time, which also brings in focus the question of ban on use of asbestos cement roofing sheets in schools, residential houses and other buildings for their protection from adverse health impact of asbestos. It is also pertinent to observe here that prayer made in Kalyaneshwari Vs. Union of India and others (2011) 3 SCC 287 for ban on use of asbestos was rejected by the Hon'ble Supreme Court.

122. However, it is pertinent to observe that MoEF&CC has in its 'Vision Statement on Environment and Human Health' stated in para 4.3.1 that 'Alternatives to asbestos may be used to the extent possible and the use of asbestos may be phased out'. We consider it appropriate to direct MoEF & CC to deliberate on this aspect and work out an Action Plan with appropriate time lines for use of alternatives to asbestos as may be scientifically feasible and environmentally and economically viable.

Directions by the Tribunal

123. In view the hazards associated with exposure to asbestos cement roofing sheets and other asbestos contained material, following directions for taking of following remedial measures for protecting workers, their family members/persons coming in contact with them, residents of the locality, occupants and users of the buildings with asbestos cement roofings and other asbestos contained material are given:-

A. To prevent occupational exposure of asbestos.

(i) **Protecting Workers**:

The employers are required to protect workers by assessing asbestos levels, marking of regulated areas, posting hazard signs, engineering controls (ventilation systems with appropriate filters) and appropriate green belt and other technological measures to reduce level of asbestos in the air. The proper use of Personal Protective Equipment (PPE), need to be made mandatory for the workers.

(ii) Measures for Controlling Exposure:

- Smoking, eating or drinking in areas where asbestos exposure is possible should be prohibited.
- Dry sweeping, shoveling or other dry cleanup of dust & debris containing asbestos should be avoided.
- Wearing protective outer clothing that can be removed & cleaned or discarded should be made mandatory.
- Washing exposed parts of the body with soap and water
- All precautions need to be taken to avoid carrying asbestos fibres out of worksite where they can later be inhaled by others (viz.family members at home).

(iii) Medical Monitoring:

Periodical exposure monitoring & medical surveillance of workers should be made mandatory.

(iv) Training:

- The workers, who may be exposed to airborne concentration of asbestos at or above Permissible Exposure Limit (PEL), need to be trained prior to initial assignment and at least annually thereafter.
- The training programme must include information on the following: -

  -The Health Effects associated with asbestos exposure

  -The relationship between smoking and asbestos exposure in producing lung cancer.

  -The quality, location, manner of use, release, and storage of asbestos, and the specific nature of operations which could result in exposure to asbestos.

B. To prevent non-occupational exposure to Asbestos in Schools.

(a) The handling, installation, maintenance and disposal of asbestos-containing roof and boundary sheets require strict adherence to safety protocols to minimize environmental and health risks. It is therefore directed as follows:

I. In handling, installation and removal asbestos-cement roofs, the manufacturer's instructions should be followed carefully and BIS recommended tools should be used and safety precautions should be taken for ensuring proper sealing and minimizing waste generation.

II. During handling, installation and removal of asbestos cement roofing sheets/other asbestos containing material precautions to prevent fiber release including wetting the material, using appropriate personal protective equipment (PPE), and minimizing disturbance may be taken.

III. If the asbestos cement roofing is in good condition the same need not be removed immediately and the same may be encapsulated with appropriate sealant or paint as a safer option than immediate removal.

IV. If asbestos cement roofing is not in good condition and requires removal, then removing existing asbestos roofing sheet from schools and other establishments should be immediately removed by prioritizing and minimizing fiber release through wetting down and proper handling techniques.

V. SPCBs/PCCs and Schools should conduct regular inspections of school buildings with asbestos cement roofing sheets/other materials

containing asbestos for assessment of the condition thereof and requirement for repair/replacement.

VI. Such Periodical assessment of condition of asbestos cement roofing sheets and other asbestos-containing materials should be made by schools/CPCBs/PCCs through qualified professionals only.

VII. The school management should be directed to ensure that Asbestos cement roofing sheets/asbestos-containing materials in schools should be handled, installed, repaired, maintained, removed and disposed of by qualified professionals only.

VIII. The school staff should be educated about the risks of asbestos cement roofing sheets/other materials containing asbestos and also about safety precautions to be taken in handling, installation, repair, maintenance, removal and disposal of the same.

(b) Transportation and disposal asbestos waste

IX. Asbestos waste must be transported in leak-tight sealed containers, such as specialized bags or drums. Damaged containers should be immediately repacked.

X. Authorized/Dedicated disposal sites should be established and the transport of asbestos waste to authorized disposal sites using vehicles that are properly covered to prevent dust emissions during transit should be ensured. Vehicles should be clearly marked, indicating the presence of asbestos waste.

XI. Disposal of asbestos waste should be made in licensed, permitted solid waste disposal facilities, specifically those designed to handle hazardous waste. These facilities must havetypical impermeable layers, drainage systems and environmental monitoring to prevent contamination.

XII. **Designated sites for disposal** -the Designated sites for disposal of asbestos should be established/created at appropriate places.
Hazardous Waste Landfills: at present landfilling is the most common disposal method but it is crucial that these are specifically designed and permitted for asbestos waste, preventing contact with other waste streams and clear demarcation.

Alternative Disposal Methods: While landfilling is prevalent, alternative like high-temperature incineration or specific recycling options for certain types of asbestos may exist, which may be explored in the context of relevant environmental considerations.

XIII. Complete detailed record regarding disposal process and compliance with all relevant regulations and guidelines for handling, transport and disposal of asbestos waste should be maintained.

XIV. Even with proper disposal, long-term use of asbestos-containing materials can lead to gradual contamination of surrounding land, necessitating ongoing monitoring in affected areas. Therefore, CPCB, SPCBs/PCCs in the States and UTs should evolve special mechanism for monitoring disposal of asbestos wastes as per environmental norms and stipulations.

(c) Issuance of Advisory, SOP, Guidelines and creating public awareness.

XV. MoE is directed to issue an advisory to all schools through concerned supervising authorities:

(i) to maintain the existing cement-asbestos roofing sheets in good condition, and apply a protective coating of paint or lime on the sheets both sides as a precautionary measure;

(ii) to follow the guidelines IS: 11769 (Part 1) during installation and handling of cement-asbestos roofing sheets; and

(iii) to ensure disposal of the waste cement-asbestos roofing sheets when discarded or damaged at authorized disposal sites under HOWM Rules 2016.

XVI. CPCB is directed to prepare, finalize and issue SOP for the concerned authorities and industry so as to ensure proper disposal of cement-asbestos waste at authorized disposal sites under HOWM Rules 2016 and prevent re-entrainment into air matrix on degradation.

XVII. MoEF & CC is directed to

(i) Review the entire scientific evidence/material available and also review global best practices within 06 months and to take appropriate decision and make appropriate policies permitting/minimizing use of asbestos cement roofing sheets and other asbestos contained material in schools, residential houses and other buildings, and proper management and disposal of asbestos waste in accordance with its vison statement with an action plan and appropriate time lines.

(ii) Issue appropriate guidelines regarding manufacturing, installation, maintenance, dismantling and disposal of asbestos roof sheets/wall

sheets and other materials in which asbestos has been used like water supply pipelines etc., for mitigating negative impacts of asbestos roof sheets/wall sheets other asbestos contained material.

124. MoEF & CC and CPCB are directed that the decisions so taken, policy framed and an action plan, guidelines, SoP prepared may be circulated to all concerned Ministries of Union of India, Chief Secretaries and Member Secretaries of SPCBs/PCCs of the States/UTs for strict compliance in all the States/UTs of India.

125. The Action Taken Report (ATR) with copies of relevant documents may be submitted by respondents no. 1 to 3-MoEF & CC, MoHUA and MoE and CPCB within one month next to the expiry of the period of six months before the Ld. Registrar General of this Tribunal.

126. The Ld. Registrar General of this Tribunal is directed to take appropriate steps for placing the matter before the Bench in case of non-receipt of action taken reports and in case of further orders are considered to be necessary in view of the action taken reports received.

127. The present original application is disposed of with the directions as mentioned above leaving the parties to bear their own costs.

128. A copy of this order may be sent to applicant and the Secretary, MoEF&CC, Secretary, MoHUA and Secretary, MoEF, Member Secretary, CPCB and all the Chief Secretaries by email for requisite compliance.

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Naveen Kumar vs. Union of India & Ors.

(Original Application No. 820/2022)
Decided on: 08th October, 2025(PB)

CASE NOTE

The Original Application No. 820/2022 was filed by Naveen Kumar against Shivalik Hospital, a 10-bed facility in Una, Himachal Pradesh. The applicant alleged that the hospital had operated without mandatory authorization under the Bio-Medical Waste Management Rules, 2016, and without valid consents under the Water (Prevention and Control of Pollution) Act, 1974, while also violating land-use norms. The respondent no.8-Shivalik hospital stated that it had repeatedly applied for approvals, but administrative delays and corruption within the State Pollution Control Board had prevented formal clearance, although it had maintained a functional sewage treatment plant and proper biomedical waste disposal.

The Tribunal considered whether the hospital had operated illegally, whether its presence in a residential area violated land-use regulations, and whether the lack of formal authorization and consent during the intervening period constituted a violation. A critical question was the applicability of 'deemed consent' and 'deemed authorization' provisions when the regulatory authority had failed to act within the statutory timelines despite receiving complete applications.

The Tribunal held that the hospital had not violated land-use rules, as hospitals were permitted in residential zones under the Una Development Plan. It further concluded that the hospital was entitled to deemed consent and deemed authorization due to the Pollution Control Board's failure to process applications on time. The hospital had complied with biomedical waste management and sewage treatment requirements, and no environmental damage had occurred, making the imposition of environmental compensation unnecessary.

The Tribunal disposed of the application and directed the Central Pollution Control Board (CPCB) to prepare a Standard Operating Procedure (SOP) and issue appropriate directions to all State and UT Pollution Control Boards (SPCBs/PCCs) to ensure: (i) expeditious disposal of applications for authorization, Consent to Establish (CTE), and Consent to Operate (CTO) within prescribed timelines; (ii) adoption of a proactive approach for enforcing environmental laws, including issuing circulars, notices, and conducting inspections, with specific remedial directions and conditional or absolute closure orders as necessary; and (iii) creation of a web portal for grievance redressal, recording complaints regarding environmental violations, taking remedial action, informing complainants of actions taken and available legal remedies, and uploading such information online. The Member Secretary, CPCB, was further directed to file an Action Taken Report within three months before the Registrar General of the Tribunal.

Naveen Kumar vs. Union of India & Ors.

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COUNSEL FOR RESPONDENT(S):
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Ms. Soni Singh, Advocate for Respondent no 2 (through VC).
Ms. Inderdeep Kaur Raina, Advocate for respondents no. 3, 6 & 7.
Mr. Aditya Vijaykumar and Mr. Anirudh Anand, Advocates for respondents no 4 & 5 (through V.C).
Mr. A. R. Takkar, Mr. Manan Takkar, Ms. Astha Tyagi and Mr. Yash Dewan, Advocates for respondent no. 8 (through VC).

CORUM:
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

RESERVED ON: 23rd September, 2025
PRONOUCED ON: 08th October, 2025

JUDGEMENT

BY HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER

1. Mr. Naveen Kumar, S/o Rajpal Singh, R/oGagsona, Post Phalawda Chaupal, Meerut, Uttar Pradesh, has filed the present application under Section 14 of the National Green Tribunal Act, 2010 (NGT Act, 2010) seeking the following reliefs:

> *"a. Direct Himachal Pradesh State Pollution Control Board to close the operation of Respondent no.8.*
>
> *b. Direct the Department of Town and Country Planning to take action against respondent no.8 as the same is operating in Non-Conforming Area.*
>
> *c. Direct the Himachal Pradesh State Pollution Control Board to act impose Environmental Compensation on the basis of Polluter Pays Principle.*
>
> *d. Pass any other Order or Direction as this Hon'ble Tribunal feels fit and proper."*

Grievances of the applicant

2. The applicant has submitted that respondent no.8 is running a 10 bedded hospital at District Una, Himachal Pradesh. Respondent no. 8 falls within the definition of "Occupier" under Rule 3(m) of the Bio Medical Waste Management Rule, 2016 (BMWM Rules, 2016) and was required to obtain authorization from Himachal Pradesh State Pollution Control Board (HPSPCB) under Rule 10 of the BMWM Rules, 2016. Respondent no.8 was also required to obtain Consent to Establish/Consent to Operate (CTE/CTO) from HPSPCB.Respondent no. 8 has not obtained the requisite authorization under Rule 10 of the BMWM Rules, 2016 and consent under the Water (Prevention and Control of Pollution) Act, 1974 (theWater Act, 1974).HPSPCB had also issued letter dated 27.07.2017 to respondent no. 8 in this regard. The Applicant has further submitted that respondent no. 8 has established the above hospital in contravention of the Master Plan issued by the Department of Town and Country Planning, Government of Himachal Pradesh and is carrying on its activity in residential plot which is a non-conforming area as far as the operation of the hospital is concerned.

3. Vide order dated 18.12.2022, this Tribunal ordered issuance of notice to the respondents.

4. Pursuant to service of notice, replies have been filed by respondent no.1 vide email dated 18.01.2023 (pages no. 48 to 98 of the paper book), respondent no.2 vide email dated 20.01.2023 (pages no. 140 to 202 of the paper book), respondents no. 4 and 5 vide email dated 18.01.2023 (pages no. 18 to 47 of the paper book), respondent no.7 vide email dated 20.01.2023 (pages no. 99 to 139 of the paper book) and respondent no.8 vide email dated 21.01.2023 (pages no. 203 to 289 of the paper book).

Reply filed by respondent no. 1-MoEF&CC

5. In its reply filed vide email dated 18.01.2023, respondent no.1-Ministry of Environment, Forest and Climate Change (MoEF&CC) has referred to the provisions of the Biomedical Waste (Management and Handling) Rules, 1998 [BMW(M&H) Rules, 1998], BMWM Rules, 2016 and revised guidelines issued by the Central Pollution Control Board (CPCB) and mentioned that the SPCBs and the State Health Departments are the nodal agencies to ensure the enforcement and implementation of the BMWM Rules, 2016.

Reply filed by respondent no. 2-CPCB

6. In its reply filed vide email dated 20.01.2023, respondent no.2- CPCB has referred to the provision of the BMWM Rules, 2016 and submitted that the HPSPCB is the prescribed authority for ensuring implementation of BMWM Rules, 2016 in the State of Himachal Pradesh. Respondent no.2-CPCB has further submitted that respondent no.2-CPCB is not

aware about the location of respondent no.8-Hospital and has no mandate for reviewing the location criteria for hospital.

Reply filed by respondent no. 4-HPSPCB and respondent no.5- Principal Scientific Officer, HPSPCB

7. In their reply filed vide email dated 18.01.2023, respondent no.4-HPSPCB and respondent no.5- Principal Scientific Officer, HPSPCB have submitted that as per record the HPSPCB had granted authorization to respondent no. 8 on 06.11.2006 which was renewed from time to time and was last renewed on 21.03.2015 which was valid up to 31.03.2017. Vide notification dated 28.03.2016, MoEF&CCenacted the BMWM Rules, 2016 in supercessionof the BMW(M&H) Rules, 1998. As per Rule 10, respondent no. 8 was required to obtain consent under the Water Act, 1974 and authorization under the BMWM Rules, 2016 from HPSPCB. The Principal Scientific Officer, Central Laboratory,Parwanoovide letter dated 27.07.2017 asked respondent no.8 to apply for consent under the Water Act, 1974 and authorization under the BMWM Rules, 2016.Respondent no.8 applied for consent and authorization vide application dated 19.08.2017 and 22.08.2017. The Principal Scientific Officer, Central Laboratory,Parwanoo vide letter dated 19.12.2017 asked respondent no.8 to submit project report, copy of design/drawing of septic tank along with layout of pipe lines for chemical liquid waste and sewage and to provide pre-treatment system for disinfection/neutralization of chemical liquid waste generated in the hospital and vide letter dated 15.03.2018 asked respondent no.8 to deposit the prescribed fee. Respondent no.8 submitted fresh online application no. 5060025 dated 08.03.2022 on which CTE was granted by HPSPCB on 26.05.2022. Thereafter, on application no. 5060056 dated 17.03.2022, CTO was granted by HPSPCB on 16.08.2022. On online application no. 7258169 dated 24.09.2022, authorization under the BMWM Rules, 2016 was granted by HPSPCB to respondent no. 8 on 12.12.2022. Respondent no. 8 entered into agreement with Bio Medical Waste Treatment Trust (BMWT) Plant Pvt. Ltd., Village Pangoli, Pathankot w.e.f. 07.07.2005 for transportation and disposal of bio-medical waste and with M/s. Enviro Engineer (CBWTF) Industrial Area Pandouga, Unaw.e.f. 01.04.2022 for collection/transportation/treatment and disposal of bio-medical waste. During the period of its operation, no complaint or matter regarding improper disposal of bio-medical waste or water pollution by respondent no. 8 came to the notice of HPSPCB. Respondent no.8 has installed STP of 3 KLD as per the BMWM Rules, 2016 and as per the analysis report for the month of November 2022, the outlet of the STP is meeting the prescribed norms. In their reply respondents no. 4 and 5 have also submitted that FIR No. 4/2022 dated 31.03.2022 was registered under section 7 of Prevention of Corruption Act, 1988 against the then Chief Scientific Officer, Parwanoo and Officer-In-Charge for HCF by the State Vigilance and Anti CorruptionBuearu, H.P. which was under investigation by the State Vigilance and Anti CorruptionBuearu, H.P.

Reply filed by Respondent no.7, District Magistrate-Una

8. In his reply filed vide email dated 20.01.2023 respondent no.7- District Magistrate, Una has mentioned that as per report received from the Chief Medical Officer, Una vide his office letter no. HFW-Una (Court Cases)/2022-13028 dated 14.12.2022, Shivalik Hospital, Jhalera Una, Himachal Pradesh is registered under the Clinical Establishment Act, 2010 w.e.f. from 05.09.2022 valid up to 04.09.2023. Respondent no. 7 has also referred to the issuance of authorization, consent granted by HPSPCB and HCF agreements. In its reply respondent no. 7 has mentioned that as per thereport received from the Assistant Town Planner, Sub Division Town Planning Office Una, District Una (H.P.) vide his office letter No. SADA (Una)-Case No. BP-630/2007-334 dated 05.12.2022,the Development Plan for Una Planning Area was approved by the Government of Himachal Pradesh vide notification No. TCP-F (5)-7/96 dated 23.04.1997. The Development Plan of Una Planning Area is valid till March, 2023. As per Development Plan of Una Planning Area the land falling under Shivalik Hospital situated at Mohal Jhalera has been earmarked for residential use. He has further reported that as per clause 7.2.1.1 of Sr. No. 7.2.1 (Residential Use) of Chapter Seven of Development Plan of Una Planning Area uses permitted in Residential Use are Residences, Hospitals, Boarding Houses, Nurseries, Kindergartens and Schools, Clinics, Social and Cultural Institutions, Public Utilities and buildings, except service and storage yards, agricultural gardens, nurseries and greenhouses, any neighbour hood recreational uses including clubs and other semi-public recreational uses, accessory uses clearly incidental to residential uses which will not create a nuisance and eco-hazard. He has further reported that the building maps for the construction of Two Storeyed Residential building at Khasra No.1546/14, 1546/15, 1546/16, 1546/21, 1546/22 and 1546/23 as per Jamabandi for the years 2003-2004 of Mohal Jhalera Tehsil and District Una (H.P.) were approved vide No. SADA (Una) BP-630/2007-659 dated 22.11.2007 in the name of Shri Krishan Dass, Shri Akshay Kumar S/o Shri Krishan Das and Smt. Anupama w/o Sh. Akshay Kumar. The Shivalik Hospital is running in the building for which said maps were approved. The necessary directions under the provisions of the Himachal Pradesh Town & Country Planning Act, 1977 have been issued to the proprietor of the Hospital vide No. SADA (Una)- Case No. BP-630/2007-333 dated 01.12.2022.The Assistant Town Planner, Sub Division Town Planning Office Una, District Una has vide his notice No. SADA (Una)- Case No. BP-630/2007-333 dated 01.12.2022, directed the proprietor of respondent no.8 to submit the proposal/maps for obtaining the permission for change of building use failing which action under Section 39 of the Himachal Pradesh Town & Country Planning Act, 1977 shall be initiated against him.

Reply filed by respondent no. 8-Shivalik Hospital

9. In its reply filed vide email dated 21.01.2023 respondent no. 8 has denied the averments made in the original application. The relevant part of the reply filed by respondent no. 8 reads as under:-

> ***"REPLY ON BEHALF OF RESPONDENT NO.8 I.E. SHIVALIK HOSPITAL TO THE ORIGINAL APPLICATION FILED BY THE***

APPLICANT UNDER SECTION 18(1) READ WITH SECTION 14 OF THE NATIONAL GREEN TRIBUNAL ACT, 2010.

X X X X

1. That at the very outset it is most relevant and important to bring to the notice of this Hon'ble Tribunal that the present Original Application has been filed by the Applicant Shri. Naveen Kumar out of malafide and to wreak vengeance as a close friend and relative of the Applicant i.e. Mr. TB Singh (Ex Principal Scientific Officer, Himachal Pradesh Pollution Control Board), was gotten arrested red handily accepting a bribe of Rs. 3,70,000/- from the answering Respondent for granting Consents which the answering Respondent Hospital was even otherwise entitled to. The Applicant i.e. Shri. Naveen Kumar is a resident of Meerut (Uttar Pradesh) and Mr. TB Singh also belongs to UP having his house in Dehradun.

2. Despite having applied for Consent to Establish as well as Consent to Operate by way of an application complete in all respect along with requisite fees in the year 2018, the said Mr. TB Singh who was Principal Scientific Officer and was in charge of Una from the beginning started harassing the Respondent demanding money despite the fact that the hospital was fully compliant. After being fed up the answering Respondent approached the State Vigilance & Anti-Corruption Bureau Himachal Pradesh and with their help a trap was laid and Mr. TB Singh was caught red handed accepting a bribe of Rs.3,70,000/- and was taken into custody. Copy of the FIR 04/2022 against Mr. TB Singh is marked and annexed herewith as Annexure-R/1.

3. It is submitted that it is under these circumstances that the said Mr. TB Singh has gotten this Original Application filled through is relative Shri. Naveen Kumar just to harass the answering Respondent herein who in accordance with law is running a very small nursing home of 10 beds, wherein occupancy is hardly of 2-3 beds daily. That the Respondent herein has also recently got to know that the then Principal Scientific Officer Mr. TB Singh purposely made sure that no communication in form of notices and letters issued by the Respondent Board, reached the Respondent herein.

X X X X

5. BRIEF FACTS OF THE CASE:-

a. That upto the year 2013, the said premises i.e. two storeyed building was being solely used only for residential purpose. It was only in the year 2013 when it was decided to set up a 10 bed single storey hospital named "Shivalik Hospital" on the half width (right side half) of the land whereas, the other half (left side hall) of the premises was still to be used for residential purpose i.e. a double storeyed residential house. It is submitted that for the purpose of setting up a 10 bed hospital a No-objection was sought from the Office of Gram Panchayat, District Una, Uttar Pradesh and the same was granted to the Respondent herein on 07.06.2013. Copy of the No-objection certificate dated 07.06.2013 issued by the Office of Gram Panchayat, District Una. Uttar Pradesh is marked and annexed herewith as Annexure-R/2. It is in the humble submission of the answering Respondent herein that the complete building has been constructed as per the approved building plans.

b. That it is pertinent to mention herein that in respect of the provisions of the Development Plan for Una Town issued by the Town and Country Planning Department, Himachal Pradesh, as per Clause/regulation 7.2.1.1 of Sr. No. 7.2.1 (Residential Use) the uses permitted in the area earmarked for Residential Use are Residences, Hospitals, Boarding Houses, Nurseries, Kindergartens and Schools, Clinics, Social and cultural Institutions, Public Utililles and buildings, except service and storage yards, agricultural gardens, nurseries and green houses, any neighbourhood recreational uses including clubs and other semi- public recreational uses, accessory uses clearly incidental to residential uses which will not create a nuisance and eco-hazard. Relevant provision is reproduced herein below for the ready reference of this Hon'ble Tribunal:

"7.2.1.1Uses Permitted- Residences, Hospitals, Boarding-Houses, Nurseries, Kindergartens and Schools, Clinics Social and Cultural institutions, Public utilities and buildings, except service and storage yards: agricultur gardens, nurseries and green houses, any neighbourhood recreational uses: including clubs and other semi- public recreational uses; accessory uses clearly incidental to residential uses which will not create a nuisance and eco-hazard."

Further as per Clause/Regulation 7.1.(i) of Sr. No. 7.1 (General Regulations) mixed land use is not prohibited unless otherwise a particular land use is hazardous. Relevant provision is reproduced herein below for the ready reference of this Hon'ble Tribunal:

"(ii)General land use in the development plan has been contemplated for specified use. However, mixed land use shall not be prohibited unless otherwise a particular land use is hazardous in nature to the pre dominated use and fulfils the regulations fixed for the same."

Therefore, it is humbly submitted that the Respondent herein is not running the hospital in violation of the Development Plan for Una Town issued by the Town and Country Planning Department, Himachal Pradesh.

c. That ab initio in compliance of the provisions of the Biomedical Waste (Management and Handling Rules), 1998 the Respondent herein entered into an Agreement dated 01.04.2014 with Bio Medical Waste Treatment Plant Pvt. Ltd. (BMWT), Village Pangoli for collection of bio-medical waste as per Schedule-1 of the Biomedical Waste (Management and Handling Rules), 1998. It is submitted that the Agreement dated 01.04.2014 was valid for a period of 5 years i.e.upto 01.04.2019. Copy of the Agreement dated 01.04.2014 with Bio Medical Waste Treatment Plant Pvt. Ltd. (BMWT), Village Pangali for collection of bio-medical waste is marked and annexed herewith as Annexure-R/3

d. That It is important to mention herein that as per the Blomedical Waste (Management and Handling Rules), 1998 the Health Care Facilities (HCF's) were required to obtain only authorization under the Biomedical Waste (Management and Handling Rules), 1998 and there was no requirement for obtaining Consent under the Water (Prevention and Control of Pollution) Act, 1974. However, the Ministry of Environment. Forest & Climate Change, Government of India in supersession of Bio-medical Waste (Management & Handling) Rules, 1998 vide notification dated 28.03.2016 revised and issued Bio-Medical Waste Management Rules, 2016. As per Rule 10 of these revised rules the Health Care Facilities (HCFs) were required to obtain Consent under the Water (Prevention and Contral of Pollution) Act, 1974 in addition to Authorization from the State Poliution Control Board.

e. Further, as per the Biomedical Waste (Management and Handling Rules). 1998 and the amended Biomedical Waste (Management) Rules. 2016, every operator of a bio-medical facility is required to obtain authorization in accordance to the procedures specified under the Rules. It is submitted that accordingly an application for authorization was submitted by the Respondent Hospital herein and the same was granted on 21.03.2015. It is submitted that the authorization dated 21.03.2015 was valid upto 31.03.2017. Copy of the authorization granted under the

Biomedical Waste (Management and Handling Rules). 1998 is marked and annexed herewith as Annexure-R/4.

f. It is submitted that as per Section 14 of the Clinical Establishment Act, 2010 for the provisional registration of the clinical establishment under Section 10 of the Act, an application has to be submitted to the concerned authority along with the prescribed fees. It is submitted that the Respondent herein accordingly submitted an application and a Certificate of Provisional Registration dated 08.02.2018 was issued by the District Registering Authority, Una, and Government of Himachal Pradesh. It is submitted that the certificate was valid for a period of one year from the date of issue i.e. It was validi till 08.02.2019. Copy of the Certificate of Provisional Registration dated 08.02.2018 issued by the District Registering Authority, Una, Government of Himachal Pradesh is marked and annexed herewith as Annexure-R/5.

g. That since the Ministry of Environment, Forest & Climate Change, Government of India in suppression of Bio-medical Waste (Management & Handling) Rules, 1998 vide notification dated 28.03.2016 revised and issued Bio-Medical Waste Management Rules, 2016 and as per Rule 10 of these revised rules the Health Care Facilities (HCFs) were required to obtain Consent under the Water (Prevention and Control of Pollution) Act, 1974 in addition to Authorization from the State Pollution Control Board, the Respondent herein submitted an Application for obtaining Consent to Establish and Consent to operate. It is submitted that the application submitted for obtaining the Consent to Establish as well as the Consent to Operate was complete in all respects and the requisite fees was also paid by the Respondent herein. Copy of the Application for Consent to Establish and Consent to Operate is marked and annexed herewith as Annexure-R/6.

h. It is submitted that there was no reply whatsoever by the State Pollution Control Board on the application for Consents submitted by the Respondent herein. That as per the provisions of the Water (Prevention and Control of Pollution) Act, 1974, since there was no reply to the application for Consents, the Respondent herein was deemed to be operating with the consent of the State Board. Thus legally speaking the hospital in question had deemed consent in view of Section 25(7) of the Water (Prevention & Control of Pollution) Act, 1974, That Section 25(7) of the Water (Prevention & Control of Pollution) Act, 1974 is reproduced herein for your ready reference:

"25(7)The consent referred to in sub-section (1) shall unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board."

i. Thereafter, the Respondent herein submitted an application dated 19.08.2018 for renewal of Authorization under Biomedical Waste (Management) Rules, 2016. It is submitted that the application submitted by the Respondent herein for renewal of Authorization under Biomedical Waste (Management) Rules, 2016 was complete in all respects and the requisite fees was also paid by the Respondent herein. Copy of the Application dated 19.08.2018 for renewal of Authorization under Biomedical Waste (Management) Rules, 2016 is marked and annexed herewith as Annexure-R/7.

j. It is submitted that there was no reply whatsoever by the State Pollution Control Board on the application for renewal of authorization submitted by the Respondent herein. That as per Rule 10(3) of the Biomedical Waste (Management) Rules, 2016 since there was no reply to the application for renewal of authorization, the Respondent herein was deemed to be operating with the authorization of the State Board. Thus legally speaking the hospital in question had deemed authorization in view of Rule 10(3) of the Biomedical Waste (Management) Rules, 2016. That Rule 10(3) of the Biomedical Waste (Management) Rules, 2016 is reproduced herein for your ready reference:

"10(4) Every application for authorisation shall be disposed of by the prescribed authority within a period of ninety days from the date of receipt of duly completed application along with such necessary documents, failing which it shall be deemed that the authorisation is granted under these rules."

k. It is most relevant and important to bring to the notice of this Hon'ble Tribunal that the present Original Application has been filed by the Applicant Shri. Naveen Kumar out of malafide and to wreak vengeance as a close friend and relative of the Applicant i.e. Mr. TB Singh (Ex Principal Scientific Officer, Himachal Pradesh Pollution Control Board), was gotten arrested red handily accepting a bribe of Rs. 3,70,000/- from the answering Respondent for granting Consents which the answering Respondent Hospital was even otherwise entitled to. The Applicant i.e. Shri. Naveen Kumar is a resident of Meerut (Uttar Pradesh) and Mr. TB Singh also belongs to UP having his house in Dehradun.

l. Despite having applied for Consent to Establish as well as Consent to Operate and Authorization under the Bio Medical Waste (Management) Rules, 2016 by way of an application complete in all respect along with requisite fees in the year 2018, the said Mr. TB Singh who was Principal Scientific Officer and was in charge of Una from the beginning started harassing the Respondent demanding money despite the fact that the hospital was fully compliant. After being fed up the answering Respondent approached the State Vigilance& Anti-Corruption Bureau

Himachal Pradesh and with their help a trap was laid and Mr. TB Singh was caught red handed accepting a bribe of Rs.3.70,000/- and was taken into custody.

m. It is submitted that it is under these circumstances that the said Mr. TB Singh has gotten this Original Application filed through is relative Shri. Naveen Kumar just to harass the answering Respondent herein who in accordance with law is running a very small nursing home of 10 beds, wherein occupancy is hardly of 2-3 beds daily. That the Respondent herein has also recently got to know that the then Principal Scientific Officer Mr. TB Singh purposely made sure that no communication in form of notices and letters issued by the Respondent Board, reached the Respondent herein.

n. That as per Rule 13 of the Biomedical Waste (Management) Rules, 2016 every occupier or operator of the bio-medical facility has to submit an annual report to the prescribed authority. That accordingly the Respondent herein sent annual reports each year to the Authority concerned. It is submitted that the Annual report of January 2017 till December 2018 was sent by the Respondent herein in Jan 2018 and the same is marked and annexed herewith as Annexure-R/8

o. That since the earlier agreement with Bio Medical Waste Treatment Plant Pvt. Ltd. (BMWT), Village Pangoli for collection of bio-medical waste was to expire, the Respondent herein well before hand entered into an Agreement dated 14.02.2018 with Suraksha Bio-Sanitizer for collection of bio-medical waste. It is submitted that the Agreement was valid till 31.03.2019. Copy of the Agreement dated 14.02.2018 is marked and annexed herewith as Annexure-R/9.

p. Similarly since the provisional registration under Section 14 of the Clinical Establishment Act. 2010 was to expire on 08.02.2019, the Respondent herein submitted an application of renewal and a Certificate of Provisional Registration dated 01.04.2019 was issued by the District Registering Authority, Una, Government of Himachal Pradesh. It is submitted that the certificate was valid for a period of one year from the date of issue Le. it was valid fill 01.04.2020. Copy of the Certificate of Provisional Registration dated 01.04.2019 issued by the District Registering Authority, Una, Government of Himachal Pradesh is marked and annexed herewith as Annexure-R/10.

q. It is in the humble submission of the answering Respondent herein that in all this duration, there was no reply by the State Pollution Control Board accepting or rejecting or pointing out deficiencies in the application for Consents under Water (Prevention and Control of Pollution) Act, 1974 as well as in application for renewal of authorization under Bio Medical Waste (Management) Rules, 2016

submitted by the Appellant herein. Thus, the Respondent herein was legally operating with deemed Consents as per Section 25(7) of the Water (Prevention & Control of Pollution) Act, 1974 and deemed Authorization as per Rule 10(3) of the Biomedical Waste (Management) Rules, 2016.

r. That it is pertinent to mention herein that in the month of September 2019, the Respondent herein at the recommendation of the Mr. TB Singh who was at that time Principle Scientific Officer with the Respondent Board, installed a Sewage Treatment Plant of capacity 3 KLD in the premises. Copy of photograph of the Sewage Treatment Plant as well as the bill for purchase/installation of the Sewage Treatment Plant issued by Apex Enviro is marked and annexed herewith as Annexure-R/11(Colly).

s. That the Agreement for collection of Bio-Medical Waste with Suraksha Bio-Sanitizer was further renewed from time to time i.e. on 01.04.2019, 01.04.2020 and 01.04.2021 and the same was valid till 31.03.2022. Copy of the Agreements with Suraksha Bio-Sanilizer dated 01.04.2019. 01.04.2020 and 01.04.2021 are marked and annexed herewith as Annexure-R/12(Colly).

t. It is in the humble submission of the answering Respondent herein that not only did Mr. TB Singh (Ex Principle Scientific Officer with the Respondent Board) advise to install Sewage Treatment Plant but also asked the Respondent herein to apply again for the Consents under the Water (Prevention and Control of Pollution) Act, 1974 online as there was no reply by Respondent Board on the previous Application submitted by the Respondent Board in 2018. That blindly following the advise of Mr. TB Singh, the Respondent herein re-submitted an application online for grant of Consents under the Water (Prevention and Control of Pollution) Act, 1974. It is submitted that along with the application made online. Mr. TB Singh also asked the Respondent herein to re-pay the fees from 2018 onwards. It is submitted that the Respondent herein paid an amount of Rs. 5000/-towards consent fees and the receipt issued by the Respondent Pollution Control Board is marked and annexed herewith as Annexure-R/13.

u. It is pertinent to mention herein that even after re-applying for the consents under the Water (Prevention and Control of Pollution) Act, 1974 online, there was no reply whatsoever from the Respondent Pollution Control Board. It is submitted that on enquiring about the same from Mr. TB Singh (Ex Principle Scientific Officer with the Respondent Board), Mr. TB Singh demanded money in form of bribe from the Respondent herein for grant of Consents and also questioned the Respondent herein as to why the Sewage Treatment Plant was not installed from a favourite vendor of Mr. TB Singh and was rather bought

and installed from some other place. That in light of the same the Respondent herein made a police complaint against Mr. TB Singh for demanding bribe for the release of Consent Certificates and an FIR being FIR No.04/2022 under Section 7 of Prevention of Corruption Act, 1988 was also registered against the then Chief Scientific Officer Mr. TB Singh by the State Vigilance &Anti Corruption Bureau Himachal Pradesh and the said Mr. TB Singh was caught red handed accepting Rs. 3,70,000/- and was arrested. It is submitted that the matter is still under investigation by the State Vigilance &Anti Corruption Bureau Himachal Pradesh. Copy of the FIR has been annexed above as Annexure-R/1.

v. That since the earlier agreement with Bio Medical Waste Treatment Plant Pvt. Ltd. (BMWT), Village Pangoli for collection of bio-medical waste was to expire, the Respondent herein well before hand entered into an Agreement dated 01.04.2022 with Enviro Engineers, CBWTF Industrial Area Pandoga, Una. Himachal Pradesh for collection of bio-medical waste. It is submitted that the Agreement is valid till 31.03.2023. Copy of the Agreement dated. 01.04.2022 is marked and annexed herewith as Annexure-R/14.

w. It is submitted that after regular follow-ups, the Respondent Board finally granted Consent to Establish dated 26.05.2022 to the Respondent Hospital, It is submitted that the Consent to Establish is valid upto 25.05.2023. Copy of the Consent to Establish dated 26.05.2022 is marked and annexed herewith at Annexure-R/15.

x. That since the provisional registration under Section 14 of the Clinical Establishment Act, 2010 was to expire, the Respondent herein submitted an application of renewal and a Certificate of Provisional Registration dated 05.09.2022 was issued by the District Registering Authority, Una, Government of Himachal Pradesh. It is submitted that the certificate was valid for a period of one year from the date of issue i.e. it is valid till 05.09.2023. Copy of the Certificate of Provisional Registration dated 05.09.2022 issued by the District Registering Authority, Una, Government of Himachal Pradesh is marked and annexed herewith as Annexure-R/16.

y. It is submitted that the Consent to Operate under Water (Prevention and Control of Pollution) Act, 1974 pursuant to the second application submitted in 2021 was eventually granted to the Respondent Hospital on 16.08.2022 and is valid till 31.03.2027. Copy of the Consent to Operate dated 16.08.2022 is marked and annexed herewith as Annexure-R/17. Also, the Respondent Board has granted the renewed Authorization dated 12.12.2022 under the Bio Medical Waste (Management) Rules, 2016 to the Respondent Hospital and the same is valid till 31.03.2027.

Copy of the renewed Authorization dated 12.12.2022 under the Bio Medical Waste (Management) Rules, 2016-is marked and annexed herewith as Annexure-R/18.

z. It is also pertinent to mention herein that the Respondent Hospital was inspected by the officers of the Board and samples from the sewage treatment plant of the Hospital were collected on 19.11.2022. It is submitted that as per the report of the Respondent Board dated 14.12.2022, the parameters of the samples collected from the sewage treatment plant of the Hospital were found to be well within the prescribed standard limits. Copy of the Report dated 14.12.2022 by the Respondent Board is marked and annexed herewith as Annexure-R/19.

aa. In recent post, a small portion was added in the premises and as an abundant precaution, though not required, the Respondent herein applied to the Department of Town and Country Planning, Una for change of building use (hospital site) and composition of additional construction of garage situated on the right side of the hospital. It is submitted that the Special Area Development Authority, Una granted completion permission vide letter dated 19.01.2023 and the same is marked and annexed herewith as Annexure-R/20.

bb. It is therefore humbly submitted that as on date, the Respondent Hospital has Consent to Establish as well as Consent to Operate and also Authorization under the Bio Medical Waste (Management) Rules, 2016 and is running the hospital in full compliance as per the prescribed norms. It is submitted that the delay in grant of the Consents as well as the Authorization was a result of lapse on part of the officers of the Respondent Board and hence the Respondent Hospital cannot be held accountable for the same.

cc. It is in the humble submission of the answering Respondent herein that there is an adequate appropriate Sewage Treatment Plant which is being run efficiently of capacity 3 KLD installed in the premises and the sample result of the same have found to be well within the prescribed limits as per the report dated 14.12.2022 of the Respondent Board. Further the allegation of the Applicant that the Respondent Hospital is discharging all its Bio Medical Waste outside the hospital is erroneous and without any evidence on record. It is submitted that starting from the year 2014 fill date, the Respondent Hospital has entered into Agreements with Bio Medical Waste Collection facilities for collection of Bio Medical Waste from the hospital and the same have been placed on record for the convenience of this Hon'ble Tribunal. It is pertinent to

mention herein that the Applicant has not placed on record any evidence or any photo to establish or support his allegation that the Respondent Hospital is discharging all its Bio Medical Waste outside the hospital. It is therefore submitted that the allegations of the Applicant are only based out of personal rivalry and hence ought to be dismissed.

dd. It is submitted that there arises no question of permanent damage or even say damage in the present case as the Respondent Hospital in its day to day operation is neither discharging any untreated effluent nor is disposing off its Bio Medical Waste outside the premises of the Hospital, It is hence submitted that there has been no environmental damage caused by the Respondent Hospital as well as that there is no evidence whatsoever to the effect that sewage/effluent as well as Bio Medical Waste is being discharged in open or otherwise."

10. Respondent no.8 has reiterated these facts in reply on merits and reply to grounds which are not reproduced. Respondent no.8 has pleaded the original application to be time barred as the Hospital is being run in the said location since the year 2013-2014 and prayed that the original application may be dismissed.

Additional affidavit dated 29.09.2023 filed by the applicant

11. Additional affidavit dated 29.09.2023 was filed by the applicant vide email dated 30.09.2023 pointing out the violations by respondent no. 8. The relevant part of the additional affidavit reads as under:-

"X X X X

a. That in the year 2004, Notice dated 21/06/2004 was issued to Respondent No. 08 by Member Secretary, Himachal Pradesh State Environment Protection and Pollution Control Board.

It is important to mention here that as per the said Notice, Respondent No. 08 was directed to deposit the fees with respect to AUTHORIZATION UNDER BIO MEDICAL WASTE (MANAGEMNT & HANDLING) RULES, 1998.

True copy of the Notice dated 21/06/2004 issued by Himachal Pradesh Environment Protection and Pollution Control Board is annexed hereto and marked as Annexure A1/2.

b. That again in the year 2005, a notice dated 02/08/2005 was issued by Himachal Pradesh Environment Protection and Pollution Control Board wherein Respondent No. 08 was again directed to deposit the AUTHORIZATION FEES under the BMW Rules.

True copy of the Notice dated 02/08/2005 issued by Himachal Pradesh Environment Protection and Pollution Control Board is annexed and marked hereto as Annexure A1/3.

c. That vide its letter Authorization letter dated 06/11/2006, the Himachal Pradesh State Environment Protection and Pollution Control Board issued Authorization for operating a facility for generation, collection, Storage, Treatment /Disposal and/or handling of Bio Medical Waste to Respondent No. 08.

It is important to mention here that the said Authorization was valid till 31/03/2008 for 5 bed only.

True copy of the Authorization letter dated 06/11/2006 issued by Himachal Pradesh State Environment Protection and Pollution Control Board is annexed and marked hereto as Annexure A1/4.

d. That again vide Authorization letter dated 30/12/2008, the Himachal Pradesh State Environment Protection and Pollution Control Board issued Authorization for operating a facility for generation, collection, Storage, Treatment /Disposal and/or handling of Bio Medical Waste to Respondent No. 08.

True copy of the Authorization letter dated 30/12/2008 issued by Himachal Pradesh State Environment Protection and Pollution Control Board is annexed and marked hereto as Annexure A1/5.

e. That on dated 23/07/2011, the Himachal Pradesh State Environment Protection and Pollution Control Board issued letter dated 23/07/2011 to respondent No. 08 wherein it is categorically mentioned that during inspection of Hospital of Respondent No. 08 it was found that Bio Medical Waste generated in the Laboratory was not chemically treated before disposal.

Ture copy of the letter dated 23/07/2011 issued by Himachal Pradesh State Environment Protection and Pollution Control Board is annexed and marked hereto as Annexure A1/6.

f. That, for the purpose of getting authorization under Bio Medical Waste Rules, Respondent No. 08 submitted FORM I before the prescribed authority of Himachal Pradesh State Environment Protection and Pollution Control Board.

It is respectfully submitted that as per the said FORM applicant has learnt that Respondent No. 08 expanded the number of beds from 05 to 10.

True copy of the FORM - I submitted by Respondent No. 08 before the Himachal Pradesh State Environment Protection and Pollution Control Board is annexed and marked hereto as Annexure A1/7.

g. That vide Authorization letter dated 31/12/2011, the Himachal Pradesh State Environment Protection and Pollution Control Board issued Authorization for operating a facility for generation, collection, Storage, Treatment /Disposal and / or handling of Bio Medical Waste to Respondent No. 08.
True copy of the Authorization letter dated 31/12/2011 issued by Himachal Pradesh State Environment Protection and Pollution Control Board is annexed and marked hereto as Annexure A1/8.
h. That Himachal Pradesh State Environment Protection and Pollution Control Board vide in the year 2012 again issued a letter to Respondent No. 08 wherein it is clearly mentioned that Respondent No. 08 has failed to segregate Bio Medical Waste as per Bio Medical Waste Rules.

True copy of the letter issued by the Himachal Pradesh State Environment Protection and Pollution Control Board to Respondent No. 08 is annexed and marked hereto as Annexure A1/9.

i. That Himachal Pradesh State Environment Protection and Pollution Control Board again issued a letter dated 15/10/2013 to Respondent No. 08 wherein it was again stated that Respondent No. 08 has failed to comply with the provisions of Bio Medical Waste (Management and Handling) Rules.
True copy of the letter dated 15/10/2013 issued by the Himachal Pradesh State Environment Protection and Pollution Control Board is annexed and marked hereto as Annexure A1/10.

j. That vide its letter dated 16/07/2014 issued by Himachal Pradesh State Environment Protection and Pollution Control Board again stated that Respondent No. 08 has failed to comply with the provisions of Bio Medical Waste (Management and Handling) Rules.

True copy of the letter dated 16/07/2014 issued by the Himachal Pradesh State Environment Protection and Pollution Control Board is annexed and marked hereto as Annexure A1/11.

k. That vide Authorization letter dated 21/03/2015, the Himachal Pradesh State Environment Protection and Pollution Control Board issued Authorization for operating a facility for generation, collection, Storage, Treatment / Disposal and/or handling of Bio Medical Waste to Respondent No. 08.
True copy of the Authorization letter dated 21/03/2015 issued by Himachal Pradesh State Environment Protection and Pollution Control Board is annexed and marked hereto as Annexure A1/12.

1. That vide its Letter dated 27/07/2017 the Himachal Pradesh State Environment Protection and Pollution Control Board again directed Respondent No 08 to comply with the Bio Medical Waste Rules, 2016. It is pertinent to mention here that by way of letter dated 27/07/2017, the Board also mentioned that Respondent No. 08 is not legally bound to have NOC under AIR ACT as well as WATER ACT.

m. That as per the affidavit filed by Respondent No. 08, on dated 16/08/2022, applicant has learnt that Himachal Pradesh State Pollution Control Board issued Consent to Operate in favour of Respondent No. 08.

n. Similarly, as per the affidavit filed by Respondent No. 08, applicant has learnt that on dated 16/08/2022 the Himachal Pradesh State Pollution Control Board issued Authorization under Bio Medical Waste Rules 2016 in favour of Respondent No. 08.

o. That is it also pertinent to mention here that District Magistrate Una in his Counter Affidavit has clearly mentioned that (para 3 (j)) that Respondent No. 08 is running its hospital on a TWO STOREY RESIDENTIAL BUILDING which UNA DEVELOPMENT AUTHORITY has approved for RESIDENTIAL PURPOSE only."

12. Written submissions were filed by the applicant vide email dated 03.10.2023 (pages no. 312 to 321 of the paper book). Arguments were heard and Judgment was reserved vide order dated 03.10.2023 while observing that written submissions may be filed by the respondents, if so desired, within three days.

13. However, written arguments were not filed by the respondents within the specified period.

14. While going through the material on record, it was found that some material aspects of the case have not been adverted to or referred to at the time of arguments and the matter

required further hearing for due elucidation/consideration of the same. Accordingly, vide order dated 11.01.2024 the matter was relisted for hearing.

Reply dated 13.03.2024 filed by respondent no. 8

15. Reply dated 13.03.2024 to additional affidavit dated 29.09.2023 filed by the applicant was filed by respondent no. 8 vide email dated 13.03.2024. The relevant part of the reply is reproduced as under:-

> ***"REPLY ON BEHALF OF RESPONDENT NO.8 1.E. SHIVALIK HOSPITAL TO THE ADDITIONAL AFFIDAVIT FILED BY THE APPLICANT.***
>
> *X X X X*
>
> *a. That in response to the contents of the corresponding paragraph it is submitted that the Respondent No.8 herein was earlier running a 5 bedded hospital at a different location other than the location of the hospital which is the subject matter of this Original Application. It is necessary to mention herein that the notice dated 21.06.2004 as mentioned by the Applicant was issued by the concerned Authority for the earlier 5 bedded hospital situated near Old Bus Stand, Una. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity.*
>
> *b. That in response to the contents of the corresponding paragraph it is submitted that the Respondent No.8 herein was earlier running a 5 bedded hospital at a different location other than the location of the hospital which is the subject matter of this Original Application. It is necessary to mention herein that the notice dated 21.06.2004 a mentioned by the Applicant was issued by the concerned Authority for the earlier 5 bedded hospital situated near Old Bus Stand, Una. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity.*
>
> *C. That the contents of the corresponding paragraph are true to the extent that are admitted herein. It is reiterated that the Respondent No.8 herein was earlier running a 5 bedded hospital near Old Bus Stand, Una. The Authorization Letter dated 06.11.2006 as stated by the Applicant, throws a light on the fact that even prior to 2013 (ie, before shiffing the hospital to location of the hospital which is the subject matter of this Original Application) the Respondent No.8 herein was running the 5 bedded hospital situated near Old Bus Stand, Una only after obtaining due Authorization under the Biomedical Waste (Management and Handling Rules), 1998. The contents of the*

preliminary submissions are reiterated and not repeated herein for the sake of brevity.

d. That in response to the contents of the corresponding paragraph it is submitted that the Authorization dated 06.11.2006 issued by the concerned Authority for running the 5 bedded hospital near Old Bus 1. Stand, Una was further renewed by the Competent Authority on 30.12.2008 and was valid upto 31.03.2011. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity.

e. That in response to the contents of the corresponding paragraph it is submitted that from year 2011 upto 2013, in the two storied building near Police Line, Jhalera, Una (that is the subject matter of the present Application) only a small makeshift laboratory/consultancy was set up by the Respondent No.08 initially whereas the rest of the premises was being solely used only for residential purpose. Hence, there was no bio medical waste generated and after the issuance of the notice dated 23.07.2011, the Respondent No.08 herein categorically informed the Respondent Board that there is no Biomedical waste being generated as the Hospital was yet to be set up and there was no operation all together. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity.

f. That in response to the contents of the corresponding paragraph it is submitted that the Respondent No.8 in the year 2011. decided to shift the hospital location from Old Bus Stand, Una to near Police Line, Jhalera. Una. It is necessary to mention herein that in the two storied building near Police Line, Jhalera. Una (That is the subject matter of the only 0 small makeshift present Application) laboratory/consultancy was set up by the Respondent No.08 initially whereas the rest of the premises was being solely used only for residential purpose upto the year 2013. Further, to initiate the process of setting up the 10 bedded hospital in the said premises, the Respondent No.8 submitted FORM-1 before the concerned authority for obtaining authorization under the Biomedical Waste (Management and Handling Rules). 1998. It is submitted that the Respondent No.8 wanted to have all the permissions before setting up the soid 10 bedded hospital which indicates the intention of the Respondent No.8 to run the hospital as per law. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity,

g. That in response to the contents of the corresponding paragraph it is submitted that pursuant to the submission of FORM-1 by the Respondent No.8. the concerned Authority granted Authorization dated 31.12.2011 to the Respondent No.8 herein under the Biomedical Waste Management and Handling Rules), 1998. It is reiterated that though the permission

was obtained on 31.12.2011, yet the Respondent No.8 started the 10 bedded hospital only in the year 2013 after obtaining no objection certificate dated 07.06.2013 from the Office of the Gram Panchayat, District Una, Himachal Pradesh. It is submitted that though the permission was taken for a 10 bedded hospital, yet occupancy is hardly of 2-3 beds daily. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity.

h. That in response to the contents of the corresponding paragraph it is reiterated that from year 2011 upto 2013, in the two storeyed building near Police Line, Jhalera, Una (that is the subject matter of the present Application) only a small makeshift laboratory/consultancy was set up by the Respondent No.08 initially whereas the rest of the premises was being solety used only for residential purpose. Hence, there was no bio medical waste generated and after the issuance of the notice in the L year 2012, the Respondent No.08 herein categorically re-informed the Respondent Board that there is no Biomedical waste being generated as the Hospital was in the process of being set up and there was no operation all together. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity.

i. That in response to the contents of the corresponding paragraph it is submitted that no such notice was ever received by the Respondent No.08 herein. It is pertinent to mention herein that the Respondent Hospital has Consent to Establish as well as Consent to Operate and also Authorization under the Bio Medical Waste (Management) Rules, 2016 and is running the hospital in full compliance as per the prescribed norms. It is submitted that starting from the year 2014 till date, the Respondent Hospital has entered into Agreements with Bio Medical Waste Collection facilities for collection of Bio Medical Waste from the hospital and the same have been placed on record for the convenience of this Hon'ble Tribunal. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity.

j. That in response to the contents of the corresponding paragraph it is submitted that no such notice was ever received by the Respondent No.08 herein. It la pertinent to mention herein that the Respondent Hospital has Consent to Establish as well as Consent to Operate and also Authorization under the Bio Medical Waste (Management) Rules, 2016 and is running the hospital in full compliance as per the prescribed norms. It is submitted that starting from the year 2014 fill date, the Respondent Hospital has entered into Agreements with Bio Medical Waste Collection facilities for collection of Bio Medical Waste from the hospital and the same have been placed on record for the convenience of this Hon'ble Tribunal. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity.

k. That in response to the contents of the corresponding paragraph it is submitted that upto the year 2013, the said premises ie, two storeyed building was being solely used only for residential purpose. It s submitted that for the purpose of setting up a 10-bed hospital a No objection was sought from the Office of Gram Panchayat, District Una. Himachal Pradesh and the same was granted to the Respondent herein on 07.06.2013. It is submitted that thereafter an application for renewal of authorization under the Biomedical Waste (Management and Handling Rules), 1998 was submitted by the Respondent Hospital herein and the same was granted on 21.03.2015. It is submitted that the authorization dated 21.03.2015 was valid upto 31.03.2017. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity.

l. That in response to the contents of the corresponding paragraph it is submitted that the Respondent No.8 herein did not receive any letter dated 27.07.2017 from the Board. That the Respondent herein also got to know that the then Principal Scientific Officer Mr. TB Singh purposely made sure that no communication in form of notices and letters issued by the Respondent Board, reached the Respondent herein. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity.

m. That in response to the contents of the corresponding paragraph it is submitted that as per the Biomedical Waste Management and Handling Rules), 1998 the Health Care Facilities (HCF's) were required to obtain only authorization under the Biomedical Waste (Management and Handling Rules), 1998 and there was no requirement for obtaining Consent under the Water (Prevention and Control of Pollution) Act, 1974. However, the Ministry of Environment, Forest & Climate Change, Government of India in supersession of Bio-medical Waste Management & Handling) Rules. 1998 vide notification dated 28.03.2016 revised and issued Bio-Medical Waste Management Rules, 2016. As per Rule 10 of these revised rules the Health Care Facilities (HCFs) were required to obtain Consent under the Water (Prevention and Control of Pollution) Act, 1974 in addition to Authorization from the State Pollution Control Board. That since the Ministry of Environment, Forest & Climate Change, Government of India in suppression of Bio-medical Waste (Management & Handling) Rules, 1998 vide notification dated 28.03.2016 revised and issued Bio-Medical Waste Management Rules, 2016 and as per Rule 10 of these revised rules the Health Care Facilities (HCFs) were required to obtain Consent under the Water (Prevention and Control of Pollution) Act. 1974 in addition to Authorization from the State Pollution Control Board, the Respondent herein submitted an Application for obtaining Consent to Establish and Consent to operate.

It is submitted that the application submitted for obtaining the Consent to Establish as well as the Consent to Operate was complete in all respects and the requisite fees was also paid by the Respondent herein. It is submitted that there was no reply whatsoever by the State Pollution Control Board on the application for Consents submitted by the Respondent herein. That as per the provisions of the Water (Prevention and Control of Pollution) Act, 1974, since there was no reply to the application for Consent, the Respondent herein was deemed to be operating with the consent of the State Board. Thus, legally speaking the hospital in question had deemed consent in view of Section 25(7) of the Water Prevention & Control of Pollution) Act. 1974. That Section 25(7) of the Water Prevention & Control of Pollution Act. 1974 is reproduced herein for your ready reference:

"25(7) The consent referred to in sub-section (1) shall unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board."

Despite having applied for Consent to Establish as well as Consent to Operate and Authorization under the Bio Medical Waste (Management) Rules, 2016 by way of an application complete in all respect along with requisite fees in the year 2018, there was no reply by the State Pollution Control Board accepting or rejecting or pointing out deficiencies in the application for Conserits under Water (Prevention and Control of Pollution) Act, 1974 submitted by the Appellant herein. Thus, the Respondent herein was legally operating with deemed Consents as per Section 25/7) of the Water (Prevention & Control of Pollution) Act. 1974. That it is pertinent to mention herein that in the month of September 2019, the Respondent herein at the recommendation of the Mr, TB Singh who was at that time Principle Scientific Officer with the Respondent Board, installed a Sewage Treatment Plant of capacity 3 KLD in the premises. It is in the humble submission of the answering Respondent herein that not only did Mr. 18 Singh (Ex Principle Scientific Officer with the Respondent Board) advise to install Sewage Treatment Plant but also asked the Respondent herein to apply again for the Consents under the Water (Prevention and Control of Pollution) Act, 1974 online as there was no reply by Respondent Board on the previous Application submitted by the Respondent Board in 2018. That blindly following the advice of Mr. TB Singh, the Respondent herein re-submitted an application online for grant of Consents under the Water (Prevention and Control of Pollution) Act, 1974. It is submitted that along with the application made online, Mr. TB Singh also asked the Respondent herein to re-pay the fees from 2018 onwards. It is submitted that the Respondent herein paid an amount of Rs. 5000/- towards

consent fees. It is pertinent to mention herein that even after re-applying for the consents under the Water (Prevention and Control of Pollution) Act, 1974 online, there was no reply whatsoever from the Respondent Pollution Control Board. It is submitted that on enquiring about the same from Mr. TB Singh (Ex Principle Scientific Officer with the Respondent Board), Mr. TB Singh demanded money in form of bribe from the Respondent herein for grant of Consents and also questioned the Respondent herein as to why the Sewage Treatment Plant was not installed from a favorite vendor of Mr. TB Singh and was rather bought and installed from some other place. That in light of the same the Respondent herein made a police complaint against Mr. TB Singh for demanding bribe for the release of Consent Certificates and an FIR being FIR No.04/2022 under Section 7 of Prevention of Corruption Act, 1988 was also registered against the then Chief Scientific Officer Mr. TB Singh by the State Vigliance& Anti-Corruption Bureau Himachal Pradesh and the said Mr. TB Singh was caught red handed accepting Rs. 3.70,000/- and was arrested. It is submitted that the matter is still under investigation by the State Vigilance & Anti-Corruption Bureau Himachal Pradesh. It is submitted that the Consent to Operate under Water (Prevention and Control of Pollution) Act, 1974 pursuant to the second application submitted in 2021 was eventually granted to the Respondent Hospital on 16.08.2022 and is valid till 31.03.2027. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity.

n. That in response to the contents of the corresponding paragraph it is submitted that the Respondent herein submitted an application dated 19.08.2018 for renewal of Authorization under Biomedical Waste (Management) Rules, 2016. It is submitted that the application submitted by the Respondent herein for renewal of Authorization under Biomedical Waste (Management) Rules, 2016 was complete in all respects and the requisite fees was also paid by the Respondent herein. It is submitted that there was no reply whatsoever by the State Pollution Control Board on the application for renewal of authorization submitted by the Respondent herein. That as per Rule 10(3) of the Biomedical Waste (Management) Rules, 2016 since there was no reply to the application for renewal of authorization, the Respondent herein was deemed to be operating with the authorization of the State Board. Thus, legally speaking the hospital in question had deemed authorization in view of Rule 10(3) of the Biomedical Waste (Management Rules, 2016. That Rule 10(3) of the Biomedical Waste (Management) Rules, 2016 is reproduced herein for your ready reference:

> *"10(3) Every application for authorization shall be disposed of by the prescribed authority within a period of ninety days from the*

date of receipt of duty completed application along with such necessary documents, failing which it shall be deemed that the authorization is granfed under these rules."

That the Respondent Board finally granted the renewed Authorization daled 12.12.2022 under the Bio Medical Waste (Management) Rules, 2016 to the Respondent Hospital and the same is valid till 31.03.2027. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity.

o. That the contents of the corresponding paragraph are true. That in respect of the provisions of the Development Plan for Una Town issued by the Town and Country Planning Department, Himachal Pradesh, as per Clause/regulation 7.2.1.1 of Sr. No. 7.2.1 (Residential Use) the uses permitted in the area earmarked for Residential Use are Residences. Hospitals, Boarding Houses, Nurseries, Kindergartens and Schools. Clinics. Social and cultural Institutions, Public Ufllfies and buildings. except service and storage yards, agricultural gardens, nurseries and green houses, any neighborhood recreational uses including clubs and other semi public recreational uses, accessory uses clearly incidental to residential uses which will not create a nuisance and eco-hazard. Relevant provision is reproduced herein below for the ready reference of this Hon'ble Tribunal

7.2.1.1 Uses Permitted- Residences, Hospitals Boarding-Houses, Nurseries Kindergartens and Schools Clinics Social and Cultural institutions. Public utilities and buildings, except service and storage yards: agriculture gardens, nurseries and green houses, any neighborhood recreational uses including clubs and other semi- public recreational uses accessory uses clearly incidental to residential uses which will not create a nuisance and eco-hazard."

Further as per Clouse/Regulation 7.1.(i) of Sr. No. 7.1 (General Regulations) mixed land use is not prohibited unless otherwise a particular land use is hazardous. Relevant provision is reproduced herein below for the ready reference of this Hon'ble Tribunal

"() General land use in the development plan has been contemplated for specified use. However, mixed land use shall not be prohibited unless otherwise a particular land use is hazardous in nature to the predominated use and fulfils the regulations fixed for the same."

Therefore, it is humbly submitted that the Respondent herein is not running the hospital in violation of the Development Plan for Una Town issued by the Town and Country Planning Department, Himachal Pradesh, In recent past, a small portion was added in the premises and as an abundant precaution, though not required, the Respondent herein applied to the Department of Town and Country Planning. Una for

change of buliding use (hospital site) and composition of additional construction of garage situated on the right side of the hospital. It is submitted that the Special Area Development Authority, Una granted completion permission vide letter dated 19.01.2023. The contents of the preliminary submissions are reiterated and not repeated herein for the sake of brevity."

16. I.A. No. 237/2024 was filed by the applicant with the prayer for passing appropriate order for placing the matter before other bench which was disposed of vide order dated 20.09.2024.

17. I.A. No. 455/2024 was filed for clarification of order dated 20.09.2024 which was disposed of vide order dated 18.07.2025 as having become infructuous.

18. This Tribunal observed in its order dated 23.10.2024 that in his reply respondent no. 7 had mentioned in Para-3(k) about the issuance of notice no. SADA (Una)-Case No. BP-630/2007-333 dated 01.12.2022 to respondent no.8 and directedrespondents no. 6 and 7 to file additional reply giving information regarding further proceedings/action taken on the above said notice.

Additional reply filed by respondents no. 6 and 7

19. In compliance thereof additional reply was filed by respondents no. 6 and 7 on 18.11.2024 through e-filing. In the reply it has been submitted that in compliance of the above said order, the District Magistrate, Una directed the Assistant Town Planner, Sub-Divisional Town Planning Office Una vide letter No. 1542-43/ADC/LFA dated 11.11.2024 to supply information regarding further proceeding/action taken about issuance of notice no. SADA(Una)-Case No. BP-630/2007-333 dated 01.12.2022 to respondent no.8.In reply thereto the Member Secretary, Special Area Development (H.P.), Authority, Una-cum-ATP Una District Una has, vide his office letter No. SADA (Una)-Case No. BP-630/2007-201 dated 12.11.2024, reported that the maps for construction of two storeyresidential building at khasra no. 1546/14, 1546/15, 1546/16, 1546/21, 1546/22 & 1546/23 situated in Mohal Jhalera, Tehsil & District Una (H.P.) were approved in favour of Shri Krishan Dass, Shri Akshay Kumar S/o Sh. Krishan Das and Smt. Anupama vide letter No. SADA (Una)-Case No. BP-630/2007-659 dated 22.11.2007;that letter No. SADA (Una)-Case No. BP-630/2007-333 dated 01.12.2022 was issued to Shri Krishan Dass, Shri Akshay Kumar S/o Sh. Krishan Das and Smt. Anupama w/o Sh. Akshay Kumar c/o Shivalik Hospital Jhalera, Tehsil and District Una (H.P.) for operating "Hospital" in the building constructed at 1546/14, 1546/15, 1546/16, 1546/21, 1546/22 and 1546/23 situated in Mohal Jhalerarequiring the said land owners to obtain the permission for change of building use and that as per provisions of clause 7.2.1.1 of Sr. No. 7.2.1 (Residential Use) of Chapter Seven of the Development Plan of Una Planning Area the permission for change of building use was granted to said land owners vide reference No. 04202300032 dated 19.01.2023.

20. We have heard arguments addressed by Mr. Gaurav Kumar Bansal, Ms. Nandita Bansal and Ms. Chandrika Upadhyay, Advocates for the Applicant (through VC), Mr. Jasmeet Singh, Advocate for respondent no 1, Ms. Soni Singh, Advocate for respondent no 2 (through VC), Ms. Inderdeep Kaur Raina, Advocate for respondents no. 3, 6 and 7, Mr. Aditya Vijaykumar and Mr. Anirudh Anand, Advocates for respondents no 4 and 5 (through V.C), Mr. A. R. Takkar, Mr. Manan Takkar, Ms. Astha Tyagi and Mr. Yash Dewan, Advocates for respondent no. 8 (through VC) and we have gone through the material on record carefully.

21. In the present case the applicant had filed written submissions on 02.10.2023 and respondent no. 8 filed written arguments on 13.03.2024 and we consider it appropriate and also expedient in the interest of the justice that the relevant part of the same be reproduced.

Written Submissions filed by the Applicant

22. The relevant part of the written submissions filed by the applicant on 02.10.2023 is reproduced as under:-

> *“* ***Written Submissions on behalf of applicant***
>
> *By way of the present Original Application, applicant has prayed the followings before this Hon'ble Court:*
>
> - *Direct Himachal Pradesh State Pollution Control Board to close the operation of Respondent No. 08*
> - *Direct the Department of Town and Country Planning to take action against Respondent No. 08 as the same is operating in Non Conforming Area*
> - *Direct the Himachal Pradesh State Pollution Control Board to act impose Environmental Compensation on the basis of Polluter Pays Principle.*
>
> *It is respectfully submitted that applicant by way of the present Original Application requests this Honble Court to adjudicate upon the Substantial Questions of Law:*
>
> *a. Whether Himachal State Pollution Control Board can allow the operation of Shivalik Hospital without issuance of Authorization as provided under Rule 10 of the Bio Medical Waste Management Rules, 2016?*
>
> *b. Whether Himachal Pradesh State Pollution Control Board can allow the operation of Shivalik Hospital without issuance of Consent to*

Operate as provided under Water (Prevention and Control of Pollution) Act, 1974?

c. Whether the Dept of Town and Country Planning. Himachal Pradesh can allow Shivalik Hospital in Non Confirming Area or in violation of Master Plan issued by Department of Town and Country Planning of State of Himachal Pradesh?

It is respectfully submitted that after filing of the present Original Application, the Himachal Pradesh State Pollution Control Board (hereinafter referred as HPSPCB) has issued Consent to Establish, Consent to Operate as well as Authorization under Bio Medical Waste Management Rules, 2016. That the same is also clear by way of the affidavit filed by Respondent No. 08 as well as the affidavit filed by Himachal Pradesh State Pollution Control Board.

That in view of the above, applicant wishes to argue the present

Original Application on the following two issues:

> *i. Regarding imposition of Environmental Compensation against Respondent No. 08 for operating its unit in absence of Consent to Operate and Authorization under Bio Medical Waste Rules 2016*
>
> *ii. Regarding Operation of Hospital by Respondent No. 08 in a Two Stoerey Building the Map of which is approved as a Residential Building by Town and Country Planning, Una*

Regarding imposition of Environmental Compensation against Respondent No. 08 for operating its unit in absence of Consent to Operate and Authorization under Bio Medical Waste Rules 2016

It is respectfully submitted that Respondent No. 08 is a habitual offender as far as Green Laws of the Land is Concerned. That applicant wishes to apprise this Hon'ble Court on the following violations which Respondent No. 08 has committed while running its Hospital Unit:

i. As stated in the Additional Affidavit, Himachal Pradesh State Pollution Control Board has issued following Notices to Respondent No. 08 for deposition of Fees with respect to Authorization under Bio Medical Waste (Management & Handling) Rules, 1998:

A.** Notice dated 21/06/2004 for deposition of Fees **(Annexure A1/2)

B.** Notice dated 02/08/2005 wherein again HPSPCB again directed Respondent No. 08 to deposit Fees under BMW Rules. **(Annexure A1/3)

ii. That followings are the instances wherein Respondent No. 08 has operated its Hospital unit in absence of Authorization provided under Bio Medical Waste Rules:

a. *Authorization letter dated 06/11/2006 issued under Bio Medical Waste Rules was valid till 31/03/2008.* ***(Annexure A1/4).***

The next authorization which HPSPCB issued in favor of Respondent No. 08 was on dated 30/12/2008.

It is clear from the above that Respondent No. 08 continued to operate its unit without Authorization under Bio Medical Waste rules from 31/03/2008 to 30/12/2008 i.e. approximately for more than 8 months.

b. *Similarly, HPSPCB again issued Authorization under BMW Rules on dated 30/12/2008 and the same was valid for Respondent No. 08 till 31/03/2011.* ***(Annexure A1/5)*** *The next authorization which HPSPCB issued in favor of Respondent No. 08 was issued on 31/12/2011.*

It is clear from the above that again Respondent No. 08 operated its Hospital unit in absence of Authorization from 31/03/2011 to 31/12/2011 i.e. approximately more than 8 months.

c. *That HPSPCB vide its letter dated 31/12/2011 again issued Authorization under BMW Rules in favor of Respondent No. 08 and the same was valid upto 31/03/2014.* ***(Annexure A1/8)***

The HPSPCB issued the next Authorization only on dated 21/03/2015, which clearly shows that from 31/03/2014 till 21/03/2015 Respondent No. 08 operated its unit in absence of Authorization under BMW Rules i.e approximately for around 01 years Respondent No. 08 operated its unit in violation of Green Laws.

d. *Similarly, Authorization letter dated 21/03/2015 which HPSPCB issued in favor of Respondent No. 08 was valid upto 31/03/2017.* ***(Annexure A1/12)***

HPSPCB has issued the subsequent Authorization under BMW Rules only in the year 2022 i.e on dated 12/12/2022. It is clear from the above that Respondent No. 08 continued operation of its Unit from 31/03/2017 till 12/12/2022 i.e. from more than 5 years.

e. *That apart from the above after the issuance of letter dated 27/07/2017 issued by HPSPCB, Respondent No. 08 obtained the Consent to Operate only in the year 2022 i.e. on dated 16/08/2022. It is clear from the above that for more than 05 years, Respondent No. 08 operated*

its Unit without NOC under Water (Prevention and Control of Pollution) Act, 1974.

Hence, it is crystal clear from the above that Respondent No. 08 at various point to time, has operated its Hospital Unit not only in violation of BMW Rules but also in absence of NOC required under Water (Prevention and Control of Pollution) Act, 1974.

That as per Section 20 of the National Green Tribunal 2010, this Honble Tribunal by way of applying 'POLLUTER PAYS PRINCIPLE" has the jurisdiction to impose Environmental Compensation on Respondent No. 08.

That in view of the fact that Respondent No 08 has operated its Unit in absence of (a) Authorization under BMW Rules as well as (b) Consent to Operate as provided under Water (Prevention and Control of Pollution) Act, 1974, applicant requests this Honble Court to direct Central Pollution Control Board and Himachal Pradesh State Pollution Control Board to impose Environmental Compensation on Respondent No. 08.

Regarding Operation of Hospital by Respondent No. 08 in a Two Stoerey Building the Map of which is approved as a Residential Building by Town and Country Planning. Una

That applicant by way of the present Original Application has stated that Respondent No. 08 is running its 10 bedded hospital in a residential building hence is operating its unit in a Non Confirming Area and in violation of Master Plan.

That vide its affidavit filed on dated 10/01/2023, the District Magistrate, Una has stated the following:

> *"That in reply to Para No. 3 (j) of the Original Application it is submitted that as per the report received from the Assistant Town Planing, Sub Division Town Planning Office Una, District Una (H.P) vide his office letter no. SADA (Una) Case No. BP-630/2007-334 dated 05/12/2022 (copy annexed as Annexure R-III), the Development Plan for UNA Planning Area was approved by the Government of Himachal Pradesh vide Notification No. TCP-F (5)-7/96 dated 23/04/97. The development Plan of Una Planning area is valid till March 2023.*

As per Development Plan of Una Planning Area the land falling under Shivalik Hospital situated at Mohal Jhalera has been earmarked for residential use…… ***He has further reported that the building maps for***

the He construction of Two StoreyedResidental Building *at Khasra No. 1546/14, 1546/15. 1546/16. 1546/21, 1546/23 as per jamabandi for the years 2003-04 of Mohal Jhalrea Tehsil and District Una (H.P) were approved vide No. SADA (Una) BP-630/2007-659 dated 22/11/20227 in the name of Shri Krishna Dass, Shri Akshay Kumar Kumar Son of Shri Krishnan Das and Smt Anupama w/o Sh Akshay Kumar…..*

…The Shivalik Hospital is running in the building for which said maps were approved. The necessary directions under the Provisions of TCP Act, 1977 have been issued to the proprietor of the Hospital vide No. SADA (Una) Case No. BP-630 /2007-333 dated 01/12/2022.

It is crystal clear from the above that Respondent No. 08 is running its unit in a residential building which as per Master Plan is not permitted, hence is operating in a Non Confirming Area.

Applicant wishes to apprise this Honble Court that in Original Application No. 1038/2018 titled as 'In re: News item published in "The Asian Age" authored by Sanjay Kaw titled CPCB to rank Industrial Units on Pollution Levels' (2022 SCC Online NGT 2957) this Honble Court observed as following:

> *"169. The principle of 'polluters pay' has to be applied to nonconforming/non complying industrial units and appropriate action which includes closer and imposition of environmental compensation has to be taken by the concerned statutory regulators as it is the statutory responsibility and obligation conferred upon them by legislature. Statutory regulators can't wriggle out of this obligation under any pretext or explanation they cannot compromise with the environment at the best of polluting industries."*

Thus in view of the above mentioned circumstances, the present petition be allowed in terms of the prayer made in the petition."

Written Argumentson Behalf of the respondent no. 8-Shivalik Hospital

23. The relevant part of the written arguments filed by the respondent no. 8-Shivalik Hospital on 13.03.2024 is reproduced as under:-

> *"**WRITTEN ARGUMENTS ON BEHALF OF THE RESPONDENT NO.8 i.e. SHIVALIK HOSPITAL.***
>
> *PRELIMINARY ARGUMENTS:*

1. The present Original Application has been filed by the Applicant Shri. Naveen Kumar out of malafide and to wreak vengeance as a close friend and relative of the Applicant i.e. Mr. TB Singh (Ex Principal Scientific Officer, Himachal Pradesh Pollution Control Board), was gotten arrested red handedly accepting a bribe of Rs. 3,70,000/- from the answering Respondent for granting Consents which the answering Respondent Hospital was even otherwise entitled to. The Applicant i.e. Shri. Naveen Kumar is a resident of Meerut (Uttar Pradesh) and Mr. TB Singh also belongs to UP having his house in Dehradun.

2. Despite having applied for Consent to Establish as well as Consent to Operate by way of an application complete in all respect along with requisite fees in the year 2018, the said Mr. TB Singh who was Principal Scientific Officer and was in charge of Una from the beginning started harassing the Respondent demanding money despite the fact that the hospital was fully compliant. After being fed up the answering Respondent approached the State Vigilance & Anti-Corruption Bureau Himachal Pradesh and with their help a trap wos laid and Mr. TB Singh was caught red handed accepting a bribe of Rs.3.70,000/- and was taken into custody ***(Copy of the FIR 04/2022 against Mr. TB Singh @ Annexure-R/1 @ Page 34-36 of the Reply filed by Respondent No.8).***

3. It is submitted that it is under these circumstances that the said Mr. TB Singh has gotten this Original Application filed through is relative Shri. Naveen Kumar just to harass the answering ***Respondent herein who in accordance with law is running a very small nursing home of 10 beds, wherein occupancy is hardly of 2-3 beds daily.*** *That the Respondent herein has also recently got to know that the then Principal Scientific Officer Mr. TB Singh purposely made sure that no communication in form of notices and letters issued by the Respondent Board, reached the Respondent herein.*

4. It is therefore humbly submitted that as on date, the Respondent Hospital has Consent to Establish as well as Consent to Operate and also Authorization under the Bio Medical Waste (Management) Rules, 2016 and is running the hospital in full compliance as per the prescribed norms. It is submitted that the delay in grant of the Consents as well as the Authorization was a result of lapse on part of the officers of the Respondent Board and hence the Respondent Hospital cannot be held accountable for the same.

5. it is in the humble submission of the answering Respondent herein that there is an adequate appropriate Sewage Treatment Plant which is being run efficiently of capacity 3 KLD installed in the premises and

the sample result of the same have found to be well within the prescribed limits as per the report dated 14.12.2022 of the Respondent Board. Further the allegation of the Applicant that the Respondent Hospital is discharging all its Bio Medical Waste outside the hospital is erroneous and without any evidence on record.

It is submitted that starting from the year 2014 date, the Respondent Hospital has entered into Agreements with Bio Medical Waste Collection facilities for collection of Bio Medical Waste from the hospital and the same have been placed on record for the convenience of this Hon'ble Tribunal. It is pertinent to mention herein that the Applicant has not placed on record any evidence or any photo to establish or support his allegation that the Respondent Hospital is discharging all its Bio Medical Waste outside the hospital. It is therefore submitted that the allegations of the Applicant are only based out of personal rivalry and hence ought to be dismissed.

6. It is submitted that there arises no question of permanent damage or even say damage in the present case as the Respondent Hospital in its day-to-day operation is neither discharging any untreated effluent nor is disposing off its Bio Medical Waste outside the premises of the Hospital. It is hence submitted that there has been no environmental damage caused by the Respondent Hospital as well as that there is no evidence whatsoever to the effect that sewage/effluent as well as Bio Medical Waste is being discharged in open or otherwise.

ARGUMENTS AND DEFENCE TO THE CONTENTIONS RAISED BY THE APPLICANT

Argument 1 of the Applicant*: Regarding imposition of Environment Compensation against Respondent No.8 for operating its unit in absence of Consent to Operate and Authorization under Bio Medical Waste Rules, 2016.*

Our Defense:

1. The Allegation of the Applicant regarding Respondent No.08 being a habitual offender is false and hence denied. It is submitted that the Applicant is trying to mislead the court by stating false and fabricated facts. The notices as mentioned by the Applicant issued by the Board for deposition of fees, are with regards to the 5 bed Hospital run by the Respondent No.08 at a different location other than the location which is the subject matter of the present Application. It is necessary to mention herein that the notice dated 21.06.2004 and 02.08.2005 as mentioned by the Applicant was issued by the concerned Authority for the earlier 5

bedded hospital situated near Old Bus Stand, Una. It is submitted that all the contentions raised and documents relied upon by the Applicant from 2004 till 2011 are with respect to the 5 bedded hospital run by the Respondent No.08 at a completely different location altogether.

2. It is submitted that the Respondent No.8 in the year 2011, decided to shift the hospital location from Old Bus Stand, Una to near Police Line, Jhalera, Una. It is necessary to mention herein that in the two storeyed building near Police Line,Jhalera. Una (that is the subject matter of the present Application) only a small makeshift laboratory/consultancy was set up by the Respondent No.08 initially whereas the rest of the premises was being solely used only for residential purpose upto the year 2013. Further, to initiate the process of setting up the 10 bedded hospital in the said premises, the Respondent No.8 submitted FORM-1 before the concerned authority for obtaining authorization under the Biomedical Waste (Management and Handling Rules), 1998. it is submitted that the Respondent No.8 wanted to have all the permissions before setting up the said 10 bedded hospital which indicates the intention of the Respondent No.8 to run the hospital as per law. As stated by the Applicant, the Authorization was granted by the Board on 31.12.2011 which was valid upto 31.03.2014.

3. That further renewal of Authorization was granted to the Respondent No.08 on 21.03.2015 which was valid till 31.03.2017. In the interregnum, the Ministry of Environment, Forest & Climate Change, Government of India in suppression of Bio-medical Waste (Management & Handling) Rules. 1998 vide notification dated 28.03.2016 revised and issued Bio-Medical Waste Management Rules, 2016 and as per Rule 10 of these revised rules the Health Care Facilities (HCFs) were required to obtain Consent under the Water (Prevention and Control of Pollution) Act, 1974. It is submitted that due to the aforementioned change, there was acute chaos and confusion with respect to permissions/consents/authorizations required or not required, due to which there was a slight delay in applying for renewal of Authorization, but the Respondent herein submitted an application dated 19.08.2018 for renewal of Authorization under Biomedical Waste (Management) Rules, 2016. It is submitted that the application submitted by the Respondent herein for renewal of Authorization under Biomedical Waste (Management) Rules, 2016 was complete in all respects and the requisite fees was also paid by the Respondent herein. ***(Copy of Renewal Application @ Annexure-R/7 @ Page 48-50 of the Reply filed by the Respondent No.08)****. It is submitted that there was no reply whatsoever by the State Pollution Control Board on the application for renewal of authorization submitted by the Respondent herein. That as per Rule*

10(3) of the Biomedical Waste (Management) Rules, 2016 since there was no reply to the application for renewal of authorization, the Respondent herein was deemed to be operating with the authorization of the State Board. Thus, legally speaking the hospital in question had deemed authorization in view of Rule 10(3) of the Biomedical Waste (Management) Rules, 2016. That Rulle 10(3) of the Biomedical Waste (Management) Rules, 2016 is reproduced herein for your ready reference:

"10(4) Every application for authorization shall be disposed of by the prescribed authority within a period of ninety days from the date of receipt of duly completed application along with such necessary documents, failing which it shall be deemed that the authorization is granted under these rules"

4. That since the Ministry of Environment, Forest & Climate Change, Government of India in suppression of Bio-medical Waste (Management & Handing) Rules, 1998 vide notification dated 28.03.2016 revised and issued Bio-Medical Waste Management Rules, 2016 and as per Rule 10 of these revised rules the Health Care Facilities (HCFs) were required to obtain Consent under the Water (Prevention and Control of Pollution Act, 1974, the Respondent herein submitted an Application for obtaining Consent to Establish and Consent to operate. It is submitted that the application submitted for obtaining the Consent to Establish as well as the Consent to Operate was complete in all respects and the requisite fees was also paid by the Respondent herein. ***(Applications @ Annexure-R/6 @ Page 44-47 of the Reply filed by the Respondent No.08).*** *It is submitted that there was no reply whatsoever by the State Pollution Control Board on the application for Consents submitted by the Respondent herein. That as per the provisions of the Water Prevention and Control of Pollution) Act, 1974, since there was no reply to the application for Consents, the Respondent herein was deemed to be operating with the consent of the State Board. Thus legally speaking the hospital in question had deemed consent in view of Section 25(7) of the Water (Prevention & Control of Pollution) Act, 1974. That Section 25(7) of the Water Prevention & Control of Pollution) Act, 1974 is reproduced herein for your ready reference:*

"25(7)The consent referred to in sub-section (1) shall, unless given or refused earlier, ***be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board****."*

5. It is in the humble submission of the answering Respondent herein that in all this duration, there was no reply by the State Pollution Control Board accepting or rejecting or pointing out deficiencies in the application for Consents under Water (Prevention and Control of Pollution) Act, 1974 as well as in application for renewal of authorization under Bio Medical Waste Management) Rules, 2016 submitted by the Appellant herein. Thus, the Respondent herein was legally operating with deemed Consents as per Section 25(7) of the Water (Prevention & Control of Pollution) Act, 1974 and deemed Authorization as per Rule 10 (3) of the Biomedical Waste (Management) Rules, 2016.

6. That it is pertinent to mention herein that in the month of September 2019, the Respondent herein at the recommendation of the Mr. TB Singh who was at that time Principle Scientific Officer with the Respondent Board, installed a Sewage Treatment Plant of capacity 3 KLD in the premises. It is in the humble submission of the answering Respondent herein that not only did Mr. TB Singh (Ex Principle Scientific Officer with the Respondent Board) advise to install Sewage Treatment Plant but also asked the Respondent herein to apply again for the Consents under the Water (Prevention and Control of Pollution) Act, 1974 online as there was no reply by Respondent Board on the previous Application submitted by the Respondent Board in 2018. That blindly following the advice of Mr. TB Singh, the Respondent herein re-submitted and on application online for grant of Consents under the Water (Prevention and Control of Pollution) Act, 1974. It is submitted that along with the application made online, Mr. TB Singh also asked the Respondent herein to re-pay the fees from 2018 onwards. It is submitted that the Respondent herein paid an amount of Rs. 5000/- towards consent fees ***(Receipt Annexure-R/13@Page 69 of the Reply filed by the Respondent No.08).***

7. It is pertinent to mention herein that even after re-applying for the consents under the Water (Prevention and Control of Pollution) Act, 1974 online, there was no reply whatsoever from the Respondent Pollution Control Board. It is submitted that on enquiring about the same from Mr. TB Singh (Ex Principle Scientific Officer with the Respondent Board), Mr. TB Singh demanded money in form of bribe from the Respondent herein for grant of Consents and also questioned the Respondent herein as to why the Sewage Treatment Plant was not installed from a favorite vendor of Mr. TB Singh and was rather bought and installed from some other place. That in light of the some the Respondent herein made a police complaint against Mr. TB Singh for demanding bribe for the release of Consent Certificates and an FIR

being FIR No.04/2022 under Section 7 of Prevention of Corruption Act, 1988 was also registered against the then Chief Scientific Officer Mr. TB Singh by the State Vigilance & Anti-Corruption Bureau Himachal Pradesh and the said Mr. TB Singh was caught red handed accepting Rs. 3,70,000/- and was arrested. It is submitted that the matter is still under investigation by the State Vigilance & Anti-Corruption Bureau Himachal Pradesh.

8. It is submitted that the Consent to Operate under Water (Prevention and Control of Pollution) Act, 1974 pursuant to the second application submitted in 2021 was eventually granted to the Respondent Hospital on 16.08.2022 and is valid till 31.03.2027. ***(Consent to Operate dated 16.08.2022 @ Annexure-R/17 @ Page 74-77 of the Reply filed by the Respondent No.08)****. Also, the Respondent Board has granted the renewed Authorization dated 12.12.2022 under the Bio Medical Waste Management) Rules, 2016 to the Respondent Hospital and the same is valid 31.03.2027.* ***(Renewed Authorization dated 12.12.2022 @ Annexure-R/18 @ Page 78-81 of the Reply filed by the Respondent No.08).***

Argument 2 of the Applicant*: Regarding Operation of Hospital by Respondent No.08 in a 2 Storey Building the Map of which is approved as a Residential Building by Town and Country Planning, Una.*

Our Defense:

*1. That it is pertinent to mention herein that in respect of the provisions of the Development Plan for Una Town issued by the Town and Country Planning Department, Himachal Pradesh, as per Clause/regulation 7.2.1.1 of Sr. No. 7.2.1 (Residential Use) the uses permitted in the area earmarked for Residential Use are Residences,****Hospitals,*** *Boarding Houses, Nurseries, Kindergartens and Schools, Clinics, Social and cultural Institutions, Public Utilities and buildings except service and storage yards, agricultural gardens, nurseries and green houses, any neighborhood recreational uses including clubs and other semi-public recreational uses, accessory uses clearly incidental to residential uses which will not create a nuisance and eco-hazard. Relevant provision is reproduced herein below for the ready reference of this Hon'ble Tribunal:-*

"7.2.1.1 Uses Permitted- Residences, Hospitals, Boarding Houses, Nurseries, Kindergartens and Schools, Clinics, Social and CulturalInstitutions,Public utilities and buildings, except service and storage yards; agriculture gardens, nurseries and green houses, any neighborhood recreational uses; including clubs and other semi-public

recreational uses; accessory uses clearly incidental to residential uses which will not create a nuisance and eco-hazard."

Further as per Clause/Regulation 7.1.(ii) of Sr. No. 7.1 (General Regulations) mixed land use is not prohibited unless otherwise a particular land use is hazardous. Relevant provision is reproduced herein below for the ready reference of this Hon'ble Tribunal:-

"ii. General land use in the development plan has been contemplated for specified use. However, mixed land use shall not be prohibited unless otherwise a particular land use is a hazardous in nature to the predominated use and fulfils the regulations fixed for the same."

Therefore, it is humbly submitted that the Respondent herein is not running the hospital in violation of the Development Plan for Una Town issued by the Town and Country Planning Department, Himachal Pradesh,

2. In recent past, a small portion was added in the premises and as an abundant precaution, though not required, the Respondent herein applied to the Department of Town and Country Planning, Una for change of building use (hospital site) and composition of additional construction of garage situated on the right side of the hospital. It is submitted that the Special Area Development Authority, Una granted completion permission vide letter dated 19.01.2023(Complete Permission vide letter dated 19.01.2023 @ Annexure-R/20 @ Page 86 of the Reply filed by the Respondent No.08).”

24. In view of the pleadings and material placed on record the following questions arise for adjudication in the present case : -

(i) Whether the present application has been filed by the applicant malafide for some ulterior motive/extraneous considerations and is liable to be dismissed on this ground?

(ii) Whether respondent no.8 was operating Shivalik Hospital in residential plot in non-conforming area in violation of Master Plan issued by Department of Town and Country Planning, Government of Himachal Pradesh?

(iii) Whether respondent no.8 operated Shivalik Hospital in District Una, Himachal Pradesh without obtaining authorization under Rule 10 of the BMWMH Rules, 1998 and BMWM Rules, 2016 and without obtaining consent under the Water Act, 1974 from HPSPCB?

(iv) Whether respondent no. 8 is liable to pay any environmental compensation for violation of environmental norms?

Question no. (i)-Whether the present application has been filed by the applicant malafide for some ulterior motive/extraneous considerations and is liable to be dismissed on this ground?

25. Learned Counsel for respondent no. 8 has argued that the application has been filed malafide at the instance of Mr. T.B. Singh, the then Principal Scientific Officer, HPSPCB. The jurisdiction of this Tribunal may not be allowed to be misused by interested litigants for their ulterior motives and the application may be dismissed on this ground.

26. This argument has been vehemently controverted by learned Counsels for the applicant who has argued that the application is not malafide and the applicant has raised the question of violation of environmental norms in public interest.

27. In **State of Uttar Pradesh and others Vs. Uday Education and Welfare Trust and another, reported as 2022 Live Law (SC) 868,** Hon'ble Supreme Court observed that before litigant is permitted to knock the door of the justice by way of public interest litigation his credentials and bonafides must be tested.

28. It may be observed that the applicant is not resident of the locality where respondent no. 8-Shivalik Hospital is situated or even any neighboring area in District Una and the applicant is resident of village Gagsona, Meerut, Uttar Pradesh situated far away therefrom. The applicant has not claimed to have worked as employee or to have taken treatment as patient in Respondent no. 8- Shivalik Hospital or to have ever visited the same. The applicant has not claimed himself to be a social worker or an environmentalist working for protection and improvement of environment. The applicant has not mentioned to have filed any other case for protection and improvement of environment in State of Himachal Pradesh or in State of Uttar Pradesh. The applicant has produced copies of notices/letters/documents dated 21.06.2004, 02.08.2005, 06.11.2006, 30.12.2008, 23.07.2011, 28.11.2011, 31.12.2012, 15.10.2013, 16.07.2014, 21.03.2015 and 27.07.2017 issued torespondent no. 8by HPSPCB or submitted to HPSPCB by respondent no. 8 but the applicant has not disclosed any particulars and has not placed on record any material to show how and from whom these documents were obtained by him. The applicant has not claimed to have obtained the same by filing application under the Right to Information Act, 2005. Said documents are not stated to have been uploaded on website of HPSPCB or to be available in public domain. The applicant has not filed affidavit and documents regarding his credentials and bona fides in filing of the present application in public interest. In these facts and circumstances, there appear to be reasonable grounds to doubt the credentials and bonafides of the applicant in filing of the present application.

29. However, it may be added here that in the present case allegations have been made by respondent no. 8 against Mr. T.B. Singh, the then Principal Scientific Officer, HPSPCB regarding harassment of and demand of bribe from respondent no. 8 and FIR no. 04/2022 under Section 7 of the Prevention of Corruption Act, 1988 was registered against Mr. T.B.

Singh, the then Principal Scientific Officer, HPSPCB by the State Vigilance &Anti Corruption Bureau, Himachal Pradesh who was also arrested in the case but there is no cogent material on recordto show that the applicant is related or known to Mr. T.B. Singh, the then Principal Scientific Officer, HPSPCB and the application cannot be said to have been filed malafide at the instance of Mr. T.B. Singh, the then Principal Scientific Officer, HPSPCB.

30. It may be observed here that the averments made in the original application raise substantial questions relating to environment arising out of implementation of the Water Act, 1974 and BMWM Rules, 2016 framed under the Environment (Protection) Act, 1986 which are the enactments specified in First schedule of the NGT Act, 2010.

31. This Tribunal cannot lose sight of the fact that right to life includes within its sweep right to clean and healthy environment which cannot be denied and has to be protected and implemented in the fullest measure by all the instrumentalities of the State and the Project Proponents. This Tribunal can also take cognizance of questions relating to environment arising out of implementation of the enactments specified in Schedule I to the National Green Tribunal Act, 2010 suo motu as held by Hon'ble Supreme Court in **Municipal Corporation of Greater Mumbai v. Ankita Sinha (2021) SCC Online SC 897: Law Finder Doc Id # 1890858: 2021 AIR (Supreme Court) 5147**. Accordinglythis Tribunal is not only empowered but is in fact duty bound to adjudicate upon the substantial questions related to environment involved in the present case.

32. In view of the above discussed factual and legal perspective of the case, the application cannot be conclusively be said to malafide and is not liable to be dismissed on that ground.

Question no. (ii)-Whether respondent no.8 was operating Shivalik Hospital in residential plot in non-conforming area in violation of Master Plan issued by Department of Town and Country Planning, Government of Himachal Pradesh?

33. The grievance of the applicant is that respondent no.8 is operating the hospital in residential plot in non-conforming area in violation of the Master Plan for District Una.

34. Respondent no. 8 has submitted that respondent no.8 was running a 05 bedded hospital near old bus stand Una before shifting the hospital to the present location which is subject matter of the present application. Respondent no.8 started 10 bedded hospital in the year 2013 after obtaining NOC dated 07.06.2013 from the office of the Gram Panchayat, District Una, Himachal Pradesh. Respondent no. 8 has attached copy of NOC dated 07.06.2013 issued from the office of the Gram Panchayat, District Una, Himachal Pradesh with its reply (copy at page no. 239 of the paper book).The applicant has not disputed the authenticity and genuineness of the NOC issued by the Gram Panchayat, District Una, Himachal Pradesh.

35. Respondent no. 8 has further submitted that the building maps for the construction of Two Storeyed Residential building at Khasra No.1546/14, 1546/15, 1546/16, 1546/21, 1546/22 & 1546/23 as per jamabandi for the years 2003-2004 of Mohal Jhalera Tehsil & District Una (H.P.) were approved vide No. SADA (Una) BP-630/2007-659 dated 22.11.2007 in the name of Shri Krishan Dass, Shri Akshay Kumar S/o Shri Krishan Das & Smt. Anupama W/o Sh. Akshay Kumar. The Shivalik Hospital is running in the building for which said maps were approved.

36. As per the report submitted by the Assistant Town Planner, Sub Division Town Planning Office Una, District Una (H.P.) vide letter No. SADA (Una)-Case No. BP-630/2007-334 dated 05.12.2022, **the Development Plan for Una Planning Area was approved by the Government of Himachal Pradesh vide notification No. TCP-F (5)-7/96 dated 23.04.1997. The Development Plan of Una Planning Area is valid till March, 2023. As per Development Plan of Una Planning Area the land falling under Shivalik Hospital situated at Mohal Jhalera has been earmarked for residential use.**

37. Clause 7.2.1.1 of Sr. No. 7.2.1 (Residential Use) of Chapter Seven of Development Plan of Una Planning Area reads as under :-

> *"7.2.1.1Uses Permitted- Residences, Hospitals, Boarding-Houses, Nurseries, Kindergartens and Schools, Clinics Social and Cultural Institutions, Public utilities and buildings, except service and storage yards; agriculture gardens, nurseries and green houses, any neighbourhood recreational uses; including clubs and other semi- public recreational uses; accessory uses clearly incident*al to residential uses which will not create a nuisance and eco-hazard."

38. Since running of a Nursing Home (Hospital) is a permitted use in the residential area as per clause 7.2.1.1 of Sr. No. 7.2.1 (Residential Use) of Chapter Seven of Development Plan of Una Planning Area, respondent no.8 cannot be said to be running the hospital in residential plot in non-conforming area in violation of the Development Plan for Una Town issued by the Town and Country Planning Department, Himachal Pradesh and no change in land use was required.

39. Further as per Clause/Regulation 7.1.(ii) of Sr. No. 7.1 (General Regulations) mixed land use is not prohibited unless otherwise a particular land use is hazardous. Relevant provision is reproduced below for ready reference:

> *"(ii) General land use in the development plan has been contemplated for specified use. However, mixed land use shall not be prohibited unless otherwise a particular land use is hazardous in nature to the pre dominated use and fulfils the regulations fixed for the same."*

40. Running of a Nursing Home (Hospital)cannot be said to be hazardous in nature to the pre dominated use and fell within permissible “mixed land use”.

41. In view of the above, respondent no.8 cannot be said to be running the hospital in residential plot in non-conforming area in violation of the Development Plan for Una Town issued by the Town and Country Planning Department, Himachal Pradesh.

42. In the present case notice bearing No. SADA (Una)-Case No. BP-630/2007-333 dated 01.12.2022 was issued to Shri Krishan Dass, Shri Akshay Kumar S/o Sh. Krishan Das and Smt. Anupama w/o Sh. Akshay Kumar c/o Shivalik Hospital Jhalera, Tehsil & District Una (H.P.) for operating "Hospital" in the building constructed at 1546/14, 1546/15, 1546/16, 1546/21, 1546/22 & 1546/23 situated in Mohal Jhalera requiring them to submit the proposal/maps for obtaining the permission for change of building use failing which action under Section 39 of the Himachal Pradesh Town & Country Planning Act, 1977 would be taken against them.

43. In additional reply dated 18.11.2024 respondents no. 6 and 7 have mentioned that the Member Secretary, Special Area Development (H.P.), Authority, Una-cum-ATP Una District Una has, vide his office letter No. SADA (Una)-Case No. BP-630/2007-201 dated 12.11.2024, reported that as per provisions of clause 7.2.1.1 of Sr. No. 7.2.1 (Residential Use) of Chapter Seven of the Development Plan of Una Planning Area the permission for change of building use was granted to said land owners vide reference No. 04202300032 dated 19.01.2023.

44. In these facts and circumstances of the case respondent no. 8 cannot be said to have operated the hospital in residential plot in non-conforming area in violation of the Development Plan for Una Town issued by the Town and Country Planning Department, Himachal Pradesh.

Question No. (iii) Whether respondent no.8 operated Shivalik Hospital in District Una, Himachal Pradesh without obtaining authorization under Rule 10 of the BMWMH Rules, 1998 and BMWM Rules, 2016 and without obtaining consent under the Water Act, 1974 from HPSPCB?

45. In exercise of the powers conferred by Sections 6,8 and 25 of the Environment (Protection) Act, 1986 the Central Government notified the BMWMH Rules 1998 for the handling and management of bio-medical waste.

Requirement of Authorization under the BMWMH Rules, 1998/the BMWM Rules 2016 from HPSPCB

46. Rule 3 (8) of the BMWMH Rules, 1998 defined the expression ‘occupier’ as under:-

> *"(8) "occupier" in relation to any institution generating bio-medical waste, which includes a hospital, nursing home, clinic, dispensary, veterinary institution, animal house, pathological laboratory, blood bank by whatever name called, means a person who has control over that institution and/or its premises"*

47. Rule 4 of the BMWMH Rules, 1998 mandated that every occupier of an institution generating bio-medical waste which includes a hospital, nursing home, clinic, dispensary, veterinary institution, animal house, pathological laboratory, blood bank by whatever name called to take all steps to ensure that such waste is handled without any adverse effect to human health and the environment.

48. Rule 5 of the BMWMH Rules, 1998 mandated that Bio-medical waste shall be treated and disposed of in accordance with Schedule I, and in compliance with the standards prescribed in Schedule V of the abovesaid Rules.

49. Rule 8 of the BMWMH Rules, 1998, which dealt with Authorization under the abovesaid Rules provided as under:-

> *"8. Authorisation.-(1) Every occupier of an institution generating, collecting, receiving, storing, transporting, treating, disposing and/or handling bio-medical waste in any other manner, except such occupier of clinics, dispensaries, pathological laboratories, blood banks providing treatment/service to less than 1000 (one thousand) patients per month, shall make an application in Form I to the prescribed authority for grant of authorisation.*
>
> *(2) Every operator of a bio-medical waste facility shall make an application in Form I to the prescribed authority for grant of authorisation.*
>
> *(3) Every application in Form 1 for grant of authorisation shall be accompanied by a fee as may be prescribed by the Government of the State or Union Territory.*
>
> *1[(4) The authorization to operate a facility shall be issued in Form IV, subject to conditions laid therein and such other condition, as the prescribed authority, may consider it necessary.]"*

50. In the present case, respondent no.8 has admitted that initially Hospital near the bus stand was established in the year 2006 and that respondent no. 8 fell within the definition of "occupier" under Rule 3 (8) of the BMWMH Rules, 1998. In view of Rule 8 of the BMWMH Rules, 1998 respondent no. 8 was required to obtain authorization under Rule 8 of the

BMWMHRules, 1998 from HPSPCB.Respondent no.8 was granted authorization by HPSPCB under BMWMH Rules, 1998 on 06.11.2006 which was renewed from time to time and was lastly renewed on 21.03.2015 with validity up to 31.03.2017.

51. MoEF&CC in supersession of the BMW (M&H) Rules, 1998 enacted BMWM Rules, 2016.

52. Rule 3(m) the BMWM Rules, 2016 defines the expression occupier as follows:-

> *"(m) "occupier" means a person having administrative control over the institution and the premises generating biomedical waste, which includes a hospital, nursing home, clinic, dispensary, veterinary institution, animal house, pathological laboratory, blood bank, health care facility and clinical establishment, irrespective of their system of medicine and by whatever name they are called"*

53. Rule 4 of the BMWM Rules, 2016 lays down the duties of occupier while Rule 5 of the BMWM Rules, 2016 lays down the duties of common bio-medical waste treatment and disposal facility. Rule 10 of the BMWM Rules, 2016 lays down the procedure for authorization and the same reads as under:-

> *"10. Procedure for authorisation.-Every occupier or operator handling bio-medical waste, irrespective of the quantity shall make an application in Form II to the prescribed authority i.e. State Pollution Control Board and Pollution Control Committee, as the case may be, for grant of authorisation and the prescribed authority shall grant the provisional authorisation in Form III and the validity of such authorisation for bedded health care facility and operator of a common facility shall be synchronised with the validity of the consents.*
>
> *(1) The authorisation shall be one time for non-bedded occupiers and the authorisation in such cases shall be deemed to have been granted, if not objected by the prescribed authority within a period of ninety days from the date of receipt of duly completed application along with such necessary documents.*
>
> *(2) In case of refusal of renewal, cancellation or suspension of the authorisation by the prescribed authority, the reasons shall be recorded in writing: Provided that the prescribed authority shall give an opportunity of being heard to the applicant before such refusal of the authorisation.*

(3) Every application for authorisation shall be disposed of by the prescribed authority within a period of ninety days from the date of receipt of duly completed application along with such necessary documents, failing which it shall be deemed that the authorisation is granted under these rules.

(4) In case of any change in the bio-medical waste generation, handling, treatment and disposal for which authorisation was earlier granted, the occupier or operator shall intimate to the prescribed authority about the change or variation in the activity and shall submit a fresh application in Form II for modification of the conditions of authorisation."

54. In view of resolutions passed by all the Houses of the legislatures of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura, and West Bengal in pursuance of Clause (1) of Article 252 of the Constitution of India for regulation in those States by Parliament by making laws for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water and for the establishment of of Boards for the prevention and control pof water pollution and for conferring on and assigning to such Boards powers and functions relating thereto, the water Act, 1974 was enacted.

Requirement of Consents under the Water Act, 1974 from HPSPCB

55. Section 25 (1) of the Water Act, 1974 which puts restrictions on new outlets and new discharge provides as under:-

"25. Restrictions on new outlets and new discharge.-(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,—

(a)establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b)bring into use any new or altered outlet for the discharge of sewage; or

(c)begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application

for such consent, within the said period of three months, till the disposal of such application."

56. Vide letter no. B29012/1/2012/ESS/1526-1563 dated04.06.2012 theCPCB issued directions under Section 18(1)(b) of the Water Act, 1974 directingthe SPCBs/PCCsto maintain uniformity in categorization of industries as Red, Green and Orange by adopting the list as given at Table 7.3, 7.4 & 7.5 in the enclosed report for grant of consent, inventorization of industries in red, green and orange category and other related activities.In "Table 7.3 :List of Red category of industries"of the above said report "Health Care Establishment (as defined in BMW Rules was covered at serial number 26 as red category industry.

57. The CPCB developed a scoring methodology based on the Pollution Index to harmonize the Criteria for classification of industrial sectors and vide letter no.B29012/ESS(CPA)/2015-16 dated 07.03.2016 issued directions under Section 18(1)(b) of the Water Act, 1974 directing the SPCBs/PCCs to adopt the revised classification.**Entry No.30 of Table G2: Final List of Red Category of Industrial Sectors reads as under:-**

Table G-2 : Final List of Red Category of Industrial Sectors

Sr. no.	Orgnil SI No.	Industry Sector	W1	W2	W	A1	A2	A	H	W+A+H	Revised Category	Remarks
30.	26	Health-care Establishment (as defined in BMW Rules)	20	10	30	-	-	-	-	75	R-R	-i. Mainly water polluting. ii. The water pollution score is normalized to 100 & valid for Hospitals having total waste-water generation > 100 KLD. iii. The hospitals with incinerator will be

												categorized as Red irrespective of the quantity of the waste water generation. iv. The hospitals having total waste-water generation less than 100 KLD and without incinerator, the normalized water pollution score will be 50 and will be categorized as Orange category.

58. Based on the experience gained over the years in Pollution Index calculation, use of cleaner fuels like PNG/CNG etc., adoption of cleaner technology resulting in reduced emission/wastewater generation andrecommendations of the Committee constituted vide order dated 26.09.2023 the CPCB revisited the classification methodology of 2016 and vide letter no. CP-18/1/2023-IPC-VI-HO-CPCB-HO dated 12.02.2025 issued directions under Section 18(1)(b) of the Water Act, 1974 directing the SPCBs/PCCs to immediately adopt the revised methodology for classification of sectors and list of 419 sectors/sub-sectors classified under Red, Orange, Green, White, and Blue categories as detailed in the attached report- "Classification of Sectors into Red, Orange, Green, White and Blue Categories (A tool for progressive environmental management)". Entry No.3.0 of Service/Infrastructure of Development Sectors of Annexure III (List of Service/Infrastructure Development Sectors Classified under Red, Orange, Green, and White categories) reads as under:-

Sno.	Sector	W1	W2	W3	PIw	A1	A2	A3	PIA	H1	H2	PIH	Pollution Index	Category	Remarks	Concerned Divisio

													(PI)			n
3.0 HEALTH CARE FACILITIES (HCFS, AS DEFINED UNDER BIO-MEDICAL WASTE MANAGEMENT RULES, 2016)																
3.1	HCFs with captive incinerator, irrespective of number of beds	20	0	15	35	35	20	25	80			50	88.5	Red	Sector generates bio-medical waste. As per methodology scores assigned to H.	WM-I
3.2	more than 1000 bedded HCFs	20	0	35	55	0	0	0	0			100	100.0	Red		WM-I
3.3	501 to 1,000 bedded HCFs	20	0	30	50	0	0	0	0			80	85.0	Red		WM-I
3.4	201 to 500 bedded HCFs	20	0	30	50	0	0	0	0			60	70.0	Orange		WM-I
3.5	51 to 200 bedded HCFs	20	0	20	40	0	0	0	0			50	60.0	Orange		WM-I
3.6	11 to 50 bedded HCFs	20	0	20	40	0	0	0	0			40	52.0	Green		WM-I
3.7	Up to 10 bedded HCFs	20	0	15	35	0	0	0	0			30	44.8	Green		WM-I
3.8	Non-bedded HCFs	0	0	0	0	0	0	0	0			25	25.0	Green		WM-I

59. Respondent no.8 has submitted that Authorization was granted by the Board on 31.12.2011 which was valid upto 31.03.2014 and further renewal of Authorization was granted to respondent no.08 on 21.03.2015 which was valid till 31.03.2017.

60. Respondent no.8 has submitted that as per the BMWMH Rules,1998 the **Health Care Facilities (HCF's) were required to obtain only authorization under the above said Rules**

and there was no requirement for obtaining Consent under the Water Act, 1974. However, the MOEF&CC in suppression of BMWMH Rules 1998 vide notification dated 28.03.2016 revised and issued BMWM Rules, 2016 and as per Rule 10 of the revised rules the Health Care Facilities (HCFs) were required to obtain Consent under the Water Act, 1974 in addition to Authorization from the SPCBs/PCCs.HPSPCB has also acknowledged this legal perspective but this legal perspective ignores the provisionsof Section 25 (1) of the Water Act, 1974 and CPCB letter no. B29012/1/2012/ESS/1526-1563 dated 04.06.2012 which categorized"Health Care Establishment (as defined in BMW Rules) as Red category industry mandatorily requiring consents from SPCBs/PCCs.

61. It may be observed here that rule 10 of the BMWM Rules 2016 merely provided for synchronization of validity of authorization with the validity of the consents and rule 10 of the BMWM Rules 2016 did not contain any specific provision mandating applicability of the Water Act 1974 which applied on its own force in terms of its own provisions. As per letter no. B29012/1/2012/ESS/1526-1563 dated 04.06.2012issued by CPCB health care facility enlisted in the list as red category industries mandatorily required consents but it appears that CPCB and SPCBs/PCCs did not look into this aspect and appear to have harboured the impression that rule 10 of the BMWM Rules 2016 mandated requirement of consents under the Water Act, 1974 from the date of commencement of the above said Rules.

62. We are of the considered view that on any change of categorization of industries or change in law on amendment/enactment appropriate communication ought to be issued and wide publicity ought to be given by SPCBs/PCCs to such change of categorization of industries or change in law so as to bring the same to the notice of all already existing industries/project proponents thereby affected.

63. We are also of the considered view that in the present case HPSPCB ought to have taken action regarding synchronization of validity of authorization under rule 10 of the BMWM Rules 2016 with validity of consents immediately on commencement ofthe BMWM Rules 2016 by issuing appropriate communications to the health care facilities to which authorization had been granted earlier without such synchronization instead of waiting for filing of applications for renewal on expiry of the respective periods of validity.

64. Be that as it may, HPSPCB did not issue any letter to respondent no. 8 regarding the requirement of obtaining consents from it immediately on issuance of letter B29012/1/2012/ESS/1526-1563 dated 04.06.2012by CPCB and also on enforcement of rule 10 of the BMWM Rules 2016.

65. Respondent No.8 has submitted that due to the aforementioned change, there was acute chaos and confusion with respect to permissions/consents/authorizations required or not required and we find this submission is supported by the material on record and responses of CPCB and HPSPCB.

66. Respondent no.8 has submitted that due to chaos and confusion with respect to permissions/consents/authorizations required or not required there was a slight delay in applying for renewal of Authorization. Respondent no.8 submitted application dated 19.08.2018 (pages no. 250 to 252 of the paper book) for renewal of Authorization under BMWM Rules, 2016 and respondent no.8 submitted application dated 19.08.2018(pages no. 246 to 249 of the paper book) for CTE and CTO to HPSPCB which are stated to be complete in all respects and accompanied by the requisite fees.

67. In its reply HPSPCB has stated that in response to HPSPCB letter dated 27.07.2017 respondent no. 8 submitted application dated 19.08.2017 for consent and application dated 22.08.2017 for grant of authorization. However, HPSPCB has not produced any cogent material on record to prove delivery/communication of above said letter to respondent no.8/ receipt of above said letters by respondent no.8 and HPSPCB has not produced copies of applications dated 19.08.2017 and 22.08.2017.

68. HPSPCB has submitted that the Principal Scientific Officer, Central Laboratory, Parwanoo wrote letter dated 19.12.2017 seeking documents mentioned therein and letter dated 15.03.2018 asking for deposit of prescribed fee but respondent no.8 has denied having received the same and also claimed thatMr. TB Singh the then Principal Scientific Officer,HPSPCB purposely made sure that no communication in form of notices or letters issued by HPSPCB reached respondent no.8. Respondents no. 4 and 5 have not produced any cogent material on record to prove delivery/communication of above said letters to respondent no.8/ receipt of above said letters by respondent no.8.

69. It may be observed here that HPSPCB has not denied the facts regarding submissions of applications by respondent no. 8 on 19.08.2018 and HPSPCB has not produced any material regarding sending of any letter to respondent no. 8 regarding the same and passing of orders refusing the same within the period of 90 days prescribed under section 10 (3) of the BMWM Rules 2016/ four months under section 25 (7) of the Water Act, 1974 respectively.

70. HPSPCB has claimed that respondent no. 8 submitted online application no. 5060025 dated 08.03.2022 for CTE online application no. 5060056 dated 17.03.2022 for CTO and online application no. 7258169 dated 24.09.2022 for authorization.

71. Respondent no. 8 has submitted that Mr. T.B. Singh the then Principal Scientific Officer, HPSPCB asked respondent no.8 to apply again for the Consents under the Water Act, 1974 online as there was no reply by HPSPCB on the previous Application submitted to HPSPCB in 2018 and to avoid harassment, respondent no.8 re-submitted applications online for grant of Consents under the Water Act, 1974. Mr. T.B. Singh also asked respondent no.8 to re-pay the fees from 2018 onwards and respondent no. 8 paid amount of Rs. 5000/- towards consent fees. Even after re-applying for the consents under the Water Act, 1974 online, there was no reply whatsoever from the HPSPCB. On enquiring about the same from Mr. T.B. Singh, the later demanded money in form of bribe from Respondent no.8 for grant of

Consents and also questioned Respondent no.8 as to why the Sewage Treatment Plant was not installed from the suppliers recommended by Mr. T.B. Singh and was rather bought and installed from some other place. Respondent no.8 made a police complaint against Mr. T.B. Singh for demanding bribe for the release of Consent Certificates and FIR no. 04 dated 31.03.2022 under Section 7 of the Prevention of Corruption Act, 1988 was registered against Mr. T.B. Singh by the State Vigilance &Anti Corruption Bureau, Himachal Pradesh. Chargesheet was filed by the State Vigilance & Anti-Corruption Bureau Himachal Pradesh in the Competent Court and the matter is still under trial.

72. This claim of respondent no. 8 is substantiated by FIR no. 04 dated 31.03.2022 (pages no. 236 to 238 of the paper book) registered under Section 7 of the Prevention of Corruption Act, 1988 and chargesheet filed against Mr. T.B. Singh,the then Chief Scientific Officer by the State Vigilance &Anti Corruption Bureau Himachal Pradesh.

73. **With reference to online application no. 7258169 dated 24.09.2022 authorization under Rule 10 of the BMWM Rules, 2016valid from 12.12.2022 to 31.03.2027was granted to respondent no. 8 vide letter no. HPSPCB/BMW:7258169 dated 12.12.2022**. With reference to application no. 5060025 dated 08.03.2022 **Consent to Establish valid from 26.05.2022upto 25.05.2023 was granted to respondent no. 8 vide letter no. 117 HPSPCB dated 26.05.2022**. With reference to application no. 5060056 dated 17.03.2022 **Consent to Operate valid from 16.08.2022 upto 31.03.2027was granted to respondent no. 8 vide letter no. 117 HPSPCB dated 16.08.2022**.

74. As per material on record there was no further communication by the HPSPCB on the applicationsdated 19.08.2018 for consents and renewal of authorization submitted by respondent no. 8 till grant of CTE vide letter no. 117 HPSPCB dated 26.05.2022, CTO vide letter no. 117 HPSPCB dated 16.08.2022 and authorization vide letter no. HPSPCB/BMW:7258169 dated 12.12.2022.

75. In the above discussed facts and circumstances, respondent no.8 cannot be said to be responsible for delay in grant of CTE and CTO under the Water Act, 1974 and authorization under Rule 10 of the BMWM Rules, 2016.

76. Rule 10(3) of the BMWM Rules, 2016, which provides for deemed consent, reads as under: -

> *"10(3) Every application for authorization shall be disposed of by the prescribed authority within a period of ninety days from the date of receipt of duly completed application along with such necessary documents, failing which it shall be deemed that the authorization is granted under these rules."*

77. Section 25(7) of the Water Act, 1974, which provides for deemed consent, reads as under: -

> *"(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board."*

78. As per the material on record, there was no further communication by the HPSPCB in respect of the applicationsdated 19.08.2018 for consent and renewal of authorizationtill grant of CTE vide letter no. 117 HPSPCB dated 26.05.2022, CTO vide letter no. 117 HPSPCB dated 16.08.2022 and authorization vide letter no. HPSPCB/BMW:7258169 dated 12.12.2022. Since, the application dated 19.08.2018 filed by respondent no.8 for authorization was not disposed of within the period of 90 days prescribed under rule 10 (3) of the BMWM Rules, 2016 andthe application dated 19.08.2018 filed by respondent no.8 for consents was not disposed of within the period of four months prescribed under 25(7) of the Water Act, 1974, respondent no. 8 must be deemed, as per Rule 10(3) of the BMWM Rules, 2016 and section 25 (7) of the Water Act, 1974 to be operating with requisite authorization and consents from HPSPCBand respondent no.8 cannot be said to have operated Shivalik Hospital in District Una, Himachal Pradesh without authorization and consents from HPSPCB during the period from the date of above said applications till filing of online applications on 08.03.2022, 17.03.2022 and 24.09.2022 which were disposed of by grant of CTE on 26.05.2022, by grant of CTO on 16.08.2022 and authorization on 12.12.2022.

79. In view of the above, respondent no.8 can not be said to have operated Shivalik Hospital in District Una, Himachal Pradesh without obtaining authorization under Rule 10 of the BMWMH Rules, 1998 and BMWM Rules, 2016 and without obtaining consent under the Water Act, 1974 from HPSPCB at the time of filing of the present original application.

Question no.(iv)-Whether respondent no. 8 is liable to pay any environmental compensation for violation of any environmental norms?

80. It may be observed here that Respondent no.8 being a clinical establishment was required to be registered under Section 14 of the Clinical Establishment Act, 2010. As per material on record Respondent no.8 was registered under the above-said enactment as mentioned below:-

Sr. No.	**Particulars of Provisional Registration as a clinical establishment under Section 14 of the Clinical Establishment Act, 2010**
1	Provisional Registration certificate dated 08.02.2018 valid for a period of 1 year i.e.upto 08.02.2019.
2.	Provisional Registration certificate dated 01.04.2019 valid for a period of

	1 year i.e.upto01.04.2020.
3.	Provisional Registration certificate dated 05.09.2022 valid for a period of 1 year i.e.upto05.09.2023.

81. **Respondent no.8 was required to enter into agreements with CBWTFfor collection/transportation / treatment and disposal of bio-medical waste. As per material on record Respondent no.8 entered into the agreements as mentioned below:-**

Sr. No.	**Particulars of agreement for collection of bio-medical waste**
1.	Agreement with (Bio Medical Waste Treatment Trust) BMWT Plant Pvt. Ltd., Village Pangoli, Pathankot w.e.f. 07-07-2005
2.	Agreement dated 01.04.2014 with Bio Medical Waste Treatment Plant Pvt. Ltd. Valid upto 01.04.2019.
3.	Agreement dated 14.02.2018with Suraksha Bio-Sanitizervalid upto 31.03.2019.
4.	Agreement dated 01.04.2019 with Suraksha Bio-Sanitizervalid upto 31.03.2020.
5.	Agreement dated 01.04.2020 with Suraksha Bio-Sanitizervalid upto 31.03.2021.
6.	Agreement dated 01.04.2021 with Suraksha Bio-Sanitizervalid upto 31.03.2022.
7.	Agreement dated 01.04.2022 with Enviro Engineersvalid upto 31.03.2023.

82. It may be observed here that respondent no. 8 has claimed that in the month of September 2019, at the recommendation of Mr. TB Singh, the then Principal Scientific Officer, HPSPCB, respondent no.8 installed Sewage Treatment Plant of capacity of 3 KLD in the premises. In support of this submission respondent no. 8 has produced copy of photograph of the Sewage Treatment Plant as well as the bill for purchase/installation of the Sewage Treatment Plant issued by Apex Enviro as Annexure-R/11. Respondent no.8 has also claimed that the Respondent Hospital was inspected by the officers of HPSPCB and samples from the sewage treatment plant of the Hospital were collected on 19.11.2022 and that as per the report dated 14.12.2022 (Annexure-R/19) the parameters of the samples collected from the sewage treatment plant of the Hospital were found to be well within the prescribed standard limits.

83. In their reply respondents no. 4 and 5 have admitted that respondent no.8 HCF has installed STP of 3 KLD as per BMWM Rules, 2016; and that the results of final outlet of STP installed by respondent No. 8 for the month of November, 2022 met the prescribed norms and undertaken that further inspection and sampling of the unit shall continue to be carried out to ensure adherence of the Hospital to environmental norms.

84. Respondent no.8 has submitted that the allegation of the Applicant that the Respondent Hospital is discharging all its Bio Medical Waste outside the hospital is erroneous and without any evidence on record; that starting from the year 2014 till date, Respondent no.8 Hospital has entered into Agreements with Bio Medical Waste Collection facilities for collection of Bio Medical Waste from the hospital and the same have been placed on record for the convenience of this Tribunal; that in its day to day operation Respondent no.8 Hospital is neither discharging any untreated effluent nor is disposing off its Bio Medical Waste outside the premises of the Hospital and no environmental damage is caused by Respondent no.8 Hospital.

85. In their reply respondents no. 4 and 5 haveadmitted that earlier the respondent No. 8 (Hospital Care Facility) was in agreement with (Bio Medical Waste Treatment Trust) BMWT Plant Pvt. Ltd., Village Pangoli, Pathankot w.e.f. 07.07.2005 for transportation and disposal of Bio-medical waste (copy annexed as Annexure R-4/7) and presently, the HCF of respondent No. 8 is in agreement with M/s Enviro Engineer, the Common Bio-medical Waste facility (CBWTF) Industrial Area Pandoga, Una for collection/transportation / treatment and disposal of bio-medical waste (copy annexed as Annexure R-4/8).

86. In view of finding on Question no. (I) respondent no.8 cannot be said to have operated the above said hospital in residential plot in non-conforming area in violation of the Master Plan issued by the Department of Town and Country Planning, State of Himachal Pradesh. Even if it be assumed that there was any violation, the same has been regularized with retrospective effect by permitting composition and grant of change of land use.

87. The present original application was filed on 15.10.2022. By Section 15 (3) of the NGT Act, 2010 this Tribunal is barred from entertaining application for relief made beyond period of five years from the date on which cause for such relief arose and in view thereof this Tribunal is not required to go into the question of imposition of EC for violations which occurred more than five years prior to the date of filing of the original application.

88. In the present case, HPSPCB has submitted that the Principal Scientific Officer, Central Laboratory, Parwanoo vide letter dated 27.07.2017 asked respondent no.8 to apply for consent under the Water Act, 1974 and authorization under the BMWM Rules, 2016 and in view thereof intervention by this Tribunal for imposition of EC for not obtaining of consents prior to 27.07.2017 is not warranted.

89. In the present case by the material on record respondent no. 8 was granted authorization under Rule 8 of BMWMH Rules, 1998/Rule 10 of BMWM Rules, 2016 and CTE/CTO under sections 25/26 of the Water Act, 1974 as shown in the following tables:-

Authorization under Rule 8 of BMWMH Rules, 1998/Rule 10 of BMWM Rules, 2016		
Date of application	**Date of grant**	**Period of validity**
Not available	06.11.2006	06.11.2006 to 31.03.2008
Not available	30.12.2008	30.12.2008 to 31.03.2011
Not available	31.12.2011	31.12.2011 to 31.03.2014
Not available	21.03.2015	21.03.2015 to 31.03.2017
22.08.2017/19.08.2018/ 24.09.2022	12.12.2022	12.12.2022 to 31.03.2027

CTE/CTO granted under sections 25/26 of the Water Act, 1974		
Date of application	**Date of grant**	**Period of validity**
19.08.2017/ 08.03.2022/ 17.03.2022	CTE dated 26.05.2022	26.05.2022 to 25.05.2023
	CTO dated 16.08.2022	16.08.2022 to 31.03.2027

90. It may be observed here that respondent no. 8 cannot be said to be solely responsible for the gaps in grant of authorization under Rule 8 of BMWMH Rules, 1998 and Rule 10 of BMWM Rules, 2016 and delay in grant of consents under the Water Act, 1974 which is also attributable to confusion/chaos created due to lack of information, appropriate clarifications and alleged corruption by Mr. T. B. Singh. It may also be added here that respondent no. 8 made appropriate arrangements for collection/transportation/treatment and disposal of bio-medical waste and discharge of treated effluent and no damage to environment was caused. No complaint regarding violation of BMWM Rules, 2016 andthe Water Act, 1974was ever made to HPSPCB by the applicant or any other person. In their reply respondents no. 4 and 5 have also admitted that during the period of its operation no complaint or matter regarding improper disposal of Bio medical waste or water pollution by the respondent No. 8 came to notice of HPSPCB.

91. In these facts and circumstances and in view of finding on Question no. (iii), respondent no.8 cannot be said to have operated Shivalik Hospital in District Una, Himachal Pradesh in violation of the BMWM Rules, 2016 and the Water Act, 1974 and respondent no. 8 is not liable to pay any environmental compensation on that account with the consequence

that issuance of directions to CPCB/HPSPCB for imposition of any environmental compensation on respondent no.8 is not warranted.

Expeditious disposal of applications for grant of authorization/CTE/CTO by SPCBs/PCCS

92. In the present case respondent no. 8 has claimed to have submitted application dated 19.08.2018 (pages no. 246 to 249 of the paper book) for consent to establish and application dated 19.08.2018 (pages no. 250 to 252 of the paper book) for renewal of authorization under BMWM Rules, 2016and to have submitted online applications subsequently at the instance of Mr. T.B. Singh.

93. In its reply HPSPCB has stated that in response to HPSPCB letter dated 27.07.2017 respondent no. 8 submitted application dated 19.08.2017 for consents and application dated 22.08.2017 for grant of authorization. HPSPCB has submitted that the Principal Scientific Officer, Central Laboratory, Parwanoo wrote letter dated 19.12.2017 seeking documents mentioned therein and letter dated 15.03.2018 asking for deposit of prescribed fee but HPSPCB has failed to produce any material to prove sending of above said letters to respondent no. 8 and has also not produced copies of applications dated 19.08.2017and 22.08.2017.

94. It may be observed here that HPSPCB has not denied the facts regarding submissions of application by respondent no. 8 on 19.08.2018 and has not produced any material regarding sending of any letter to respondent no. 8 regarding the same.

95. It may also be added here that online application no. 7258169 dated 24.09.2022, HPSPCB granted authorization vide letter no. HPSPCB/BMW:7258169 dated 12.12.2022 and on online application no. 5060025 dated 08.03.2022 and online application no. 5060056 dated 17.03.2022HPSPCB granted Consent to Establish to respondent no. 8 vide letter no. 117 HPSPCB dated 26.05.2022 and Consent to Operate vide letter no. 117 HPSPCB dated 16.08.2022.

96. Incidents of such unreasonable delays in disposal of applications for grant of authorization/CTE/CTO by SPCBs/PCCs abound and also surface in numerous cases coming up before this Tribunal which warrant taking of appropriate remedial measures.

97. We are of the considered view that applications for grant of authorization and CTE/CTO need to be disposed of within statutorily prescribed periods of 90 days under Rule 10 (3) of BMWM Rules, 2016 and four months under Section 25 (7) of the Water Act, 1974as long unreasonable delay in disposal of applications for grant of authorization and CTE/CTO leads to corruption and also other complications and remedial measures are required to be taken to prevent the same. Accordingly, CPCB is directed to prepare SoPand to issue appropriate directions for disposal of applications for authorization and grant of CTE/CTO by

SPCBs/PCCs in time bound manner within the prescribed periodsand also for uploading of the information on website of the concerned SPCB/PCC and on the website of the concerned Regional Office regarding pendency of the applications beyond the prescribed period and reasons for delay.

Necessity for Proactive approach by CPCB/SPCBs/PCCs for protection and improvement of environment

98. We are also of the considered view that CPCB/SPCBs/PCCs being under constitutional and Statutory obligations for protection and improvement of environment are required to adopt Proactive approach for ensuring compliance with environmental laws/norms by issuing appropriate circulars, letters, notices and makingrequisite inspections, giving requisite directions for specific remedial measures with specific timelines and pass appropriate orders including conditional/absolute closure orders to the concerned Project Proponents as may be required and cannotadopt **"sit and wait in the office till violations are reported",** turn blind eye to violations of environmental laws/norms, feel contended by **merely issuing show cause notices repeatedly without passing orders on the same** or by passing orders for **imposition of environmental compensation without realization and also utilization of the environmental compensation imposed for remediation of the environmental damage caused**.

99. We are also of the considered view that in view of the constitutional and statutory obligations for protection and improvement of environment, any complaint regarding violation of environmental laws/norms made with relevant details and supporting material to SPCBs/PCCs has to be looked into by the concerned SPCB/PCC and requisite remedial action has to be takenon the same in accordance with law and the complainant has to be informed about the action taken on the complaint with specific information regarding availability of legal remedy of appeal/revision against the same.

Directions by the Tribunal

100. Accordingly, in exercise of powers under Sections 14 and 15 of the NGT Act, 2010, CPCB is directed to prepare SoP and issue appropriate directions to SPCBs/PCCs of all the States and UTsfor (i) expeditious disposal of applications for grant of authorization/CTE/CTO by SPCBs/PCCs within prescribed periods;(ii) adoption of Proactive approach for ensuring compliance with environmental laws/norms by issuing appropriate circulars, letters, notices and making requisite inspections, giving requisite directions for specific remedial measures with specific timelines and pass appropriate orders including conditional/absolute closure orders to the concerned Project Proponents as may be required; and (iii) to create web-portal for redressal of grievances and to look into complaints regarding violation of environmental laws/norms made with relevant details and supporting material and to take requisite remedial action on the same in accordance with law andalso to inform the complainant about the action taken on the complaint with specific information regarding availability of legal remedy

of appeal/revision against the same and also to upload the information regarding the same on the web-portal.

101. In view of the above discussion the present original application is disposed of with no order as to costsand with directions to CPCB as mentioned above.

102. The Member Secretary, CPCB is directed to file Action taken Report in this regard within three months before the learned Registrar General of this Tribunal who shall ensure placing of the report so received and in case of non-receipt thereof, office report in this regard before the Bench for such further orders as may be considered necessary.

103. A copy of this order may be sent to the Member Secretary, CPCB by email for requisite compliance.

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Sukhbir Singh vs. Union of India & Ors.

(Original Application No.124/2024)
(I.A. No. 551/2024, I.A. No. 453/2025, I.A. No. 450/2024 & I.A. No. 291/2025)
Decided on: 09th September, 2025 (PB)

CASE NOTE

The Original Application No.124/2024 was filed by Sukhbir Singh, an erstwhile landowner in Rohtak, Haryana, against the State of Haryana, the Department of Forest, and the Haryana Shehri Vikas Pradhikaran (HSVP). The applicant's land (approximately 7.5 acres) near Sector-6, Rohtak, though acquired by the State in the year 2002 under the Land Acquisition Act, 1894, for the developing Commercial Sector-6, Rohtak, had allegedly remained in his possession due to prior court stays. During this period, the applicant claimed to have developed the land into a "forest patch" with thousands of trees. The cause of action arose when HSVP attempted to fell about 1,000 trees for the development project. The applicant approached the Tribunal after the Forest Department refused to intervene, stating the area was a non-notified area, falling outside its jurisdiction, thereby revealing a critical "regulatory vacuum" in the state concerning trees outside declared forest areas.

The main issues the Tribunal adjudicated were: (1) whether it could re-open the land acquisition proceedings, already dismissed by the Punjab and Haryana High Court and the Supreme Court; (2) whether a "regulatory vacuum" existed in Haryana regarding protection of trees in "non-forest areas" and if the State had a duty under the Public Trust Doctrine to frame a mechanism; (3) whether the land, claimed by the Applicant as a 'forest patch,' was environmentally protected against HSVP's statutory right to develop it for allottees.

The Tribunal concluded that the Applicant's challenge to the land acquisition had been finally settled against him by superior courts, and the land had lawfully vested in HSVP, noting he had accepted compensation in the year 2005. It observed that the environmental issues were a "camouflage/pretext to re-litigate" the settled matter, making the application barred by res judicata and an abuse of process. However, on broader tree protection in non-forest areas, the Tribunal acknowledged the need for a comprehensive framework despite the State of Haryana citing existing laws and schemes like the Punjab Land Preservation Act, 1900, and Pran Vayu Devta Scheme. Furthermore, it accepted that title and land-use rights were settled, allowing the development project to proceed.

The Tribunal disposed of the Original Application and dismissed the pending Interlocutory Applications (I.A. No. 291/2025 and I.A. No. 453/2025). While dismissing the petition on the specific dispute, it issued mandatory directions to address the systemic issue of tree cutting. The Tribunal directed Chief Secretary, Haryana to consider creating a single, comprehensive legal framework for protection and management of trees in non-forest areas. HSVP was ordered to seek Divisional Forest Officer, Rohtak's for permission to translocate or cut the identified trees and to proceed with development only in accordance with the orders of DFO, Rohtak.

Sukhbir Singh vs. Union of India & Ors.

COUNCEL FOR APPLICANT:
Mr. Gaurav Kumar Bansal and Ms. Chandrika Upadhyaya, Advocates for the Applicant.

COUNCEL FOR RESPONDENT(S):
Ms. Bihu Sharma, Advocate for Respondent No.1.
Mr. Rahul Khurana, Advocate for Respondents No. 2 to 4 (through VC).
Mr. Piyush Chandel, Advocate for Respondent No. 5 (through VC).
Mr. D. Abhinav Rao and Mr. Raghav Berwani, Advocates for Respondents No. 7 to 13.
None for respondent no. 6.

CORAM:
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

RESERVED ON: 9th May, 2025
PRONOUNCED ON: 9th September, 2025

JUDGMENT

BY HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER

1. The applicant-Mr. Sukhbir Singh, S/o Late Sh. Maha Singh, resident of House no. 86-6F, Ward No. 29, Near Sheela Bye Pass, Jasbir Colony, Rohtak, Haryana has filed the present application under Sections 14 and 18 of the National Green Tribunal Act, 2010 seeking the following reliefs:-

> *"a) Direct the Respondents and in particular State of Haryana and Department of Forests, Government of Haryana to frame the regulatory mechanism for the protection and conservation of Trees planted in Non Notified areas of Haryana.*
> *b) Direct Respondents and in particular the State of Haryana and Haryana Shehri Vikas Pradhikaran, Govt of Haryana to not to cut trees standing in Forest Patch developed by applicant on land measuring about 7.5 acres situated at Killa no. 41//7/2,8,13,18,33//20/2 (1- 13),21(8-0), 40//1(7-11)2, 41//9(8-0) and 41/12(8-0) (Total Land -60 kanal) and Killa no. 41//7/2,8,13, 18,33//20/2 (1-13),21(8-0), 40//1(7-11)2, 41/19(8-0) and 41/12(8-0) (Total Land -60 kanal) Hanuman mandir road, opposite- Pandit Lakhmi Chand State University of Performing and Visual Arts, sector -6, Rohtak, Haryana.*

c) Pass any other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the present case."

Grievances of the applicant

2. The applicant has submitted in the original application (at pages no. 1 to 85 of the paper book) that in the year 2002 State of Haryana by issuing notification under Section 4 of the Land Acquisition Act, 1894 and notification under Section 6 thereof acquired land in District Rohtak, Haryana including land of the applicant measuring about 7.5 acres comprised in Killa no. 41//7/2,8,13,18,33//20/2(1-13),21(8-0),40//1(7-11)2,411/9(8-0)and 41/12(8-0) (total land -60 kanals) and Killa no. 411/7/2,8,13, 18,33//20/2 (1-13),21(8-0), 40//1(7-11)2, 41//9(8-0) and 41/12(8-0) (total land -60 kanals) situated within the revenue estate of village Para, Tehsil and District Rohtak, Haryana. More than 90 % of the acquired land was released in an arbitrary manner with malafide intention. The applicant filed Writ Petition (Civil) no. 20329/2011 for issuance of writ in the nature of mandamus against the respondents for release of land falling in Khasra/Killa No. 70/17/2, 17/3,17/4, 24/1/1/1, 24/1/1/2, 24/2/1/1 and Killa No. 41/7/2, 8, 13 and 18 situated within the revenue estate of village Para, Tehsil and District Rohtak, Haryana from acquisition proceedings.Vide order dated 03.11.2011 (copy at page no. 79 of the paper book) Hon'ble Punjab and Haryana High Court issued notice to the respondents and stayed dispossession of the petitioner. Vide order dated 12.03.2012 (copy at page no. 80 of the paper book) Hon'ble Punjab and Haryana High Court made interim order dated 03.11.2011 absolute. The applicant is in possession of above said land and had planted thousands of trees on the above said land converting the land in question as forest patch which is having avian species, butterflies, reptile species and native plant species numbering 1475. On or around 20.10.2023 respondent no. 5-HSVP tried to cut the trees of forest patch developed by the applicant. The applicant made a complaint to the Department of Environment and Forest which stated vide letter dated 19.12.2023 (copy at page no. 81 of the paper book) that the area upon which the said trees are standing is outside the jurisdiction of the Forest Department due to which the Forest Department cannot take any action. Some miscreants uprooted fully grownup trees standing on the forest patch developed by the applicant regarding which the applicant made complaint dated 29.12.2023 (copy at pages no. 82 to 84 of the paper book). As per the Forest Department, the Forest Department has jurisdiction only at the notified land like reserved forest, protected areas, land under the Punjab Land Preservation Act,1900 (PLPA) etc. The respondents no. 1 to 5 are bound to protect the trees in the non-forest areas as under the public trust doctrine it is imperative for the respondents no. 1 to 5 and in particular the State of Haryana and its Forest Department to frame a regulatory mechanism for the protection of trees in non-forest areas. The State of Haryana has failed to appreciate the environmental significance of trees. The absence of appropriate regulatory mechanism and failure to address the environmental concern is violative of Article 14 and 21 of the constitution of India.In O.A. No. 622/2023 titled as Hemant Sharma Vs. Narender Nath Gaur and others this Tribunal has held vide order dated

09.10.2023 (copy at pages no. 34 to 36 of the paper book)that issue relating to illegal cutting of trees arises out of the implementation of the enactments specified in schedule I of the National Green Tribunal Act, 2010. This Tribunal, vide order dated 01.07.2022 (copy at pages no. 30 to 33 of the paper book) passed in O.A. No. 374/2022 titled as Green Earth Vs. Deputy Commissioner, Kurukshetra and others directed State of Haryana to frame regulatory mechanism on the issue of conservation and protection of trees in non-forest areas but the State of Haryana has not framed any policy in this regard.Hence the present original application.

3. So far as the question of limitation is concerned the applicant has submitted that cause of action first arose on 19.12.2023 when the Forest Department refused to take action on his complaint and the present application has been filed on 30.01.2024 within prescribed limitation period of six months.

4. The application came up for hearing on 07.02.2024 and 12.02.2024 on which dates the applicant sought and was accordingly granted time to file copies of the revenue records and other relevant documents. The applicant filed copies of the revenue records and other relevant documents vide email dated 13.03.2024. Thereafter the application came up for 18.03.2024 on which date the applicant sought and was accordingly granted time for impleading owner of Plot No. 436 P, Sector 6, Rohtak and Estate Officer, Haryana Shehri Vikas Pradhikaran (HSVP).

5. The applicant filed I.A. No. 144/2024 for impleadment of HSVP and Ms. Sonia owner/allottee of above said Plot which was allowed vide order dated 02.04.2024 and HSVP and Ms. Sonia owner/allottee of the above said Plot were impleaded as respondents no. 5 and

6. Since the averments made in the application raised substantial questions relating to environment arising out of the implementation of the enactment specified in Schedule I of the National Green Tribunal Act, 2010, notices along with copies of the application and documents attached with the same were ordered to be served on the respondents.

7. I.A. No. 388/2024 was filed by Sh. Devender Kumar, Daya Chand, Satbir Singh, Har Kishan Dalal, Tarun, Rupender Goyal and Sachin Gahlawat for their impleadment as respondents on the ground that the land in dispute has been allotted to them by HSVP for residential purposes. I.A. No. 388/2024 was allowed vide order dated 21.08.2024and the above mentioned applicants were impleaded as respondents No. 7 to 13.

8. Pursuant to notice, reply was filed by respondent no. 1-MoEF & CC vide email dated 06.11.2024; reply was filed by respondents no. 2 to 4 vide email dated 04.10.2024; reply was

filed by respondent no. 5 vide email dated 20.08.2024; and common reply was filed by respondents no. 7 to 13 vide email dated 17.09.2024.

Affidavit dated 05.11.2024 filed by respondent no.1- MOEF&CC

9. In its reply respondent no.1-MOEF&CC has submitted that its role is of the policy-making and advisory body at a broader level. The primary responsibility for the protection and management of forests and trees rests with the State Governments and Union Territory Administrations, as "land" is a subject matter under their jurisdiction. Respondent no.1-MOEF&CC has submitted that there are "robust legal frameworks" for the protection and management of forest and tree resources which include key Central statutes such as the National Forest Policy, 1988, the Indian Forest Act, 1927, the Forest (Conservation) Act, 1980, the Wildlife (Protection) Act, 1972, and various State Forests Acts/State specific Trees Preservation Acts and Rules, besides the relevant State Level Revenue and Municipal Statutes. Respondent no.1 MOEF&CC has referred to directions in order dated 25.03.2021 given by the Hon'ble Supreme Court in Special Leave Petition (Civil) No. 25074/2018 whereby Expert Committee was constituted with nine point mandate to develop comprehensive guidelines on tree felling for developmental projects, report titled "Compensatory Conservation in India, An Analysis of the Science, Policy and Practice," submitted by the Expert Committee on 05.01.2022, order dated 08.02.2023 passed by the Hon’ble Supreme Court which directed a joint meeting of the Central Government with all State and Union Territory stakeholders to formulate a unified proposal for the Court's consideration and submitted that respondent No.1-MOEF&CC has filed a detailed response on the Expert Committee's recommendations after due consultation to the Hon’ble Supreme Court.

Reply dated 03.10.2024 filed by Respondents No. 2 to 4

10. In reply dated 03.10.2024 filed on behalf of Respondents No. 2 to 4 by Shri Sunder Lal, IFS, Deputy Conservator of Forest, Rohtak, respondents no.2 to 4 have denied the allegations made in the original application and have provided a detailed account of the legislative and administrative measures undertaken by the State of Haryana for the protection and management of non-forest areas.In their reply the respondents no.2 to 4 have delineated the State of Haryana into four ecologically distinct geographical zones namely the Yamuna-Ghaggar plain, the Lower Shivalik Hills, the Bagar region, and the Aravali Range and asserted that in view of ecological diversity, the State has adopted targeted regulatory and conservation strategies suited to the needs of each zone. Respondents No.2 to 4 have submitted that the State Authorities had been very particular about the conservation of natural resources and the environment in the State and various steps have been undertaken for non-forest areas in the from of different formations of Acts/Regulations, launch of various schemes for plantations under different components, soil and water conservation and in the

form of incentives, schemes for farmers adopting agroforestry, purchase price scheme for tree growers etc. Respondents no. 2 to 4 have referred to (a) notification of land along National Highways, Road, Canals, Railway Lines, Bunds as protected forest; (b) Section 4 of the Punjab Land Preservation Act, 1900; (c) Pran Vayu Devta Scheme; (d) Van Mitra Scheme; and (e) Plantation scheme of Forest Department for non-forest areas. Particular reliance has been placed upon the Punjab Land Preservation Act, 1900 (PLPA), wherein Section 4 mandates prior approval of the Forest Department for the cutting of trees in notified areas, including those located on private lands. Respondents no. 2 t0 4 have further submitted that, in order to encourage agroforestry and augment rural livelihoods, certain species such as Eucalyptus and Poplar have been expressly exempted from the requirement of prior permission. However, species such as Khair (Acacia catechu) continue to be regulated under specific harvesting regulation due to their environmental and economic significance. After passing of order dated 01.07.2022 in O.A. no. 374/2022, office order dated 27.08.2023 has been passed by the Development and Panchayat Department Haryana to regulate cutting of trees in non-forest areas owned by Gram Panchayats. Respondents no. 2 to 4 have also referred to the Haryana Municipal Corporation Act, 1994, which imposes a statutory obligation on municipal corporations to plant and maintain trees along public roads and vests ownership and regulatory control over such roadside trees with the municipal authorities and empowers the Municipal Commissioner to act in cases where trees pose a risk to public safety. Respondnts no.2 to 4 have referred to the Stakeholders' Consultation on Trees Outside Forests (TOF) held on 20.04.2023, wherein key findings underscored the need for evolving people-centric policies and simplifying the regulatory architecture governing tree management outside forest areas and acknowledged a stable forest cover within the State and an increment in tree cover on non-forest lands, thereby reinforcing the importance of community-driven and sustainable land-use practices. Respondents no. 2 to 4 have submitted that the present O.A. does not raise any substantial question relating to environment as there are various regulatory mechanisms by different departments in their area of jurisdiction. Natural vegetation which came up and the trees planted by the applicant during pendency of challenge to acquisition before and grant of stay by Hon'ble Punjab & Haryana High Court does not make the same forest patch and does not entitle the applicant to any relief. Government Authorities proceed for tree cutting only when there is requirement for development of some project and carry out plantation as per targets allotted by the Government. Respondents no. 2 to 4 have accordingly prayed for dismissal of the original application.

Reply dated 14.08.2024 filed by respondent no. 5-HSVP

11. In its reply Respondent No. 5 – Haryana Shehri Vikas Pradhikaran (HSVP) has submitted that the primary issue raised in the application concerns the formulation of regulatory mechanisms for tree cutting in non-forest areas of Haryana which falls exclusively within the domain of the State Government, the Forest Department, and other competent

authorities and respondent no.5-HSVP cannot be held liable or made accountable for any grievance concerning tree felling or relocation in such areas.

12. With respect to the land in question, respondent no.5-HSVP has submitted that that acquisition was duly undertaken in accordance with the provisions of the Land Acquisition Act, 1894for a legitimate public purpose, namely the development of Commercial Sector-6, Rohtak, by initiating the process through notification dated 01.01.2002 issued under Section 4 followed by a declaration vide Notification dated 30.12.2002 under Section 6 of the Land Acquisition Act, 1894 covering 434.68 acres in Village Para and 128.75 acres in Village Rohtak. Pursuant to Government directions, a resurvey was conducted and, based on the findings, the Government released 25.36 acres from Village Para and 5.95 acres from Village Rohtak, totaling 31.31 acres, on account of the area being densely populated and unsuitable for acquisition. Notices under Section 9 of the Land Acquisition Act, 1894 were issued on 05.11.2004 and 08.11.2004, inviting claims from landowners. Upon due consideration of such claims on 24.11.2004, the Land Acquisition Officer passed Award Nos. 5 and 6 dated 29.12.2004, acquiring a total of 532.12 acres—comprising 409.32 acres in Village Para and 122.80 acres in Village Rohtak. Compensation was awarded based on prevailing market value, after taking into account relevant factors, including the recommendation of the Divisional Level Evaluation Committee chaired by the Commissioner, Rohtak Division. The applicant, having accepted the compensation amounting to ₹19,89,085/-, received the same vide Cheque No. 285871 dated 09.02.2005. Possession of the acquired land was handed over to the Estate Officer, HUDA (now HSVP), on 29.12.2004, except in those specific cases where dispossession was stayed by orders of the Hon’ble High Court. The entry evidencing such possession was duly recorded in the “Rapat Rojnamcha”. Additionally, land measuring 197.94 acres was released post-award, vide Director’s letter dated 03.11.2006, in view of the existence of houses, religious structures (samadhis), and other areas deemed unfit for planned development.

13. Respondent no.5-HSVP has further submitted that the legality and validity of the land acquisition has already been examined and upheld by the Hon’ble High Court of Punjab and Haryana in CWP No. 19846 of 2004, which was dismissed on merits. The SLP preferred thereagainst, bearing No. SLP (C) 8113 of 2011, was also dismissed by the Hon’ble Supreme Court. A subsequent writ petition raising similar grounds and reliefs has again been dismissed by the Hon’ble High Court vide order dated 06.05.2024, inter alia, on the ground of constructive res judicata and in view of the fact that the land forms an essential part of a duly approved layout plan for public development purposes. Respondent no.5 HSVP has also relied upon the decision in CWP No. 7064 of 2008 titled as Rajbir Singh vs. State of Haryana & Ors., wherein similar acquisition proceedings concerning the same land were upheld, and the judgment was affirmed by the Hon’ble Supreme Court in SLP (C) No. 25243 of 2023, dismissed vide order dated 01.12.2023. Respondent no.5 HSVP has alsosubmitted that representation dated 23.11.2023 made by the applicant, seeking release of certain land parcels

under the State Government policy dated 14.09.2018 on the ground of non-viability, was duly considered and rejected by the Zonal Administrator, HSVP, by a reasoned order dated 17.10.2023. Thereafter, the applicant has now approached this Tribunal raising environmental issues relating to tree cutting, which is a disguised attempt to reopen settled issues and delay the implementation of the development project.

14. Regarding the issue of cutting of trees, respondent no.5-HSVP has submitted that the Estate Officer, HSVP, Rohtak has taken steps to coordinate with the concerned authorities for the relocation or removal of trees from the site in question. However, vide letter dated 19.12.2023, the Forest Department declined jurisdiction over the subject land, and therefore refused to act. Subsequently, HSVP's Horticulture Division has been requested to take necessary action, following due procedure including evaluation and auction, as per applicable norms. Respondent no. 5-HSVP has brought to the attention of this Tribunal that the applicant and other erstwhile landowners have been engaging in unauthorized acts of plantation on the acquired land, amounting to illegal encroachment. A telephonic complaint dated 15.03.2024 was received from the President, Resident Welfare Association, Sector-6, Rohtak, regarding such plantation. Upon site inspection conducted on 13.03.2024, it was found that new trees had been planted by the applicant and other individuals with the apparent intention of obstructing development. Consequently, HSVP has written to the Deputy Superintendent of Police, Rohtak, seeking action against such acts of trespass and violation of court orders.

15. Respondent no.5 has submitted that a scheme was floated in 2012 and as per the scheme allotment letters were issued. As per the conditions of the allotment possession was to be delivered within 3 years but due to litigations pending before Hon'ble Punjab & Haryana High Court and Hon'ble Supreme Court possession could not be delivered. Any direction/stay in the present case will violate interest/right of the allottees.

16. In view of the above, respondent no.5-HSVP has prayed for dismissal of the petition with costs, contending that the same is devoid of merit, barred by the principles of res judicata, and an abuse of process intended solely to delay a lawfully sanctioned and judicially upheld development project undertaken for public benefit.

Common Reply dated 14.09.2024 filed by respondents no.7 to 13

17. Respondents No. 7 to 13 have filed a common reply, asserting their status as allottees of the land which is the subject matter of the present dispute. In their reply respondents no. 7 to 13 have submitted that the land, situated at Sector-6, Rohtak, Haryana, was duly acquired by the Government of Haryana for the Haryana Shehari Vikas Pradhikaran (HSVP) in accordance with the provisions of the Land Acquisition Act, 1894. Pursuant to the completion of acquisition proceedings and transfer of possession, HSVP demarcated plots on the land in sector-6, Urban Estate, Rohtak, Haryana and issued allotment letters in the year 2012 to

various individuals, including respondents no. 7 to 13. Consequently, the said allottees have acquired valid ownership rights. The land acquisition proceedings were repeatedly challenged by the erstwhile landowners, including the Applicant, before Hon'ble High Court of Punjab and Haryana and the Hon'ble Supreme Court of India which challenges were dismissed by the Hon'ble High Court of Punjab and Haryana and the Hon'ble Supreme Court of India. Respondents no.7 to 13 have submitted that the land acquisition proceedings have attained finality, having been upheld by the Hon'ble High Court as well as the Hon'ble Supreme Court and the land has lawfully vested in HSVP. Invoking the doctrine of res-judicata, the respondents no. 7 to 13 have asserted that the present matter, having already been adjudicated, cannot be reopened before this Tribunal and the present application is a malafide and misconceived attempt, amounting to an abuse of the process of law. Respondents no.7 to 13 have also brought to the attention of this Tribunal that, due to continued obstruction, they were constrained to file a separate writ petition bearing CWP No. 2835 of 2024 before the Hon'ble High Court, seeking possession of their allotted plots. The said writ petition was disposed of on the basis of an undertaking furnished by the State Government and HSVP, assuring completion of developmental works and delivery of possession within a stipulated time frame. Any relief granted to the applicant would not only run contrary to the said undertaking but would also seriously prejudice the vested rights of the respondents as lawful allottees and respondents no. 7 to 13 have prayed for dismissal of the original application.

18. Vide order dated 10.12.2024 respondent no.5 was directed to file additional affidavit of duly authorized officer as to the number of trees which are to be cut for development of Sector-6 and as to whether any trees are to be translocated and whether any trees are to be planted by respondent no. 5 in lieu of trees cut and if so what is the number thereof.

Additional Affidavit dated 20.01.2025 filed by Respondent No. 5 -Haryana Shehri Vikas Pradhikaran

19. In compliance thereof additional reply dated 20.01.2025 was filed by respondent no.5-HSVP providing the number of trees to be cut, the feasibility of translocation, and plans for compensatory afforestation in Sector-6, Rohtak. Respondent no.5 has submitted that a survey of the area for the development of Sector-6, Rohtak, has been conducted and the survey determined that a total of 968 trees are to be cut out of which 268 trees have been assessed as feasible for translocation to a suitable alternative site, such as a green belt or park. Respondent no.5 has also submitted a plan for compensatory afforestation, which is to be carried out in lieu of the trees to be cut. The afforestation will take place on a green belt of 15,625 square meters and other designated parks within Sector-6, as well as on a 512,897 square meter area within the Urban Estate, Rohtak. A total of 1,400 trees are planned to be planted as part of this initiative, in addition to the 4,000 trees already planted in the fiscal year 2024-25. The species to be planted include Neem, Shisham, Arjun, and others. A budget of ₹114.88 Lacs for the year 2024-25 has been allocated for tree planting measures and post-

plantation care. Respondent no.5 has further submitted that a joint survey by the officials of the Estate Office, HSVP, the Executive Engineer, Horticulture Division, and the Haryana Forest Development Corporation was hindered due to violent interruption by the applicant's brother and son and FIR no. 0243 dated 21.07.2024 was registered against them.Respondent no.5-HSVP has submitted that the applicant has deceitfully planted trees on the disputed land to obtain ownership and stop the development of Sector-6.

20. I.A. No. 301/2025 was filed by respondents no. 7 to 13 seeking permission to file copy of the application/letter dated 23.10.2023 filed by Rajbir Singh addressed to the Director, Town & Country Planning Haryana, Chandigarh, Senior Town Planner Rohtak, and District Town Planner, Rohtak and Order dated 03.04.2025 passed in CWP-5735 of 2025 by the Hon'ble High Court of Punjab and Haryana as Annexures A1 and A-2 which was allowed vide order dated 09.05.2025 and the above said documents were taken on record.The applicant filed I.A. No. 638/2024 for interim directions to the respondents to refrain from undertaking or permitting the cutting of trees until the final disposal of the present Original Application and to submit the detailed mechanism and a comprehensive action plan outlining the procedure and measures for the translocation of the trees identified for cutting. Since the prayers made in I.A. No. 638/2024 were covered in the original application, this Tribunal observed in order dated 10.12.2024 that the same did not require any separate orders and ordered that the same will be disposed of with the original application.

21. I.A. No. 291/2025 was filed by the applicant-Sukbir Singh for issuance of directions to respondents to maintain complete status quo in respect of the subject land and to refrain from taking any action which may lead to the felling of trees or altering the ecological character of the land as expressly observed by the Hon'ble Supreme Court in order dated 24.05.2010 titled as Pawan Kumar and others Vs. State of Haryana and others and not to hand over possession to the allottees in furtherance of the modified order of the Hon'ble Supreme Court until due verification is conducted regarding compliance with the status quo directions.

22. Arguments on the original application and I.A. No. 291/2025 were heard and judgment/order was reserved vide order dated 09.05.2025.

23. Thereafter, the original applicant-Sukhbir Singh filed I.A. No. 452/2025 for reopening of the present original application further hearing and adjudication in light of the subsequent facts and possible perjury committed by respondent no. 5 but learned Counsel for the original applicant-Sukhbir Singh made statement seeking dismissal of I.A. No. 452/2025 as withdrawn and I.A. No. 452/2025 was accordingly dismissed as withdrawn.

24. I.A. No. 453/2025 was filed by the original applicant-Sukhbir Singh for issuance of directions to respondents particularly respondent no. 5 and the District Administration to

maintain status quo and not to undertake any tree felling or any related activity on the land in question till further orders.

25. In the course of hearing Learned Counsel for the original applicant referred to order dated 20.04.2012 passed by Hon'ble Supreme Court of India in ***SLP (*Civil*) No. 14692 of 2010 titled Pawan Kumar and others vs. State of Haryana and others*** for maintaining of status quo and submitted that in violation thereof the Deputy Commissioner, Rohtak has, vide order dated 21.06.2025, directed SDO, HSVP for the purpose of counting of the trees despite the fact that as per affidavit filed by respondent no. 5 in the present case, 968 trees were identified for felling. Respondent no. 5 has asked Haryana Forest Development Corporation to expedite the process of execution of the agreement for cutting of trees. The Estate Officer, HSVP, Rohtak has issued letter dated 18.06.2025 for handing over physical possession of plots to the aggrieved allotees. The respondents may be directed to maintain status quo and not to undertake any tree felling or related activity on the land in question till further orders. In view of the stand of learned Counsel for the original applicant that order dated 24.05.2010 for maintaining of status quo has already been passed by the Hon'ble Supreme Court of India in **SLP (Civil) No(s). 14692/2010 titled as Pawan Kumar and others vs. State of Haryana and Others** this Tribunal considered it unnecessary to pass any separate order for maintenance of status quo as prayed for. Further this Tribunal considered that I.A. No. 453/2025 having similar prayer shall also abide by order to be passed by this Tribunal on the original application and I.A. No. 291/2025.

26. I.A. No. 551/2024 was filed by respondent no. 1 for waiver of costs and the same was rejected vide order dated 07.11.2024.

27. I.A. No. 450/2024was filed by respondents no. 7 to 13 for condonation of delay in filing of common reply on behalf of respondents no. 7 to 13 which stands impliedly allowed vide order dated 14.10.2024 whereby common reply was taken on record.

28. We have heard arguments addressed by Mr. Gaurav Kumar Bansal, Ms. Nandita Bansal, Ms. Chandrika Upadhyaya and Ms. Vishnu Kumar Gupta, learned Counsels for the Applicant and Ms. Bihu Sharma, learned Counsel for Respondent No.1; Mr. Rahul Khurana, learned Counsel for Respondents No. 2 to 4; Mr. Piyush Chandel, learned Counsel for Respondent No. 5 and Mr. D. Abhinav Rao and Mr. Raghav Berwani, learned Counsels for Respondents No. 7 to 13.

Contentions of learned Counsels for the Parties

29. Learned Counsels for the applicant -Sukhbir Singh have argued thatthe Applicant made complaints tothe Forest Department regarding acts/threatened acts of illegal cutting of trees from the land in question but theForest Department, vide letter dated 19.12.2023,

refused to take any action on the ground of the land in question being out of its jurisdiction on which the Applicant has, within the prescribed period of limitation of six months, filed the present original application which involves environmental issues distinct from the settled land acquisition dispute and adjudication thereof is not barred by the principle of res judicata.

30. Learned Counsels for the Applicant have further argued that a "regulatory vacuum" exists regarding mechanism for protection of trees in "non-forestof areas" of Haryana and absence thereof in comparison to statutory framework for protection of trees in notified forest areas being discriminatory violates constitutional right to equality under Article 14 and also right to clean environment under Article 21 of the Constitution of India.

31. Learned Counsels for the applicant have also invoked the Public Trust Doctrine and argued that the State of Haryana, as a trustee, has an imperative duty to protect natural resources including trees standing in non-forest areas in the interest and for the welfare of public and its failure to create a comprehensive regulatory framework for protection of trees in non-forest area is a breach of this duty.

32. Learned Counsels for the Applicant have further argued that the Deputy Commissioner, Rohtak has, vide order dated 21.06.2025, directed SDO, HSVP for the purpose of counting of the trees despite the fact that as per affidavit filed by respondent no. 5 in the present case, 968 trees were identified for felling. Respondent no. 5 has asked Haryana Forest Development Corporation to expedite the process of execution of the agreement for cutting of trees. The Estate Officer, HSVP, Rohtak has issued letter dated 18.06.2025 for handing over physical possession of plots to the aggrieved allotees.

33. Learned Counsels for the Applicant have referred to order dated 20.04.2012 passed by Hon’ble Supreme Court of India in SLP (Civil) No. 14692 of 2010 titled Pawan Kumar and others vs. State of Haryana and others for maintaining of status quo and accordingly prayed that the original application may be allowed and directions as prayed for may be issued and the respondents may also be directed to maintain status quo and not to undertake any tree felling or related activity on the land in question at least till passing of further orders by Hon’ble Supreme Court.

34. On the otherhand, Learned Counsels for Respondents No. 2 to 5 have argued that land in question was acquired vide notification dated 01.01.2002 issued under section 4 and notification dated 30.12.2002 issued under section 6 of the Land Acquisition Act, 1894 at the public expenses for a public purpose namely for the development and utilisation of land as Residential and Commercial in Sector-6 Rohtak, Haryana. Compensation for the acquisition of the total land measuring 532.12 acres i.e. 409.32 acres of Village Para and land measuring 122.80 acre of village Rohtak was announced vide awards No. 5 and 6 dated 29.12.2004. Possession was handed over to Estate Officer, HUDA on 29.12.2004 except in those cases in

which stay had been granted by Hon’ble Punjab and Haryana High Court. The applicant was paid amount of Rs. 19,89,085/- as compensation towards the acquisition vide cheque no. 285871 dated 09-02-2005. The applicant and his co-sharer namely Rajbir Singh filed writ petitions before the Hon'ble Punjab and Haryana High Court for release of land which were dismissed. Special Leave Petitions filed before Hon’ble Supreme Court of India were also dismissed. The applicant made representation dated 23.11.2023 before the Zonal Committee, Urban Estate Haryana, Panchkula for seeking release of his land which was dismissed. Based on acquisition, HSVP offered and allotted plots in 2012 to various individuals, including the impleaded respondents no.6 to 13. The allottees-Mulakh Raj Chawla and others filed writ petition before Hon’ble Punjab and Haryana High Court for directing the respondents to deliver actual physical possession of the plots/sites allotted to them which was disposed of in view of statement made by learned Counsel for the respondents (HSVP and others) that the authorities have decided to complete all the development work at site whereafter possession of the plots/size would be handed over to the petitioners/allottees at the earliest provided the pending dues if any are cleared. The Respondents are taking requisite action in compliance of orders passed by Hon’ble Punjab and Haryana High Court and 968 trees will be cut out of which 268 trees will be translocated and with requisite compensatory afforestation of 1400treesin lieu thereof, besides trees already planted in accordance with the environmental norms as mentioned in the replies filed before this Tribunal.

35. Learned Counsels for Respondents No. 2 to 5 have further argued that Respondents No.2 to 4 have rebutted the applicant's claim of a "regulatory vacuum" by providing a detailed list of existing legal and policy instruments for tree protection in non-forest areas and referred to the legal frameworks such as the Punjab Land Preservation Act, 1900, the Haryana Municipal Corporation Act, 1994, as well as specific schemes including the Pran Vayu DevtaScheme, which offers a pension for trees over 75 years old, and the Van Mitra Scheme, which provides incentives for public tree planting.

36. Learned Counsels for Respondents No. 1 to 5 have submitted that legal and policy framework is sufficient for protection of trees in non-forest areas and no directions are required to be issued for laying down regulatory framework for protection of trees in non-forest areas and have accordingly prayed that the original application may be dismissed.

37. Learned Counsels for Respondents no. 7 to 13 have argued that the applicant's title and right to possession over the land in question have been repeatedly and conclusively settled against him by Hon’ble Punjab and Haryana High Court and Hon’ble Supreme Court. The Applicant having lost said round of litigation has filed the present original application to stall the development resulting in denial of legitimate rights of Respondents no. 7 to 13 and also negation of order passed by Hon’ble Punjab and Haryana High Court in their favour. The original application and interlocutory applications filed by the applicant are abuse of process and also barred by the principle of res judicata. The applicant accepted compensation for his

land in 2005 and the revenue records produced by the applicant himself showed that the land's possession was taken over by the State of Haryana which vested in HSVP free from all encumbrances. The environmental issues raised by the applicant are merely a camouflage/pretext to re-litigate the land acquisition matter which has attained finality.

38. Learned Counsels for Respondents No.7 to 13 have accordingly prayed that the original application may be dismissed with exemplary costs.

39. A brief resume of the factual background, litigative history, orders passed by Hon'ble Punjab and Haryana High Court and Hon'ble Supreme Court, nature and genesis of the environmental issues highlighted, statutory and policy framework, magnitude and effect of problem of unregulated and unscientific felling of trees and urgency for evolving appropriate mechanism and methodologies for valuation and protection of trees in non-forest areas is fundamental to comprehending of the arguments presented in this case.

40. The facts which are conclusively established by the pleadings of the parties and are not disputed by the parties or are not rebutted by any evidence to the contrary may be summarised.

41. Notification no. LAC (F)- NTLA/2002/72 dated 01.01.2002 wasissuedunder section 4 of the Land Acquisition Act, 1894 for acquisition of land measuring 632.28 acres of village Para and 186.79 of village Rohtak Tehsil and District Rohtak at the public expenses for a public purpose namely for the development and utilisation of land as Residential and Commercial in Sector-6 Rohtak situated at revenue estate Rohtak, Haryana.

42. The land owners were given an opportunity to file objections Under section 5-A of the Land Acquisition Act, 1894. The applicant filed objections and he was given due opportunity of being heard. Report was sent to the Government and after considering the matter andreport of Land Acquisition Collector, it was decided to acquire the land of the applicant.

43. Land measuring 255.64 acres of village Para and Rohtak was left out from the acquisition U/s 5A of the Land Acquisition Act, 1894 because of the constructed area and notificationno. LAC(F)-NTLA/2002/128 dated 30.12.2002 was issued under section 6 of the Land AcquisitionAct, 1894 in respect of land measuring 434.68 acres area of Village Para and 128.75 acres area of Village Rohtak.

44. As per the directions of the Government, resurvey of the area was conducted and the report was sent to the Government. The Government again decided to release the total area of 25.36 acres of village Paraand 5.95 acres of village Rohtak (Total 31.31 acres) because of blocks of thickly populated area.

45. Notices U/s 9 of the Land Acquisition Act, 1984 were issued on 05.11.2004 and 08.11.2004 to the land owners for their claims. After considering the individual claims on 24.11.2004, compensation for the acquisition of the total land measuring 532.12 acres i.e. 409.32 acres of Village Paraand land measuring 122.80 acre of village Rohtak was announced vide award No. 5 & 6 dated 29.12.2004. The land owners were awarded fair and adequate compensation as per prevailing market price and considering at length all the relevant factors, situations and location of the acquired land further on the recommendation of the Divisional level Evaluation Committee headed by the Commissioner of Rohtak Division Rohtak in lieu of their land.

46. Possession was handed over to Estate Officer, HUDA on 29.12.2004 except in those cases in which stay had been granted by Hon'ble Punjab and Haryana High Court.

47. Land measuring 197.94 acres was released after award vide Director's letter dated 03.11.2006 because of deserving houses, blocks of thickly populated area, samadhis, pocket which could not be gainfully utilized by HUDA and with Structures also.

48. The applicant was paid amount of Rs. 1989085/- as compensation towards the acquisition vide cheque no.285871dated 09.02.2005.

49. Despite the receiving of the compensation of acquisition, the applicant and his co-sharer namely Rajbir Singh approached the Hon'ble Punjab and Haryana High Court for release of land by filing writ petitions.

50. The applicant filed CWP No. 19846/2004 which was dismissed by the Hon'ble Punjab and Haryana High Court vide order dated 06.10.2010.

51. The Applicant filed Special Leave Petition (Civil) No. 8113 of 2011 against Judgment and order dated 06.10.2010 passed by Hon'ble Punjab and Haryana High Court in CWP No. 19846/2004 which was dismissed by Hon'ble Supreme Court of India vide order dated 04.04.2011.

52. The applicant filed CWP No. 20329 of 2011 titled Sukhbir Singh Vs State of Haryana and his co-sharer filed CWP No. 7064/2008 titled Rajbir Singh Vs State of Haryana.CWP No. 20329/2011 filed by the applicant-Sukhbir Singh was dismissed by the Hon'ble Punjab and Haryana High Court vide order dated 06.05.2024 (copy at pages no. 137 to 141/ 178 to 182 of the paper book). CWP No. 7064 of 2008 filed by co-sharer-Rajbir Singh was dismissed by Hon'ble Punjab and Haryana High Court vide order dated 21.09.2023 (copy at pages no. 132 to 136/ 183 to 187 of the paper book).

53. Co-sharer Rajbir Singh filed Special Leave Petition (Civil) No. 25243 of 2023 titled Rajbir Singh Vs. The State of Haryana and another before Hon'ble Supreme Court of India against Judgment and order dated 21.09.2023 passed by Hon'ble Punjab and Haryana High Court in CWP No. 7064 of 2008 which was dismissed by Hon'ble Supreme Court of India vide order dated 01.12.2023 (copy at pages no. 188 and 189 of the paper book).

54. The applicant made representation dated 23.11.2023 before the zonal committee, Urban Estate Haryana, at Panchkula for seeking release of his land falling in Khasra/ Killa No. 41/ 7/ 2 (3-8), 8 (8-0), 13(8-0), 18(8-0) measuring 27 K -8Mby resorting to the policy of the State Government dated 14.09.2018, on the ground that the HSVP cannot utilise the Land in question as it has become non essential / unviable. The Zonal Administrator, HSVP - Additional Director, Urban Estate, Rohtak dismissed the representation vide order dated 17.10.2023 (copy at pages no. 202 and 207of the paper book).

55. In 2012 HSVP offered and allotted plots to various individuals, including the impleaded respondents no.6 to 13 namely Ms. Sonia and S/Sh. Devender Kumar, Daya Chand, Satbir Singh, Har Kishan Dalal, Tarun and Rupender Goyal and Sachin Gahlawat (copies of allotments letters of respondents no. 7 to 13 being Annexures A1 to A7 at pages no. 110 to 131 of the paper book).

56. The allottees-Mulakh Raj Chawla and others filed CWP No. 2835 of 2024 titled Mulakh Raj Chawla and others Vs. Haryana Shehri Vikas Pradhikaranand others before Hon'ble Punjab and Haryana High Court for directing the respondents to deliver actual physical possession of the plots/sites allotted to them. Statement was made by learned Counsel for the respondents (HSVP and others) that the authorities have decided to complete all the development work at site whereafter possession of the plots/size would be handed over to the petitioners/allottees at the earliest provided the pending dues if any are cleared. Learned Counsel for the petitioners made statement that nothing survived in the petition in view of the statement made by learned Counsel for the respondents. The above said writ petition was disposed of by Hon'ble Punjab and Haryana High Court vide order dated 08.02.2024 (copy at pages no. 144 and 145 of the paper book) in terms of the statements made by learned Counsel for the parties.

57. It emerges from the material on record and the undisputed facts and circumstances of the case including the applicant's acceptance of compensation and the history of litigationthat the applicant's challenge to acquisition of land in question was conclusively rejected in terms of orders passed by Hon'ble Punjab and Haryana High Court and Hon'ble Supreme Court and in view thereof the applicant must be held to have ceased to be and respondent no. 5-HSVP must be held to have become owner of the land in question. This Tribunal cannot overstep its jurisdiction to interfere with matters legally settled by other/higher courts and cannot and is

not required to go into the settled questions of facts and law adjudication of which will also be barred by the principle of res judicata.

58. The applicant has claimed in the present original application that the applicant is in possession of the land in question and had planted thousands of trees over the years on the above said land converting the land in question as forest patch which is having avian species, butterflies, reptile species and native plant species numbering 1475. On or around 20.10.2023 respondent no. 5-HSVP tried to cut the trees of forest patch developed by the applicant. Some miscreants uprooted fully grownup trees standing on the forest patch developed by the applicant. The applicant made complaints to the Department of Environment and Forest which refused to take any action on the ground of the area being out of its jurisdiction.

59. Based upon the Forest Department's letter dated19.12.2023 refusing action the applicant has raised the present environmental issues, distinct from the settled land dispute, regarding vacuum ofany regulatory mechanism for protection of trees in non-forest areas.

60. On its surface, the dispute concerns the alleged illegal felling of trees on a 7.5-acre parcel of land in Rohtak, Haryana but the underlying policy issue raised by the applicant as to "the lack of a comprehensive and unified regulatory framework for trees in "non-forest areas" extends beyond the specifics of the dispute encompassing the need to identify, analyze, and propose solutions for the systemic environmental and jurisdictional challenges thereby highlighted. The interplay between the private land dispute and the public environmental claim connects the local issue to broader State policy reforms highlighting urgent need for consolidation of existing fragmented regulations and development of a comprehensive and accessible policy for protection of trees in non-forest areas in alignment with the national guidelines.

61. It may be observed here that the Applicant has not made any averment regarding absence/vacuum or inadequacy of regulatory framework for protection of trees in notified forest areas and the applicant has claimed absence/vacuum or inadequacy of regulatory framework for protection of trees only in non-forest areas.

62. The applicant's assertion of a "regulatory vacuum" for protection of trees in non-forest areas is controverted by respondents no. 2 to 4 in terms of reply dated 03.10.2024. In their reply respondents no. 2 to4 have submitted that State of Haryana has four main geographical features as mentioned below: -

(i) The Yamuna-Ghaggar plain forming the largest part of the state is also called Delhi doab consists of Sutlej-Ghaggar doab), Ghaggar-Hakra doab and Hakra-Yamuna doab.
(ii) The Lower Shivalik Hills to the northeast in foothills of Himalaya.

(iii) The Bagar region semi-desert dry sandy plain in north west of Haryana, covering northwest districts of Sirsa, western Fatehabad and north-western Hisar.

(iv) The Aravali Range's northernmost low rise isolated non-continuous outcrops in the south, covering the Nuh district.

Each geographic zone has its own typical features and importance. The Shivalik Zone is prone to water erosion and the southern and western zones are prone to wind erosion. Central Yamuna-Ghaggar Plains with fertile soil are important for agricultural production.

63. In their reply respondents no. 2 to 4 have submitted that State authorities had been very particular about the conservation of natural resources and the environment in the State and various Acts/Regulations and schemes have been launched by the State Government for protection, conservation of trees and promotion of tree plantation in non-forest areas as mentioned below: -

a) Notification land along National Highways, Road, Canals, Railway lines, Bunds as Protected Forest: Area along major roads, highways, canals, bunds, Railway lines has been notified as protected forest and provisions of Indian Forest Act, 1927 and Forest Conservation Act, 1980 are attracted on these areas. Large tracts of greenery have been developed in the State in these areas. In other States, these areas are non-forest areas.

b) Section 4 of Punjab Land Preservation Act, 1900 (PLPA) —Restricting cutting of trees in notified areas with the permission of Forest Department even from privately own areas.

c)Pran Vayu Devta Scheme — Pension of Rs. 2500/- to tree owners per year for trees of more than 75 years so that the trees can be saved and the ecological services may be provided by these trees till physical rotation.

d)Van Mitra Scheme: Incentives to people on account of planting and maintenance of trees for promotion of tree planting by public.

e) **Plantation Schemes of Forest Department for non-forest areas:**

- Creation of Village Woodlots
- Plantation on Institutional land
- Farm Forestry
- Greenbelts in Urban Areas
- VWL Tall Plantation on Bani Rejuvenation
- Plantation on Shiv Dham (Shamshan Ghats)
- Plantation around village Ponds

- Plantation on Amrit Van (Establishment of Amrit Vans on non-forest lands)

64. In their reply respondents no. 2 to 4 have further submitted (i) that considering the problem of soil erosion in Shivalik Zone, Aravallis and Western Sandy Zones, some erosion prone areas were notified by notifications dated 28.11.1997 and 19.12.2012 under Sections 3 and 4 of the Punjab Land Preservation Act,1900 in which there is restriction on cutting of trees or timber except eucalyptus and poplar or the collection or removed or subjection to any manufacturing process of any forest produce other than flower, fruit and honey, save for bonafide domestic or agricultural purposes or for purpose of the right holders in the land, provided that the owners of the land may sell trees or timber after obtaining a permit to do so from the Divisional Forest Officer, of the concerned division, such permit will prescribe such conditions for sale as may from time to time appear necessary in the interest of forest conservancy. In notified area of Panchkula District, Ambala District and Yamuna Nagar District of the State of Haryana, specified in the schedule, Khair trees (Acacia catechu) shall be purchased solely by Haryana Forest Development Corporation limited at the prices fixed by the Board of Directors of the Haryana Forest Development Corporation Limited.

(ii) That Haryana being premier in the field of agroforestry, some species suitable for agroforestry viz. Eucalyptus. Poplar, Ailanthus, Bakayan, Amrood, Bans (Bamboo), Sahtoot have been exempted vide notification dated 04.01.2013 even in areas notified under Section 4 of PLPA for promotion of agroforestry and increasing income of farmers.

(iii) That after passing of order dated 01.07.2022 in OA No.374/2022, Office order dated 27.08.2023 has been passed by the Development and Panchayat Department, Haryana to regulate cutting of trees in non-forest areas owned by Gram Panchayats.

(iv) That there are various provisions in the Haryana Municipal Act 1994 (sections 43, 161, 267, 309 and 315) regrading plantation of trees for areas falling in municipal limits.

(v) That State Government through Forest & Wildlife Department has launched a unique first of its kind scheme namely **Pran Vayu Devta Tree Scheme** vide order dated 02.05.2023 for conservation of trees of more than 75 years of age.

(vi) That the State Government through Forest & Wildlife Department has also launched **Van Mitra Scheme** for providing incentives in the form of honorarium to people on account of planting and maintenance of trees.

(vii) That the State of Haryana through its Forest &Wildlife Department is implementing various plantation schemes with targets and budget for the Year 2024-25 for non-forest areas**:-**

a. Creation of Village Woodlots
b. Plantation on Institutional land
c. Farm Forestry
d. Greenbelts in Urban Areas
e. VWL Tall Plantation on Bani Rejuvenation
f. Plantation on Shiv Dham (Shamshan Ghats)
g. Plantation around village Ponds
h. Plantation on Amrit Van (Establishment of Amrit Vans on non-forest lands)

(viii) That the Central Government and State Governments are emphasising more on promotion of planting and conservation of trees in non-forest areas so that import of timber is minimised and the tree growers can get income also from tree cultivation. **Regulations in terms of acts to get permission for cutting of trees also discourage general public for planting trees as they think that they will have to run after government authorities when there will be requirement of cutting the planting trees.** Ministry of Environment, Forest & Climate Change, GoI has launched single Transit Pass scheme for transport of forest produce within the country. Even transit permit is not required in the State for transport of timber in the State for promotion of agroforestry and tree cultivation in non-forest areas. **On the other hand, the grant of permission for trees cutting also leads to delay in process and corruption in government offices if implemented throughout the State.** Restrictions for tree cutting have been imposed in ecological sensitive and erosion prone areas.

(ix) That the State also organised Stakeholders' Consultation on Tree Outside Forests (TOF) Species on Deregulation in Haryana: Current Status, Challenges, and Technology-Based Solutions under Trees Outside Forests in India (TOFI) Program on 20.04.2023 at Panchkula, Haryana. Key findings and recommendations of the workshop have been mentioned in the reply and the relevant part is reproduced as under: -

- *The forest and tree cover in the state has remained around 7 percent over the last 20 years, with the tree cover outside forests at approximately 3.5 percent. To increase ToF, it is essential to implement suitable policy measures and regulations that promote tree plantation on farmers' fields, panchayat lands, institutional lands, waste lands, and other suitable areas.*
- *There's a need to frame people-friendly policies/regulations to promote tree cultivation under agroforestry. Prohibitory regulations may be formulated for trees of ecological importance.*
- *The existing exemption of seven species viz. Ailanthus, Bakain, Eucalyptus, Poplar, Shehtoot, Bamboo, Amrood and bamboo, that are exempted for felling in areas notified under general Section 4 of PLPA 1900 is sufficient for agroforestry models. However, orchards of unproductive fruit trees that*

the farmers wish to replace with high density and high yielding varieties, should be included in the exemption.

- *Trees in urban areas, where the land has been acquired by government authorities for residential development, should be exempted from tree felling regulations. The plot owners should be allowed to cut the tree in their plots without requiring permission in urban sectors.*
- *The tree produce from agricultural fields should be recognized as agri-produce, and suitable regulations should be formulated by concerned government authorities. In addition to Eucalyptus and Poplar being in the list of agriculture produce under Haryana Agriculture Produce Marketing Act., species like Melia and Ailanthus may be considered for inclusion in the list of agriculture produce.*
- ***There is a need to frame a policy throughout the state to conserve indigenous trees of ecological significance such as Peepal, Bargard, Gulhar, Pilkhan, Khejari, Barna, Krishan Kadam, Jaal, Rohida etc. This policy should extend to areas that are not notified under general Section 4 of PLPA 1900. In-line with the order passed by the Hon'ble National Green Tribunal in July 2022 in this regard, a list of trees species is recommended to be prepared in consultation with stakeholders and botanists.***
- *The Haryana state government has already proposed a scheme called Pran Vayu Devta, which provides pension to tree owners for conservation of trees of over 75 years of age.*
- *Schemes may be introduced for the conservation of Khejari and other indigenous trees on farmers' fields in south and west Haryana, incorporating Payment of Ecological/Environmental Services (PES) to discourage tree felling by farmers.*
- *Establishing a consortium of tree growers and wood-based industries is recommended to streamline the demand and supply of raw material and ensure sustainability of industries in Yamunanagar. This will help tree growers in fetching suitable prices on a sustainable basis.*
- *Eucalyptus and Poplar have the major contribution under agroforestry. To ensure diversity, other species such as Melia, Ailanthus, etc. must be promoted amongst tree growers, coupled with suitable incentives.*
- *CIFOR-ICRAF is in the process of developing a mobile app for tree growers to record the trees grown on their lands along with identifying the carbon sequestration potential. The database will be valuable for assessing the raw material availability and sustainability of the wood-based industry.*

While annexing the proceedings of the workshop the respondents no. 2 to 4 have submitted that the recommendations of the Stakeholders workshop are under discussion and a suitable decision will be taken on framing a policy throughout the State to conserve indigenous trees of ecological significance such as Peepal, Bargad, Gulhar, Pilkhan, Khejari, Barna, Krishan Kadam, Jaal, Rohida etc. by way of regulatory mechanism as exists in areas notified under Section 4 of Punjab Land Preservation Act, 1900.

65. In their reply respondents no. 2 to 4 have also submitted that the State of Haryana has various regulations and schemes for protection and conservation of trees as mentioned above and there are restrictions on tree cutting as tree cutting can be done with the permission of Forest Department in ecologically sensitive and erosion prone areas of about 10 districts and in other districts, there are regulations regarding tree cutting on lands owned by Gram Panchayats.The Central Haryana districts are part of Yamuna-Ghaggar Plains and are the main districts for agricultural production due to fertile soils. There are schemes for conservation and promotion of tree planting in these districts and there is no restriction on tree cutting in these districts at present as these areas are zones of agroforestry andif permissions for tree cutting is imposed, it will discourage tree growers from tree cultivation.

66. In their reply respondents no. 2 to 4 have also mentioned that while designing sectors, HSVP has earmarked some areas as green in sectoral plans which can only be kept green areas as shown by map of Sector – 3, Rohtak andif any violation is done by HSVP for diversion of these green patches for other purposes, the same will be considered as violation of master plan of particular sector.

67. Respondents no. 2 to 4 have also submitted in the reply that Government authorities proceed for tree cutting only where there is requirement for development of some project otherwise all governments encourage tree planting on their land and targets are allotted by the Government for plantation every year. Copy of targets allotted during the current year 2024-25 to different departments in Rohtak District has been annexed with the reply.

68. This Tribunal had by **order dated 01.07.2022 passed on I.A. No. 162/2022 filed by the Kurukshetra Development Board in O.A. No. 374/2022 titled Green Earth Vs. Deputy Commissioner, Kurukshetra and others** held **the State of Haryana to be bound by public trust doctrine to lay down appropriate mechanism for protection of trees** and directed the Chief Secretary, Haryana to look into the matter and if no regulation existed to lay down regulatory mechanism within a month. The relevant part of the order reads as under:-

> *"7. We have heard learned Counsel for the parties. Main contention raised on behalf of the applicant is that proposed cutting of full-grown trees*

ignores the environmental concerns and no approval has been granted by any authority for the same.

8. Stand of the respondents is that cutting of trees is required for executing a project meant for facilities for pilgrims and tourists. It is, however, submitted that ten times of the trees, proposed to be cut, will be planted as compensatory afforestation.

9. It is undisputed that no permission has been granted for cutting of trees by any competent authority. Learned Counsel for the respondents submitted that there is no regulatory mechanism in Haryana on the pattern of Delhi Tree Preservation Act, 1994 and thus, no permission for cutting trees outside forest area is required.

10. We have considered the rival submissions. Having regard to environmental significance of trees, it is difficult to accept that trees should be allowed to be cut without any regulation or approval. If there is no regulatory mechanism, the State is bound by public trust doctrine to lay down an appropriate regulatory mechanism on the subject. Environmental concerns may be addressed as per laid down mechanism.

11. Accordingly, we direct that the Chief Secretary, Haryana to look into the matter and if no regulation exists, the same be laid down within a month. Regulatory mechanism be complied before cutting the trees in question. An action taken report may be filed with the Registrar General, NGT by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF by 09.09.2022. If found necessary, the RG may place the matter before the Bench for any further direction.

Subject to above, the IA and the main application stand disposed of"

69. In compliance of order dated 01.07.2022 Additional Chief Secretary, Development and Panchayat Departments Government of Haryana issued order dated 27.08.2023 the relevant part of which is reproduced below: -

"Development and Panchayats Department Haryana

Order

Development of Social Forestry is one of the duties of a Gram Panchayat as provided in Section 21(V) of the Haryana Panchayati Raj Act, 1994. Gram Panchayats are required to promote and develop social forestry within their

jurisdiction. To regulate the cutting of trees on private land in such areas, it has been decided by State Government that the Gram Panchayat may allow cutting of trees on private land only in the manner prescribed hereinafter.

The applicant may submit an application to the Gram Panchayat or Gram Sachiv for cutting of tree. The Sarpanch shall immediately get the preliminary inspection done. In case the proposal is not found to be justified, the same is to be rejected at this level itself and if it is found to be a fit case or if it falls within the categories of trees detailed below, it shall be considered and decided by the Gram Panchayat. The Gram Panchayat shall be competent to approve the cutting of such tree. The entire process shall be completed within 10 days: -

a. Diseased (name of disease and extent) Tree.
b. Dead dry Tree.
c. Road blockage and constitutes obstruction to traffic.
d. Leaning and posing danger to life or property.
e. Over mature (if estimated age is beyond tree rotation period).
f. Critical root zone is covered with concrete (root asphyxiation).
g. Hollowness in tree.
h. Lacks mechanical strength.
i. Decay in the main trunk due to fungi.
j. Termite infestation in tree.
k. Silvi-culturally mature tree.
l. Uneven canopy weights.
m. Suitable for transplantation.
n. Threatens life or property or effects public safety.

In case the tree does not fall in any of the above mentioned categories, the Gram Panchayat will have to seek the opinion of the Biodiversity Management Committee (BMC) constituted at the Panchayat level on the ecological value of the tree before allowing its cutting. It required a Joint Inspection can be done by the Gram Panchayat and the BMC. On the basis of Joint Inspection Report, the Gram Panchayat shall consider and may allow the request of the applicant for cutting of tree subject to the conditions that the person on whose land the tree stands, shall commit to plant at least 3 trees of the indigenous species/variety and also protect and ensure their conservation for at least 3 years. In case the request of the applicant is rejected by the Gram Panchayat, the applicant may approach the BDPO concerned.

Permission for felling of trees within the jurisdiction of the Forest Department shall be given exclusively by the Forest Department only."

70. It may be observed here that the above order does not apply to forest areas and the same makes it clear that permission for felling of trees within the jurisdiction of the Forest Department shall be given exclusively by the Forest Department only.

71. It may also be observed here that the above quoted order applies only to cutting of trees on private land in rural areas falling within jurisdiction of Gram Panchayats and does not apply to non-forest land falling in urban areas within jurisdiction of urban local bodies.

72. So far ascutting of trees on private land in rural areas falling within jurisdiction of Gram Panchayats is concerned, the above order prescribes the procedure for grant of permission for cutting of trees by the Gram Panchayat and also lays down the condition of compensatory plantation of at least three trees of indigenous species/variety in lieu of one tree cut and also protecting and ensuring conservation of the same for at least three years. However, the above order does not confer any power, does not prescribe any procedure and does not provide for imposition, realisation and utilization of any penalty/environmental compensation and ordering compensatory plantation of trees in cases of illegal cutting of trees without obtaining permission from the Gram Panchayat.

73. Even though reply filed by respondents no. 2 to 4, which lists a variety of existing laws and schemes, appears to contradict the claim of the applicant regarding vacuum for protection of trees in non-forest areas but we find the regulation of tree protection in non-forest areas by multiple laws and schemes administered by different departments (Forest, Panchayat, Municipal) to be materially deficient as the same does not confer any power, does not prescribe any procedure and does not provide for imposition, realisation and utilization of any penalty/environmental compensation and ordering compensatory plantation of trees in cases of illegal cutting of trees without obtaining permission from the concerned authority and has also resulted in lack of clarity and accountability, jurisdictional confusions and contradictions and a non-cohesive policy governing the environmental issues involved.

74. The stand of respondent no. 1-MoEF&CC in the present case is that the role of the MoEF&CC is to frame policy, provide directions and guidance in an advisory capacity, as well as to provide necessary approvals under the provisions of the relevant Central Acts so far as the protection and conservation of forest, wildlife and other environmental resources are concernedand that due to ‘land’ being State subject the protection and management of trees in non-forest areas is primarily the responsibility of State Governments/Union Territory Administrations.

75. In the present case respondent no. 1-MoEF&CC has referred to order dated 25.03.2021 passed in SLP (Civil) No. 25047/2018 titled Association for Protection of Democratic rights and another Vs. The State of West Bengal and others by Hon’ble Supreme

Court whereby Expert Committee was constituted with direction to discuss and recommend on the following points: -

> *(a) Develop a set of scientific and policy guidelines that shall govern decision making with respect to cutting of trees for developmental projects.*
> *(b) These guidelines may specify the species of trees in categories based upon their environmental values considering the age and girth of the trees etc.*
> *(c) The guidelines may provide special treatment for geographical area or eco-sensitive area, they may identify areas which need to be regulated and even identify a minimum threshold beyond which the guidelines will apply.*
> *(d) The guidelines shall prescribe a mechanism for assessment of both intrinsic and instrumental value of the trees, based not only on the value of timber, but also the ecosystem services rendered by the trees and its special relevance, if any, to the habitat of other living organisms, soil, flowing and underground water.*
> *(e) The guidelines shall also mandate rules regarding alternate routes/sites for roads/projects, and possibilities for using alternate modes of transport like railways or water-ways.*
> *(f) The guidelines shall also prescribe the mode of compensation financial and otherwise, the stage of depositing such compensation and the process that governs the computation and recovery. In this regard, the committee may consider the existing regulatory framework regarding calculation of Net Present Value (NPV) and may suggest necessary modification.*
> *(g) In addition, the guidelines shall also specify the manner and mechanism of compensatory afforestation to be carried out using the deposited compensation, consistent with the native ecosystem, habitat and species.*
> *(h) The Committee may consider the need for any permanent expert body and its proposed structural form.*
> *(i) Any other issue incidental to the aforesaid objectives.*

76. The aforesaid Expert Committee submitted its Report titled "Compensatory Conservation in India, An Analysis of the Science, Policy and Practice." (copy at pages no. 371 to 553 of the paper book) to the Hon'ble Supreme Court of India on 05.01.2022.

77. Hon'ble Supreme Court of India, vide its order dated 08.02.2023 (copy at pages no. 554 to 587 of the paper book), directed the Central Government to hold joint meeting with all the stake holders including the representatives of all the State Governments/Union Territories and come out with a unified proposal for consideration of Hon’ble Supreme Court.Respondent no. 1-MoEF & CC after consulting all States/UTs and other line Ministries submitted its detailed response on the recommendations of the Expert Committee vide its

affidavit dated 08.02.2024 (copy at pages no. 588 to 771 of the paper book).However, no specific response has been given by respondent no. 1-MoEF & CC and respondent no. 1-MoEF & CC has submitted that appropriate directions may be given by this Tribunal.

78. This Tribunal was established as a specialized, quasi-judicial body with the mandate to provide for "effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources". Unlike conventional civil courts, this Tribunal possesses a broad and proactive role in environmental governance. It has the authority to take cognizance of environmental violations based on citizen letters or even news reports, allowing it to move beyond individual disputes to address systemic issues that affect the wider public interest. This unique position as both an adjudicator and a policy architect places this Tribunal at the forefront of environmental jurisprudence in India. However, the ultimate object and also impact of the working of this Tribunal lies not in its ability to resolve every individual dispute but in its capacity to transform legal grievances into systemic reforms. Reference in this regard may be made to the observations made by **Hon'ble Supreme Court in its Judgment in Municipal Corporation of Greater Mumbai V/s. Ankita Sinha and others 2021 SSC Online SC 897**.

79. The underlying environmental issues raise a legitimate concern that affects the public at large. This Tribunal has the power to issue broader, policy-oriented directives, as it has done in other landmark cases, to address the environmental issues raised, particularly so as the right to a clean and healthy environment, as enshrined in Article 21, has to be protected through effective, integrated, and proactive policies and remedial measures.

80. As mentioned in "Guidelines for Liberalizing Felling and Transit Regime for Tree Species Grown on Non-Forest/Private Land" issued by MoEF & CC on 16.11.2014, there has been a long felt need to create enabling environment for massive tree plantation outside the natural forests as is also envisaged in the National Forest Policy, 1988 for achieving the national goal of 33% of geographical area of the country under forest or tree cover and also for meeting the growing demands of wood and non wood products including fuelwood, fodder, food and renewable bio-resources in view of the increasing population and developmental needs of the country. MoEF & CC had issued guidelines dated 15.12.2004 on 'Felling and Transit Regulations for Tree Species Grown on Non-Forest Private Lands'. In view of the difficulties faced by the people in disposing trees grown on their lands MoEF & CC constituted a Committee to study the current regulatory regime regarding felling and transit rules and norms for trees species grown on non-forest as well as private lands in June, 2011. National Agroforestry Policy, 2014 was promulgated by the Ministry of Agriculture, Government of India in February, 2014, which also called for supportive regulatory framework for felling and transit of trees grown under Agroforestry and Farm forestry systems. In view of the report of the Committee, comments submitted to the same and National Agroforestry Policy, 2014, respondent no. 1-MoEF &CC issued "Guidelines for

Liberalizing Felling and Transit Regime for Tree Species Grown on Non-Forest/Private Land" on 18.11.2014.

81. The Government of India has been consistently promoting agroforestry as a viable solution to address multiple national priorities, including doubling farmers' income, enhancing tree cover outside forests, mitigating climate change, minimizing import of timber, and ensuring sustainable land use. Agroforestry not only enhances ecosystem services but also plays a critical role in diversifying livelihoods, increasing agricultural resilience, and contributing to India's Nationally Determined Contributions (NDCs) under the Paris Agreement. A key barrier identified by stakeholders is the lack of clear, harmonized rules for felling of trees grown on agricultural land, which hampers both cultivation and marketing of agroforestry produce. MoEF & CC after consultations with States circulated model rules called **"Rules for felling of trees in agricultural lands in [Name of State/UT], 2025"** to States/UTs for examining the model rules and considering their adoption and notification for felling of trees in agricultural land.

82. It may be observed here that State of Uttar Pradesh has enacted the Uttar Pradesh Protection of Trees Act, 1976 and in National Capital Territory of Delhi, the Delhi Preservation of Trees Act, 1994 has been enacted for protection of trees in non-forest areas. Similar enactments have also been made in some of the other States/UTs but the details regarding the same are not required to be mentioned in the present case. The submissions made on behalf of respondents no. 2 to 4 that **regulations in terms of Acts to get permission for cutting of trees also discourage general public for planting trees as they think that they will have to run after government authorities when there will be requirement of cutting the planting trees and that the grant of permission for trees cutting also leads to delay in process and corruption in government offices if implemented throughout the State are neither logical and legal nor justified and adversely reflect on the working of Government machinery in the State of Haryana and the same cannot be accepted.**

Directions to State of Haryana

83. In view of the above, State of Haryana is directed (i) to consider the desirability of creating a single, comprehensive, and consolidated legal framework for the protection and management of trees in non-forest areas in alignment with the national guidelinesintegrating and superseding the scattered provisions found in existing laws including the Punjab Land Preservation Act, 1900 (which was enacted more than 125 years ago) and Haryana Municipal Corporation Act, 1994 (which was enacted more than 30 years ago) thereby eliminating the jurisdictional confusion and establish a clear, easily accessible regulatory mechanismfor reporting and seeking redress for illegal tree felling in a timely manner and(ii) to launch a public awareness campaign regarding tree conservation and promote plantation drivesimilar toEk Ped Maa Ke Naam andplantation schemes Pran Vayu Devta and Van Mitra that

incentivize tree plantation and protection with the object to achieve the target of having the requisite tree cover in non-forest areas and to prevent illegal felling of trees.

Interim Directions by this Tribunal till establishment of regulatory framework

84. We have observed from the cases coming up before this Tribunal that the incidents of illegal felling of trees in non-forest rural and urban areas are increasing in the State of Haryana. Creation of integrated legal frame work for protection and management of trees in non-forest area is likely to take time but the question of taking of requisite action for remediating environmental damage caused by illegal felling of trees has to be promptly addressed and cannot be deferred for inordinately long time. This Tribunal cannot ignore its statutory obligation of intervention for remediation of environmental damage caused. In view of provisions made in Section 20 of the National Green Tribunal Act, 2010 mandating this Tribunal to apply Sustainable Development Principle, Precautionary Principle and Polluter Pays Principle, absence of proper regulatory framework for protection of trees in non-forest areas as mentioned above, the time likely to be taken in establishment of regulatory frame work by the State of Haryana as directed above, precedents in which significant policy directions were issued by this Tribunal to address similar environmental issues, provisionsof Section 33 of the National Green Tribunal Act, 2010 giving overriding effect to the provisions thereof notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the above said Act and in exercise of powers under Sections 14 and 15 of the National Green Tribunal Act, 2010 following interim directions are issued till establishment of regulatory framework by the State of Haryana as directed above:-

(i) No person shall cut any tree (not falling in the exempted category/agro forestry category as already notified or as may be notified in future by the State of Haryana) standing over his private land or private land owned by any other person or public land owned by the Central or State Government, Municipal or Panchayat Authorities or Public Institution or Public Sector Undertaking or Company except with permission of the Divisional Forest Officer of the District in which such land is situated;
(ii) Application for permission to cut the tree(s) may be submitted to such Divisional Forest Officer with all relevant details regarding the land, its location, area, boundaries, ownership and possession, nature and number of trees to be cut with brief statement of reasons for cutting of the trees;
(iii) The concerned Divisional Forest Officer shall make every endeavour to dispose of such application expeditiously preferably within 90 days and grant or decline permission to cut the tree(s) by making requisite inspection and taking into consideration relevant factors;
(iv) While granting permission to grant permission to cut tree(s), the concerned Divisional Forest Officer shall impose condition of compensatory plantation of at least three trees of indigenous species/variety in lieu of one tree cut in the land of the applicant or some other

land to be specified in the order and also protecting and ensuring conservation of the same for at least five years;
(v) In case of failure to comply with condition of compensatory plantation and conservation thereof imposed by order granting permission for cutting of tree(s) or illegal cutting of tree(s) without obtaining permission from him as directed above, the concerned Divisional Forest Officer shall impose environmental compensation on the violator totalling to the amount of timber value as per guidelines of the Forest Department and amount required for three times compensatory plantation and five year conservation of the same and recover the same by sending recovery certificate to the Collector/Deputy Commissioner of the District for recovery as arrears of land revenue and thereafter utilize the same for compensatory plantation and conservation thereof during the monsoon/appropriate season.

Grievances raised by the applicant regarding illegal cutting of trees in the present original application and interlocutory applications

85. So far as the grievances raised regarding illegal cutting of trees in the present original application and interlocutory applications are concerned, the applicant has claimed in the present original application that the applicant is in possession of the land in question and had planted thousands of trees over the years on the above said land converting the land in question as forest patch which is having avian species, butterflies, reptile species and native plant species numbering 1475 and the Applicant is seeking protection thereof.

86. The land in question was acquired by notification dated 01.01.2002 issuedunder section 4 and notification dated 30.12.2002 issued under section 6 of the Land Acquisition Act, 1894 at the public expenses for a public purpose namely for the development and utilisation of land as Residential and Commercial in Sector-6 Rohtak situated at revenue estate Rohtak, Haryana. Compensation was awarded vide award No. 5 & 6 dated 29.12.2004. The applicant was paid amount of Rs. 19,89,085/- as compensation towards the acquisition vide cheque no. 285871 dated 09.02.2005. The Applicant's challenge to acquisition and prayer for release of his land were dismissed by Hon'ble Punjab and Haryana High Court and Hon'ble Supreme Court and representation of the applicant for release of land was dismissed byZonal Administrator, HSVP-Additional Director, Urban Estate, Rohtak.

87. The Applicant has claimed himself to be in possession of the land in question and pleaded in the original application that vide order dated 03.11.2011 (copy at page no. 79 of the paper book) passed on CWP No. 20329 filed by him, Hon'ble Punjab and Haryana High Court issued notice to the respondents and stayed dispossession of the petitioner. Vide order dated 12.03.2012 (copy at page no. 80 of the paper book) Hon'ble Punjab and Haryana High Court made interim order dated 03.11.2011 absolute. Respondents No.1 to 5 have claimed that the possession of the acquired land was handed over to Estate Officer, HUDA on 29.12.2004 except in those cases in which stay had been granted by Hon'ble Punjab and Haryana High

Court. The applicant has not produced copy of stay order operating in his favour on 29.12.2004 to support his claim that possession of his land was not taken in view of such stay order. The Applicant has claimed himself to be in possession on the basis of interim orders passed by Hon'ble Punjab and Haryana High Court in CWP No. 20329 but the writ petition was filed and interim orders dated 03.11.2021 and 12.03.2012 were passed much later and the same also stood vacated and protection thereof ceased to operate on dismissal of his writ petition by Hon'ble Punjab and Haryana High Court vide order dated 06.05.2024.Respondent no. 5 has claimed that after dismissal of SLP No. 25243/2023 vide order dated 01.12.2023 encroachment drive was launched and physical possession of the land was taken and possession of the above said land lies with HSVP. In view of section 16 of the Land Acquisition Act, 1894 on passing of the award and payment of compensation to the applicant and dismissal by Hon'ble Punjab & Haryana High Court of the writ petitions filed by the applicant and by Hon'ble Supreme Court of SLP filed by the applicant, land involved in the present original application must be held to have vested in State of Haryana and thereafter in HSVP free from all encumbrances.Respondent No. 5 has submitted that the Applicant trespassed over the land in question and planted trees over the same regarding which FIR No.0243 dated 21.07.2024 was registered. Even if the Applicant be assumed to be in possession of the land involved in the present application, even then due to the status of applicant being that of trespasser, the applicant is liable to be dispossessed from the land in question and is not entitled to protection of his possession over the same. Trees planted by the Applicant over the land in question during pendency of the litigation filed/representation made by him do not confer any right on the applicant to continue in possession thereof as ownership of the trees standing over the land in question will also vest in present owner of the land in question- HSVP/allottees as the case may be. The land involved in the present original application which was agricultural land earlier,was acquired for residential and commercial purposes and trees standing over the same will not change nature thereof and transform the land acquired as being a "forest patch"so as to bring the same within definition of "forest"laid down by Hon'ble Supreme Court in **TN GodavarmanThirumulkpad Vs. Union of Indiaand others**: **(1997) 2 SCC 267**so as to extend the protection of the Indian Forest Act, 1927 and the Forest Conservation Act, 1980 renamed as Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 to the same. It may be observed here that there is no absolute bar to cutting of trees and in conformity with the principle of Sustainable Development, the trees can be cut in accordance with permission granted by the Competent Authority for valid reasons on consideration of relevant factors by complying with conditions of compensatory plantation and conservation thereof. Since the land in question was acquired for a public purpose namely for the development and utilisation of land as Residential and Commercial in Sector-6 Rohtak, Respondents No.2 to 5 are entitled and are also legally bound in view of order dated passed by Hon'ble Punjab & Haryana High Court in CWP No. 2835/2024 to develop the same and to hand over the possession thereof to the allottees.

88. Vide order dated 21.02.2025, this Tribunal directed the Applicant to file an affidavit detailing whether any legal proceedings concerning the subject land have been initiated either by the Applicant or any other person within his knowledge, along with the status of such proceedings and the reply filed by Respondent No. 5.

89. The Applicant filed I.A. No. 291/2025seeking issuance of direction to respondents to maintain complete status quo in respect of the subject land and to refrain from taking any action which may lead to the felling of trees or altering the ecological character of the land as expressly observed by Hon'ble Supreme Court in order dated 24.05.2010 in Special Leave Petition (Civil) No. 14692 of 2010 titled Pawan Kumar and Others v. State of Haryana and Othersand not to hand over possession to the allotees in furtherance of the modified of the order of the Hon'ble Supreme Court until due verification is conducting regarding compliance with the status quo directions.

90. Thereafter, the Applicant filed I.A. No. 453/2025 for directing the respondents particularly respondent no. 5 to maintain status quo and not to undertake any tree felling or related activity on the land in question till further orderswhile mentioningthat modification of order dated 24.05.2010 by Hon'ble Supreme Court vide order dated 20.04.2012 did not vacate the embargo against altering the land's character, which included felling of trees and destruction of natural features.

91. Orders dated 24.05.2010and 20.04.2012 passed by Hon'ble Supreme Court may be referred to before dealing with the prayers in I.A. No.291/2025 and I.A. No. 453/2025.

92. The relevant part of order dated 24.05.2010 reads as under:-

> *"One of the grounds urged by the petitioners before the High Court in support of their prayer for issue of a direction to the respondents to release their land from acquisition was that other similar parcels of land have already been released by the Director, Urban Estate Department, Haryanabecause the owners of those parcels of land were influential persons, politically or otherwise.*
>
> *Prima facie, we are of the view that once the possession of land is said to have been taken and transferred to HUDA, the State Government and the Director Urban Estates do not have the jurisdiction to release the acquired land. However, before finally pronouncing upon the matter, we deem it proper to give an opportunity of hearing to all those whose land was released by the Director, Urban Estate Department by orders dated 12.6.2006 (Annexure P-9) collectively.*

The petitioners are directed to implead all such persons as parties to this petition. The needful be done within seven days.

Notice to the respondents including the impleaded respondents, returnable in ten weeks.

Notice on prayer for interim relief as well.

In the meanwhile, the parties are directed to maintain status quo insofar as possession of the acquired land is concerned. This would necessarily mean that the petitioners and the respondents shall not alienate the land/property to any other person in any manner whatsoever and they shall not alter present character thereof."

93. The relevant part of order dated 20.04.2012 reads as under:-

"Heard Mr. C.S. Vaidyanathan, learned senior counsel for the applicant, Mr. Dhruv Mehta, learned senior counsel for the petitioners, Mr. H.P. Raval,learned ASG and Mr. Manjit Singh, learned AAG for the State of Haryana.

Shri Vaidyanathan submitted that the land which has been allotted to the applicant does not include the land owned by the special leave petitioners.

Mr. Dhruv Mehta, learned senior counsel appearing for the petitioners states that in view of the statement made by the applicant, his client will have no objection if interim order passed on 24.5.2010 is modified to thelimited extent of allowing allotment of plots to the members of the applicant.

In view of the above, order dated 24.5.2010 is modified and it is made clear that the order of status quo shall not operate as a bar to the allotment of land to the members of the applicant.

The application is, accordingly, disposed of.

Leave granted.

Interim order dated 24.5.2010, as modified today, is made absolute to last till the disposal of the appeal."

94. Vide order dated 28.08.2025 this Tribunal observed that since the question as to applicability of *status quo* order passed by the Hon'ble Supreme Court to the subject land is involved, by way of abundant caution a clarification was required as to whether the land in question is subject matter of the above said writ petition or any part of the land in question has been released by any order passed by the Director, Urban Estate Department, Haryana the validity of which has been questioned by Hon'ble Supreme Court and parties to which have been ordered to be impleaded as respondents.The applicant as well as respondents were given opportunity to submit the relevant material for clarification of this aspect at least one day before the next date of hearing.

95. In compliance thereof applicant has filed reply dated 01.09.2025. The relevant part of the reply dated 01.09.2025 reads as under:-

> *"**Additional Affidavit on behalf of the applicant***
> *X X X X*
> *3. That the Applicant in the Original Application sought the following prayers:*
>
> *a) Direct the Respondents and in particular State of Haryana and Department of Forests, Government of Haryana to frame the regulatory mechanism for the protection and conservation of Trees planted in Non Notified areas of Haryana.*
> *b) Direct Respondents and in particular the State of Haryana and Haryana Shehri Vikas Pradhikaran, Govt of Haryana to not to cut trees standing in Forest Patch developed by applicant on land measuring about 7.5 acres situated at Killa no. 41//7/2,8,13,18,33//20/2 (1-13),21(8-0), 40//1(7-11)2, 41//9(8-0) and 41/12(8-0) (Total Land -60 kanal) and Killa no. 41//7/2,8,13,18,33//20/2 (1-13),21(8-0), 40//1(7-11)2, 41//9(8-0) and 41/12(8-0) (Total Land -60 kanal) Hanuman mandir road, opposite- Pandit Lakhmi Chand State University of Performing and Visual Arts, sector -6, Rohtak, Haryana.*
> *c) Pass any other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the present case.*
>
> *4. That in furtherance thereof, the Applicant also filed Interlocutory Application, inter alia, praying that this Hon'ble Tribunal may be pleased to:*
>
> *a) Direct the Respondents to maintain complete status quo in respect of the subject land and to refrain from taking any action which may lead to the felling of trees or altering the ecological character of the land, as expressly*

observed by the Hon'ble Supreme Court of India in its order dated 24.05.2010 in Pawan Kumar & Ors. v. State of Haryana & Ors.;
b) Direct that no possession shall be handed over to the allottees in furtherance of the modified order of the Hon'ble Supreme Court until due verification is conducted regarding compliance with the status quo directions; and
c) Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice, equity, and environmental protection.

5. That vide Order dated 28.08.2025, this Hon'ble Tribunal, while considering the present matter, observed that prima facie the applicability of the status quo order dated 24.05.2010 (as modified on 20.04.2012) passed by the Hon'ble Supreme Court in SLP (Civil) No. 14692 of 2010, Pawan Kumar & Ors. v. State of Haryana & Ors., to the land in question was not evident. However, by way of abundant caution, this Hon'ble Tribunal granted an opportunity to the Applicant as well as the Respondents to place on record the relevant material clarifying whether the land in question was subject matter of the said writ petition, or whether any part thereof had been released by any order of the Director, Urban Estate Department, Haryana, the validity of which has been questioned before the Hon'ble Supreme Court.

6. That in compliance with the aforesaid directions of this Hon'ble Tribunal, the Applicant respectfully seeks to submit and place on record the following facts and documents for clarification:

i. That in Special Leave Petition (Civil) No. 14692 of 2010, titled as Pawan Kumar & Ors. v. State of Haryana & Ors., the grievance of the petitioner therein pertained to acquisition of land for the purpose of developing Sector-6, Rohtak under the Haryana Urban Development Authority (HUDA).
ii. That deponent has learn that in the SLP (Civil) No. 14692 of 2010 which has now been converted into Civil Appeal No. 4247 of 2012, titled Pawan Kumar & Ors. v. State of Haryana Urban Estate Department through its Commissioner and Secretary to Government of Haryana & Ors, the petitioner therein has annexed the Gazette Notification dated 01/01/2002, whereby the Government of Haryana has expressly recorded that the land described in the specifications mentioned in the revenue estate of Village Rohtak, Hadbast No. 74, and Village Pada, Hadbast No. 67, Tehsil and District Rohtak, stood registered for a public purpose, namely, for the development of Commercial Sector-6, Rohtak, under the provisions of the

Haryana Urban Development Authority Act, 1977, by the Haryana Urban Development Authority.

iii. That it is further important to mention here that the Killa numbers pertaining to the Applicant herein are also reflected in the Gazette Notification dated 01.01.2002. Hence, it is clear that the said SLP (Civil) No. 14692 of 2010, which has now been converted into Civil Appeal No. 4247 of 2012, titled Pawan Kumar & Ors. v. State of Haryana Urban Estate Department through its Commissioner and Secretary to Government of Haryana & Ors., squarely contains and covers the land in question of the present Applicant.

iv. Accordingly, it is crystal clear that all the orders passed by the Hon'ble Supreme Court therein, including the orders dated 24.05.2010 and 20.04.2012, whereby this Hon'ble Court directed maintenance of status quo and expressly denied any change in the nature of the land, are fully applicable to the land of the present Applicant as well.

True copy of the SLP (Civil) No. 14692 of 2010, including the Gazette Notification dated 01.01.2002 showing the Killa numbers of the deponent herein are Annexed and marked herewith as Annexure A1/1.

V. That it is also important to mention here that the deponent herein has been arrayed as Respondent No. 1034 in the aforesaid SLP (Civil) No. 14692 of 2010, which now stands converted into Civil Appeal No. 4247 of 2012, titled Pawan Kumar & Ors. v. State of Haryana Urban Estate Department through its Commissioner and Secretary to Government of Haryana & Ors.

vi. That it is further important to mention here that the Rojnamcha dated 29.12.2004 expressly records that the lands which are subject matter of writ petitions pending before the Hon'ble High Court had not been acquired by the Collector, Hisar.

True copy of the Rojnamcha dated 29.12.2004 is annexed and marked herewith as Annexure A1/2.

vii. That it is also pertinent to mention here that the Rojnamcha dated 29.12.2004 clearly makes reference to the writ petition filed by the deponent herein, i.e., CWP No. 19846 of 2004.

viii. From the above mentioned facts and circumstances following facts are absolutely clear:

a. That as per the Rojnamcha dated 29.12.2004, neither the paper possession nor the physical possession of the land of the deponent herein has ever been acquired by the Respondents.

b. That it is further crystal clear that the land of the deponent herein is subject matter of SLP (Civil) No. 14692 of 2010, which now stands converted into Civil Appeal No. 4247 of 2012, titled Pawan Kumar & Ors.

v. State of Haryana Urban Estate Department through its Commissioner and Secretary to Government of Haryana &Ors.. As such, all the consequential orders passed by the Hon'ble Supreme Court therein, including the orders dated 24.05.2010 and 20.04.2012, are fully applicable to the land of the present deponent.

c. That in light of the aforesaid facts and circumstances, it is respectfully submitted that the land of the Applicant is squarely covered within the ambit of SLP (Civil) No. 14692 of 2010, now converted into Civil Appeal No. 4247 of 2012, titled Pawan Kumar & Ors. v. State of Haryana Urban Estate Department through its Commissioner and Secretary to Government of Haryana &Ors.. Consequently, all the orders passed by the Hon'ble Supreme Court therein, including the orders dated 24.05.2010 and 20.04.2012, are fully applicable to the Applicant's land, and the same bind the Respondents from altering the nature or character of the said land in any manner.

7. That balance of convenience is in the favour of the applicant and the ends of the justice shall suffer if the relief as prayed is not granted.

8. That the applicant has not approached any other court or tribunal seeking similar relief as prayed before this Hon'ble Court."

96. The applicant has accordingly submitted that order dated 24.05.2010 (modified vide order dated 20.04.2012) passed in Special Leave Petition No. 14692 of 2010 titled as Pawan Kumar and Others V/s State of Haryana and Othersdirecting maintenance of status quo qua possession, alienation and alteration of character of the land is fully applicable to the land subject matter of the present original application.

97. In its reply dated 30.08.2025, respondent no. 5 has mentioned details of the land which are subject matter of the above said SLP, the land which is subject matter of the present original application and the land of the applicant which was released from acquisition and submitted that the land involved in the present original application is not the subject matter of Special Leave Petition No. 14692 of 2010 titled as Pawan Kumar and Others V/s State of Haryana and Others andorder dated 24.05.2010 (modified vide order dated 20.04.2012) directing maintenance of status quo qua possession, alienation and alteration of character of the land involved in Special Leave Petition No. 14692 of 2010 titled as Pawan Kumar and Others V/s State of Haryana and Others is not applicable to the land involved in the present original application.

98. Respondents no. 7 to 13 also filed reply dated 01.09.2025 asserting that status quo order dated 24.05.2010 is not applicable to the present case filed by applicant-Sukhbir Singh.

99. It is evident from a reading of orders dated 24.05.2010 and 20.04.2012 passed in Special Leave Petition No. 14692 of 2010 titled as Pawan Kumar and Others V/s State of Haryana and Others thatthe petitioners in the abovementioned case sought release of their land on parity with persons whose land had been released the Director, Urban Estate Department, Haryana. Hon'ble Supreme Court, being prima facie of the view that once the possession of land is said to have been taken and transferred to HUDA, the State Government and the Director Urban Estates do not have the jurisdiction to release the acquired land, deemed it proper to give an opportunity of hearing to all those whose land was released by the Director, Urban Estate Department by orders dated 12.06.2006 collectively before finally pronouncing upon the matter and directed the petitioners to implead all such persons as parties to the petition.

100. A perusal of copy of special leave petition filed by respondent no. 5 (at pages no. 1256 to 1298 of the paper book) shows that land involved in SLP No. 14692 of 2010 titled as Pawan Kumar and Others V/s State of Haryana and Otherscomprises of Khasra No. 52//2 (8-0), 3 (7-12), 4(8-0), 5(8-0), 6(6-6), 7(8-0), 8(7-12), 13 (7-4) and 14/1(6-4) total measuring 66 Kanals 18 Marlas situated in the revenue estate of village Pada(named as village Para in the present case), District Rohtak where as the land involved in the present original application comprises of Khasra/Killa 33//20/2 No. (0-13), 21(8-0), 40//1(7-11), 41//7/2 (3-8), 8 (8-0), 9(8-0), 12(8-0), 13(8-0) 18(8-0)Land measuring 59 Kanals 14 Marlas situated in revenue estate of village Para, District Rohtak which is different from the land involved in above said SLP.

101. It may also be observed here that land of the applicant-Sukhbir Singh measuring 3-Kanal 3-Marla comprised in Rectangle No. 70 Killa No. 17/2 (1K-15M), 24//1/1 (OK-13M) and 24/2/1(0K-15M) situated in revenue estate of Village Para, Rohtak was released vide order dated 03.11.2006 issued by Govt. of Haryana. (copy at pages no 1253 to 1255 of the paper book) and due to this reason the applicant-Sukhbir Singh has been impleaded as respondent no. 1034 in SLP No. 14692 of 2010.

102. It may be observed here that (i) the Applicant is not one of the petitioners in the above mentioned case and has been impleaded as one of the respondents due to release of some other land; (ii) the land involved in the present original application was not released from acquisition and is not subject matter of litigation in the above mentioned case and (iii) neither any relief has been claimed nor grant of any relief is contemplated in SLP No. 14692 of 2010 titled as Pawan Kumar and Others V/s State of Haryana and Otherswith respect to the land involved in the present original application.

103. It follows from the above discussion that order dated 24.05.2010 (modified vide order dated 20.04.2012) passed by Hon'ble Supreme Courtin SLP No. 14692 of 2010 titled as Pawan Kumar and Others V/s State of Haryana and Othersdirecting maintenance of status quo

qua possession, alienation and alteration of character of the land involved in the above said SLP is not applicable to the land involved in the present original application. Consequently, order for maintenance of status quo is not required to be passed in the present case in view of order dated 24.05.2010 (modified vide order dated 20.04.2012) passed in above mentioned SLP and I.A. No.291/2025 and I.A. No. 453/2025 are liable to be dismissed.

104. So far as the question of cutting of trees standing over the land in question is concerned, in additional reply dated 20.01.2025 respondent no. 5-HSVP has submittedthat as per the project proposal a total of 268 trees are found feasible for translocation based on the site conditions and tree species in accordance with the guidelines and best practices laid down for translocation of trees and a total of 968 trees are to be cut for the purpose of the development of sector-6, Rohtak; compensatory afforestation will be carried out in lieu of the trees cut, as per the applicable guidelines and regulations in the green belt measuring 15625 sq. meters and designated parks of sector 6, Rohtak and 512897 sq. meters area of Urban Estate, Rohtak. A total of 1400 trees of the species such as Neem, Shisharn, Papri, Arjun, Pilkhan, Alstonia, Marod Fali, Sila Ficus and Ashoka etc. will be planted as part of compensatory Afforestationas per norms. All necessary measures will be taken to ensure that the development of Sector 6 is carried out in an environmentally responsible manner, in compliance with all statutory requirements and the tree cutting, translocation, and afforestation efforts will be completed in strict compliance with the timelines and budget outlined above and in accordance with the environmental guidelines and norms.

105. Respondent no. 5-HSVP has further submitted that Respondent no. 5-HSVP being conscious about environment has already provisioned a significant chunk of land for location of parks, green area and green belts for whole of Urban estate Rohtak. The details have been given in tabular format regarding the same which is reproduced as under:-

S. No.	**Location of park/Green area/Green Belt**	**Area of Park/green area/green belt within HSVP Limit (Located on HSVP Land under the control of HSVP)**
1	Sector -1, Rohtak	
	Central Park	22264 Sqmtr.
2	Sector-4 (Extn), Rohtak	
	Park No.1 in front of H no. 1227	7961 Sqmtr.
	Park No. 2 in front of House no. 1393	9345 Sqmtr.

3	Sector 5, Rohtak	
	Green Belt along railway line Sector 5 Rohtak	9837 Sqmtr.
4	Sector 6, Rohtak	
	Green belt along railway line sector-6, Rohtak.	15625 Sqmtr.
5	City Park, Sector-13, Rohtak.	64646 Sqmtr_
6	parks in Sector-27 (Suncity area) at Rohtak	25624 Sqmtr.
7	Town Park at IMT, Rohtak	78000 Sqmtr.
8	Park at old ITI, Rohtak.	7084 Sqmtr.
9	Green belt along Sector-2, 3, 4, 5 8& 6 Rohtak.	80596 Sqmtr.
10	Green Belt along Sec.24 & 25, Rohtak.	34367 Sqmtr.
11	Green belt along master road sector- 34, 35 &36, Rohtak.	56672 Sqmtr.
12	Green belt on both side along Kheri Sadh bye pass, Rohtak	62987 Sqmtr.
13	Green belt along dividing road of Sector 21& 21 A Rohtak	38577 Slmtr.
Total		**528522.00 Sqmtr.**

106. In its additional reply respondent no. 5-HSVP has also submitted that in addition to the compensatory afforestation to be carried out in lieu of trees to be cut, total 4000 trees have already been planted for the year 2024-25 andrespondent no. 5-HSVP has given the details of trees planted for the last four years in tabular format which is reproduced as under:-

Sr. No.	**Year**	**Total No. of Plantes planted**	**Site/place where plants were planted**	**Expenditure**
1	2021-2022	2410 Nos	Road side and central verge of sector-25 & 27 at Rohtak	5.58 Lacs (including cost of plants, digging of pits, application of FYM and one time watering cost).
2	2022-2023	2295 Nos	Road side and central verge ofsector-26, 27, parks of Sector-5, parks of sector-4extn., City park sector-13, Central verge of sector-	3.89 Lacs (including cost of plants, digging of pits, application of YM and one time watering cost).

			7 & 37, Rohtak	
3	2023-2024	4000 Nos	Green belt of Sector-2,3,4,5 & 6 along master road, green belt and central verge of sector-34 -35, 36, Rohtak	5.87 Lacs (including cost of plants, digging of pits, application of FYM and one time watering cost).
4	2024-2025	5400 Nos	Green belt and central verge of sector-18-A, 21-21A, Central Verge of Sector 24 and 25 Rohtak	7.68 Lacs (including cost of plants, digging of pits, application of FYM and one time watering cost

107. In its additional reply respondent no. 5-HSVP has also submitted that the budget amounting to Rs. 114.88 Lacs has been allocated for the year 2024-25 for tree planting measures, including post-plantation care and maintenance to ensure the proper execution of all aspects of the tree conservation measures. Respondent no. 5-HSVP has given details of the area, works and expenditure for the year 2024 in tabular format which is reproduced as under:-

Sr. No.	**Location of Park/Green area/ Green Belt**	**Area of Park and Green Belt**	**Expenditure in Lacs**
1	Sector – 1, Rohtak, Central Park	22264 Sqmtr	6.23
2	Sector-4 (Extn), Rohtak		
	Park No. 1 in front of House no. 1227	7961 Sqmtr.	14.70
	Park No. 2 in front of H. No. 1393	9345 Sqmtr.	
	Green Belt along sector Dividing Road	14937 Sqmtr.	
3	Sector- 6 Rohtak Green Belt along railway line Sector-6 Rohtak	15625 Sqmtr.	2.28
4	City Park, Sector 13 Rohtak	64646 Sqmtr.	20.44
5	Parks in sector 27 (Suncity area)	25624 Sqmtr.	2.20

	at Rohtak		
6	Town Park at IMT, Rohtak	78000 Sqmtr.	0.93
7	Park at old ITI, Rohtak.	7084 Sqmtr.	6.51
8	Green belt along Sector-2, 3, 4, 5 &, 6 Rohtak.	80596 Sqmtr.	13.44
9	Green Belt along Sec.24 & 25, Rohtak.	34367 Sqmtr.	11.40
10	Green belt along master road sector- 34, 35 & 36, Rohtak.	56672 Sqmtr.	26.43
11.	Green belt on both side along Kheri Sadh Bye pass, Rohtak	62987 S mts.	2.26
12.	Green Belt along dividing road of sector 21 and 21 A Rohtak	38577 Sqmtre.	8.06
Total		**528522.00 Sqmtr.**	**114.88**

108. Respondent no. 5 has mentioned the environmental measures which have been taken/would be taken to remediate the environmental damage to be caused by cutting of trees for development of the land involved in the present original application.

109. In view of order dated 01.07.2022 passed by this Tribunal on I.A. No. 162/2022 filed by the Kurukshetra Development Board in O.A. No. 374/2022 titled Green Earth Vs. Deputy Commissioner, Kurukshetra and others holding that State of Haryana to be bound by public trust doctrine to lay down appropriate mechanism for protection of trees and direction issued to the Chief Secretary, Haryana to look into the matter and if no regulation existed to lay down regulatory mechanism within a month, the trees standing over the land involved in the present original application can be cut in accordance with regulatory mechanism laid down in this regard.

110. Since the land involved in the present original application is situated in urban area within municipal limits and is no longer situated in rural area governed by Gram Panchayat, order dated 27.08.2023 issued by Development and Panchayats Department, Haryana is not applicable to the land involved in the present original application.

Direction to HSVP

111. Since the matter of laying down regulatory mechanism governing cutting of trees in urban areas is likely to take some time, interim directions given by this Tribunalhere-in-above will be applicable to the land involved in the present original application. In view thereof respondent no.5-HSVP is directed to apply to the Divisional Forest Officer, Rohtak for grant of permission for translocation/cutting of trees as may be necessary and take further action

regarding translocation/cutting of trees and compensatory plantation in accordance with the orders of the Divisional Forest Officer, Rohtak on the same.

112. In view of the above, thepresent original application is disposed of with directions as mentioned here-in-above while I.A. No.291/2025 and I.A. No. 453/2025 are dismissed leaving the parties to bear their own costs.

113. A copy of this order may be sent to the Chief Secretary, Government of Haryana, Vice Chairman, HSVP, Member Secretary, HSPCB and District Magistrate, Rohtak by email for requisite compliance.

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Jot Singh Bist vs. Ministry of Environment, Forest & Climate Change & Ors.

(Original Application No. 44/2024)
Decided on: 18th December, 2025 (PB)

CASE NOTE

The applicant, Jot Singh Bist instituted Original Application No. 44/2024 before the National Green Tribunal wherein he raised a grievance pertaining to the environmental damage allegedly caused in the course of execution of the Rishikesh–Karnaprayag railway project in Rudraprayag District, Uttarakhand. The applicant alleged that Rail Vikas Nigam Limited (RVNL) and its contractor, Megha Engineering and Infrastructure Limited (MEIL), had illegally dumped tunnel excavation muck into the Chopra Gadhera stream at Jawadi village without obtaining the requisite statutory approvals. The dumping, spread over nearly 2.41 hectares, resulted in large-scale destruction of native vegetation and rendered a seasonal water source used by villagers as a deep, hazardous trench. Investigations disclosed that over 60,000 cubic meters of debris were rolled down from elevated locations in violation of the approved Environmental Management Plan.

The Tribunal adjudicated upon issues: (i) whether Section 11 of the Railways Act, 1989 granted immunity to railway authorities from compliance with environmental laws such as the Forest (Conservation) Act, 1980; (ii) whether dumping muck on land not acquired for the railway project could be justified as a "necessary work" under railway powers. The case also involved the applicability of the "Polluter Pays" principle, the effect of contractual clauses mandating adherence to environmental laws, and the legality of extracting and reusing minor minerals from the dumped muck without payment of royalties under the Uttarakhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2021.

The Tribunal held that the statutory protection under the Railways Act is limited to land lawfully acquired for railway purposes and does not extend to causing ecological harm to community owned resources. It observed that the respondents could not claim immunity after having contractually committed to comply with environmental statutes. The Tribunal strongly condemned the practice of rolling down muck in a fragile Himalayan region, observing that national infrastructure projects do not enjoy a free pass to violate environmental norms. It further ruled that processing muck into construction material without payment of state royalties amounted to a breach of mining regulations, thereby affirming the environmental compensation imposed.

The Tribunal directed removal and relocation of the excess muck to designated disposal sites and ordered restoration/rejuvenation of the Chopra Gadhera through a Committee of Experts. The environmental compensation amounting to ₹2,03,96,111/- was mandated to be utilized exclusively for ecological restoration of the affected area. RVNL and MEIL were held jointly and severally liable for restoration costs, to be assessed by the Expert Committee within three months. Additionally, the Tribunal instituted a monitoring mechanism requiring quarterly compliance reports supported by video documentation to ensure environmental recovery.

Jot Singh Bist vs. Ministry of Environment, Forest & Climate Change & Ors.

FOR THE APPLICANT:
None for the applicant.

COUNSEL FOR RESPONDENT(S)
Mr. Somesh Chandra Jha and Ms. Saumya, Advocates for respondent no. 1.
Mr. Mukesh Verma, Advocate for respondent no. 2.
Ms. Anjali Rajput, Advocate for respondent no. 3.
Ms. Ananya Thapliyal, Advocate for respondent no. 4.
Mr. Ninad Laud, Mr. Varun Chugh, Ms. Katahiamang Panmei, Mr. Kunal Gupta and Ms. Ishani Shekhar, Advocates for respondent no. 5.

COURM:
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

RESERVED ON:11th July, 2025
PRONOUNCED ON: 18th December, 2025

JUDGMENT

BY HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER

1. The applicant-Mr. Jot Singh Bist, Adhyaksh, Gram Vikas Samiti Utyasu (Jawadi) Bhardar, District Rudraprayag, Uttarakhand has sent a Letter Petition dated 10.08.2023 (pages no. 1 to 17 of the paper book) by post to this Tribunal which was treated and registered as **Original Application No. 44/2024** in exercise of suo-moto jurisdiction in view of law laid down by Hon'ble Supreme Court in ***Municipal Corporation of Greater Mumbai Versus Ankita Sinha and Others, (2022) 13 SCC 401.***

Grievances of the applicant:

2. The applicant raised the grievances that the Rail Vikas Nigam Limited (RVNL), which is executing a railroad project from Rishikesh to Karnaprayag, has created a dumping area on Chopra Gadhera without obtaining statutory permissions/NOC/Clearance from the concerned authorities and dumped muck there from above burying the vegetation and destroying the Gadhera causing damage to environment, depriving local people of its use and posing risk to their lives. The relevant part of the letter petition enumerating grievances of the applicant reads as under:-

> *"विषय - रेल विकास निगम द्वारा ग्राम जवाडी के उत्यासू चोपडा तोक में डम्पिंग जोन बनाये जाने से गाँव को हुयी पर्यावरणीय क्षतिपूर्ति के सम्बन्ध में।*

X X X X

उपर्युक्त विषयक निवेदन है कि-

1. ऋषिकेश- कंर्णप्रयाग रेल मार्ग निर्माण हमारे क्षेत्र के लिए एक अति महत्वपूर्ण योजना है जिस कारण इस योजना के डम्पिंग जोन का विरोध नही किया गया।

2. यह कि रेल विकास निगम ने जवाडी मे बिना गाँव की अनुमति के डंम्पिंग जोन बना दिया यह सोचकर कि निगम सामाजिक दायित्व के रूप में हमारी मदद करेगा इसलिए कोई विरोध नहीं किया गया।

3. यह कि उत्यासू गॉव के लोगो को धूल आदि से जो परेशानी हुई इसका भी किसी प्रकार कोई विरोध नहीं हुआ।

4. यह कि जब इन्होने गाँव की सडक में अपने बाथरूम लेट्रिन तथा किचिन का गन्दा पानी सडक पर डाल दिया तो गांव वालो को घास लकडी के लिए आने जाने वाली महिलाओ को परेशान हुई तब गॉव वालो ने विरोध किया और इन्होने उसे ठीक कर दिया।

5. यह कि गाँव के चोपडा गदेरा जिसमें वर्षा ऋतु में ही पानी रहता है। वहाँ जामुन दाडिम तथा आम के फलदार वृक्षो के साथ इमारती सान्दण हल्दू तथा खैर आदि के वृक्ष थे, उन सब को दबा दिया है। डम्पिग करने में नीचे ले जाने का प्रयास नही किया गया उचाई से गिराकर सारी वनस्पति को नष्ट कर दिया।

6. यह कि औषधीय पौधों को भी नष्ट कर दिया है।

7. यह कि वहाँ पर सान्दण के काष्ठ उपकरण बनाने में प्रयुक्त एवं घास के पौधो को हमेशा हमेशा के लिए दबा दिया गया है। यह गदेरा हजारो वर्षो के अपरदन से बना जैव विविधता का एक जीता जागता स्थल था। जहाँ हमारे गाय, बकरी घोडे, खच्चर तथा भैस लोग चराते थे।

8. यह कि हमारे बच्चों के लिए यह गदेरा सीजनल स्वीमिंग तथा पानी और पानी पर आधारित खेल का स्थल था रेलवे ने उसे गहरी खाई में बदल दिया है। लगभग 100 मी० गहरी खाई दोनो तरफ से जीवन का खतरा बन गया है तथा अत्यन्त गम्भीर समस्या खडी कर दी गई है।

9. यह कि 12 दिसम्बर 2022 को गाँव वालों ने पहली बार विरोध करने का प्रस्ताव किया तथा इस हानि की क्षतिपूर्ति हेतु विचार किया तथा जिलाधिकारी को पत्र देकर इन्हे बातचीत करने को कहा गया। निर्माण कार्य कर रही संस्था को जब कहा गया आप ने किस के आदेश पर यह कार्य किया तो मेद्या कम्पनी के परियोजना प्रबन्धक का कहना है कि हमने रेल विकास निगम के आदेश से वहा पर डम्पिंग किया है। इसलिए रेलवे विकास निगम कहेंगा तो तभी उसका भरान करेंगें।

10. यह कि महोदय डम्पिंग और लुढकान में अन्तर तो समझना चाहिए। यह निर्मम तरीके से किया गया काम है। इसे देखते हुए हमे लगा कि इस गदेरे को प्राकृतिक रूप

में वापस नही पाया जा सकता है। बल्कि अगर यह ऐसा ही रखा गया तो यह मौत की खाई बन जायेगा। इससे वर्षों तक वन से होने वाले लाभों से हम वचित रहेंगे। इस डम्पिंग से जो प्राकृतिक रूप से गॉव को करोडो की छति हुई है, उसका आकलन एन जी टी स्वयं करे और रेल विकास निगम को उत्यासू गॉव को निम्न दो काम करने को कहा जाय पर ये लोग जवाब भी नहीं दे रहे है।

महोदय रेल विकास निगम ने जिलाधिकारी रूद्रप्रयाग को दिए गए उत्तर की हमको प्रतिलिपि नही दी जबकि हमने उन्हें उस पत्र की प्रतिलिपि पंजीकृत डाक से भेजी थी। हमें सुचनाधिकार में उनके उत्तर को मांगना पडा जो हमे 18 जुलाई 2023 को मिला, जिस पर उन्होने लिखा है उन्हे रौली (गदेरा) भरान की अनुमति नही मिली है और सडक के लिए उन्होनें उच्च अधिकारीयों को लिखने के लिए कहा है (संलग्न) सुचना अधिकार में प्राप्त वन विभाग की रिपोर्ट भी सलग्न कर प्रेषित की जा रही है।

अतः माननीय हरित न्यायाधिकरण से प्रार्थना है कि

1. रेल विकास निगम को चोपड़ा गदेरे को भरने की अनुमति देकर उपर वाले झरने के बराबर भरकर सिवर पाईप लाईन बिछाकर नीचे के झरने तक लाया जाय और सिवर लाईन के उपर मलबा बिछाकर उपर के लेवल पर लाया जाय। जिससे मैदान को कोई छति नही होगी और वर्षा जल सिधे पाईप लाईन से दुसरे झरने के उपर छोडा जाय और गदेरे को भरकर समतल खेल मैदान में बदलने तथा शेष भूमी में बनीकरण करने तथा मैदान की चारो ओर से फैंसिंग करवाने को कहा जाय जिससे वर्तमान में वहा पर बन रहे महाविद्यालय के खेल मैदान के रूप में विकसित किया जा सके जिससे वहा पर भविष्य में अन्तरविद्यालयी खेलकू प्रतियोगिताए हो सके।

2. गॉव को लगभग एक से दो किमी० तक सडक सरूली के फलिण्डे (जामुन) के निकट से गामागदरा तक बनाने को कहा जाय, यह सडक हमारे गांव के मरूडी सारी गॉव को मुख्यालय से जोंड सकेगी।"

3. English Translation by the Registry of the relevant part of the letter petition enumerating grievances of the applicant reproduced above reads as under:

*"**Subject: Regarding environmental compensation to the village due to the dumping zone created by Rail Vikas Nigam at Utyasu – Chopra Tok, Village Jawadi.***

X X X X

It is respectfully submitted that:

1. The construction of the Rishikesh–Karnaprayag railway line is an extremely important project for our region, which is why the dumping zone for this project was not opposed by us.

2. The Rail Vikas Nigam created a dumping zone in Jawadi without obtaining the permission of the village. We did not protest because we believed that the Corporation would help us as part of its social responsibility.

3. The people of Utyasu village faced difficulties due to dust and other issues, yet no protest was made regarding this.

4. When they discharged dirty water from their bathrooms, toilets, and kitchen onto the village road, the women who used the road for collecting grass and firewood were troubled. Only then did the villagers protest, and the issue was subsequently resolved by them.

5. The Chopra Gadhera (seasonal stream) of the village, which contains water only during the rainy season, had fruit-bearing trees such as Jamun, Pomegranate, Mango, and timber trees like Sandan, Haldu, and Khair. All these were buried. No attempt was made to reduce the height while dumping; debris was thrown from above, destroying all vegetation.

6. Medicinal plants were also destroyed.

7. The plants used for making Sandan wood tools and grass species were permanently buried. This Gadhera, formed over thousands of years of erosion, was a living site of biodiversity where our cows, goats, horses, mules, and buffaloes grazed.

8. For our children, this Gadhera was a seasonal swimming and water-play site. The Railway has turned it into a deep trench. A nearly 100-meter-deep ditch on both sides has become a life-threatening situation and has created a very serious problem.

9. On 12th December 2022, for the first time, the villagers resolved to protest and sought compensation for this loss. A letter was sent to the District Magistrate requesting a dialogue. When asked under whose orders the work had been carried out, the Project Manager of Media Company (the construction agency) stated that they had dumped material there under the orders of Rail Vikas Nigam, and that they would carry out filling work only when Rail Vikas Nigam instructs them.

10. Sir, there is a difference between dumping and rolling down debris. This work was done in a cruel and irresponsible manner. Seeing this, we realised that the Gadhera cannot be restored to its natural condition. If it remains as it is, it will become a death trap. For years to come, we will be deprived of the benefits of the forest. The village has suffered natural losses worth crores due to this dumping. We request that the NGT itself assess this loss and direct Rail Vikas Nigam to carry

out the following two works for Utyasu village, as they are not even responding to us.

Sir, we were not given a copy of the response that Rail Vikas Nigam sent to the District Magistrate, Rudraprayag, even though we had sent them a registered letter requesting it. We had to obtain their response through the Right to Information Act, which we received on 18 July 2023. In that letter, they stated that they have not received permission for filling the Rawli (gadhera) and that they have written to higher authorities for approval for the road (documents attached). The Forest Department report received through RTI is also attached.

Therefore, we humbly request the Hon'ble National Green Tribunal to:

1. Grant permission to Rail Vikas Nigam to fill the Chopra Gadhera up to the level of the upper spring, lay a sewer pipeline from the upper spring to the lower spring, cover the pipeline with debris, and bring it up to level. This will prevent damage to the field, and rainwater can be directed straight to the second spring through the pipeline. The gadhera may then be levelled and converted into a playground, and plantation may be carried out in the remaining land, with fencing around the ground. This can serve as the sports field for the college currently being constructed there and host inter-school sports competitions in the future.

2. Direct that a road of approximately 1–2 km be constructed from Saruli's Falinde (Jamun) to Gama Gadhera, which will connect our village Marudi Sari with the main headquarters."

4. The applicant had enclosed with the letter petition copy of resolution dated 30.05.2023 passed by Gram Vikas Samiti Utyasu (Jawadi) Bhardar, District Rudraprayag, letter dated 14.06.2023 written by Gram Vikas Samiti Utyasu (Jawadi) Bhardar, District Rudraprayag to District Magistrate, Rudraprayag and other documents.

Constitution of Joint Committee

5. Vide order dated 07.03.2024, this Tribunal constituted a Joint Committee comprising District Magistrate, Rudraprayag; Uttarakhand State Pollution Control Board; and representative of Regional Officer, Ministry of Environment, Forest and Climate Change (MoEF&CC), Dehradun with direction to visit the site, collect relevant information and submit a factual report within two months.

Report of the Joint Committee

6. In compliance of order dated 07.03.2024, report of the Joint Committee (pages no. 18 to 32 of the paper book) was filed by the District Magistrate, Rudraprayag on 13.05.2024.

The relevant part of the report of the Joint Committee containing its observations/recommendations is reproduced below:-

"निरीक्षण आख्या निम्नवत् है-

1. उपरोक्त स्थल पर कार्य करने हेतु रेलवे विकास निगम लिमिटेड द्वारा टनल निर्माण कार्य मैं० मेघा इंजीनियरिंग लि० को दिया गया। कार्य के दौरान जनित मक को उपरोक्त स्थल पर निस्तारित किया गया है।

2. राजस्व विभाग द्वारा अवगत कराया गया कि ग्राम जवाड़ी की खतौनी खाता संख्या-41/251, श्रेणी-9(3) ड० (कृषि योग्य बंजर भूमि) के खसरा नम्बर-5361 रकवा 0.158, खसरा नम्बर-5362 रकवा 1.308, खसरा नम्बर-5364 रकवा 0.717, खसरा नम्बर-5446 रकवा 0.277 है० कुल रकवा 2.410 है०: मध्ये 1.310 है०. भूमि पर रेल विकास निगम लि० द्वारा बिना अनुमति के अवैध रूप से उपखनिज पत्थर/मक / मलवा डम्प किया गया है। उक्त स्थल पर जहां पर रेल विकास निगम लि० द्वारा मलवा डम्प किया गया है। (संलग्नक-2)

3. चोपड़ा गदेरे में एकत्रित मक की कुल मात्रा के सम्बन्ध में उप निदेशक / ज्येष्ठ खान अधिकारी, रुद्रप्रयाग द्वारा विभागीय सर्वेक्षक की सहायता से पैमाइश की गयी। पैमाइश करने पर पाया गया कि उक्त चोपड़ा गदेरे में कुल लगभग 60702.71 घनमीटर अर्थात् 97124.34 टन उपखनिज पत्थर / मक एकत्रित किया गया है, जिसमें से रेल विकास निगम के ठेकेदार मेघा कम्पनी द्वारा उपयोगी उपखनिज पत्थर को डम्पर में भरकर क्रेशर प्लांट में ले जाया जा रहा था। स्पष्ट है कि कम्पनी प्रबन्धन द्वारा उपयोगी उपखनिज को उपयोग क्रेशर प्लांट से ग्रिट/डस्ट तैयार कर टनल निर्माण / सुदृढीकरण हेतु किया जा रहा है।

4. राज्य में प्रख्यापित उत्तराखण्ड खनिज अवैध खनन परिवहन एवं भण्डारण का निवारण नियमावली 2021 की अध्याय 3 के नियम 8 (6) के अनुसार परियोजना के निर्माण / टनल से निकले मक के चिन्हित भण्डारण स्थलों पर भण्डारण हेतु प्रपत्र एच-1 में आवेदन निर्धारित शुल्क रू० 50,000.00 के चालान सहित महानिदेशक, भूत्तत्व एवं खनिकर्म निदेशालय देहरादून को प्रस्तुत करना चाहिए था तथा नियमावली में गठित समिति के माध्यम से जांच होनी थी तथा समिति की जांच आख्या के आधार पर अनुमति शासन स्तर से प्राप्त की जानी चाहिए थी, जो कि नियमानुसार नहीं की गयी है। रेल विकास निगम द्वारा विना अनुमति प्राप्त किये तथा बिना राजस्व / रायल्टी व अन्य कर का भुगतान किये मक डम्पिंग याड से खनिजों का उपयोग किया जाना उपरोक्त नियमावली के सुसंगत प्राविधानों का उल्लंघन है।

5. संयुक्त निरीक्षण दिनांक 02.04.2024 को मौके पर उपस्थित रेल विकास निगम लिमिटेड के प्रतिनिधि द्वारा अवगत कराया गया कि चोपड़ा गदेरा में एकत्रित मक का पूर्ण उपयोग टनल निर्माण कार्य में किया जायेगा। अधिशासी अभियन्ता सिंचाई खण्ड रूद्रप्रयाग द्वारा अवगत कराया गया कि एकत्रित मक के पूर्ण उपयोग के उपरान्त चोपड़ा गदेरे में पूर्व में लगाये गये क्षतिग्रस्त वायर क्रेट एवं नवीन वॉयर क्रेट का निर्माण

कर, उक्त गदेरे को पूर्व की भांति विकसित किया जाना उचित प्रतीत होता है। वर्तमान में उक्त स्थल पर कोई भी जल स्रोत नहीं पाया गया एवं स्थानीय व्यक्तियों द्वारा उक्त गदेरे को बरसाती गदेरा बताया गया है। एकत्रित मक से हुई क्षति हेतु क्षतिपूर्ति रेल विकास निगम लि० द्वारा राजस्व विभाग को दिया जाना उचित प्रतीत होता है।

6. उप वन संरक्षक, रुद्रप्रयाग वन प्रभाग, रुद्रप्रयाग की आख्यानुसार-

1. वर्तमान समय में मौके पर पाया गया कि संबन्धित प्रस्तावक विभाग/ कार्यदायी संस्था द्वारा सक्षम स्तर से अनुमति / स्वीकृति प्राप्ति के बिना ही निर्माण कार्य किया गया है।

2. उक्त निर्माण कार्य हेतु सक्षम स्तर से अनुमति / स्वीकृति से संबन्धित अभिलेख/अनुमति पत्र के सम्बन्ध में प्रयोक्ता अभिकरण से पूछताछ की गई, जिसके सम्बन्ध में उनके द्वारा अवगत कराया गया कि उक्त प्रस्ताव को स्वीकृति / अनुमोदन हेतु भारत सरकार को प्रेषित किया गया है।

3. पूर्व में भी अधोहस्ताक्षरी द्वारा समय-समय पर प्रश्नगत् स्थल का संबन्धित प्रस्तावक विभाग के प्रतिनिधि एवं वन विभाग के कर्मियों के साथ मौके पर निरीक्षण किया गया तथा निरीक्षण के पश्चात् प्रकरण में प्रस्तावित / चयनित 0.8511 है० सिविल वन भूमि से अतिरिक्त 0.4589 है० सिविल वन क्षेत्र पर मलवा निस्तारण पाया गया।

4. उक्त अतिरिक्त क्षेत्र, पर किये गये मलवा निस्तारण से वन सम्पदा को हुई क्षति के आंकलन हेतु वन क्षेत्राधिकारी दक्षिणी जखोली रेंज को निर्देशित किया गया, जिसके एवज में दक्षिणी जखोली रेन्ज द्वारा संबन्धित्त प्रस्तावक विभाग के विरुद्ध भारतीय वन अधिनियम-1927 के अन्तर्गत कार्यवाही करते हुए जुर्म केश संख्या-40/2022-23 दिनांक 23.02.2023 दर्ज कर उक्त क्षति से आंकलित रूपये 4,61,291.00 (चार लाख इकसठ हजार दो सौ इक्यानवे) मात्र की धनराशि वसूल कर वन राजस्व में जमा कराई गई।

5. भविष्य में इस प्रकार की पुनरावृत्ति न हो एवं उक्त प्रकरण में विधिवत् स्वीकृति प्राप्त करने के पश्चात् मलवा निस्तारण किये जाने हेतु संबन्धित प्रयोक्ता अभिकरण को निर्देश दिये गये।

6. उक्त के अतिरिक्त संबन्धित प्रस्तावक विभाग को यह भी निर्देश दिये गये कि प्रश्नगत् मक डम्पिंग स्थल का reclamation Plan तैयार करें व उक्त स्थल के rejuvenation हेतु विभिन्न गतिविधि (जिससे भविष्य में उक्त नाले/ गदेरे के बहाव से वन सम्पदा/पर्यावरण/जानमाल का कोई नुकसान / क्षति न हो) प्रस्तावित करते हुए भारत सरकार को उपलब्ध करायें। (संलग्नक-3)

7. रेलवे विकास निगम लिमिटेड एवं कार्यदायी संस्था मेघा इंजीनियरिंग द्वारा निर्माण कार्य के दौरान जनित मक को निस्तारित करने हेतु डम्पिंग स्थल की अनुमति नहीं ली

गयी तथा कंस्ट्रक्शन एवं डेमोलेशन वेस्ट प्रबन्धन नियम- 2022 के अन्तर्गत राज्य प्रदूषण नियंत्रण बोर्ड से प्राधिकार एवं जल/वायु सहमति प्राप्त नहीं की गयी है।

8. सहायक महानिरीक्षक वन, पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, क्षेत्रीय कार्यालय, देहरादून की आख्यानुसारः-

1) प्रस्ताव इस कार्यालय में अपर प्रमुख वन संरक्षक एवं नोडल अधिकारी वन संरक्षण के पत्र द्वारा दिनांक 27.04.2022 को प्राप्त हुआ। वर्तमान में प्रस्ताव विचाराधीन है तथा अभी तक प्रस्ताव को मंजूरी नहीं मिली है। निरीक्षण के दौरान देखा गया कि वन (संरक्षण) अधिनियम, 1980 के तहत सैद्धान्तिक स्वीकृति प्राप्त होने से पूर्व ही प्रस्तावित स्थल (वन भूमि) पर कार्य किया जा रहा है जो कि वन (संरक्षण) अधिनियम, 1980 के प्रावधानों का उल्लंघन है। पूर्व में इन मुद्दों को इंगित करते हुए 17.03.2023 (संलग्नक-4) एवम् बाद में दिनांक 12.04.2024 (संलग्नक-5) के माध्यम से राज्य सरकार को विस्तृत आख्या प्रस्तुत्त करने के लिए संचार किया गया, ताकि प्रकरण में वन संरक्षण अधिनियम, 1980 के तहत कार्रवाई की जा सके।

2) इस कार्यालय के पत्र दिनांक 17.03.2023 का जवाब इस कर्यालय में दिनांक 07.05.2024 को प्राप्त हुआ है, जिसके अवलोकन उपरान्त यह ज्ञात हुआ है कि परियोजना की समयबद्धता के दबाव में अन्य कोई विकल्प न होने के कारण स्वीकृति की प्रत्याक्षा में प्रस्तावित डम्पिंग स्थल पर मक डम्प किया गया है। अतः यह मामला वन संरक्षण अधिनियम, 1980 के उल्लंघन का प्रतीत होता है। इसके मध्यनजर प्रकरण में वन (संरक्षण एवम् संवर्धन) अधिनियम, 1980 के तहत नियमानुसार अग्रिम कार्रवाई की जाएगी।

3) प्रस्ताव में प्रभावित होने वाले वृक्षों की संख्या 05 का उल्लेख करते हुए प्रस्ताव प्रस्तुत किया गया है। हालांकि निरीक्षण के दौरान देखा गया कि कोई वृक्ष नहीं काटा गया है तथा मलबा भी अलकनंदा नदी में नहीं जा रहा है।
समिति द्वारा की गई जांच एवं वन विभाग, भूतत्व एवं खनिकर्म विभाग, राजस्व विभाग द्वारा दिये गये आंकड़ों के आधार पर निम्न तथ्य प्रकाश में आये-

1. रेल विकास निगम लि० द्वारा बिना अनुमति प्राप्त किये ग्राम जवाडी की खतौनी खाता संख्या-41/251, श्रेणी-9 (3) ड० (कृषि योग्य बंजर भूमि) के खसरा नम्बर- 5361 रकवा 0.158, खसरा नम्बर-5362 रकवा 1.308, खसरा नम्बर-5364 रकवा 0.717, खसरा नम्बर-5446 रकवा 0.277 है० कुल रकवा 2.410 है० मध्ये 1.310 है०, भूमि मलवा डमप किया गया है।

2. उपरोक्त खसरों के मध्य खसरा नम्बर- 5363 रौली अपनी पूर्ववत् स्वरूप में है व मलवा डम्पिंग से निजी नाप भूमि को कोई क्षति नहीं हुई है।

3. उक्त स्थान पर मलवा डम्पिंग से 05 वृक्षों के तने दबे हैं तथा उक्त वृक्षों की शाखाएं हरी-भरी अवस्था में हैं, जिससे उक्त वृक्षों को कोई भी नुकसान होना प्रतीत नहीं होता है।

4. रेल विकास निगम द्वारा बिना अनुमति प्राप्त किये तथा बिना राजस्व / रायल्टी व अन्य कर का भुगतान किये मक डम्पिंग याड से खनिजों का उपयोग किया जाना उपरोक्त नियमावली के सुसंगत प्राविधानों का उल्लंघन है।

5. पूर्व में वन विभाग के कर्मियों द्वारा मौके पर निरीक्षण किया गया तथा निरीक्षण के पश्चात् प्रकरण में प्रस्तावित / चयनित 0.8511 है० सिविल वन भूमि से अतिरिक्त 0.4589 है० सिविल वन क्षेत्र पर मलवा निस्तारण पाया गया।

6. जिसके एवज में दक्षिणी जखोली रेन्ज द्वारा संबन्धित प्रस्तावक विभाग के विरुद्ध भारतीय वन अधिनियम-1927 के अन्तर्गत कार्यवाही करते हुए जुर्म केश संख्या 40/2022-23 दिनांक 23.02.2023 दर्ज कर उक्त क्षति से आंकलित रूपये 4,61,291.00 (चार लाख इकसठ हजार दो सौ इक्यानवें) मात्र की धनराशि वसूल कर वन राजस्व में जमा कराई गई।

7. रेलवे विकास निगम लिमिटेड एवं कार्यदायी संस्था मेघा इंजीनियरिंग द्वारा निर्माण कार्य के दौरान जनित मक को निस्तारित करने हेतु डम्पिंग स्थल की अनुमति नहीं ली गयी तथा कंस्ट्रक्शन एवं डेमोलेशन वेस्ट प्रबन्धन नियम- 2022 के अन्तर्गत राज्य प्रदूषण नियंत्रण बोर्ड से प्राधिकार एवं जल/ वायु सहमति प्राप्त नहीं की गयी है।

8. वन भूमि प्रत्यावर्तन का प्रस्ताव अभी विचाराधीन है तथा यह पाया गया है कि उक्त प्रस्ताव में सैद्धान्तिक स्वीकृति प्राप्त होने से पूर्व ही स्थल (वन भूमि) पर कार्य किया जा रहा है जो कि वन (संरक्षण) अधिनियम, 1980 के प्रावधानों का उल्लंघन है। अतः प्रकरण में वन (संरक्षण एवम् संवर्धन) अधिनियम 1980 के तहत नियमानुसार अग्रिम कार्रवाई की जाएगी।"

7. English Translation by the Registry of relevant part of the report of the Joint Committee reproduced above reads as under:-

"The inspection report is as follows-

The tunnel construction work was given to Megha Engineering Limited by Railway Development Corporation Limited to work at the above site. At the above site, the dust generated during the work has been disposed of.

2. It was informed by the Revenue Department that Khatauni account number-41/251 of village Jawadi, Category-9(3) E (cultivable barren land) Khasra number-5361 area 0.158, Khasra number-5362 area

1.308, Khasra number -5364 area is 0.717, Khasra number-5446 area is 0.277. Total area is 2.410 1.310 hectare. Mineral hectare. Central area is stones/muck/debris have been illegally dumped on the land by Rail Vikas Nigam Ltd. without permission. The place where the debris have been dumped by Rail Vikas Nigam Limited is attached as (Enclosure-2).

3. The measurement of the total quantity of corn collected in Chopra Gadhera was done by Deputy Director/Senior Mine Officer, Rudraprayag with the help of departmental surveyor. It was found during measurement that a total of approx. 60702.71 cubic meters i.e. 97124.34 tons of mineral stone/muck has been collected in the said Chopra Gadhera, out of which the useful mineral stone was being filled in a dumper by the contractor Megha Company of Rail Vikas Nigam and taken to the crusher plant. It is clear that the company management is using useful minerals for tunnel construction/reinforcement by preparing grit/dust from the crusher plant.

4. According to Rule 8 (6) of Chapter 3 of Uttarakhand Mineral "Prevention of Illegal Mining, Transportation and Storage Rules 2021 promulgated in the state, for storage of corn extracted from the construction/tunnel at the identified storage sites of the project, application in Form H-1 with prescribed fee in form of challan of Rs. 50,000.00 should have been submitted to the Director General, Geology and Mining Directorate, Dehradun and the investigation should have been done through the committee constituted as per the rules and on the basis of the investigation report of the committee, permission should have been obtained from the Government, which is not as per the rules. The use of minerals from the dumping yard by Rail Vikas Nigam without obtaining permission and without paying revenue/royalty and other taxes is a violation of the relevant provisions of the above rules.

5. It was informed by the representative of Rail Vikas Nigam Limited present on the occasion of joint inspection dated 02.04.2024 that the muck collected in Chopra Gadhera will be fully utilized in the tunnel construction work. The Executive Engineer of Irrigation Division, Rudraprayag informed that after complete utilization of the collected muck, it seems appropriate to develop the said Gadhera as before by replacing the damaged wire crates installed earlier and constructing new wire crates in the Chopra Gadhera. At present, no water source has been found at the said site and the said Gadhera has been described as a rainy Gadhera by the local people. The compensation given by Rail

Vikas Nigam Ltd. to the Revenue Department for the loss caused by the collected maize seems appropriate.

6. According to the report of Deputy Forest Conservator, Rudraprayag Forest Division, Rudraprayag-

1. At present, it was found on the spot that the construction work has been done by the concerned proposing department/executive organization without obtaining permission/approval from the competent level.
2. Inquiries were made to the user agency regarding the records/permission letter related to permission/approval from the competent level for the said construction work, in relation to which it was informed by them that the said proposal has been sent to the Government of India for sanction/approval.
3. Earlier, the undersigned had inspected the site in question on the spot along with the representative of the concerned proposing department from time to time and the Forest Department personnel and after the inspection, additional 0.4589 hectares of civil forest land was found in an addition to the proposed/selected 0.8511 hectares of ci forest land in the case. Debris disposal was found in t forest area.
4. Forest Officer South Jakholi Range was directed to asse the damage caused to the forest wealth due to the debris disposal in the said additional area, in lieu of which t South Jakholi Range took action under the Indian Forest Act-1927 against the concerned proposing department while registering Criminal Case No. 40/2022-23 dated 23.02.2023, an amount of Rs 4,61,291.00 (four lakh sixty one thousand two hundred ninety one rupees only) from t said damage was recovered and deposited in Fore Revenue.
5. This should not be repeated in the future and aft obtaining due approval in the said case, instructions w given to the concerned user agency to dispose of the debris
6. Apart from the above, instructions were also given to t concerned proposing department to prepare a reclamation plan of the dumping site in question and to carry out various activities for the rejuvenation of the said site (There shou be no loss / damage of the forest wealth/environment/and property due to the flow of the said drain/wet hole future) and make it available to the Government of Ind while proposing. (Attachment-3)
7. Railway Vikas Nigam Limited and the executing agency Megha Engineering did not take permission for the dumping site to dispose of the dust generated during the construction work and under the Construction and Demolition Was Management Rules-2022,

authorization from the State Pollution Control Board and Water/Air Consent has been obtained.

8. According to the report of Assistant Inspector General Forests, Ministry of Environment, Forest and Climate Change, Regional Office, Dehradun:-

1) The proposal was received in this office by through let dated 27.04.2022 of Additional Chief Forest Conservator an Nodal Officer, Forest Conservation. Currently the proposal under consideration and the proposal has not been approved yet. During inspection, it was observed that work was being carried out on the proposed site (forest land) even before obtaining in-principle approval under the Forest (Conservation Act, 1980, which is the violation of the provisions of the so Act. The issues were pointed out earlier by this office via letter dated 17.03.2023 (Annexure-4) and letter dated 12.04.2024 (Annexure-5) communicated to the State Government to submit a detailed report so that action can taken in the matter under the Forest Conservation Act, 1980.

2) The reply to this office's letter dated 17.03.2023 has been received in this office on 07.05.2024. After observation of which it has come to light that due to pressure of timeliness of the project and there being no other option, muck has been dumped at the proposed dumping site in anticipation of approval. Therefore, this case appears to be a violation of the Forest Conservation Act, 1980. In view of this, further action will be taken in the matter as per rules under the Forest (Conservation and Promotion) Act, 1980.

3) The proposal has been submitted mentioning the number of 05 affected trees. However, during inspection, it was seen that no trees had been cut and the debris was also not going into the Alaknanda River.

Based on the investigation done by the committee and the data given by the Forest Department, Geology and Mining Department, Revenue Department, the following facts were observed -

1. Muck/debris has been illegally dumped by Rail Vikas Nigam Ltd. without permission on the land comprising of total area of 2.410 hectare out of which Central area is 1.310 hectare categorically divided into Khatauni account number-41/251 of village Jawadi, Category-9(3) E (cultivable barren land) 0.158 hectare area of Khasra number-5361, 1.308 hectare area of Khasra number-5362, 0.717 hectare area of Khasra number -5364, 0.277 hectare area of Khasra number-5446.

2. Among the above Khasras, Khasra No. 5363 Rauli is in its previous form and there has been no damage to the private land due to dumping of debris.

3. The trunks of 05 trees are buried due to debris dumping at the said place and the branches of the said trees are green, due to which there is no damage to the said trees.
4. The use of minerals from the dumping yard by the Rail Vikas Nigam without obtaining permission and without paying revenue/royalty and other taxes is a violation of the relevant provisions of the above rules.
5. Earlier, on-site inspection WGS conducted by Forest Department personnel and after inspection, debris disposal was found on additional 0.4589 hectares of civil forest area in addition to the proposed/selected 0.8511 hectares of civil forest land in the case.
6. In lieu of which, Southern Jakholi Range has registered a criminal case number 40/2022-23 dated 23.02.2023 against the concerned proponent department, taking action under the Indian Forest Act-1927, and recovered an amount of Rs 4,61,291.00 (four lakh sixty one thousand two hundred ninety one rupees only) from the said loss and deposited in forest revenue. 7. Railway Vikas Nigam Limited and the executing agency Megha Engineering did not take permission for the dumping site to dispose of the dust generated during the construction work and under the Construction and Demolition Waste Management Rules-2022, authorization from the State Pollution Control Board and Water/Air Consent has not been obtained.
8. The proposal for reversion of forest land is currently under consideration and it has been found that work is being done on the site (forest land) even before getting in-principle approval for the said proposal, which is a violation of the provisions of the Forest (Conservation) Act, 1980. Is. Therefore, further action will be taken in the case as per rules under the Forest (Conservation and Promotion) Act, 1980."

Impleadment of respondents

8. In view of the averments in the Original Application and observations/recommendations in the Report of the Joint Committee, this Tribunal impleaded (i) MoEF&CC through its Secretary; (ii) Uttarakhand Pollution Control Board (UKPCB) through its Member Secretary; (iii) District Magistrate, Rudraprayag; (iv) Rail Vikas Nigam Limited (RVNL) through its Chief Project Manager; and (v) M/s Megha Engineering and Infrastructure Limited (MEIL) as respondents and notices were ordered to be issued to them with direction to file their replies/responses/objections to Joint Committee Report within one month.

Response dated 18.06.2024 filed by respondent no.1-Ministry of Environment, Forest and Climate Change.

9. Response dated 18.06.2024 (pages no. 33 to 74 of the paper book) has been filed by respondent no.1-MoEF&CC. The relevant part of the response reads as under:-

> *"X X X X*
> *5. It is humbly submitted that prior approval of the Central Government under Section-2 of Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 (Earlier known as Forest (Conservation) Act, 1980) is required for carrying of any non-forestry activity on forest land.*
> *6. It is submitted that a proposal under section 2 of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 was received in the office of answering respondent through APCCF-cum Nodal Officer (FCA), Government of Uttarakhand vide letter dated 19.04.2022 seeking diversion of additional 0.8511 ha of forest land in favour of Rail Vikas Nigam Ltd (RVNL) for the construction of 126 Km Rishikesh-Karnprayag new broad gauge rail line. A copy of letter dated 19.04.2022 of APCCF-cum Nodal Officer (FCA), Government of Uttarakhand is annexed herewith as ANNEXURE R1/1.*
> *7. That the proposal was discussed in the Regional Empowered Committee (REC) meeting of answering respondent held on 30.08.2022, wherein the following decision were taken:*
>
> *"After detailed discussion on various aspects of the proposal, the committee decided to approve the proposal subject to submission of clarification/ documents/ information on the following points:*
> *i. The proposal is for additional area requirement for the already approved Rishikesh-Karnprayag Railway line project and it is expected that few more proposals for the same were and will be submitted. It is requested to propose the plantation area in one patch/ Block for all the proposals instead of providing it in small patches and accordingly KML file, maps & plantation scheme of 1702 trees shall be submitted.*
> *ii. A detailed analysis of the previously proposed muck dumping yards is required to be submitted.*
> *iii. Muck disposal plan is required to be reviewed and resubmitted in view of the quantity of muck that will be generated along with the capacity of the dumping yard.*
> *iv. No trees should be felled in the muck dumping area."*
> *A copy of MoM dated 30.08.2022 of REC is annexed herewith as ANNEXURE R1/2.*
> *8. That the above observation of REC was replied by the APCCF-cum-Nodal Officer, Government of Uttarakhand vide letter dated 17.02.2023. The KML file of diversion area was perused and it was found that muck has already been dumped in the site in question before taking approval under the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980. Therefore, the office of answering respondent had sought a report from the State Government vide*

letter 17.02.2023. A copy of reply letter dated 17.02.2023 and a copy of this office letter dated 17.03.2023 are annexed herewith as ANNEXURE R1/3 & ANNEXURE R1/4 respectively.

9. Further, during the inspection of Joint Committee on 02.04.2024, it was also observed that muck was dumped on the site in question. Therefore, the office of answering respondent vide letter dated 12.04.2024 has pointed out the violation of Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 to the State Government of Uttarakhand with the request to submit a detailed report in the matter. Further, the name and designation of persons responsible for the violation of above-said Act has also been sought. However, the reply of this office letter dated 12.04.2024 is still awaited from the State Government. A copy of this office letter dated 12.04.2024 is annexed herewith as ANNEXURE R1/5.

10. That referring to this office letter dated 18.03.2024 (may be read as letter dt. 17.03.2023), reply has been submitted by the Nodal Officer, Government of Uttarakhand vide letter dated 27.04.2024 (received online on 07.05.2024). By above letter, it has informed that muck has dumped in an anticipation of Stage-I approval. A copy of reply letter dated 27.04.2024 is annexed herewith as ANNEXURE R1/6.

11. Since, Stage-I approval in the proposal is not accorded by the answering respondent yet, therefore, it amounts to the clear violation of Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980. Therefore, as per the Para 10 (2) (v) of the Van (Sanrakshan Evam Samvardhan) Rules, 2023, the office of answering respondent has submitted the case file to the Ministry of Environment, Forest & Climate Change, New Delhi on 13.06.2024 through e-office for taking appropriate action in the matter in accordance with law."

Response dated 15.07.2024 filed by respondent no. 3- District Magistrate, Rudraprayag

10. Response dated 15.07.2024 (pages no. 75 to 87 of the paper book) has been filed by respondent no. 3- District Magistrate, Rudraprayag. Relevant part of the response reads as under:-

"5. That, Sub Divisional Magistrate has apprised vide letter dated 11-07-2024 that a team comprising of Tehsildar, Rudraprayag, Deputy Director/Senior Mines officer, Rudraprayag, Revenue Sub Inspector, Jawadi and representatives of Rail Vikas Nigam and Megha Engineering and Infrastructure Limited visited the site on 10 July 2024 and the respondent no 5 Rail Vikas Nigam or its representative were unable to provide appropriate - permission letters issued from competent authorities for dumping of Muck/Debris in Chopda Gadera.

6. That prima facie, considering that the muck/debris generated from the digging of the tunnel was illegally dumped at the site in question at Chopda

Gadera of Jawadi Village, the site was sealed and the road that leads to the Chopda Gadera was closed/blocked with the help of pillars and wires and the representatives from Rail Vikas Nigam and Megha Engineering and Infrastructure Limited were directed to maintain the status quo at the dumping site and to keep the sealed road intact. The copy of the inspection report dated 10 July 2024 and photographs are annexed herewith as Annexure A.

7. It is also submitted that a show cause notice vide letter , dated 11-07-2024 has also been issued to the Chief Project Manager, Rail Vikas Nigam by the office of Geology and Mining Department, Rudraprayag for dumping of 60702.71 cubic meter i.e. 97124.34 ton minerals without permission. The show cause notice is annexed herewith as Annexure B."

Response dated 25.07.2024 filed by respondent no. 2- UKPCB.

11. Response dated 25.07.2024 (pages no. 88 to 93 of the paper book) has been filed by respondent no. 2-UKPCB. Relevant part of the response reads as under:-

""X X X X

3. That from the perusal of Joint Committee report, it is evident that the Rail Vikas Nigam Limited and its executing agency i.e. M.S Megha Engineering & Infrastructure Limited have illegally disposed the muck generated from the tunnelling that is too without prior permission of the Competent Authority. Considering the observations of the Joint Committee, the Uttarakhand Pollution Control Board has issued necessary directions regarding disposal of muck and its management to M/S Megha Engineering & Infrastructure Limited vide its letter ref. no. UKPCB/HO/Gen-183-759/2024/538 dated 11.07.2024. Copy of letter dated 11.07.2024 is being marked and filed as Annexure No.1 to this affidavit.

4. That the Joint Committee report also reported that that necessary permission under the Uttarakhand (Regulation of Illegal Mining, Transportation & Storage) rules, 2021 has not obtained. In this regard, letter along with the Joint Committee report was also forwarded to the Director, Department of Geology and Mining, Government of Uttarakhand for necessary action in the matter.

Copy of letter dated 11.07.2024 addressed to the Director, Department of Geology and Mining, Government of Uttarakhand is being marked and filed as Annexure No. 2 to this affidavit.

5. That the deponent is a responsible Government servant having the highest regards for the Hon'ble Tribunal and orders passed by them. The deponent has always made his sincerest efforts to carry out the orders passed by this Hon'ble Tribunal in its letter and spirit and shall continue to do so in the future."

Response dated 26.08.2024 filed by respondent no. 5- M/s Megha Engineering and Infrastructure Limited (MEIL)

12. Response dated 26.08.2024 (pages no. 94 to 1052 of the paper book) has been filed by respondent no. 5- MEIL. Relevant part of the response reads as under:-

> *"X X X X*
>
> *4. That the project in question is for construction of Tunnels, Bridges and Formation Works from Chainage 91+228 to 101 + 339(FLS) under Package 7B in connection with new Broad-Gauge Line between Rishikesh and Karanprayag (125km) in the State of Uttarakhand, India, was introduced. The proposed alignment for the Rishikesh-Karnaprayag railway project spans 125 km, traversing the Ganga and Alaknanda River valleys with substantial tunnel and bridge construction over deep gorges and valleys. This strategic infrastructure initiative aims to enhance connectivity within the Ganga/Alaknanda valley and is anticipated to bolster the economic and tourism sectors of Uttarakhand. Future developments may extend the line to Badrinath and Kedarnath.*
>
> *5. That a tender was issued for the project's implementation, and following the bidding process, the Respondent No. 5 won the bid and the contract was awarded to them the contract value, as specified in the contract agreement, is INR 17,45,55,63,272.00.*
>
> *6. That a contract agreement (herein after referred to as "bid document PK-7B") for the construction of the above-mentioned project was signed between Rail Vikas Nigam Limited (herein referred to as Respondent No.4) and Respondent No.5 on September 2, 2020. As per the contract agreement the RVNL signed the said contract agreement as "EMPLOYER" and M/s Megha Engineering and Infrastructures Ltd. is shown as "CONTRACTOR". A copy of the contract is enclosed as Annexure-1.*
>
> *7. This initiative represents a highly ambitious and significant endeavor in India. The proposed extension aims to link the project to Badrinath and Kedarnath through future developments. Upon its completion, this undertaking will significantly enhance connectivity within the Ganga/Alaknanda valley, thereby stimulating economic growth and boosting tourism in the Uttarakhand region.*
>
> *8. The route of the project traverses challenging and steep mountainous terrain. Specifically, within the 7B alignment package, the project includes Tunnel T13 and the Tilani station yard.*
>
> *9. That it is submitted that, the Respondent No.5 has not deviated from any mining rules or environmental guidelines, and adhered to the proper protocols placed under the contract. Respondent No.5 merely followed the guidelines laid by its empower i.e., Respondent No. 4. Respondent No. 5 utilized the designated muck dumping zone as per the bid document PK-7B; however, the entire allocated area reached its full capacity during the course of construction. Consequently, the Respondent no.5 adhered to the prescribed procedures and requested an*

additional dumping site to ensure the smooth and efficient continuation of the contract. Respondent No. 4, RVNL, promptly facilitated this request through its project manager. Relevant correspondence regarding this matter i.e., the letter dated 02.12.2021 sent by Respondent No.5 requesting for additional space for Muck dumping and reply/order of Respondent No.4 vide letter no 1276 dated 28.08.2021 designating additional space for Muck dumping, is enclosed as Annexure-2.

10. That it is pertinent to mention that the Joint Committee has erred in its finding that Respondent No. 5 has been collecting useful mineral stone/muck from the tunnel construction without obtaining relevant permissions and without paying revenue/royalty, thus violating the Rule 8(6) of Chapter 3 of Uttarakhand Mineral "Prevention of Illegal Mining, Transportation and Storage" Rules 2021. It is further explained in detail by Respondent No. 5 in following para 11 and 12 of this reply

11. That it is pertinent to mention that Respondent No. 5 is legally authorized to utilize muck generated from tunnelling operations pursuant to Government of Uttarakhand (herein referred to as GoUK) Orders No. 123/VII-1/2021/8(16)/19 dated January 19, 2021, and No. 910/VII-A-1/2021/03(46)/2021 dated August 24, 2021, issued by the Audhyogik Vikas (Khanan) Anubhaga-1, Dehradun. Further it is reiterated that Respondent No. 5 is complying with the requirement to deposit the Royalty as stipulated by the GoUK. It is affirmed that Respondent No. 5 is appropriately utilizing the muck generated from tunnel excavation as per the aforementioned permissions. Copies of the orders by the GoUK are enclosed as ANNEXURE-3.

12. That it is submitted that Respondent No. 5 is in compliance with the Rule 8(6) of Chapter 3 of Uttarakhand Mineral "Prevention of Illegal Mining, Transportation and Storage" Rules 2021. Thus, Respondent No.5 has meticulously adhered to all applicable regulations and statutory requirements governing the use of such materials. Respondent No.5 has duly paid the Royalty of Rs. 50,000/- (Fifty Thousand Rupees only) as per the State Rule 8(6). A copy of the receipt issued by the State for the payment of Rs. 50,000/-(Fifty Thousand Rupees only) Royalty paid by Respondent No. 5 in adherence of the Rule 8(6) is enclosed as ANNEXURE-4.

13. That it is material to confirm the fact that Respondent No. 5 assumes full responsibility for the utilization of the usable muck at Chopra Gadera in the production of aggregates. This commitment is in accordance with the approval granted by the Government of Uttarakhand, as outlined in the Order dated August 24, 2021. This commitment ensures that all activities related to the muck are conducted in compliance with the government's guidelines. Respondent No.5 is ready to carefully assess the environmental impact of our projects and work closely with experts to apply the best practices. Copy of the above-mentioned order is enclosed as ANNEXURE-5.

14. That it is submitted that the Executive Engineer of Irrigation Division, Rudraprayag informed that after complete utilization of the collected muck, it seems appropriate to develop the said Gadera as before by replacing the damaged wire crates installed earlier and constructing new wire crates in the Chopra Gadera. It is hereby agreed that Respondent No.5 shall undertake the restoration work in close consultation with the Forest Department, relevant administrative authorities, and local villagers. This collaborative approach ensures that all restoration activities are conducted in alignment with environmental and community considerations, thereby reaffirming our commitment to responsible and effective restoration efforts. Respondent No.5 takes their responsibility for environmental protection very seriously. This means they don't just follow the rules they go above and beyond to prevent any negative effects on nature.

15. That it is pertinent to mention, that the Joint Committee report mentions no water source has been found at the site yet describes the Gedera as rainy Gedera. Clearly indicating that Respondent No.5 was vigilant in keeping the Gadera safe and not damaging. At the same time, the report reiterates that compensation has been paid by Respondent No.4 to the Revenue Department for the loss caused by the collected maize, which is appropriate. Thus, no clarification on the same is needed by Respondent No.5.

Reply to the report of Deputy Forest Conservator, Rudraprayag Forest Division, Rudraprayag-

16. That it is submitted that as per the report of the Deputy Forest Conservator, Rudraprayag Forest Division an additional 0.4589 hectares of civil forest land was found in addition to the proposed 0.8511 hectares of civil forest land. That Respondent No.5 noted that there has been an inadvertent overlap into areas. This may have occurred due to an oversight, and we are committed to promptly addressing and rectifying the issue as early as possible. Respondent No.5's commitment to environmental protection goes beyond compliance; it is a core value that drives their operations and decision-making processes. Through their conscientious efforts, they aim to balance progress with preservation, demonstrating that economic development and environmental stewardship can coexist harmoniously.

17. That it is pertinent to mention that Forest Officer South Jakholi Range was directed to assess the damage caused to the forest wealth due to the debris disposal in the additional area. In lieu of the same and under Indian Forest Act, 1927 an amount of Rs. 4,61,291.00 (Four Lakh Sixty-One Thousand Two Hundred Ninety-One Rupees only) was deposited by Respondent No.5 for the damages caused to the environment and the same was deposited in the Forest Revenue. Respondent No. 5 assures that it will diligently implement all necessary precautions to prevent any further impact or harm. Respondent No.5 deeply recognizes the vital importance of environmental stewardship in all our projects.

We are committed to integrating sustainable practices and stringent environmental safeguards into every phase of our work, from planning through execution

18. That it is submitted that Respondent No.5 is a mere contractor of the said construction and Respondent No.4 i.e., RVNL is the actual Employer and authority of the said construction of Tunnels, Bridges and Formation Works from Chainage 91+228 to 101 + 339(FLS) under Package - 7B in connection with new Broad-Gauge Line between Rishikesh and Karanprayag (125km) in the State of Uttarakhand. As also reiterated in Clause 2.18.1 (a) of the bid document PK-7B i.e., the contract agreement between Respondent No.4 and Respondent No.5 that is reproduced herein, clearly reflects the responsibility of Respondent No. 4 to acquire all necessary permissions referred in para 1, 2 and 7 of the report of Deputy Forest Conservator.

Clause 2.18 Other Provision: 2.18.1 Land: a) Employer has acquired land required for construction of permanent works and Muck dumping zones. Necessary forest clearances and possession of entire land (Government, forest and Private) has been obtained. Contractor will be made available entire acquired land for construction of permanent works.

Response to the report of Assistant Inspector General of Forests, Ministry of Environment, Forest and Climate Change, Regional Office, Dehradun:

19. That it is submitted that in relation to paragraph 1 and 2 of the report of Assistant Inspector General of Forests, Ministry of Environment, Forest and Climate Change, Regional Office, Dehradun, it is stated that proposal for work on the proposed site (forest land) was received by the Additional Chief Forest Conservator and Nodal Officer, Forest Conservation on the 27.04.2022.

20. That it is alleged that even before obtaining in-principal approval under the Forest (Conservation) Act, 1980, the work was being carried out on the proposed site (forest land). It is important to note that securing the necessary permissions from the relevant authorities was part of the responsibilities outlined in the contract agreement i.e. bid document PK-7B. The significance of this project cannot be over stated, as it is a major undertaking with the potential to transform connectivity and drive economic and tourism growth in Uttarakhand. Given the scale and complexity of the project, involving extensive infrastructure development and substantial manpower, it is imperative that strict adherence to timelines is maintained. Any deviation from the scheduled deadlines could jeopardize the entire project, leading to significant delays and operational challenges. Effective project management and timely execution are crucial to prevent disruptions and ensure that the project remains on track, thereby avoiding potential chaos and ensuring the successful realization of its objectives. It is reiterated that Respondent No. 4, as the Employer as per the bid document PK-

7B, was responsible for securing the necessary authorization from the relevant authority.
21. That it is submitted that even the survey report ensures the fact that Respondent No. 5 has not harmed any trees or the water bodies at the site of construction. Neither any trees were cut nor any debris was discharged in the Alaknanda River.

***Reply on the investigation done by the committee and the data given by the Forest Department, Geology and Mining Department, Revenue Department**:*

22. That it is submitted that the allegations raised in the survey report in its para 1 have already been dealt with, in the above contentions. The same are being not repeated for the sake of brevity.
23. That it is submitted that even the survey report ensures the fact that Respondent No. 5 has not harmed Khasra No. 5363 Rauli, it is intact in its previous form and there has been no damage to the private land. We are committed to integrating sustainable practices and stringent environmental safeguards into every phase of our work, from planning through execution. Respondent No.5's dedication to Minimizing ecological impact is reflected in our meticulous approach to environmental protection, ensuring that our projects not only enhance quality of life but also preserve the natural world for future generations. By adhering to rigorous environmental standards and employing advanced technologies, we strive to reduce our carbon footprint and mitigate any adverse effects on the ecosystems we work within.
24. That it is submitted that even the survey report ensures the fact that Respondent No. 5 has not harmed any trees at the site of construction. The Respondent No.5 assures that it will take all necessary precautions to safeguard and protect the environment.
25. That it is submitted that even the survey report ensures the fact that Respondent No. 5 has not harmed Khasra No. 5363 Rauli, it is intact in its previous form and there has been no damage to the private land.
26. That it is submitted that the allegations raised in the survey report in its para 4 have already been dealt with, in the above contentions. The same are being not repeated for the sake of brevity. Yet, Respondent No. 5 reiterates that it has paid the mandated Royalty as per the order of GoUK. The muck is also being used for production of aggregates in a lawful and legitimate manner.

X *X* *X*
X

32. This current project between RVNL and M/s MEIL represents a visionary and critical initiative for India, with far-reaching implications for national. development. The proposed extension aims to connect key spiritual and tourist

destinations, Badrinath and Kedarnath, through future enhancements. Once completed, this ambitious project will significantly enhance connectivity within the Ganga/Alaknanda valley, fostering economic growth and advancing tourism in Uttarakhand. Its completion will not only streamline travel and trade but also open new avenues for regional development, thereby contributing to India's. broader economic and infrastructural progress. This project stands as a testament to India's commitment to creating integrated and sustainable growth across its diverse regions."

Response dated 21.08.2024 filed by respondent no. 4- Rail Vikas Nigam Limited (RVNL)

13. Response dated 21.08.2024 (pages no. 1053 to 1139 of the paper book) has been filed by respondent no. 4- Rail Vikas Nigam Limited (RVNL). Relevant part of the response reads as under:-

"X X X X

5. That the Authorized representative of Rail Vikas Nigam Limited i.e., RVNL has gone through the joint committee report dated 13.05.2024 and after perusing the same, the response is being filed which as follows-

A. That the Rail Vikas Nigam Ltd. (RVNL), is a public sector undertaking under the Ministry of Railways and has been entrusted with the work of detailed construction survey, design, engineering and construction of new line as a part of Northern Railway (NR). The proposed alignment connects Rishikesh and Karnaprayag and passes through Ganga and Alaknanada river valley. The alignment is 126 km long with a significant part falls in tunnels and bridges spanning deep gorges and valleys. This project is further proposed to be extended to connect Badrinath and Kedarnath (through future development). On completion of this project, it will improve connectivity in Ganga/Alaknanda valley and boost the economy and tourism in Uttarakhand state. Otherwise also this project a dream and important project in India.

B. That the project alignment passes through the rugged, mountainous and steep terrain. Out of 126 Km about 105 km track passes through the tunnels. The alignment avoids the hill slope excavation, acquisition of open land and tree cutting. Thus, while finalizing the alignment, RVNL has taken care of all environmental aspects.

It is pertinent to mention that for construction purpose the alignment has been divided in 10 packages. Out of 10 packages, the package 7B covers tunnel T13 (between Narkota and Tilani) and Tilani station yard. The package 7B starts from chainage Km.91+228 and ends at Km.101+339.

C. That as stated in the preceding paragraph, RVNL has been entrusted with the work of detailed construction survey, design, engineering and construction

of this project. For the implementation of the project a tender was floated for package 7B and after completion of bidding process, the contract was awarded to M/s Megha Engineering & Infrastructure Ltd. which is a company incorporated under the Companies Act. M/s. Megha Engineering & Infrastructure Ltd. is also impleaded as respondent No.5 in the instant Original Application No.44 of 2024.

D. That the contract agreement was executed between RVNL and M/s Megha Engineering and Infrastructure Ltd. on 02.09.2020. The RVNL signed the said contract agreement as the "EMPLOYER" and M/s Megha Engineering and Infrastructures Ltd. as the "CONTRACTOR". The Copy of the contract agreement dated 02.09.2020 is being enclosed as Annexure No. R-1 with this response.

As a Contractor under the agreement, M/s Megha Engineering and Infrastructures Ltd. has been assigned the following work-

"Construction of Tunnels, Bridges and Formation Works from Chainage 91+228 to 101+339 (FLS) under Package-7B in connection with new Broad Gauge Line between Rishikesh and Karanpravag (125km) in the state of Uttarakhand, India"

As it appears from this contract agreement the contractor has been given the task for execution of the aforesaid work.

E. That the contract value in the contract agreement is INR 17,45,55,63,272/- only. In the contract agreement there is reference of description of contents which is in the form of index, and it contains 16 descriptions (Page no 2 of 900). This description of contents include the "General Condition of Contract" mentioned at Serial No.9 in the Index and also the "Special/Particular Conditions of Contract" mentioned at Serial No.8 of the contract agreement.

F. That the relevant extract of the bid document relating to the General Conditions of Contract (GCC) are reproduced below. The complete copy of the bid document will be produced at the time of argument of the instant Original Application and is not being filed for the sake of brevity and to avoid making the file heavy and bulky

G. Under chapter 1 of section 5 (works requirement) of Sr. 10 of index i.e. The Works/Employer's Requirements, the Clause no. 1.8 describes the works requirements for protection of environment. This clause clearly provides that the contractor and its sub-contractors and petty contractors shall abide at all times by all existing enactment on environmental protection and rules made thereunder. For ready reference Clause 1.8 is being reproduced here as under: -"1.8 Protection of Environment

1.8.1During execution of works, the Contractor, his sub-contractors and petty contractors shall abide at all times by all existing enactments on environmental protection and rules made there under, regulations,

notifications and bye-laws of the State or Central Government or local authorities and any other law, bye- law, regulation that may be issued in this respect in future by the State or Central Government or local authority. Some of the most relevant laws that are currently in force and are applicable in the subject contract are listed below: -

1.8.1.1 The Forest Act 1927;

1.8.1.2 The Forest (Conservation) Act 1980;

1.8.1.3 The Wildlife (Protection) Act 1972;

1.8.1.4 National Wildlife Action Plan 1983;

1.8.1.5 National Conservation Strategy 1992;

1.8.1.6 National Forest Policy, 1988;

1.8.1.7 The Water (Prevention and Control of Pollution) Act, 1974;

1.8.1.8 The Air (Prevention and Control of Pollution) Act, 1981;

1.8.1.9 The Environment (Protection) Act, 1986;

18.1.10 The Public Liability Insurance Act, 1991.

1.8.2 The last-named Act provides for public liability insurance for the purpose of providing immediate relief to persons affected by accidents occurring while handling hazardous substances and for matters connected therewith or incidental thereto. Hazardous substance means any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986, and exceeding such quantity as may be specified by notification by the Central Government.

1.8.3 Protection of Trees: The Contractor must organize his work in such a way that the ecology of the area is not affected. The work area is located mostly in forest land. The Contractor and his men are prohibited from cutting any trees. Contractor shall provide assistance to the forest official in cutting of trees. Unauthorized felling of trees will result in legal action being taken under the relevant laws for which the Contractor shall be responsible.

The abstract of the bid document PK-7B i.e., Chapter 1 is being enclosed as Annexure R-2,

H. That another annexure is abstract of Chapter 2 of bid document PK 7B is also being enclosed which pertains to general information and scope of work. Clause 2.3 pertains to project components and its sub clause E is relevant which gives the description of Muck dumping locations. The said Sub Clause E is being reproduced here as under for ready reference -.

"E. Muck Dumping Locations

Employer has already acquired land required for dumping of muck to be generated from tunnel excavation at suitable locations. All sites are located within 10km lead of the tunnel Portals. Site maps for all muck dumping grounds are shown in bid drawings in Vol. III. Brief details are as follows:

Ground ID	Available Muck dumping capacity	Muck Dumping Location	Suitable for	Distance (Kms)
D27 (NH)	3,52,000.00 cum.	At Narkota Village	T13-P-1	At Tunnel-13 Portal-1 location
D27 (NH)	3,52,000.00 cum.	At Narkota Village	Adit-7 Portal	At 8 km fromadit portalPortal location.
D-28* (NH)	7,69,280.00 cum	Nearby Tilani Yard	T-13-P-2	At Portal Location Only.

*This dumping ground would be shared between T13 and T14.

As it appears from the aforesaid sub clause E there are identified muck dumping zones of Muck and in the bid document there is clear cut reference of these dumping locations with available muck dumping capacity as well as there is a with description of muck dumping location.

The Chapter 2 of bid document is also being enclosed as Annexure R-3.

In support of this, Volume 3 which contains the bid drawing of muck dumping locations is also being enclosed as Annexure R-4.

Along with this, the maps which pertains to the muck dumping location area from period 2021 till 2024 is being collectively filed and being enclosed as Annexure R-5.

Volume III is under Chapter 7 of the bid document PK-7B chapter contains different drawings, reports and information. Clause 7.1 and 7.2 of Chapter 7 are relevant and the said clause 7.1. and 7.2 are reproduced herein under for ready reference-.

"7.0 BID DRAWINGS

7.1 Following drawings, reports and information etc. are available in Volume III of the Bid Document

(i) Alignment and Longitudinal Section

(ii) Geotechnical Baseline Report J.

(iii) Borehole Data (Available in RVNL office for reference)

(iv) Tunnel Portals and other Underground structures.

(v) Approach roads.

(vi) Adit 7

(vii) Muck Dumping Areas

(viii) Station Yard Plan

7.2 The information contained in the tender drawings given in Vol-III are indicative and for guidance only. The contractor shall execute the works as per the approved construction drawings and specifications or as approved by the Engineer."

Clause 7.2 clearly stipulates that ***"the contractor shall execute the works as per the approved construction drawings and specifications or as approved by the Engineer"****.*

Now clause 7.1 contains sub clause (vii) i.e., Muck Dumping areas and therefore as per clause 7.2 of Chapter 7, the contractor is responsible to dump the muck in the identified muck dumping areas, the description of which has been given in Clause E of Chapter 2 and the muck dumping areas as specified in drawing in Volume III. The abstract of Chapter 7 of bid document PK 7B is being enclosed as Annexure R-6.

j. That under Annexure-A (Technical Specification for Tunneling) sub chapter 1 (Site Installations and Services) the clause no. 1.3.19, clause no. 1.3.20 and clause no. 8.15 of sub chapter 8 (Underground Excavation) of Annexure -A are relevant with respect to Muck Disposal of bid document PK-7B are also relevant and these are clauses 1.3.19, 1.3.20 and clause 8.15.

Clause 1.3.19. pertains to dumping areas and this clause is also very relevant for the subject matter of present Original Application.

1.3.19 DUMPING AREAS WITH DEVELOPMENT PLANS

i. Dumping areas lands acquired by employer near the tunnel portal will be made available for muck disposal purposes. Tender drawings show the available land demarcated and reserved for muck dumping under the scope of works. The technical specifications for developing and rehabilitating the muck disposal sites shall be as submitted by contractor and agreed by the Engineer.

ii. The contractor shall make necessary arrangements for the management of muck disposal so that it meets all the environment guidelines/conditions imposed for the construction of project by MOEF / Govt. bodies / State Pollution control board and/or other statutory bodies."

Further Clause 1.3.20 is also relevant which pertains to Land requirement which clearly provides whatever be the royalty is concerned that will be payable by the contractor. For ready reference clause 1.3.22. is being reproduced herein under:-

"1.3.20 WASTE AND GARBAGE DISPOSAL

i. The Contractor shall daily collect waste material and garbage from camps, offices and workshops and transport it to an area approved by the Engineer, where it shall be incinerated and buried or disposed off as approved by the Engineer.

ii. The site shall be kept clean and free of refuse at all times. No waste shall be dumped in areas other than those approved by the Engineer for waste disposal. No waste of any kind shall be deposited in any watercourses.

iii. Waste and Garbage disposal system shall meet all environment guidelines and conditions imposed for construction of project by MOEF/Govt. bodies at no extra cost to The Employer.

iv. The contractor has to make appropriate provision for Oil / Grease interceptor at refuelling stations and at fuel storage locations.

Further, Clause 8.15 pertains to disposal of excavated materials and the same are being also reproduced here as under-.

"8.15 DISPOSAL OF EXCAVATED MATERIALS

8.15.1 All materials from underground excavation suitable for use as fill concrete aggregates or for other purposes shall be stockpiled on the Site as directed or approved by the Engineer, if the immediate placement in the final location in permanent works is not possible.

8.15.2 Excavated materials, which are not suitable or are in excess of the permanent construction requirements, shall be disposed off in the waste disposal areas shown in the drawings or in areas designated as such by Engineer in the course of the work.

8.15.3 The Contractor shall shape and trim the dumping areas and stockpiles to the lines and grades as directed or approved by the Engineer and shall provide for adequate diversion of existing water courses. The area over which the excavated material is to be a disposed shall be stripped of all vegetation.

If the area is steeply dipping, precautions shall be taken to ensure stability of the material in the area, including base drainage and surface protection against erosion and providing retaining wall / gabions etc. wherever required. The material dumped shall be compacted, by movement of the dumping vehicles and grading as necessary, in layers not exceeding 0.5m in depth. It shall be the responsibility of the Contractor to remove any material from any slide that may occur in the disposal dump or its base and redispose the removed material properly to the satisfaction of the Engineer at his own cost.

Prior to the commencement of excavation work the Contractor shall have prepared the disposal area to the satisfaction of the Engineer and the methods proposed for disposal shall also have received approval of the Engineer.

8.15.4 The Contractor shall be liable for any damage to Temporary or Permanent Works or to the property of third parties caused by poor drainage in the waste disposal or stockpile areas.

8.15.5 If additional areas are required for disposal of the excavated material, the contractor shall propose, such area for approval of the Engineer.

8.15.6 The Contractor shall ensure that no excavated materials are disposed. off in the stream or at locations, where in the opinion of the Engineer these are liable to be washed away by the floods.

8.15.7 The disposal of the excavated material in the dumping area shall not damage the environment and will be regulated as per the norms of Government of India. In spite muck disposal area shall be suitably covered off with retaining structures. Before taking up such works the contractor shall propose the construction methodology of retaining wall with RR Masonry/gabions approved from the engineer."

The aforesaid relevant clauses i.e., 1.3.19 and clause 8.15 of the bid documentPK-7B are being enclosed as Annexure R-7.

k. The respondent no.5 i.e., M/s Megha Engineering and Infrastructure Ltd. issued letter of price bid. This letter is being enclosed only to demonstrate and establish that the said contractor accepted the said work with no reservations to the bidding document and undertakes to execute the works in conformity with the bidding document.

The copy of letter of price of respondent no.5 dated 17.02.2020 is also being enclosed as Annexure R-8.

RESPONSE TO THE OBSERVATIONS MADE BY THE JOINT COMMITTEE REPORT

L. That the answering respondent no.4 i.e., RVNL would further make submissions on the factual position as observed by the committee in its report dated 13.05.24 which are as follows-

i. That the proposal of muck dumping yard at Jawadi for area 0.8511 hectares was processed and uploaded on MoEF& CC portal PARIVESH (https://parivesh.nic.in) on 29.11.2021. After recommendation of Sate Forest Secretary (Annexure----), the proposal was submitted to REC (Regional Empowered Committee) and discussed on 30.08.2022. The decision of the RECis read as under-

"After detailed discussion on various aspects of the proposal, the committee decided to approve the proposal subject to submission of clarification/ documents/ information on the following points:

1. The proposal is for additional area requirement for the already approved Rishikesh Karnprayag Railway line project and it is expected that few more proposals for the same were and will be submitted. It is requested to propose the plantation area in one patch/ Block for all the proposals instead of providing it in small patches and accordingly KML file, maps & plantation scheme of 1702 trees shall be submitted.

2. A detailed analysis of the previously proposed muck dumping yards is required to be submitted.

3. Muck disposal plan is required to be reviewed and resubmitted in view of the quantity of muck that will be generated along with the capacity of the dumping yard.

4. No trees should be felled in the muck dumping area."

The copy of the letter dated 06.09.2022 regarding the 71st meeting of the Regional Empowered Committee of Integrated Regional Office, Dehradun, held on 30.08.2022 along with the proposal is hereby being annexed and enclosed as Annexure R-9.

ii. That, consequently, RVNL complied with all the above points of submission s of clarification/ documents/ information of REC approval vide letter no.

RVNL/RKSH/FRST(Cors)/1/2020/CIVIL/RKSH/898 dated 29.12.2022. The Timeline movement of proposal from date 29.11.2021 till date can be seen on PARIVESH portal. However, the formal approval from MOEF & CC is still awaited. It is further submitted that muck dumping on additional land of 0.4589 hectare was done by the Contractor M/s Megha Engineering & Infrastructure Limited (responded no. 5 in the matter) awaiting approval. For this the contractor has been penalized under Indian Forest Act-1927, under case no. 40/2022-23 dated 23.02.2023, for Rs. 4,61,291.00 (Rs. Four Lakhs sixty-one thousand two hundred ninety-one only). Though, the default, in the humble submission was not on the part of the contractor, however, to avoid any dispute the said amount was deposited. The copy of the amount bearing Rs. 4,61,291/- is being reproduced at during the course of argument.

iii. That the answering respondent no.4 i.e., RVNL had carried out all the formalities for obtaining permission for Storage and Transportation well in advance in Form H-1 along with the challan of Rs. 50,000/- vide dated 28.06.2021. Subsequently, the committee constituted by the Director General Mining and Geology, Government of Uttarakhand carried out the inspection on date 24.07.2021. However, for unknown reasons the permission is kept in abeyance and the same is not granted till date.

The copy of the Form H-1 vide dated 28.06.2021 wherein the department had carried out all the formalities for obtaining the permission for Storage and Transportation as well as the inspection report are collectively being filed herewith and enclosed as Annexure R-10 (colly)

iv. That the site inspection report dated 07.12.2021 from DCF wherein the inspection of the land required by the answering respondent for the project i.e., 0.8511 ha. (Revenue Forest Land) wherein it was found that no violation by the user agency (i.e., answering respondent no.4 i.e., RVNL) as per Forest Conservation Act, 1980.

The copy of the site inspection report dated 07.12.2021 is being enclosed as Annexure R-11.

v. That it is pertinent to mention herein that the District Level Committee of District Rudraprayag, Uttarakhand chaired by District Magistrate recommended for the diversion of the forest land in the village Jaweri in Rudraprayag admeasuring 0.8511 hectares of the forest land for the development of 126 km long broad Gauge New Rail Link.

The copy of the proceedings of meeting of District Level Committee constituted under Scheduled Tribes & other Traditional Forest Dwellers (recognition of rights) Act (FRA), 2006 is being enclosed as Annexure R-12.

vi. That vide letter dated 19.04.2022 by Additional Chief Conservator of Forests and Nodal Officer, Forest Conservation, Uttarakhand, Dehradun to the Forest Secretary, Government of Uttarakhand vide Letter No. 2502/FP/UK/RAIL/148808/2021 in which it is recommended that the proposal

be sent to the central government for approval in principal for transfer of 0.8511 hectares of forest land for non-forestry works under the Forest Conservation Act, 1980 and as such it has been specifically mentioned that the proposal was accepted by Revenue Department/Divisional Forest Officer, Rudraprayag Forest Division, Rudraprayag and Forest Conservator, Garhwal Circle, Pauri.

The letter dated 19.04.2022 by Additional Chief Conservator of Forests and Nodal Officer. Forest Conservation, Uttarakhand, Dehradun to the Forest Secretary, Government of Uttarakhand vide Letter No. 2502/FP/UK/RAIL/148808/2021 is being enclosed as Annexure R-13.

vii. That it is hereby pertinent to mention that the answering respondent no.4 vide letter dated 06.07.2023 sent to the Deputy Conservator of Forest, Rudraprayag Forest Division, Rudraprayag wherein the answering respondent no.4 raised its concerns/ objections with regard to the excess muck dumping accessed by the Regional Forest Officer. It was explained that most of the part of concrete in muck dumping would be used in construction of railways and further no forest property is getting destroyed/ proposed to be destroyed. Keeping in view, the project is of national importance the space was utilized on the oral permission granted by the Regional Office, Dehradun of Environment, Forest and Climate change Ministry.

Further, it is also stated that all the precautions have been taken so that no damage is caused to environment in this regard. It was prayed that permission be granted for utilization of the muck dumped and discharge from the penalty imposed.

The copy of the letter dated 06.07.2023 is being enclosed as Annexure R-14.

viii. It is pertinent to mention that the no objection certificate was granted to the answering respondent no.4 by the Office of Sub-Divisional Magistrate, Rudraprayag for 0.8511 ha of forest land to carry out the construction of 126 km of Rishikesh- Karnaprayag broad gauge railway project and as such no agricultural work was being done in the said forest land under the occupation of any Scheduled Tribe or other traditional forest dweller. The copy of the no objection certificate is being enclosed as Annexure R-15.

ix. That it is pertinent to mention herein that as far as permission for dumping yard is concerned, obtaining permission under the Construction and Waste Demolition Waste Management Rules 2022 is not required. It is furthermore pertinent to mention that the specific reclamation plan for the entire area will be prepared once the muck is removed from the site.

M. The respondent no.4 is most humbly submitting before the Hon'ble Tribunal that muck dumping at the site which was under the process of approval was done in the national interest and to save the claims of contractor which might have caused huge financial losses to Govt. of India. It is further submitted that after completing the formalities as required by the competent authorities way

back in the year 2021-22, till date there is neither any objection raised nor any further query made from respondent no.4."

Corrected Supplementary reply dated 11.10.2024 filed by respondent no.4-Rail Vikas Nigam Limited (RVNL)

14. Supplementary reply dated 11.10.2024 (pages no. 1146 to 1221 of the paper book) was filed by respondent no.4-RVNL. But later corrected Supplementary reply dated 11.10.2024 (pages no. 1232 to 1307 of the paper book) was filed by respondent no.4-RVNL. The relevant part of the reply reads as under:-

"X X X X

3. That it is pertinent to mention that the Environment Impact Assessment Report (EIA Report for reference) of the Railway line project bearing of distance 126 kms being reproduced by way of Supplementary Reply alongwith Supporting Affidavit wherein the following abstract/chapters are relevant for reference and as such the same are being reproduced herein as under-

It is also pertinent to mention that as per the EIA Report, under the Heading "5.3 SOLID WASTE & MUCK" is relevant whereby the mitigating measures in handling the solid waste generated during the development site and how much the muck disposal is being reused for the purposes; the reference of which is being reproduced below-

"5.3.1 Solid Waste Generation and Disposal

Waste quantification is carried out to estimate the quantities of waste to be generated by different activities at the project site. For estimation of quantity of solid waste generated from the proposed project, waste generation factors are selected for each activity based on case studies available for similar type of projects, assumptions and past experience.

Domestic Solid Waste generated during Construction from the construction camps has been estimated to be 250 kg/day (Assuming 1000 labourers/camp). Out of it almost 110 kg/day will be biodegradable waste.

During operation solid waste is likely to be generated from the station offices, staff quarters, health centres as given in Table 5.1.

5.3.3 Mitigation Measures

The following practices should be followed at the development site during the construction and operation phase and solid waste shall be handled as per Medical Waste (Management and Handling) Rules, 1998. The flowchart in Fig. 5.3 and 5.4 gives the management plan for solid waste during construction and operations stage.

- *In case debris generated from cutting in hill areas could not be reused, method of disposal shall be addressed like construction of gabion walls on valley side at ridge location to form A trough for water disposal. As the ridge location- usually have streams flowing through, length of the*

pipe provided at the culvert should be extended to let runoff flow out of the disposal location.

- *Muck shall be recycled in the form of aggregates, filling material, for access roads, embankments etc. The excess muck should be disposed as per Muck Disposal Plan detailed in the following section. After filling up of the disposal site, it should be grassed and suitably vegetated to prevent erosion of the disposed soil.*
- *Saleable items such as metal scrap should be kept separately and cleared off as soon as possible.*
- *Bricks and rubble should be used as fill material at project site and recyclables sold to authorized vendors. The remaining wastes should be taken out by local body for disposal in common landfill site.*
- *Biodegradable waste generated from the camps shall be composted at site and the compost can be used for landscaping in station and dumping areas.*
- *Store the non-biodegradable waste into large bags or bins for handing over to the municipal authorities or contractors appointed for the purpose on the day of collection notified.*
- *Bio medical waste from health centers shall be managed according to Bio-Medical Waste (Management and Handling) Rules, 1998. Segregated storage at source in coloured plastic bags shall be done (according to the rules) which are to be kept inside sturdy covered containers. For collection, dedicated wheel-barrows are to be used for carrying the containers directly to the storage area. No untreated bio-medical waste shall be kept stored beyond a period of 48 hours. Either it should be incinerated at site or taken to a Common Bio medical waste treatment facility (CBMWTF) if any.*

The Contractor should depute a team of persons, who is aware of the nature and types of solid waste and should be assigned the responsibility for collection, segregation and disposal of solid waste at the proposed project during the construction phase.

The contesting respondent no.4 herein has neither violated any environmental rights nor there is any harm to the vegetation during the course of the project.

The true abstract of the Section 5.3 i.e., "SOLID WASTE & MUCK" which is the part of the EIA Report is being annexed herewith and marked as ANNEXURE B-2.

4. That it is also pertinent to mention that under the heading ***"5.3.3.1.2.- MANAGEMENT PLAN FOR MUCK DUMPING****" whereby the guidelines for muck dumping is followed by the answering respondent no.4 during the course of the project and as such the same is being reproduced herein under:-*

Management Plan for Muck Dumping

The following guidelines shall be followed for muck management. Detailed plan is given in section 9.5 of chapter 9.

Construction

- *Retaining walls with weep holes shall be provided for stability especially around stations and along major rivers like Ganga and Alaknanda.*
- *Gabion walls shall be provided along the down slope of the dumping areas. Where both retaining and Gabion walls are proposed it shall be on the inner side of the retaining wall.*
- *Barrier wall shall be provided on the uphill side of the dumping areas if roads settlements are present in the uphill.*
- *Fencing shall be done along the perimeter with gates for access to station or maintenance. This will be to prevent the area getting interfered by human activities or animal grazing.*
- *Turfing shall be done on dumping site*
- *The muck shall be dumped in the form of terraces*
- *Settling channel and storage chamber shall be provided along the down slope perimeter for maintaining quality of runoff washing through the muck*

Operation

- *Manpower in the form of watchmen/ Supervisors, main gardeners and labours shall be deployed for protection and maintenance of the sites for at least 4years.*
- *Survival rate of vegetation shall be monitored.*
- *Regular inspection of dumping sites to ensure that no factor is causing or is likely to cause slope instability by competent engineer. Inspection shall be scheduled mandatorily before and after rainy season.*
- *A contingency plan shall be prepared by the concessnaire / contractor for construction as well as operation period to manage any kind of slope instability during the operation period. The Chief project Manager shall be the responsible personnel to manage the contingency situation. In case required the protection measures shall be re-strengthened or reconstructed as the need be. In case muck slips down the slope or gets dumped into the water body, it has to be cleared immediately within 48 hours."*

It is most respectfully submitted that under Chapter-9- Environment Management Plan which is the key to ensure that the quality and its maintenance of the environment shall be protected in the development site and as such various sets of measures to be taken in different stages of the project to reduce adverse environmental impacts.

The true copy of the abstract of Chapter 9 which is titled as "Environmental Management Plan" in the EIA Report is annexed herewith marked as ANNEXURE B-3.
NOTE- The true copy of EIA Report will be reproduced at the time of arguments.

5. That it is hereby pertinent to mention that as per EIA Notification of 2006 vide dated 14.09.2006 enshrined in Gazette of India under Part-II and Section 3, sub section (ii) of Ministry of Environment and Forests, whereby it indicates the following projects on activities which requires prior environmental clearance from the concerned regulatory authority. The true abstract of EIA Notification of 2006 vide dated 14.09.2006 is being annexed herewith and marked as ANNEXURE B-4.
NOTE- The true copy of EIA Notification, 2006 will be reproduced at the time of arguments.

6. That as per the notification of EIA Notification 2006, the issuance of environmental clearance is not required in case of the Railway Project in question i.e. Rishikesh Karan Prayag new broad gauge rail line project and as such the letter is being reproduce along with this supplementary reply.
The true copy of the letter is annexed herewith and marked as ANNEXURE B-5.
7. That in view of the reasons stated above it is expedient in the interest of justice that the Hon'ble Tribunal may graciously be pleased to allow this Supplementary Reply to place on record the relevant documents in compliance to the order passed by the Hon'ble Tribunal dated 23.09.2024 otherwise the answering respondent may suffer irreparable loss."

Reply dated 14.10.2024 filed by respondent no. 5-M/s Megha Engineering and Infrastructure Limited (MEIL)

15. Reply dated 14.10.2024 (pages no. 1222 to 1231 of the paper book) was filed by respondent no. 5-MEIL. Relevant part of the reply reads as under:-

"X X X X
4 With respect to the Proposed Project, a contract was entered into between RVNL and the Answering Respondent on 02.09.2020 (the "Agreement"). Under the Agreement, the Answering Respondent, whose bid was accepted by RVNL, was engaged for the construction of Tunnels, Bridges and Formation Works from Chainage 91+228 to 101+339 (FLS) under Package-7B in connection with New Broad-Gauge Line Between Rishikesh and Karanprayag (125Km) in the State of Uttarakhand. Pertinently, the Agreement is one between RVNL as the "Employer" and the Answering Respondent as the

"Contractor", and sets out the obligations of the respective parties accordingly.

5. The Answering Respondent cannot be held liable in the instant OA on broadly three (3) grounds:

a. That RVNL represented to the Answering Respondent that it has obtained the necessary forest clearances for the construction of permanent works and muck dumping zones. The Answering Respondent carried out the works only on the assurance under Clause 2.18.1 of the General Information and Scope of work in the Agreement that the said clearances had already been obtained by RVNL;

b. That additional muck dumping sites utilized subsequent to their allocation by RVNL to the answering respondent were employed with the requisite authorization from RVNL. The Answering Respondent has only deposited muck generated from the construction works in areas designated by RVNL, in strict accordance with the Agreement and the Bid Document. Furthermore, the site in question, which served as an additional muck dumping site, was also provided by RVNL itself through its letter no. 1276 dated 28.12.2021 (annexed as Annexure R-2) in the Response filed by the Answering Respondent on 26.08.2024.

C. That the Answering Respondent cannot be held joint and severally liable for any alleged inaction on the part of RVNL, as the Agreement itself records that the necessary forest clearances have been obtained.

CLAUSE 2.18.1 OF THE GENERAL INFORMATION AND SCOPE OF WORK IN THE AGREEMENT STATES THAT NECESSARY CLEARANCES HAVE ALREADY BEEN OBTAINED

6. It is submitted that Clause 2.18.1 of the General Information and Scope of work in the Agreement clearly states that all necessary clearances with respect to the possession of the forest land have been obtained by RVNL. It reads as follows:

"a) Employer has acquired land required for construction of permanent works and Muck dumping zones. Necessary forest clearances and possession of entire land (Government, forest and Private) has been obtained. Contractor will be made available entire acquired land for construction of permanent works. All acquired area are shown in drawings included Vol. III [Emphasis added]."

7. The abovementioned Clause makes it clear that it was not only the responsibility of RVNL to obtain the necessary clearances but also that the said clearances had already been obtained by it. It is submitted that it is on this basis that the Answering Respondent carried out the works in the designated areas under the Agreement. It is nobody's case that the Answering Respondent has dumped in areas beyond the designated sites.

8. Pertinently, the findings in the Joint Committee Report with respect to the forest clearances are against the "user agency" i.e., RVNL and not the Answering Respondent. The Joint Committee Report records as follows:

"The inspection report is as follows-

2... Mineral stones/muck/debris have been illegally dumped on the land by Rail Vikas Nigam Ltd. without permission...". [Emphasis added]

9. According to the report of the Dy. Forest Conservator, Rudraprayag Forest Division, inquiries with respect to the permissions and approvals for the said construction work, were also made to RVNL. It records as follows:

"2. Inquiries were made to the user agency regarding the records/permission letter related to permission/approval from the competent level for the said construction work, in relation to which it was informed by them that the said proposal has been sent to the Government of India for sanction/approval." [Emphasis added]

10. Further, the Joint Committee Report records that an inspection of the site revealed an additional area of 0.4589Ha of forest land (in addition to the proposed 0.8511Ha of forest land), where debris disposal was found.

11. Based on this finding, the Forest Officer, South Jakholi Range was directed to assess the damage caused to the forest wealth due to the debris disposal in the said additional area. Subsequently, action was taken under the INDIAN FOREST ACT, 1927 against the concerned proposing department and an amount of Rs. 4,61,291/- was recovered and deposited in the Forest Revenue. The said amount was paid in fact by the Answering Respondent.

12. Furthermore, the Joint Committee Report relying on the report of the Assistant Inspector General of Forests, records that the site inspection revealed that no trees had been cut and the debris was not going into the Alaknanda River. This, it is submitted, also shows that the Answering Respondent has been cognizant of its responsibilities under the Contract Chapter 1, Clause 1.8.3 of the Safety and Security in the Agreement underscores the responsibility of the Answering Respondent as the Contractor to organize its work in such a way that the ecology of the area is not affected as the work area is located mostly in forest land.

DISPOSAL OF MUCK ONLY IN AREAS DESIGNATED BY RVNL

13. It is pertinent to note that the Answering Respondent is legally authorised to utilize muck generated from the construction work in accordance with the approval dated 21.08.2021 given by the Government of Uttarakhand by its Order No. 910/VII-A-I/2021/03(46)/2021.

14. With respect to the disposal of muck, it is submitted that the Answering Respondent has disposed of muck generated from the construction work in the designated sites, which have been earmarked by RVNL in the Bid Document. Chapter 2 (General Information and Scope of work) of the Agreement Clause 2.3 (E) (Muck Dumping Locations) clearly states that the Employer (RVNL) has already acquired land required for dumping of muck to be generated from

tunnel excavation at suitable locations. Site maps for all muck dumping grounds are given in the bid Drawings itself (Vol. III - Muck Dumping Area of the Bid Document). Even the additional muck dumping site (the site in question) which was required for dumping was provided by RVNL as Employer, as annexed as Annexure R-2 in the Reply filed by the Answering Respondent on 26.08.2024.

15. Further, Clause 7.2, Chapter 7 of the Bid Drawing in the Agreement makes it incumbent on the Answering Respondent to execute the works as per the approved construction drawings and specifications. Therefore, it is clear that the sites for muck dumping have already been identified by RVNL. Even the additional muck dumping sites utilised subsequent to their allocation by RVNL to the Answering Respondent were employed with the requisite authorization from RVNL (through its letter no. 1276 dated 28.12.2021, annexed as Annexure R-2). Upon reading the same with Clause 2.18.1 of the General Information and Scope of work in the Agreement, the extent of liability of the Answering Respondent becomes clear. Simply put, the responsibility of the Answering Respondent was restricted to carrying out the muck dumping in the designated areas as acquired by RVNL and the same was done under the impression that necessary clearances had already been obtained.

ANSWERING RESPONDENT CANNOT BE HELD JOINTLY AND SEVERALLY LIABLE

16. The Answering Respondent cannot be held jointly and severally liable as it was the responsibility of RVNL to obtain the necessary clearances as contemplated under the Agreement. The Answering Respondent executed the work in terms of the Agreement and the Bid Document and only upon an assurance that the said clearances had been obtained by RVNL (as is evident from Clause 2.18.1 of the General Information and Scope of work in the Agreement). Therefore, the Answering Respondent cannot be held liable for not having obtained the necessary clearances as the same was the responsibility of RVNL.

17. The Answering Respondent has not caused any environmental damage and the same has also been recorded in the report of the Assistant Inspector General of Forests, whose findings have been relied upon in the Joint Committee Report.

18. Further, the Answering Respondent is a mere contractor and acted in terms of the Agreement to execute the work as directed by RVNL. Notably, RVNL is individually and solely responsible for obtaining Forest Clearance for the Dumping Site. Answering Respondent has no contractual obligation regarding any clearances related to the dumping sites. There is no clause for joint and several liability in the Bid Document between RVNL and the Answering Respondent and the Answering Respondent has acted in good faith and completely under the scope of its work as per the Agreement. GCC Clause

1.14 of the Agreement provides for joint and several liability only in case where the Contractor constitutes a joint venture of two or more persons/ firms, in such cases, these JV entities would be jointly and severally liable to the Employer for the performance of the Contract.

19. In the absence of a clause for joint and several liability under the Agreement, the Answering Respondent cannot be personally held liable as it was acting on behalf of RVNL in executing the work contemplated under the Agreement.

20. Hence, to summarise:

A. Clause 2.18.1 of the General Information and Scope of work in the Agreement makes it clear that the necessary clearances had already been obtained by RVNL and it is on this basis that work was carried out by the Answering Respondent;

B. The Answering Respondent has dumped the muck generated from the construction works only in the areas designated by RVNL. The Bid Documents also make it clear that all muck dumping sites have been identified and specified by RVNL and the Answering Respondent has no role to play in identifying such sites, even in the case of additional muck dumping sites provided by RVNL; and

C. The Answering Respondent cannot be held jointly and severally liable because the terms of the Agreement are clear as to the extent of liability of the Answering Respondent. Therefore, the Answering Respondent cannot be held accountable for any alleged misrepresentation on the part of RVNL as to obtaining forest clearance."

16. Vide order dated 13.02.2025, respondents no. 4 and 5 were directed to file additional responses specifically mentioning the muck dumping area/site identified, permission granted for muck dumping, verification reports submitted regarding compliance/non-compliance of muck dumping and also mitigation measures to be taken in case of violations and also to file pen drive containing video clips showing present status and also photographs/video clips if any available showing status before execution of the Project.

Additional reply dated 30.04.2025 filed by respondent no. 5-M/s Megha Engineering and Infrastructure Limited (MEIL)

17. In compliance of order dated 13.02.2025, additional reply dated 30.04.2025 (pages no. 1536 to 1550 of the paper book) was filed by respondent no. 5-MEIL. The relevant part of the additional reply is reproduced below:-

"xxx……xxx……xxx

1. The present additional response is being filed by the Respondent No. 5/ Megha Engineering and Infrastructures Ltd. (MEIL) (the "Answering Respondent") in compliance with the order dated 13.02.2025 passed by

this Hon'ble Tribunal directing the Respondent No. 4 and 5 to file additional responses specifically mentioning the muck dumping area/ site identified along with the permissions granted for muck dumping, verification reports regarding compliance/non-compliance of muck dumping, mitigation measures to be taken in case of any alleged violation, and a pen drive containing video clips showing the before and after status of the site in question. The present affidavit is also being filed in response to IA No. 216/2025 filed by the Respondent No. 4/ Rail Vikas Nigam Ltd. (RVNL).

2. The present additional response is to be read as supplementing the Reply dated 26.08.2024, the Affidavit dated 14.10.2024 as well as the written submissions dated 11.02.2025, filed by the Answering Respondent before this Hon'ble Tribunal, the contents of which are not being repeated herein for the sake of brevity.

3. Briefly stated, notwithstanding the exemption u/s. 11 of the RAILWAYS ACT, 1989, which has been elaborately dealt with in the previous affidavits, the Answering Respondent submits that:

i. An approved environmental management plan (EMP) is already in place. Particularly, Clause 9.5 and Table 9.2 of the EMP provide for the muck disposal management plan, and contemplate management measures for each dumping site

ii. The Answering Respondent could not implement the approved EMP in its entirety, since a sealing order dated 11.07.2024 came to be passed owing to the captioned OA. If IA. No. 216/2025 were to be allowed, it will facilitate implementation of the EMP.

iii. The Answering Respondent undertakes to plant trees at the subject muck dumping site, over and above that contemplated in the approved EMP.

iv. The Answering Respondent has strictly adhered to the terms of the contract dated 02.09.2020 entered into between the Respondent No. 4 and the Answering Respondent (the "Agreement"), and has executed the muck dumping work in the designated muck dumping sites.

v. The Agreement, particularly, Clause 2.18.1 (a), expressly stipulated that all necessary permissions with respect to the land acquired by the Respondent No. 4 had already been obtained by the Respondent No. 4.

vi The Joint Committee Report dated 13.05.2024 (JCR), has confirmed that no damage had been caused to the private lands, the Alaknanda River, and the trees due to the debris disposal

vii. The Answering Respondent has complied with the protective measures contemplated under the Agreement to prevent any environmental damage.

EXISTING EMP & ADDITIONAL MITIGATION MEASURES

4. An approved EMP already in place (Ser Pg. 1161 of R4's Supplementary Affidavit dated 11.10.2024).
5. Clause 7.7.2 of the Agreement stipulates that the Contractor i.e, the Answering Respondent must ensure muck management as per the "approved environmental mitigation plan. CL 7.7.2 is being reproduced below for ease of reference:
"Excavated materials which are not suitable for construction and those in excess of the requirement for construction shall be disposed off in the waste disposal area Surfaces of material so disposed off shall be trimmed to regular lines and grades satisfactory in the Engineer. Disposal off material shall be such that it will not interfere with natural drainage and is as per the regulations for environmental protection or with Engineer's acceptance. The Contractor must ensure muck management as per the approved environmental mitigation plan with proper turfing and plantation at dumping sites."

[Emphasis added]

6. Clause 9.5 and Table 9.2 of the EMP provide for the muck disposal management plan, and contemplate management measures for each dumping site. Further, Cl. 9.5.6 of the EMP provides for "Turfing and Tree Plantation" and states as follows
"The waste material dumped at spoil tips would comprise mainly of loose rock fragments that would be mechanically compacted and properly levelled with suitable safe slopes. In order to restore the area, all these spoil tip areas/dumping sites need to be rejuvenated by means of turfing and vegetation growth. Effort shall be made to retain trees along the contour with row interval of 10 m for compaction machineries to be operated. Around 85% of the dumping site area it considered to be turfed as the rest of the space would get consumed in providing protection walls, fencing, retaining existing trees etc. About 15-30 cm of thick layer external soil will be spread on the slope area. Bio engineering techniques like geotextiles shall be used for growth of grass or ground cover. Maintenance of the same shall be done for at least 4 years followed by periodic inspection…".

[Emphasis added]

7. The Regional Empowered Committee (REC) of the Integrated Regional Office, Dehradun, of the MoEF&CC, in its 71st meeting held on 30.08.2022, discussed the proposal for diversion of additional 0.8511 Ha of forest land in Jawari, in favor of the Respondent No. 4. The said proposal was made due to the need for an additional area for muck dumping necessitated by the incorporation of new Adit tunnels in

the already approved proposal for the construction of the proposed project (See Pg. 1119 of R4's Reply dated 21.08.2024)

8. In this respect, it is submitted that the REC while considering the approval of additional area for muck dumping, noticed that there would be compensatory plantations in multiple areas and hence, instead recommended a plantation scheme of 1702 trees in one single patch of land.

9 The Answering Respondent undertakes the following mitigation measures:

i. To implement the EMP already in place.

ii. To additionally plant trees in the subject muck dumping area, once the excavated muck is allowed to be relocated.

iii. To relocate the muck from the dumping site so as to obviate any adverse environmental consequences owing to the impending monsoons

IA NO. 216/2025 OUGHT TO BE ALLOWED

10. It is submitted that if the IA for Directions filed by the Respondent No. 4 is allowed, the Answering Respondent will be able to relocate the muck from the dumping site (which is presently sealed) and thus, avoid any adverse environmental implications owing to the impending monsoons. Further, it will also allow the Answering Respondent to reuse the excavated muck for construction-related activities, as was contemplated under the Agreement.

11. The Answering Respondent respectfully submits that the muck in question ought to be utilised to facilitate the clearance of the Gadera, thereby serving a dual purpose. This approach will not only expedite the project's execution but also eliminate the need for procuring additional muck, reducing unnecessary costs and resource wastage. Furthermore, by removing the muck, the area would be restored for natural growth of plants. The sealing of the dumping site has significantly delayed the project and caused undue hardship to the Answering Respondent, despite its compliance with all relevant environmental, mining, and contractual obligations. The Answering Respondent humbly requests this Hon'ble tribunal to consider the immediate necessity of utilising the muck for Gadera clearance and to provide the required relief to ensure that the project is completed efficiently and without any ecological harm.

NO DEVIATION FROM THE APPROVED MUCK DUMPING SITES

12. Clause 2.3(E) in Chapter 2 (General Information and Scope of Work) provides for details of the muck dumping locations and reads as follows:

"Employer has already acquired land required for dumping of muck to be generated from tunnel excavation at suitable locations. All sites are located within 10km lead of the tunnel Portals. Site maps for all muck

dumping grounds are shown in bid drawings in Vol. III. Brief details are as follows:

Ground ID	*Available Muck dumping capacity*	*Muck Dumping Location*	*Suitable for*	*Distance (Kms)*
D27 (NH)	*3,52,000.00 cum*	*At Narkota Village*	*T13-P-1*	*At Tunnel 13 Portal-1 location*
D27 (NH)	*3,52,000.00 cum*	*At Narkota Village*	*Adit-7 Portal*	*At 8 km from admit portal location*
D-28 (NH)	*7,69,280.00 cum*	*Nearby Tilani Yard*	*T-13-P-2*	*At Portal Location Only*

**This dumping ground would be shared between T13 and T14.*

Details of access Roads for Muck Dumping Zone D-27 are as follows: Muck Dumping Yard (D-27) is located at Narkota Location. This dumping yard is accessible through NH-58. No additional approach road is required in access this dumping zone. At Adit 7 portal location, there is space for muck dumping, muck generated from this audit portal shall be dumped in this dumping yard only Details of access Roads for Muck Dumping Zone D-28 are as follows… Muck Dumping Yard (D-28) is located nearby Tilani Yard station. This dumping yard is accessible through NH-58. No additional approach road is required to access this dumping zone."

[Emphasis added]

13. It is submitted that following the directives of the Respondent No. 4, the Answering Respondent utilized the designated muck dumping sites as per the terms of the Agreement. Locations of the identified muck dumping sites as per Bid Document PK-78 is hereto marked and annexed as (Annexure A1)

14. However, the D27 dumping yard was not available for use and during the course of the construction, it was discovered that the D28 dumping yard had reached its full capacity. thereby necessitating the need for additional land. Accordingly, the Answering Respondent requested the Respondent No. 4 for allocation of additional dumping land at Adit 7/ Jawari Bypass by its letter dated 02.12.2021 (See Pg. 1010 of RS's Reply dated 26.08.24). The Respondent No. 4, through its

Engineer (AECOM), by a letter dated 28.12.2021 accorded its in-principal approval for the dumping yard for Adit-7 at Jawari Bypass and instructed the Answering Respondent to "start the work at the earliest" (See Pg. 1012 of R3's Reply dated 26.08.24)

15. Therefore, from the above, it is clear that the Answering Respondent has acted in accordance with the terms of the Agreement and has executed the muck dumping work only in the land provided to it by the Respondent No. 4.

RESPONSIBILITY TO OBTAIN PERMISSIONS FOR MUCK DUMPING SITES LAY WITH RESPONDENT NO. 4

16. The Answering Respondent is the Contractor under the Agreement (responsible for the execution of the project in question), while the Respondent No. 4 is the Employer Accordingly, their responsibilities are stipulated in the Agreement. Particularly, Clause 2.18.1(a) of the Agreement reflects the responsibility of the Respondent No. 4 to acquire all necessary permissions with respect to land acquired by it. Clause 2.18.1 is reproduced below for ease of reference:

"Clause 2.18 Other Provision: 2.18.1 Land

a) Employer has acquired land required for construction of permanent works and Mack dumping zones. Necessary forest clearances and possession of entire land (Government, forest and Private) has been obtained. Contractor will be made available entire acquired land for construction of permanent works. All acquired area are shown in drawings included Vol. III."

[Emphasis added]

17. The abovementioned Clause makes it clear that it was not only the responsibility of the Respondent No. 4 to obtain the necessary clearances but also that the said clearances had already been obtained by it. It is submitted that it is on this basis that the Answering Respondent carried out the works in the designated areas under the Agreement. Thus, was not the Answering Respondent's responsibility to obtain the necessary permissions with respect to the muck dumping sites. It is nonetheless reiterated that S. 11 of the RAILWAYS ACT, 1989 obviated the need for any such statutory permissions.

18. In other words, the sole responsibility was cast on the Respondent No. 4 to obtain permission/ clearance for the project (as per Bid Document PK-7B Clause 2.18.1), and it was represented to the Answering Respondent that the Respondent No. 4 had acquired land required for construction of permanent works and mock dumping zones Furthermore, the violation as contended before this Hon'ble Tribunal mainly pertains to the dumping of muck at Jawari By-pass for which approval was under process by the Respondent No. 4.

19. It is pertinent to mention that the Answering Respondent is legally authorized to utilize muck generated from tunnelling operations pursuant to Government of Uttarakhand (GoUK) Orders No. 123/VIL-1/2021/8(16)/19 dated January 19, 2021 (See Pg. 1013 of R5's Reply dated 26.08.24), and No. 910/VII-A-1/2021/03(46)/2021 dated August 24, 2021 (See Pg. 1026 of R5's Reply dated 26.08.24), issued by the Audhyogik Vikas (Khanan) Anubhaga-1, Dehradun.

20. It is further submitted that Clause 7.2, Chapter 7 of the Bid Drawings in the Agreement makes it incumbent on the Answering Respondent to execute the works as per the approved construction drawings and specifications. Therefore, it is clear that the sites for muck dumping had already been identified by the Respondent No. 4. Even the additional muck dumping sites utilised subsequently had the approval of the Respondent. No. 4 by its letter dated 28.12.2021. Upon reading the same with Clause 2.18.1(a) of the General Information and Scope of work in the Agreement, the extent of liability of the Answering Respondent becomes clear.

21. Simply put, the responsibility of the Answering Respondent was restricted to carrying out the muck dumping in the designated areas as acquired by the Respondent No. 4 and the same was done under the impression that necessary clearances had already been obtained. It is nobody's case that the Answering Respondent has not complied with this contractual requirement.

22. The Answering Respondent further wishes to highlight that there has been no other violation at any of the work sites moreover additional Gabions wherever required have also been installed by the Answering Respondent.

NO DAMAGE FOUND BY JOINT COMMITTEE AT SITE IN QUESTION

23. Moreover, to this effect, the findings of the JCR dated 13.05.2024 (as translated and reproduced in the order dated 17.05.2024) are noteworthy. The Joint Committee has confirmed that:

a. No damage has been caused to the private lands or the Alaknanda River due to the debris disposal.

b. No trees had been cut.

c. The branches of 5 trees, which appeared to be buried due to debris dumping, were green and hence, no damage could be said to have been caused to the said trees.

24. Such categorial findings were made pursuant to a site visit of the muck dumping site by the Joint Committee and hence, must be had specific regard to.

COMPLIANCES BY THE ANSWERING RESPONDENT

25. The Answering Respondent recognises how crucial it is to protect the environment and is committed to using sustainable practices and strict environmental controls at every step of the project by following high environmental standards and using the latest technology to reduce the impact on the ecosystem. Accordingly, the muck dumping has been undertaken as per the provisions of bid Document PK-7B by installing Gabions at the toe of the muck dump to avoid spillages. The same can be ascertained from the photos and videos submitted along with the present additional response.

26. Further, in compliance with Rule 8(6) of Chapter 3 of UTTARAKHAND MINERAL (PREVENTION OF ILLEGAL MINING, TRANSPORTATION AND STORAGE) RULES, 2021, which contemplates the payment of a fees of Rs. 50,000 for the storage of muck collected from tunnel excavation, has been duly paid by the Answering Respondent (See Pg. 1030 R5's Reply dated 26.08.24).

27. In any case, the Answering Respondent has been penalised under the INDIAN FOREST ACT, 1927 by the Forest Officer, South Jakholi Range, who was directed to assess the damage caused to the forest wealth due to the debris disposal in the additional area. In lieu of the same, an action was taken under the INDIAN FOREST ACT, 1927 and an amount of Rs. 4,61,291/ was recovered and deposited in the Forest Reveme by the Answering Respondent. The Answering Respondent assures that it will diligently implement all necessary precautions to prevent any ecological impact or harm.

28. The Answering Respondent further submits that the final dressing up of the dumping sines shall be done as per the instructions of the Respondent No. 4 in compliance with the environmental guidelines after the completion of the project

THE BEFORE & AFTER STATUS OF THE SITE IN QUESTION

29. Lastly, it is submitted that as per the order of this Hon'ble Tribunal dated 13.02.2025, the Answering Respondent is also submitting a pen drive containing the video clips/ photos showing the current status of the muck dumping site at Jawari Bypass."

30. A pen drive containing the pictures and videos showing the current status of the muck dumping site is hereto marked and annexed as Annexure A-2.

SUMMARY

31. Hence, in summary, it is submitted that:

The Answering Respondent undertakes to implement the already approved EMP in place and carry out a plantation scheme of 1702 trees.

B Additionally, the Answering Respondent undertakes to plant trees separately in the subject muck dumping site.

The IA for directions for de-sealing of the muck dumping site filed by the Respondent No. 4 ought to be allowed so that the Answering Respondent may relocate the excavated mock to an alternate site, thereby avoiding any adverse environmental consequences owing to the impending monsoons, and also implement the approved EMP in its entirety.

d. The Answering Respondent has strictly adhered to the terms of the Agreement (which provided for designated muck dumping areas) in executing the muck dumping work.

The JCR dated 13.05.2024 has confirmed that there has been no damage to private lands, the Alaknanda River and the trees. Therefore, no environmental damage can he attributed to the Answering Respondent."

Additional Written Arguments dated 02.05.2025 filed by respondent no. 4-RVNL

18. In compliance of order dated 27,03.2025, additional written arguments dated 02.05.2025 were filed by respondent no. 4-RVNL. The relevant part of the additional written argument is reproduced below: -

"X X X X

2. The answering respondent no.4 herein, in compliance of the order dated 27.03.2025, is hereby submitting below its additional arguments for the kind consideration of the Hon'ble Tribunal.

The true copy of the order passed by this Hon'ble Bench vide dated 27.03.2025 is annexed herewith and marked as ANNEXURE R-1 to this application.

3. That for the sake of brevity as per the bid document; under Chapter 1 of Section 5 (works requirement) of Sr. No. 10 of Index i.e., Works/ Employer's Requirements wherein Clause No. 1.8 describes the works requirements for the protection of environment and as such contractors and its sub-contractors shall abide by all existing laws prevailing for the protection of the environment. The description of Clause No. 1.8 is being already reproduced by way of application for objections filed by Answering Respondent No.4(Annexure R-2).

4. That another abstract of Chapter 2 of the bid document is already being reproduced by way of the objections filed by Answering Respondent No.4 (Annexure R-3) wherein Clause 2.3 pertains to the project components and its sub cause E gives description of Muck Dumping locations."

1. FACTUAL STATUS OF THE PROJECT:-

5. That the answering respondent no.4 states the factual situation of the project (PK7-B) and the tentative time period for its completion which are being reiterated hereinunder:-

Present Status-

Item	***Main Tunnel (9.42 Km)***	***Escape Tunnel (9.44km)***	***Remarks***
Excavation of tunnels	*100% Completed*	*100% Completed*	
Final Lining of Tunnels	*Completed 5.86km*	*Completed 3.57km*	*Work in progress*
Open Works - Minor bridges, ROB(Road Over Bridge), yard development, Slope protection etc.	*Almost 60% work of Slope Protection including retaining wall completed,* *Minor bridges = 30% completed (approx.)* *ROB - Substructure work = 50%* *-Superstructure - Drg. Under revision and under proof check with IIT-Roorkee.*		

6. That it is hereby pertinent to mention that the Answering Respondent No.4 had taken several possible measures for the execution of the said project which are as follows:-

i. Pk-7B consist of construction of Tilani Yard and Tunnel no. 13 etc.
ii. Before excavation of tunnels, slope protection works at tunnel portals were undertaken and completed.
iii. The tunnels (Main Tunnel and Escape tunnel) have been excavated using NATM method.
iv. All precaution, Regular monitoring of tunnel profile, deformation etc. have been done to avoid any untoward situation.
v. Advanced equipment viz. Automatic/ semi-automatic Drilling Jumbo, continuous loader, tilting loader, Advanced shotcrete machines, 3D monitoring, advanced shotcrete machines etc.
vi. Most of the machines work on electrical supply thus reducing smoke load in tunnels.
vii. Regular monitoring of safety, health and environmental aspects.
viii. Regular monitoring/testing of noise level, air quality, waste water quality, drinking water, vibrations during blasting.
ix. Management of municipal waste and hazardous waste.

x. In order to minimize the requirement of dumping area suitable provisions have been made in the contract agreement to use the usable tunnel muck.
xi. Escape tunnel has been provide for safety of passengers. Cross passes between Main Tunnel and Escape tunnel are provided @375m.
xii. A Fire Fighting section of almost 1 Km length has also been provided in-the tunnel.

2. DE-SEALING OF MUCK DUMPING:-

7. In the case of de-sealing of muck dumping for which the order was passed by the Office of Geology and Mining Department, Rudraprayag vide order dated 11.07.2024 (the dumping site was sealed and the road leading to the dumping site was also blocked with the help of pillars and wire at Chopra Gadera in Village Jawadi, Rudraprayag), the same is being filed by way of IA No. 216 of 2025.
8. That the communication dated 11.07.2024 passed by the District Magistrate to the Chief Project Manager, Rail Vikas Nigam Ltd. Rishikesh, pursuant to an inspection, the muck dumping site, situated at Chopra Gadera at village Jawadi, Rudraprayag as well as the road leading to the said site was sealed. is being annexed herewith and marked as ANNEXURE R-2 to this application.
It is hereby pertinent to mention that the following necessary steps is going to be executed if this Hon'ble Bench of National Green Tribunal may grant permission for de-sealing of the said muck dumping while granting stay of the communication vide dated 11.07.2024 passed by the District Magistrate, Rudraprayag

3. MEASURES FOR REUSING THE SAID MUCK AND SUPPORTING MEASURES TO CLEAR THE AREA

i. Further dumping of muck in the subjected area will not take place.
ii. The muck dumped at the area in question is usable and the contractor M/s MEIL can use it. In case M/s MEIL, do not opt for use of this muck, it will be transported and dumped at designated dumping yards.
iii. As of now contractor has desired to use the muck. The Muck shall be shifted/transported to land rented/leased by the contractor. After taking permission from State Mining Department the contractor will start using the muck.
iv. The shifting process of the muck from the area in question will take 5-6 months (Approx).

v. After shifting of muck, the area in question shall be reclaimed (revegetation/turfed). The reclamation of the area may further take 5-6 months.

9. That it is hereby pertinent to mention that the google imageries reflecting muck dumping location area from period 2021 to 2025 alongwith the video clip and photographs of the area are being produced by way of a pen drive by the answering respondent no.4.

The pendrive containing Google imageries of the site in question from 2021 to 2025 alongwith the recent photographs and video is annexed herewith and marked as ANNEXURE R-3 to this application

10. That it is hereby pertinent to mention that without any restrained order being passed by this Hon'ble Bench, the District Magistrate vide communication dated 11.07.2024 pursuant to an inspection, the muck dumping site, situated at Chopra Gadera at village Jawadi, Rudraprayag as well as the road leading to the said site was sealed. It was further directed not to touch the dumping site till further orders and also to keep the constructed approach road as it is.

11. That the project is itself represents a visionary and critical initiative for India, with far-reaching implications for national development and as such it aims to connect key spiritual and tourist destinations, Badrinath and Kedarnath, through future enhancements. Once completed, this ambitious project will significantly enhance connectivity within the Ganga/Alaknanda valley, fostering economic growth and advancing tourism in Uttarakhand. Its completion will not only streamline travel and trade but also open new avenues for regional development, thereby contributing to India's broader economic and infrastructural progress. This project stands as a testament to India's commitment to creating integrated and sustainable growth across its diverse region.

PRAYER

It is, therefore, respectfully prayed in the interest of justice and fair play that this Hon'ble Tribunal Court, may

a. Graciously be pleased to allow this application to file additional documents to place on record the relevant documents in compliance of the order dated 27.03.2025 and or and to pass any other appropriate order or to pass any other appropriate order or directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case."

I.A. No. 216/2025 filed by respondent no. 4-RVNL

19. Respondent no. 4-RVNL filed I.A. No. 216/2025 (pages no. 1518 to 1528 of the paper book) with the prayer for issuance of appropriate directions to the District Magistrate, Rudraprayag to permit reuse of the excavated muck from the dumping site and allow access

to the road leading to the dumping at Chopra Gadhera in Village Jawadi, which were sealed by him vide communication dated 11.07.2024, for construction related activities and also to relocate the excess muck from the said site.

20. Replies to I.A. No. 216/2025 were filed by respondent no. 1-MoEF&CC, respondent no. 3-District Magistrate, Rudraprayag and respondent no. 5-MEIL.

21. I.A. No. 216/2025 was allowed vide order dated 30.05.2025 and directions were issued to respondent no. 3-District Magistrate, Rudraprayag to permit reuse of the excavated muck and to allow access to the road leading to the dumping of muck at Chopra Gadhera of village Jawadi, which were sealed by him vide communication dated 11.07.2024 and to allow respondents no. 4 and 5 to re-use the muck for construction related activities and to relocate the excess muck from the said site subject to the terms and conditions mentioned therein.

22. The applicant did not appear before this Tribunal personally or through representative in the course of hearing and did not file any objections to the report of the Joint Committee and to the responses filed by the respondents.

23. We have heard submissions made by Mr. Somesh Chandra Jha and Ms. Saumya, learned counsels for respondent no. 1; Mr. Mukesh Verma, learned counsel for respondent no. 2; Ms. Anjali Rajput, learned counsels for respondent no. 3; Ms. Ananya Thapliyal, learned counsel for respondent no. 4; and Mr. Ninad Laud, Mr. Varun Chugh, Ms. Katahiamang Panmei, Mr. Kunal Gupta and Ms. Ishani Shekhar, learned counsels for respondent no. 5 and we have gone through the material on record carefully.

24. In their respective arguments, learned Counsels for the respondents have reiterated factual and legal submissions made in their replies.

Written submissions filed by respondent no.5-M/s Megha Engineering and Infrastructure Limited (MEIL)

25. Respondent no. 5-MEIL has also filed **short note dated 11.02.2025** (pages no. 1308 to 1317 of the paper book) with **Compilation of Judgments** (pages no. 1318 to 1517 of the paper book), the relevant part of which is reproduced below:-

> *"xxx……xxx……xxx*
> *2. A contract dated 02.09.2020 was entered into between the Respondent No. 4 and the Respondent No. 5 (the "Answering Respondent"), wherein the Answering Respondent was engaged as the contractor to execute the said project (the "Agreement"). The Agreement along with its accompanying documents including the bid documents clearly stipulate the obligations of the Answering Respondent as the "Contractor" and that of the Respondent No. 4 as the "Employer".*

3. Broadly, the Answering Respondent submits that:

i. The instant OA is not maintainable being evidently actuated by vested interests and hence, is contrary to Sec. 14 read with Sec. 2(1)(m) of the National Green Tribunal Act, 2010 (NGT Act), which disqualify issues which only concern an individual or a small group of individuals, as opposed to the public.

ii. In view of Sec. 11 of the RAILWAYS ACT, 1989 (the "Railways Act"), the Project is exempt from all statutory stipulations barring those relating to land acquisition.

iii. The Joint Committee's Report (JCR) dated 13.05.2024 confirms that no environmental damage has occasioned owing to the Project.

iv. Assuming without admitting, that statutory permissions were necessary, the responsibility to obtain them lay with the Respondent No. 4, which has, in fact, admitted that there was no default on the part of the Answering Respondent.

OA MOTIVATED BY VESTED INTERESTS

4. Sec. 14 of the NGT Act enjoins on the Hon'ble NGT, jurisdiction over all civil cases, where a substantial question relating to environment is involved. Sec. 2(1)(m) of the NGT Act, defines a "substantial question relating to environment", to be one where there is either:

i. A direct violation of a specific statutory environmental obligation by a person by which:

i. Affects the community at large other than an individual or group of individuals or

ii. the gravity of damage to the environment or property is substantial or

iii. the damage to public health is broadly measurable; or

ii. The environmental consequences relate to a specific activity or a point source of pollution.

5. A reading of Sec. 2(1)(m) evinces that grievances that are individualistic in nature or that pertain to a small group of individuals, are expressly barred.

6. The instant OA appears to have been instituted on individualistic grievances of the Applicant as is evident from the letter petition dated 10.08.2023. The Applicant, in the said letter petition, threatens to invoke the jurisdiction of this Hon'ble Tribunal if certain demands essentially for the convenience of the villagers of the village of which the Applicant is a resident, are not met.

7. The Applicant, on 14.06.2023, addressed a letter to the District Magistrate, Rudraprayag, wherein he reiterated two demands i.e., filling up of a river called Chopda Gadera upto the ground level to make a playground; and also building a road from Saruli, Phalinda to Gama Gadera. The Applicant also stated that he would be constrained to invoke

the jurisdiction of this Hon'ble Tribunal if the aforesaid demands were not met by 07.07.2023.

8. Therefore, had the abovementioned demands been met, the Applicant would not have filed the letter petition, which is proof that the Applicant was never really concerned about the restoration of any alleged environmental damage.

9. The Hon'ble Supreme Court, in State of U.P. v. Uday Education & Welfare Trust, 2022 SCC OnLine SC 1469 (para 99), has emphasized that objections as to locus must be considered by the NGT and the credentials and bona fides of the applicants must be tested, before they can be allowed to knock the doors of justice.

JCR CONFIRMS NO ENVIRONMENTAL DAMAGE OWING TO THE PROJECT

10. The Joint Committee, in its report dated 13.05.2024, categorically held that it had found no damage to the private lands or the Alaknanda River due to the disposal of debris during its site visit. The relevant portion of the JCR (as translated in the order dated 17.05.2024) is reproduced below for ease of reference:

"... 8. According to the report of Assistant Inspector General of Forests, Ministry of Environment, Forest and Climate Change, Regional Office, Dehradun:-

3) The proposal has been submitted mentioning the number of 05 affected trees. However, during inspection, it was seen that no trees had been cut and the debris was also not going into the Alaknanda River.

Based on the investigation done by the committee and the data given by the Forest Department, Geology and Mining Department, Revenue Department, the following facts were observed -

2. Among the above Khasras, Khasra No. 5363 Rauli is in its previous form and there has been no damage to the private land due to dumping of debris.

3. The trunks of 05 trees are buried due to debris dumping at the said place and the branches of the said trees are green, due to which there is no damage to the said trees."

[Emphasis added]

11. Therefore, when the Joint Committee itself has recorded that there has been no environmental damage by any action of the Answering Respondent, the requirement of Sec. 2(1)(m) is clearly not met, which contemplates "substantial" damage to the environment or property.

NO STATUTORY STIPULATIONS (OTHER THAN THOSE RELATING TO LAND ACQUISITION) APPLICABLE TO RAILWAY ADMINISTRATIONS

12. Sec. 11 of the Railways Act exempts the railway administration, in carrying out work related to constructing or maintaining a railway, from all

laws except those relating to land acquisition. Sec. 11 of the Railways Act is reproduced below for ease of reference:

"11. Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Act and the provisions of any law for the acquisition of land for a public purpose or for companies, and subject also, in the case of a non-Government railway, to the provisions of any contract between the non-Government railway and the Central Government, a railway administration may, for the purposes of constructing or maintaining a railway...

(a) make or construct in or upon, across, under or over any lands, tunnels lines of railways, ...;

(h) do all other acts necessary for making, maintaining, altering or repairing and using the railway."

[Emphasis added]

13. There can be no doubt that the tunnelling work and the consequential muck disposal being undertaken by the Answering Respondent (in terms of the Agreement with the

Respondent No. 4) squarely comes within the sweep of the aforesaid provision.

14. The implication of Sec. 11 of the Railways Act on environmental laws is no longer res integra since the same stands decided by a catena of decisions, some of which are as follows:

a. A Division Bench of the Hon'ble Bombay High Court at Goa in Goa Foundation v. Konkan Railway Corporation, 1992 SCC OnLine Bom 205 (paras 7, 8), held that neither the FOREST CONSERVATION ACT, 1980 (FCA) nor the ENVIRONMENT PROTECTION ACT, 1986 (EPA), which predate the Railways Act, are applicable to work done by railway administration.

b. A Division Bench of the Kerala High Court in Geologist v. Sunil Kumar, 2015 SCC OnLine Ker 13635 (paras 14, 17), reaffirmed the mandate of Sec. 11 of the Railways Act but clarified that the same cannot be used to enter private lands, which is a proposition following the express exception contained in Sec. 11 itself, with respect to the laws for land acquisition.

c. Another Division Bench of the Hon'ble Bombay High Court at Goa in Ganv Bhavancho Ekvott v. South Western Railways, 2022 SCC OnLine Bom 7184 (paras 55, 65, 86), after relying on Goa Foundation (supra), held that building permissions from a Panchayat and so also permissions under the CRZ NOTIFICATION, 2011 (though framed subsequent to the Railways Act but under the EPA which predates the Railways Act) were not required to be obtained by the railway authorities. Importantly, this decision, at para 86, expressly disapproves the decision of this Hon'ble Tribunal in Saloni Singh & Anr. v. Union of India & Ors., (OA No. 141/2014) in its order dated 12.12.2019 (para 20).

d. A Division Bench of the Hon'ble Bombay High Court at Goa in Village Panchayat of Velsao, Pale, Issorcim v. Ministry of Railways, 2022 SCC OnLine Bom 3526 (paras 4,11), followed the decision in Ganv Bhavancho (supra), and held that building permissions under the GOA PANCHAYAT RAJ ACT, 1994 were not necessary to be obtained by railway authorities.

e. A Division Bench of the Hon'ble Bombay High Court at Bombay in National High Speed Rail Corpn. Ltd. v. State of Maharashtra, 2022 SCC OnLine Bom 6701 (paras 64, 75), after again relying on Goa Foundation (supra), held the EPA to be inapplicable to works undertaken by Railway authorities. Importantly, this judgment at para 64 also expressly rejected the argument that Sec. 11 of the Railways Act leads to "absurd consequences", and adopted the views of the Division Bench in Ganv Bhavancho (supra).

f. Pertinently, challenges to the decisions in Ganv Bhavancho (supra) and Village Panchayat (supra) came to be dismissed by the Hon'ble Supreme Court in SLP (C) No. 17001/2024 by an order dated 02.08.2024; and in SLP (C) Diary No. 19439/2023 by an order dated 16.05.2023, respectively.

SUBORDINATE LEGISLATION CANNOT PREVAIL OVER A PLENARY LEGISLATION

15. The CONSTRUCTION AND DEMOLITION WASTE MANAGEMENT RULES, 2022 (C&D Rules) is a subordinate legislation enacted under the EPA, and consequently, it cannot prevail over the provisions of a parliamentary legislation, such as the Railways Act, in view of the settled law that a subordinate legislation must not only conform to the parent Act, but also to any other statute vide Kerala Samsthana Chethu Thozhilali Union v. State of Kerala & Ors., (2006) 4 SCC 327 (para 17); and Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 (para 75).

16. Therefore, if the C&D Rules are held to be applicable, it would lead to an absurd consequence inasmuch as a Parliamentary legislation would be subject to a subordinate legislation, which is untenable.

17. Further, the Hon'ble Supreme Court in Solidaire India Ltd. v. Fairgrowth Financial Services Ltd., (2001) 3 SCC 71 (para 9), has held that in case of non-obstante clauses contained in two enactments, it is the latter enactment which prevails. Therefore, since the C&D Rules have been notified by the Central Government in exercise of powers under the EPA, which predates the Railways Act, the said Rules, being a subordinate legislation, cannot prevail over the non-obstante clause in Sec. 11 of the Railways Act.

NO DEFAULT ON THE PART OF THE ANSWERING RESPONDENT

18. Even assuming without admitting, that statutory permissions were necessary, the responsibility to obtain them lay with the Respondent No. 4, as had been clearly stipulated in Cl. 2.18.1 of the Agreement (Pg. 443, R5's

Reply dated 27.08.2024), and has, in fact, been admitted by the Respondent No. 4 at para L(ii) of its Reply dated 21.08.2024 (Pg. 1068, R4's Reply dated 28.08.2024).

19. While the Project does not attract the C&D Rules, the Answering Respondent has scrupulously followed the detailed stipulations in the Agreement, which it is humbly submitted, assuages any concerns of environmental degradation. Therefore, adherence to the C&D Rules, effectively becomes a matter of formality. Particularly, the following Clauses in the Agreement deal with waste and garbage disposal:

	RELEVANT CLAUSE	PAGE
1.	Cl. 1.3.20: (i) Waste to be transported to an area approved by the Engineer and to be incinerated, buried or disposed of as approved by the Engineer. (ii) **No waste of any kind shall be deposited in any watercourses**.	***484, R5's Reply dated 27.08.2024***
2.	Cl. 7.7.2: Excavated material not suited for construction shall be disposed of in the waste disposal area. Disposal of such material shall not interfere with natural drainage and will be as per regulations for environmental protection.	***551, R5's Reply dated 27.08.2024***
3.	Cl. 7.7.3: No excavated materials **to be disposed of in the streams** or at locations, where these may be washed away by the floods or may block the water way of streams.	***552, R5's Reply dated 27.08.2024***
4.	Cl. 8.2.3: To prevent spillage of muck, R.R. Masonry/ Gabion **retaining walls** with adequate arrangement shall be provided in the disposal area.	***556, R5's Reply dated 27.08.2024***

20. There is no suggestion in the JCR that these have not been followed.

21. In any case, the Answering Respondent has been penalised under the INDIAN FOREST ACT, 1927 for damage caused due to debris disposal and has paid an amount of Rs. 4,61,291/- for the same. The same has been acknowledged by the Respondent No. 4 at para L(ii) of its Reply dated 28.08.2024 (Pg. 1068), wherein the Respondent No. 4 has, in fact, admitted that even though the Answering Respondent has paid the amount, there was no default on its part.

22. Hence, imposition of any penalty over and above this, by this Hon'ble Tribunal would amount to double jeopardy.

REGULARISATION OF FOREST CLEARANCE ALREADY UNDER CONSIDERATION

23. Even assuming without admitting that forest clearance was required to be obtained by the Respondent No. 4, the said requirement has been fulfilled. The Respondent No. 4 on 19.04.2022 had submitted its proposal u/s 2 of the FCA, seeking diversion of an additional area of 0.8511ha of forest land before commencing operations. The said proposal for Stage-I approval was forwarded to the MoEFCC for consideration on 13.06.2024, and is being considered in accordance with Rule 10(2)(v) of the VAN (SANRAKSHAN EVAM SAMVARDHAN) RULES, 2023 (FCA Rules), which deals with cases of regularization.

24. In respect of cases of regularization, Cl. 1.16, Chapter 1 of the MoEFCC Consolidated Guidelines and Clarifications under the FCA states that where land is diverted while awaiting FC approval, penal NPV will be imposed which can be up to five (5) times the NPV and 12% interest. Therefore, imposition of penalty is already contemplated under the FCA and will be imposed on the Respondent No. 4 in the course of its proposal being considered for regularisation by the MoEFCC. Hence, imposition of any penalty over and above this, by this Hon'ble Tribunal would amount to double jeopardy.

SUMMARY OF ARGUMENTS

25. Hence, in summary, it is submitted that:

i. The instant OA is not maintainable, since it is motivated by vested interests of the Applicant and hence barred u/s 14 r/w 2(1)(m) of the NGT Act.

ii. The implication of Sec. 11 of the Railways Act on environmental laws is no longer res integra and stands decided by a catena of decisions. It is now settled law that in view of the said Sec. 11, no statutory stipulations, including those under environmental laws, are applicable to works done by the railway authorities.

iii. Joint Committee's Report dated 13.05.2024 has confirmed that there has been no environmental damage, hence the letter petition's grievance is rendered academic.

iv. The Answering Respondent has scrupulously followed the detailed stipulations in the Agreement, which assuages any concerns of environmental degradation.

v. Even assuming without admitting, that statutory permissions were necessary, the responsibility to obtain the same lay with the Respondent No. 4.

vi. The Respondent No. 4's proposal for Stage-I approval is being considered under Rule 10(2)(v) of the FCA Rules, 2023, which deals with ex-post facto approval involving cases of violations, and contemplates the imposition of a penalty for the same. Therefore, the imposition of any penalty over and above this, by this Hon'ble Tribunal, either on the Respondent No. 4 or the Answering Respondent, would amount to double jeopardy."

26. Before dwelling upon factual and legal submissions made by learned Counsels for the respondents, factual background emerging from the material placed on record may be noticed.

Factual Background

27. Respondent no.4 is executing the project for construction of Tunnels, Bridges and Formation Works from Chainage 91+228 to 101 + 339(FLS) under Package 7B in connection with new Broad-Gauge Line between Rishikesh and Karanprayag (125km) in the State of Uttarakhand.

28. The proposed alignment for the Rishikesh-Karnaprayag railway project spans 125 km, traversing the Ganga and Alaknanda River valleys with substantial tunnel and bridge construction over deep gorges and valleys. Future developments may extend the line to Badrinath and Kedarnath. Upon its completion, the project will significantly enhance connectivity within the Ganga/Alaknanda valley, thereby stimulating economic growth and boosting tourism in the Uttarakhand region.

29. Admittedly, a tender was issued for "Construction of Tunnels, Bridges and Formation Works from Chainage 91+228 to 101+339 (FLS) under Package-7B in connection with new Broad Gauge Line between Rishikesh and Karanpravag (125km) in the State of Uttarakhand, India".

30. Following the bidding process, the respondent no. 5-MEIL won the bid and the contract was awarded to respondent no. 5-MEIL. Contract agreement for the construction of the above-mentioned project was signed between respondent no. 4-RVNL as employer and respondent no.5-MEIL as contractor on 02.09.2020.

31. The Railway Projects are not included in EIA Notification, 2006 and prior Environmental Clearance is not required for the same.

32. The applicant has raised grievances that the RVNL has created a dumping area on Chopra Gadhera without obtaining statutory permissions/NOC/Clearance from the concerned authorities and dumped muck there from above burying the vegetation and destroying the Gadhera causing damage to environment and depriving local people of its use and posing risk to their lives.

33. Learned Counsels for respondent no.5 have raised three pronged arguments as to the original application being not maintainable, relief claimed being barred due to applicability of Section 11 of the Railways Act, 1989 and there being no joint or several liability of respondent no.5 in the short note dated 11.02.2025 (the relevant part of which has been reproduced in earlier part of this judgment and is not reproduced here to avoid repetition).

34. The question which first arises is as to bonafides and credentials of the applicant and maintainability of the original application.

Bonafides and credentials of the applicant

35. So far as the question of bonafides and credentials of the applicant are concerned there is no dispute with the proposition of law emerging from the observations made by Hon'ble

Supreme Court in **State of Uttar Pradesh & Others vs. Uday Education & Welfare Trust & Others, 2022 SCC OnLine SC 1469** that before litigant is permitted to knock the door of the justice by way of public interest litigation his credentials and bonafides must be tested but in the present case the applicant being president of registered Gram Vikas Samiti has raided grievances on behalf of local people affected by the acts complained of which are supported by resolution passed by Gram Vikas Samiti, complaint made to the District Magistrate, Rudraprayag and other documents enclosed with the original application. Respondents have not produced any cogent material to doubt the bonafides and credentials of the applicant. In the absence of any such material the bonafides and credentials of cannot be doubted.

Maintainability of the Original Application

36. So far as the argument of learned Counsel for respondent no. 5 as to the present Original Application not being maintainable due to being actuated by vested interests of the concerned individual or small group and being contrary to provisions of Section 14 read with Section 2(1)(m) of the National Green Tribunal Act, 2010 is concerned, it may be observed that the applicant had sent the letter petition, which has been treated as Original Application, as Adhyaksh of Gram Vikas Samiti Utyasu (Jawadi) Bhardar, District Rudraprayag, Uttarakhand and the applicant raised grievances regarding creation of dumping zone/area on Chopra Gadhera in violation of environmental laws/norms and destruction of vegetation and water body due to dumping of muck thereby damaging environment, causing life risk to the local people and depriving them of the ecological benefits thereof. The grievances raised cannot be said to be based on individualistic grievances of the applicant or to be concerning an individual or small group of individuals and have been evidently made for protection and improvement of environment by restoration of previous position and espousing the interest of all the villagers/local inhabitants. No doubt in letter dated 14.06.2023 addressed to the District Magistrate, Rudraprayag, the applicant reiterated two demands of filling up of Chopra Gadhera upto the particular level mentioned and construction of a road from Saruli's Falinde to Gama Gadhera with threat to stop the dumping and remove the malba if the demands were not met but the threat to do so and even the threat to move this Tribunal cannot, by any stretch of imagination, be considered to be proof of the demands having being made for securing with vested interests by person(s) not being really concerned about the remediation of environmental damage and protection of environment. On the other hand, we are of the considered view that said letter validly presented concerted viable alternative for redressal of environmental damage and also inconvenience caused to the affected villagers/local inhabitants. The mere fact that the applicant would not have filed the present Original Application if the demands were met, does not give rise to any such inference of the applicant not being concerned about the remediation of environmental damage caused and not acting for protection of environment. The observations made by the Joint Committee in its Report as to rauli being in previous form, five trees buried in dumped muck being green and no damage to private land do not by themselves disprove causing of environmental damage to Chopra Gadhera which can be seen in the video clips recorded in the pen drive filed by the applicant. The grievances raised by the applicant involve substantial questions

relating to environment arising out of the implementation of the enactments specified in Schedule I of the National Green Tribunal Act, 2010 within the meaning of Section 14 read with Section 2(1)(m) of the National Green Tribunal Act, 2010. Consequently, the present Original Application is maintainable in the present form.

37. The question which next arises is as to whether applicability of the environmental laws/norms, on which the grievances of the applicant are based, is barred by Section 11 of the Railways Act, 1989.

Applicability of environmental laws/norms and bar of Section 11 of the Railways Act, 1989

38. Vide order dated 07.03.2024, this Tribunal constituted a Joint Committee and based on the investigation done by the Joint Committee and the data given by the Forest Department, Geology and Mining Department, Revenue Department, the Joint Committee observed following facts:-

(i) Muck/debris have been illegally dumped by RVNL without permission on the land comprising of total area of 2.410 hectare out of which Central area is 1.310 hectare categorically divided into Khatauni account number-41/251 of village Jawadi, Category-9(3) E (cultivable barren land) 0.158 hectare area of Khasra number-5361, 1.308 hectare area of Khasra number-5362, 0.717 hectare area of Khasra number -5364, 0.277 hectare area of Khasra number-5446.

(ii) Among the above Khasras, Khasra No. 5363 Rauli is in its previous form and there has been no damage to the private land due to dumping of debris.

(iii) The trunks of 05 trees are buried due to debris dumping at the said place and the branches of the said trees are green, due to which there is no damage to the said trees.

(iv) The use of minerals from the dumping yard by the RVNL without obtaining permission and without paying revenue/royalty and other taxes is a violation of the relevant provisions of the Uttarakhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2021.

(v) On-site inspection, WGS conducted by Forest Department personnel and after inspection, debris disposal was found on additional 0.4589 hectares of civil forest area in addition to 0.8511 hectares of civil forest land proposal diversion of which for non-forest activities has been made to MoEF&CC.

(vi) Forest Officer, Southern Jakholi Range registered a criminal case number 40/2022-23 dated 23.02.2023 against the concerned project proponent department and assessed and recovered amount of Rs. 4,61,291/- (Rs. four lakh sixty one thousand two hundred ninety one only) from respondent no.5 towards the environmental damage and deposited the same in forest revenue.

(vii) Rail Vikas Nigam Limited (RVNL) and the executing agency M/s Megha Engineering and Infrastructure Limited (MEIL) did not take permission for disposing of the dust/muck generated during the construction work on the site

and did not take consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and authorization under the Construction and Demolition Waste Management Rules, 2016 from the UKPCB.

(viii) The proposal for reversion of forest land is currently under consideration and it has been found that work is being done on the site (forest land) even before getting in-principle approval for the said proposal, which is a violation of the provisions of the Forest (Conservation) Act, 1980 and further action will be taken in view of the violations.

39. In its reply, respondent no.1-MoEF&CC has admitted that a proposal under Section 2 of the Van (Sanrakshan Evam Samvardhan) Adhiniyam, 1980 was received in the office of answering respondent through APCCF-cum Nodal Officer (FCA), Government of Uttarakhand vide letter dated 19.04.2022 seeking diversion of additional 0.8511 ha of forest land in favour of RVNL for the construction of 126 Km Rishikesh-Karnprayag new broad gauge rail line. The proposal was discussed in the Regional Empowered Committee (REC) meeting of answering respondent held on 30.08.2022, wherein the following decisions were taken:-

> "*After detailed discussion on various aspects of the proposal, the committee decided to approve the proposal subject to submission of clarification/ documents/ information on the following points:*
>
> *i. The proposal is for additional area requirement for the already approved Rishikesh-Karnprayag Railway line project and it is expected that few more proposals for the same were and will be submitted. It is requested to propose the plantation area in one patch/ Block for all the proposals instead of providing it in small patches and accordingly KML file, maps & plantation scheme of 1702 trees shall be submitted.*
> *ii. A detailed analysis of the previously proposed muck dumping yards is required to be submitted.*
> *iii. Muck disposal plan is required to be reviewed and resubmitted in view of the quantity of muck that will be generated along with the capacity of the dumping yard.*
> *iv. No trees should be felled in the muck dumping area."*

40. Violations were brought to the notice of State Government and reports were sought and received from concerned State Government agencies/officers as mentioned in the reply filed by respondent no.1 MoEF&CC but the Matter is still pending with MoEF&CC and the approval has not yet been granted.

41. So far as the dumping of muck in the land of Chopra Gadhera in the present case is concerned, in its reply dated 26.08.2024, respondent no. 5 submitted that the respondent no.5 adhered to the proper protocols placed under the contract; respondent no.5 followed the

guidelines laid down by its employer respondent no. 4 and respondent no. 5 utilized the designated muck dumping zone as per the bid document PK-7B. However, the entire allocated area reached its full capacity during the course of construction. Consequently, the respondent no.5 requested an additional dumping site to ensure the smooth and efficient continuation of the contract. Respondent no. 4 promptly facilitated the request through its project manager. Respondent no.5 enclosed copies of letter dated 02.12.2021 sent by respondent no.5 requesting for additional space for muck dumping and reply/order of respondent no.4 vide letter no. 1276 dated 28.08.2021 designating additional space for muck dumping with its reply dated 26.08.2024.

42. In the present case, this Tribunal had vide order dated 13.02.2025 specifically directed respondents no. 4 and 5 to file additional responses specifically mentioning the muck dumping area/ site identified along with the permissions granted for muck dumping, verification reports regarding compliance/non-compliance of muck dumping, mitigation measures to be taken in case of any alleged violation, and a pen drive containing video clips showing the before and after status of the site in question.

43. In compliance thereof, respondent no. 5 filed additional response dated 30.04.2025. In the additional response, respondent no. 5 has submitted that an approved Environment Management Plan (EMP) is already in place and referred to clause 7.7.2 and 9.5 and table 9.2 of the EMP. The relevant part of the additional response is reproduced below:-

> *"5. Clause 7.7.2 of the Agreement stipulates that the Contractor i.e., the Answering Respondent must ensure muck management as per the "approved environmental mitigation plan". Cl. 7.7.2 is being reproduced below for ease of reference:*
>
> *"Excavated materials which are not suitable for construction and those in excess of the requirement for construction shall be disposed off in the waste disposal area. Surfaces of material so disposed off shall be trimmed to regular lines and grades satisfactory to the Engineer. Disposal off material shall be such that it will not interfere with natural drainage and is as per the regulations for environmental protection or with Engineer's acceptance. The **Contractor must ensure muck management as per the approved environmental mitigation plan with proper turfing and plantation at dumping sites**."*
>
> ***[Emphasis added]***
>
> *6. Clause 9.5 and Table 9.2 of the EMP provide for the muck disposal management plan, and contemplate management measures for each dumping site. Further, Cl. 9.5.6 of the EMP provides for "Turfing and Tree Plantation" and states as follows:*
> *"The waste material dumped at spoil tips would comprise mainly of loose rock fragments that would be mechanically compacted and*

properly levelled with suitable safe slopes. In order to restore the area, all these spoil tip areas/dumping sites need to be rejuvenated by means of turfing and vegetation growth. Effort shall be made to retain trees along the contour with row interval of 10 m for compaction machineries to be operated. Around 85% of the dumping site area is considered to be turfed as the rest of the space would get consumed in providing protection walls, fencing, retaining existing trees etc. About 15-30 cm of thick layer external soil will be spread on the slope area. Bio engineering techniques like geotextiles shall be used for growth of grass or ground cover. ***Maintenance of the same shall be done for at least 4 years followed by periodic inspection...****".*

[Emphasis added]

44. In the additional response, respondent no. 5 has also asserted that there was no deviation from the approved muck dumping sites and referred to Clause 2.3(E) in Chapter 2 (General Information and Scope of Work) which provides for details of the muck dumping locations and reads as follows:-

"Employer ***has already acquired land*** *required for dumping of muck to be generated from tunnel excavation at suitable locations. All sites are located within 10km lead of the tunnel Portals.* ***Site maps for all muck dumping grounds are shown in bid drawings in Vol. III****. Brief details are as follows:*

Ground ID	***Available Muck dumping capacity***	***Muck Dumping Location***	***Suitable for***	***Distance (Kms)***
D27 (NH)	*3,52,000.00 cum.*	*At Narkota Village*	*T13-P-1*	*At Tunnel-13 Portal-1 location*
D27 (NH)	*3,52,000.00 cum.*	*At Narkota Village*	*Adit-7 Portal*	*At 8 km from admit Portal location.*
D-28 (NH)*	*7,69,280.00 cum*	*Nearby Tilani Yard*	*T-13-P-2*	*At Portal Location Only.*

**This dumping ground would be shared between T13 and T14.*

Details of access Roads for Muck Dumping Zone D-27 are as follows:

*Muck Dumping Yard (D-27) is located at Narkota Location. This dumping yard is accessible through NH-58. No additional approach road is required to access this dumping zone. At Adit 7 portal location, there is space for muck dumping**, muck generated from this adit portal shall be dumped in this dumping yard only**. Details of access Roads for Muck Dumping Zone D-28 are as follows:*

Muck Dumping Yard (D-28) is located nearby Tilani Yard station. This dumping yard is accessible through NH-58. No additional approach road is required to access this dumping zone."

[Emphasis added]

45. In its additional response, respondent no. 5 has asserted that following the directives of respondent no. 4, respondent no. 5 utilized the designated muck dumping sites as per the terms of the Agreement (PK-7B) but has further submitted that the D27 dumping yard was not available for use and during the course of the construction, it was discovered that the D28 dumping yard had reached its full capacity, thereby necessitating the need for additional land. Accordingly, the respondent no. 5 requested the respondent no. 4 for allocation of additional dumping land at Adit 7-Jawari Bypass by its letter dated 02.12.2021 (copy at pages no. 1010 and 1011 of the paper book). The relevant part of the letter reads as under:-

"X X X X
During last Weekly Progress Review Meeting held on 30.10.2021, Contractor was informed that new dumping site will be given for use after Diwali. However, the same still to be made available to the Contractor.

Due to non-availability of dumping site near Adit 7, Contractor is required to re-handle the muck and cycle time is getting affected.

Availability of Dumping site near Adit 7 is very crucial for timely mucking. Accordingly, Contractor would like to again request you to please allocate dumping area near batching plant at Adit 7/Juari Bypass at the earliest possible so that we can avoid un-necessary re-handling of muck.
X X X X"

46. In its additional response, respondent no. 5, has submitted that respondent no. 4 through its Engineer (AECOM), by a letter dated 28.12.2021 (copy at page no. 1012 of the paper book), accorded its in-principal approval for the dumping yard for Adit-7 at Jawari Bypass and instructed respondent no. 5 to "start the work at the earliest". The relevant part of the above said affidavit reads as under:-

"X X X X

Subject: "CONSTRUCTION OF TUNNELS & BRIDGES WORKS FROM CHAINAGE 91+228 to 101+339 UNDER PACKAGE-7B IN CONNECTION WITH NEW BG LINE BETWEEN RISHIKESH AND KARANPRAYAG (125KM) IN STATE OF UTTARAKHAND, INDIA."

Reg: Regarding approval of Dumping Yard for Adit-7 at Jawari Bypass

Ref: (i) CA No. RVNL/RKSH-KNPG/Tender/Tunnels/PK-7B/52, dated 02.09.2020

(ii) Your office letter no. MEIL/RVNL/RKSH-KNPG/PKG-7B/2021-22/1009, dated 02.12.20221

Dear Sir

This is with respect to the captioned subject and CA under Ref. (i). The Contractor vide letter under Ref. (ii) has submitted its request for providing the dumping site near Adit-7 and the same was reviewed by the Employer & the Engineer.

The Employer after some negotiation with District Authorities (Forest Department) has now arranged for ***dumping yard for Adit-7 at Jawari Bypass and in principal approval is hereby accorded for the use of said dumping yard****.*

The Contractor is therefore required to submit a proposal for protection works for the use of the dump site. After approval of proposal and completion of protection works the Contractor can start dumping the muck from Adit-7. In addition to above, it is pertinent to mention that the Contractor should arrange for a joint measurement for lead and prepare & keep handy the records (maintain a register - a format is already shared) of the same at all times.

It is to be noted that the Engineer during several discussions has asked for maintaining a register/record for the Crusher Plant (a format in this regard is also shared); however, the Contractor to date has not provided the details and also, details/records pertaining to lead distance for dumping of muck from Adit-7 at Portal 2 - Dumping Yard are not provided.

In this regard, the Contractor is required to survey the area and provide the proposal for protection works for dumping yard near Jawari Bypass and to start the works at the earliest. In addition to this, submit the details/records as required and arrange for a joint measurement for lead distance.

X *X* *X* *X"*

47. In its additional response, respondent no. 5 has submitted that respondent no. 5 has acted in accordance with the terms of the Agreement and has executed the muck dumping work only in the land provided to it by respondent no. 4.

48. However, above said letter required respondent no.5 to submit a proposal for protection works for the use of the dump site. After approval of proposal and completion of protection works the Contractor could start dumping the muck from Adit-7. The above said letter did not in any manner permit respondent no. 5 to dump muck in Chopra Gadhera by throwing the same from above burying the vegetation and trees and damaging the water body/spring causing extensive damage to environment as shown by the video clips recorded in the pen drive produced by the applicant.

49. So far as the question as to exclusion of applicability of environmental laws-the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986 and the Construction and Demolition Waste Management Rules, 2016 by non-obstante clause in Section 11 of the Railways Act, 1989 and exemption from requirement of consent from UKPCB is concerned, it has to be seen as to whether the above provision applies and the protection thereby provided extends to the acts complained of.

50. Section 11 of the Railways Act, 1989, which confers power on railway administration to execute all necessary works, reads as under:-

> *"**11. Power of railway administrations to execute all necessary works.** Notwithstanding anything contained in any other law for the time being in force, but subject to the provisions of this Act and the provisions of any law for the acquisition of land for a public purpose or for companies, and subject also, in the case of a non-Government railway, to the provisions of any contract between the non-Government railway and the Central Government, a railway administration may, for the purposes of constructing or maintaining a railway-*
>
> *(a) make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, roads, railway, tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes, oil-pipes, sewers, electric supply lines, or telegraph lines, such temporary or permanent inclined-planes, bridges, tunnels, culverts, embankments, adequcts, bridges, roads, lines of rail, ways, passages, conduits, drains, piers, cuttings and fences, in-take wells, tube wells, dams, river training and protection works as it thinks proper;*

(b) alter the course of any rivers, brooks, streams or other water courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them and divert or alter either temporarily or permanently, the course of any rivers, brooks, streams or other water courses or any roads, streets or ways, or raise or sink the level thereof, in order to carry them more conveniently over or under or by the side of the railway;
(c) make drains or conduits into, through or under any lands adjoining the railway for the purpose
of conveying water from or to the railway;

(d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery apparatus and other works and conveniences as the railway administration thinks proper;

[(da) developing any railway land for commercial use:]

(e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead;

(f) erect, operate, maintain or repair any telegraph and telephone lines in connection with the working of the railway;

(g) erect, operate, maintain or repair any electric traction equipment, power supply and distribution installation in connection with the working of the railway; and

(h) do all other acts necessary for making, maintaining, altering or repairing and using the railway."

51. In the present case, there is no dispute with the propositions of law laid down in the cases relied upon by learned Counsels for respondent no 5 (i) that in case of non-obstante clauses contained in two enactments, it is the latter enactment which prevails as held by Hon'ble Supreme Court in **Solidaire India Ltd. vs. Fairgrowth Financial Services Ltd., (2001) 3 SCC 71** (ii) that a subordinate legislation must not only conform to the parent Act, but also to any other statute as held in **Kerala Samsthana Chethu Thozhilali Union vs. State of Kerala and Others, (2006) 4 SCC 327** and **Indian Express Newspapers (Bombay) (P) Ltd. vs. Union of India and Others, (1985) 1 SCC 641** and (iii) that in view of non-obstante clause in Section 11 of the Railways Act, 1989 statutory requirements under enactments made prior thereto will not be applicable to railway works covered by and falling within the fold of Section 11 of the Railways Act, 1989 as held in **Goa Foundation and Another vs. Konkan Railway Corporation and Others, 1992 SCC OnLine Bom 205**;

Geologist vs. Sunil Kumar, 2015 SCC OnLine Ker 13635; **Ganv Bhavancho Ekvott and Others vs. South Western Railways and Others, 2022 SCC OnLine Bom 7184**; **Village Panchayat of Velsao, Pale, Issorcim vs. Ministry of Railways & Others, 2022 SCC OnLine Bom 3526;** and **National High-Speed Rail Corpn. Ltd. vs. State of Maharashtra & Others, 2022 SCC OnLine Bom 6701.**

52. However, even learned Counsels for respondent no.5 have conceded that in **Geologist vs. Sunil Kumar, 2015 SCC OnLine Ker 13635,** Hon'ble Division Bench of High Court of Kerala, while reaffirming the mandate of Section 11 of the Railways Act, 1989, clarified that the same cannot be used to enter private lands and learned Counsels for respondent no.5 have also conceded that said proposition follows from the express exception contained in Section 11 of the Railways Act, 1989 itself, with respect to the laws for land acquisition.

53. In **Geologist vs. Sunil Kumar, 2015 SCC OnLine Ker 13635**, Hon'ble Division Bench of High Court of Kerala on Writ Appeals against the judgment of Learned Single Judge directing grant of short term permit/renewal of permit on writ petitions filed by the petitioners claiming to be sub-contractors from a railway contractor, who had been granted contract to supply red earth for Railway line/doubling of Railway line held that since the work of construction of railway line was not being done in the survey numbers involved in the writ petitions Section 11 of the Railways Act, 1989 was in-applicable and set aside the judgments of the learned Single Jude and dismissed the Writ Petitions. Hon'ble Division Bench of High Court of Kerala distinguished **Goa Foundation and Anr. vs. Konkan Railway Corporation & Others, 1992 SCC OnLine Bom 205** relied upon before it by observing that Goa Foundation's case (supra), was a case where the Central Government decided to provide a broad gauge railway line from Bombay to Mangalore and thereafter to extend to the State of Kerala and for that purpose the Konkan Railway Corporation Ltd. was set up. A public interest litigation was filed alleging that drawing of Railway line shall affect the environment and no clearance has been obtained under the Environment Protection (Amendment) Act, 1986 and the notification dated 19.02.1991 was issued by which restrictions on the setting up or extension of industries, operations or processes in the coastal regulation zone has been prescribed. In the above context, the Division Bench referred to Section 11 of the Railways Act, 1989 and held that there was no necessity to obtain environmental clearance by virtue of Section 11 of the Railways Act, 1989. In the above case, the Corporation had acquired the land on which the Corporation intended to proceed to lay down the Railway line. The Railway administrations was proceeding to carry out the work on the land, which was acquired by the Railway. The said case was not a case of carrying out any work in any private land, nor the said was a case of carrying out any mining operation in a private land for extraction of sand.

54. In the present case, the land, on which muck was found to have been dumped, is not shown to be owned or to have been acquired by the respondent no. 4-Rail Vikas Ltd. Railway is not making or constructing and executing the project on or in the land in question. Even if the act of dumping muck be held to be necessary part thereof and respondent no. 4 be held to

have permitted respondent no. 5 to dump muck in the land in question mentioned in the letter relied on by respondent no.5, respondent no. 5 was bound under the agreement executed with respondent no. 4 to dump muck in the identified/demarcated muck dumping site only with also as per environmental norms with requisite precaution so that the same did not roll over to other land and cause any environmental damage. The applicant has substantiated the assertion made in the present original application by the supporting videos produced before this Tribunal by the applicant which show that the muck has not been dumped in the identified/demarcated land only and also as per environmental norms with requisite precaution and has been dumped in such a manner that the same has rolled over the Chopra Gadhera in question, other private land and also buried part of the five trees.

55. Dumping of muck in place not identified and earmarked by the respondent no. 4 is not permitted by the agreement between the respondent no. 4 and respondent no. 5 and is not covered by clauses (a) to (g) of Section 11 of the Railways Act, 1989 and cannot be said to be an act necessary for making, maintaining, altering or repairing and using the railway within the meaning of clause (h) of Section 11 of the Railways Act, 1989.

56. In these facts and circumstances of the case, Section 11 of the Railways Act, 1989 is not applicable and the exemption from the applicability of the environmental laws/norms provided by Section 11 of the Railways Act, 1989 is not available to respondents no. 4 and 5 and observations in **Goa Foundation and Anr. vs. Konkan Railway Corporation & Others,** 1992 SCC OnLine Bom 205; **Geologist vs. Sunil Kumar**, 2015 SCC OnLine Ker 13635; **Ganv Bhavancho Ekvott & Others vs. South Western Railways & Others**, 2022 SCC OnLine Bom 7184; **Village Panchayat of Velsao, Pale, Issorcim vs. Ministry of Railways & Others**, 2022 SCC OnLine Bom 3526; **National High-Speed Rail Corpn. Ltd. vs. State of Maharashtra & Others**, 2022 SCC OnLine Bom 6701; **Kerala Samsthana Chethu Thozhilali Union vs. State of Kerala & Others,** 2006 4 SCC 327; **Indian Express Newspapers (Bombay) (P) Ltd. & Others vs. Union of India & Ors.**, (1985) 1 SCC 641; **Solidaire India Ltd. vs. Fairgrowth Financial Services Ltd. & Others,** (2001) 3 SCC 71 relied upon by learned Counsel for respondent no. 5 are not of any help to respondents no. 4 and 5.

57. Even otherwise, under chapter 1 of Section 5 (works requirement) of Sr. 10 of index i.e. The Works/Employer's Requirements, Clause no. 1.8 describes the works requirements for protection of environment and clearly provides that the contractor and its sub-contractors and petty contractors shall abide at all times by all existing enactment on environmental protection and rules made thereunder. For ready reference, Clause 1.8 is reproduced below:-

> *"1.8 Protection of Environment*
> *1.8.1During execution of works, the Contractor, his sub-contractors and petty contractors shall abide at all times by all existing enactments on environmental protection and rules made there under, regulations, notifications and bye-laws of the State or Central Government or local*

authorities and any other law, bye- law, regulation that may be issued in this respect in future by the State or Central Government or local authority. Some of the most relevant laws that are currently in force and are applicable in the subject contract are listed below: -

1.8.1.1 The Forest Act 1927;
1.8.1.2 The Forest (Conservation) Act 1980;
1.8.1.3 The Wildlife (Protection) Act 1972;
1.8.1.4 National Wildlife Action Plan 1983;
1.8.1.5 National Conservation Strategy 1992;
1.8.1.6 National Forest Policy, 1988;
1.8.1.7 The Water (Prevention and Control of Pollution) Act, 1974;
1.8.1.8 The Air (Prevention and Control of Pollution) Act, 1981;
1.8.1.9 The Environment (Protection) Act, 1986;
18.1.10 The Public Liability Insurance Act, 1991"

58. Clause 1.8.3 thereof provides for protection of trees and the same reads as under:-

"1.8.3 Protection of Trees: The Contractor must organize his work in such a way that the ecology of the area is not affected. The work area is located mostly in forest land. The Contractor and his men are prohibited from cutting any trees. Contractor shall provide assistance to the forest official in cutting of trees. Unauthorized felling of trees will result in legal action being taken under the relevant laws for which the Contractor shall be responsible."

59. Clause 8.15.7 of the bid document PK-7B mandates that the disposal of the excavated material in the dumping area shall not damage the environment and will be regulated as per the norms of Government of India. In spite muck disposal area shall be suitably covered off with retaining structures. Before taking up such works the contractor shall propose the construction methodology of retaining wall with RR Masonry/gabions approved from the engineer.

60. Even if Section 11 of the Railways Act, 1989 be assumed to be applicable to the work in question, even then in view of the contractual obligations to comply with environmental norms/laws incorporated in the agreement executed by respondent no.5 with respondent no.4, respondents no. 4 and 5 must be held to have waived and opted out of the protection extended by Section 11 of the Railways Act, 1989.

61. The question which next arises as to whether in view of the contractual stipulations particularly Clause 2.18.1 of the General Information and Scope of work in the Agreement respondent no.5 is not liable for violations of the environmental laws/norms and is not liable for remediation of environmental damage caused.

Liability for remediation of environmental damage caused

62. In its replies respondent no.5 has asserted that Clause 2.18.1 of the General Information and Scope of work in the Agreement not only implies that it was the sole responsibility of respondent no.4-RVNL to obtain the necessary clearances but also specifically records that the said clearances had already been obtained by respondent no.4-RVNL and that respondent no.5-MEIL carried out the works in the designated areas under the Agreement by relying on the contractual stipulation that the said clearances had already been obtained by respondent no.4-RVNL. Respondent no.5-MEIL having acted in terms of the agreement is not liable jointly or severally.

63. Clause 2.18.1 of the General Information and Scope of work in the Agreement reads as under:-

> *"Employer has acquired land required for construction of permanent works and Muck dumping zones. Necessary forest clearances and possession of entire land (Government, forest and Private) has been obtained. Contractor will be made available entire acquired land for construction of permanent works. All acquired area are shown in drawings included [Emphasis added] Vol. III."*

64. In view of above contractual stipulation **and existing environmental norms,** it was the responsibility of respondent no.4-RVNL only to obtain the necessary clearances if not already obtained and respondent no.5-MEIL cannot be said to be responsible for not obtaining the necessary clearances.

65. However, even while relying on Clause 2.18.1 of the General Information and Scope of work in the Agreement that the clearances had already been obtained by respondent no.4-RVNL, respondent no.5-MEIL was bound to obtain copies of necessary clearances and to look into the same. Consequently, respondent no.5-MEIL must be deemed to have known on requisite inquiries that the proposals for grant of necessary clearances was pending and respondent no.5-MEIL must be held to have knowledge of the same. In view of pendency of the proposals, no dumping of muck on forest land could be carried out and dumping of muck on forest land before grant of approval by the Central Government for diversion of the same for non-forest activities violated the provisions of the Forest (Conservation) Act, 1980.

66. Further, respondents no. 4 and 5, were legally bound, in conformity with the contractual stipulations and existing environmental norms referred to above, to ensure compliance with environmental laws/norms and to ensure protection of environment. In the present case assertion made by the applicant in the present original application is substantiated by the supporting videos produced before this Tribunal by the applicant which show that the muck has not been dumped in the identified/demarcated land only and also as per environmental norms with requisite precaution and has been dumped in such a manner that the same has

rolled over the Chopra Gadhera in question, other private land and also buried part of the five trees. Consequently, respondents no. 4 and 5 are jointly and severally liable to remediate the environmental damage caused by dumping of muck over the land of Chopra Gadhera and surrounding area at their own costs jointly and severally.

67. As per report of the Joint Committee the Deputy Forest Conservator, Rudraprayag Forest Division, Rudraprayag inspected the site in question on the spot along with the representative of the concerned proposing department from time to time and the Forest Department personnel and after the inspection, debris disposal was found in additional 0.4589 hectares of civil forest land in addition to the proposed/selected 0.8511 hectares of forest land before grant of approval by the MoEF&CC. Forest Officer, South Jakholi Range was directed to assess the damage caused to the forest wealth due to the debris disposal in the said additional area. The Forest Officer, South Jakholi Range took action under the Indian Forest Act, 1927 and while registering Criminal Case No. 40/2022-23 dated 23.02.2023, imposed an amount of Rs. 4,61,291/- (Rs. four lakh sixty one thousand two hundred ninety one only) which was liable to be paid by respondents no.4 and 5. The same was deposited by respondent no.5 as acknowledged by respondent no. 4 at para L(ii) of its Reply dated 28.08.2024.

68. Penalty of Rs.2,03,96,111/- was imposed on respondents no. 4 and 5 under the Uttarakhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2021 (as amended vide notification dated 18.09.2024) which was also deposited.

69. Respondent no.5 has submitted that in respect of cases of regularization, Cl. 1.16, Chapter 1 of the MoEFCC Consolidated Guidelines and Clarifications under the FCA states that where land is diverted while awaiting FC approval, penal NPV will be imposed which can be up to five times the NPV and 12% interest. Therefore, imposition of penalty is already contemplated under the FCA and will be imposed on the respondent no. 4 in the course of its proposal being considered for regularization by the MoEF &CC.

70. In these facts and circumstances of the case, we do not consider it necessary /appropriate to impose any further amount of environmental compensation on respondents no. 4 and 5.

71. In the present Original Application, the applicant sought the following reliefs:-

(i) Grant permission to Rail Vikas Nigam Limited (RVNL) to fill the Chopra Gadhera upto the level of the upper spring, lay a sewer pipeline from the upper spring to the lower spring, cover the pipeline with debris, and bring it up to level. This will prevent damage to the field, and rainwater can be directed straight to the second spring through the pipeline. The Gadhera may then be levelled and converted into a playground, and plantation may be carried out in the remaining land, with fencing around the ground. This can serve as the

sports field for the college currently being constructed there and host inter-school sports competitions in the future; and

(ii) Direct that a road of approximately 1–2 km be constructed from Saruli's Falinde (Jamun) to Gama Gadhera, which will connect our village Marudi Sari with the main headquarters.

72. The Joint Committee constituted by this Tribunal was informed by the representative of RVNL present on the occasion of joint inspection dated 02.04.2024 that the muck collected in Chopra Gadhera will be fully utilized in the tunnel construction work. The Executive Engineer of Irrigation Division, Rudraprayag informed the Joint Committee that after complete utilization of the collected muck, it seems appropriate to develop the said gadhera as before by replacing the damaged wire crates installed earlier and constructing new wire crates in the Chopra gadhera.

73. The Joint Committee constituted by this Tribunal had given instructions to the concerned proposing department to prepare a reclamation plan of the dumping site in question and to carry out various activities for the rejuvenation of the said site so that there should be no loss / damage of the forest wealth/environment/and property due to the flow of the said drain/wet hole in future and make the same available to the Government of India with proposal.

74. In its additional written arguments dated 02.05.2025, respondent no. 4 has undertaken that further dumping of muck in the subjected area will not take place; the muck dumped at the area in question is usable and the contractor MEIL can use it; in case MEIL, do not opt for use of this muck, it will be transported and dumped at designated dumping yards; as of now contractor has desired to use the muck. The muck shall be shifted/transported to land rented/leased by the contractor; after taking permission from State Mining Department the contractor will start using the muck; the shifting process of the muck from the area in question will take 5-6 months (approximately); after shifting of muck, the area in question shall be reclaimed (revegetation/turfed); and the reclamation of the area may further take 5-6 months.

75. Respondent no. 4-RVNL filed I.A. No. 216/2025 (pages no. 1518 to 1528 of the paper book) with the prayer for issuance of appropriate directions to the District Magistrate, Rudraprayag to permit reuse of the excavated muck from the dumping site and allow access to the road leading to the dumping at Chopra Gadhera in Village Jawadi, which were sealed by him vide communication dated 11.07.2024, for construction related activities and also to relocate the excess muck from the said site.

76. In its additional response dated 30.04.2025, respondent no. 5 undertook to implement the already approved EMP to carry out plantation of 1702 trees and to plant trees separately in the subject muck dumping site and also submitted that I.A. No. 216/2025 for directions for de-sealing of the muck dumping site filed by the respondent no. 4 ought to be allowed so that

the respondent no. 5 may relocate the excavated muck to an alternate site, thereby avoiding any adverse environmental consequences owing to the impending monsoons, and also implement the approved EMP in its entirety. Respondent no.5 has also mentioned that respondent no.5 is entitled to utilize muck generated from the construction work in accordance with the approval dated 21.08.2021 given by the Government of Uttarakhand.

77. This Tribunal allowed I.A. No. 216/2025 vide order dated 30.05.2025. The relevant part of which reads as under:-

> *"17. In view of the above, I.A. No. 216 of 2025 is allowed and directions are issued to respondent no. 3-District Magistrate, Rudraprayag to permit reuse of the excavated muck and to allow access to the road leading to the dumping of muck at Chopra Gadera of village Jawadi, which were sealed by him vide communication dated 11.07.2024 and to allow respondents no. 4 and 5 to re-use the muck for construction related activities and to relocate the excess muck from the said site subject to the following terms and conditions:-*
>
> *(i) that respondents no. 4 and 5 shall deposit the penalty amount of Rs. 2,03,96,111/- by taking the requisite steps as per the Uttarakhand Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2021 (as amended vide notification dated 18.09.2024) including filing of relevant challans;*
>
> *(ii) That the de-sealing of the excavated muck dumping site and the road in question shall be effected immediately on deposit of the amount of penalty by respondents no. 4 and 5;*
>
> *(iii) that respondents no. 4 and 5 shall reuse the excavated muck and relocate the excess muck as per approved Environment Management Plan and environmental norms;*
>
> *(iv) that such relocation of the excess muck shall be to site duly approved by the competent authorities and the competent authorities shall ensure that excess muck is not relocated and dumped at some other place in violation of the environmental laws/norms;*
>
> *(v) that respondents no. 4 and 5 shall, in consultation with respondents no. 1 to 3 and such Committee of Experts as may be constituted by respondent no. 1, prepare and execute action plan for restoration/rejuvenation of Chopra Gadera of village Jawadi and remediation of the environmental damage caused;*

(vi) that the amount of penalty amount of Rs. 2,03,96,111/- deposited may not be treated as revenue generated and may be utilized for restoration/rejuvenation of Chopra Gadera of village Jawadi and remediation of the environmental damage caused;

(vii) that the cost of restoration/rejuvenation of Chopra Gadera of village Jawadi and remediation of the environmental damage caused may be assessed by the Committee of Experts constituted by respondent no. 1 expeditiously preferably within three months; and

(viii) that respondents no. 4 and 5 shall also be liable to pay the costs so assessed by the Committee of Experts for restoration/rejuvenation of Chopra Gadera of village Jawadi and remediation of the environmental damage caused."

78. I.A. No. 460/2024 was filed by respondent no. 4 for extension of time for filing of documents in compliance of order dated 06.09.2024. The documents were subsequently filed which were taken on record but no specific order was passed on I.A. No. 460/2024 which has become infructuous and is disposed of accordingly.

79. In view of the above, present Original Application is disposed of with the following directions:-

(i) that respondents no. 4 and 5 shall reuse the excavated muck and relocate the excess muck as per approved Environment Management Plan and environmental norms;

(ii) that such relocation of the excess muck shall be to site duly approved by the competent authorities and the competent authorities shall ensure that excess muck is not relocated and dumped at some other place in violation of the environmental laws/norms;

(iii) that respondents no. 4 and 5 shall, in consultation with **Village Gram Panchayat, respondents no. 1 to 3 and such Committee of Experts** as may be constituted by respondent no. 1, prepare and execute action plan for restoration/rejuvenation of Chopra Gadhera of village Jawadi and remediation of the environmental damage caused **by taking into consideration the viability of prayers made by the applicant made in the present original application**;

(iv) that the penalty amount of Rs. 2,03,96,111/- deposited may not be treated as revenue generated and may be utilized for restoration/rejuvenation of Chopra Gadhera of village Jawadi and remediation of the environmental damage caused;

(v) that the cost of restoration/rejuvenation of Chopra Gadhera of village Jawadi and remediation of the environmental damage caused may be assessed by the

Committee of Experts constituted by respondent no. 1 expeditiously preferably within three months; and

(vi) that respondents no. 4 and 5 shall also be liable to pay the costs so assessed by the Committee of Experts for restoration/rejuvenation of Chopra Gadhera of village Jawadi and remediation of the environmental damage caused; and

(vii) that the Expert Committee constituted in compliance of order dated 30.05.2025 shall monitor the progress and file Quarterly Action Taken Reports with pendrives containing supporting video recordings with its observations/recommendations before learned Registrar General of this Tribunal who shall place the report before the Bench by registering the same as Miscellaneous Application for consideration and passing of such orders as may be considered appropriate.

80. In the eventuality of non-compliance or any grievance surviving, the applicant may move to this Tribunal by way of appropriate proceedings.

81. A copy of this judgment may be sent to the applicant by post for information and by e-mail to respondents no. 1, 4 and 5 for requisite compliance.

❖

Harvinder Singh vs. State of Haryana & Ors.

(Original Application No. 408/2023)
Decided on: 21st July, 2025 (PB)

CASE NOTE

In the matter of *Harvinder Singh vs. State of Haryana & Ors*., the applicant, Harvinder Singh raised a grievance against the grant of a No Objection Certificate (NOC) for the establishment of a petroleum retail outlet proposed by Indian Oil Corporation Limited (IOCL) along with a private proponent on a plot (Property ID-131C4U3) located within the Hindu Girls College precinct at Jagadhri, Haryana. The applicant alleged violations of the Central Pollution Control Board (CPCB) Guidelines dated 07.01.2020, which prescribe a mandatory safety buffer of 30 to 50 meters from schools, hospitals and residential areas. A Joint Committee inspection ordered by the Tribunal observed that the fuel vent pipe was positioned only 11.3 meters from the college auditorium, a facility with a seating capacity of approximately 1,500 students, thereby falling well short of the mandated safety distance.

The issue before the Tribunal was whether the term "Schools" under Paragraph H of the CPCB Guidelines should be interpreted to include "Colleges." Also legal validity of administrative relaxations issued by the Ministry of Road Transport and Highways (MoRTH) and IOCL internal circulars reducing minimum plot sizes, which rendered compliance with mandatory radial safety distances structurally impossible. The Tribunal also examined allegations of material concealment, particularly the omission of the auditorium from the site layout, and negligence by revenue authorities who certified the absence of nearby sensitive receptors.

Adopting both literal and purposive interpretations, the Tribunal held that "Schools" necessarily include "Colleges," as the risk posed by petroleum installations does not diminish based on the age of occupants. The Tribunal rejected the argument that adult students possess a greater capacity for self-preservation as "absurd", emphasizing that safety buffers are objective preventive measures grounded in potential harm. The Tribunal further ruled that MoRTH notifications and IOCL policies cannot override environmental siting norms, observing that a reduced plot size is inherently incompatible with a 30-meter radial buffer. The NOC was set aside due to deliberate misrepresentation and administrative failure to verify site conditions.

The Tribunal quashed the NOC dated 15.05.2023 and directed the District Magistrate, Yamuna Nagar, to dispose the retail outlet application in accordance with the observations of the Tribunal. Disciplinary proceedings were also ordered against erring Revenue Officials, along with an inquiry into the conduct of the college management. At the policy level, the Ministry of Petroleum and Natural Gas (MoP&NG) and the CPCB were directed to constitute an Expert Committee to review the 2020 Guidelines, explicitly including colleges and other sensitive receptors, and to ensure alignment of plot-size norms with mandatory safety buffers.

Harvinder Singh vs. State of Haryana & Ors.

COUNSEL FOR APPLICANT:
Applicant in Person.

Counsel for the Respondent(S):
Mr. Rahul Khurana, Advocate for Respondents No. 1, 2 and 5.
Mr. Robin Dutt, Advocate for Respondent No. 4.
Mr. Raj Kumar, Advocate for Respondent no. 6 (through VC).
Mr. Divye Chugh, Mr. Manish Sharma and Mr. Rachit Roshan, Advocates for Respondent no. 7.
Ms. Madhu Sweta, (through VC) and Mr. Yash Kapoor, Advocates for respondent no. 8.
None for Respondent no. 3.

CORUM:
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER

RESERVED ON :2nd July ,2025
PRONUNCED ON :21st July,2025

JUDGMENT

BY HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER

1. The applicant-Mr. Harvinder Singh filed an application/complaint bearing Diary No. 0701116011382023 (O.A.) (F/A) on 22.05.2023 through e-filing along with court fee of Rs. 1100/- but due to the same being defective for not filing of proper application/complaint,the applicant was asked to remove the defect on which the applicant refiled the proper complaint/application on 26.05.2023 which has been registered as O.A. No. 408/2023.

2. The applicant has raised grievances about grant of permission by the officers of the Indian Oil Corporation and grant of NOC by the officers of the District Administration, Yamuna Nagar, Haryana for establishment of petrol pump in the premises of Hindu Girls College and School, Jagadhri, District Yamuna Nagar by ignoring the byelaws, rules and regulations and safety of the children with the prayer for directing cancellation of the NOC.

3. The relevant part of the application enumerating grievances of the applicant is reproduced as under:-

> ***"Subject:- Complaint against the officers who were negligent in issuing petrol pump of Indian Oil Corporation by ignoring the byelaws, rule and regulation and safety of the children in the premises of Hindu Girls College and Hindu Girls School, Jagadhri,***

District Yamuna Nagar and complaint against the officials of District Administration Yamuna Nagar (Haryana) for illegally issuing the NOC for petrol pump of the aforesaid premises and cancelled the NOC or passed stay orders against the said NOC.

X X X

1. *That the applicant Harvinder Singh S/o Shri Sardar Govind Singh, Resident of House No. C 2/1854, Budia Gate, Jagadhri, District Yamuna Nagar, Haryana and am a law abiding and peace loving person. I am a social worker and RTI Activist.*
2. *That the Indian Oil Corporation has issued letter no. 45154037444376 dated 01.02.2020 regarding the release of a petrol pump to Mr. Pushpesh, at the above mentioned place (in the premises of Hindu Girls College Jagadhri). In which NGT rules have been flouted. Even the local administration has issued No Objection Certificates illegally, without keeping the safety of girl students of Hindu Girls College and School. There will be no justification either.*

   The National Green Tribunal (NGT) has also issued guideline for setting up a Petrol/fuel pump vide OA No. 86/2019 dated 18-01-2019 which are as follow:-

   In case of sitting criteria for petrol pumps new Retail Outlets shall not be located within a radial distance of 50meters (from fill point/dispensing units/vent pipe whichever is nearest) from Schools, Hospitals (10 beds and above) and residential areas designated as per local laws. In case ofconstraints in providing 50 metres distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new Retail outlet from schools, hospital (10 beds and above) and residential area designated as per local laws shall be less than 30 metres. No high tension line shall be pass over the retail outlet.

   Central Pollution Control Board (CPCB) has recently issued guidelines to establish petrol pumps*. These instructions have been issued because of the poor impact of petrol pumps on the environment. The Central Pollution Control Board has issued new guidelines keeping in view the directives of the National Green Tribunal.*

   According to these guidelines any petrol pump cannot be established in 50 metres radius of a school, hospital or residential area. CPCB also asked the concern authorities to issue challan if violations of rules are found.

But in the present case, the Hindu Girls College and School Management and Pushpesh have not complied with the NGT guidelines and CPCB guidelines. The distance between petrol pump and college is only 5-10 meters as the land (where petrol pump setting up) is situated in the premises of college and beside the land for petrol pump there is auditorium of college which can hold 1500 students at a time. The hostel of the college is also situated adjacent to the land in question. It is worthwhile to mention here that if the petrol pump set up the life of the students is not safe.

That the applicant has also moved complaint bearing complaint No. MOEAF/E/2023/0001258 to CPCB on dated 22-05-2023 and the said complaint is still pending.

The applicant has also moved complaint bearing No. CMOFF/N/2023/044818dated 17-04-2023 through CM Window and the complaint is still pending and no action has been taken so far.

The management of the college and Pushpesh are highhanded persons and they have no respect of law as well as the guidelines of NGT and CPCB.

It is relevant to mention here that the local officials /administration are also illegally helping them and have not taken any action against them.

It is relevant to mention here that the properties (moveable or immovable) of any educational society be used for the welfare of children but in the present case the properties of the educational society are being used against the safety of the students.

It is therefore, respectfully prayed that please take some strict legal action against aforesaid persons and necessary legal action may kindly be taken against the erring officials who are misusing their power and post ad illegally helping the aforesaid persons, keeping in mind the safety of the general public as well as students(girls), so that no one can take such negligence in their duty and it is further prayed that please cancelled the NOC or passed stay orders against the said NOC (which was issued by the District Administration Yamuna NagarHaryana for the foresaid premises). It will be so kind of you.

Note:-All the relevant documents and photographs are attached herewith for your kind perusal."

4. Vide order dated 31.05.2023 this Tribunal impleaded the District Magistrate, Yamuna Nagar, Haryana; Hindu Girls College, Jagadhri, District Yamuna Nagar; Mr. Pushpesh Passi,

House No. 931, Sec-17, HUDA Jagadhri, Yamuna Nagar, Haryana-135001 and Haryana State Pollution Control Board (HSPCB)as respondents no. 2 to 5 and ordered issuance of notices to respondents no. 1 to 5 requiring them to file their reply/response within two months.

5. By the above said order, this Tribunal also constituted a Joint Committee comprising of representatives of HSPCB and the District Magistrate, Yamuna Nagar and directed the same to meet within two weeks, undertake visits to the site, look into the grievances of the applicant, associate the applicant and representative of the concerned project proponent, verify the factual position and file Factual and Action taken Report suggesting appropriate remedial action within two months.

6. In compliance thereof Team comprising of Sub-Divisional Magistrate, Jagadhri, Tehsildar, Jagadhri, Environmental Engineer, HSPCB, Jagadhri, Halqa Kanungo, Jagadhri and Patwari, Jagadhri visited the site on 28.06.2023 in the presence of the applicant and the Project Proponent-Mr. Pushpesh Passi and submitted Joint Inspection Report dated 28.06.2023 to the District Magistrate, Yamuna Nagar. The relevant part of the Joint Inspection Report is reproduced as under:

> **"Spot inspection report of the proposed retail outlet in between JagadhriBus Stand to Aggarsain Chowk on NH, RD.+1.400 (RHS) of project proponent Sh. Pushpesh Passi at village/ Town Jagadhri, District Yamunanagar (Haryana)**
>
> *X X X X*
>
> *Presently the said piece of land measuring 20 mts X 20 mts found lying vacant with having raised boundary wall only and having no machinery found available on the site.*
>
> *Further there is an auditorium found available near to the back wall of the proposed retail fuel outlet in the premises of Hindu Girls College, Jagadhri which was not shown in the lay out plan/site plan submitted at the time of applying for NOC at various departments by the project proponent.*
>
> *The distance of the auditorium situated in the college premises was measured on the spot by revenue department from the proposed vent pipe location shown in the drawing of the retail outlet and same was found approx **11.3 meter**, which is not fulfilling the criteria laid down by central pollution control board vide memorandum dated 07-01-2020 wherein the desired distance is **50 meters** from fill point /dispensing units/vent pipe whichever is nearest from schools, hospitals (10 beds and above) and residential areas designated as per local laws. In no case the distance between new retail outlet from schools, hospitals (10*

*beds and above) and residential area designated as per local laws shall be less than **30 meters**. The site photographs are enclosed herewith.*

In view of position explained above it is found that the said retail fuel outlet is not meeting the required siting criteria distance as laid down by central pollution control board vide memorandum dated 07-01-2020

X X X X"

(emphasis added)

7. In view of the Joint Inspection Report the District Magistrate, Yamuna Nagar cancelled NOC number 45/PLA dated 15.05.2023vide letter no. 253/PLA dated 30.06.2023 and filed Action Taken Report vide letter no. 254/PLA dated 30.06.2023. The relevant part of letter no. 254/PLA dated 30.06.2023 reads as under:-

*"**विषय:Joint Inspection Report in the matter of complaint No. 408/2023, Harvinder Singh Vs. State of Haryana and others.***

*विषयाधीन मामले में आपकी सेवा में सादर सूचित किया जाता है कि Application No. 408/2023में दिनांक 31.05.2023काआप द्वारा पारित आदेशानुसार संयुक्त समिति की मौका निरीक्षण रिपोर्ट प्राप्त की गई,जिसमें स्पष्टतौर पर लिखा गया है कि The distance of the auditorium situated in the college premises was measured on the spot by revenue department from the proposed vent pipe location shown in the drawing of the retail outlet and same was found approx **11.3 meter**, In view of position explained above it is found that the said retail fuel outlet is not meeting the required siting criteria distance as laid down by central pollution control board vide memorandum dated 07-01-2020. जबकि इस कार्यालय द्वारा जारी किये गए अन्नापति प्रमाण पत्र के बिन्दु नं0 2में लिखा गया था कि In compliance of Hon'ble NGT order dated January 18, 2019 in OA No. 86/2019 the guidelines issued by the Central Pollution Control Board, Delhi vide letter No. B-13011/1/2019- 20/AQM/10809 dated January 07, 2020 if the said company/owner of the retail outlet failed to comply the said guidelines the NOC would be revoked automatically without prior information.*

अतः संयुक्त समिति की रिपोर्ट दिनांक 28.06.2023जो कि उपमण्डलाधीश जगाधरी के कार्यालय के पत्र क्रमांक 842/ए०एल०सी०दिनांक28.06.2023के माध्यम से प्राप्त हुई है, के मध्य नजर Under Property ID-131C4U3 (PPID WITH EQUAL LENGH J 131 C0004U00003A गांव / शहर- जगाधरी, जिलायमुनानगर (हरियाणा) मेंIOCL कम्पनी नया रिटेल आउटलेट लगाने के लिये इस कार्यालय के पत्र कमांक 45/पी०एल०ए०

दिनांक15.05.2023के माध्यम से जारी किया गया अन्नापति प्रमाण पत्र को निरस्तकरदियागयाहै, जिसकी प्रतिसंलग्न है।"

8. The District Magistrate, Yamuna Nagar enclosed copy of letter no. 253/PLA dated 30.06.2023with letter no. 254/PLA dated 30.06.2023. The relevant part of letter no. 253/PLA dated 30.06.2023 reads as under:-

*"**विषयः- इस कायाालय के पत्र क्रमाांक 45/पी०एल०ए० विनाांक 15.05.2023 द्वारा जारी की गई एन.ओ.सी वनरस्त करनेबारे।***

आपको सूचित किया जाता है कि आपको इस कार्यालय केपत्रक मांक45/पी०एल०ए०दिनांक15.05.2023द्वाराUnder Property ID-131C4U3(PPID WITH EQUAL LENGH J 131 C0004U00003A गांव / शहर- जगाधरी, जिलायमुनानगर (हरियाणा) मेंIOCL कम्पनी नया रिटेल आउटलेट लगाने के लिये अन्नापति प्रमाण पत्र जारी किया गया था।

*इस बारेApplication No. 408/2023में माननीय नैशनल ग्रीन ट्रिब्यूनल (NGT) के द्वारा दिनांक31.05.2023को पारित आदेशों की पालना में संयुक्त समिति की मौकानिरीक्षण रिपोर्ट प्राप्त की गई, जिसमें स्पष्टतौर पर लिखा गया है किThe distance of the auditorium situated in the college premises was measured on the spot by revenue department from the proposed vent pipe location shown in the drawing of the retail outlet and same was found approx **11.3 meter**, In view of position explained above it is found that the said retail fuel outlet is not meeting the required siting criteria distance as laid down by central pollution control board vide memorandum dated 07-01-2020. जबकि इस कार्यालय द्वारा जारी किये गएअन्नापतिप्रमाणपत्रकेबिन्दुनं0 2मेंलिखागयाथाकिIn compliance of Hon'ble NGT order dated January 18, 2019 in OA No. 86/2019 the guidelines issued by the Central Pollution Control Board, Delhi vide letter No. B-13011/1/2019- 20/AQM/10809 dated January 07, 2020 if the said company/owner of the retail outlet failed to comply the said guidelines the NOC would be revoked automatically without prior information.*

अतः संयुक्त समिति की रिपोर्ट दिनांक 28.06.2023जो कि उपमण्डला धीश जगाधरी के कार्यालयके पत्रकमांक 842/ ए०एल०सी० दिनांक28.06.2023के माध्यम से प्राप्त हुई है, के मध्यनजरUnder Property ID-131C4U3(PPID WITH EQUAL LENGH J 131 C0004U00003A गांव/शहर- जगाधरी, जिलायमुनानगर (हरियाणा)मेंOCL कम्पनी नया रिटेल आउटलेट लगाने के लिये इस कार्यालय के पत्र क्रमांक45/पी०एल०ए०दिनांक15.05.2023के द्वारा जारी किया गया अन्नापति प्रमाण पत्र को तुरन्त प्रभाव से निरस्त किया जाता है।"

9. Respondent no. 4-Mr. Pushpesh Passi(Project Proponent) challenged order dated 30.06.2023 passed by the District Magistrate, Yamuna Nagar by filing**CWP No. 15708/2023**titled as **Pushpesh Passi Vs. State of Haryana & Ors.**before Hon'ble Punjab and Haryana High Court which was allowed vide order dated 25.07.2023 whereby order dated 30.06.2023 passed by the District Magistrate, Yamuna Nagar was set aside. The relevant part of the order reads as under:-

> *"1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 30.06.2023 (Annexure P-7) whereby District Magistrate has cancelled NOC granted to establish a petrol pump.*
>
> *2. The brief facts of the case are that petitioner pursuant to advertisement issued by respondent No.4 applied for retail outlet. The respondent No.4-IOC issued LOI on 04.07.2020. The respondent No.4- IOC applied for NOC in terms of Rule 144 of Petroleum Rules, 2012. The District Magistrate issued NOC on 15.05.2023 after getting clearance from different authorities. The respondents vide impugned order dated 30.06.2023 has cancelled NOC.*
>
> *3. Mr.Robin Dutt, Advocate inter alia contends that the petitioner has already spent more than Rs.50 lakhs on the development of site and civil work. The respondent has cancelled NOC in a mechanical and whimsical manner. The petitioner as well as respondent No.4 were neither issued show cause notice nor granted opportunity of personal hearing. The act of respondents amounts to gross violation of principal of natural justice. He further submits that this Court in identical situation in the case of "Hindustan Petroleum Corporation Limited vs. District Magistrate, Ferozepur" CWP No.12070 of 2019 vide order dated 19.07.2023 has quashed order of cancellation of NOC on the ground that neither show cause notice was issued nor opportunity of hearing was granted.*
>
> *4. Mr. Sharma, on being confronted with aforesaid order of this Court as well as order dated 19.07.2023 passed by this Court in CWP No.12963-2023 expressed his inability to controvert the applicability of these judgment to present case.*
>
> *5. The relevant extracts of the order dated 19.07.2023 passed in CWP No.12070 of 2019 read as :*
>
> > *9. On being asked, learned State counsel failed to produce copy of show cause notice which preceded the impugned order. From the perusal of impugned order, it comes out that it has been passed in a mechanical manner. Neither show cause notice has been issued nor opportunity of hearing has been granted. Impugned order*

itself is non-speaking. It is settled proposition of law that every order which entails civil or criminal consequences is bound to be passed after compliance of principles of natural justice and it should be a reasoned order.

10. The respondent has passed impugned order without issuing show cause notice as well granting opportunity of personal hearing. In the absence of show cause notice followed by opportunity of personal hearing, the impugned order can not be sustainable.

11. The petition deserves to be allowed and accordingly allowed. The impugned order dated 28.01.2019 (Annexure P-10) is hereby set aside.

5. The case of the petitioner is squarely covered by aforesaid order, thus, the present petition deserves to be allowed and accordingly allowed. The impugned order dated 30.06.2023 (Annexure P-7) is hereby set aside."

10. Pursuant to notice respondent no.3- Hindu Girls College, Jagadhari, District Yamuna Nagar filed reply vide email dated 28.07.2023.The relevant part of the reply is reproduced as under:

"Sub:-Reply to notice in Application No.408/2023 (Harvinder Singh…Applicant Vs. State of Haryana& Ors…)

X X X

Refer to notice mentioned cited above. In this regard it is submitted:

1. *That Hindu Girls College, Jagadhri or the management has not applied for any petrol pump nor taken any NOC from anywhere.*
2. *That Sh. Pushpesh r/o H. No.921, Sector - 17, HUDA, Jagadhri has taken the farthest,vacant,non-useable land of the college on lease for installation of petrol pump.*
3. *That it is revenue generating attempt for sole utilization for the welfare of the girl students of our college and the area is far from the class rooms, playground and mess.*
4. *That the building called auditorium and the girl's hostel is vacant. No student is residing in the hostel building for the last 08 years."*

11. In response thereto the applicant sent email dated 30.11.2023 submitting that the averments made by College Management regarding the auditorium and the hostel being vacant and no student residing in the hostel for the last eight years are false and that a convocation function/annual function was celebrated in the auditorium a few days ago.

12. Respondent no.4-Project Proponent filed reply vide email dated 07.08.2023. The relevant part of the reply reads as under:

> ***"Reply on behalf of respondent no.4 Pushpesh***
>
> *1. That answering respondent arrayed as an respondent no.4 in the abovesaid Original Application with the ulterior motive and with the malafide intention just to harass the answering respondent and to stop the smooth working of granting the LOI for the outlet issued by Indian Oil Corporation Ltd., hereinafter called (IOCL.).*
> *2. That the application is not maintainable in the present form and applicant very smartly twisted the fact and tried to mislead this Hon'ble Tribunal by giving the wrong facts to the effect that the present outlet is near the school and there is violation of guidelines , which was framed by Central Pollution Board, while complying with the order in OA No.2056of 2019 .*
> *3. That the true facts of the case are that :-*
> *(i) IOCL on 24.11.2018 through an Advertisement called for Retail Outlet and issued the broucher and answering respondent applied for and after the visit of the officials of IOCL, the place which was chosen for the outlet was passed by Land Evaluation Committee of IOCL and issued the LOI and directed the answering respondent to start the development of the place where the outlet is to be installed and as per the directions answering respondent started the development as answering respondent came to know that IOCL has applied for No Objection Certificate for storing the Diesal & Petrol from the concerned departments.*
>
> *(ii) That District Magistrate cum Collector i.e. respondent no.2 called the No Objection from various departments that are Municipal Corporation, Forest Department, Pollution Department, National Highway Authority, Fire Department, Labour Department, Industry Department, Electricity Board, S.D.O.(Civil), Town & Country Planning & Police Department etc. and after obtaining the NOCs, respondent no.2 on dated 15.5.2023 issued the No Objection Certificate, which is annexed as **Annexure R4/1** before this Hon'ble Tribunal. They suggest that enquiry has throughly been conducted since 2020 to till 2023 and then NOC was issued.*
>
> *(iii) That applicant with ulterior motive and just to harass the answering respondent filed the present application, while twisting the facts submitted that NOC was issued while ignoring the by laws and rules and regulations and safety of the children in the premises of Hindu Girls College & Hindu Girls School Jagadhri, Yamuna*

Nagar, whereas the facts are otherwise. It is humbly submitted before this Hon'ble Tribunal that there is long process of issuing NOC as District Magistrate cum Collector issue the directions to various departments and all the departments to whom the directions were issued inquire the matter at spot and prepare that spot report and thereafter submit the report before the District Magistrate as answering respondent is annexing one of the example before this Hon'ble Tribunal as ***Annexure 4/2 ,*** *the report submitted by S.D.O.(Civil).*

(iv) That it is not out of place to mention here that while complying with the order passed by this Hon'ble Tribunal in O.A. No.86 of 2019 Central pollution Board framed the policy after taking the Expert Committee Opinion for the installation of the new petrol pumps and in their guidelines it was specifically mentioned at point "h" that the siting critera of Retail Outlet not to be located within radial distance of 50 meters (from all points/ dispening unit/vent pipe, whoever is nearest) from school, hospital (10 bed and above) . It is humbly submitted before this Hon'ble Tribunal that expert committee while framing the guidelines , which were in their mind expressed in the words specifically mentioned the school and the hospital and in the brackets it was very much clear that the hospital means 10 bed and above., hence expert committee can express while mentioning school only, but neither the educational institution nor the college is mentioned meaning thereby that after perusing the guidelines issued by the Central Pollution Board it is very much clear that answering respondent can install the petrol pump near the college. The guidelines issued by Central Pollution Board is annexed as ***Annexure 4/3*** *before this Hon'ble Tribunal.*

(v) That there is difference in between the definition of school and college in Haryana. The Haryana School Education Act 1995,(hereinafter called Haryana Education Act 1995). Section 2(r) are defined the school as ***:-***

"r. "School includes a primary, middle, high or senior secondary school and also includes any other institution which imparts education or training below degree level, but does not include an institution, which imparts technical education:"

Hence, after perusing the definition defined in the Act 1995, it is very much clear that college is different from the school as University Grant Commission Act 1956 define the college in

chapter 3 ***section 12(a)(i)(b) as "" College" means any institution whether known as such such or by any other name, which provides for a course of study for obtaining any qualification from a***

University and which, in accordance with rules and regulations of such university, is recognized as competent to provide for such course of study and present students under going such course of study for the examination for the award of such qualification:". *Hence, after perusing the abovesaid provisions in the Act, it is very much clear that school and college is different from each other.*

(vi) That the present application is misconceived and not sustainable in the eye of law as NOC issued by respondent no.2 on 15.5.2023 is well within the frame work of law and after thorough inspection and enquiry.

That this Hon'ble Tribunal was pleased to pass the interim order on dated 31.5.2023 and directed the State of Haryana to frame a Joint Committee to verify the factual position. The Joint Committee was framed and Joint Committee after visting the spot measured the distance from the vent pipe to the college auditorium hence the committee, which was constituted vide the order dated 31.5.2023 by this Hon'ble Tribunal also did not find that the school is situated nearby vent pipe or premises of petrol pump, but respondent no.2 in very hurry and arbitrary passed the order and cancelled all NOCs. On 30.6.2023 without calling the answering respondent to explain his case, hence, remain with no option answering respondent challenged the illegal action of respondent no.2 before Hon'ble High Court for the States of Punjab & Haryana at Chandigarh. While filing CWP , which was numbered as 15708 of 2023 titled as Pushpesh Passi Vs State of Haryana & Others and Hon'ble High Court was pleased to set aside the illegal order passed by respondent no.2. The order is annexed as ***Annexure 4/4*** *before this Hon'ble Tribunal.*

(viii) That the present application is filed with ulterior motive and malafide intention just to stop the smooth working. Applicant is very much aware of the fact that almost 90% of the work have already been completed and answering respondent has spent more than 50 Lacs Rupees to develop the site, which clear cut prove that the LOI was issued in year 2020 and the NOc was issued on 15.5.2023 and applicant was very much aware with the fact that LOI has already been issued as applicant is local resident of Jagadhri and projected himself to be RTI activist, but he chose to kept mum upto 2020, which clear cut suggest the malafide intention of the applicant, hence, the present application deserves to be dismissed on this sole ground.

ON MERITS :-

1. *That contents of the para no.1 of the application are denied for want of knowledge. The applicant be put to strict proof of the averments made in the para.*
2. *That contents of the para no.2 of the application are admitted to the extent that IOCL has issued the letter to answering respondent. It is wrong to suggest that the NGT Rules have been floated. It is further wrong hence denied that Administration has issued NOC illegally. It is humbly submitted before this Hon'ble Tribunal that LOI was issued in the year 2020 and IOCL applied for NOC, which was issued after 3 years after thorough inspection and enquiry hence it is wrong and vehemently denied that NOC was issued without keeping the safety of girls students of Hindu Girls College. It is further wrong and hence denied that there is any school situated where the site for retail outlet is developed. The fact mentioned in next paragraphs, regarding issuance of guidelines by this Hon'ble Tribunal are matter of record, hence admitted, whereas after perusing the Bold words it is very much clear that outlet cannot be installed near the school, but it is no where mentioned that it cannot be installed near the college or educational institution.*

   Regarding the interpretation given in the para it is humbly submitted before this Hon'ble Tribunal that applicant cannot interpret in his own words regarding the guidelines issued by Central Pollution Control Board. It is further wrong and hence denied that answering respondent have not complied with NGT guidelines and CPCB guidelines. It is further submitted before this Hon'ble Tribunal that the applicant very smartly twisting the facts and tried to mislead this Hon'ble Tribunal by inter mingling the school and college. As far as moving of complaint by the applicant before the CPCB & CM Window, the same is denied for want of knowledge.

   It is further wrong and hence denied that the answering respondent has no respect for the law or guidelines issued by NGT and CPCB as alleged.

   It is further wrong and hence denied that Local Administration illegally helping the answering respondent.

13. Vide order dated 17.08.2023 this Tribunal directed the District Magistrate, Yamuna Nagar to report as to whether as per terms and conditions of the allotment/lease, the installation of petrol pump within the campus of school/college is permissible or not and whether the installation of petrol pump in the campus violates the basic principles of establishment of Educational Institution. This Tribunal also directed the District Magistrate, Yamuna Nagar to proceed further in accordance with law and after providing an opportunity of hearing, dispose of the application in the light of CPCB Guidelines and to file further

action taken report within three weeks. This Tribunal also directed that till decision is taken by the District Magistrate, the NOC shall be kept in abeyance.

14. In compliance of order dated 17.08.2023 the District Magistrate, Yamuna Nagar constituted a Committee comprising of Additional District Magistrate, Yamuna Nagar, Sub-Divisional Officer, Jagadhri, Regional Officer, HSPCB, Yamuna Nagar and District Higher Education Officer, Yamuna Nagar which submitted its report dated 06.10.2023 vide letter no. 1255 dated 10.10.2023 to the District Magistrate, Yamuna Nagar. The relevant part of the report dated 06.10.2023 reads as under:-

> *"**Detailed inspection report in compliance of orders issued by District Magistrate vide letter no. 462 dated 22.09.2023.***
>
> *The site of the proposed retail fuel outlet in between Jagadhri Bus Stand to Aggarsain Chowk which is mentioned in the complaint filed before Hon'ble NGT New Delhi vide OA No. 408 of 2023 tilled as Harvinder Singh Vs. State of Haryana and Others was visited on dated 22-09-2023 by the team comprising of following officers:-*
>
> *1. Additional Deputy Commissioner, Yamuna Nagar.*
> *2. Sub Divisional Magistrate, Jagadhri.*
> *3. Regional Officer, HSPCB, Yamuna Nagar.*
> *4. District Higher Education Officer, Yamuna Nagar.*
>
> *Point wise reply of points as asked by District Magistrate, Yamuna Nagar vide letter no. 462 dated 22.09.2023 is as below:-*
>
> ***Observation 1. संयुक्त समिति की रिपोर्ट दिनांक 28.06.2023 जोकि उपमंडलाधीश जगाधरी के कार्यालय के पत्रक्रमांक 842 / ए०एल०सी०दिनांक 28.06.2023 केमाध्यम से प्राप्त हुई थी की पुनः जांच की जाये व्रि पोर्ट करें किकेन्द्रीय प्रदूषण नियंत्रण बोर्ड के पत्रदिनांक 07.01.2020 (प्रतिसंलग्न) एबिंदु H मेंवर्णितदिशा-निर्देशों के अनुसार शर्त पूर्ण करता है अथवा नहीं?***
>
> *Reply Point 1:- The distance of the auditorium situated in the college premises was measured on the spot by revenue department from the proposed vent pipe location shown in the drawing of the retail outlet and same was again found approx **11.3 meter**, which is not fulfilling the criteria laid down by Central Pollution Control Board vide memorandum dated 07-01-2020 (Point-H) wherein the desired distance is **50 meters** from fill point /dispensing units/vent pipe whichever is nearest from schools, hospitals (10 beds and above) and residential areas designated as per local laws. In no case the distance between new retail outlet from schools, hospitals (10 beds and above) and residential area designated as per local laws shall be less than **30 meters**.*

In view of position explained above, it is found that the said retail fuel outlet is not meeting the required siting criteria distance as laid down by central pollution control board vide memorandum dated 07-01-2020.

Observation2 .शैक्षनिक संस्था के द्वारा दिये गए पट्टा की शर्तों केअनुसार क्या स्कूल/ कालेज परिसर में पेट्रोल पंपस्थापित किया जा सकता है अथवानहीं?

Reply Point 2:- Principal of Hindu Girls College, Jagadhri has submitted sale purchase documents vide their letter dated 05.10.2023 and as per the conditions of sale deed there is no objection in setting up of Petrol Pump on the said land (copy of letter dated 05.10.2023 and copy of lease agreement is attached herewith). However petrol pump cannot be established on this land as it violates Point No.-H of CPCB memorandum dated 07.01.2020.

Observation 3.प्रार्थी द्वारा प्रस्तुत किये गए दस्तावेज में University Grant Commission Act, 1956 (College definition) Haryana School Education Act 1995 (School definition) व Hindu Girl College Law bye laws के बारे भी स्थिति स्पष्ट करें।

Reply Point 3:- As per the criteria laid down by Central Pollution Control Board vide memorandum dated 07-01-2020 (in Point-H) it is mentioned that "In case of siting criteria for petrol pumps new Retail Outlets shall not be located within a radial distance of 50 meters (from fill point/ dispensing units/ vent pipe whichever is nearest) from ***schools****, hospitals (10 beds and above) and residential areas designated as per local laws. In case of constraints in providing 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new retail outlet from schools, hospitals (10 beds and above) and residential area designated as per local laws shall be less than 30 meters No high tension line shall pass over the retail outlet".*

Therefore, the Applicant has submitted documents of University Grant Commission Act, 1956(College definition), Haryana School Education Act 1995 (School definition) and Hindu Girl College Law bye laws for clarifying the definition of school and college and pleading that Hindu Girls College is a college and not a school and thus they are not covered under point no. H of Central Pollution Control Board vide memorandum dated 07-01-2020.

Whereas the installation of petrol pump near college violates the (Point-H) as both school & college are educational institutes and installation of petrol pump near Educational Institute violates Point-H of CPCB notification dated 07.01.2020."

(Emphasis added)

15. On receipt of the report the District Magistrate, Yamuna Nagar, vide letter no. 574/PLA dated 20.11.2023,granted opportunity of personal hearing to respondent no. 4- Pushpesh Passi who made written statement before the District Magistrate, Yamuna Nagar. The relevant part of written statement made by respondent no. 4- Pushpesh Passi before the District Magistrate, Yamuna Nagaris reproduced as under:-

> *"स्कूल व 10 बेड या 10 बेड से अधिक के अस्पताल में समाज के 18 वर्ष से कम आयु के बच्चे जो कि किसी आपदा के समय खुद से बचाव के निर्णय लेने में सक्षम नहीं होते और अस्पताल में भर्ती मरीज भी आपदा में स्वंय वहां से बाहर नहीं आ सकते। हमारी दृष्टि में कानून में इस तब्के की सुरक्षा को अहमियत दी गई है। जहां तक कॉलेज की बात है या फिर किसी भी कार्यालय जहां पर व्यस्क लोग काम करते है, वहां के लोग आपदा के समय अपनी सुरक्षा स्वंय कर सकते है। ऐसे में Educational Institute का हवाला देते हुए स्कूल और कॉलेज को एक दृष्टि से नहीं देखा जाना चाहिए। मान लीजिए कल को कोई प्राईवेट कोंचिग सेंटर शुरू हो जाता है तो क्या हम उसे भी Educational Institute की श्रेणी में शामिल कर देंगे, यह बात विचार योग्य है। उपरोक्त तथ्यों को मध्यनजर रखते हुए मेरी जमीन CPCB Act के अनुसार निर्धारित मानकों का अनुसरण करती है। अतः मेरे पैट्रोल पंप के अन्नापति प्रमाण पत्र को रद्द न किया जाए।"*

16. Thereupon, the District Magistrate, Yamuna Nagar sought opinion from the District Attorney, Yamuna Nagar who, vide letter no. 4173/DAY/2023 dated 30.11.2023, opined that the word "Schools" is mentioned whereas the word "Colleges" is not mentioned in the guidelines and it would be appropriate to seek the clarification from the CPCB regarding inclusion of colleges in the word "schools" as mentioned in the guidelines dated 07.01.2020 issued by the CPCB as there was no clear guidelines, notifications and instructions regarding inclusion/exclusion of the 'colleges" in the word "Schools" for the said purpose".

17. In view of the opinion given by the District Attorney, Yamuna Nagar,the District Magistrate, Yamuna Nagar sought clarification from CPCB and made written request to this Tribunal for permitting filing of reply by him thereafter.

18. Vide order dated 20.12.2023 this Tribunal impleaded CPCB as respondent no.6 requiring it to file its reply/response within one month.

19. In compliance thereof reply has been filed by respondent no. 6-CPCBvide email dated 02.02.2024.The relevant part of the reply is reproduced as under:

> ***"REPLY ON BEHALF OF RESPONDENT NO. 6 i.e. CENTRAL POLLUTION CONTROL BOARD (CPCB)***
>
> *X X X*
>
> ***REPLY ON MERIT:-***

1. It is humbly submitted that the issue of setting up of large number of petrol pumps without any environmental concern was considered by the Hon'ble NGT in OA No. 86 of 2019 titled as Gyanprakash @ Pappu Singh vs UoI & Others. Thereby, Hon'ble NGT directed the Ministry of Petroleum and Natural Gas and CPCB to review the matter and issue appropriate guidelines. Accordingly, the guidelines for settting up of new petrol pumps were framed under the guidance of the Expert Committee comprising of officials from MoPNG, NEERI, IIT-Kanpur, IIP- Dehradun, TERI & CPCB and were subsequently circulated on 07-01-2020 to concerned stakeholders for implementation. The copy of guiudelines is annexed herewith as ***ANNEXURE-A.***

2. It is humbly submitted that the Expert Committee while framing the guidelines, had discussed the applicability of the siting criteria, and it was decided that siting criteria should be applied for sensitive locations. Subsequently, Expert Committee in its meeting held on 01.01.2019, decided that siting criteria may be prescribed only w.r.t. schools and hospitals (10 beds and above), considering these as sensitive locations. The copy of minutes of Expert Committee meeting held on 5.4.2019 and 01.10.2019 are annexed herewith as ***ANNEXURE-B.***

3. That the issue of prescribing siting criteria w.r.t certain locations/buildings have already been deliberated by the expert committee and colleges have not been included considering schools and hospitals (10 beds and above), as sensitive locations.

4. That in response to letter dated 29-11-2023 of DM, Yamuna Nagar, Haryana, seeking clarification from CPCB whether college is exempted from prescribed criteria, CPCB vide letter dated 18-12-2023 had provided its response to DM, Yamuna Nagar, informing that CPCB Guidelines dated 07-01-2020 for setting up of new petrol pumps prescribe siting criteria w.r,.t. schools, hospitals (10 beds and above) and residential areas designated as per local laws.

5. That CPCB humbly submits that this Hon'ble Tribunal may pass any order as may deem fit and proper in the facts and circumstances of the matter. Additionally, it is also submitted that CPCB will comply with all the orders and directions of the Hon'ble Tribunal passed in the instant OA, in the interest of justice."

20. Arguments were heard and order was reserved but while going through the material on record this Tribunal considered impleadment of the Deputy General Manager (Retail Sales), IOCL Panipat Divisional Office, Panipat to be essential for just and proper adjudication of the questions involved in the case and production of the original record pertaining to grant of NOC by the District Magistrate, Yamuna Nagar with photostat copy thereof to be essential for

considering the aspect of suppression of/misrepresentation of material facts by the Project Proponent for grant of NOC and effect thereof.

21. Accordingly, vide order dated 20.08.2024 this Tribunal relisted the case for further hearing and impleaded the Deputy General Manager (Retail Sales), Panipat Divisional Office, Indian Oil Corporation Ltd. as respondent no.7 requiring him to file his reply/response at least one week before the next date of hearing and directed the District Magistrate, Yamuna Nagar to arrange production of the entire original record pertaining to grant of impugned NOC to the Deputy General Manager (Retail Sales) IOCL Panipat Divisional Office, Panipat with photostat copy thereof on the next date of hearing. The relevant part of order dated 20.08.2024 reads as under:-

> *"12. Arguments were heard and order was reserved but while going through the material on record we have observed that in the present case the Deputy General Manager (Retail Sales), IOCL Panipat Divisional Office, Panipat submitted application no. PDO/RO/Jagadhri dated 11.07.2020 for storage of petroleum products in the premises under property ID-131C4U3 (PPID WITH EQUAL LENGH J 131 C0004U0003A,Village/Town Jagadhri District Yamuna Nagar, Haryana. In view of reports submitted by the concerned officers/departments, NOC no. 45/PLA dated 15.05.2023 was granted by the District Magistrate, Yamuna Nagar to the Deputy General Manager (Retail Sales), IOCL Panipat Divisional Office, Panipat. In view of Joint Inspection Report dated 28.06.2023 as to proposed retail outlet being violative of CPCB Guidelines, the District Magistrate, Yamuna Nagar cancelled NOC no. 45/PLA dated 15.05.2023 vide letter no. 253/PLA dated 30.06.2023 sent to the Deputy General Manager (Retail Sales), IOCL Panipat Divisional Office, Panipat. It may also be added here that respondent no.4 filed CWP No. 15708/2023 titled as Pushpesh Passi Vs. State of Haryana & Ors. challenging order dated 30.06.2023 before Hon'ble Punjab and Haryana High Court on the ground that the same was passed without grant of opportunity of being heard to respondent no.4 and the Deputy General Manager (Retail Sales), IOCL Panipat Divisional Office, Panipat although in his reply filed before this Tribunal respondent no. 4 did not take any plea as to non-joinder of the Deputy General Manager (Retail Sales), IOCL Panipat Divisional Office, Panipat. In view of the above discussed facts and circumstances, presence of the Deputy General Manager (Retail Sales), IOCL Panipat Divisional Office, Panipat is necessary and due to being necessary party impleadment of the Deputy General Manager (Retail Sales), IOCL Panipat Divisional Office, Panipat is essential for just and proper adjudication of the questions involved in the case.*

13. Further, it may be observed here that Tehsildar Jagadhri sent report vide memo No.100/OK dated 17.04.2023 to Sub Divisional Officer, Jagadhri that the proposed site falls in Abadi-deh; as per registered lease deed no. 1655 dated 02.06.2021 Mr. Pushpesh son of Mr. Amar Nath is in procession as lessee;. Hindu Girls College is about 100 meter far from the proposed site and there is no public site nearby; and no school, hospital and residential house came within 100 meters. In Joint Inspection Report dated 28.06.2023 it has been mentioned that there is an auditorium in the premises of Hindu Girls College, Jagadhri approx 11.3 meter from proposed retail fuel outlet which was not shown in the lay out plan/site plan submitted at the time of applying for NOC by the Project Proponent. Copies of the application submitted for grant of NOC and documents enclosed with the same have not been filed before this Tribunal. We consider production of the original record pertaining to grant of NOC by the District Magistrate, Yamuna Nagar with photo stat copy thereof to be essential for considering the aspect of suppression of/misrepresentation of material facts by the Project Proponent for grant of NOC and effect thereof.

14. In view of the above, the case is re-listed for further hearing.

15. The Deputy General Manager (Retail Sales), Panipat Divisional Office, Indian Oil Corporation Ltd., Village Bohli, P.O. Panipat Refinery, District Panipat, Haryana is impleaded as respondent no.7. The Registry is directed to amend the memo of parties and issue notice to respondent no.7 requiring him to file his reply/response at least one week before the next date of hearing hereby fixed.

16. The District Magistrate, Yamuna Nagar is directed to arrange production of the entire original record pertaining to grant of impugned NOC to the Deputy General Manager (Retail Sales) IOCL Panipat Divisional Office, Panipat with photo stat copy thereof on the next date of hearing hereby fixed.

22. In compliance thereof respondent no. 2-District Magistrate, Yamuna Nagar produced the original record and submitted Photostat copy of the same. Original record was seen and returned and the Photostat copy was taken on record.

23. Reply was filed by respondent No. 7-IOCL, Panipat vide email dated 23.09.2024.The relevant part of the reply filed by respondent No. 7-IOCL, Panipat vide email dated 23.09.2024 is reproduced below:-

"***REPLY ON BEHALF OF THE RESPONDENT NO.7. THE INDIAN OIL CORPORATION LIMITED, (IOCL)***

X X X

A. That the Respondent No.7 herein. respectfully submits that the allegations raised by the Applicant regarding the alleged improper issuance of NOC for the establishment of a retail outlet near Hindu Girl College Jagadhri, District Yamuna Nagar. are without any basis or merit. Respondent No 7 has adhered to all applicable laws, rules, regulations and guidelines including the Central Pollution Control Board (CPCB), in seeking and obtaining the NOC.

PRELIMARY SUBMISSIONS

B. That the present Original Application (hereinafter referred as OA) was registered vide O.A.408/2023 before the Hon'ble NGT, PB, New Delhi .On 31.05.2023, the Applicant filed a complaint before this Hon'ble Tribunal. alleging that the NOC was granted on 15.05.2023, vide NOC no. 45/PLA for the proposed retail outlet at the location Between Jagadhri bus stand to Agrasen Chowk on NH, RD +1.400 (RHS) at Village/Town Jagadhri, District Yamuna Nagar, Haryana was in violation of by-laws. endangering the safety of children at the nearby Hindu Girl College and School. Copy of NOC granted is marked herewith as Annexure R7/1. On 30.06.2023, the District Magistrate, cancelled the NOC (Copy of NOC cancelled is marked herewith as Annexure R7/2), prompting Respondent No. 4 to challenge the cancellation before the Punjab and Haryana High Court. The Hon'ble High Court in its order dated 25.07.2023, set aside the cancellation and restored the NOC.

C. That the Hon'ble Tribunal directed the District Magistrate to follow due process and CPCB guidelines while keeping the NOC in abeyance until further clarification was received. That the Hon'ble Tribunal also directed the impleadment of CPCB and sought clarification in regard to the fact whether colleges are included in the guidelines dated 07.01.2020.

The CPCB vide its reply clarified that that its siting criteria for sensitive locations applied only to schools and hospitals (with more then 10 beds) and not to colleges.

D. That it is humbly submitted that on 20.08.2024, this Hon'ble Tribunal raised concerns regarding the presence of an auditorium within 11.3 meters of the proposed retail outlet, which was not shown in the original layout plan submitted by IOCL. The Tribunal further directed the production of the original records related to the grant of NOC and also impleaded the Deputy General Manager (Retail Sales), Panipat, as Respondent No. 7.

E. That in response to the Hon'ble Tribunal's order dated 20.08.2024, it is relevant to mention that application for NOC for the proposed Retail Outlet sites are always filed by the answering Respondent and in the instant case, the answering Respondent respectfully submit that there has been no suppression or misrepresentation of material facts done by answering Respondent while obtaining the NOC for the establishment of Retail Outlet. The initial drawing/layout (annexed herein as ANNEXURE R7/3) submitted to the District Magistrate, Yamuna Nagar, for the grant of the NOC clearly indicated the presence of "Hindu Girls College Land" around the Retail Outlet site. At the time of submission of application for NOC, the answering Respondent had no access to, nor knowledge of, the internal facilities of the college or their specific uses. As such, further detailed indications regarding the internal layout of the college were not included in the submission, as this information was not available to the answering Respondent.

F. Furthermore, the approved drawing/layout (annexed herein as ANNEXURE R7/4), which was prepared by an NHAI-approved consultant, fully complies with the relevant NHAI norms. This approved layout also explicitly identifies the presence of Hindu College, with the college's access point marked as "Hindu College Gate." Therefore, it is evident that there was no concealment of facts during the submission of the drawing/layout for obtaining the NOC, as all relevant information available to the answering Respondent was duly disclosed and inserted in the drawings while applying for NOC. We affirm that all actions were taken in compliance with the applicable regulations, and there was no intention of mislead or misrepresent facts.

G. That the complainant herein has failed to show locus standi in this matter, Hon'ble Supreme Court of India has in many cases indicated that person filing the complaint should exhibit his/her locus standi first in order to pray for cancellation of NOC, in this particular case complainant has no locus standi and complainant seems to be settling his personal score and eventually delaying setting of petrol pump which is of public use and public utility.

H. That it is relevant to place on record that CPCB guidelines dated 7.1.2020 clearly mentions that in case of constraints in providing 50 mtrs distance, the retail outlet shall implement additional safety as prescribed by PESO. In no case, the distance between new Retail Outlet from school, hospitals (10 beds and above) and residential area designed as per local laws shall be less than 30 mtrs. Based on the aforesaid guidelines, PESO has issued a circular bearing no C.VIII(3) 125/Circular/Petroleum dt 9.9.2024 whereby additional safety measures for setting up of new Retail Outlet within the radius of 30-50 mtrs of residential areas, school, hospitals (10 beds and above) have been prescribed. Copy of PESO Circular bearing no C. VIII (3)

125/Circular/Petroleum dt 9.9.2024 is annexed as Annexure R7-5) In view of the above, it is very clear that the Retail Outlets can be established even within 30-50 mtrs of radius of school, residential area and hospitals (10 beds & above) by taking additional safety measures as prescribed by PESO in line with CPCB circular. As such the proposed site in the instant case is meeting the norms and NOC granted by DM was in line with CPCB guidelines.

REPLY ON MERITS:

I. At the outset it is respectfully submitted that the Answering Respondent deny all contents as well as averments, questions of law raised, and grounds taken in the Application unless specifically admitted and reply all together in the following paragraphs.

2. That the contents of the para no. 1 of the application are denied for want of knowledge. The applicant be put to strict proof of the averments made in the para

3. That the content of para 2 is denied to extent to that answering Respondent has issued the letter to the Respondent NO 4 illegally without keeping safety of girl students of Hindu Girls College. It is humbly submitted that there has been no suppression or misrepresentation of material facts by the answering Respondent in the process of obtaining the NOC or otherwise. The initial drawing/layout, which was submitted to the District Magistrate, Yamuna Nagar, for the purpose of obtaining the NOC. clearly indicates the presence of "Hindu College Land" around the Retail Outlet site. The specific facilities within the college premises like auditorium are neither accessible nor known to the answering Respondent, and the purpose for which these facilities are used is also beyond the knowledge of the answering Respondent. As a result, no further detailed indications were made in the layout regarding the internal college facilities. Furthermore. it has been clarified by CPCB in its reply that colleges are not part of point H in the guidelines dated 07.01.2020. That the said guidelines only identifies Schools as sensitive locations and that term does not include colleges/college.

4. That it is respectfully submitted that the allegation suggesting that the NGT Rules have been violated is incorrect and is categorically denied. It is further denied that the Administration issued the N0C in an illegal manner. It is respectfully submitted that answering Respondent, vide letter no. PDO/R0/Jagadhari dated 11.07.2020, applied for the issuance of an NOC, enclosing the requisite layout for the proposed project clearly depicting, the existence of Hindu Girls College. After following all due processes, including the scrutiny and examination of the submitted documents and compliance with

applicable regulations, the NOC was duly granted on 15.05.2023. This issuance was done in accordance with all statutory requirements and guidelines in place at the time. Therefore, the contention that the N0C was issued without due regard to the safety of the students of Hindu Girls College is completely unfounded and vehemently denied. That it is relevant to place on record that CPCB guidelines dated 7.1.2020 clearly mentions that in case of constraints in providing 50 mtrs distance, the retail outlet shall implement additional safety as prescribed by PESO. In no case, the distance between new Retail Outlet from school, hospitals (10 beds and above) and residential area designed as per local laws shall be less than 30 mtrs. Based on the aforesaid guidelines, PESO has issued a circular bearing no C.VIII(3)125/Circular/Petroleum dt 9.9.2024 whereby additional safety measures for setting up of new Retail Outlet within the radius of 30-50 mtrs of residential areas, school, hospitals (10 beds and above) have been prescribed. In view of the above, it is very clear that the Retail Outlets can be established even within 30-50 mtrs of radius of school, residential area and hospitals (10 beds & above) by taking additional safety measures as prescribed by PESO in line with CPCB circular. As such the proposed site in the instant case is meeting the norms and NOC granted by DM was in line with CPCB guidelines. The issuance of guidelines by this Hon'ble Tribunal is a matter of record and is, therefore, admitted. However, upon a careful reading of the relevant guidelines, it is clear that while the establishment of a retail outlet near a school is restricted, there is no such prohibition with regard to its proximity to a college or other educational institution.

5. That with regard to the averment related to this answering respondent, it is humbly submitted that respondent No. 6 vide CPCB office memorandum No. B-13011/1/2019-20/AQM/0814, dated January 07, 2020, has issued guidelines for setting up of new petrol pumps in compliance with the Honourable National Green Tribunal (NGT) order dated January 18, 2019 in the matter of OA No. 86/2019. The guidelines issued are based on the specific directions to prepare appropriate guidelines; for setting up new petrol pumps in the country and the guidelines; are to be got implemented by the State Government/ State Pollution Control Board (hereinafter referred as SPCBs)/ Pollution Control Committee.

That it is relevant to place on record that in line with aforesaid guidelines of CPCB. PESO has issued a circular bearing no C.VIII(3)125/Circular/Petroleum dt 9.9.2024 whereby additional safety measures for setting up of new Retail Outlet within the radius of 30-50 mtrs of residential areas, school, hospitals (10 beds and above) have been prescribed. In view of the above, it is very clear that the Retail Outlets can be established even within 30-50 mtrs of radius of school, residential area and hospitals (10 beds & above) by taking additional safety measures as

prescribed by PESO in line with CPCB circular. As such the proposed site in the instant case is meeting the norms and NOC granted by DM was in line with CPCB guidelines.

6. It is respectfully submitted that, the Hon'ble Supreme Court order dated 14.03.2023 in Civil Appeal No. 421 of 2022 (Indian Oil Corporation Limited V/s V.B.R Menon & Ors [2023 SCC On Line SC 257]) has clearly stated that the guidelines issued by CPCB vide its Office Memorandum dated 07.01.2020 are to be strictly adhered. In compliance to the order of the Hon'ble Supreme Court, CPCB has also issued an Office Memorandum dated 16,06.2023 (copy of Office memorandum dated 16.06.23 is annexed as Annexure R7-6) vide which it has been directed -hat all the SPCBs in the States and PCCs in the Union Territories are required to ensure that CPCB guidelines are strictly adhered to.

It is also submitted that the applicant has deliberately misrepresented the facts and attempted to mislead this Hon'ble Tribunal by conflating the distinctions between a school and a college.

7. Therefore, the establishment of the retail outlet near the Hindu Girls College is in full compliance with the applicable regulations, and any suggestion to the contrary is baseless and vehemently denied. That, it is further submitted that as per the CPCB guidelines, new petrol pumps/ Retail Outlets (hereinafter referred as ROs) shall not be located within a radial distance of 50 m (from fill point/ dispensing unit/ vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per the local laws. It is also mandated that in case of constraints in complying with 50 m distance criteria, the petrol pump/ RO shall implement additional safety measures as prescribed by the Petroleum Explosive Safety Organization (hereinafter referred as PESO). The guideline further insists on a minimum 30 m distance criteria between the new petrol pump/ RO and schools/ hospitals/ residential areas designated by local laws.

8. It is submitted that the answering respondent has not shown any disregard for the law or the guidelines issued by the National Green Tribunal (NGT) and the Central Pollution Control Board (CPCB) as alleged. That the answering Respondent has strictly adhere to the guidelines of the Hon'ble Tribunal and CPCB

9. It is respectfully submitted that the initial drawing/layout submitted to the District Magistrate, Yamuna Nagar for obtaining the NOC clearly indicates the presence of land belonging to Hindu Girls College in the vicinity of the proposed site. However, the specific facilities within the college premises were neither accessible to the Respondent and hence the purpose of the

buildings in the college premises were not known to the answering Respondent. Consequently, further detailed indications were not Provided in the layout. Additionally, the drawing/layout, which was duly approved by the District Magistrate, Yamuna Nagar, was prepared by an NHAI-approved consultant and is fully compliant with NHAI norms. This approved layout clearly identifies the presence of Hindu College, with the access point to the college marked as "Hindu College Gate." Therefore, it is submitted that there has been no concealment or misrepresentation of facts in the drawings/layout submitted for the purpose of obtaining the NOC.

In view of the aforementioned facts, the allegation made by the applicant is conspicuously false and fabricated and does not support any action for the same. In circumstances , it just and necessary that this Hon'ble Tribunal may pleased to dismissed the application as may deem fit ."

24. Vide order dated 06.11.2024 respondent no. 7 was permitted to file additional affidavit regarding the relevant circulars/guidelines regarding land requirement and safety measures for setting up of new petrol pump and respondents no. 1, 2 and 5 were permitted to file copies of map and other documents enclosed with the application submitted by respondent no. 7 to the District Magistrate, Yamuna Nagar.

25. Pursuant thereto additional affidavit dated 03.12.2024 was filed by respondent no. 7. The relevant part of additional affidavit is reproduced below:-

"***ADDITIONAL AFFIDAVIT ON BEHALF OF THE RESPONDENT NO.7***

X *X* *X*

1. That the Respondent No.7 herein, is filing the present additional affidavit in pursuance to order dated 06.11.2024 of this Hon'ble Tribunal, wherein the Hon'ble Tribunal had directed the current respondent to file an additional affidavit regarding relevant circulars/guidelines regarding land requirement and safety measures for setting up new petrol pump.

2. That it is submitted that Respondent has internal guidelines for procurement of land for development of retail outlets for establishing petrol pumps, which state the minimum plot size requirements for different classes of markets.

That the Respondent had issued Policy Circular No. 143-01/2009 dated 21.01.2009 wherein the guidelines were stipulated. That an amendment to the Policy was made via The Policy Circular No. 176-09/2010 dated 17.09.2010 which listed revised guidelines for procurement of land for development of

retail outlets for establishing petrol pumps and changed the firming up of Plot Size. It is pertinent to mention that vide this notification an Exception was introduced which allowed for smaller plots in accordance with guidelines issued by MoRTH for National Highways and other local laws. A copy of the Policy Circular No. 143-01/2009 dated 21.01.2009 isannexed herewith as ***Annexure R7-7****(PAGE NO.7-33). A copy of the Policy Circular No. 176-09/2010 dated 17.09.2010 is annexed herewith as* ***Annexure R7-8****. (PAGE NO. 34)*

3. It is submitted by the Answering Respondent that the advertisement of 2018 wherein the notice for appointment of regular/rural retail outlet dealerships for Haryana was published, wherein the plot size has been mentioned in the notification depicting location for Regular and Rural retail outlets in the State of Haryana at S No. 1427 as 20m x 20m. A copy of the newspaper advertisement for `Notice for Appointment of Regular/Rural Retail Outlet Dealerships for Haryana' is annexed herewith as Annexure R7-9(PAGE NO. 35). A copy of the notification depicting location for Regular and Rural retail outlets in the State of Haryana is annexed herewith as ***Annexure R7-10****(PAGE NO.36-74)wherein S.No. 1427 depicts the subject petrol pump.*

4. It is submitted by the Answering Respondent that vide notification No. RW/NH—33023/19/99-DO-III dated 24.07.2013 Ministry of Road Transport and Highways (MoRTH) issued guidelines/norms for access permission to fuel stations, private properties, rest area complexes and such other facilities along national highways. It is further submitted by the answering respondent that MoRTH issued another notification no. RW/NH-33032/01/2017-S&R(R) dated 26.06.2020, the Ministry of Road Transport and Highways (MoRTH) Issued guidelines/ norms for grant of permission for construction of access to fuel stations, wayside amenities, connecting roads, other properties, rest area complexes and such other facilities. That herein the MoRTH had issued the plot size for petrol pumps in respect to Rural areas, Urban Areas and Hilly and Mountain terrain. That this notification was amended again on 28.01.2021 by MoRTFI and relaxed minimum plot size to 20mx20m instead of 30mx30m for urban areas. Copy of the notification No. RW/NH — 33023/19/99-DO-III dated 24.07.2013 issued by the MoRTH is annexed herewith as ***Annexure R7-11****(PAGE NO. 75-87). A copy of the notification RW/NH-33032/01/2017-S&R(R) dated 26.06.2020 and the amended notification dated 28.01.2024 issued by the MoRTH is annexed herewith as* ***Annexure R7-12*** *(Page No. 88-141) and* ***Annexure R7-13*** *(Page No. 142-143) respectively.*

5. It is submitted by the answering respondent that the subject petrol pump is situated on National Highway and thus the subject petrol pump is supposed to be in conformity with the above mentioned notifications issued by MoRTH.

That the subject petrol pump is in conformity with all the rules and regulations issued by MoRTH and in fact MoRTH has issued NOC for the same. A copy of the NOC dated 23.10.2021 issued by the MoRTH for the subject petrol pump is annexed herewith and annexed as ***Annexure R7-14*** *(Page No. 144-146). A copy of the map approved by the NHAI for the subject petrol pump is annexed herewith and annexed as* ***Annexure R-7-15*** *(Page NO. 147)*

6. It is submitted by the answering Respondent that in regard to safety measures to establish a petrol pump the answering respondent is guided by the rules stated in Petroleum Rules, 2002. That the petrol pump is set up after submitting a drawing of the map to Petroleum Explosives and Safety Organization (PESO) which gives approval based on the present guidelines and notifications for safety. That the Petroleum Explosives and Safety Organization (PESO) strictly adheres to the Petroleum Rules 2002 for safety of the petrol pumps. A copy of the Petroleum Rules, 2002 is annexed herewith as ***Annexure R7-16****. (Page No. 148-248). A copy of the Drawing submitted for the present petrol pump is annexed herewith as* ***Annexure R7-17****. (Page No. 249). A copy of the approval letter from PESO is annexed herewith and marked as* ***Annexure R7-18****. (Page No. 250-250)*

7. It is submitted by the answering respondent that the Oil Industry Safety Directorate (OISD) has also issued guidelines for the installation of petrol pumps across the country. A copy of the notifications issued by the OISD is annexed herewith and marked as ***Annexure R7-19****. (Page No. 253-294)*

8. It is submitted by the answering Respondent that the present petrol pump is proposed on a land belonging to the Hindu Girls College (Respondent No. 3) who in turn had leased the same for the purpose of the establishment of the Petrol Pump. It is submitted that since the lease deed executed contains a clause permitting the establishment of petrol pump and the lease deed is registered document, therefore, it is clear that the Respondent No. 3 had no restrictions from any authority or legal documents to establish a petrol pump or to sub lease the land for a petrol pump. A copy of the Minutes of Meeting for leasing of the land for the purpose of petrol pump is annexed herewith as ***annexure R7-20*** *(Page No. 295-300). A copy of the lease agreement for leasing the said land is annexed herewith as* ***Annexure R7-21*** *)Page No. 301-306).*

9. In light of the above mentioned facts it is submitted by the answering Respondent that the Petrol Pump in question was in consonance with all the notifications and guidelines which were in effect and implemented till 2020."

26. Vide order dated 10.12.2024 CPCB was directed to file copies of all Minutes of Meeting of the Expert Committee and also copies of relevant documents/discussion as the case may be regarding inclusion of Schools and exclusion of Colleges in the siting criteria adopted for finalization of the guidelines dated 07.01.2020.

27. In compliance thereof response dated 14.01.2025 has been filed by Mr. Pankaj Agarwal, Scientist 'F' on behalf of CPCB. The relevant part of the response filed by CPCB is reproduced below:-

> *"**RESPONSE ON BEHALF OF CENTRAL POLLUTION CONTROL BOARD (CPCB) i.e. RESPONDENT NO. 6***
>
> *1. That, Hon'ble NGT vide order dated 10.12.2024 **(Annexure – A)** has directed to file copies of all Minutes of Meeting of the Expert Committee and also copies of relevant documents/discussion as the case may be regarding inclusion of Schools and exclusion of Colleges in the siting criteria adopted for finalization of the guidelines dated 07.01.2020. Thereby this response is submitted for kind consideration of Hon'ble Tribunal.*
>
> *2. It is humbly submitted that the issue of setting up of large number of petrol pumps without any environmental concern was considered by the Hon'ble NGT in OA No. 86 of 2019 titled as Gyanprakash @ Pappu Singh vs UoI & Others. Thereby, Hon'ble NGT directed the Ministry of Petroleum and Natural Gas and CPCB to review the matter and issue appropriate guidelines. Accordingly, the guidelines for setting up of new petrol pumps were framed under the guidance of the Expert Committee comprising of officials from MoPNG, NEERI, IIT-Kanpur, IIP- Dehradun, TERI & CPCB and were subsequently circulated on 07-01-2020 to concerned stakeholders for implementation.*
>
> *3. That, the minutes of meeting held on 05.04.2019 and 01.10.2019 regarding finalisation of guidelines for siting of petrol pumps in compliance of Hon'ble NGT order dated 18.01.2019 in OA 86/2019 titled "Gyanprakash @ Pappu Singh vs. UoI & Ors ", as directed by the Hon'ble Tribunal is hereby annexed as **Annexure 'B'** for ready reference. The same indicates that schools have been considered as sensitive receptor by the Expert Committee and not colleges. It is further submitted that the ibid minutes of meeting has also been submitted before Hon'ble NGT in the instant matter vide report of Answering Respondent herein dated 02.02.2024. ."*

28. Arguments were heard and Judgment was reserved vide order dated 18.02.2025 but while going through the material on record, this Tribunal noticed that prima facienotification was issued by MoRTH and policy circular and advertisement were issued by IOCL without taking into consideration order dated 18.01.2019 passed by this Tribunal in O.A. No. 86/2019 and also Guideline "H. Siting Criteria of Retail Outlets" of CPCB Guidelines dated 07.01.2020 and presence of MoRTH before this Tribunal was essential for just and proper

adjudication of the substantial environmental questions involved and ordered the matter to be relisted for further hearing. The relevant part of order dated 30.05.2025 reads as under: -

"6. The Deputy General Manager (Retail Sales), IOCL, Panipat Divisional Office, Panipat was impleaded as respondent no. 7 and replies/additional replies were filed by respondents no. 6 and 7. Original record was also produced by the District Magistrate, Yamuna Nagar which was returned while retaining photostat copy thereof. Arguments were heard and Judgment was again reserved vide order dated 18.02.2025.

7. While going through the material on record, we have noticed that as per order dated 18.01.2019 passed by this Tribunal in O.A. No. 86/2019 and guideline (H) siting criteria of retail outlet of CPCB Guidelines dated 07.01.2020 in case of sitting criteria for petrol pumps new Retail Outlets shall not be located within a radial distance of 50 meters (from fill point/dispensing units/vent pipe whichever is nearest) from Schools, Hospitals (10 beds and above) and residential areas designated as per local laws. In case of constraints in providing 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new Retail outlet from schools, hospital (10 beds and above) and residential area designated as per local laws shall be less than 30 meters. No high tension line shall pass over the retail outlet.

8. We have also noticed that as per notification no. RW/NH/33032/0112017/S&R (R) dated 28.01.2021 Ministry of Road Transport and Highways (MoRTH) amended minimum plot size for establishment of new petrol pump as 20 m x 20 m instead of 30 m x 30 m for urban areas. IOCL also issued policy circular no. 176-09/2010 dated 17.09.2010 fixing plot size for establishment of new petrol pump as 20 m x 20 m for KSKs allowing smaller plots in accordance with guidelines issued by MoRTH. IOCL issued advertisement of 2018 mentioning the plot size as 20 m x 20 m for appointment of Retail Outlet Dealership for Haryana.

9. Prima facie, it appears that plot size of 20 m x 20 m for establishment of new petrol pump has been fixed by notification issued by MoRTH and policy circular and advertisement issued by IOCL without taking into consideration order dated 18.01.2019 passed by this Tribunal in O.A. No. 86/2019 and also Guideline "H. Siting Criteria of Retail Outlets" of Guidelines dated 07.01.2020 issued by CPCB which by necessary implication require minimum plot size of 30 m x 30 m and questions of the notification issued by MoRTH and policy circular and advertisement issued by IOCL being violative of the order dated 18.01.2019 passed by this Tribunal in O.A. No. 86/2019 and CPCB Guidelines dated 07.01.2020 arise in the present case.

10. In these facts and circumstances, presence of MoRTH and IOCL before this Tribunal is essential for just and proper adjudication of the substantial environmental questions involved in the case as the question of validity of notification/policy fixing

the plot size of 20 m X 20 m issued by MoRTH and IOCL cannot be decided without granting opportunity of being heard to them in compliance with the principles of natural justice.

11. IOCL is also represented before this Tribunal through its Deputy General Manager (Retail Sales) but MoRTH is required to be impleaded as respondent no. 8 in the present case.

12. Since, this aspect was not specifically referred, and arguments were not addressed in this regard, opportunity is also required to be given to the parties to make their submissions in this regard for compliance with principles of natural justice.

13. Consequently, the matter requires relisting for further hearing and the matter is accordingly relisted for further hearing.

14. MoRTH is impleaded as respondent no. 8. The Registry is directed to amend the memo of parties and to issue notice to newly added respondent no. 8 requiring it to file its response with respect to the aspects noticed herein above at least three days before the next date of hearing fixed with advance copies to the applicant and Counsels for other respondents."

29. Pursuant to notice reply dated 28.06.2025 has been filed by respondent no. 8-Ministry of Road, Transport and Highways (MoRTH). The relevant part of the reply is reproduced below:-

*"**REPLY ON BEHALF OF RESPONDENT NO.8/ MINISTRY OF ROAD TRANSPORT AND HIGHWAYS***

X X X X

2. The brief factual background of the matter is as under:-

2.1 On 24.07.2013 (Annexure-R7/11, Pg.252-264), the Answering Respondent issued guidelines/norms for access permission to Fuel Stations, Private Properties, Rest Area Complexes and such other facilities along the National Highways. As per Clause 5.2 (Pg.259) of the said Guidelines, the minimum size of the plot for fuel stations in the urban stretches along the National Highways were 20 m x 20 m i.e. 20 m front and 20 m depth.

2.2 In the year 2019, Sh. Gyanprakash @ Pappu Singh filed an Original Application ("OA") bearing no.86/2019 titled as Gyanprakash @ Pappu Singh vs. Union of India & Ors. before the Hon'ble Tribunal seeking to limit the number of petrol pumps so as to avoid adverse impact on the environment.

2.3. On 18.01.2019, the Hon'ble Tribunal in the OA bearing no.86/2019 observed as under:

"We are of the view that the matter needs to be looked into by a Joint Committee of representatives of the Central Pollution Control Board and the Ministry of Petroleum. The CPCB will be the nodal agency. The first meeting of the Committee may be held

within one month and on review of the subject matter, appropriate guidelines be issued by the Central Pollution Control Board, in exercise of its statutory power within three months thereafter. The Central Pollution Control Board may furnish an action taken report to the Tribunal by email at ngtfiling@gmail.com on or before 30th April 2019."

True copy of the Order dated 18.01.2019 passed by the Hon'ble Tribunal in OA bearing no.86/2019 is annexed herewith and marked as Annexure R-8/1.

2.4. Considering the direction in Order dated 18.01.2019 passed by the Hon'ble Tribunal, the Central Pollution Control Board ("CPCB") issued guidelines dated 07.01.2020 (Annexure P-2, Pg.44-52) for setting up of New Petrol Pumps. Clause H of the Guidelines issued by the CPCB is reproduced here under:

"H. Siting criteria of Retail outlets in case of siting criteria for petrol pumps new Retail outlets shall not be located within a redial distance of 50 meters (from all points/dispensing units/ vent pipe whichever is nearest) from school, hospitals (10 beds and above) and residential areas designated as per local laws. In case of constraints in proving 50 meters distance, the retail outlet shall implement additional safely measures as prescribed by PESO. In no case the distance between new retail outlet from schools, hospitals) 10 beds and above) and residential area designated as per local laws shall be less than 30 meters. No high tension line shall pass over the retail outlet. These guidelines are supplementary to all existing relevant rules, guidelines orders etc."

2.5. On 26.06.2020 (Annexure-R7/12, Pg.265-318), the Answering Respondent issued the revised guidelines for access permission to Fuel Stations, Private Properties, Rest Area Complexes and such other facilities on the National Highways, exercising its powers under Sections 28 & 29 of The Control of National Highways (Land and Traffic) Act, 2002 and The Highway Administration Rules, 2004. Clause 4 of the revised guidelines is reproduced here under:

"4.0 Plot size for Fuel Station:

i. The minimum size and shape of the plot for fuel station should primarily be laid down by the Company/ Establishment concerned, for which they would need to consider suitable accommodation of all the facilities e.g. fuel pumps, offices, stories, compressor room, air pump and kiosks etc. The Highway Administration steps in primarily keeping in view that no hindrance is caused to the movement of vehicles of expected maximum dimensions. within the fuel station and in the access area. Sufficient space would need to be available to accommodate the number of fuel pumps to cater to the expected number of vehicles in peak time at this location so that the vehicles do not spill over to the access area. The air pump and kiosks for pollution control measurements be installed at some distance from the fuel pumps so that the vehicles requiring these services do not cause hindrance to the free movement of vehicles entering or exiting the fuel station.

ii. Keeping the above considerations in view, the minimum size of the plot for a fuel station along National Highways shall be as follow:-

Sr. NO.		*Frontage (in meter)*	*Depth (in meter)*
i	*On Rural stretches in plain and rolling terrain*	*35*	*35*
ii	*On Urban stretches in plain and rolling terrain*	*30*	*30*
iii	*In hilly and mountainous terrain*	*20*	*20*
	Note: The proposed slot of new fuel stations should be such that the minimum frontage is achieved within the minimum total area as stipulated above.		

iii. For fuel station being part of the rest area complex, the area required for other facilities such as parking, restaurant, rest rooms, toilets, kiosks for selling sundry items, bathing facilities, repair facilities, shops etc. would be extra but there would be a single access/ egress."

2.6 That in continuation to aforesaid guideline, the Answering Respondent vide letter no.RWNH-33032/01/2017-S&R(R) dated 28.01.2021 (Annexure-R7/13, Pg.319-320) issued amendment that for the retail outlets allotted by Petroleum companies, plots acquired by applicants in urban areas as per earlier guidelines (prior to 26.06.2020) i.e. of 20 m x 20 m, the NOCs may be granted as per revised guidelines dated 26.06.2020 with relaxation for plot size of 20mx20m (instead of desired plot size of 30mx30m). This amendment was issued based on large number of grievances/notices being received by MoRTH from applicants/the applicant companies, which stated to be facing problems in getting NOC due to implementation of Revised Guidelines / Norms dated 26.06.2020.

2.7. Thereafter, in the year 2023, the Applicant filed the present OA before the Hon'ble Tribunal. It is pertinent to note that the OA was filed seeking prayer for directing cancellation of the NoC, since the grant of permission by Indian Oil Corporation and grant of NoC by District Administration, Yamuna Nagar, Haryana for establishment of petrol pump in the premises of Hindu Girls College and Hindu Girls Schools, Jagadhri, District Yamuna Nagar, was given ignoring the byelaws, rules and regulations and safety of the children.

2.8. The OA was listed on 20.03.2024, 17.10.2024, 10.12.2024, 18.02.2025 and the judgment was reserved by the Hon'ble Tribunal.

2.9 On 30.05.2025, the OA was listed in which the Hon'ble Tribunal impleaded the Answering Respondent as Respondent No.8. True copy of order dated 30.05.2025 passed by the Hon'ble Tribunal is annexed herewith and marked as Annexure R-8/2.

3. It is evident from the aforesaid factual background that the basis for impleading the Answering Respondent as a party in the present proceedings is that the Amendment dated 28.01.2021 by the Answering Respondent is in violation of the Order dated

18.01.2019 passed by this Hon'ble Tribunal in OA bearing no.86/2019 and the guidelines dated 07.01.2020 issued by the CPCB.

4. In this regard, the Answering Respondent submits as under-

4.1 A perusal of the Order dated 18.01.2019 passed by this Hon'ble Tribunal makes it clear that there was no direction regarding the reduction of the plot size for granting permission for construction of fuel stations, and as such there is no violation of the Order dated 18.01.2019 by the Answering Respondent.

4.2 Reference is also made to Clause H (Siting Criteria of Retail outlets) of the CPCB guidelines dated 07.01.2020 which merely specifies the radial distance of the new retail outlets from School, Hospitals (10 beds and above) and residential areas designated as per local laws, and no such guidelines is there regarding the plot size of retail outlets.

4.3. It is pertinent to state that the Answering Respondent has issued the amendment dated 28.01.2021 for reducing the plot size from 30 m x 30 m to 20 m x 20 m in view of receipt of various grievances raised by the applicants/applicant companies who were facing problems in getting NOC due to the implementation of the guidelines dated 26.06.2020.

4.4. It is further submitted that during setting up of a Fuel Station, the concerned applicant/Fuel Station agency has to take NOC's from all concerned departments and the Answering Respondent/MoRTH, and has to comply to guidelines/norms stated in above mentioned guidelines and subsequent amendments w.r.t Access from National Highway only. However as far as criteria/norms of various departments are concerned, the same shall be dealt with by concerned department accordingly before issuing NOC or energizing the fuel station. This implies that the applicant has to parallelly fulfil criteria pertaining to all departments based on which the fuel station can be energized, and the same is decided by relevant/concerned department of State Government/Local body. Accordingly, the minimum criteria set forth by concerned department shall prevail in order to issue NOC. Further, the Provisional Access Permission granted to Retail Outlet in question stands cancelled w.e.f. 20.07.2024 since the extension of time granted upto 19.07.2024 for obtaining final permission from Highway Administration has lapsed. True copy of letter dated 08.08.2023 is annexed herewith and marked as Annexure R-8/3.

4.5 It is further submitted that the Answering Respondent in its previous guideline dated 26.06.2020 categorically stated that the minimum size and shape of the plot for fuel station should primarily be laid down by the Company/ Establishment concerned. The Answering Respondent only steps in primarily keeping in view that no hindrance is caused to the movement of vehicles of expected maximum dimensions, within the fuel station and in the access area. Thus, the role of the Answering Respondent is very limited to the same.

4.6. It is submitted that the OA. 408/2023 was filed by the Applicant regarding violation of the silting criteria by the fuel station located near the premises of the Hindu Girls School, Jagadhri, District Yamuna Nagar by ignoring the bylaws, rules, regulation, orders of NGT and CPCB guidelines. While going through the record, the Hon'ble Tribunal has observed that Ministry's guidelines of access permission issued

vide letter No.RW/NH/33032/011/2017/S&R (R) dated 28.01.2021 which amended the minimum plot size for establishment of new fuel station as 20 x 20 m instead of 30m x 30m is without taking into consideration the order passed by the NGT dated 18.01.2019 in OA No. 86/2019. In this regard, it is stated that the Answering Respondent was not a party in the OA 86/2019.

4.7. It is further clarified that the Answering Respondent vide letter no.RW/NH-3302/01/2017-S&R(R) dated 26.06.2020 issued revised guidelines/norms for grant of permission for construction of access to fuel stations, way side amenities, connecting roads, other properties, Rest Area Complexes and such other facilities.

i. As per revised guidelines dated 26.06.2020, minimum plot size of 30m x 30m was mandated for new fuel stations abutting the NHs in urban stretches.

ii. The Answering Respondent vide letter no. RW/NH 33032/01/2017-S&R (R) dated 28.01.2021 issued amendments to the guideline dated 26.06.2020. As per this amendment, for the applications of access permissions submitted on online portal of MoRTH for the retail outlets allotted by Petroleum companies, plots acquired by applicants in urban areas (i.c. 20 m x 20 m) as per earlier guideline dated 24.07.2013, the NOCs may be granted as per revised guideline dated 26.06.2020 with relaxation in plot size, as 20 m x 20 m instead of desired plot size of 30 m x 30 m.

4.8. It is further clarified that the above temporary relief was granted to the applications submitted prior to 26.06.2020 only, and that all the new applications are being processed by considering the minimum plot size of 30m x30 m for urban stretches without deviations.

4.9. Moreover, the issue in the present OA being filed by the Applicant is related to the NOC's issued by various departments. There is no dispute or any averment regarding the reduction of the plot size by the Answering Respondent.

4.10 It is submitted that the Answering Respondent is an apex organisation under the Central Government entrusted with the task of formulating and administering policies for road transport, national highways and transport research in consultation with other Central Ministries/Departments, State Governments/Union Territory Governments, organizations and individuals. The Answering Respondent has the highest regard for this Hon'ble Tribunal and thus, the Answering Respondent would not violate any order(s) passed by this Hon'ble Tribunal.

5 Thus, in the light of the aforesaid submissions, the Answering Respondent has not violated the Order dated 18.01.2019 and the guidelines issued by the CPCB dated 07.01.2020. The Answering Respondent most humbly prays that the present OA be dismissed in favour of the Answering Respondent.

6. The Answering Respondent further reserves its right to file additional reply/objection, if required, with the permission of the Hon'ble Tribunal.

30. We have heard the submissions made by Mr. Harvinder Singh-the applicant and Mr. Rahul Khurana, learned Counsel for respondents no. 1-State of Haryana, 2-District Magistrate, Yamuna Nagar and 5-HSPCB, Mr. Robin Dutta, learned Counsel for respondent no. 4,Mr. Rajkumar, learned Counsel for respondent no. 6-CPCB, Mr. Manish Sharma, Mr. Divye Chugh and Mr. Rachit Raushan, learned Counsels for respondent no. 7-Dy. G.M.

(Retail Sales), IOCLand Mrs. Madhu Sweta (through VC) and Mr. Yash Kapoor, learned Counsels for respondent no. 8-MoRTH and we have gone through the material on record carefully.

31. The questions which first arise for adjudication in the present case are as to whether the applicant has no locus standi to file the present application and whether the application has been filed mala-fide to settle personal score.

32. Learned Counsels for respondent no. 4 and learned Counsels for respondents no. 7 have challenged the credentials and bona fides of the applicant and argued that the Hon'ble Supreme Court of India has in many cases indicated that person filing the complaint should exhibit his/her locus standi bonafides for the reliefs of cancellation of NOC etc. sought by him. The applicant has no locus standi and has file the application with ulterior motive just to harass respondent no. 4 to settle his personal score and to delay the setting up of the petrol pump which is a project of public utility. The jurisdiction of this Tribunal may not be allowed to be misused by such interested litigant for his ulterior motives and the application being malafide may be dismissed on this ground.

33. On the other hand, the applicant has argued that the applicanthas filed present application bonafide raising substantial questions relating to environment pointing out serious violations of the CPCB Guidelines dated 07.01.2020 in Public Interest.

34. In the present case the respondents have not produced any material to show any previous enmity of the applicant with respondent no. 4 or any ill will or malice on his part towards respondent no. 4 or any previous instance of misuse of public interest litigation by the applicant for personal interest. In the absence of any such material the applicant must be considered to be a public spirited person acting with the motive of protection and improvement of environment and to have raised substantial environmental questions regarding violations of orders passed by this Tribunal and CPCB Guidelines dated 07.01.2020 in public interest. This Tribunal cannot lose sight of the fact that right to life includes within its sweep right to clean and healthy environment which cannot be denied and has to be protected and implemented in the fullest measure by all the instrumentalities of the State as well as the Project Proponents. In these facts and circumstances, the applicant must be considered to have locus standi and cause of action to file the present application in public interest for protection of environment and the bonafides of the applicant cannot be doubted.

35. Even otherwise, this Tribunal is empowered under the provisions of the NGT Act, 2010 to take cognizance of questions relating to environment arising out of implementation of the enactments specified in Schedule I to the NGT Act, 2010 suo motu as held by Hon'ble Supreme Court in **Municipal Corporation of Greater Mumbai v. Ankita Sinha (2021) SCC Online SC 897: Law Finder Doc Id # 1890858: 2021 AIR (Supreme Court) 5147)** and in view thereof this Tribunal can adjudicate upon the questions involved in the present application regarding compliance with the orders passed by this Tribunal and CPCB Guidelines dated 07.01.2020.

36. The Applicant has argued that NOC dated 15.05.2023 for the proposed retail outlet at the location between Jagadhri bus stand to Agrasen Chowk, Jagadhri, District Yamuna Nagar, Haryana has been granted in violation of orders passed by this Tribunal and CPCB Guidelines dated 07.01.2020 endangering the safety of children at the nearby Hindu Girls College and School, Jagadhri.

37. On the other hand learned Counsels for respondents no. 4 and 7 have argued that the allegations raised by the Applicant regarding the alleged improper issuance of NOC for the establishment of a retail outlet near Hindu Girls College Jagadhri, District Yamuna Nagar in violation of orders passed by this Tribunal and CPCB Guidelines dated 07.01.2020 endangering the safety of children at the nearby Hindu Girls College and School, Jagadhriare without any basis or merit. Respondent No 7 has adhered to all applicable laws, rules, regulations and guidelines in obtaining the NOC.

38. While dealing with the issue of limiting the number of petrol pumps so as to avoid adverse impact on the environment in **O.A. No. 86 of 2019Gyanprakash @ Pappu Singh vs. Union of India & Ors.**, this Tribunal vide order dated 18.01.2019 directedthe Ministry of Petroleum and Natural Gas and CPCB to review the matter and issue appropriate guidelines. The relevant part of the order reads as under:-

> *"We are of the view that the matter needs to be looked into by a Joint Committee of representatives of the Central Pollution Control Board and the Ministry of Petroleum. The CPCB will be the nodal agency. The first meeting of the Committee may be held within one month and on review of the subject matter, appropriate guidelines be issued by the Central Pollution Control Board, in exercise of its statutory power within three months thereafter. The Central Pollution Control Board may furnish an action taken report to the Tribunal by email at ngt.filing@gmail.com on or before 30th April 2019."*

39. This Tribunal vide order dated 22.07.2019 in **O.A. No. 31/2019 K. Sathyadevan Vs. Union of India & Ors.** and **O.A. No. 86/2019Gyanprakash @ Pappu Singh vs. Union of India & Ors.**, directed that a safe distance from a residential area must be maintained for any new petrol pump/filling station sought to be set up. The relevant part of the order reads as under:-

> *"11..... We may also add that a safe distance from the residential areas must be maintained for any new outlet to be set up which may also be specified within one month, keeping in view the health and safety of the inhabitants."*

40. In compliance with directions given by this Tribunal vide order dated 18.01.2019 passed in **O.A. No. 86/2019 titled as Gyanprakash@Pappu Singh Vs. UoI & Ors.** guidelines dated 07.01.2020 were framed under the guidance of an Expert Committee comprising of Members from IIT Kanpur, NEERI, IIP, TERI, MoP&NG and CPCB (constituted to frame Guidelines for setting up of new Petrol Pumps including siting criteria and pollution prevention and control measures). The guidelines were placed in public domain and comments/suggestions/objections were invited from public and concerned stakeholders which were reviewed and guidelines were finalized and circulated by CPCB vide its Office Memorandum bearing No. 13011/1/2019-20/AQM dated 07.01.2020 for implementation by concerned stakeholders.

41. The CPCB Guidelines were clarified by OM No. B- 13011/1/2020-21/AQM dated 29.01.2021 to state that the CPCB Guidelines would apply to all petrol pumps where construction had not commenced before 07.01.2020.

42. Clause H of the Guidelines issued by the CPCB, which lays down Siting criteria for Retail Outlets, is reproduced hereunder:-

> *"H. Siting criteria of Retail Outlets:-*
>
> *In case of siting criteria for petrol pumps new Retail outlets shall not be located within a radial distance of 50 meters (from all points/dispensing units/ vent pipe whichever is nearest) from school, hospitals (10 beds and above) and residential areas designated as per local laws. In case of constraints in proving 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new retail outlet from* ***schools, hospitals (10 beds and above) and residential area designated as per local laws*** *shall be less than 30 meters. No high tension line shall pass over the retail outlet. These guidelines are supplementary to all existing relevant rules, guidelines orders etc."*
>
> ***(Emphasis added)***

43. As per the above-quoted guidelines any new petrol pump/retail outlet has to satisfy the following conditions to meet the Siting Criteria:-

> (i) New petrol pump/Retail Outlet has to be located beyond a radial distance of 50 m (from fill point/ dispensing unit/ vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per the local laws;
>
> or
>
> In case of constraints in complying with 50 m distance criteria, (a) the petrol pump/ Retail Outlet has to implement additional safety measures as prescribed by PESO and

(b) the distance between new Retail outlet from schools, hospital (10 beds and above) and residential area designated as per local laws shall not be less than 30 meters;

and

(ii) No high tension line shall pass over the retail outlet.

44. This Tribunal vide its orders dated 23.07.2020 and 09.10.2020, in **O.A. No. 61 of 2019 (CZ)Suresh Madaloi vs. State of M.P. & Ors.,** directed the MoEF & CC and the CPCB to submit a report with regard to the minimum distance of petrol pumps from water bodies.

45. Subsequently, the CBCB Guidelines dated 07.01.2020 were revised by OM No. B-13011/1/2019-20/AQM dated 16.08.2021 to include the following:-

". All the surface water bodies irrespective of utility shall be protected from any possible contamination. These include lakes, ponds, streams, rivers, wetlands, canals and creeks, as per revenue records. Retail Outlets shall not be located within a distance of 50 meters from the nearest point of water bodies. In case of streams and rivers, the distance shall be considered from floodway. In case floodway is not defined, the distance shall be considered from firm banks / edge of river The siting criterion is to be implemented for all new petrol pumps where construction by OMCs start post the issuance of these guidelines."

46. It follows that **generally** new petrol pumps/ Retail Outlets can be located beyond a radial distance of 50 m (from fill point/ dispensing unit/ vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per the local laws and only **exceptionally** in case of constraints in complying with 50 m distance criteria, new petrol pumps/ Retail Outlets can be located at the distance of not less than 30 meters from schools, hospital (10 beds and above) and residential area designated as per local laws on implementation of additional safety measures as prescribed by the PESO.

47. It follows that for **permitting location of new petrol pumps/Retail Outlets at the distance of 30 meters** from schools, hospital (10 beds and above) and residential area designated as per local laws **the constraints in complying with 50m criteria** and **the additional safety measures implemented by the new petrol pumps/Retail Outlets** have to be specifically mentioned.

48. It may be observed here that the abovesaid siting criteria prescribed by Clause H of the Guidelines dated 07.01.2020 issued by the CPCB do not apply to new petrol pumps/Retail Outlets **which are not located near schools, hospitals (10 beds and above) and residential area designated as per local laws**.

49. There seems to be no ambiguity or dispute regarding the expressions **"hospitals (10 beds and above)"** and **"residential area designated as per local laws"**.

50. However, it may be observed here that the use of expression **"residential area designated as per local laws"** will apply to both urban and rural areas and is not confined to urban areas only and will also extend to individual residences in designated residential area.

51. However, in the present case dispute has been raised regarding interpretation/scope of the expression **"schools"** and the question which arises in the present case is as to whether the expression **"schools"** includes/extends to **"colleges"**.

52. The applicant has submitted that in the present case, the Hindu Girls College and School Management and respondent no. 4-Pushpesh Passi have not complied with the orders passed by this Tribunal and CPCB Guidelines dated 07.01.2020. The distance between petrol pump and college is only 5-10 meters as the land (where petrol pump is proposed to be set up) is situated in the premises of college and beside the land for petrol pump there is auditorium of college which can hold 1500 students at a time. The hostel of the college is also situated adjacent to the land in question. If the petrol pump is set up in the land in question the life of the students will not be safe.

53. Learned Counsels for respondents no. 4 and 7 have argued that there are material differences in schools and colleges which have mutually exclusive definitions in statutory enactments governing them and in view thereof the expression "Schools" does not and cannot be interpreted to include "Colleges". In support of their submissions learned Counsels for respondents no. 4 and 7 have referred to definition of "School" in Section 2(r) of the Haryana School Education Act, 1995 and definition of "College" in section 12A(1)(b) of the University Grant Commission Act, 1956 which are reproduced below:-

> ***Section 2(r) of the Haryana School Education Act, 1995***
>
> *"Section 2(r):-"School" includes a primary, middle, high or senior secondary school and also includes any other institution which imparts education or training below degree level, but does not include an institution, which imparts technical education:"*
>
> ***Section 12A(1)(b)of the University Grant Commission Act, 1956***
>
> *"Section12A(1)(b):- "College" means any institution whether known as such or by any other name, which provides for a course of study for obtaining any qualification from a University and which, in accordance with rules and regulations of such university, is recognized as competent to provide for such course of study and present students under going such course of study for the examination for the award of such qualification:".*

54. Learned Counsels for respondents no. 4 and 7 have further argued that CPCB Guidelines dated 07.01.2020 bar setting up of new petrol pumps/retail outlets within 30-50 meters of radius of school, hospitals (10 beds & above)and residential area butCPCB Guidelines dated 07.01.2020 do not apply to new petrol pumps/retail outlets being established in the vicinity of college.As such the proposed site in the instant case is meeting the norms and NOC granted by District Magistrate, Yamuna Nagar is not violative of orders passed by this Tribunal and CPCB Guidelines dated 07.01.2020. Therefore, the original application may be dismissed with costs.

55. Learned Counsel for CPCB has argued that the CPCB Guidelines dated 07.01.2020identify **"Schools"** and not **"Colleges"** as sensitive locations and CPCB has clarified in its reply that the term "**Schools"** does not include **"Colleges"** and colleges are not included in para H thereof.

56. However, learned Counsel for CPCB and has submitted that CPCB will abide by the directions of this Tribunal.

57. Learned Counsel for respondents no. 1, 2 and 5 has reiterated the submission made by learned Counsels for respondents no. 4, 6 and 7 while adding that above respondents will abide by the orders as may be passed by this Tribunal.

58. Learned Counsel for respondent no. 8 has submitted that respondent no. 8 not being a party has not violated directions issued by this Tribunal as mentioned in its reply.

59. In order to appreciate and adjudicate upon the environmental issue as to applicability of CPCB Guidelines dated 07.01.2020 raised in the present case, this Tribunal, vide order dated 10.12.2024 directed CPCB to file copies of the Minutes of Meeting of the Expert Committee and also copies of relevant documents/discussion, as the case may be, regarding inclusion of Schools and exclusion of Colleges in the siting criteria adopted at the time of finalization of the CPCB Guidelines dated 07.01.2020.

60. In compliance thereof copies of the minutes of meetings held on 05.04.2019 and 01.10.2019 regarding finalization of CPCB Guidelines dated 07.01.2020 prescribing the siting criteria for setting up of new petrol pumps/retail outlets have been filed by CPCB. The relevant parts of the minutes of meetings held on 05.04.2019 and 01.10.2019 are reproduced below:-

> **(i) Minutes of Meeting dated 05.04.2019**
> *"**Minutes of the meeting held on 05.04.2019 at CPCB, in compliance of the Hon'ble NGT order dated 18.1.2019 in OA No. 86/2019: Gyanprakhash @ Pappu Singh vs UoI& Ors,***

Sh. V.K. Shukla, Scientist `E', AQM Division, CPCB welcomed the Member Secretary, CPCB and the Committee members and briefed about the orders passed by the Hon'ble NGT on 18.01.2019 for preparation of siting and other necessary guidelines in reference to the OA No. 86 of 2019 filed on the issue of setting up of 80,000 petrol pumps in the country. The list of participants is annexed.

Sh. V.K. Shukla further informed that first meeting in the matter was convened between CPCB and MoPNG on 08.02.2019 wherein MoPNG was requested to share detailed information about the proposed petrol pumps and guidelines followed for setting up of petrol pumps including siting criteria and information on clearances obtained from different departments. However, the information is still not received. During the said meeting, it was also decided that a Committee comprising of officials from MoPNG and CPCB, and, experts from NEERI, IIT, Indian Institute of Petroleum, Dehradun and TERI may be constituted for suggesting necessary guidelines and accordingly the present committee has been constituted. The minutes of the said meeting were circulated to the committee members.

Member Secretary, CPCB expressed that the main objective of convening this meeting is to finalize the various environment related issues that needs to be addressed under the proposed guidelines to be finalized by the said Committee.

Committee members discussed the various issues related to environment protection and suggested following aspects should be considered while framing the draft guidelines:

A. Siting of petrol pumps
1. Siting criteria for petrol pumps to be setup in urban, rural areas and on highways consideringpopulation and land use pattern.
2. Siting distance from sensitive locations such as schools, hospitals, play grounds and electricsubstations etc. should be prescribed.
B. Measures for air and ground water protection
1. Containment and treatment of spillages from fuel filling operations at petrol pumps.
2. Check on leakages (Leakage Detection System) from underground storage tanks so as to prevent groundwater contamination. Treatment and disposal of sludge removed from underground tanks during
cleaning.
3. Protocol for proper operation and maintenance of Vapor Recovery System, and, to monitor
performance and check efficiency of Vapor Recovery System.
4. Requirement of additional pollution control systems (air purification systems) needed to be installed

for control of VOCs at petrol pumps located in areas having high population density in order to
minimize exposure, if any.
5. Monitoring mechanism (procedure, parameters and frequency) to check air and ground water quality
in and around petrol pump depending upon location of petrol pump (Urban, Rural and Highways).
C. Measures for protection of worker's health
Member Secretary, CPCB expressed that MoPNG being the concerned parent ministry may come out with draft guidelines in association with oil marketing companies. International practices being followed in this regard may be referred. The draft guidelines so prepared may be subsequently discussed, reviewed and finalized by this committee. It was agreed that draft guidelines to be prepared in two weeks and these be discussed by the Committee in the next meeting scheduled on April 22, 2019.

Meeting ended with thanks to chair."

(ii) ***Minutes of Meeting dated 01.10.2019***

"Minutes of Expert Committee meeting dated 1.10.2019 on siting guidelines for petrol pumps

Comments received from stakeholders on the guidelines were discussed with the Committee and following decisions were taken:
1. ***Groundwater level data available on CGWA website may be limited to a specified area around the monitoring station and that there may be variation in water table within different areas around the monitoring station, hence, requirement of checking online data may be removed.*** *Expert Committee agreed with the suggestion received and decided that it shall be the responsibility of OMC to properly get measured groundwater level at the site of proposed petrol pump and ensure implementation of adequate protection measures as per guidelines for the sites with groundwater levels less than 04 meters. In case, any deviation is observed in the data reported by OMC, action as per law may be initiated against the OMC.*
2. ***Ancillary components of storage tanks made of HDPE which is corrosion free may also be permitted in addition to the materials confirming to IS with corrosion protection coatings.*** *Expert Committee decided that materials approved by PESO shall be considered and that this shall be applicable for underground as well as above ground storage tanks.*
3. ***In case of leakage/ spillage of lube oil/ fuel in quantity more than 01 barrel, operation of concerned underground storage tank may be stopped instead of the entire petrol pump.*** *Expert Committee decided that since the release from specific source i.e. tank is required to be controlled; operation of that tank and ancillary components shall be stopped and be not resumed till*

corrective measures are implemented to the satisfaction of PESO and SPCB. All such incidences be reported to SPCB, PESO, DM within 24 hours of occurrence under intimation to CPCB. Further, EC decided that experience requirement of consultants/ expert agency to be appointed by OMCs for damage assessment due to leakage and its remediation may be reduced to 05 years from 07 years proposed earlier, considering that there may be a limited number of consultants available with an experience of 07 years in this field.

4. ***Single plane swivel with breakaway couplings installation at dispensing units may also be permitted as alternative to two plane swivel.*** *Expert Committee agreed with the suggestion and decided that Single/ double plane swivel with breakaway coupling shall he installed for all the dispensing units for better positioning of nozzle while refuelling so that it does not fall off accidently.*

5. ***Automation system approved by EPA shall be allowed to be used for leak detection.*** *Expert Committee discussed that since PESO is the regulatory authority, automation system to be installed for providing alert on tank leak shall have PESO approved auto gauging system.*

6. ***Increase the frequency of testing of tank and pipeline leaks from 05 years to 10 years or testing to be done only in cases where the compromise in integrity of the internal monitoring system is observed.*** *Expert Committee decided that leak tests are needed as preventive measure for protection of environment; however the frequency of testing may be revised to 07 years instead of 05 years considering high design life of these components and very few cases reported in the past with such faults.*

7. ***VRS installation at petrol pumps to be done within 03 months of achievement of monthly average sale of 100 KL or 300 KL instead of installation by the time petrol pump touches the MS sale of 100 KL or 300 KL.*** *MoPNG expressed that it is very difficult to procure and install VRS for petrol pumps touching MS sale of 100 since this quantum of sale can be easily achieved by petrol pumps and therefore limited time is available for procurement and installation of VRS. Expert Committee deliberated the issue and decided that time period of 03 months can be given for installation of VRS in case of petrol pumps with sale potential of 100 KL however in case of petrol pumps with sale potential of 300 KL MS per month, VRS shall he made functional by the time of sale of MS touch 300 KL. In case of failure of installation of VRS, Environment Compensation will be levied equivalent to the cost of VRS and this will further increase proportionate to the period of non-compliance.*

8. Stage II VRS nozzle shall be provided with flexible cover flap or other alternate system for proper covering, of filling tank and therefore proper recovery of vapors.

9. ***Whether, TWA or STEL standards to be considered for Work zone monitoring for Total VOCs.*** *Expert Committee discussed the matter and*

decided that TWA standards be applicable being more stringent than STEL standards.

10. Standards for parameters to be analysed during groundwater monitoring be prescribed.

11. In case of siting criteria for petrol pumps new Retail Outlets shall not be located within a radial distance of 50 meters (from fill point/ dispensing units/ vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per local laws. In case of constraints in providing 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new retail outlet from schools and hospitals (10 beds and above) and residential area shall be less than 30 meters designated as per local laws. No high tension line shall pass over the retail outlet."

61. We have gone through the minutes of the meeting of the Expert Committee and we do not find any reference regarding non-inclusion /exclusion of colleges and any reasons for the same. It is evident from a bare perusal of the above-quoted Minutes of Meeting that the Expert Committee did not discuss the matter of inclusion of "schools" only in the Guidelines and exclusion of "colleges" from the same with or without assignment of any reasons for such exclusion and did not use the expression "schools" with any qualifying word or with reference to any particular enactment. Consequently, definition of "school" in Section 2 (r) of the Haryana School Education Act, 1995 and definition of "college" in Section 12A(1)(b) of the University Grant Commission Act, 1956 are not applicable and conclusive thereof.**Therefore, the expression "schools" has to be read/interpreted in accordance with the principles governing interpretation of statutes/contracts/documents.**

62. As per literal rule of interpretation the expression "schools" has to be given the ordinary meaning assigned to the same. In Chambers 21st Century Dictionary (2000 Reprint) meaning of "School" is mentioned at page no. 1256 as "1 A place or institution where education is received especially primary and secondary education.2… A place or institution offering instruction in a particular field or subject, often part of a university". In Webster Comprehensive Dictionary International Edition Volume Two meaning of "School" is mentioned at page 1126 as "1 An educational institution … 5 A subdivision of a university devoted to a special branch of higher education: A school of education, medicine etc…". In Oxford Dictionary of English Third Edition meaning of "School" is mentioned at page 1592 as "1 An institution for educating children… 2 Any institution at which instruction is given in a particular discipline: a dancing school".

63. It is evident therefrom that the expression "School" is not exclusively confined to educational institutions for primary, secondary and senior secondary education and is more often than not used for educational institution giving higher education under university. Reference in this regard may be made to some educational institutions which are imparting higher education under university but are named as Schools i.e., (i) Delhi School of Economics, (ii) OP Jindal Global School of Law, (iii) National School of Drama, (iv) School

of Open Learning, Delhi University(v) University School of Law and Legal Studies, Guru Gobind Singh Indraprastha University and we do not want to multiply reference to such institutions any further.

64. Keeping in mind the background and object of framing of the CPCB Guidelines dated 07.01.2020 the expression "School" cannot be read within confines of its narrow meaning and has to be given wider interpretation of being an educational institution so as to include "college".

65. The reason/justification assigned by respondent no. 4 for exclusion of colleges from applicability of CPCB Guidelines dated 07.01.2020 on the ground of age of students being above 18 years of age and their ability to save themselves due to being adults does not appear to us to be sound. The object of prescription of 50mx50m or 30mx30m siting criteria is to locate new Petrol Pump/Retail Outlet at safe distance from schools, which are considered to be sensitive location in view of presence of large number of students, teachers, non-teaching staff members, so that any accidental fire/explosion taking place there does not endanger the safety/lives of students, teachers, non-teaching staff members. The reason/justification for considering schools to be sensitive locations will be equally applicable to colleges also in view of presence of large number of students, teachers, non-teaching staff members any danger to whose safety/lives has to be weighed with the same scale and different scale cannot be applied to them on the ground of being above 18 years of age and their ability to save themselves due to being adults as highlighted by respondent no.4-Pushpesh Passi. As sensitivity of the location is considered not **with respect to age of occupants and their related ability to save themselves** but with respect to sensitivity of the place due to potential danger to safety/lives of large number of persons minor or major, exclusion of colleges on the ground of age of occupants and their related ability to save themselves will be absurd. In order to suppress/redress the intended mischief and to achieve the patent object of the CPCB Guidelines 07.01.2020, wider meaning of the expression "schools" has to be preferred to the narrow meaning thereof so as to include "colleges".

66. It may be observed here that in Government of Uttarakhand Housing Section-2 notification No.V-2/21/11 (L.U.C.)/2003 T.C. Dehradun dated 05.10.2021 **College** has also been included with **School** and said notification mandates minimum distance of 50 m from residential area/building, school/college, hospital which could be 30 m if the safety standards prescribed by PESO are complied with. Government of Uttarakhand has equated colleges with schools for compliance with the siting criteria for new petrol pumps/retail outlets.

67. We accordingly hold that the expression "schools" in para H of CPCB Guidelines dated 07.01.2020 includes "colleges".

68. Hon'ble Supreme Court vide order dated 14.03.2023 passed in Civil Appeal No. 421 of 2022 Indian Oil Corporation Limited V/s V.B.R Menon & Ors [2023 SCC On Line SC 257]emphasized that CPCB Guidelines dated 07.01.2020 are to be strictly adhered to.

69. In compliance to the order of the Hon'ble Supreme Court, CPCB has also issued Office Memorandum dated 16.06.2023directing all the SPCBs in the States and PCCs in the Union Territories to ensure that CPCB Guidelines dated 07.01.2020 are strictly adhered to.

70. Respondent no.7 had issued Policy Circular No. 143-01/2009 dated 21.01.2009 which was amended by Policy Circular No. 176-09/2010 dated 17.09.2010 where by minimum plot size for establishment of new petrol pump was fixed as 20 m x 20 m.

71. MoRTH issued guidelines/ norms for grant of permission for construction of access to fuel stations, wayside amenities, connecting roads, other properties, rest area complexes and such other facilities vide notification No. RW/NH—33023/19/99-DO-III dated 24.07.2013. MoRTH issued another notification no. RW/NH-33032/01/2017-S&R(R) dated 26.06.2020 mentioning the plot size for petrol pumps in respect to Rural areas, Urban Areas and Hilly and Mountain terrain as 35mX35m, 30mX30m and 20mX20m respectively. Notification no. RW/NH-33032/01/2017-S&R(R) dated 26.06.2020 was amended by MoRTH on 28.01.2021 to relax minimum plot sizeto be 20mx20m as clarified by respondent no. 8 in its reply.

72. Question arises is as to whether notification issued by MoRTH and policy circular issued by IOCL prescribing minimum plot size of 20mx20m for location of new Petrol Pump/Retail Outlet is violative of order dated 18.01.2019 passed by this Tribunal in O.A. No. 86/2019 and CPCB Guidelines dated 07.01.2020.

73. It may be observed here that CPCB Guidelines dated 07.01.2020 apply to new Petrol Pump/Retail Outlet construction of which was started after 07.01.2020 and after 07.01.2020 new petrol pump/retail outlet in the vicinity of Schools, Hospitals (10 beds and above) and residential areas designated by local laws have to satisfy the land requirement of 50mX50m or 30mX30m in case of constraints in arranging plot measuring 50mX50m and implementation of additional safety measures. CPCB Guidelines dated 07.01.2020 do not make any distinction in Rural and Urban areas and Hilly and Mountain terrain and apply with equal force to the same. The notification issued by MoRTH and policy circulars issued by IOCL have to comply with the same and therefore notification issued by MoRTH and policy circular issued by IOCL have to be amended with respect to their applicability with effect from 07.01.2020.

74. Notification issued by MoRTH and circular issued by IOCL after 07.01.2020 have to clearly mention that generally new petrol pumps/Retail Outlets can be located beyond a radial distance of 50 m (from fill point/ dispensing unit/ vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per the local laws and only exceptionally in case of constraints in complying with 50 m distance criteria, new petrol pumps/ Retail Outlets can be located at the distance of not less than 30 meters from schools, hospital (10 beds and above) and residential area designated as per local laws on implementation of additional safety measures as prescribed by the PESO and notification issued by MoRTH and circular issued by IOCL after 07.01.2020 without such specific

stipulation will be violative of order dated 18.01.2019 passed by this Tribunal in O.A. No. 86/2019 and CPCB Guidelines dated 07.01.2020.

75. It follows that plot size of 20 m x 20 m for establishment of new petrol pump fixed by notification issued by MoRTH and policy circular issued by IOCL being violative of order dated 18.01.2019 passed by this Tribunal in **O.A. No. 86/2019Gyanprakash@Pappu Singh Vs. UoI & Ors** and also Guideline "H. Siting Criteria of Retail Outlets" of CPCB Guidelines dated 07.01.2020 issued by CPCB which by necessary implication require minimum plot size of 30 m x 30 m with effect from 07.01.2020 need to be reviewed/modified by MoRTH and IOCL accordingly.

76. The questions which next arise are whether siting criteria for new Petrol Pump/retail outlet laid down in Point H of CPCB Guidelines dated 07.01.2020 is applicable to the proposed Petrol Pump and whether respondent no. 7 is entitled to grant of NoC for setting up of the same as proposed in the land in question.

77. In the present case new petrol pump/retail out let is proposed to be set up on plot property ID no.131C4U3 measuring 66ftx66ft situated between Jagadhri bus stand to Agrasen Chowk at KM0.243(LHS) RD+1.400 (RHS) on Jagadhri Ponta Sahib Section of NH 73A in village and Tehsil Jagadhri, District Yamuna Nagar belonging to respondent no.3 Hindu Girls College/School, Jagadhri.

78. Respondent no.4- Pushpesh Passi took the land in question on lease from respondent no.3 Hindu Girls College/School, Jagadhri for 30years on rent of Rs.90,000/- per month. The Managing Committee of the society Hindu Girls High School and Hindu Girls College, Jagadhri in its meeting dated 24.03.2021 passed Resolution for leasing of the land for the purpose of setting up of petrol pump .Lease Deed no. 1655 dated 02.06.2021was executed in favour of Respondent no.4- Pushpesh Passi by respondent no.3-Hindu Girls College/School, Jagadhri through Executive Member Mr. Jagbir Singh authorized by the Managing Committee vide resolution dated 24.03.2021. Clause no. 3 in the lease deed permitted Respondent no.4- Pushpesh Passito use the land in question for establishment of petrol pump.

79. The Applicant has submitted that the distance between petrol pump and college is only 5-10 meters as the land (where petrol pump is being set up) is situated in the premises of college and beside the land for petrol pump there is auditorium of college which can hold 1500 students at a time. The hostel of the college is also situated adjacent to the land in question.

80. Learned Counsels for respondents no. 4 and 7 have argued that respondent no. 3 was not subject to any restriction from any authority barring it from leasing out and permitting lessee to sub-lease the land in question for setting up of petrol pump and there is no legal restriction on/bar to use by respondent no.4 of the land in question for setting up of petrol pump.

81. Vide order dated 17.08.2023 this Tribunal directed the District Magistrate, Yamuna Nagar to look into as to whether as per terms and conditions of the allotment/lease in favour of the college/school for propagation of education to the girls, the installation of petrol pump within the campus of school/college is permissible or not and whether installation of petrol pump in the campus violates the basic principles of installation of Educational Institution.

82. The District Magistrate, Yamuna Nagar vide letter no.462/PLA dated 22.09.2023 constituted a Joint Committee comprising (i) Additional Deputy Commissioner, Yamuna Nagar, (ii) Sub Divisional Magistrate, Jagadhri, (iii) Regional Officer, HSPCB, Yamuna Nagar and District Higher Education Officer, Yamuna Nagar which submitted report vide letter no.1255 dated 10.10.2023. In the report the joint committee mentioned that the Principal Hindu Girls College, Jagadhri submitted sale purchase documents vide letter dated 05.10.2023 and as per the conditions of sale deed there is no objection in setting up of petrol pump on the said land.

83. However, it may be observed here that the Joint Committee constituted by this Tribunal vide order dated 31.05.2023 submitted report dated 28.06.2023 that the distance of the auditorium situated in the college premises was measured on the spot by the revenue department from the proposed vent pipe location shown in the drawing of the retail outlet and same was found approx 11.3 meter which is not fulfilling the criteria laid down by CPCB Guidelines dated 07.01.2020.

84. The joint committee constituted by the District Magistrate, Yamuna Nagar vide letter no.462/PLA dated 22.09.2023also mentioned in its report submitted vide letter no.1255 dated 10.10.2023that the distance of the auditorium situated in the college premises was measured on the spot by the revenue department from the proposed vent pipe location shown in the drawing of the retail outlet and same was again found approx 11.3 meter which is not fulfilling the criteria laid down by CPCB memorandum dated 07.01.2020 and the petrol pump cannot be established on the land in question as it violates point No. H of CPCB Guidelines dated 07.01.2020.

85. It may be observed here that the Joint Committee constituted by this Tribunal has mentioned in its report dated 28.06.2023 that in the original layout plan submitted by IOCL with application for grant of NOC the presence of an auditorium within 11.3 meters of the proposed retail outlet was not shown.

86. Since said report raised the question as to concealment of material facts by respondents no. 3, 4 and 7,this Tribunal ,vide order dated 20.08.2024, directed the production of the original records related to the grant of NOC and also impleaded the Deputy General Manager (Retail Sales), Panipat, as Respondent No. 7.

87. The District Magistrate, Yamuna Nagar produced the original record which was returned while retaining photo stat copy of the same on record.

88. Respondent no. 7 filed reply dated 23.09.2024 denying any concealment of facts pleading as to relevant information not being available with it as referred to hereinabove.

89. Learned Counsel for respondent no. 7 has argued that the initial drawing/layout submitted to the District Magistrate, Yamuna Nagar, for the grant of the NOC clearly indicated the presence of "Hindu Girls College Land" around the Retail Outlet site. At the time of submission of application for NOC, Respondent no.7 had no access to, nor knowledge of, the internal facilities of the college or their specific uses. As such, further detailed indications regarding the internal layout of the college were not included in the submission, as this information was neither available nor accessible to Respondent no. 7 and the purpose of the buildings in the college premises was not known to Respondent no. 7.Consequently, further detailed indications were not provided in the layout. Additionally, the drawing/layout, which was duly approved by the District Magistrate, Yamuna Nagar, was prepared by an NHAI-approved consultant and is fully compliant with NHAI norms. This approved layout clearly identifies the presence of Hindu College, with the access point to the college marked as "Hindu College Gate." There has been no suppression or misrepresentation of material facts by Respondent no.7 in the drawings/layout submitted for the purpose of obtaining the NOC.

90. This submission is devoid of any merit as the distance of the auditorium building would have been visible to even the naked eye. Photographs filed with the report dated 28.06.2023 of the Joint Committee constituted by this Tribunal vide order dated 31.05.2023 conclusively establish this fact. In the facts and circumstances of the case, we are of the considered view that there was deliberate concealment of facts regarding the auditorium building by respondent no.7 in the original layout plan which disentitles respondent no.7 to grant of NOC for setting up of new Petrol Pump/Retail outlet on this ground.

91. Respondent no. 3 has also deliberately misrepresented the facts before this Tribunal by submitting that **respondent no.4 Pushpesh Passi Jagadhri has taken the farthest, vacant, non-useable land of the college on lease for installation of petrol pump; the area is far from the college playground and mess; the building called auditorium and the girl's hostel is vacant; no student is residing in the hostel building for the last 08 years.** The applicant has disputed correctness thereof and submitted that recently convocation was held in the auditorium. Respondent no. 3 has also deliberately absented from the proceedings to avoid any liability for the same. Respondent no.3 has tried to justify lease of land in question as revenue generating measure for sole utilization for the welfare of girl students of the college but the facts pleaded by respondent no.3 regarding vacant, non-useable land of the college, the building called auditorium and the girl's hostel being vacant and no student residing in the hostel building for the last 08 years raise serious doubts regarding the bona fides, competence, efficiency of the Members of the Managing Committee and disclose lack of proper management in Hindu Girls College and School, Jagadhri. **Haryana Government is directed to look into these aspects and consider the desirability of taking appropriate action for proper management of the Hindu Girls College and School, Jagadhri in accordance with law.**

92. It may also be observed here that even in the report submitted vide letter no. 73/MC dated 19.04.2023 the concerned Revenue Officers and Officials had deliberately given factually wrong report as to Hindu Girls College being situated at the distance of 100 meters and no school, hospital or residential house being situated within 100 meters whereas auditorium and hostel buildings were situated within distance of 100 meters.**Haryana Government is directed to take appropriate disciplinary action against the erring Revenue Officers and Officials in accordance with law.**

93. **Action taken report may be filed by concerned Head of Department in Haryana Government in this regard before learned Registrar General of this Tribunal within six months.**

94. Since we have held that the expression "Schools" in Point no. H of CPCB memorandum dated 07.01.2020 includes "colleges", CPCB memorandum dated 07.01.2020 will be applicable in the present case and proposed new Petrol Pump cannot be permitted to be set up in the land in question measuring 20mX20m as the same does not meet even 30mx30m siting criteria prescribed by CPCB Memorandum dated 07.01.2020.

95. Even if the expression "schools" be interpreted not to include "colleges", even then it may be observed that proposed new Petrol Pump is to be set up **not in land abutting college/school** but **in land owned and possessed by college/schoolwithin the campus thereof**. In lease deed no. 1655 dated 02.06.2021 reference is made as to Hindu Girls College and School, Jagadhri being joint owners in possession of the land in question which is also mentioned first party therein and executed the sale deed through Executive Member Mr. Jagbir Singh. Consequently, location of new Petrol Pump in the land in question jointly owned and possessed by Hindu Girls High School will not be permissible.

96. Even Otherwise, it may be observed that in report submitted vide letter no. 73/MC dated 19.04.2023 it was mentioned that as per revenue record the land in question is part of abadi deh. Consequently, the land in question is covered by the expression "residential area designated by local laws" and the siting criteria laid down by Point H of CPCB Guideline dated 07.01.2020 will be applicable to the case and in view thereof,proposed new Petrol Pump cannot be permitted to be set up in the land in question as the same does not meet even 30mx30m siting criteria prescribed by CPCB Guidelines dated 07.01.2020.

97. In view of the above, the original application deserves to be allowed and is allowed accordingly and application submitted by respondent no.7 for grant of NOC is held to be liable to be declined and NOC dated 15.05.2023 issued by the District Magistrate, Yamuna Nagar is liable to be set aside and it is so ordered accordingly.

98. The District Magistrate, Yamuna Nagar is directed to dispose of the proceedings, if any pending before him, in accordance with the observations made by this Tribunal.

99. However, in view of the facts and circumstances of the present case and similar cases coming up before this Tribunal, we are also of the considered view that the expressions "schools, hospital (10 beds and above) and residential area designated as per local laws" used in CPCB Guidelines dated 07.01.2020 purport to be exhaustive whereas the same ought to be illustrative conferring some discretion to take into consideration, instead of ignoring, similar sensitive installations/locations and the CPCB Guidelines dated 07.01.2020need to be reviewed to include other similarly sensitive installations/locations.

100. Accordingly, Ministry of Petroleum and Natural Gas (MoP&NG) and CPCB are directed to review CPCB Guidelines dated 07.01.2020 by constituting Expert Committee and circulate the same to all concerned authorities within six months for strict compliance.

101. A copy of this order may be sent to the Secretary, MoEF&CC, Secretary, MoRTH and Secretary, MoP& NG, Government of India, Chief Secretary, Government of Haryana, Member Secretary, CPCB, Chairman, IOCL and District Magistrate, Yamuna Nagar by email for requisite compliance.

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Navendu Mishra vs. Municipal Council of Seoni & Ors.

(Original Application No. 154/2023)
Decided on: 23rd July, 2025 (CZ)

CASE NOTE

In the matter, the grievance of the applicant against the respondents are flouting the settled environmental principle and violating the norms by carrying out illegal permanent construction in Dalsagar lake of Seoni City in Seoni District Madhya Pradesh, which is registered as wetland under wetlands protection and management rules 2017.

The Tribunal adjudicated upon the issue related to construction of permanent foot over bridge is a gross violation of the wetlands protection and management rules 2017, as Dalsagar lake comes under National Wetland List at Number - 1202. It was held that the District Administration shall ensure strict compliance of Section 4 of the Wetland Rules and to ensure that there will not be any encroachment on wetland, construction activities, discharge of untreated water or dumping of the garbage/solid waste/plastic waste in the Lake and the constructions raised during the pendency of this application and already raised previously must be demolished immediately at the cost of Municipal Council.

Municipal Council, Seoni shall prepare a detailed time bound action plan for the restoration of the site that shall be examined by the MPPCB and approved by MP State Wetland Authority and the State PCB is directed to realise the environmental compensation according to rules and that the amount of compensation must be utilised for the improvement of lake under the supervision of the Wetland Authority and local administration headed by the Collector. A time targeted action plan shall be prepared and submitted to Regional Office, MPPCB Seoni regarding demolition of pillars and other civil structure constructed inside the lake. Sign boards and caution boards should be installed at suitable place regarding restricted zone. Immediate actions shall be taken by Municipal Council, Seoni for performing cleaning of the lake and its boundary should be identified, demarcated and fenced to restrain any unauthorized dumping of solid/ plastic waste. Removal of weeds in a scientific manner in Dal Sagar Lake and catchment area study shall be carried out for identification of natural inlet drains of the lake to restore water in lake. Bioremediation and restoration of lake bed to improve the water carrying and holding capacity of lake. Effective measures shall be taken by the Local Body to expedite the establishment of sewerage network connections and construction & operation of STPS proposed under Amrut 2.0 Scheme in the city within time frame. The State PCB, M.P. to monitor and submit report within four months to Registrar, National Green Tribunal, Central Zone Bench, Bhopal.

With above observations, the Court disposed of the Original Application with above direction.

Navendu Mishra vs. Municipal Council of Seoni & Ors.

COUNSELS FOR APPLICANT(S):
Mr. Navendu Mishra - Applicant In Person

COUNSELS FOR RESPONDENT(S):
Mr. Prashant M. Harne, Adv
Ms. Parul Bhadoria, Adv. Mr. Deepak Awasthi, Adv. Mr.
Mehul Bhardwaj, Adv. Mr. Rohit Sharma, Adv.
Mr. Naveen Ahuja, Adv. Mr. Vinod
Nayak Adv.
Mr. Mahesh Kumar Wattee
Mr. Sant Kumar Marskole (Gond Samaj)

CORAM:
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

RESERVED ON: 14th July, 2025
PRONOUNCED ON: 23rd July, 2025

JUDGMENT

BY HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER

1. The grievance of the applicant against the respondents are flouting the settled environmental principle and violating the norms by carrying out illegal permanent construction in Dalsagar lake of Seoni City in Seoni District Madhya Pradesh, which is registered as wetland under wetlands protection and management rules 2017. The non applicant initiated the permanent construction of a foot over bridge between the land and the central island of Dalsagar Lake, Seoni City in District Seoni, M.P. to facilitate this construction, the Municipal Counseldismantled the peripheral boundary of Dalsagar, to completely drain all the water. The construction of this permanent foot over bridge is a gross violation of the wetlands protection and management rules 2017, as Dalsagar lake comes under National Wetland List at Number - 1202.

2. Dal Sagar Lake also known as Dal Sagar Talab is a manmade lake. It is an inland lake situated in the heart of Seoni city having GPS coordinates as (latitude:22.2001, Longitude:79.4042). It has a total area of approximately 18.0 hectare. A small island is located in the middle of this lake. This lake falls under the jurisdiction of the Municipal Counsel Seoni.As per the National Wetland atlas prepared by Space Application Center, ISRO and

maintained at VEDAS (Visualization of Earth Observation Data and Archival System) Portal, it is an inland manmade pond of area 17.5 Hectare and has wetland code 1202, which is also mentioned in the petition but it is not included in the state wetland list prepared by the state wetland authority. As per the inventory of wetlands (>2.25 ha) of Seoni district (M.P.) prepared as per the guidelines for preparation of inventory of the wetlands (conservation and management) rules ,2017, it is an entry no. 53 with wetland code 234560394 having area 18.31 hectare and situated within the jurisdiction of Municipal Counsel Seoni. Though it is not a Ramsar Site as per the Ramsar convention.

3. Municipal Counsel Seoni came up with the plan to install a statue of 16th century Gond King Raja Dalpat Shah on the island. In order to connect the island with main land and for the ease of the visitors, a Foot Over Bridge (F.O.B.) Construction work was started at the site approximately six months ago. Subsequently a case was filed before the NGT.

4. The matter was taken up by this Tribunal and notices were issued to the respondent. In compliance thereof, the reply by the respondents has been filed. During the course of hearing, this Tribunal constituted a committee to submit the factual and action taken report and State PCB was directed to submit the action taken report. In compliance thereof, the report of the joint committee, response on the committee report, and the action taken report has been filed by the respondents. Heard the argument of the Learned Counsel for the parties and perused the record.

5. The contention of the Learned Counsel for the applicant are that, the Dalsagar Lake has been notified as a wetland and falls under the jurisdiction of the state Wetland authority of Madhya Pradesh, as per notification no-1202- year 2019, issued under the Wetlands (Conservation and Management) Rules 2017. A small island located in the middle of this lake provides shelter and breeding ground for a variety of birds, reptiles, and other creatures, including winter migratory birds. Unfortunately, this fragile ecology of island has been damaged by cutting of trees and the construction of concrete foot over bridge by the Municipal Council of Seoni (M.P.). This lake provides habitat and food for creatures living in lake and island as well. These creatures filter out pollutants to keep the water clean, and the trees along the lake boundaries provide shade to keep the water cool for fish and water bugs.

6. The contractor is using heavy machinery on the lake's ground. And to facilitate the smooth movement of these machineries temporary road have been made , which are causing damage to the natural surface of Dalsagar Lake. These machineries are also being used on the island, resulting in the destruction of the sensitive ecology of the island and its biodiversity, including the loss of several-

year- old trees. For a long time, Dalsagar Lake was home for several aquatic species and was used for fish farming. During this entire process, the habitat for these aquatic species was completely destroyed.

7. The members of the joint committee after visiting at the site submitted the report with the legal provisions as follows :-

"Legal Provisions for the conservation and managements of the wetlands: -

Being a signatory of Ramsar convention, 1971, India has come up with the rules to preserve and regulate the wetland, so as to maintain their ecological characteristics. Subsequently, the MOEF&CC, New Delhi notified the Wetland (Conservation and Management) Rules, 2017 dated 26.09.2017 in official Gazette.

- A*s per the rule no. 4(2)(vi) of the Wetland (Conservation and Management) Rules, 2017 "any construction of a permanent nature except for boat jetties within fifty meters from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules"*
- *Also, as per the order of the Hon'ble SC in the case no. WP (civil) No. 230/2001 M.K. Balakrishnan vs Union of India dated 08.03.2022 and office memorandum issued by the GOI, all the wetlands situated within the respective district boundaries having area (> 2.25 hectare) shall be protected under rule no. 4 of the Wetland (Conservation and Management) Rules, 2017.*
- *In light of the aforementioned, it is proposed that wetlands larger than 2.25 hectares be conserved in accordance with Wetland (Conservation and Management) Rules, 2017, Rule No. 4. Thus, the Dal Sagar Lake, which has a surface area of about 18 hectacres, shall likewise be protected by the same regulation. Copy of wetland rules and office memorandum issued on date 08.03.2022 by MOEF&CC is enclosed.*

Field Observations: -

During the visit of committee various observations and statements were recorded as Panchnama, the "Sthal Nirikshan Panchnama" is enclosed.

Point-wise facts based on the documents submitted, field observations and the public statements are as follows: -

- *During the visit approximately 30% of the total wetland area was found to be filled with water. During inspection it seems that water would have been drained out for the purpose of construction of foot over bridge (F.O.B.)*
- *It was observed that, there is a vegetation/shrubs growth in the dried area of the lake post draining out.*
- *During the inspection, it was discovered that the lake had been fenced off.*
- *It was observed that the Municipal Council Seoni had given the permission and issued the tender to construct 385 m long F.O.B. connecting MPT chaupati and Central Island, on which a 25-feet stone statue of Gond king Raja Dalpat Shah would be constructed.*
- *An unmetalled road has been constructed parallel to the under-construction foot over bridge, connecting main land and Central Island.*
- *A twenty-five-foot statue of Raja Dalpat Shah was discovered during an inspection and will be erected on the island.*
- *It was noted that a cement concrete base for the statue's planned installation was being built.*
- *Since the construction of F.O.B. is a time taking process. Therefore, for the ease of transportation of materials to Central Island of lake, the Non applicant had constructed an unmetalled road parallel to the Under Construction F.O.B. connecting MPT chaupati and Central Island.*
- *During inspection it was found that a drain discharging untreated effluent directly meeting into the Dal Sagar Lake. Furthermore, small amounts of trash and plastic waste that originate from drains were observed near the lake and drain intersection.*
- *It was observed that municipal council seoni has not constructed any sewage treatment plant for seoni city till date.*
- *During the inspection, CMO Seoni submitted permission related documents and*

documents related to granted funds for the foot over bridge and statue, a copy of which is provided.

- *The committee has revisited the site on dated 04.01.2024, during inspection it has now been observed that the untreated water earlier meeting into lake has been stopped.*

Technical details of F.O.B. as observed by the M.P.P.C.B.: -

- *The aforesaid F.O.B. is a deck type bridge. It is of the length approximately 385 meters. It has 17 piers and 2 abutments. The construction work of F.O.B. is in process and all the piers have been raised.*

Water sampling: -

Following the committee's site inspection, a junior scientist from M.P.P.C.B. conducted the sampling and collected two samples, one from the drain and the other from the Talab. The important parameters of analysis report area follows:-

Parameter	***Unit***	***Sample 1: Accumulated water of Dal Sagar Lake***	***Sample 2: Drainmeeting into Dal Sagar Lake***
pH	*-*	*7.51*	*7.29*
D.O.	*mg/l*	*5.80*	*-*
B.O.D.	*mg/l*	*4.40*	*34.0*
Suspended Solids	*mg/l*	*58.0*	*108.0*
C.O.D.	*mg/l*	*30.0*	*160.0*
Dissolved Solids	*mg/l*	*320.0*	*584.0*

The analysis report showing various parameters is also being enclosed.

Action taken by the M.P.P.C.R.:-

- *The board had issued the notice on dated 24.11.2023, to the municipal council Seoni, to impose Environmental compensation for discharging untreated effluent in the lake.*

- *A Criminal Court case has been filed under section 24, 25, 43 & 44 of water (prevention and control of pollution) Act, 1974 against Municipal council Seoni*

Recommendations:

- *Municipal council, Seoni shall construct Sewage treatment plant for the treatment of the domestic effluent of sufficient capacity.*
- *To improve the aesthetics and water quality of the lake, fountains shall be installed by the Municipal Council Seoni.*
- *Since the majority of the lake's surface is dry, the lake needs to be cleaned and desilted.*
- *Municipal council Seoni shall take effective steps for the rejuvenation of the lake."*

8. After hearing the parties vide order dated 08.01.2024 this Tribunal observed as follows :-

1. *The activities carried out in the wetland is in violation of notification dated 26.09.2017 issued by MoEF&CC which provides that many wetlands are threatened by reclamation and degradation through drainage and landfill, polluting the discharge domestic waste and solid waste and there are cases of over exploitation of natural resources resulting in loss of bio-diversity. Accordingly, in Section 4 following activities have been declared to be prohibited within the wetland.*

"4. Section 4 (2)

(i) *onversion for non-wetland uses including encroachment of any kind;*

(ii) *setting up of any industry and expansion of existing industries;*

(iii) *manufacture or handling or storage or disposal of construction and demolition waste covered under the Construction and Demolition Waste Management Rules, 2016; hazardous substances*

covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically engineered organisms or cells, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008; electronic waste covered under the E- Waste (Management) Rules, 2016;

(iv) solid waste dumping;

(v) discharge of untreated wastes and effluents from industries, cities, towns, villages and other human settlements;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules; and,

(vii) poaching."

2. *There are provisions of wetland authority in Section 5 and constitution of National Wetland Committee and without the recommendations of the committee, State Government duly approved by the Central Government, no activities can be permitted to be continue within the wetland as provided under Section 4 of the notification.*

3. *In view of the above, we direct the respondent to strictly comply Section 4 of the wetland rules and to ensure that there will not be any encroachment on wetland, there will not be any construction activities, discharge of untreated water or throwing of the garbage or solid waste or plastic waste in the waterbody/wetland.*

4. *The report reveals that there are serious violations of environmental rules, the water is totally drained out by the use of pumps, nallah/drainage system has been diverted towards the wetland, contaminating the water quality and without the sanction and approval according to the rules, the Municipal*

Corporation has acted in violation of notification dated 26.09.2017 violating the Wetland Rules. Accordingly, the State Pollution Control Board is further directed to communicate the Municipal Corporation to immediately take necessary action and strictly observe Rule 4 and prohibit immediately the prohibited categories of constructions and activities as provided in Section 4 of the Wetland Rules and State Pollution Control Board is further directed to calculate the environmental compensation and realise according to rules and to submit further action taken report before this Tribunal within three weeks.

5. *It is surprising that the authorities / municipal corporation to whom the responsibility to maintain the Rule of Law as given are directly or indirectly violating the rules and acting in violation of notification as quoted above."*

9. Compliance report on behalf of Municipal Council, Seoni, respondent no. 1, has been filed taking the stand that the decision to install a statue of Raja Dalpat Shah on the lake was taken by the Jila Yojna Samiti and that the fund was sanctioned by Vidhayak Nidhi and permission was granted by the Collector, Seoni to install the statue of Raja Dalpat Shah and for construction of pathway to reach the Island where the statue was to be installed. After the internal communication, NIT was floated to construct the foot over bridge.

10. The compliance report of Municipal Council, Seoni states about following corrective measures:

"CORRECTIVE STEPS.

1. *The answering respondent has taken following corrective steps in compliance of the Report submitted by the M.P. Pollution Control Board and directions issued by the Tribunal :-*

   a) *That, on 11.01.2024, the letter is issued to the Contractor to stop the construction work in the Dal Sagar Talab, till further orders.*

   b) *That, the Drain/Nala, situated near the Rain Basera, which was meeting into Dal*

Sagar Talab, has been completely closed and now no Untreated Water is being discharged in the Talab.

c) *That, Municipal Council has taken extensive drive for disilting of Talab and for removal of thrash and Plastic and also the vegetation, covering the Talab.*

d) *That, on 16.01.2024, the answering respondent has informed the Regional Officer, M.P. Pollution Control Board, Jabalpur, regarding the steps taken, in compliance of the orders passed by the Tribunal.*

e) *That, it would be proper here to brought to the knowledge of this Tribunal that an amount of Rs.6,31,14,987/- (Rupees Six Crores Thirty One Lakhs Fourteen Thousand Nine Hundred & Eighty Seven only) have been sanctioned under the Chief Minister Infrastructur Scheme for Musical Fountain & Sound System alongwith0.6.. number of Jet Fountain and a Gallery on the open pillars, is also proposed to be constructed along side the banks of Talab, to view the Musical Fountain and Sound system. Looking to the fact, that as the issue is pending before this Hon'ble Tribunal, no further steps is being undertaken unless the Hon'ble Tribunal approve the installation of Musical Fountain, Jet Fountain and the Gallery. The copy of relevant documents in relation to the Musical Fountain, Jet Fountain and Gallery are collective being filed herewith.*

2. *That, in view of abovementioned facts, it is sufficiently clear that the Municipal Corporation, has acted as per the recommendation of the Jila Yojana Samiti and the directions issued by different State Authorities for construction of Foot Over Bridge and installation of Statue. It is clear that the Municipal Council, has not allocated any amount for the work in question and all the amount has been sanctioned and provided by the state authorities in view of the*

> *recommendations made by the Zila Yojna Samiti. The work in question was started after approval and sanction by the state authorities and thus no fault is lies with the municipal counsel and it has worked as an executing agency only."*

11. The above corrective steps do not indicate any action to remove the construction which has already been raised in violation of Rule 4.

12. The District Collector has constituted a committee of administrative/executive officers and after examining the site they have submitted the report that foot over bridge is being constructed and the water of the lake has been discharged by use of pumps and there are slabs in the middle of the lake.

13. It is further submitted that the direction of the discharge of the Nallah has been diverted towards the pond side, resulting the discharge of untreated water towards the lake. In the action taken report submitted by the State Pollution Control Board it has been submitted that the District Magistrate, Seoni has directed the Chief Municipal Officer, Seoni to stop the on-going construction activities at Dal Sagar Lake, and further measures are being taken to prevent the discharge of untreated water/sewage water into the Dal Sagar Lake. It is further submitted that State PCB has calculated the environmental compensation and notice has been issued for the payment.

14. Learned Counsel for the State Pollution Control Board, Ms. Parul Bhadoria, has cited the directions for calculation of environmental compensation which was directed by this Tribunal in O.A. No. 74/2022 (CZ) titled *Mr. Rashid Noor Khan vs. BMC & Ors.* The directions are as follows :-

> *"45. We direct the respondent to strictly comply Section 4 of the wetland rules and to ensure that there will not be any encroachment on wetland, there will not be any construction activities, discharge of untreated water or throwing of the garbage or solid waste or plastic waste in the water body/wetland.*
>
> *46. In such matters, we find that real damage to ecology and environment with scientific precision is difficult to ascertain. It is further difficult to measure it very accurately in terms of money. However, this Tribunal is under Statutory duty to seek restoration of degraded environment by applying principal of 'Polluter Pays' and if necessary, can ascertain and assess the damage in terms of money. In*

assessing environmental compensation, objective consideration involving some element of subjective satisfaction. due to very nature of functions to be performed by this Tribunal, have to be followed. In the entirety of the facts of this case, in our view, an interim compensation of Rs. One Crore should be directed to be paid by respondent 1 which shall be utilized for restoration of ecology and environment and if any further amount is required, the same later on can be demanded and realised by MPPCB from BMC.

47. In view of the above discussion, OA is hereby allowed. Respondents, and in particular respondent 1, is restrained from going ahead with raising of any permanent construction over the site in question. RCC pillars, to the extent construction has already been raised, shall be demolished within one month from today.

Since permanent construction at the prohibited site has caused damage to the site and requires restoration of the site as also restoration of the ecology and remediation of damage already done to environment, we impose inter- alia environmental compensation of Rs. One Crore upon respondent 1 i.e., BMC which it shall deposit within three months with MPPCB. The said amount of environmental compensation shall be utilized/spent for restoration of the site in question as it originally was and also for restoration of ecology and environment by preparing a plan. The said plan shall be prepared by a Joint Committee of CPCB, MPPCB, Integrated Regional Office, MoEF&CC and Collector, Bhopal within two months.

48. The amount of environment compensation deposited by respondent I shall be spent within six months of preparation of plan, for restoration of the site and ecology/environment.

49. If the expenses for restoration are more than Rs. One Crore, it will be open to MPPCB to raise demand of such additional amount of environmental compensation from BMC and

the same shall be paid by BMC within one month of raising of demand. If the amount of interim compensation of Rs. One Crore, exceeds the actual expenses, the balance amount shall be utilised for maintenance and cleanliness of Bhopal Lake i.e., Bhoj Wetland."

15. The submission of the Learned Counsel for the applicant are that there has been no action taken by the Municipal Council, Seoni regarding the encroachment on the banks of Dal Sagar Lake/Talab on the south and west side, and that there are a large number of garages and automobile body-making workshops operating in the vicinity of Dal Sagar Lake/Talab on the western bank within 50 mtr. of the lake boundary. It is further submitted that, there are two liquor shops operating within 50 mtr. of perimeter of Dal Sagar Lake and other items leading to the generation of a significant amount of single-use plastic waste.

16. There are two public toilets operating directly on the ridge or boundary of Dalsagar Talab. Their contaminated water and waste are seeping directly into Dalsagar Talab due to the absence of a sewage treatment plant. The actual fact is that underground pipes have been installed to channel water flow into the talab, which have not been permanently removed, and the flow of water into Dalsagar Talab continues.

17. Regarding the restoration of Dalsagar Lake, there was a canal system connecting the three major talabs of Seoni with Babaria Lake. The overflow water from Babaria Lake was directed to this lake during the monsoon season to fill these lakes with rainwater. However, due to the lack of maintenance of these canals over an extended period, they have suffered destruction and encroachment. Reviving these canals is of utmost importance. No action has been taken by competent authorities to remove the temporary road constructed from the bank of the lake to the central island, facilitating the easy movement of raw materials and heavy machinery used in the construction of the foot overbridge. Additionally, a temporary storeroom constructed by the contractor in the middle of the lake has also not been removed. Furthermore, no steps have been taken to dismantle the pillars and the large concrete platform constructed on the fragile island of Dalsagar Lake to install the statue on the island.

18. The Municipal Corporation of Seoni is proceeding with the construction of shops on the ridge or boundary of Budhwari Talab, which is also a wetland spanning over 2.5 hectares. This repeated violation of wetland rules and disregard for Court orders demonstrates intentional disregard for environmental laws by the municipal corporation and the Seoni Collector.

19. The submission of the learned counsel for respondent no. 3 District

Collector, Seoni are that the lake was constructed for the primary purpose of supporting irrigation in the surrounding area by Gond King Dalpat Shah, and it is water lake with the only source of replenishment through rain- water. He has justified the construction of statue or monument and utilization of funds allotted by the authorities but no sufficient explanation has been explained with regard to protection of lake and compliance of the provisions contained in Rule 4 of the Wetland (Conservation and Management) Rule 2017. Though it has been stated that the administration is taking all necessary steps to beautify the banks of the lake by undertaking extensive plantation and that necessary actions are being taken to prevent the discharge of untreated water/sewage water into the lake.

20. During the course of hearing, some applications by the intervener, the contractor of the work has been moved before this Tribunal for the measurement of the construction so that the cost of the labor and other material supplied by the contractor must be paid by the authorities concerned. This Tribunal is not concerned with the contract agreement, however, if there are any expenditures borne by the contractor, the amount must be released according to rules which shall be decided by the administration according to rules.

21. India is endowed with extraordinarily diverse and distinctive traditional water bodies found in different parts of the country, commonly known as ponds, tanks, lakes, vayalgam, ahars, bawdis, talabs and others. They play an important role in maintaining and restoring the ecological balance. They act as sources of drinking water, recharge groundwater, control floods, support biodiversity, and provide livelihood opportunities to a large number of people. Currently, a major water crisis is being faced by India, where 100 million people are on the frontlines of a nationwide water crisis and many major cities facing an acute water shortage. The situation will worsen as United Nations and Niti Ayog reports say that the demand for water will reach twice the available supply, and 40 per cent of India's population will not have access to clean drinking water by 2030. One of the reasons is our increasing negligence and lack of conservation of waterbodies. Since independence, the government has taken control over the waterbodies and water supply. With a colonial mindset, authorities move further and further away in the quest of water supply, emphasing more on networks, infrastructure and construction of dams. This, over time, has led to the neglect of waterbodies and catchments areas. As a result, we have started valuing land more than water. In the last few decades, waterbodies have been under continuous and unrelenting stress, caused primarily by rapid urbanisation and unplanned growth. Encroachment of waterbodies has been identified as a major cause of flash floods in Mumbai (2005), Uttarakhand (2013), Jammu and Kashmir (2014) and Chennai (2015). Further, waterbodies are being polluted by untreated effluents and sewage that are continuously being dumped into them. Across the country, 86 waterbodies are critically polluted, having a chemical oxygen demand or COD

concentration of more than 250 mg/l, which is the discharge standard for a polluting source such as sewage treatment plants and industrial effluent treatment plants. In urban India, the number of waterbodies is declining rapidly. For example, in the 1960s Bangalore had 262 lakes. Now, only 10 hold water.

Similarly, in 2001, 137 lakes were listed in Ahmedabad. However, by 2012, 65 were already destroyed and built upon. Hyderabad is another example. In the last 12 years, it has lost 3,245 hectares of its wetlands. The decline in both the quality and quantity of these waterbodies is to the extent that their potential to render various economic and environmental services has reduced drastically. Although there are sufficient polices and acts for protection and restoration of waterbodies, they remain insufficient and ineffective.

22. Realizing the seriousness of the problem confronting waterbodies, the Centre had launched the Repair, Renovation and Restoration of Water Bodies' scheme in 2005 with the objectives of comprehensive improvement and restoration of traditional water bodies. These included increasing tank storage capacity, ground water recharge, increased availability of drinking water, improvement of catchment areas of tank commands and others. However, in this regard, not much has been seen on the ground.

23. It is of utmost importance for meeting the rising demand for water augmentation, improving the health of waterbodies as they provide various ecosystem services that are required to manage microclimate, biodiversity and nutrient cycling. Many cities are working towards conservation of waterbodies like the steps initiated in the capital city of Delhi for instance. In turning Delhi into a city of lakes, rejuvenation of 201 waterbodies has been finalised. Of these, the Delhi Jal Board (DJB) plans to revive 155 bodies while the Flood and Irrigation Department will revive 46. DJB claims that the aim is to achieve biological oxygen demand or BOD to 10ppm and total suspended solids to 10mg/l. Also the establishment of the Wetlands Authority by the Delhi government is a welcome step towards notifying and conserving natural waterbodies. In order to achieve the goal of revival of waterbodies, it is important to understand that one solution may not fit all the waterbodies. Depending on the purpose, ecological services, livelihood and socio- cultural practices, the approach will vary from one waterbody to another. However, the issues with regard to lack of data and action plans, encroachments, interrupted water flow from the catchment, siltation, violations of laws, solid waste deposit and polluted water, involvement of too many agencies, etc. have to be taken into consideration.

24. Action needs to be taken towards:

1. Attaining sustainability. Thus, emphasis on

long- term goals, operation and maintenance should be included along with the allocation of budget.

2. Success of the lakes should be tested on all three fronts namely economic, environmental and social. Many studies point that a deliberate effort has to be made on the social front for which better publicity of the environmental benefits of the project and enhancing environmental awareness, especially among the local community is required.
3. Encouraging local people to collaborate with other stakeholders to successfully utilise resources and ensure the protection and conservation of waterbodies.
4. Traditionally, water was seen as a responsibility of citizens and the community collectively took the responsibility of not only building but also of maintaining the water bodies. This needs to be brought back into the system.
5. Thus, an integrated approach taking into account the long-term sustainability, starting from the planning stage where looking at every waterbody along with its catchment, is required.

25. It is further reported by the State Pollution Control Board that untreated/sewage water is being discharged continuously in the water body. The rule does not provide such activities. The legislature has enacted the Water (Prevention and Control of Pollution) Act, 1974 to provide for the prevention and control of water pollution and the maintaining or restoring of water and for carrying out the aforesaid purpose the Board has been constituted. It is argued by the Learned Counsel for the applicant that the problem of pollution of rivers, water bodies and streams has assumed considerable importance and urgency in recent years as a result of the growth of industries and the increasing tendency to urbanization. It is therefore essential to ensure that the domestic and industrial effluents are not allowed to be discharged into the water course without adequate treatment as such discharges could render the water unsuitable either source of drinking water as well as for supporting fish life and for use in irrigation. Pollution of rivers, water bodies and streams also causes increasing damage to the country's economy. The relevant sections of the Water (Prevention and Control of Pollution) Act, 1974 are as follows:-

Section 2 (e)-

Pollution which means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

Section 17 -

That the State Board shall plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof; to advise the State Government on any matter concerning the prevention, control or abatement of water pollution; to evolve methods of utilisation of sewage and suitable trade effluents in agriculture; to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream (1(l)(i) take necessary action for the prevention, control or abatement of discharge of waste into streams or wells or water bodies.

Section 24 -

Provides prohibition on use of stream or well for disposal of polluting matter, etc.

(1) Subject to the provisions of this section, -

(a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any 1 [stream or well or sewer or on land]; or

(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead

to a substantial aggravation of pollution due to other causes or of its consequences.

(2) (c) putting into an stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of such stream.

Section 25 –
Provides restrictions on new outlets and new discharges.

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board,--

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outletsfor the discharge of sewage; or begin to make any new discharge of sewage;

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application."

Section 33 –
Power of Board to make application to courts for restraining apprehended pollution of water in streams or wells

1) *Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by reason of the disposal or likely disposal of any matter in such stream or well or in any sewer or on any land, or otherwise, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class, for restraining the person who is likely to cause such pollution from so causing.*

2) *On receipt of an application under sub-section (1) the court may make such order as it deems fit.*

3) *Where under sub-section (2) the court makes an order restraining any person from polluting the water in any stream or well, it may in that order-*

   (i) direct the person who is likely to cause or has caused the pollution of the water in the stream or well, to desist from taking such action as is likely to cause pollution or, as the case may be, to remove from suchstream or well, such matter, and

   (ii) authorise the Board, if the direction under clause

      (i) (being a direction for the removal of any matter from such stream or well) is not complied with by the person to whom such direction is issued, to undertake the removal and disposal of the matter in such manner as may be specified by the court.

4) *direct the person who is likely to cause or has caused the pollution of the water in the stream or well, to desist from taking such action as is likely to cause pollution or, as the case may be, to remove from such stream or well, such matter, and*

   i. authorise the Board, if the direction under clause (i) (being a direction for the removal of any matter from such stream or well) is not complied with by the person to whom such direction is issued, to undertake the

removal and disposal of the matter in such manner as may be specified by the court.

33 A. Power to give directions Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions. Explanation : For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct- (a) the closure, prohibition or regulation of any industry, operation or process; or (b) the storage or regulation of supply of electricity, water or any other service.

Section 41 –
Failure to comply with directions under Sub-Section (2) or Sub-Section (3) of Section 20, or order issued under Clause (c) of Sub-Section (1) of 32 or directions issued under Sub- Section (2) of Section 33 of Section 33A.

1. *Whoever fails to comply with any direction given under sub- section (2) or sub-section (3) of section 20 within such time as may be specified in the direction shall, or conviction, be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.*
2. *Whoever fails to comply with any order issued under clause (c) of sub-section (1) of section 32 or any direction issued by a court under sub-section (2) of section 33 or any direction issued under*

section 33A shall, in respect of each such failure and on conviction, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

3. *If the failure referred to in sub-section (2) continues beyond a period of one year after the date of conviction, the offender shall, on conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.*

Section 42 -
Penalty for certain acts.

(1) Whoever –

(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or

(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or

(c) damages any works or property belonging to the Board, or

(d) fails to furnish to any officer or other employee of the Board any information required by him for the purpose of this Act, or

(e) fails to intimate the occurrence of an accident or other unforeseen act or even under section 31 to the Board and other authorities or agencies as required by that section, or

(f) in giving any information which he is required to give under this Act, knowingly or willfully makes a statement which is false in any

material particular, or

(g) for the purpose of obtaining any consent under section 25 or section 26, knowingly or willfully makes a statement which is false in any material particular, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to 1 [ten thousand rupees] or with both.

(2) Where for the grant of a consent in pursuance of the provisions of section 25 or section 26 the use of a meter or gauge or other measure or monitoring device is required and such device is used for the purposes of those provision, any person who knowingly or willfully alters or interferes with that device so as to prevent it from monitoring or measuring correctly shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to 1 [ten thousand rupees] or with both.

Section 43 –
Penalty for contravention of provisions of Section 24.

Whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term which shall not be less than 1 [one year and six months] but which may extend to six years and with fine.

Section 44 –
Penalty for contravention of Section 25 or Section 26.

Whoever contravenes the provision of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than 1 [one year and six months] but which may extend to six years and with fine.

Section 45 –
Enhanced Penalty after previous conviction.

If any person who has been convicted of any offence under section 24 or 25 or section 26 is again found guilty of an offence involving a contravention of the same provision, he shall, on the second and on

every subsequent conviction, be punishable with imprisonment for a term which shall not be less than 2 [two years] but which may extend to seven years and with fine: Provided that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

Section 45A
Penalty for contravention of certain provisions of the Act.

3. [Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure.

Section 48 –
Provides that offences by government departments.

Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Section 60 –
The Provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

Thus, it is a statutory duty of the State Pollution Control Board to check the abatement of the water pollution and also advice the authorities concerned and failure to comply the statutory duty is defiance of the act and necessary action with calculation and recovery of environmental compensation is the pious duty of the Pollution Control Board. We hope and trust that the State Pollution Control Board will nothesitate to proceed according to law and try to fulfill the purpose of the act."

26. Learned Counsel for the State Mr. Prashant M. Harne has submitted that a decision has been taken by the District Administration for construction of memorial statue and platform and beautification by way of construction of 19 columns of foot-bridge for construction of slab which is not permitted in the wetland rules. State/District Administration/District Magistrate/CMO is required to strictly follow the Wetland Rules which is quoted below:-

i. It is proper to quote the Sections of Wetlands (Conservation and Management) Rules, 2017 which are as follows:-

Section 2 (g)

"wetland" means an area of marsh, fen, peatland or water; whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters, but does not include river channels, paddy fields, human-made water bodies/tanks specifically constructed for drinking water purposes and structures specifically constructed for aquaculture, salt production, recreation and irrigation purposes.

Section 4

Restrictions of activities in wetlands.—

1) *The wetlands shall be conserved and managed in accordance with the principle of 'wise use' as determined by the Wetlands Authority.*
2) *The following activities shall be prohibited within the wetlands, namely,-*
   - *(i) conversion for non-wetland uses including encroachment of any kind;*
   - *(ii) setting up of any industry and expansion of* existing industries;
   - *(iii) manufacture or handling or storage or disposal of construction and demolition waste covered under the Construction and Demolition Waste Management Rules, 2016; hazardous substances covered under the Manufacture, Storage and Import of*

Hazardous Chemical Rules, 1989 or the Rules for Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically engineered organisms or cells, 1989 or the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008; electronic waste covered under the E-Waste(Management) Rules, 2016;

(iv) solid waste dumping;

(v) discharge of untreated wastes and effluents from industries, cities, towns, villages and other human settlements;

(vi) any construction of a permanent nature except for boat jetties within fifty metres from the mean high flood level observed in the past ten years calculated from the date of commencement of these rules; and,

(vii) poaching.

Provided that the Central Government may consider proposals from the State Government or Union Territory Administration for omitting any of the activities on the recommendation of the Authority."

ii. *It has further been provided in the Section 5 of the Wetlands Rules directing the State Government to prepare a list of all the wetlands of the State within three months from the date of publication of these rules and to prepare a list of wetlands to be notified, within six months from the date of publication of these rules taking into cognizance any existing list of wetlands prepared/notified under other relevant State Acts and recommend identified wetlands, based on their Brief Documents, for regulation under these rules. Further, there is a provision to prepare a comprehensive digital inventory of all wetlands within a period of one year from the date of publication of these rules and upload the same on a dedicated web portal to be developed by the Central Government for the said purpose, the inventory to be updated every ten years. It has further been provided that the State has to develop a comprehensive list of activities to be regulated and permitted within the notified wetlands and their zone of influence. In cases wherein lands within boundary of notified wetlands or wetlands complex have private tenancy rights, recommend*

mechanisms for maintenance of ecological character through promotional activities.

***Section 7** of the Wetlands (Conservation and Management) Rules, 2017 provides as follows:-*

> *"Delegation of powers and functions to the State Governments and Union Territory Administrations.—*
>
> *(1) The concerned Department of the State Government or Union Territory Administration shall, within a period of one year from the date of publication of these rules, prepare a Brief Document for each of the wetland identified for notification, providing:—*
>
> *(a) demarcation of wetland boundary supported by accurate digital maps with coordinates and validated by ground truthing;*
>
> *(b) demarcation of its zone of influence and land use and land cover thereof indicated in a digital map;*
>
> *(c) ecological character description;*
>
> *(2) The State Government or Union Territory Administration shall, after considering the objections, if any, from the concerned and affected persons, notify the wetlands in the Official Gazette, within a period not exceeding 240 days from the date of recommendation by the Authority".*

Accordingly, it is mandatory duty of the State Authorities to demarcate and publish the list of wetlands within the period as prescribed above and if it is not done it is violation of rules and necessary disciplinary action should be taken against the authority concerned. We are of the view that the rules could have been followed and if not done the respondents are directed to expedite it, execute it and to publish in public domain.

iii. When the law protector becomes the law violators, how law will be protected. The basic principle of rule of law is to follow rule/ law and not to break or violate it. For the negligence of those to whom public duties have been

entrusted can never be allowed to cause public mischief. Public servants if committing wrong in discharge of statutory functions and later on if it was found not be in accordance with law within the knowledge of the officer concerned then it cannot be said to be the work and duty within the definition of State Act.

iv. The action and construction is not only disregard to the law but it is negation of the authority of the State by the public official doing the act and expending the budget in accordance with their wishes. An action specifically punitive action does lie for doing what the legislature has authorized if it is done negligently carelessly and in violation of the law. Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation. Any act by any officer in violation of the rules is abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury. The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when theofficer discharges his duty mala-fidely and not in accordance with the guidelines, when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable

functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook.

v. Absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The Rule of Law means that the decisions should be made by the application of known principles and rules, such decisions should be predictable and the citizens should know where he is. If decision is taken without any principle or without any rule, it is unpredictable and such decision is the anti-thesis of a decision taken in accordance with the Rule of Law. Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury."

27. We have further considered the relevant provisions and sustainable development and reminded the State with the state duties which is discussed in Original Application No. 17/2018(CZ) decided on 21.09.2020, which is quoted below:-

1. In the case reported in S.G. Jaisinghani. Vs. Union of India AIR 1967 SC 1427, Hon'ble Supreme Court held that absence of arbitrary power, is first essential of 'rule of law' upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision

taken in accordance with the rule of law.

In the case reported in (2009) 10 SCC 388, Shanti Zenith Metal Pvt. Ltd. Vs. State of Maharashtra, Hon'ble Supreme Court held that in case an applicant approaches the Court, complaint against statutory authority alleging arbitrariness, bias or favouritism, the Court being the custodian of law must examine the allegation as to whether there is any substance in those allegations. Hon'ble Supreme Court reiterated the principle laid down in the case of S.G. Jaisinghani (supra) and ruled that State action must be bona fide and not be arbitrary or suffering from favouritism.

2. *In the case reported in AIR 1975 SC p. 2260, Hon'ble*
Supreme Court interpreted the rule of law as under:

> *"205. Rule of Law postulates that the decisions should be made by the application of known principles and rules and in general such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is not predictable and such such decision is the antithesis of a decision taken in accordance with the rule of law."*
>
> *94. In the case reported in (2011) 6 SCC 508: NOIDA Entrepreneurs Association. Vs. NOIDA and others, Hon'ble Supreme Court while emphasising for maintenance of rule of law in the country observed that public bodies or the State instrumentalities are trustees of the public property and their action must be in conformity with the Statutory provisions and also should be just and fair, to quote relevant portion:*
>
> *"38. The State or the public authority which holds the property for the public or which has been assigned the duty of grant of largesse etc., acts as a trustee and, therefore, has to act fairly and reasonably. Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests. As such, all powers so vested in him are meant to be exercised for*

public good and promoting the public interest. Every holder of a public office is a trustee.

39. State actions are required to be non-arbitrary and justified on the touchstone of Article
14 of the Constitution. Action of the State or its instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a "democratic form of Government demands equality and absence of arbitrariness and discrimination". The rule of law prohibits arbitrary action and commands the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

40. The Public Trust Doctrine is a part of the law of the land. The doctrine has grown from Article 21 of the Constitution. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fides, as it would only be a case of colourable exercise of power. The Rule of Law is the foundation of a democratic society. (Vide: M/s. Erusian Equipment & Chemicals Ltd. v. State of West Bengal & Anr., AIR 1975 SC 266; Ramana Dayaram Shetty v. The International Airport Authority of India & Ors., AIR 1979 SC 1628; Haji T.M. Hassan Rawther v. Kerala Financial Corporation, AIR 1988 SC 157; Kumari Shrilekha Vidyarthi etc. etc. v. State of U.P. & Ors., AIR 1991 SC 537; and M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu & Ors., AIR 1999 SC 2468)."

95. A country should not be ruled by men but should be ruled by law. It means, the State action must conform to statutory provisions. The power must flow from Rules, Regulations and

statutory provisions. In absence of powers conferred by the statutory provisions, State or its instrumentalities cannot divest a person from his or her property or abridge or dilute the right protected by Articles 14 and 21 of the Constitution of India safeguarding life, liberty livelihood or quality of life."

3. Arbitrariness of public authorities are antithesis of rule of law. In M/s. Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal & Anr., AIR 1975 SC 266, the Supreme Court observed that where Government activity involves public element, the "citizen has a right to claim equal treatment", and when "the State acts to the prejudice of a person, it has to be supported by legality." Functioning of "democratic form of Government demands equality and absence of arbitrariness and discrimination".

Similarly, in Ramana Dayaram Shetty Vs. The International Airport Authority of India & ors., AIR 1979 SC 1628, the Apex Court observed that every action of the executive Government must be informed by reasons and should be free from arbitrariness. That is the very essence of rule of law and its bare minimum requirement.

Thus, the decision taken in an arbitrary manner contradicts the principle of legitimate expectation and the plea of legitimate expectation relates to procedural fairness in decision making and forms a part of the rule of non-arbitrariness as denial of administrative fairness is Constitutional anethama. (Vide E.P. Royappa Vs. State of Tamil Nadu, AIR 1974 SC 555; Smt Maneka Gandhi Vs. Union of India & Anr. AIR 1978 SC 597; Ghaziabad Development Authority Vs. Delhi Auto & General Finance Pvt. Ltd. & Ors., AIR 1994 SC 2263; and Ku. Shrilekha Vidyarthi Vs. State of U.P. & ors., AIR 1991 SC 537).

The rule of law inhibits arbitrary action and such action is liable to be invalidated. Every action of the State or its instrumentalities should not only be

fair, legitimate and above- board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favouritism and nepotism. (Vide Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, AIR 1988 SC 157).

In the State of Andhra Pradesh & Anr. Vs. Nalla Raja Reddy & ors., AIR 1967 SC 1458, the Constitution Bench of the Apex Court observed as under:-

> *"Official arbitrariness is more subversive of doctrine of equality than the statutory discrimination. In spite of statutory discrimination, one knows where he stands but the wand of official arbitrariness can be waved in all directions indiscriminately."*

Similarly, in S.G. Jaisinghani Vs. Union of India & ors., AIR 1967 SC 1427, the Constitution Bench of the Apex Court observed as under:-

> *"In the context it is important to emphasize that absence of arbitrary power is the first essence of the rule of law, upon which our whole Constitutional System is based. In a system governed by rule of law, discretion, when conferred upon Executive Authorities, must be confined within the clearly defined limits. Rule of law, from this point of view, means that the decision should be made by the application of known principle and rules and in general such decision should be predictable and the citizen should know where he is, if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law."*

3. *Statutory rules are required to be observed. It is settled law that when the action of the State or its instrumentalities is not as per the rules or regulations and supported by a statute, the Court must exercise its jurisdiction to declare such an act to be illegal and invalid.*

In Sirsi Municipality Vs. Cecelia Kom Francis Tellis, AIR 1973 SC 855, the Supreme Court

observed that "the ratio is that the rules or the regulations are binding on the authorities."

Similarly, a Constitution Bench of the Hon'ble Supreme Court in Sukhdev Singh & Ors. Vs. Bhagatram Sardar Singh Raghuvanshi & Anr., AIR 1975 SC 1331, has observed as under:-

> *"The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by Courts to invalidate actions in violation of rules and regulations. The existence of rules and regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard.*
>
> *The statutory regulations in the cases under consideration give the employees a statutory status and impose restrictions on the employer and the employee with no option to vary the conditions……In cases of statutory bodies there is no personal element whatsoever because of the impersonal character of statutory bodies… the element of public employment or service and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring (action) in violation of rules and regulations to be void. This Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute."*

28. Article 21 of the Constitution of India protects not only the human rights but also casts an obligation on human beings to protect and preserve a specie becoming extinct, conservation and protection of environment is an inseparable part of right to life. In M. C. Mehta v. Kamal Nath and Others (1997) 1 SCC 388, the Court enunciated the doctrine of "public trust", the thrust of that theory is that certain common properties such as rivers, seashores, forests and the air

are held by the Government in trusteeship for the free and unimpeded use of the general public. The resources like air, sea, waters and the forests have such a great importance to the people as a whole, that it would be totally unjustified to make them a subject of private ownership. The State, as a custodian of the natural resources, has a duty to maintain them not merely for the benefit of the public, but for the best interest of flora and fauna, wildlife and so on. The doctrine of 'public trust' has to be addressed in that perspective.

29. While disposing the Original Application No. 325 of 2015 vide order dated 18.11.2020, this Tribunal, while dealing with restoration of water bodies observed as follows:-

> *"The protection of water bodies not only add to availability of water for different purposes, it also contributes to recharge of ground and maintaining e- flow in the rivers, is congenial to micro climate in sub- watersheds as well as enhancing the natural aesthetics. While the rain water harvesting is certainly important,* ***harvesting surplus water during excessive rains from any areas of catchment needs to be optimized by enhancing the capacity of the existing ponds/water bodies, creation of water harvesting structures in the sub- watersheds to the extent possible, apart from setting up of additional water bodies/water harvesting structures wherever viable, utilizing available funds including under MGNREGA and involving the community at large at every level.*** *Gram Panchayats can certainly play a significant role in the matter. Once adequate capacity enhancement of waterbodies takes place, excess flood/rain water can be channelized by using appropriate water harvesting techniques. This action needs to be coordinated by the District Magistrates in coordination with the Department of Irrigation and Flood Control or other concerned Departments such as Department of Rural Development / Urban Development / Local Bodies / Forests / Revenue etc. The District Magistrate may as far as possible hold a meeting of all the stakeholders for the purpose as per the District Environment Plan or Watershed Plan within one month from today. The District Magistrates may also ensure that as far as possible atleast one pond/water body must be restored in every village, apart from creation of any new pond/water body."*

30. The entire land of water body, minerals etc. are the property of the State

Government. The State Government is the owner of the land including water bodies and the Municipal Corporation was not competent to take any decision to construct commercial shops or residential buildings on and around the said water body. He has also taken reliance on the judgement of the Hon'ble the Madhya Pradesh High Court in Sukchain vs. the State of Madhya Pradesh decided on 20.09.2017 (High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 1377/2016). The relevant portions are quoted as below:

> "14. ***This is a case where Gram Sabha and petitioners on the strength of Article 243(A) and Sections-5(A) and 7 of the 41 Adhiniyam, trying to justify the resolution and construction of shops at the pond whereas Government's stand is that said provisions do not confer any such licence to Gram Sabha to construct the shops at the pond***. *This interesting conundrum can be best defined in the words of Justice K.K. Mathew:*
>
> > *"The major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty become licence; and the difficulty has been to discover the practical means of achieving this grand objective and to find the opportunity for applying these means in the ever shifting tangle of human affairs."*
>
> *[see- 'Legends in Law', Page 372, Universal Publication]*
>
> *15. Before dealing with rival contentions, it is apposite to refer the relevant portion of Sections-5- A and 7 of the Adhiniyam: Section-5-A. Constitution and incorporation of Gram Sabha.-*
> *There shall be a Gram Sabha for every village. The Gram Sabha shall be a body corporate by the name specified therefor having perpetual succession and a common seal and shall by the said name sue and be sued and shall subject to the provisions of this Act and the rules made there under have power to acquire, hold and dispose of any property movable or immovable, to enter into contract and to do all other things necessary for the purpose of this Act."*

The Gram Sabha shall have the following powers and functions, namely,- (j-ii) to manage natural resources including land, water, forests within the area of the village in accordance with provisions of the Constitution and other relevant laws forthe lime being in force;
(j-iii) to advise the Gram Panchayat in the regulation and use of minor water bodies;
(l) construction, repair and maintenance of public wells, ponds and tanks and supply of water for domestic use; construction and maintenance of sources of water for bathing and washing and supply of water for domestic animal;
(o) construction, maintenance and clearing of public streets, latrines, drains, tanks, wells and other public places;
(p) filling in of disused wells, unsanitary ponds, Pools ditches and pits and conversion of step wells into sanitary wells;
16. As noticed, the constitutional provision and Sections-5- A and 7 of the Adhiniyam in no uncertain terms makes it clear that powers and functions of Gram Sabha are not absolute in nature. Such powers and functions are subject to the provisions of local laws and general instructions/orders issued by the Government."

31. On more than one occasion, the Courts have expressed their concern for preservation of water bodies. In 2001 (6) SCC 496 [Hinch Lal Tiwari Vs Kamla Devi], the Apex Court considered Section-117 of U.P. Zamindari Abolition and Land Reforms Act, 1950. As per said provision, certain powers were given to the Gaon Sabhas and other local Authorities. While interpreting the said provision, it was held that it is difficult to sustain the order of the High Court. There exists a concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case, no part of it could have been allotted to anybod for construction of house building or any allied purposes.

The judgment of Hinchlal Tiwari (supra) was again considered in 2011 (11) SCC 396 [Jagpal Singh Vs State of Punjab]. In addition, the judgment of Madras High Court reported in 2005 (4)CTC 1 (MAD) [L. Krishnan Vs State of T.N.] was considered and it was held that the Court will pass a similar order as it was passed in Hinchlal Tiwari and L. Krishnan (supra).

32. In 2015 SCC Online Utt 1829 [Tahseen Vs. State of Uttarakhand and

others] Alok Singh, J. held as under:-

> *"What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous person using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with their original character, for personal aggrandizement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.*
>
> *[Emphasis supplied]*
>
> ***At the cost of repetition, it is apposite to remember that the Apex Court, in no uncertain terms, clarified that construction activity even in the close vicinity of the lakes; is impermissible. Resultantly, the High Court directed the Authorities to remove encroachments and restore the water body in its original form.***
>
> *26. In 2013 SCC Online P&H 10564 [Jagdev Singh Vs. State of Punjab & Haryana and others], the High Court followed the ratio decidendi of Hinchlal Tiwari (supra) and opined that the Gram Panchayat which has a statutory obligation to ensure that water bodies are not diverted for any other use and further to ensure that these water bodies are protected, cleaned and recharged, it cannot be allowed to use a part of it for installation of a statue of a resident of the village. A Division Bench of Calcutta High Court in 2013 SCC Online Cal 1060 [Sandhya Barik & others Vs. State of West Bengal & others] expressed its view that this is bounden duty of panchayat and other authorities to prohibit such construction and said property cannot be alienated or permitted to be destroyed in any manner. No construction can be permitted over such water body.*

Construction, if any, which have been made by any person, the respondent cannot claim equity. Even if any sanction is granted with regard to construction over the canal, the same is illegal and void. It was further directed that if there exists any encroachment on water body, appropriate action must be taken for clearing the encroachment made over the canal. The public trust doctrine expounded by Supreme Court in M.C. Mehta was followed by Calcutta High Court in Sandhya Barik (supra).

In view of constitutional scheme, public trust doctrine and object engrained in Section-7 ofthe Adhiniyam, Gram Sabha cannot take any decision or pass resolution to raise construction either by disturbing the water body or on the periphery(esM-) of the water tank. In M.C. Mehta (supra), such action was clearly disapproved by Supreme Court. The common string in the judgments referred hereinabove is that herculean efforts should to be made to protect the water bodies. Such bodies are required to be protected from greedy politicians and persons*. Ancient poet Rahim said:*

Meaning thereby:

Water is most important. As without water, there is no wealth (pearls), life or earth."

33. In view of constitutional scheme Interestingly, in Jagpal Singh (supra), the Apex Court with pains recorded that 'our ancestors were not fools'. They knew that in certain years, there may be droughts or water shortages for some other reasons, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple tc. These were their traditional rain water harvesting methods, which, served them for thousands of years. With great concern, Apex Court emphasized that the ponds are now a day's auctioned of at throw away prices to businessmen for fisheries in collusion with Authorities/ Gram Panchayat Officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop. We deem it apposite to direct the State Government and the concerned Collector to ensure that all such constructions/encroachments are removed. The official respondents shall remove such constructions and encroachments and file a compliance report. It shall be the duty of respondents

to restore water pond to its original shape and condition and preserve it as per the constitutional mandate.

34. In view of the Constitution Provisions, Adhiniyam and the Rules and Governments Orders issued under the Adhinyam and Land Revenue Code, the Municipal Corporation is not justified in taking the decision to construct the commercial shops on the periphery of the pond. In view of settled legal position this Tribunal has scintill of doubt that the corporation has exceeded its authority while passing such resolution. The action of Corporation runs contrary to public trust doctrine. It is to be noted that any autonomy given by the Constitution or by Adhiniyam needs to be tested on anvil of enabling provisions. When impugned action was tested on the anvil of such enabling provisions, the said action was not found to be inconsonance with the enabling provisions nor can such action be said to be in a larger public interest.

35. It is to be noted that the right to the people to live in the healthy environment with minimum disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agriculture land and undue affection of air, water and environment. It is for the Government for the Nation and not for the Court to decide whether the deposit should be exploited at the cost of ecology and environmental consideration or the industrial requirement should be otherwise satisfied. It may be perhaps possible to exercise greater control and vision over the operation and strike a balance between preservation and utilization, that could indeed be a matter for an expert body to examine and on the basis of appropriate advise, the Government should take a policy decision and formally implement the same and for the purpose it is for the expert committee to examine as to whether the ponds and water bodies can be converted into commercial complex and can these operations be permitted on the cost of environmental damage.

36. We know and can take judicial cognizance of the fact that entire country is facing a tremendous scarcity of drinking and potable water almost everywhere and, in fact, it is a global phenomenon. It is this reason which required Regulators/Statutory Authorities to act responsibly for protection of environment and ecology and in particular, wetland/water bodies. They are expected to function in a more responsible and accountable manner and deeper study ought to have been made, before allowing any construction activities in vicinity of a wetland/water body, more so when project site is abutting the wetland itself. Importance of water no one can deny.

37. It cannot be doubted that water though cover three-fourth of earth, still drinking and potable water is in great scarcity. Manmade ventures are the basic cause for this situation. Protection of wetland assumed international importance at very late stage. However, serious concern at global level is writ large from the fact that in 1991, Convention in Ramsar was held only to discuss protection of

wetland. Some important wetlands across the world were identified therein. Signatory countries vowed to protect wetland by taking all necessary measures including stringent actions. This is a matter of common knowledge that people residing in urban areas had turned cities into jungles of concrete. Nature has lost its place, healthy and clean environment has been compromised in the name of development. The consequences are air pollution, scarcity of drinking water, extreme heat and cold, lack of raining etc. earlier's comfortable life in such cities has become a nightmare. Resourceful people are now resorting to other areas on the outskirt or near such cities where they can enjoy proximity with nature. This attempt or desire is nothing but costing heavy to nature. It is a concerted effort by greedy elite class to cause destruction of nature in un- probed areas, which have remained untouched till date, but now are being frequently occupied by them. These constructions near water bodies or forest areas etc. are not as a necessity to provide shelter to homeless needy people or development to economy in general but virtually a part of luxury life for those who can afford. The elite class and its greed, in the name of development, has already destroyed cities and now moving towards the areas, rich in natural flora and fauna including forests, lakes, rivers, streams i.e., different type to water bodies and wetlands. In the name of stay in the lap of nature, in reality they are causing damage and destructing nature. In fact, commercial or residential construction projects do not need vicinity of wetlands or water bodies etc., as a necessity but Promoters/PPs/Developers normally choose such sites so as to increase salability and commercial value of their projects/constructions.

38. Various statutory authorities which were constituted to serve as a watchdog for protection of these places, rich in natural flora and fauna, are not very sincere and serious in protection but working only technically. They are liberal in allowing these activities instead of adopting strict and stringent measures necessary for protection. We can see destruction of Aravalli Hills in National Capital Delhi itself, and disappearance of several small chains of hills in many States. When we come to the garden city of Bengaluru itself, the facts have already been noted that in the past there were hundreds of lakes in the city which are now reduced to just two figures. Most of the lakes have been reclaimed, encroached or otherwise usurped by the so called development activities.

39. Problem of environment today is a Global phenomenon. The irresponsible and unmindful development has proved an enemy to environment. It has increased pollution everywhere compelling Global leaders to take recourse for protection of environment, if necessary, by framing strict and stringent provisions, but fact remains, that condition of environment today is extremely alarming.

40. It is the pious duty of the Municipal Corporation to make a planning including

town planning, planning for economic and social development, roads and bridges, water supply for domestic, industrial and commercial purposes, public health, sanitation conservancy and Solid Waste Management, urban forestry, protection of the environment and promotion of ecological aspects, slum improvement and up-gradation, urban poverty alleviation. Provisions of urban amenities and facilities such as parks, gardens, playgrounds promotion of cultural educational and aesthetic aspects. Cattle ponds prevention of cruelty to animals and public amenities.

41. We may note the observations of the Hon'ble Supreme Court on the subject which are as follows:

i. ***State of T.N. v. Hind Stone, (1981) 2 SCC 205,*** **at page 212:**

> *4. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation.*

ii. ***Hinch Lal Tiwari v. Kamala Devi, (2001) 6 SCC 496,*** **at page** ***500:***

> ***"13. It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature"s bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution."***

iii. ***T.N. Godavarman Thirumulpad v. Union of India, (2002) 10 SCC 606,*** **at page 628:**

> **……** …… …

> 33. *… As was observed by this Court in M.C. Mehta v. Kamal Nath our legal system based on English common law*

includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The public at large is the beneficiary of the seashore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

iv. ***Intellectuals Forum v. State of A.P., (2006) 3 SCC 549*, at page 574:**

75. In M.C. Mehta v. Kamal Nath & Ors. (1997) 1 SCC 388, Kuldip Singh, J., writing for the majority held:

> *"34. Our legal system ... includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. ... The State as a trustee is under a legal duty to protect the natural resources."*

76. The Supreme Court of California, in National Audubon Society v. Superior Court of Alpine Country also known as Mono Lake case summed up the substance of the doctrine. The Court said:

> *"Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering the right only in those rare cases when the abandonment of the right is consistent with the purposes of the trust."*

This is an articulation of the doctrine from

the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly prohibit the alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources [Joseph L. Sax —The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention‖, Michigan Law Review, Vol. 68, No. 3 (Jan. 1970) pp. 471-566]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to be imposed by the public trust doctrine [ibid]:

> ***1. The property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;***
>
> ***2. The property may not be sold, even for fair cash equivalent;***
>
> ***3. The property must be maintained for particular types of use (i) either traditional uses, or (ii) some uses particular to that form of resources."***
>
> ……..

v. Jitendra Singh v. Ministry of

Environment & Ors., 2019 SCC Online 1510 pr 20

“

…. …….

20. …. Waterbodies, specifically, are an important source of fishery and much needed potable water. Many areas of this country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal.”

17. In NGT order dated 27.08.2020 in OA 351/2019, Raja Muzaffar Bhat vs. State of Jammu and Kashmir & Ors., it was observed:

“

…… …… ……

33. One of the serious challenges is solid and liquid waste management, apart from encroachments. There are binding directions of the Hon’ble Supreme Court in Almitra H. Patel Vs. Union of India & Ors1. and Paryavaran Suraksha vs. Union of India2 on the subject of scientific management of solid waste and sewage/effluents in accordance with the statutory provisions of the Water (Prevention and Control of Pollution) Act, 1974, („Water Act") Air (Prevention and Control of Pollution) Act, 1981, („Air Act) and waste management rules framed under the Environment (Protection) Act, 1986 („EP Act"). There is large scale non- compliance of the said statutory provisions which has led this Tribunal to consider the issue of river pollution in OA No. 673/2018, News item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB" in view of acknowledged data of 351 polluted river streches in the country. Apart from the said issue, large scale failure has been found

in the matter of solid waste management as repeatedly recorded in O.A. No. 606/2018. The Chief Secretaries of all the States/UTs were required to remain present in person before this Tribunal for interaction and further planning. In O.A. No. 325/2015, Lt. Col. Sarvadaman Singh Oberoi v. UOI & Ors., the Tribunal has considered the issue of restoration of water bodies. In Original Application No. 593/2017, Paryavaran Suraksha Samiti & Anr. v. UOI & Ors., the issue of untreated sewage or effluent being discharged in water bodies have been taken up for consideration. There are several other matters dealing with the such issues, including coastal pollution, pollution of industrial clusters etc.

34. There is discussion in the media about inadequacy of monitoring of action for restoration of lakes, wetlands and ponds which is certainly necessary for strengthening the rule of law and protection of public health and environment3. Several directions have been issued by the Hon"ble Supreme Court in M.K. Balakrishnan and Ors. v. UOI & Ors."

18. We also note that the Ministry of Urban Development, Government of India, Central Public Health and Environmental Engineering Organization (CPHEEO) has issued an advisory on ***"Conservation and Restoration of Water Bodies in Urban Areas"5*** *in August, 2013 which need to be followed. The matter was also considered by the Standing Committee on Water Resources (2015-16), Sixteenth Lok Sabha. Its Tenth Report has been published by the Ministry of Water Resources, River Development and Ganga Rejuvenation under the heading* ***"Repair, Renovation and Restoration of Water Bodies- Encroachment on Water Bodies and Steps***

Required to Remove the Encroachment and Restore the Water Bodies"6 *in August, 2016. Further, the* ***"Guidelines for the Scheme on Repair, Renovation and Restoration (RRR) of Water Bodies under PMKSY (HKKP)"7*** *have been published by the Ministry of Water Resources, River Development and Ganga Rejuvenation, Govt. of India in June, 2017. The said report also provides useful material to be looked into by the enforcement agencies.*

20. There is, thus, need for continuous planning and monitoring at National, State and District levels. Suggestions and observations of CPCB and the Oversight Committee need to be acted upon."

42. The matter was again taken up on 09.07.2024 and considering the report, this Tribunal directed as follows:-

i. *"Respondent have to strictly comply Section 4 of the Wetland Rules and to ensure that there will not be any encroachment on wetland, there will not be any construction activities, discharge of untreated water or throwing of the garbage or solid waste or plastic waste in the water body/wetland.*

ii. *Respondents are restrained from going ahead with raising of any permanent construction over the water body of the lake. Constructions or the pillars to the extent which has been raised shall be demolished within one month from today.*

iii. *Since permanent construction at the prohibited site has caused damage to the site and requires a restoration of the site, as also restoration of the ecology and remediation of damage already done to the environment, we constitute a committee consisting Director, CPCB at Bhopal, one representative from the Secretary (Environment) and one representative from the Central Ground*

Water Authority to assess the environmental compensation*.''*

43. In compliance of direction no. '*iii'*, the members of the committee consisting the officers mentioned below visited the site on 09.08.2024. The details of the members of the committee are as follows :-

1) ''Shri P. Jagan Regional Director, Central Pollution Control Board, Bhopal.
2) Shri Alok Nayak, OIC & Chief Scientific Officer, MPSEIAA, Bhopal.
3) Shri Rakesh Singh EE, Central Ground Water Board Bhopal.
4) Shri A.K. Biswal, Regional Director, Central Ground Water Board.
5) Smt. Purvi Tiwari, Additional Collector, District Seoni.
6) Shri Alok Kumar Jain, Regional Officer, Regional Office, MP Pollution Control Board, Bhopal, Jabalpur
7) Dr. Manoj Vishwakarma, Assistant Scientific Officer, State Wetland Authority, Bhopal
8) Dr.Ranu ChoukseyVerma, ScientistC, Central Pollution Control Board, Regional Directorate, Bhopal
9) Dr. Ajit Sharma, PF, MPSEIAA, Bhopal
10) Shri Ram Kumar Kuvreti, CMO, Municipal Council, Seoni
11) Shri. Santosh Tiwari, Asst. Engineer, Municipal Council, Seoni''

44. It is submitted by the committee that wetland (having area > 2.25 ha.) of Seoni District MP prepared in compliance of the guidelines for the preparation of inventory of the Wetland (Conservation and Management) Rule, 2017, Dal Sagar Lake is placed at an entry No. 53 with wetland code 234560394 having area of 18.38 hectares and situated within the jurisdiction of Municipal Council, Seoni. It is further reported that 19 numbers of RCC pillars were raised and there is a provision for 385 meter long foot over bridge which is in violation of rules. The following has been also narrated by the members of the committee quoted below:-

1. ***Field Observation of the Committee on 09.08.2024*** *The factual status on verification of the documents furnished by Municipal council, Seoni and observations made during the field visit of the site by*

the joint committee members on 09.08.2024 is discussed below: -

i. *Dal Sagar is a man-made Talab situated at GPS Co-ordinates 22.089380, 79.546983 in District Seoni, Madhya Pradesh; and having an area of around 18.31 hectares.A small island is located in the middle of this lake*

ii. *The catchment area of the lake includes around 3-4 km^2 area within the city which serves as the recharging source for the lake. Also, two natural drains are confluence at the lake as water source.*

iii. *During the visit approximately 60% of the total wetland area was found filled with water. About 30-40% of the lake area is under weed infestation and vegetative cover.*

iv. *During inspection it seems that unmetalled road constructed parallel to the under constructed foot over bridge for the transportation of material is presently under submergence due rain water. Only 33 meters road appeared outside the submergence towards the food court side.*

v. *Municipal Council, Seoni issued a tender dated 30.01.2023 to construct a Foot Over Bridge (F.O.B) to connect the main land with the central island of the lake.Theproposal for the above work was approved in the meeting of Municipal Council, Seoni dated 30.12.2020 where an amount of Rs. 1,68,20,123/- was sanctioned for the construction of approach foot over bridge at Dal Sagar Lake. Later, the technical permission for the above work was given by Urban Administration and Development*

Department, Jabalpur Division dated 31.12.2020.

vi. *During the inspection, it was observed that a 25-feet stone statue of Gond king Raja Dalpat Shah has been installed over cement concrete base of 15 ft. in the central island of the Dal Sagar Lake.*

vii. *Committee has observed that for construction of this platform and erecting the statue around 15-20 plants/trees and wild shrubs grew at the central island were cut down.*

viii. *In order to prevent the intrusion of lake over flow towards the nearby settlement situated in the downstream of the lake, recently another civil structure (retaining wall) has been constructed by Municipal Council, Seoni in the submergence area of lake which is also violating the Rule 4 of Wetland Rules, 2017.*

ix. *For the construction of Foot-Over- Bridge, 19 concreted pillars were raised on the site between MPT Chaupati and the Central Island.The length of the bridge to be constructed was observed 385 meters. However, after direction from Hon'ble NGT, the construction work was restrained.The construction was done within the 10 meters of Full Tank Level (FTL).At the time of inspection, no construction activity was observed and no machinery / materials etc. were found near or at the site.*

x. *It was observed at the site that for transportation of construction material to the central island, an unmetalled kachcha approach road of Length- 105meter and*

Width- 6 meter was constructed by the non- applicant parallel to the proposed F.O.B connecting MPT Chaupati and the Central Island.

xi. *The Dal Sagar Lake has full tank level of approx. 3.84 meters. For the ease of construction activity at the site, 70 % Water of the lake was drained out by the Municipal Council, Seoni. For lake de- watering through gravity, one side of the lake bund has been demolished. This has resulted into the major impact on the water quality, flora & fauna and bio-diversity of the lake. During the visit the present water level was observed 1.3meter in the lake.*

xii. *During visit, it was observed that no sewerage water meeting the Dal Sagar Lake. The Municipal Council, Seonihas temporarily blocked the sewage carrying drains and diverted the flow opposite to the lake. However, during the earlier visit of joint committee constituted in compliance of NGT order dated 20.10.2023, it was observed that drains carrying untreated sewage from the city meeting the water body (02 drains meeting Wainganga River and 01 drain meeting into Dal Sagar Lake); and there is no proper sewerage network and sewage treatment facility exist in the city.*

In this regard, Regional Office, MPPCB Seoni vide letter dated 24.11.2023 had imposed a total environmental compensation of Rs. 480 Lakhs for period of 01.01.2022 to 31.10.2023 for non-compliance of directions of NGT orders dated 25/02/2020, 28/02/2020 & 14/12/2020 in OA No. 606/ 2018 and violation of

provisions of Solid Waste Management Rules, 2016 under section (5) of Environment (Protection) Act, 1986.

It was informed by MPPCB RO, Seoni that the imposed compensation is yet not deposited by Municipal council, Seoni. It was observed that Municipal Council,Seoni has not constructed any sewage treatment plant for the city till date.

xiii. As informed by Municipal Council, Seoni representative, proposal of installation of 04 nos. of STP is approved in Amrut 2.0 schemeand to be constructed in the city for effective management of generated sewage.

xiv. The committee has explored the periphery of the Dal Sagar Lake and it was found that there are number of shops and other establishments are already present in the Full Tank Level (50 meter) of the lake. Plastic waste and trashes were observed at the periphery of the lake.

xv. NGT in its order dt 09.07.2024 directed the respondent to restrained from going ahead with raising of any permanent construction over the water body of the lake and to demolish the raised structure within one month. However, the constructed pillars were yet not demolished by Municipal Council, Seoni and observed still erected at the site.

After Field visit of Dal Sagar Lake, a short briefing of the field observation shared with the Collector, District- Seoni and discussed various actions required regarding conservation and management of Dal Sagar

Lake in compliance of direction issued by NGT. Following deliberations were made by the District Collector, Seoni for conservation of lakes in the city:

- *All the activities for conservation and management of Lakes of Seoni should be done in consultation with State and District Wetland Authority.*
- *Awareness Programs to be organized for conservation and management of lake.*
- *Catchment area study should be carried out for identification of natural inlet drains of Dal Sagar Lake.*

2. ***Threats & Damage caused to the Environment due to permanent construction at the site***

During the site visit, the committee members discussed on various possible threats to ecology and damage caused to the environment because of the construction activities at the prohibited site within the lake. It was discussed that raising a permanent structure within the full tank level of a water body might lead to following threats & damage at the site:

a. ***Impact on Aquatic ecosystem:*** *Construction activities within the lake, including dewatering operations, disrupt the delicate balance of aquatic ecosystems. These disruptions might lead to the destruction of habitats of native species of fish, amphibians, and other aquatic species. The alteration of water conditions and sediment can severely impact their survival and reproductive success.*
b. ***Deterioration of riparian zone:*** *The riparian zone, which acts as a buffer between land and aquatic*

systems, is adversely affected by construction activities. The destruction of vegetation and alteration of natural water flow can lead to soil erosion, loss of habitat, and decreased water quality.

c. **Depletion of ground water level:** De- watering of the lake can lower the groundwater table in the surrounding areas. This depletion can affect local wells and ground water dependent *ecosystems, leading to reduced water availability for both human use and natural habitats.*

d. ***Reduced Water Holding and Carrying Capacity:*** *Permanent construction may reduce the lake's capacity to hold water due to changes in its physical structure and the accumulation of construction debris. This reduction can lead to diminished flood control benefits and lower water availability during dry periods.*

e. ***Blockage of Inlet Channels:*** *Construction activities can lead to the blockage or alteration of inlet channels that feed the lake from its catchment area. This obstruction can disrupt the natural flow of water, reduce sediment and nutrient inflow, and negatively impact the lake's ecological health.*

f. ***Damage to Lake Bed and Siltation Issues:*** *The lake bed may suffer damage from construction activities, including the creation of temporary pathways. Such disturbances can exacerbate siltation, impacting the lake's depth and overall functionality, and potentially leading to further ecological imbalance.*

g. ***Western Bank Degradation:*** *The process of de-watering led to significant damage to the lake's*

western bank. This erosion compromises the structural integrity of the bank, leading to further soil loss and potential destabilization of the surrounding land."

45. By filing another application I.A. No. 99/2024, the Learned Counsel for the applicant has submitted that in spite of the repeated orders, no action has been taken by the authorities concerned and grounds has regrown leading to further silt accumulation and disrupting the aquatic life. It is further submitted that no action has been taken to remove the encroachment and no permanent measures have been implemented to prevent the accumulation of solid waste and garbage in the swamp around Dal Sagar.

46. An application in the form of compromise between the parties has been filed which has no relevance with the wetland rules and further, it is for the parties to consider and reconsider about the philosophy adopted by Gond King Raja Dalpat Shah. The philosophy of the construction of this water body was making necessary provisions for future generation and provision for drinking water as well as for agricultural purposes to the civilians and general public, not only the human beings but also the living creatures.

47. The pious philosophy should be taken into account and it is the duty of the litigating parties to fulfil the desire of Gond King Raja Dalpat Shah. It was not desired that the nature of the water body or the lake should be curtailed or damaged and it was never intended that his statue may be installed there.

48. In case if it was in mind of Gond King Raja Dalpat Shah, it might have been installed for the reasons that at that point of time he was the King and there was no to prevent him. But the spiritual philosophy and the duty towards the humanity inspired him to do the spiritual and pious work. It is the duty of the litigants to maintain the philosophy and to promote the philosophy of Gond King Raja Dalpat Shah and not to damage his philosophy by making any construction for their convenience. Secondly, we cannot pass any order against the wetland rules and further that, illegality cannot be legalized by any judicial order. If anything is legally wrong, then it cannot be justified to be morally correct. The compromise and agitation is for the state to decide it. It is not binding on the wetland rules.

49. In view of the above discussion and analysis of the report submitted by the joint committee and the members of the SEIAA and the CPCB, we direct as follows:-

i. *The District Administration shall ensure strict compliance of Section 4 of the Wetland Rules and to ensure that there will not be any encroachment on wetland, construction activities, discharge of untreated water or dumping of the garbage/solid waste/plastic waste in the Lake and the constructions raised during the pendency of this application and already raised previous to this in violation of Section 4 of the wetland rules must be demolished immediately on the cost of Municipal Council.*

ii. *Municipal council, Seoni shall prepare a detailed time bound action plan for the restoration of the site that shall be examined by the MPPCB and approved by MP State Wetland Authority and the State PCB is directed to realise the environmental compensation according to rules and that the amount of compensation must be utilised for the improvement of lake under the supervision of the Wetland Authority and local administration headed by the Collector. A time targeted action plan shall be prepared and submitted to Regional Office, MPPCB Seoni regarding demolition of pillars and other civil structure constructed inside the lake. The guidelines on Environment Management of Construction & Demolition (C&D) Waste, March 2017 issued by Central Pollution Control Board may be adopted and applied.*

iii. *Sign boards and caution boards should be installed at Suitable place regarding restricted zone. Immediate actions shall be taken by Municipal Council, Seoni for performing cleaning of the lake and its boundary should be identified, demarcated and fenced to restrain any unauthorized dumping of solid/ plastic waste.*

iv. *Removal of weeds in a scientific manner in Dal Sagar Lake and catchment area study shall be carried out for identification of natural inlet drains of the lake to restore*

water in lake. Ground water study including assessment of present water quality and ground water table around the lake should be carried out by engaging an expert agency. To compensate with the plants/trees felling during the construction work, planation of native plant species shall be carried out around the lake and at the central island.

v. *Bioremediation and restoration of lake bed to improve the water carrying and holding capacity of lake. Effective measures shall be taken by the Local Body to expedite the establishment of sewerage network connections and construction & operation of STPS proposed under Amrut 2.0 Scheme in the city within time frame.*

vi. *The State PCB, M.P. to monitor and submit report within four months to Registrar, National Green Tribunal, Central Zone Bench, Bhopal.*

50. A copy of the order be communicated on available e-mail from the Registrar, National Green Tribunal, Central Zone Bench, Bhopal to the Principal Secretary, Department of Environment, Member Secretary, State MPPCB, Bhopal, Wetland Authority, Bhopal, Collector, Seoni and Chief Executive Officer, Municipal Council, Seoni, for information and necessary action.

51. With theseobservations and directions, **Original Application No. 154/2023** alongwith **I.As.** stand **disposed of** accordingly.

❖

Chitrabhan Singh Rathore & Ors. vs. State of Chhattisgarh & Ors.

(Original Application No. 168/2024)
Decided on: 14th July, 2025 (CZ)

CASE NOTE

In the matter, the applicant (Chaitrabhan Singh Rathore & Ors.) filed an Original Application under Section 14, 15 read with Section 18 of the National Green Tribunal Act, 2010, regarding protection and conservation of local environment at Village Kanhaiband, Tehsil Janjgir, District Janjgir-Champa (Chhattisgarh) due to operation of coal washery by M/s Mahavir Coal Washery Private Limited. The Respondent State authorities allotted land to Respondent 6 for establishing coal washeries despite the objections by the villagers. The functioning of coal washery is affecting entire area causing air pollution, asthmatic & respiratory problems especially in infants and old-age residents due to emission of dust particles. Due to the emission of coal particles, the entire area is engulfed with blackish layer of dust.

The matter related to expansion was taken up by this Tribunal and a committee was constituted with direction to submit the factual and action taken report.

It was held that the respondent/project proponent is directed to maintain the minimum green belt, plantation of trees as to maintaining green belt in three-tier level system, have to maintain a green wall of 40 meters in the railway siding area, to make necessary provisions for plant protection and preservation by maintaining the quality of the soil as suggested by the committee or any alternate method which is suitable at the place in consultation with the Agriculture Department and to ensure the protection in the green belt area. The approach road should be properly maintained and there should be regular water sprinkling by the project proponent. So far as the construction of the road and its maintenance is concerned outside the unit area within the jurisdiction of the PWD or the National Highway, the same may be maintained by the DMF fund or the CAMPA fund from the taxes and revenue generated through the project proponent. In case of non-availability of the fund, the State Administration/PWD Department may have to take a meeting with the project proponent and to make a proper and necessary arrangement of the fund. In-charge of the Primary Health Centre, Village – Sivni, District – Janjgir Champa, Chhattisgarh, is directed to have a regular check-up health camp in the area periodically and not more than 30 days. For maintaining and protection of the green belt and plants, the research work must be taken into account by the respondents and necessary action must be done in accordance with the consultation of the Forest Department as suggested in the research paper. The CECB is directed to periodically monitor the status of the health camps and development of green belt and in-case of any deficiency, the remedial measures must be taken immediately in consultation with the authorities concerned.

With above observations, the Court disposed of the Original Application with the above directions.

Chitrabhan Singh Rathore & Ors. vs. State of Chhattisgarh & Ors.

COUNSELS FOR APPLICANT(S):
Mr. Dharamvir Sharma, Adv.

COUNSELS FOR RESPONDENT(S):
Mr. Vikram Sharma, Adv.
Mr. Mayur Mandhanya, Adv.
Ms. Parul Bhadoria, Adv.
Mr. Sarabvir Singh Oberoi

CORAM:
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

RESERVED ON : 8th July, 2025
PRONOUNCED ON : 14th July, 2025

JUDGMENT

BY HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER

1. The present application has been filed by the applicants claiming the following reliefs:-

   i. That, the expansion of Respondent No. 6 Coal Washery causing pollution in the area may kindly be order to be declared as illegal, arbitrary, and unconstitutional.
   ii. That, a high-level committee may kindly be constituted for submitting report regarding violations of the EC conditions and factual finding of the present status.
   iii. That, the Respondent No. 6 may kindly be imposed with heavy environmental compensation for past violations and loss caused to the agricultural produce, underground water and air pollution due to release of life-threatening dusty coal particles.
   iv. That, any further order, directions as deem fit in the facts and circumstances submitted above may kindly be passed in favour of the environment and its ecology.

2. Issue raised in this application is protection and conservation of local environment at Village Kanhaiband, Tehsil Janjgir, District Janjgir-Champa (Chhattisgarh) due to operation of

coal washery by Respondent No. 6 M/s Mahavir Coal Washery Private Limited. Pertinently, the authorities have allowed the coal washery to expand from 0.99 million tonner/year to 2.48 million tone/year. The Respondent State authorities initially have allotted land to Respondent 6 for establishing coal washeries despite the objections by the villagers, who are the worst affected due to the operation of coal-washery. The land where washery is in operation, is recorded as grazing and pasturing land (चराई मद) in the revenue record. The functioning of coal washery is affecting entire area causing air pollution, asthmatic & respiratory problems especially in infants and old-age residents due to emission of dust particles. The said area covers agricultural and irrigated land, where farming products are being cultivated. Due to the emission of coal particles, the entire area is engulfed with blackish layer of dust.

3. The matter was taken up by this Tribunal and notices were issued to the respondent for submission of reply and a committee was constituted with direction to submit the factual and action taken report. In compliance thereof, the reply on behalf of the respondent has been filed and the report of the committee with the response on the report of the committee are on the record. Heard learned counsel for the parties and perused the record.

4. The submission of the learned counsel for the applicant are that the unit of respondent no. 06 M/s Mahavir Coal Washery Private Limited situated in Tehsil- Janjgir, Village Kanhaiband, Tehsil Janjgir, District Janjgir_ Champa (Chhattisgarh) was operating and state authorities have allowed extension of capacity of coal washery.

5. The expansion of coal washery by the Respondents no. 4 & 5 through facilitation and grant of EC without heeding to the objections made by the villagers and without addressing the grievances, is grossly against the law of land, environmental norms and principles of justice. The land where the unit is operational, is recorded as grazing and pasturing land (□□□□ मद) in the revenue record and the expansion of capacity granted is affecting entire area causing air pollution and that That, despite the objection raised by the village panchayat/applicants and villagers, the Respondent no. 4 CECB (Regional office) started the proceedings for expansion of capacity of Respondent no. 6. The said proceedings are completely illegal, arbitrary and unconstitutional in the eyes of law, since the order passed by the Collector in which 30 acres grass land of village Kanhaiband was allotted to Respondent No. 3 Directorate Industry is already under challenge before the Hon'ble High Court by the Applicants in W.P. (C) No. 3762/2021. During the pendency of above case, the Respondent authorities had further allotted land to Respondent no. 6 against the will of villagers which is bad in law.

6. It is further argued that the surrounding area to the coal washery covers agricultural and irrigated land, where farming products are being cultivated. Due to the emission of coal particles, the entire area is engulfed with blackish layer of dust. The Applicants along with the Sarpanch, approached the Hon'ble High Court of Chhattisgarh against the air pollution and its adverse impact due to the grant of EC for expansion of capacity to Respondent No. 6 and vide order dated 25.04.2024, the Hon'ble HC in its concluding Para 11 has directed to avail the remedy before the

Hon'ble Tribunal ordering that the environmental grievance raised by the petitioners in the petition can be very well redressed by the NGT.

7. It is further argued that Hon'ble the apex court in the case *M.C. Mehta Vs. Union of India & Ors. (1987) for SCC 463* has held that life and public health with ecology as priority over unemployment and loss of revenue and in *Subhash Kumar Vs. State of Bihar, AIR 1991, SC 420* it was held that Article 21 of the Constitution of India relating to right to life includes right to enjoy pollution free-water and air for full enjoyment of life.

8. It is to be noted that the project proponent has applied proposal for environmental clearance and it was duly considered by the State Environmental Impact Assessment Authority and vide communication dated 26.07.2023 the environmental clearance was granted with certain statutory compliances.

9. Aggrieved by the order some of the litigants filed Writ Petition (PIL) No. 24/2023 titled Smt. Ekta Tiwari & Ors. Vs. State of Chhattisgarh & Ors. and after hearing the parties Hon'ble the Court headed by Hon'ble the Chief Justice passed an order and disposed the petition as follows:-

1. *"The present petition has been filed for the following reliefs:-*
    - i. *That, this Hon'ble Court may kindly be pleased to issue a suitable writ fordirecting the respondent authorities to restrain the extension of capacity from 0.99 million tonne per year to 2.48 million tonne per year weight type of respondent No. 6.*
    - ii. *Cost of the petition may also be allowed by this Hon'ble Court.*
    - iii. *Any other relief/reliefs which may deem fit and proper in the facts and circumstances of this case, may also be allowed."*
2. *Mr. Anil Singh Rajput, learned counsel for the petitioner submits that the petitioner No.1 is an elected Sarpanch and petitioner No.2 is the Upsarpanch of village panchayat Kanhaiband, Tehsil Janjgir, District Janjgir Champa. Khasra No.55/1 and 55/3 total area 30 acres of land situated at village Kanhaiband, Tehsil Janjgir, District Janjgir Champa is recorded as grassland in revenue record. The Director Industry, Directorate C.G. has filed revenue case No.01/31 19(3)/2020-2021 Ecode No. 201606060100023 before Collector District Janjgir Champa for allotment of 25 acre from Khasra No. 55/1 and 5 acres from Khasra No.55/3 situated at village Kanhaiband Tehsil Janjgir, District Janjgir Champa. Vide order dated 03.02.21 the case of the Director Industry, Directorate C.G. was allowed. The said order is under challenge in W.P.(C) No. 3762/2021 before this Hon'ble Court and vide order dated 23.09.21, this Hon'ble Court has issued notice to the respondents on admission as also on application for grant of ad-interim relief.*
3. *Mr. Rajput further submits that through Industries Department the respondent No.6 was allotted 6.98 hectare (17.26 acre) land of Khasra No.55/1 for purpose*

of coal washery against the will of the villager as well as office bearer of panchayat. On 04.01.23, the respondent No.7 issued a notice of public hearing for extension of capacity of the respondent No.6 from 0.99 million tonne per year to 2.48 million tonne per year weight type. On 27.02.23, the petitioners filed representation before respondent authorities and raised the objection for extension of capacity of respondent No.6. On 09.03.23, the respondent No.7 wrote a letter to respondent No.6 for Munadi in village prior to public hearing dated 15.03.23. In pursuance of letter dated 09.03.23 issued by the respondent no.7 to respondent no.6, the respondent No.6 issued letter to village kotwar Kanhaiband. Despite the objection raised by the village panchayat / petitioners and villagers the respondent No.7 started the proceedings for extension of capacity of respondent no.6.

4. *Mr. Rajput further submits that the proceedings initiated by the respondent No.6 and 7 for extension of capacity from 0.99 million tonne per year to le per law. The order dated 03.02.21 passed by Collector in which 30 acres grassland of village Kanhaiband allotted to the Directorate Industry is already under challenge before this Hon'ble Court by the Sarpanch and Upsarpanch of village panchayat in W.P.(C) No.3762/2021 and during the pendency of above case the respondent authorities allotted 6.98 hectares (17.26 acre) land to the respondent no.6 for capacity of coal washery 0.99 million tonne per year against the will of the villagers. The respondent authorities have failed to see that the extension of capacity of respondent No.6 is detrimental to the life and health of the villagers those who are residing at village Kanhaiband and nearby.*

5. *Mr. R.S.Marhas, learned Additional Advocate General appearing for the State/respondents No. 1 to 5 submits that the issue involved in the present petition can be very well adjudicated by the National Green Tribunal (for short, the NGT) and as such, this petition may not be maintainable before this Court.*

6. *Mr. Vikram Sharma, learned counsel for the respondent No. 6, at the very outset, submits that this very writ petition filled in the name and style of PIL deserves to be dismissed at threshold for the reason that, in the entire writ petition the petitioner have failed to espouse the public interest which is involved in present litigation, More so, by reading the pleadings of the petition it appears that, it is the private interest litigation in the garb of public interest litigation. It is pertinent to state here at this juncture, that the petitioners have not challenged the procedure with regard to allotment of the land, neither they have challenged the grant of environment clearance for the subject washery granted earlier for the establishment of washery to the extent of 0.99 million ton's per year. However, now at the belated stage when the answering respondent is extending its capacity of the washery over the earlier allotted land only, petitioners all of sudden has started raising the voice, without there being any basis of it. It is respectfully submitted that by virtue of the extension the answering respondent is only enhancing its capacity from 0.99 Metric Million tons per year to 2.48 Metric Million Tons per year and not enlarging the area of the land earlier allotted 1.o.*

17.50 Acres. Therefore, prima facie this entire writ petition in the form of PIL deserves to be dismissed.

7. *Mr. Animesh Tiwari, learned counsel appearing for the respondent No. 7-Chhattisgarh Environment Protection Board, submits that the petitioners have failed to exercise their efficacious alternate remedy available under the National Green Tribunal Act, 2010 (for short, the Act, 2010) and the petition should be dismissed at the very threshold and the petitioners should be relegated to exercise their efficacious alternate remedy as per law before approaching this Hon'ble High Court under writ jurisdiction. The primary relief being sought by the Petitioner is premature i.e. they pray for restraining the respondent no. 6 from the extension of their capacity from 0.99 million tonne per year to 2.48 million tonne per year Coal Washery. However, it is submitted that granting or rejecting the Environmental Clearance for expansion of a project is the sole discretion of the Regulatory Authority' as per the Environmental Impact Assessment Notification, 2006.*

8. *The regulatory authority which has to take the final decision regarding the environmental clearance in this matter is State Level Environment Impact Assessment Authority (SEIAA) which has not been impleaded as a party in this petition. The allegations regarding the allotment of grassland to the respondent No. 6 for their expansion are not concerned with the respondent-Board. Such issues should be answered by the State instrumentalities concerned with allotment of land. The petitioners have also failed to allege specific grounds against the Board and have focused their petition on the general idea of the coal washery causing pollution without backing it with any relevant data, facts or figures to support their claims. Thus, the reply will be focusing on the process of public head conducted as per the Environment Impact Assessment Notification, 2003. Mr. Tiwari further submits that to prevent and control the water pollution and air pollution and also to restore and maintain the wholesomeness water and air in the country, the Central Government enacted the Water (prevention and control of pollution) Act, 1974 (hereinafter to be referred Water Act) and Air (prevention and control of pollution) Act, 19 [Hereinafter to be referred as 'Air Act']. Subsequently the Environment Protection Act, 1986 was also enacted by the Central Government and exercise of powers under Section 3 of Environment Protection Act rea with Environment Protection Rules, the Central Government had notify the Environment Impact Assessment Notification, 2006 (EIA Notification amended from time to time) which primarily deals with grant or reject c environmental clearance by requisite authority as per the notification to the projects of private proponents. As per the EIA Notification, the Centra Government directs that from the date of publication of this notification construction of any new projects or activities or expansion o modernization of existing projects or activities listed in the schedule shall be undertaken anywhere in India only after taking prior EC from the Central or State authorities. By exercise of powers under Section 4 of the Water and Air Acts respectively, the Chhattisgarh Environment Conservation Board was constituted, which is a statutory body vested with discharge of statutory functions, with an object to*

ensure that goals of sustainable development and a pollution-free world are realised by ensuring strict compliance of environmental laws, rules, regulations, etc. The Central Government had also enacted the Act of 2010 with a view to provide for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief, etc. The NGT Act has special mechanism for dealing with the plethora of environment related issues at various stages. Section 14 read with Schedule I of the Act provides jurisdiction to the NGT to deal with all civil cases where a substantial question is related to environment and even any challenge can be made to orders passed under Air Act, etc. Further, Section 16 also provides for appellate powers of the Tribunal in certain matters mentioned therein. In pursuance of seeking EC, as per Paragraph 6 of EIA Notification, the applicant has to apply in Form 1 and Supplementary Form 1A if applicable after identification of prospective sites and shall also file a copy of pre-feasibility project report. It is submitted that in the present case the Applicant i.e. Respondent No. 6 has filed the Form 1 Application Online Proposal dated 19/12/2022 along with their draft EIA report. Thereafter, as per Paragraph 7 (III)- Stage 3 i.e. Public Consultation comes into play. As per Paragraph 7(III) must undertake Public Consultation which has two components comprising of Public Hearing at the site and obtaining written responses. Keeping in view the administrative and logistical reasons as well as keeping in view the law-and-order situation, the Member Secretary, CECB wrote letters dated 29.12.2022 to the Board and to the District Magistrate, Janjgir Champa so that a date may be proposed on which Public Hearing can be fixed. The Board also wrote letter dated 04.01.2023 to the District Magistrate requesting the same. Further, to make available the Draft EIA Report and Summary EIA Report to the public at large, the Board had forwarded the copies of Draft EIA Report and Summary EIA Report to the concerned local authorities/administration on 04.01.2023 itself through letter and the aforesaid reports were also available on the website of CECB. In pursuance of the above-mentioned consultation, the Additional Collector had finally held vide letter dated 06/02/2023 that the Public Hearing shall take place on 15/03/2023 at Primary School, Kanhaiband, Tehsil Janjgir, District Janjgir Champa from 11:00 AM onwards. In order to ensure wide publicity and advertisement of the Public Hearing the Board directed vide letter dated 09.02.2023 to Pioneer and Dainik Bhaskar news-papers to publish the detailed advertisement with reference too public hearing in the concerned matter on 15.03.2023, which was duly published in the said two news-papers on 10.02.2023.

9. *It is further submitted by Mr. Tiwari that vide letters dated 09.03.2023, the respondent-Board had informed the Tehsiladar, District- Janjgir Champa to widely publicize the public hearing in the vicinity of all the villages for a week from 08.03.2023 that the Public Hearing is to take place on 15.03.2023. The Additional District Magistrate, Janjgir Champa sent a letter dated 06.02.2023 to the Superintendent of Police, District- Janjgir Champa to make requisite security*

arrangements for the conduct of Public Hearing on 15.03.2023. On 15.03.2023 the Public Hearing had taken place at the venue and time as already decided, and the entire process of Public Hearing had taken place under the supervision of the Additional District Magistrate and Board wherein the public therein had marked their presence and the statements of those persons present and interested were recorded, which can be seen from the minutes of the Public Hearing Work Summary Report along with a copy of the attendance sheet. Further, the written responses so received during the public hearing were forwarded to Respondent No. 6 and Respondent No. 6 has replied to all such queries by their letter dated 20.03.2023. In the present matter, the public hearing has already taken place on 15.03.2023. The Board has also sent the entire record of the said public hearing to Head Office, CECB by letter dated 22/03/2023. Thereafter, the Member Secretary, CECB has also sent the entire record of public hearing to the Member Secretary, State Level Environment Impact Assessment Authority (SEIAA) by letter dated 05/04/2023. Furthermore, the regulatory authority has also granted Environment Clearance to respondent no. 6. In case of any issue regarding concealment/misloading Information at the time of granting EC, then as per Paragraph Sivi) the Regulatory authority i.e. SEIAA has the absolute power to reject the application seeking environmental clearance or oven If environmental clearance has boon granted the Regulatory authority has the power to cancel the environmental clearance so granted. Hence, In light of the said submissions, the petitioners are not entitled to any of the reliefs as claimed by them In the present petition and the present petition of the petitioners deserves to be dismissed.

10. *We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.*

11. *Basically, the petitioners are aggrieved by extension of the capacity of the respondent No. 6-Company which is a Coal Washery. From the pleadings and averments made in the petition, it transpires that the said Coal Washery is existing there for a long time and now they have been permitted to extend their capacity. The environmental clearances are given by the respondent No. 7 and the grievance raised by the petitioners in this petition can be very well redressed before the NGT. The NGT has special mechanism for dealing with the environment related issues and as such, it would be appropriate that the petitioners are relegated to avail the said remedy.*

12. *In view of the above, this petition stands dismissed reserving liberty to the petitioners to approach the appropriate forum for redressal of their grievance."*

10. Learned counsel for the applicant relied on the photographs which is annexed as annexure-A/8 depicting the emission of dangerous black smoke and fly ash dust alleged to be affecting the flora and fauna and some newspaper reporting as annexure-A/9.

11. During the course of hearing to find out the actual cause of action and parameter of pollution and health problems, this Tribunal constituted a committee consisting representative of the Secretary, Government of Chhattisgarh, one representative of the Director, Industries,

Member Secretary, CECB, with direction to submit the factual and action taken report. The members of the committee visited the site and submitted the report as follows :-

1. ***Environmental Clearance:*** *M/s Mahavir Coal Washery Pvt. Ltd. is established in an area of 17.26 acre. Earlier, the industry was operating at 0.99 MTPA during which the working hour was of 8 hour. A public hearing on date 15/03/2023 was conducted at Primary School Kanhaiband, District – Janjgir Champa. After the public hearing, the industry was granted Environmental Clearance to expand its operation from 0.99 MTPA to 2.48 MTPA by the State Environment Impact Assessment Authority (SEIAA) on dated 26/07/2023. After expansion to 2.48 MTPA, the working hours were increased from 8 hours to 20 hours.*

2. ***CTE & CTO for expansion:*** *The Chhattisgarh Environment Conservation Board has thereafter granted the consent to establish to the industry on date 19/01/2024 and consent to operate on date 01/07/2024 under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 for its expansion.*

3. ***Plant & machinery:*** *The Coal Washery is two product washery; clean coal and rejects. Heavy Media Cyclone process has been selected. Washing is done through close circuit water system comprising mainly of cyclone, high frequency screen, thickener and multi roll belt press filter.*

4. ***Approach Road:*** *The committee while visiting the site found out that the village approach road connecting to the washery plant was not maintained. It was neither made of concrete road neither any plantation was carried out in the roadsides. Due to which coal dust was found accumulated on the road.*

5. ***About the Land records:*** *In relation to the allegations of the land where coal washery has been established being recorded as grazing and pasturing land (□□□□ मद) in the revenue records, it is submitted that while examining the documents provided, the industry has been allotted land (17.26 acre) for establishment by the Chhattisgarh State Industrial Development Corporation (CSIDC) on dated 24/12/2021. Vide letter of the Collector, District – Janjgir Champa dated 08/02/2018, government land was allotted to M/s Mahavir Coal Washery Pvt. Ltd with the condition that the firm shall provide equivalent land as grazing/pasture land to the government. Accordingly, the firm has provided equivalent land to the government.*

   In this regard, the Revenue Inspector and Patwari were present during the inspection alongwith the land record register and the same was inspected by the committee. As per the information mentioned in the register they stated that the firm has full possession of the industrial land (17.26 acre) allotted to them and it is presently used for industrial purpose and regarding the equivalent land handed over to the government by the firm, they stated that the said land is registered as grazing and pasturing land (चराई मद) in the land records in the name of Chhattisgarh Revenue Department.

6. ***Issues related to Environment & health conditions of the villagers:*** *During the inspection it has been observed that-*

   a) Industry has established a dust extraction system along with bag filters in between rotary breaker and screen house to prevent air pollution.

   b) All the coal carrying conveyor belts and junction points were found covered.

   c) Rain gun was found established in raw coal yard; reject coal yard and stock yard of the industry for controlling fugitive emission during loading and unloading process. These arrangements for controlling fugitive emission appears to be not satisfactory and the industry needs to establish more effective arrangements, especially in raw coal handling area and finished product area.

   d) All the internal roads of the industry were found to be made Pucca and water was being sprinkled by water sprinklers. However, the industry needs to improve the housekeeping practices with state of the art sweeping machines.

   e) Plantation has been done along the inner side of the boundary wall of the industry. The industry's representative has informed that about 4000 tress have been planted in 2023, out of which 3500 are alive. However, the plantation has not been done in scientific manner. It is pertinent that industry makes sincere efforts towards improving the plantation as well as survival rate of the plants.

   f) Ambient Air Quality Monitoring System has been established in MCC room of the washery building and was found operational. During the inspection, the readings of the Ambient Air Quality Monitoring System were observed and found to be within normal range, which are enumerated as follows –

Parameters and their values	***Prescribed Standards***
PM10 – 35 µg/m3	*100 µg/m3*
PM2.5 - 31 µg/m3	*60 µg/m3*
CO -1.34 µg/m3	*04 µg/m3*

   g) During the inspection, air quality monitoring was also conducted at four locations in Village - Kanhaiband and the dust particles were found within the limits prescribed by Central Pollution Control Board. A copy of the air quality monitoring report is attached as Annexure-1 to this report.

   h) Garland drains were found to be established in the industrial premises

in which stop dam structure has been constructed. These drains are finally connected with the settling pond where coal fines ultimately get arrested and settled in this pond. These fines are then reused in the industrial process.

i) Sewage Treatment Plant (STP) of capacity 30 KLD has been established for the treatment of domestic waste water. The treated water is used in watering plantation.

j) Belt Filter Press (20 TPH) has been established to prevent the spillage of polluted water along with the sludge during washing process.

k) In relation to the allegations of functioning of coal washery is affecting entire area causing air pollution, asthmatic & respiratory problems especially in infants and old age residents due to emission of dust particles the Chief Medical and Health Officer, District – Janjgir Champa (C.G.) has stated in his letter dated 04/09/2024 that out of the 2255 people residing in the village – Kanhaibandh, a total 4 elderly people are suffering from Asthma. However, no supporting medical evidence justifying the cause of disease due to the industry has been produced.

l) In relation to the allegations of the agricultural and irrigated land being engulfed with blackish layer of dust due to the emission of coal particles, the committee also visited the farm fields located around the industry and found that the farming was being done normally by the farmers.

7. After taking into account the above mentioned facts, the recommendations and findings of the committee are as follows-

I. As per the consent conditions granted to the industry by the Chhattisgarh Environment Conservation Board, the industry needs to do plantation on 50% area of the total area. In this regard, the industry needs to develop extensive tree plantation. Thus, industry has been instructed to plant 5000 trees belonging to native species and having broad leaves along the periphery of the industry in scientific manner by the end of the Monsoon season, 2024 itself.

II. Industry has also been instructed to improve its housekeeping practices. In this regard, industry needs to purchase a sweeping machine which would ensure regular improvement of housekeeping practices of the industry.

III. In order to more effectively control fugitive emissions from the industry, measures related to water sprinkling system should be established at raw coal handling area and finished product area.

IV. The comments submitted by the Health Department and the monitoring of air quality performed by Chhattisgarh Environment Conservation Board conclude that there is no instance of air pollution due to the industrial

activity."

12. The submission of the learned counsel for the respondent no. 06 are that the applicant has no cause of action as Applicant no. 2 and 3 are not local resident of the village Kanhaiband, therefore their knowledge about the subject matter, and their interest in the subject matter is highly questionable and raises a serious doubt on their credibility, which again substantiate, the stand taken by the answering respondent in above paras and that the Applicant no. 1 has also sold various lands to the answering respondent i.e (Project Proponent) in village Kanhaiband only which is used for exchange of land with State Government for purpose of establishing coal washery plant at Khasra no. 55/10 as well as 55/11 area administering 6.98 hectare (17.26 acre) situated at village Kanhaiband. Thus the Applicant no.1 who himself is a party to the transaction relating to the same subject matter and being aware of the fact that the said land for which the lands are exchanged is used for the construction of washery, can not take a summersault and question the same after establishment of the coal washery and grant of Environmental Clearance, this again goes to show that the purpose behind filing of this original application is ulterior with a motive to enrich themselves illegally, by an arm twisting method.

13. It is further argued that Section 14(3) clearly mandates that no application for adjudication of dispute under this section shall be entertained by the tribunal unless it is made within a period of 6 months from the date on which the cause of action for such dispute first arose. Means thereby, the preliminary requirement, for the entertainment of an application, is the time period of 6 months from the date when the cause of action arose. Admittedly, in the entire application filed, not a single whisper about the cause of action, more so the period of limitation has been mentioned.

14. The statute under Section 14(3) specifically mandates the entertainment of an application within a statutory time period of 6 months from the date of arising of cause of action. Means thereby, it is mandatory for the applicants to plead and state very categorically that, when and how he has got the cause of action, and whether an application filed by him is within the period of limitation of 6 months or not. However, in the present case the same is lacking, thus as per the settled law by the Hon'ble Tribunal, the present application deserves to be dismissed. It is pertinent to mention here that, it is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and within its rigor and same must need to be adhered to.

15. Brief facts as narrated by the learned counsel for the respondent no. 06 are that on 04/02/2015, the answering respondent has applied to the State Investment Promotion board for the allotment of 30 acres of land for the establishment of 2.50 Metric Million Ton Coal Washery at Village and Post Kanhaiband, Near Jangir-Naila Railway Station, Thesil Jangir, District Jangir Champa and on 22.04.2015 the said application which is forwarded to State Investment Promotion Board was forwarded by the Joint Director of State Investment Promotional Board to Directorate of Industries vide letter dated 22.04.2015.

16. That, after filling of an application various internal correspondence took place among the various department of Chhattisgarh and in between that the answering respondent has obtained the NOC for Establishment of the Coal Washery from Gram Panchayat Kanhaiband Thesil Jangir District Janjgir Champa vide letter dated 25.04.2016. The land for which the application was made by the answering respondent is situated at Khasra no. 55/1 of Total Rakba 25 acres as well as Khasra No 55/3 of Total Rakba 5 acres, i.e. Total land of 30 acres. Apposite to state here that, since the lands for which the application was made were recorded as grassland in the revenue records. Therefore, Collector Janjgir has written a letter to Directorate of Industries Raipur vide dated 08.02.2018, to write the letter to the answering respondent for compliance of the provisions of Section 237(3-A) of Chhattisgarh Land Revenue Code to make available that land it is necessary for exchange of similar proportion of land over the area.

17. The said letter was further forwarded by Directorate of industries to Managing Director of CSIDC on 25.04.2018 has written to the answering respondent to provide the land in exchange of said land so that the lands which is recorded under the grassland can be exchanged and allotted to the answering respondent by as per the provision of Section 237 (3-A) of Chhattisgarh Land Revenue Code on 23.08.2018 the answering respondent has written a letter to Joint Director, Directorate of Industries giving their consent restricting the land allotment to the tune of 17.26 acres, instead of 30 acres and further giving the consent for exchange of land to the tune of 17.26 Acres.

18. That, taking into consideration the letter written by the answering respondent, on 14.09.2018 the Managing Director of CSIDC has passed an order 27.02.2019 by virtue of which it was ordered get the registration of private land of the answering respondent in favour of the Chhattisgarh State Industrial Development Corporation which is to be provided by the answering respondent in exchange of the Government land situated at Khasra no. 55/1 for Total Rakba 17.26 acres.

19. That on 24.04.19, answering respondent has written a letter to Managing Director of CSIDC and informing the Managing Director that vide dated 06.03.2019 the answering respondent has already registered the land in the name of CISDC and has transfer their possession of land also to the CSIDC. Along with the letter the answering respondent has annexed the copy of the registration made in favor of CSIDC and vide order dated 03/02/2021, Collector, while exercising the power conferred under provision of Section 237(3-A) of Chhattisgarh Land Revenue Code has exchange the Government Land Situated at Khasra No. 55/1 with the private land of the answering respondent.

20. That on 23.07.2021 Managing Director CSIDC has written a letter to answering respondent asking to pay the amount for the allotment of the Government Land as per the provision within 10 days from the issuance of letter of intent and after issuance of the letter dated 23.07.2021 the amount demanded by the State Government was deposited by the answering

respondent. The copy of money receipt demonstrating the same is being annexed herewith as Annexure R-13, and finally on 21.10.2021 the said land was allotted to respondent vide issuing the land allotment letter. After the allotment of the land on 21.10.2021, the Environmental clearance was granted on 04.03.2022, for the establishment of Coal Washery of capacity 0.99 Million Ton per year.

21. That, after getting the Environment Clearence the consent to establish the factory with capacity of 0.99 MTPA was granted on 20.04.2022 and finally on 20.04.2023 consent to operate was granted and vide dated 18.05.2023, the license to work a factory was granted for establishment of Coal Washery with the capacity of 0.99 MTPA.

22. The total land allotted to the answering respondent was 17.26 Acres and in this 17.26 Acre only earlier the Coal Washery plant was established with capacity of 0.99 MTPA, however in the originally application filled before the State Investment Promotional Board, the proposal was made for the establishment of Coal Washery plant with the capacity of 2.48 MTPA. Therefor answering respondent has filed an application on 31.05.2022 for issuance of Terms of Reference for the extension of capacity of Coal Washery from 0.99 MTPA to 2.48 MTPA. On the said application the Term of Reference was issued by the Special State Level Evaluation Committee Chhattisgarh, Department of Environment, Forest and Water Ministry, Government of India, on 05.12.2022 and public hearing for the said extension took place on 15.03.2023 and the objection raised in those public hearing was replied by the answering respondent on 20.03.2023 and finally on 27.06.2023 the environmental Clearence was granted by the State Environment Impact Assessment Authority Chhattisgarh, Ministry of Environment, Forest and Climate Change.

23. In compliance of the EIA notification dated 14.09.2006 the public hearing for the said project was scheduled on 15.03.2023 and the public hearing with regard to the same was communicated in widely published newspaper i.e., Danik Bhasker as well as Pioneer, New Delhi on 10.02.2023. On 15.03.2023 the public hearing started in which various oral objections as well as written objections were taken into consideration. The Applicant no. 1 Mr. Chitrabhan Singh Rathore was also present in the public hearing, and has raised an oral objection on general terms, his objection was recorded at Serial no. 64 on the minutes of the meeting of public hearing held on 15.03.2023.

24. The Submission of the learned counsel are that by virtue of this expansion the answering respondent is not expanding any area of the land but has only sought for the permission to increase the working hours from 8 hours to 20 hours i.e., by increasing its capacity from 9.99 MTPA to 2.48 MTPA. And in reply to the objection raised by the villagers in which it was very categorically stated by the answering respondent that, the proposed coal washery plant is being developed with zero liquid discharge function and that by virtue of an extension the capacity of the plant has been increased from 0.99 MTPA to 2.48 MTPA without there being any increase in the area of land, as the land was allotted for the purpose of establishment of washery with the capacity of 2.48 MTPA. It is further respectfully submitted that, so far as the averment raised by

the Applicants that the land where the washery is situated has been situated in the land at Khasra no. 55/1 and against the will of villagers, with regard to the same, it is respectfully submitted that the Applicant no. 1 himself has acted upon in the entire transaction of sale and purchase of land for purpose of establishment of this washery. The respondent has also filed the compliance reports of terms and conditions given in environmental clearance issued to the project proponent and the same has been submitted to the authorities concerned periodically and the compliance say that these conditions have been complied with.

25. Certain issues were raised by the members of the joint committee and in reply and response to the report of the committee, respondent no. 06 has filed the compliance report and stated that all the directions and suggestions raised by the committee have been complied with in the following manner:-

a) *"**Environment Clearance:-** The finding was given (by the committee with regard to the environment clearance and it was stated that after the public hearing, the project proponent was granted environment clearance to expand its operation from 99 MTPA to 2.48 MTPA by the State Level Environment Impact Assessment Authority (SEIAA) on 26.07.2023. It was further stated by the committee that after expansion to 2.48 MTPA, the working hours were increased from 08 hours to 20 hours. In this particular finding, there was no such adverse finding given by the committee and therefore, the answering respondent/project proponent refrain itself from commenting anything.*

b) ***CT & CTO Expansion**:- In this para, the finding which was recorded by the committee was with regard to the fact that only after the grant of consent to operate vide order dated 01.07.2024 by the Chhattisgarh Environment Conservation Board, the answering respondents has stated its working, thus, this finding is also a matter of record. Hence, no reply is required from the project proponent.*

c) ***Plant and Measure**:- In this para also, the facts (which were prevailing have been quoted by the committee and it was stated by the committee that the coal washery is the product washery i.e. clean coal and widgets and the washing is done through closed circuit water system comprising mainly of highest frequency stream, thickner and multirole pale press. Therefore, the same is also a matter of record, hence no comment is required from the answering project proponent.*

d) ***Approach Road**:- In this para, it was stated by the (committee that the committee while visiting the site, the village approach road connection to the washery plant was not maintained. It was neither made of concrete road, nor any plantation was carried out in the road site due to which, the coal was accumulating in the road side. With regard to this submission, it is respectfully submitted that the approach road from the Main Road to the washery is a Government Road, which is a WBM Road. The Road about 500 Meters from the Main gate of the Washery to WBM Road has been made*

Pucca (Concrete) by the industry, and the remaining WBM Road is maintained by the project proponent. It is further respectfully submitted that, to control the dust flying due to vehicles transportation in the industry, water sprinkling is done regularly from water tankers every day. The Pucca (Concreted) road is cleaned with sweeping machines and water is also sprinkled with water tankers to control dust. It is further respectfully submitted that, out of all the measures currently being opted by the answering respondent/project proponent, the answering respondents/project proponent has also taken into consideration the suggestion made by the committee and has ensured the Regional Officer, Chhattisgarh Environment Conservation Board by writing a letter on 30.08.2024 in compliance of the inspection carried on 28.08.2024 that the road which is connecting the washery from the main road will be constructed at the expense of the project proponent themselves by spending money through the fund of CSR (Corporate Social Responsibility) within a period of 01 year and after taking the due permission from the Collector, District - Janjgir-Champa and thus, with regard to plantation, the answering respondents has carried out the plantation also in compliance of the said report which is visible from the photographs dated 21.12.2024 and thus, the answering respondents/project proponent very categorically and respectfully submits that the suggestion made by the Joint Committee has been duly accepted by the answering respondents/project proponent and the part of the same has been complied with and for the same, the assurance was provided by writing a letter on 30.08.2024.

That, it is pertinent to mention at this juncture, at present, since the road is the government road and the same is not under the control of the answering respondents/project proponent, therefore, the answering respondents/project proponent at this juncture tried to maintain the approach road by carrying out repairs each and every time it was required and by regularly sprinkling water on the said road, so that, the dust cannot flow.

That the answering respondents/project proponent assures this Hon'ble Tribunal that within a period of 01 year, the concrete road from the expense of the answering respondents/project proponent will be constructed, after the same gets approval from the district administration under the CSR (Corporate Social Responsibility) head. It is also pertinent to mention that the work of water sprinkling was carried out from the starting point of the main road to the washery which is admeasuring approximately around 1.5 kilometers continuously at an interval of 6 to 7 hours, 03 times a day.

e) ***About the land record**:- That, the finding with regard to the land record, it was stated by the committee that in response to the letter by the applicant that the land where the coal washery has been established being recorded as grazing and per land in the revenue records, however, when the committee has inspected the records and documents provided by the department in the presence of Revenue Inspector and Patwari, they came to know about the fact*

that the industry has been allotted the land for its establishment by the Chhattisgarh State Industrial Development Corporation vide order dated 24.12.2021 and vide letter dated 08.02.2023 of Collector, District Janjgir-Champa and the government land was allotted to M/s. Mahaveer Coal Washery Private Limited with a direction that the firm shall provide equivalent land as grazing/pur to the government and the documents annexed as shown by the project proponent goes to show that the equivalent land as recorded in the name of project proponent was handed over to the State Government and the said land was recorded in the Chhattisgarh Revenue Department. Thus, with regard to the allocation of land recorded, the committee has carried out its inspection and stated the material facts which are part of record. Hence, no reply with regard to the same is needed in this observation of the committee by the project proponent.

f) Issue related to environment and health condition of the villagers: In this para, the committee has reported the various finding with regard to the measures adopted by the answering respondents/project proponents for controlling the fugitive ambitions during loading and unloading process and plantation done inside the area of plant and after recording the various finding, the committee has directed the answering respondents/project proponents to carry out the following plans at Para 7 of the report. In compliance of the same, the answering respondents/project proponents has already stated vide letter dated 30.08.2024 communicating to the Regional Officer, Chhattisgarh Environment Conservation Board about the fact that the project proponent will carry out all the recommendations suggested by the committee and to assure the same, the project proponents has prepared a chart and has stated that so far as the recommendation i.e. plantation of five thousand trees is concerned, answering respondents/project proponents has stated at present, 3500 trees are planted and during the coming monsoon, 5000 more plants will be planted and the said plantation work was also carried out which is evident from the photographs annexed herewith as ANNEXURE -AD/4. Thus, the recommendation made for the plantation of trees has been carried out by the answering respondents/project proponents. Secondly, it was recommended by the committee that the project proponent needs to improve their housekeeping practices and to do the same, it was recommended by the committee that the industry was required to purchase, sweeping machines so that a regular improvement of housekeeping may be maintained in the industry. In compliance of the recommendation made by the committee, the answering respondents/project proponents has already purchased the sweeping machines and has installed the said sweeping machines in the factory/plant premises of the answering respondents/project proponents and has regularly started carrying out the sweeping activities to maintain good hygiene and is improving their housekeeping practices. Copy of the invoice of the sweeping machines along with the photographs of the sweeping machines installed at the premises of factory/plant. Thus, it can be very stated that the answering respondents/project proponents have accepted the recommendations in a positive manner and has complied with the same

which is evident from the documents annexed along with the compliance report."

26. With reference to water sprinkling system it has been submitted that sprinkler system has already been installed at raw coal handling areas as well as finished product area, but to comply with the recommendation of the committee, respondent/ project proponent has appointed a team of specialist persons to regularly monitor the water sprinkler system and to ensure that the same may be operated effectively so that the fuel emission from the industry can be controlled and to demonstrate this fact, photographs of the water sprinkler system operated at raw coal handling area has been submitted with the application and the Members of the CECB regularly make inspection and after notice sufficient compliance has been made by the project proponent.

27. With regard to air pollution the submission of the applicant are that the function of the coal washery unit was closed down by the project proponent prior to the visit and inspection of the committee, so that, there may not be any air pollution in the atmosphere during monitoring of the air quality by the committee, but this issue has been replied by the project proponent that the proper precaution for maintaining the air pollution has been taken by the project proponent and there is no violation reported by the CECB or the expert body.

28. After hearing the parties, vide order dated 16.05.2025, this Tribunal directed the State Pollution Control Board to submit the compliance report on point of plantation and its survival, construction and maintenance of road, issue relating to health condition of villagers and availability of medical facility.

29. In compliance of the above, the Divisional Forest Officer and Regional Officer, CECB have filed the report as follows :-

1) *"**Plantation and its survival:** For verifying the fact, the committee has called the records i.e. Environment Clearance and Consent to Operate orders issue to Project Proponent. The committee has perused the terms and condition of Consent to Operate as well as the details of provided in Environment Clearance. As per the terms and conditions of Consent to Operate, the Project Proponent is required to:*

   - *Maintain 50% green belt area with minimum 8500 nos. plantation.*
   - *Maintain a green wall of 20 meters all along the boundary of the plant.*
   - *Maintain a green wall of 40 meters in the railway siding area.*
   - *The green belt must be a three-tier level plantation.*

   Suggestions for improvement –

   1. *It was observed that the soil in which plantation has been done lacks porosity and thus it will be better to mix sand in the plantation area so that there is better survival of the plants.*
   2. *It is also advised that spreading of local available grass seeds can be done to maintain a check on soil erosion and increase the aesthetics.*

3. *As one of the issues was that the grazing lands of villagers are lost, some fodder species like Babool, Khair, Banyan etc. can also be planted which can survive the local edaphic and climatic conditions and also provide fodder to local villagers if needed.*

Overall, the company has worked on all the aspects as per the directions issued by the Hon'ble Tribunal. It is also mentioned that the aforementioned suggestions may be implemented to form a three-tier green belt which can further the agenda of protection against pollution. The research paper by S. K. Maiti titled "Selection of plant species for the reclamation of minedegraded land in the Indian context" along with the plantation photographs in the industry have been annexed as Annexure-1 with the report to allow the full understanding of the construction of green belt around industries.

2) ***Construction and maintenance of road, which is under repair or damage:*** *During the visit, it was observed that the approach road which leads to the industry has been repaired and is being maintained. The representative of the project proponent present during the visit informed that the approach road is regularly inspected and maintained by the project proponent. He has also informed that water sprinkling is being carried out on the approach road from the starting point to the end point of the road every day.*

3) ***Issue relating to health condition of villagers and availability of medical facility:*** *A letter dated 19/06/2025 has been sent to the Primary Health Centre, Village – Sivni, District – Janjgir Champa (C.G.) seeking information from them regarding the complaints of any disease caused because of the operation of the industry. Also, during the visit, the officials of the CECB talked with the villagers of Village – Kanhaibandh. The villagers told that a health camp was organized by the project proponent on date 29/05/2025 and in the camp, no illness has been found to be caused due to pollution.*

The Primary Health Centre, Village – Sivni, District – Janjgir Champa (C.G.) have stated in their letter that 14 people are suffering from cough for 2-4 days and 5 people are suffering from allergy since 2-4 days. The PHC also states in its letter that currently all these people are healthy. A copy of the letter dated 19/06/2025, panchnama dated 18/06/2025 and letter of PHC, Village – Sivni, District Janjgir Champa (C.G.) are collectively attached as Annexure-3 with this report."

30. The committee has further taken reliance on the selection of plant species for the reclamation of mining degraded land in the Indian context by Mr. S. K. Maiti, Center of Mining Environment, Indian School of Mines, Dhanbad, where it has been reported that India has emerged as the world's third largest coal producing country, after China and the USA. The country's coal reserves are estimated at 70 billion tonnes, which accounts for 5.7% of proven

world reserves (Mathur 1996). Indian coal consumption is about 5.5% of the world total. The share of coal as a source of energy in the commercial sector increased to 66% in 1994–95 (Kumar 1995). In India, coal production will have to increase to meet energy demand over the next 20–25 years at the rate of 20–25 Mt/y. The national plan envisages further exploitation of coal resources at a very rapid rate, which is likely to pose greater environmental problems.

Underground coal mining is less detrimental to the environment than opencast mining. But, due to various problems with underground mines, there has been a trend towards opencast mining (Kumar 1995). Globally, coal accounts for 26% of primary energy consumption, whereas in India it has a share of 46% (Singh 2006). Indian coal production, which was of the order of 380 Mt in 2004–05, is supporting some 83 772 MW of thermal power generation, and with developments being planned for 2010, power generation is expected to increase to 150 000 MW (Singh 2006). More specifically, to meet estimated energy needs, India must produce nearly double the quantity of coal that it is currently mining, as fuel requirements will be some 550 Mt/y (Singh 2006). The increasing trend towards opencast mining, together with the adoption of large-scale mechanization, has led to the release of large amounts of dust and gaseous pollutants. In opencast mining, massive quantities of overburden (OB) have to be removed to reach the mineral deposits (Ghose 1989). The operations involved are likely to result in massive discharges of fine particulates from overburden materials. Similarly, the mining operations themselves will involve excavation, size reduction, waste material transportation, loading, stockpiling, etc. These will all release particulate matter. Mine closure operations, which are similar to those involved in mine opening, but are of shorter duration, will also release particulate matter (Ghose and Majee 2000). Since future plans envisage that a large proportion of overall coal production will come from opencast mining, more air pollution problems will be created.

Tree planting is one of the best measures for reducing the air pollution (Maiti and Banerjee 1992; Maiti 1993, 1998; Abbasi et al. 2001). This paper focuses on the selection of plant species to control air pollution effectively by developing ‘green belts’ in coal mining areas.

31. SOURCES OF AIR POLLUTION DUE TO COAL MINING

The main air pollution problem in a mining area is the presence of particulates, which may be coal, soil or rock dust. Particulates find their way into the atmosphere from wind-scavenged soil surfaces, combustion sources, material transfer points, or other sources at the mine site. Strip-mine air-pollution sources can be divided into two categories: point sources and fugitive sources. Point sources typically include stationary exhaust stacks. In contrast, fugitive sources are open sources, such as the exposed soil of OB, and coal (Ghose and Majee 2001). During dry and windy conditions, the surface soil is scavenged by wind, causing particulate matter (dust) to be suspended and transported downwind. A subset of point sources of particulates would include line sources and mobile sources. Most important are the identification and quantification of dust emissions at the mine site.

Heavy earth-moving machinery (HEMM) on haul roads has been identified as the most prolific source of fugitive dust, and can contribute as much as 80% of total dust. Cowherd et al. (1979) estimated that about 50% of the total dust is released during dumper truck movements on unpaved haul roads, while 25% arises during loading and unloading operations. Chadwick et al. (1987) estimated that 0.02% of coal is lost during loading and unloading. Nair and Singh (1990) estimated that road dust contains more than 4% of respirable dust.

Another major source of fugitive dust is wind erosion from stockpiles. Jacko (1983) has given estimates of fugitive dust from mining operations. In opencast mining, workers are exposed to concentrations ranging from 3–5 mg/m3 in coalfaces to 1–2 mg/m3 in overburden faces. After haul roads, drilling is perhaps the next most important source of fugitive dust. During drilling in overburden benches, the dust concentration varies between 20 and 25 mg/m3 , and in coal benches it varies between 15 and 30 mg/m3 .

32. MECHANISMS: FOR REMOVAL OF AIR POLLUTANTS BY 'GREEN BELTS'

A 'green belt' is the mass planting of pollution-tolerant trees (evergreen and deciduous) in an area, for the purpose of minimizing air pollution by filtering, intercepting and absorbing pollutants in an effective manner to improve the environment (Roy and Sharma 1997; Abbasi et al. 2001). The pollutants are transferred from the atmosphere to vegetation by the combined forces of diffusion and flowing air movements (Smith 1981). Once in contact with plants, gases may be bound or dissolved on exterior surfaces or taken up by the plant via stomata. If the surface is wet and pollutants are water soluble, then they are removed by the diffusion process. When the plant is dry, or in the case of gases with low solubility, air movement is assumed to be an important mechanism. The rate of gaseous pollutant removal depends on the solubility of pollutants in water and is reported as following the order: HF > SO_2 > Cl > NO_2 > O_3 > PAN> NO > CO (Hill 197l; Bennett and Hill 1975).

Trees are to be selected based on location, availability and sustainability given the climate; and on the type of pollutants and their intensity. Trees with compact branching, closely arranged leaves, broad leaves of simple elliptical and hairy structure, shiny or waxy leaves and high proline content are suitable for arresting dust pollutants (Maiti 1993). All the plant parts act as sinks; leaves intercept 60–90%; petioles (leaf stalks) 3–30%; and stems 4–14% (Smith 1981). The natural sink processes are precipitation, chemical reaction, sedimentation and absorption. Research into the criteria for selection of plant species for gaseous pollutant attenuation in India is very sparse. The Central Pollution Control Board (CPCB) has suggested the following criteria for selection of plant species for removal of particulate pollutants:

(i) Height and spread of crown;
(ii) Arrangement of leaves (phyllotaxy);
(iii) Abundance of surfaces on bark and foliage, through:
- roughness of bark

- epidermal outgrowth on petioles
- abundance of auxiliary hairs (trichomes)
- stomata protected (hairs, wax, etc.)

In the present investigation, stomatal features of 51 tree species commonly growing in mining areas were studied and ranked according to their ability to absorb gases and dust.

33. Green belt is an effective and economic means of mitigating air pollution and remains effective for a long period of time. It is the canopy which acts as a sink for gaseous air pollutants. The limitations in green belt development observed during the study were:

i. the diversity of tree species was not considered;
ii. monoculture plantation was widely practised; and
iii. plant density was not normal, being either too high or too low. As a result, bole height (branchless tree trunk) was very short. It is suggested that plant species selection for the construction of green belt should be made on the basis of stomata characteristics, and an in-depth study is essential. The study reveals that the removal of gaseous pollutants depends on stomatal frequency and size. In some species, stomatal frequency was found to increase in polluted areas. Selection of plant species should be made on the basis of size of stomata, stomatal frequency, stomatal coverage, and tolerance to specific pollutants. The methodology adopted for the study may form the basis of guidelines, and the scheme proposed for designing green belt for attenuation of air pollution will be useful on an industrial scale for various sites.

34. Learned counsel for the respondent has argued that sustainable development means for making a balance between the right to environment and development and further that sustainable development is a means to eradicate poverty and improve the quality of human life while living within the carrying capacity of supporting ecosystem. He has relied on the (2025) 4 SCC 150, 2025 SCC Online SC 557 *The Auroville Foundation Vs. Navroz Kersasp Mody & Ors.* where vide order dated 17.03.2025 disposing the Civil Appeal No. 5781-82/2022 Hon'ble the Court observed as follows:-

> ***"Law on the protection of environment***
> ***(Para 45)***
> *The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable development" has been accepted as a viable concept to eradicate poverty and improve the quality of human life, while living within the carrying capacity of supporting ecosystems. "Sustainable development" as defined by Brundtland Report means "development that meets the needs of the present without compromising the ability of the future generations to meet their own needs".*
>
> *(Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647, followed).*
>
> ***(Para 46)***
> *There need not necessarily be a deadlock between development on the one hand and the environment on the other. The objective of all laws on environment should be to create harmony between the two since neither one can be sacrificed at the altar of the other.*

There should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

(Essar Oil Ltd. v. Halar Utkarsh Samiti, (2004) 2 SCC 392; Indian Council for Enviro-Legal Action v. Union of India, (1996) 5 SCC 281, followed)

(Para 48)
The adherence to sustainable development principle is a sine qua non for the maintenance of the symbiotic balance between the rights to environment and development. Right to environment is a fundamental right. On the other hand, right to development is also one. Here the right to "sustainable development" cannot be singled out. Therefore, the concept of "sustainable development" is to be treated as an integral part of "life" under Article 21 of the Constitution.

(N.D. Jayal v. Union of India, (2004) 9 SCC 362; State of H.P. v. Ganesh Wood Products. (1995) 6 SCC 363; M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388; Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647, followed)

(Para 49)
As demonstrated earlier, in the instant case, no substantial question relating to environment had arisen, nor violation of any of the enactments specified in Schedule I of the NGT Act, was alleged. The Tribunal therefore had committed gross error in assuming the jurisdiction and giving directions untenable in law.
(Para 50)
In that view of the matter, the impugned orders passed by the Tribunal being without jurisdiction and legally untenable deserve to be quashed and set aside."

(Navroz, Kersasp Mody v. Auroville Foundation, 2022 SCC OnLine NGT 5402; Navroz Kersasp Mody v. Auroville Foundation, 2022 SCC OnLine NGT 2934; Navroz, Kersasp Mody v. Auroville Foundation, 2021 SCC OnLine NGT 4505, reversed

Auroville Foundation v. Navroz Kersasp Mody, 2023 SCC OnLine SC 2353, referred to Appeals stand allowed [RM-D/72272/C]).

35. The main question raised by the Learned Counsel for the applicant relates to the public hearing on the ground that in-spite of the fact that the villagers repeatedly filed objections during the proceeding but the respondent authorities has not taken care of. In reply thereof, the Learned Counsel for the respondent has submitted that the applicant was instrumental in providing and managing the land for expansion of the project and he was fully aware about the activities of the unit and further assisting for provision of land and for the reasons best known to him, he again filed this petition for ulterior motives. It is further stated that public hearing took place on 15.03.2023 and after objections raised by the public, it was finally heard and decided by the authorities concerned.

36. The report of the SEIAA, Chhattisgarh has been filed with the reply where the matter of nearest abadi site, land, air pollution, consumption of water, and source of water, rain water harvesting, EIA report, plantation of tree, and cumulative impact assessment was considered vide meeting dated 22.05.2023. In Para 16, the SEIAA has considered the report and points of public hearing and it is found that the opportunity of public hearing was provided and the copy of the proceedings was sufficiently discussed in the meeting.

37. It is further argued that the proceedings of the public hearing discloses that everyone were given an opportunity of hearing and approximately more than 74 persons presented their objections which were duly discussed and resolved. Accordingly, the matter of public hearing and lack of public hearing is not substantiated by any cogent evidence and this ground is not found to be genuine.

38. Learned counsel for the applicant has raised the issue of plantation, public health and road construction, and the report on that point has been called from the CECB and Forest Department. The Forest Department has suggested the plantation and methods and its survival and further that the health camps are being organized during the proceedings of this Tribunal, but regular health camp is required to check up the health status of the public.

39. In view of the above facts and discussion, we direct as follows:-

i. The respondent/project proponent is directed to maintain the minimum green belt, plantation of trees as to maintaining green belt in three-tier level system, have to maintain a green wall of 40 meters in the railway siding area, to make necessary provisions for plant protection and preservation by maintaining the quality of the soil as suggested by the committee or any alternate method which is suitable at the place in consultation with the Agriculture Department and to ensure the protection in the green belt area.

ii. The approach road should be properly maintained and there should be regular water sprinkling by the project proponent.

iii. So far as the construction of the road and its maintenance is concerned outside the unit area within the jurisdiction of the PWD or the National Highway, the same may be maintained by the DMF fund or the CAMPA fund from the taxes and revenue generated through the project proponent. In case of non-availability of the fund, the State Administration/PWD Department may have to take a meeting with the project proponent and to make a proper and necessary arrangement of the fund.

iv. In-charge of the Primary Health Centre, Village – Sivni, District – Janjgir Champa, Chhattisgarh, is directed to have a regular check-up health camp in the area in consultation and cooperation with the project proponent and to make every effort to provide the medical assistance to the locals, periodically and not more than 30 days.

v. For maintaining and protection of the green belt and plants, the research work as narrated above and given in paragraph 33 must be taken into account by the

respondents and necessary action must be done in accordance with the consultation of the Forest Department as suggested in the research paper.

vi. The CECB is directed to periodically monitor the status of the health camps and development of green belt and in-case of any deficiency, the remedial measures must be taken immediately in consultation with the authorities concerned.

40. With these observations, the **Original Application No. 168/2024** is stands **disposed of.**

❖

Yadram vs. State of Rajasthan & Ors.

(Original Application No. 96/2023)
Decided on: 25th September, 2025 (CZ)

CASE NOTE

The case concerns the challenge raised by the applicant against largescale sandstone mining in Bansi Pahadpur Blocks A & B of Bharatpur, Rajasthan, areas that were earlier part of the Band Baretha Wildlife Sanctuary and later de-notified in 2021. The applicant argued that de-notifying ecologically sensitive sanctuary land to permit Red-category mining violated the Wildlife Protection Act, the precautionary principle, and the Public Trust Doctrine. The applicant alleged non-compliance with Environmental Clearance (EC) conditions—such as dust control, road quality, monitoring infrastructure—and highlighted health risks to nearby villagers and wildlife.

The matter related to the permissions to carry out sand stone mining in the Bharatpur District of Rajasthan of approx. 4 crore tons per annum of sand stone, by specifically de-notifying protected area of the Band-Baretha Wildlife Sanctuary.

It was held that the orders and directions issued by the Hon'ble Supreme Court of India in TTZ matters must be strictly complied with and Sustainable Sand Mining Management Guidelines, 2016 & The Enforcement and Monitoring Guidelines for Sand Mining, 2020 and its conditions must be observed. The recommendations suggested by the joint committee must be monitored by the Collector concerned. The Department of Mines and Geology is directed that the quality and extent of the plantation must be improved in the entire cluster and there be an appropriate plantation planning for entire cluster zone and the dense plantation with effective protection through barbed wire fencing to be carried out using Miyawaki Plantation Technique. There must be adequate maintenance of road network, demarcation of mining lease through pillars and planning for replenishment. Mandatory six (06) monthly compliance report must be examined and in case of non-compliance of the conditions, the data should be uploaded on the website and necessary action must be taken for compliance of various conditions. Revenue Department, Forest Department and Department of Geology and Mining to ensure that mining is done within allotted lease area and within permissible quantity and strict action to be taken against the concerned violation is observed during visit to be carried out on regular basis. The State PCB is directed to monitor ambient air quality at the locations where the air quality has deteriorated beyond permissible limits and air emissions are reported to be high due to vehicular movement in the cluster as well as in adjacent road network periodically. There must be permanent and regular water sprinkler installed on the main highways, roads on the cluster and must be installed a Wheel washing facility at the individual mines and the road network in the cluster must be metalled so as to avoid any fugitive emissions. The respondent/state is directed that the transportation route must be improved from the District Mineral Foundation Trust from the DMF Fund, subject to audit by the concerned department. The prayer for quashing the notification dated 26.12.2018 and 18.05.2021 issued by the MoEF&CC is time barred and not maintainable before this Tribunal. The efficacious and alternate remedy for filing the appeal was available before the appellant/applicant, the same has not been adopted. If the applicant is aggrieved by any order of the competent authority the appropriate remedy under Section 16 of NGT Act, 2010 or any other law for challenging the notification is available. Thus, present original application as filed is not maintainable for the above relief. The prayer for quashing the environmental clearance dated 24.03.2022 and recommendation of SEAC dated 22.03.2022 with MoEF&CC permission dated 11.06.2021 is not within the limitation and barred by time. Further the applicant has efficacious remedy to file an appeal before the appropriate forum.

With above observations, the Court disposed of the Original Application with the above directions.

Yadram vs. State of Rajasthan & Ors.

COUNSELS FOR APPLICANT(S):
Mr. Ajit Sharma, Adv.

COUNSELS FOR RESPONDENT(S):
Mr. Shoeb Hasan Khan, Adv. For State Of Rajasthan
Mr. Rohit Sharma, Adv. For Seiaa & Rspcb
Mr. Om Shankar Shrivastava, Adv. For Moef&Cc
Mr. Prshant Sthapak, Adv. For R-6
(With Mr. Shreeyash U. Lalit, Adv. & Mr. Angad Pahel, Adv.)
Mr. Nishant Awana, Adv. For R-7, 9,10 & 19
Mr. Sandeep Singh Shekhawat, Adv.

CORAM:
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR CHATURVEDI, EXPERT MEMBER

RESERVED ON: 11th September, 2025
PRONOUNCED ON: 25th September, 2025

JUDGMENT

BY HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER

1. The applicant has filed this petition/application for the following relief :-

   a) Declare illegal the largescale sandstone mining in the denotified area of the Band Baretha Wildlife Sanctuary, i.e. in Bansi Pahadpur Blocks A & B for causing irreparable damage to the flora and fauna of the Band Baretha Wildlife Sanctuary as well to the health of the people living in close proximity to the mining areas.

   b) Declare that large scale mining impermissible in District Bharatpur, which forms a part of the Taj Trapezium Zone, without conducting any analysis of the impact such mining would have on the protected monuments and health of the public.

   c) Pass necessary orders to halt sandstone mining in Bansi Pahadpur Blocks A & B of Bharatpur District, Rajasthan, which was formerly part of the Band Baretha Wildlife Sanctuary

   d) Quash ESZ Notification dt. 26.12.2018 and subsequent amendment dt. 18.05.2021 issued by the MoEF being in violation to the judgment of the Hon'ble Supreme Court of India in In Re: T.N. Godavarman Thirumulpad vs. Union of India & Ors. [Writ Petition (C.) No. 202/1995, judgment dt. 3rd June 2022].

   e) Quash Environmental Clearance dt. 24.03.2022, issued in haste and two days after receiving recommendation of SEAC dt. 22.03.2022.

f) Quash MoEF permission dt. 11.06.2021 permitting diversion of forest area for sandstone mining activity.

g) Appoint a court commissioner to inspect the sandstone mining site at Bansi Pahadpur Blocks A & B for compliance with the terms of the Environmental Clearance dt. 24.03.2022 and to measure data regarding generation of particulate matter or alternatively appoint a neutral committee of experts to carry out inspection.

h) In the alternative, direct the Respondents to ensure compliance with each of the conditions of the Environmental Clearance dt. 24.03.2022.

2. The grievance of the applicant is the permissions to carry out sand stone mining in the Bharatpur District of Rajasthan of approx. 4 crore tons per annum of sand stone, by specifically de-notifying protected area of the Band-Baretha Wildlife Sanctuary. Currently, about 42 leases granted for 50 years, operate in contiguous mining blocks to mine sandstone is in violation of the specific conditions stipulated in the Environmental Clearance dt 24.03.2022 and generate enormous amounts of inhalable dust pollution.

3. Two blocks namely Bansi Pahadpur-A and Bansi Pahadpur-B were notified and declared as Sanctuary under Section 18 of the Wildlife Protection Act, 1972 and falls under the Taj Trapezium Zone. Main ground for challenge in the application is that the Expert Appraisal Committee (EAC) did not determine the question whether the project could be allowed in Taj Trapezium Zone (TTZ) area where adhoc moratorium on expansion and setting up of the new industries is in operation, as per decision of the MoEF&CC dated 08.09.2016. The project will affect Taj Mahal, which is a World Heritage site. Even though the applicant has raised certain other objections, which are not necessary to be referred.

4. The contention of the applicant is that Hon'ble the Supreme Court of India vide order dated 17.11.2004 in W.P. (C) No. 653 of 1994 Waseem Ahmed Saeed Vs. Union of India & Anr. has ordered that no blasting operations are allowed within 10 Km. from Shrine of Darga Saleem Chisti, Fatehpur Sikri.

5. The matter was taken up by this Tribunal at the stage of admission and notices were issued to the respondents in addition to constituting a committee with direction to submit the factual and action taken report. The relevant portion of the order dated .01.09.2023 are as follows :-

1. *"We deem it just and proper to call a report on the matter in issue in present Original Application, from a Joint Committee consisting of:-*
   - *(i) One representative from MoEF&CC.*
   - *(ii) One representative from Central Pollution Control Board.*
   - *(iii) One representative from Taz Trapezium Zone Pollution (Prevention and Control) Authority, Jaipur House, Agra*
   - *(iv) One representative from State Pollution Control Board*

2. *We further direct the Committee to visit the place and submit the factual and action taken report within four weeks. The State PCB will be the nodal agency for coordination and logistic support.*
3. *In case mining is found in violation of environmental rules, EC conditions and order of Hon'ble Supreme Court of India with regard to Taz Trapezium Zone, necessary actions must be initiated immediately and further action taken report be filed before this Tribunal."*

6. Respondents have filed the reply. Members of the committee visited the site and submitted the report. In response to the above report the applicant has filed the objection. We have heard the learned counsel for the parties and perused the record.

7. Submission and contention of the learned counsel for the applicant are that on 26.12.2018 vide a Gazette Notification, the ministry of Environment, Forest and Climate Change, declared the Bandh-Baretha Wildlife Sanctuary situated in Bharatpur district, spread over an area of 204.16 square kilometers as an Eco-sensitive Zone.

8. On 01.04.2021 and 02.04.2021 a part of this Eco-sensitive Zone of the Bandh-Baretha Wildlife Sanctuary was de-notified pursuant to the State Government of Rajasthan's request letters. On 18.05.2021 pursuant to the letters dt. 01.04.2021 and 02.04.2021 by the State Government of Rajasthan two standalone blocks namely Bansi Pahadpur-A admeasuring 221.75 hectares and Bansi Pahadpur-B admeasuring 424.81 hectares (combined area of 0.5387 square kilometers) were de-notified by the Gazette Notification, of the ministry of Environment, Forest and Climate Change.

9. On 11.06.2021 a letter was sent by the ministry of Environment, Forest and Climate Change to the Principal Secretary (Forests), Government of Rajasthan for the diversion of forest land for mining and generation of employment and earning of revenue. On 12.10.2021 a State Level Impact Assessment Authority was constituted by the Gazette Notification, of the ministry of Environment, Forest and Climate Change in the State of Rajasthan.

10. On 21.10.2021 and 27.10.2021, auctions notices were published by the State for Rajasthan for Sandstone mining leases in district Bharatpur. Pursuant to which leases were granted and mining activities started. In 2021 Numerous detailed representations have been sent by the local villagers who are residents of the same area where large scale mining has been taking place to the DM of Bharatpur District and to various other statutory authorities. On 24.03.2022, an Environment Clearance was granted to the Pharpur Sandstone mining Project.

11. The applicant has challenged the notifications and EC granted by the respondent on the following grounds:-

i. *"The forest land which was taken out of the Sanctuary cannot be diverted in favour of the Department of Mines & Geology, Rajasthan, for the purpose of sandstone mining, which is a highly polluting industry.*

ii. *Protected area which has been declared as a sanctuary under Section 18 of the Wildlife Protection, Act 1972 comprises of adequate ecological, floral, and faunal significance for the purpose of protecting it de-notifying such a highly sensitive area cannot be done in a such a casual manner.*

iii. *Such an Eco-sensitive zone which should have ideally been given the highest protection, on the contrary, permitting one of the most polluting industries shall cause irreparable loss to the biodiversity of the area.*

iv. *The whole de-notification exercise and granting permission for mining has been deliberately carried out in a casual manner with no compliance, approved plans or any kind of remedial measures.*

v. *A single EC was issued for all these mining leases and further the EC itself records that the mining leases are located in close proximity to abadi area (i.e. Village Paharpur is only 300 meters away as per EC) and to the remaining Sanctuary area.*

vi. *The de-notified area of the Bandh-Baretha Wildlife Sanctuary where the Paharpur Sandstone Cluster Mining Project is being carried out admittedly falls under the Taj Trapezium Zone which comprises monuments including three World Heritage Sites the Taj Mahal, Agra Fort and Fatehpur Sikri.*

vii. *Taj Trapezium Zone Pollution (Prevention and Control) Authority is the concerned authority which was constituted by the ministry of Environment and forests in the year 1998, and has been specifically given the power to deal with any environmental issue which may be referred to it by the Central Government or the State Governments of Uttar Pradesh and Rajasthan relating to the Taj Trapezium Zone and in the present no such reference was ever made."*

12. The applicant had relied on the Hon'ble Supreme Court of India in M.C. Mehta Vs. Union of India (reported as 1987 AIR 1086) held as follows:-

> *"The atmospheric pollution TTZ has to be eliminated at any cost. Not even one percent chance can be taken when-human life apart the preservation of a prestigious monument like Taj is involved. In any case, in view of the precautionary principle as defined by this Court, the environmental measures must anticipate, prevent and attack the causes of environmental degradation."*

13. It is further argued that, the Hon'ble Supreme Court in MC Mehta Vs. Union of India [(2009) 6 SCC 142] interfered and suspended all mining activities in the whole Aravali hills region in Haryana. However, it is true that in an earlier decision reported as [(2004) 12 SCC 118] a balancing approach between development and mining was adopted by the Supreme court. Therefore, the Apex court rightly held that balancing of mining activities with

environment protection, and banning such activities, if they affect the environment are two sides of the same principle of sustainable development.

14. The matter of mine and minerals of District Bharatpur, Rajasthan was taken up by this Tribunal in Appeal No. 48/2018 and vide order dated 03.02.2021, the Tribunal observed as follows :-

1. *"Apart from the above, we are informed that the Hon'ble Supreme Court disposed of W.P. (C) No. 13381 of 1984, M.C. Mehta v. UOI & Ors. on the subject of activities in the TTZ area vide order dated 16.12.2019 with the following observations:-*

   "1 to7….xxx……xxx…….xxx

   8.. As regards permission for establishing nonpolluting industrial units, it appears to us that only those small, micro and macro level industries which are both nonpolluting and eco-friendly and which have necessary clearances from all statutory authorities as well as concurrence of the Central Empowerment Committee and NEERI, can be setup within the notified industrial area.

   9. We, thus, clarify that since the interim order dated 22nd March 2018 directing maintenance of status quo was passed to ensure timely submission of the Vision Plan by the State of U.P. and the said direction already stands complied with, there shall be no impediment for the authorities to consider pending environmental clearances which are necessary to secure essential amenities within TTZ. Simultaneously, the State and other statutory authorities are free to consider requests for relocating eco-friendly nonpolluting industrial units, subject to them meticulously complying with environmental laws and all norms/conditions laid down by this Court (including those in the main judgment of 30th December 1996). Concurrence with the Central Empowerment Committee and opinion of NEERI shall also be necessary before according such permission.

   10. There shall, however, be an embargo on granting clearances to and/or shifting of any heavy industry until a final decision is taken on the vision document. The interlocutory application is accordingly disposed in above terms."

15. And the Tribunal directed as follows :-

"In view of order of the Hon'ble Supreme Court dated 16.12.2019, only small, micro and macro level industries which are both non- polluting and eco-friendly or which are necessary to secure essential amenities within TTZ can be allowed in TTZ. The project in question is a Red Category project involving blasting

within 10 kms of TTZ which is not permissible. Thus, the impugned EC is liable to be set aside. However, in absence of any representation by the MoEF&CC and the project proponent, we direct that the MoEF&CC to pass an appropriate further order in the matter within two months from today and till such a decision is taken, the impugned EC may not be given effect and no mining in terms of the project may be carried out."

16. In the matter of *T.N. Godavarman Thirumulpad Vs. Union of India & Ors.* Hon'ble the Supreme Court of India considered the safety measures required to be taken for eco-sensitive zones around National Parks and Wildlife Sanctuaries and observed as follows :-

1. *"The second report of the CEC dated 20th September 2012 makes the following recommendations as regards identification and declaration of ESZ. This report entitled "Note regarding safety zones (Eco-sensitive zones) around National Parks and Wildlife Sanctuaries" makes the following recommendations:-*

> *"10. After considering that during the last ten years no significant progress has been made regarding identification and declaration of Safety Zones around protected areas and considering the matter in its totality, an implementable scheme has been prepared by the CEC and which has been dealt with in subsequent paragraphs.*
>
> *11. For the purpose of identification and declaration of the Safety Zones around National Parks/Wildlife Sanctuaries (hereinafter referred to as protected areas), the protected areas based on their areas, are classified into four categories:*
>
> *i)* ***CATEGORY-A*** *- the protected areas having an area of 500 sq. km. or more. The total number of such protected areas is 73 and their total area is about 1,01,389 sq. km (63.44 % of total area of protected areas);*
>
> *ii)* ***CATEGORY-B*** *- the protected areas having an area between 200 sq. km. to 500 sq. km. The total number of such protected areas is 115 and their total area is about 38942 sq. km. (24.37 % of total area of protected areas.*
>
> *iii)* ***CATEGORY-C*** *- the protected areas having an area between 100 sq. km. to 200 sq. km. The total number of such protected areas is 85 and their total area is about 12,066 sq. km (about 7.55 % of total area of protected areas); and*
>
> *iv)* ***CATEGORY-D*** *- the protected areas having an area up to 100 sq. km. The total number of such protected areas is 344 and their total area is about 7,422 sq. km (about 4.65 % of total area of all protected areas).*
>
> *12. Wherever two or more protected areas are contiguous to each other, such protected areas will be placed in the*

appropriate category based on the sum total of their areas (and not on the basis of area of individual protected area). The details of some of the contiguous protected areas are given below:

a) Corbett National Park (520 sq. km.) and Sonanadi Sanctuary (301 sq. km) - total area is 821 sq. km and therefore both will fall in Category-A;

b) Gir National Park (258 sq. km.) and Gir Sanctuary (1,153 sq. km.) - total area is 1,411 sq. km. and therefore both will fall in Category-A;

c) Periyar National Park (350 sq. km.) and Periyar Sanctuary (427 sq. km.) - total area is 777 sq. km. and therefore both will fall in Category-A;

d) Satpura National Park (585 sq. km.), Bori Sanctuary (485 sq. km.) and Pachmarhi Sanctuary (417 sq. km.) - total area is 1488 sq. km. and therefore all three will fall in Category-A;

e) Valmiki National Park (335 sq. km.) and Valmiki Sanctuary (545 sq. km.) - total area is 880 sq . km. and therefore both will fall in Category-A;

f) Tadoba National Park (116 sq. km.) and Andhari Wildlife Sanctuary (509 sq. km.) - total area is 625 sq. km. and therefore both will fall in Category-A; and

g) Sariska National Park (273 sq. km.) and Sariska Sanctuary (219 sq. km.) - total area is 492 sq. km. and therefore both will fall in Category-B;

12. *The Safety Zone, in respect of protected areas falling in 'Category-A and Category-B, may comprise of all the areas including non-forest areas falling within a distance of two kilometers and one kilometer respectively from the boundaries of the protected area. Such distances, in respect of protected areas falling within Category-C and Category-D, may be kept at 500 meter and 100 meter respectively.*

13. *The grant/renewal of mining leases (excluding for collection of boulders, gravel and sand from river beds), setting up of hazardous industries, brick kilns, wood based industries (except MDF/Particle Boards Plants) will be treated as prohibited activities within the Safety Zone (eco-sensitive zones). The activities such as setting up of industries (other than those included in the list of prohibited activities), hotels*

and restaurants including resorts, commercial helicopter services, hydel projects, irrigations projects, canals, laying of transmission lines and distribution lines above 33 KV, roads of more than five meter width and collection of boulders, gravel and sand from the river beds will be treated as regulated activities and which will be permissible only after obtaining environment clearance and clearance of the Standing Committee, National Board for Wildlife. All other activities which are not prescribed as prohibited activities or regulated activities will be treated as permissible activities.

14. *The concerned State/UT will be at liberty to shift a protected area from a lower category to higher category (say from Category-C to Category-B) after considering the importance of the protected area on account of:*
    - *i. presence of flagship species/endangered species such as Tiger, Lion, Elephant, Rhino, Snow Leopard, Red Panda, Hangul, Musk deer, Great Indian Bustard, Lion Tailed Macaque, floricans;*
    - *ii. fragile eco-system such as Western Ghats, North Eastern States, areas having high altitude flora and fauna, rain forest, mangroves, marine eco-system;*
    - *iii. World Heritage sites; and*
    - *iv. Wetland eco-systems*

15. *The concerned State/UT Governments may after detailed examination of the status of habitation, existing industries and other activities and other relevant factors, and, if found desirable and in public interest forward the proposal(s) for shifting a protected area from a higher category to a lower category. They may also forward the proposal(s) for exclusion of the areas of cities falling within the Safety Zone. The MoEF thereafter will examine such proposals and place such proposals before the Standing Committee of the National Board for Wildlife for its consideration. The proposals cleared by the Standing Committee of the NBWL will be placed before this Hon'ble Court for seeking its permission. It is only after obtaining the permission of this Hon'ble Court that a protected area may be shifted from a higher category to a lower category.*

16. *The Safety Zones (eco-sensitive zones) around National Parks and Wildlife Sanctuaries will be in addition to the following eco-sensitive zones notified by the MoEF (and by other notifications, if any):*

    i. **S.O. 20(E)** dated **06.01.1989** – Prohibiting industries in **Murud–Janjira**, District **Raigad**, Maharashtra.
    ii. **S.O. 102(E)** dated **01.02.1989** – Restricting location of industries, mining, and other activities in the **Doon Valley**, Uttar Pradesh.

iii. **S.O. 416(E)** dated **20.06.1991** – Declaring **Dahanu Taluka**, District **Thane**, Maharashtra, as an **Ecologically Fragile Area** (amended in **1999**).
iv. **S.O. 319(E)** dated **07.05.1992** – Restricting certain activities causing environmental degradation in the **Aravalli Range**.
v. **S.O. 481(E)** dated **05.07.1996** – Declaring a **No Development Zone** at **Numaligarh**, east of **Kaziranga**.
vi. **S.O. 884(E)** dated **19.12.1996** – Constituting the **Dahanu Taluka Environment Protection Authority, 1996** (amended in **2001**).
vii. **S.O. 350(E)** dated **13.05.1998** – Constituting the **Taj Trapezium Zone Pollution (Prevention and Control) Authority**.
viii. **S.O. 825(E)** dated **17.09.1998** – Declaring the **Pachmarhi Region** as an **Eco-Sensitive Zone**.
ix. **S.O. 52(E)** dated **17.01.2001** – Declaring the **Mahabaleshwar–Panchgani Region** as an **Eco-Sensitive Zone**.
x. **S.O. 133(E)** dated **04.02.2003** – Declaring **Matheran and surrounding areas** as an **Eco-Sensitive Zone**.
xi. **S.O. 83(E)** dated **16.01.2004** – Amendments to **S.O. 133(E)** dated 04.02.2003.
xii. **S.O. 1545(E)** dated **25.06.2009** – Declaring **Mount Abu** as an **Eco-Sensitive Zone**.
xiii. **S.O. 1260(E)** dated **31.05.2012** – Declaring **Girnar Reserve Forest** as an **Eco-Sensitive Zone**.

17. In [(1997) 2 SCC 267] it has been observed by the Hon'ble Supreme Court :-

> *"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213], Rural Litigation and Entitlement Kendra v. State of U.P. [1989 Supp (1) SCC 504] and recently in*

> *the order dated 29-11-1996 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority [WP (C) No 749 of 1995 decided on 29-11-1996]). The earlier decision of this Court in State of Bihar v. Banshi Ram Modi [(1985) 3 SCC 643] has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."*

18. The role of the State cannot be confined to that of a facilitator or generator of economic activities for immediate upliftment of the fortunes of the State. The State also has to act as a trustee for the benefit of the general public in relation to the natural resources so that sustainable development can be achieved in the long term. Such role of the State is more relevant today, than, possibly, at any point of time in history with the threat of climate catastrophe resulting from global warming looming large. The Court has highlighted the Public Trust Doctrine in the case of *M.C. Mehta v. Kamal Nath and Others [(1997) 1 SCC 388]* and opined that the Public Trust Doctrine is part of the law of land. In Paragraph 25 of the said judgment, as reported, this doctrine has been explained with reference to writings of Joseph L. Sax, Professor of Law, University of Michigan, the proponent of Modern Public Trust Doctrine:-

> *The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:*
>
> > *"Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be*

held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses."

19. And finally in para 44 the Hon'ble Supreme Court directed as follows :-

a) *Each protected forest, that is national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9th February 2011 shall be strictly adhered to. For Jamua Ramgarh wildlife sanctuary, it shall be 500 metres so far as subsisting activities are concerned.*

b) *In the event, however, the ESZ is already prescribed as per law that goes beyond one kilometre buffer zone, the wider margin as ESZ shall prevail. If such wider buffer zone beyond one kilometre is proposed under any statutory instrument for a particular national park or wildlife sanctuary awaiting final decision in that regard, then till such final decision is taken, the ESZ covering the area beyond one kilometre as proposed shall be maintained.*

c) *The Principal Chief Conservator of Forests as also the Home Secretary of each State and Union Territory shall remain responsible for proper compliance of the said Guidelines as regards nature of use within the ESZ of all national parks and sanctuaries within a particular State or Union Territory. The Principal Chief Conservator of Forests for each State and Union Territory shall also arrange to make a list of subsisting structures and other relevant details within the respective ESZs forthwith and a report shall be furnished before this Court by the Principal Chief Conservator of Forests of each State and Union Territory within a period of three months. For this purpose, such authority shall be entitled to take assistance of any governmental agency for satellite imaging or photography using drones.*

d) *Mining within the national parks and wildlife sanctuaries shall not be permitted.*

e) *In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9th February 2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State or Union Territory and the person responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come within the prohibited list and were continuing prior to passing of this order in a legitimate manner. No new permanent structure shall be permitted to come up for whatsoever purpose within the ESZ.*

f) *The minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Territory concerned shall approach the CEC and MoEF&CC and both these bodies shall give their respective opinions/recommendations before this Court. On that basis, this Court shall pass appropriate order.*

g) *In the event the CEC, MoEF&CC, the Standing Committee of National Board of Wildlife or any other body of persons or individual having special interest in environmental issues consider it necessary for maintaining a wider or larger ESZ in respect of any national park or wildlife sanctuary, such body or individual shall approach the CEC. In such a situation the CEC shall be at liberty to examine the need of a wider ESZ in respect of any national park or wildlife sanctuary in consultation with all the stakeholders including the State or Union Territory concerned, MoEF&CC as also the Standing Committee of National Board of Wildlife and then approach this Court with its recommendations."*

20. It is further contended by the learned counsel for the applicant that the specific conditions for –

i. Robust dust free road
ii. Designated parking facility
iii. Roads should be metalled and maintained
iv. Continuous ambient air quality monitoring station
v. Registration of mining lease and execution after public hearing were not complied with by the respondents.

21. Firstly, the applicant has challenged the notification dated 18.05.2021 issued by the Ministry of Environment, Forest and Climate Change which is quoted below:-

"MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
NOTIFICATION
New Delhi, the 18th May, 2021

S.O. 1929(E).-WHEREAS by the notification of the Government of India in the Ministry of Environment, Forest and Climate Change published in the Gazette of India vide number S.O. 6319(E), dated the 26th December 2018, the Central Government notified an Eco-sensitive Zone (ESZ) surrounding the Bandh Baretha Wildlife Sanctuary in the State of Rajasthan;

AND WHEREAS, the State Government of Rajasthan vide letters number 1(71)/Band Baretha/Forest/2002pt, dated 1 April, 2021 and dated 2nd April 2021, has communicated that two standalone blocks namely Bansi Pahadpur-A and Bansi Pahadpur-B of the notified Band Baretha Wildlife Sanctuary have been denotified vide Gazette No. F1(71) Van/Bandh-Baretha/02 Part dated 23rd March, 2021. The area of Bansi Pahadpur-A is 221.75 hectares with ESZ extent and area of 25 m and 26.356 ha, respectively. The area of Bansi Pahadpur-B is 424.81 hectares with ESZ extent and area of 25 m and 27.514 ha, respectively. The State Government of Rajasthan has also requested that since the above mentioned blocks are no more part of the notified Sanctuary, the ESZ around these two blocks with combined area of 53.870 ha (0.5387 square kilometers) to be considered denotified.

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1), clauses (v) and (xiv) of sub-section (2) and sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following amendments in the said notification, namely:-

1) *in paragraph 1, in sub-paragrph (1), for the words and figures "area of the Eco-sensitive Zone is 173.92 square kilometres", the words and figures "area of the Eco-sensitive Zone is 173.38 square kilometres" shall be substituted;*
2) *for Annexure IIA to Annexure IIF, the enclosed Annexures shall be substituted;*
3) *in Table B of Annexure-III, Sl. No. 6 and S. No. 15 shall be omitted.*

[F.No. 25/56/2015-ESZ-RE]
Dr. SATISH C. GARKOTI, Scientist G'

Note: The principal notification was published in the Gazette of India, Extraordinary, Para II, Section 3, Sub-section (ii), vide number S. O. 6319(E), dated the 26th December, 2018."

22. The applicant has further challenged the notification dated 11.06.2021 issued by the Government of India, MoEF&CC for diversion of the land in favour of DMG Rajasthan in Pahadpur Block A & B for mining and generation of employment and earning of revenue for Government in Bharatpur District in the State of Rajasthan which is quoted below :-

"File No.8-14/2021_FC

Government of India
Ministry of Environment, Forests and Climate Change (Forest Conservation Division)

Indira Paryavaran Bhawan,
Aliganj, Jor Bag Road, New Delhi-110003.
Dated: 11th June, 2021

To,

The Principal Secretary (Forests),
Government of Rajasthan,
Jaipur

Sub: Diversion of 398.0085 ha of forest land in favour of DMG, Rajasthan in Pahadpur Block A & B for mining and generation of employment and earning of revenue for Government in Bharatpur District in the State of Rajasthan (FP/RJ/MIN/125714/2021).

Madam/Sir,

I am directed to refer to the Government of Rajasthan's proposal No. FP/RJ/MIN/125714/2021 uploaded on PARIVESH portal for seeking prior approval of the Central Government under Section-2 of the Forest (Conservation) Act, 1980 and inform that the said proposal has been examined by the Forest Advisory Committee constituted by the Central Govemment under Section-3 of the aforesaid Act.

After careful examination of the proposal of the State Government and on the basis of the recommendations of the Forest Advisory Committee, In-principle approval/Stage-1 Clearance of the Central Government is hereby accorded for diversion of 398.0085 ha of forest land in favour of DMG, Rajasthan in Pahadpur Block A & B for raining and generation of employment and earning of revenue for Government in Bharatpur District in the State of Rajasthan subject to fulfillment of the following conditions:

(i to xxix) with all these conditions as enumerated in these paragraphs).”

23. The MoEF&CC vide notification dated 12.10.2021 constituted a State Level Environment Impact Assessment Authority for the State of Rajasthan directing the State Govt. of Rajasthan to notify an agency to act as secretariate for the authority of Rajasthan and SEAC-I and SEAC-II. Third challenge in the application is the notification for e-auction proceedings issued by the Mining Department of the State of Rajasthan.

24. The SEAC, Rajasthan after due consideration of the relevant document submitted by the project proponent and additional clarification furnished to it have recommended for environmental clearance with certain stipulation and the SEIAA, Rajasthan after considering the proposal and recommendation of SEAC, Rajasthan in its 510th Meeting held on 23.03.2022, accorded environmental clearance to the project with certain stipulation and conditions and EC was issued by the SEIAA, Rajasthan on dated 24.03.2022, the Mining Department, Rajasthan and applicant has also grievance and prayed for cancellation of the EC.

25. Learned counsel for the applicant has relied on Appeal No. 48/2018 (order dated 03.02.2021) which was in relation to mining in certain areas in District Bharatpur for the present EC was issued after the order of this Tribunal in Appeal No. 48/2018 on 24.03.2022. While considering the EC the report of the SEAC in light of the orders passed by the Tribunal or the Hon’ble Supreme Court was re-considered and was issued according to rules.

26. The contention of the learned counsel for the respondent are that the remedy to the applicant lies for challenging the EC by means of filing an appeal and not by original application.

27. Learned counsel for the applicant has further argued and relied on Hon'ble Supreme Court of India I.A. No. 1000/2003 in Writ Petition (Civil) No. 202/1995 in *T.N Godaverman Thirumulpad Vs. Union of India & Ors.,* Judgment dated 03.06.2022 and quoted relevant provisions as follows :-

> *"In [(1997) 2 SCC 267) it has been observed by the Hon'ble Supreme Court of India :-*
>
> > *"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land". occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the dated purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213], Rural Litigation and Entitlement Kendra v. State of U.P. [1989 Supp (1) SCC 504] and recently in the order 29-11-1996 (Supreme Court Monitoring Committee v. Mussoorie Dehradun Development Authority [WP (C) No 749 of 1995 decided on 29-11-1996]). The earlier decision of this Court in State of Bihar v. Banshi Ram Modi ((1985) 3 SCC 643] has. therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."*

28. Hon'ble the court has observed in following paras as follows:-

i. *It has also been highlighted by the State that 25 sanctuaries, 2 national parks have been declared by the State comprising of a total area of 9,07,070 hectares and an area of 23,29,659 hectares of area as forest area or deemed forest is already existing as eco-sensitive/eco fragile/buffer/safety zones in that State within which no non-forest activities is allowed without proper permission under the Forest (Conservation) Act, 1980. The State of Rajasthan has opposed the proposal for declaring 10 kilometres beyond the boundary of sanctuaries and national parks being declared as ESZ.*

ii. *The approach of the Court in dealing with complaints of environmental degradation has been laid down by this very Bench in this Writ Petition itself in an order passed on 9th May 2022 in connection with another set of applications. In this Order, it has been observed and held:-*

> *"15. Adherence to the principle of sustainable development is a constitutional requirement. While applying the principle of sustainable development one must bear in mind that development which meets the needs of the present without compromising the ability of the future generations to meet their own needs. Therefore, Courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under our Constitution to devise and implement a coherent and coordinated programme to meet tts obligation of sustainable development based on inter-generational equity. While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.*
>
> *16. In Vellore Citizens' Welfare Forum v. Union of India, this Court held that the 'Precautionary Principle' is an essential feature of the principle of 'Sustainable Development'. It went on to explain the precautionary principle in the following terms: -*
>
> i. *Environmental measures and the statutory authorities by the State Government must anticipate, prevent and attack the causes of environmental degradation.*
> ii. *Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing environmental degradation. measures to prevent*

iii. *The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.*

17. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by justified concern or risk potential.

18. A situation may arise where there may be irreparable damage to the environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest. This Court held that in case of a doubt, protection of environment would have precedence over the economic interest. It was further held that precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. Further, this Court emphasises in the said judgment that it is not always necessary that there should be direct evidence of harm to the environment."

While dealing with the applications in the present set of proceedings, we shall follow the same principles.

iv. *In our opinion, the Guidelines framed on 9th February 2011 appears to be reasonable and we accept the view of the Standing Committee that uniform Guidelines may not be possible in respect of each sanctuary or national parks for maintaining ESZ. We are of the opinion, however, that a minimum width of 1 kilometre ESZ ought to be maintained in respect of the protected forests, which forms part of the recommendations of the CEC in relation to Category B protected forests. This would be the standard formula, subject to changes in special circumstances. We have considered CEC's recommendation that the ESZ should be relatable to the area covered by a protected forest but the Standing Committee's view that the area of a protected forest may not always be a reasonable criteria also merits consideration. It was argued before us that the 1 km wide "no-development-zone" may not be feasible in all cases and specific instances were given for Sanjay Gandhi National Park and Guindy National Park in Mumbai and Chennai metropolis respectively which have urban activities in very close proximity. These sanctuaries shall form special cases."*

29. The main objection as raised in the application by the applicant contains the following issues :-

i. ***De-notification of sanctuary area for sandstone mining:*** *The Band Baretha Wildlife Sanctuary was declared as a sanctuary vide Notification dt. 07.10.1985 in District Bharatpur, Rajasthan. It is pertinent to mention here that the said protected area had been declared as a sanctuary under Section 18 of the Wildlife Protection, Act 1972. De-notifying sanctuary land, which enjoys the highest protection for conservation, to permit sandstone mining, i.e. one of the most polluting industries, shall cause irreparable loss to the biodiversity of the area. As such, it submitted that the whole de-notification exercise and granting permission for mining has been deliberately carried out in a casual manner with no compliance, approved plans or any kind of remedial measures.*

ii. ***De-notified area falls within the taj trapezium zone:*** *No reference was ever made to Taj Trapezium Zone Pollution (Prevention and Control) Authority by SEIAA or SEAC and the EC is conspicuously silent in this regard.*

iii. ***Mining is classified as red category industry by CPCB:*** *Mining has been classified in the most polluting industries having Pollution Index score of 60 and above under the red category. Therefore, to de-notify the Sanctuary land and permit a highly polluting mining activity on it is directly contrary to the cause of the environment.*

iv. ***All mining leases are contiguous:*** *It is submitted that there are more than 40 sandstone mining leases which are currently being operated in both the blocks namely Bansi Pahadpur-A and Bansi Pahadpur-B. Pertinently, it is submitted that contiguous pieces of land should not be broken down into smaller leases as the same shall lead to manipulation in auction.*

v. ***Terms of Environment Clearance not being complied with:*** *It is submitted that the 49 plus lease holders who are operating sandstone mining leases in the de-notified area of the Bandh-Baretha Wildlife Sanctuary are carrying out mining outside the lease areas and are also not complying with the following conditions of the common environmental clearance dt. 24.03.2022:*

vi. ***Mining area adjacent to the abadi area & sanctuary:*** *It is submitted that of late several instances of illegal mining activities have been reported from the Bharatpur District of Rajasthan, which has become a hotbed of illegal mining. Admittedly, local villagers have been living adjacent to these mining areas within a close radius from where the mining activities are being carried out. As these sandstone mining activities are bound to generate a lot of inhalable dust particles it is inevitable that it will cause irreparable damage to the*

health of these villagers as well as the environment, which being national asset subject to inter-generational equity.

vii. ***Large scale illegal mining going on with the connivance of state officials:*** *It is submitted that of late, these illegal mining has been going on with the connivance of State officials, who are involved with the mining proponents and therefore, it is prayed that a neutral committee should be appointed to carry out inspection."*

30. The Tribunal at the time of admission constituted a committee consisting the representative of MoEF&CC, CPCB, one member representative from the Taz Trapezium Zone Pollution, Agra and one representative of State Pollution Control Board with direction to submit the factual and action taken report. The members of the committee visited the site and submitted the report with the following facts :-

1) *The area under question is sandstone mining lease cluster of Banshi Paharpur block-A and B situated at village Paharpur, tehsil Roopbas of district Bharatpur in the state of Rajasthan where 41 mining leases have been allotted by Department of Mines and Geology, GoR and these mining leases have been accorded Environmental Clearances (ECs) from State Level Environment Impact Assessment Authority, SEIAA (State Environment Impact Assessment Authority), Rajasthan for individual leases as well as entire cluster formed by agglomeration of individual leases.*
2) *Out of these 41 mining leases, 31 mining leases have obtained CTO (Consent to operate from) from Rajasthan State Pollution Control Board RSPCB. The entire area of Paharpur block-A and B, Tehsil Roopbas, district Bharatpur falls under TTZ (Taz Trapezium Zone).*

Taj Trapezium Zone (TTZ)

3) *Taj Trapezium Zone (TTZ) is a defined area of 10,400 sq. km around the Taj Mahal to protect the monuments from air pollution. The Supreme Court of India passed an order on December 30, 1996.*
4) *The Ministry of Environment, Forest and Climate Change (MoEF & CC, formerly MoEF), vide Gazette Notification No. 258, dt. 17.05.1999, number S.O. 350(E), has constituted the Taj Trapezium Zone Pollution (Prevention and Control) Authority and defined the geographical limits of Taj Trapezium Zone in the shape of trapezoid. Area lying in the Agra Division of the State of Uttar Pradesh and in the Bharatpur Division of the State of Rajasthan. 8-Tehsils/Parts of Tehsil of Bharatpur district (including Tehsil Roopbas) fall under Taj Trapezium Zone(TTZ) Area.*
5) *MOEF & CC has imposed adhoc moratorium in the meeting on dt. 08-09-2016 on expansion and setting up of the new industries in red, orange and green categories (except white categories) to control air pollution by TTZ authority.*
6) *As per the Hon'ble Supreme Court order dated 06.12.2019, "As regards permission for establishing non-polluting industrial units, it appears to us that only those small, micro and macro level industries which are both*

non-polluting and ecofriendly and which have necessary clearances from all statutory authorities as well as concurrence of the Central Empowerment Committee and NEERI, can be setup within the notified industrial area".

7) *The Hon'ble Supreme court had passed order in the matter related to TTZ (WP (Civil) No. 13381/1984, MC Mehta Vs Union of India & Ors.) on dt. 08.12.2021 as "This Interlocutory Application is filed for certain clarifications/modification of the Order dated 06.12.2019. By an Order dated 29.01.2021, clarification sought in prayer clauses (a), (b) and (c) were made by this Court. In respect of the clarification of the Order dated 06.12.2019 pertaining to the concurrence with the Central Empowered Committee (CEC) and opinion of NEERI as mentioned in paras 8 and 9 of the Order, learned Amicus Curiae in consultation with Ms. Aishwarya Bhati, learned Additional Solicitor General appearing for the State of Uttar Pradesh submitted a note. It has been agreed that a representative of NEERI shall be included as a Member in the Environmental Appraisal Committee (EAC) and State Environmental.*

Appraisal Committee (SEAC) constituted by the Ministry of Environment, Forest and Climate Change for dealing with industrial units falling in TTZ Area. In respect of industrial units where the Air Pollution Score as per CPCB and UPPCB is between 11 to 20, sectorial guidelines shall be obtained from NEERI. No industrial units shall be cleared by the State till sectorial guidelines are obtained from NEERI. For those industrial units having Air Pollution more than 20, the concurrence/opinion of NEERI will have to be obtained."

8) *It is noteworthy to mention that as per CPCB categorization dt. 07.03.2016 industrial sector, "Mining and Ore Beneficiation" have Air Pollution Score as 20.*

9) *As per Hon'ble Supreme Court order dt. 08-12-2021, NEERI has been added in the SEIAA committee in which the EC has been given to mining leases with the recommended additional conditions by NEERI in reference of TTZ area. SEIAA incorporated these conditions as "Additional conditions suggested by NEERI due to project being in TTZ" :-*

   (i) The PP has also bound to fulfill all the conditions of the approved EIA/EMP/EC of Paharpur Sandstone Cluster Mining Project in consultation and supervision of the concerned Asst. Mining Engineer, Department of Mines and Geology, Government of Rajasthan. The PP shall be jointly and severely responsible for compliance of the conditions as provided by the SEIAA, Rajasthan for the Paharpur Sandstone (Block A & B) Cluster mining project, vide letter dated 24.03.2022.

   (ii) The mining activities are in cluster therefore project proponent/ all lessees of cluster shall ensure that required permission of DGMS for blasting be obtained, taking into account the number of blasts, timing of blasts, mechanism of blasts, strength of blasts with in a finite time duration, for the entire cluster. The project proponent/ lessees of cluster shall ensure that blasting shall be limited to the minimum possible extent and that the blasting shall not impact the nearby structures, sensitive areas and the human habitat.

(iii) In order to ensure sustainable mining with efficient utilization of mineral resources, and adequate environmental safeguards, Step-wise mining is suggested. The annual production for the next year could be equal to the actual production in the current year plus 50% increase in the production, subject to satisfactory compliance of various conditions imposed by concerned departments as per EC, CTE/CTO, Forest and Wildlife etc.

(iv) The haul roads (within the mine lease area) and approach roads (upto main road) shall be metaled and maintained in a manner that there shall not be any particulate re-suspension from the plying of vehicles/machineries.

(v) Adequate and designated proper parking facility shall be developed within the mine lease area for the trucks as well as other heavy machinery used in the mining activities, and no village/public roads shall be used for the parking purposes.

(vi) The village/public roads shall not be used for haulage of material from mines to the State and/or National Highway. The network of transport shall be designed and implemented so as to ensure the level of service of State/National Highway, as exists now shall not deteriorate.

(vii) The mine shall be operated in one shift only, during day time (8- 9 am to 5-6 pm). Individual mine lease holder/project proponent shall ensure that the mining activities are performed in an environmentally sustainable manner, and there shall be no adverse impacts on the surrounding environment, particularly with respect to air pollution. The waste materials shall be stored properly within the mine lease area.

(viii) During the operation of mines, any grievances/concerns, raised by the affected local villagers shall be resolved amicably and documented properly for review by the Committee.

(ix) Since all these mines are part of Cluster mines, all the relevant documents/data/information of environmental compliance monitoring by individual mines shall also be submitted to the Environment Monitoring/Management Cell (EMC) of the Cluster Mining Area, to be coordinated by the Dept of Mines & Geology, Roopwas, Bharatpur.

(x) To ensure the air quality in the entire cluster area, an optimum air quality network shall be designed and established by the EMC of Cluster Area and daily basis and air quality shall be monitored on daily basis.

(xi) To review the compliance status of various conditions and also suggest annual production for the next year, and also additional measures, if any, "Review Committee", comprising representative from the MOEF & CC-IRO, Department of Mines & Geology, Bharatpur, RO, RSPB, Bharatpur and CSIR-NEERI, Delhi may be constituted. RO, RSPCB could be the nodal officer.

(xii) Copy of all the ECs shall be shared with all the member organizations of the "Review Committee". To ensure the environmental sustainability of the region, the "EMC of Cluster Mining Area", taking into account all the individual mines, shall

prepare a comprehensive EMP for the entire cluster/mines and shall submit to the "Review Committee".

(xiii) The PP shall carry out ambient air quality monitoring on weekly basis to ensure adherence to National Air Quality Standards.

(xiv) The PP shall also be responsible, jointly and severely, for mutatis mutandis compliance of the specific conditions imposed in EC for cluster mining project dated 24.03.2022 granted by SEIAA, Rajasthan.

10) Accordingly, the SEIAA, Rajasthan has accorded EC to the mining leases.

11) RSPCB vide it's office order dated 18.02.2022 mandated that consent shall be considered for all industrial sector having air score of 0-10 as per CPCB categorization after the submission of all other statutory compliances and in accordance to Hon'ble Supreme Court order dated 08.12.2021.

12) In compliance to the Hon'ble Supreme Court Order dated December 8, 2021, CSIR-NEERI has prepared the guidelines November 2022 for proposed industrial unit/activities falling under TTZ Area and having Air pollution score between 11 & 20 and above.

13) The guideline recommends to critically evaluate/apprise the project report of the project/activity/industrial unit (having Air Pollution Score between 11 & 20) for grant of consent as per prevailing procedure of SPCB. The guideline recommends to critically evaluate/apprise the project report of the project/activity/industrial unit (having Air Pollution Score > 20) asper the opinion from CSIR-NEERI to be obtained by SPCB for grant of consents as per prevailing procedure of SPCB. Chronology of Forest Diversion in reference of sand stone mining cluster banshi paharpur Block A and B:

14) Previously this area was part of the Band Baretha wild Life Sanctuary which was then de-notified by NBWL (National Board of Wild Life) in its 61th meeting dated 18.02.2021 & Gazette notification in this context has been published by the Rajasthan State Forest department dated 23.03.2021 and Eco sensitive Zone (ESZ) area of the Band Baretha WLS has also been denotified by MoEF & CC on 18.05.2021.

15) A total area measuring 646.56 hac. has been de-notified form Band Baretha WLS, out of this 221.75 hac. area falls under Block A & 424.81 hac. area in Block B of Paharpur, Tehsil – Roopbas, District - Bharatpur (Raj).

16) Forest Diversion (Stage-I and II) was granted in favor of Department of Mines and Geology, Rajasthan in Paharpur over an area of 398.0085 Hac. (Block A-113.6950ha & Block B-284.3135ha) by Ministry of Environment, Forest and Climate Change (Forest Conservation Division) vide letter dt. 11.06.2021 and 11.03.2022. The purposes of forest diversion are mining, employment generation and earning of revenue generation. (Forest Diversion letters dt. 11.06.2021 and 11-03-2022)

17) Ecological Sensitive Areas (National Park, Wild Life Sanctuary, Biosphere Reserve exist within 10 km distance from the periphery of diverted forest area. The Band Baretha WLS at 5.0 km in SW direction

from the Block-A & 1.50 km in SW direction from the Block-B periphery area. The Cluster area does not fall under the notified Eco-Sensitive zone of the said WLS.

18) *The Department of Mines and Geology, GoR after successful e-auction, issued LOI to grant Mining Lease to the applicant.*

• Environmental Clearance:

19) *State Level Environment Impact Assessment Authority, Rajasthan, has accorded Environment Clearance in favor of Assistant Mining Engineer, Roopbas, Department of Mines & Geology, Government of Rajasthan on 24-03-2022 for Paharpur Sandstone (Block A & B) cluster mining project, Cluster area 398.0085 hac., Carrying capacity of the Cluster- 4,00,00,000 TPA (ROM) (Minor Mineral). (EC of cluster mining banshi paharpur block A and B).*

20) *Further, individual 41 leases were also accorded Environment Clearances in accordance to the procedures laid under the provisions of EIA Notification 2006. Total 31 leases are in consent mechanism, out of them 28 mining leases located in Paharpur block B have obtained consent to operate and 3 mining leases of block-A have obtained consent to operate, however only 24 mining leases of block-B are operational, details of EC and CTO are as mentioned in below table :-*

Banshi Paharpur Block-A

S.No.	***Plot No./ Mining lease No.***	***Mining Lease Area (ha.)***	***Mining Lease Holder Name***	***Capacity (Sand Stone) (ROM) (TPA)***	***E.C Issued Date***	***Consent Issued Date***	***Consent Validity***	***Status***
1.	*33/2022*	*11.0346*	*M/s. Faujdar Construction Company*	*1124480*	*20/12/2022*	*Not Applied for Consent*	*NA*	*non-operational*
2.	*34/2022*	*10.6654*	*M/s. Om Prakash Singh*	*1250405*	*20/12/2022*	*Not Applied for Consent*	*NA*	*non-operational*
3.	*35/2022*	*10.4170*	*M/s. India E Hub Services Pvt Ltd*	*960100*	*23/06/2022*	*Not Applied for Consent*	*NA*	*non-operational*
4.	*36/2022*	*10.1223*	*M/s. India E Hub Services Pvt Ltd*	*838350*	*23/06/2022*	*Not Applied for Consent*	*NA*	*non-operational*
5.	*37/2022*	*10.4482*	*M/s. Learn and Excel Pvt. Ltd.*	*1216063.10*	*23/06/2022*	*08/12/2022*	*30/11/2027*	*under development*
6.	*38/2022*	*10.5995*	*M/s. Shri*	*752400*	*23/06/2022*	*07/07/2023*	*30/06/2028*	*under development*

			Asif Ali					
7.	*39/2022*	*10.5377*	*M/s. Cut Quite Gems Private Ltd.*	*752400*	*23/06/2022*	*Not Applied for Consent*	*NA*	*non-operational*
8.	*40/2022*	*10.0691*	*M/s. R.R. Minerals*	*1194075*	*23/06/2022*	*08/12/2022*	*30/11/2027*	*under development*
9.	*41/2022*	*10.8143*	*M/s. Paras Sethi*	*604500*	*23/11/2022*	*Not Applied for Consent*	*NA*	*non-operational*

Banshi Paharpur Block-B

S.No.	***Plot No./ Mining lease No.***	***Mining Lease Area (ha.)***	***Mining Lease Holder Name***	***Capacity (Sand Stone) (ROM) (TPA)***	***E.C Issued Date***	***Consent Issued Date***	***Consent Validity***	***status***
1.	*3/2022*	*4.2139*	*M/s. Anil Kanti Prasad Poddar*	*406875*	*25/05/2022*	*12/07/2022*	*30/06/2027*	*operational*
2.	*4/2022*	*4.6658*	*M/s. Jai Girraj Stones*	*527250*	*23/06/2022*	*30/11/2022*	*31/10/2027*	*operational*
3.	*5/2022*	*4.0000*	*M/s. Anil Kanti Prasad Poddar*	*387625*	*25/05/2022*	*12/07/2022*	*30/06/2027*	*operational*
4.	*6/2022*	*4.1769*	*M/s. Anil Kanti Prasad Poddar*	*361750*	*25/05/2022*	*12/07/2022*	*30/06/2027*	*operational*
5.	*7/2022*	*4.0501*	*M/s. Infinity Stonex India Pvt. Ltd.*	*106837.61*	*25/05/2022*	*25/07/2022*	*30/06/2027*	*under development*
6.	*8/2022*	*4.0000*	*M/s. Kanha Stone Suppliers*	*463860*	*23/06/2022*	*14/09/2022*	*31/08/2027*	*operational*
7.	*9/2022*	*4.2467*	*M/s. Devdashrath Royalties Pvt. Ltd.*	*160256.41*	*23/06/2022*	*Not Applied for Consent*	*NA*	*NA*
8.	*10/2022*	*5.2723*	*M/s. Devdashrat*	*170940.17*	*23/06/2022*	*11/11/2022*	*31/10/2027*	*operational*

			h Royalties Pvt. Ltd.					
9.	*11/2022*	*5.9743*	*M/s. Krishna Associate*	*688260*	*25/05/2022*	*08/05/2023*	*30/04/2028*	*operational*
10.	*12/2022*	*4.1680*	*M/s. Om Prakash Singh*	*475515*	*20/12/2022*	*Consent under consideration with Board*	*NA*	*non-operational*
11.	*13/2022*	*5.7608*	*M/s. Kapil Agarwal*	*459120*	*23/06/2022*	*11/11/2022*	*31/10/2027*	*operational*
12.	*14/2022*	*5.8140*	*M/s. Devdashrath Royalties Pvt. Ltd.*	*160256*	*25/05/2022*	*20/06/2022*	*31/05/2027*	*operational*
13.	*15/2022*	*4.4934*	*M/s. Anil Kanti Prasad Poddar*	*362625*	*25/05/2022*	*11/07/2022*	*30/06/2027*	*operational*
14.	*16/2022*	*5.6000*	*M/s. Madhukar Malviya*	*649590*	*25/05/2022*	*11/11/2022*	*31/10/2027*	*operational*
15.	*17/2022*	*4.0000*	*M/s. R B Distributors Pvt. Ltd.*	*455505*	*23/06/2022*	*10/10/2022*	*30/09/2027*	*operational*
16.	*18/2022*	*4.0000*	*M/s Pankaj Tiwari*	*468000*	*23/06/2022*	*12/10/2022*	*31/08/2027*	*operational*
17.	*19/2022*	*4.000*	*M/s R.B. Distributors Pvt. Ltd.*	*460500*	*23/06/2022*	*10/10/2022*	*30/09/2027*	*operational*
18.	*20/2022*	*4.000*	*M/s. Infinity Stonex India Pvt. Ltd.*	*213675.21*	*23/06/2023*	*Not Applied for Consent*	*NA*	*NA*
19.	*21/2022*	*5.1880*	*M/s. Devdashrath Royalties Pvt. Ltd.*	*213675.21*	*23/06/2023*	*Not Applied for Consent*	*NA*	*NA*
20.	*22/2022*	*4.0000*	*M/s. S S Group*	*443655*	*23/06/2022*	*20/10/2022*	*30/09/2027*	*operational*
21.	*23/2022*	*4.0000*	*M/s. Jagat Choudhary*	*460155*	*23/06/2022*	*10/10/2022*	*30/09/2027*	*operational*
22.	*24/2022*	*4.0000*	*M/s. Pankaj Tiwari*	*459645*	*23/06/2022*	*12/10/2022*	*31/08/2027*	*operational*

23.	*25/2022*	*4.0000*	*M/s. K.K. Gupta Construction Pvt. Ltd.*	*387625*	*25/05/2022*	*16/06/2022*	*31/05/2027*	*operational*
24.	*26/2022*	*5.6000*	*M/s. Deepraj Singh*	*624250*	*25/05/2022*	*19/09/2022*	*31/08/2027*	*operational*
25.	*27/2022*	*4.0040*	*M/s. Devdashrath Royalties Pvt. Ltd.*	*111111.11*	*25/05/2022*	*10/06/2022*	*30/04/2027*	*operational*
26.	*28/2022*	*4.5467*	*M/s. Devdashrath Royalties Pvt. Ltd.*	*181623.93*	*25/05/2022*	*10/06/2022*	*30/04/2027*	*operational*
27.	*29/2022*	*4.6156*	*M/s. Shiv Shankar Stones Suppliers*	*530790*	*23/06/2022*	*02/01/2023*	*30/11/2027*	*operational*
28.	*30/2022*	*4.5037*	*M/s. Sunlight Minerals*	*310200*	*23/06/2022*	*15/02/2023*	*31/12/2027*	*under development*
29.	*31/2022*	*4.7751*	*M/s. Rajendra Kunkulol*	*388000*	*23/06/2022*	*01/11/2022*	*31/10/2027*	*under development*
30.	*32/2022*	*5.0768*	*M/s. Sunlight Minerals*	*362750*	*23/06/2022*	*05/06/2023*	*31/05/2028*	*under development*
31	*42/2022*	*5.5686*	*M/s. Shree Shyam Rolling Mill*	*146251*	*23/06/2022*	*16/01/2023*	*31/12/2027*	*operational*
32	*43/2022*	*5.4280*	*M/s. Deepraj Singh*	*624225*	*23/06/2022*	*04/10/2022*	*30/09/2027*	*operational*

Factual Observations-

21) In the Paharpur village as Paharpur block-A and B, Tehsil Roopbas, district Bharatpur sandstone mining units/leases are operational. There are 41 leases and EC have been issued by SEIAA, Rajasthan to all 41 mining leases. Rajasthan State Pollution Control Board (RSPCB) has issued Consent to operate to 31 mining units/leases only. At present, 24 mining units are operational, 07 leases are in development phase and rest are non-operational as per the production data provided by the AME, Roopbas.

22) As per categorization of CPCB dt. 07-03-2016, mining units covered under Red category and having air POLLUTION score AS20.

i. *During the visit of joint committee on 26-09-2023, both mining clusters i.e. block A and B were visited to ascertain the status of mining and environment compliances in operational, non-operational and under development mines.*
ii. *At site, open cast semi-mechanized mining is being carried out by drilling and wire saw machines. Water is being used in the wire saw machines for cooling and dust suppression purposes. Water was in recirculation through pits (pits created by mining and being used for collection & recirculation of water).*
iii. *The complainant has alleged regarding illegal mining by the lease holders beyond the lease area, hence the committee categorically visited such places in presence of complainant and it was observed after examining the data and KML files received from Forest department and Mining department, that mining has not been done beyond the lease area by any of the lessee. It was appraised by the Mines Foreman and AME Rupbas that a designated Dump area has been proposed adjacent to plot no. 43 of block B where sandstone blocs were observed.*
iv. *Although efforts have been done for plantation by the lease owners still it need to be increased.*
v. *Approach roads to the mining leases are not metaled which are required to be metaled to avoid the fugitive particulate matter emission during vehicular movements/trucks ply.*
vi. *Water sprinkling through tractor-tankers is in practice to suppress the road dust emitted during vehicular movements.*
vii. *Continuous ambient air quality monitoring stations have not been installed at site which is required to install to analyses the data of air quality.*
viii. *Adequate demarcation pillars have not been provided in the both Block A and B for clear demarcation of mining leases and forest area by Department of Mines and Geology.*

Details of illegal mining activity and Silicosis disease

Total cases (10-10-2022 to 26-09-2023)	*Illegal mining activity*	*Illegal mining transportation activity*	*FIR filed*	*Amount of fine imposed*
19	*04*	*15*	*19*	*Rs. 5.872 lacs*

As per direction of Joint committee a letter has been written by RSPCB Bharatpur to Forest Department and Mining Department, Bharatpur for providing data of illegal mining in this area and actions taken thereon.

- *It was informed by DCF, Forest Department Bharatpur that 19 cases of illegal mining activities were identified and necessary action was taken details of which have been forwarded vide letter dt. 27-09-2023 details are as under :-*

    - *It was informed by AME, Mining Department Rupbas, Tehsil-Rupbas, District Bharatpur that 304 cases of illegal mining activities were identified and necessary action was taken details of which have been forwarded vide letter dt. 30-09-2023 details are as under:-*

Total cases (2018 to 30-09-2023)	*Illegal mining activity*	*Illegal mining transportation activity*	*Illegal stock activity*	*FIR filed*	*Amount of fine imposed*
304	*09*	*293*	*02*	*31*	*Rs. 4.5414906 crores*

- *Besides above, AME, Mining Department Rupbas, Tehasil-Rupbas, District Bharatpur has also submitted that -*
    - *Notices to mines lessees for completion of deficiencies observed during joint visit, have been issued on 29-09-2023.*
    - *No case of silicosis has been filed from the workers those are involved in mining activity in these mines.*
    - *Details of awareness program has been submitted regarding prevention and control of silicosis.*
    - *As per direction of Joint committee a letter has been written by RSPCB Bharatpur to CMHO Bharatpur for providing data of patients of silicosis disease in this area because complainant informed and alleged that the silicosis disease is causing due to these mining operations. No detail has been provided by CMHO Bharatpur so far in this regard.*

<u>Ambient Air quality Monitoring and Assessment:</u>

As per direction of Joint committee, Ambient air quality monitoring was conducted by the RSPCB on 27-09-2023 at three locations for obtaining representative data of ambient air quality of these sand stone mining cluster Banshi Paharpur block-B zone as mining units are operational in this block only, details of air quality monitoring sites with results are as under :-

sr. no	***Monitoring locations***	***Parameters***	***Standards in $\mu gm/M_3$***	***Results in $\mu gm/M_3$***

1	*Community Health Center Banshi Paharpur, Tehsil Rupbas, Bharatpur*	*Particulate matter - PM10*	*100*	*85*
		Sulphur dioxide as SO2	*80*	*7*
		Oxides of Nitrogen as NOx	*80*	*19.2*
2	*M/s Deepraj Singh, ML No. Plot No. 43, Block B, Near Village Banshi Paharpur, Tehsil Rupbas, Bharatpur*	*Particulate matter - PM10*	*100*	*107*
		Sulphur dioxide as SO2	*80*	*5.2*
		Oxides of Nitrogen as NOx	*80*	*17.2*
3	*M/s Kapil Agarwal, ML No. Plot No. 13, Block B, Near Village Banshi Paharpur, Tehsil Rupbas, Bharatpur*	*Particulate matter - PM10*	*100*	*117*
		Sulphur dioxide as SO2	*80*	*5.6*
		Oxides of Nitrogen as NOx	*80*	*18.4*
		Particulate matter – PM2.5	*60*	*76.37*

In view of above data of air quality sampling results, parameters as PM-10 and PM 2.5 are exceeding the prescribed limits. Parameters (particulate matter) are exceeding the prescribed limits due to Dust emission during vehicular movements, approach roads are not metaled to control fugitive dust emission and water sprinkling practice is not in proper manner to efficiently capture the road dust.

Conclusion and Recommendations

i. *The de-notification of the area Band Baretha Wildlife Sanctuary has been done in accordance to law and after following due procedure of the various rules and regulations.*
ii. *For the mining units under reference, SEIAA Rajasthan has accorded the EC to Mining Cluster as well as individual lease after due consultation with TTZ Authority and representatives of the TTZ Authority were present during the appraisal of the units. Specific Conditions with respect to projection of TTZ area have been added in the EC granted to these units.*
iii. *The plantation needs to be improved at leases as well as in the entire cluster. Considering the fact that the mines leases are operational for little over one year, there should be a proper plantation planning for entire cluster so as to achieve desired plantation density in coming times. It is pertinent to mention that in addition to the Environment Clearance accorded to the individual leases, The Department of Mines and Geology, GoR has also been accorded Environment Clearance for the development of entire mining cluster and the department is under obligation to fulfill its commitments and ensure the compliance of EC. Plantation in Clusters, Adequate Maintenance of Road Network, demarcation of mining lease through pillars being most important amongst them.*

iv. *Mandatory 6 monthly compliance report has been submitted by 23 Unit out of 41 units. Remaining units have failed to submit the compliance report along with all necessary monitoring data.*

v. *Illegal mining within the cluster i.e. (a) mining beyond the permissible capacity and (b) mining excavation beyond the allotted lease area; has not been observed in the cluster. Other cases of Illegal mining in Forest and Revenue lands are being attended to by State Forest Department and DMG, GoR respectively. Strict vigilance is to be ensured by the State Government in this regard.*

vi. *Ambient Air quality monitoring was conducted on 27-09-2023 at two locations to get the air quality data at mining site and at one location in village as background data of air quality.*

vii. *As per the analysis report of Ambient Air Quality Monitoring conducted by State Pollution Control Board on 27/09/2023 at 3 locations, it is evident the parameters of PM10 and PM2.5 are marginally beyond the prescribed standards (PM-10 are 107 & 117/against the permissible limit of 100 µgm/M3 and PM2.5 is 76.37/against the permissible limit of 60 µgm/M3). The committee is of the opinion that as the main production activity is based on wire saw based block mining, the major source of air emission is Vehicular Movement in the cluster as well as in adjacent road network. Following measures must be taken immediately to address the situation :*

   a) *Permanent water sprinklers must be installed on the main haulage roads on the cluster.*
   b) *Wheel washing facility must be developed at individual mine.*
   c) *The Road network in the cluster must be metaled so as to avoid fugitive emissions. d. The condition of road on the main transportation route must be improved for which the funds available in District Mineral Foundation Trust (DMFT) can be utilized."*

31. Submission of the learned counsel for the MoEF&CC and the respondent state are that in the case M.C. Mehta Vs. Union of India & Ors. dealing with the matter of TTZ and I.A. was filed (quoted above) and in consultation with the Central Empowered Committee,
opinion of NEERI was mentioned in para 8 and 9 of the order and in accordance with the above report appraisal committee SEAC constituted by the authority concerned in dealing with the industrial unit falling in TTZ area where the air pollution score is between 11 to 20 secretarial guidelines were obtained from the NEERI and action was taken in accordance with the above report. As per recommendation and order and direction of Hon'ble the Supreme Court NEERI has been added in the SEIAA committee and the recommendation and additional conditions submitted and suggested by the NEERI in reference to the TTZ area was incorporated in the conditions as additional conditions suggested by the NEERI. The relevant portion of the order of Hon'ble the Supreme Court of India passed in M.C. Mehta Vss. Union of India & Ors. Dated 08.12.2021 in W.P. No. 13381/1984 are quoted below:-

> *"This Interlocutory Application is filed for certain clarifications/modification of the Order dated 06.12.2019. By an Order dated 29.01.2021, clarification sought in prayer clauses (a),(b) and (c)*

were made by this Court. In respect of the clarification of the Order dated 06.12.2019 pertaining to the concurrence with the Central Empowered Committee (CEC) and opinion of NEERI as mentioned in paras 8 and 9 of the Order, learned Amicus Curiae in consultation with Ms. Aishwarya Bhati, learned Additional Solicitor General appearing for the State of Uttar Pradesh submitted a note. It has been agreed that a representative of NEERI shall be included as a Member in the Environmental Appraisal Committee (EAC) and State Environmental Appraisal Committee (SEAC) constituted by the Ministry of Environment, Forest and Climate Change for dealing with industrial units falling in TTZ Area.

In respect of industrial units where the Air Pollution Score as per CPCB and UPPCB is between 11 to 20, sectorial guidelines shall be obtained from NEERI. No industrial units shall be cleared by the State till sectorial guidelines are obtained from NEERI. For those industrial units having Air Pollution more than 20, the concurrence/opinion of NEERI will have to be obtained.

In case of the need for felling trees to set up industrial units/projects, the matter shall be referred to the CEC for its opinion/concurrence. Where there is no need for felling of trees, a declaration shall be obtained from the industrial units/projects to that effect. The declaration shall be accompanied by an affidavit and photograph of the site along with the Key Plan of the site. The said declaration along with the other documents shall be forwarded to the concerned District Forest Officer. In case, incorrect information has been given by the declarant, suitable legal action shall be taken."

32. In the matter of Net Present Value for the damage of the trees Hon'ble the court has followed the guidelines and recommendations as follows :-

a) *"Develop a set of scientific and policy guidelines that shall govern decision making with respect to cutting of trees for developmental projects.*
b) *These guidelines may specify the species of trees in categories based upon their environmental values considering the age and girth of the trees etc.*
c) *The guidelines may provide special treatment for geographical area or eco-sensitive area, they may identify areas which need to be regulated and even identify a minimum threshold beyond which the guidelines will apply.*
d) *The guidelines shall prescribe a mechanism for assessment of both intrinsic and instrumental value of the trees, based not only on the value of timber, but also the ecosystem services rendered by the trees and its special relevance, if any, to the habitat of other living organisms, soil, flowing and underground water.*
e) *The guidelines shall also mandate rules regarding alternate routes/sites for roads/projects, and possibilities for using alternate modes of transport like railways or water-ways.*
f) *The guidelines shall also prescribe the mode of compensation financial and otherwise, stage of depositing such compensation and the process that governs the computation and recovery. In this regard, the committee*

may consider the existing regulatory framework regarding calculation of Net Present Value (NPV) and may suggest necessary modification.

g) *In addition, the guidelines shall also specify the manner and mechanism of compensatory afforestation to be carried out using deposited compensation, consistent with the native ecosystem, habitat and species.*

h) *The Committee may consider the need for any permanent expert body and its proposed structural form.*

i) *Any other issue incidental to the aforesaid objectives."*

33. The submission of the learned counsel for the SEIAA (Rajasthan) are as follows:-

i. *In the Paharpur village as Paharpur block-A&B, Tehsil Roopbas, District Bharatpur sandstone mining units/leases are operational. There are 41 leases and EC have been issued by SEIAA, Rajasthan to all 41 mining leases. Rajasthan State Pollution Control Board (RSPCB) has issued Consent Operate 31 mining units/leases only. At present, 24 mining units are operational, 07 leases are in development phase and rest are non-operational as per the production data provided by the AME, Roopbas.*

ii. *That, as per of CPCB dt. categorization 07.03.2016, mining units covered under Red category and having air Pollution score AS20.*

   i. *During the visit of Joint Committee on 26.09.2023, both mining clusters i.e. block-A&B were visited to ascertain the status mining and environment compliances in operational, non-operational and under development mines.*

   ii. *At site, open cast semi-mechanized mining is being carried out by drilling and wire saw machines. Water is being used in the wire saw machines for cooling and dust suppression purposes. Water was in recirculation through pits (pits created by mining and being used for collection & recirculation of water).*

   iii. *The complainant has alleged regarding illegal mining by the lease holders beyond the lease area, hence the Committee categorically visited such places in presence of complainant and it was observed after examining the data and KML files received from Forest Department and Mining Department, that mining has not been done beyond the lease area by any of the lessee. It was appraised by the Mines Foreman and AME Rupbas that a designated Dump area has been proposed adjacent to plot no. 43 of where sandstone blocs block-B observed.*

   iv. *Although efforts have been done for plantation by the lease owners still it need to be increased.*

   v. *Approach roads to the mining leases are not metaled which are required to be metaled to avoid the fugitive particulate matter emission during vehicular movements/trucks ply.*

   vi. *Water sprinkling through tractor-tankers is in practice to suppress the road dust generated during vehicular movements.*

vii. *Continuous ambient air quality monitoring stations have not been installed at site which is required to install to analyses the data of air quality.*

viii. *Adequate demarcation pillars have not been provided in the both Block-A and B for clear demarcation of mining leases and forest area by Department of Mines and Geology.*

Additional Submissions

i. *The Respondent is a body the constituted for the purposes of granting and rejecting EC and with respect to monitoring of the compliance of the conditions of EC, the and Ministry of Environment forest & Climate Change are the competent authority to ascertain the same and thus, the issues regarding compliance of EC conditions have to be administered by the respective departments."*

34. Submission of the learned counsel for the State of Rajasthan and Department of Mining are that the area falling within the forest department are to be controlled by the department of forest and any non-forest activity if found to be carried out by the violator, the actions are required to be taken by the Forest Department.

35. It is further argued that, for effective prevention of illegal mining in the entire state a SIT is formed and performing its function to control the illegal mining, further that e-auction proceedings were conducted in accordance with law.

36. It is further argued that Banshi Pahadpur area were de-notified by the MoEF&CC and after forest diversion, delineation of plots was done as per rules and the E-Auction was conducted from which the State Government got revenue of approx Rs. 137.29 crores and local people in the area got direct/indirect employment. It is also submitted that after the valid e-auction legal mining activities area started and illegal mining activities was curbed and amount realised by DMFT is being utilized for the development of the area. The mining of mineral sandstone is currently done in block form by wire saw technology using water in cutting so that there is no air pollution in the environment. Blasting is not done in the Sandstone mining because use of explosive may create cracks in the blocks/strips which cause it to lose its usefulness.

37. The aforesaid mentioned areas have been de-notified by the Ministry of Environment, Forest & Climate Change after examining it as per the rules and keeping in view the adequate ecological, floral & formal significance. That mining is carried out by the leases after approval mining plan and obtaining environmental clearance and CTO from Government authorities in denotified/diverted forest land.

38. After the diversion of forest land, a single cluster EC was obtained for delineated plots. After Cluster EC each mining lessee has obtained EC separately from SEIAA Rajasthan as per the rules. It is also noteworthy that EC received in the above-mentioned mines, the Chief Scientist and head of (NEERI) zonal office Delhi was a co-opt member. It is clear that keeping TTZ in view, EC has been issued. The meeting of SEIAA was held on

12/10/2021 & 24/03/2022 regarding the grant of EC and EIA/EMP in which after taken all the points into consideration the EC was granted.

39. he Minutes of the meeting of SEAC 2nd held on 14/3/2022 & 24/3/2022 have been submitted in which at serial no. 8, the Chief Scientist and head of (NEERI) zonal office Delhi also attended the meeting and suggestions which has been raised before the meeting has been recommended and added in the EC conditions. The conclusion of the committee are given below :-

> *"This project falls in Taj Trapezium Zone (TTZ). As per the directions of the Hon'ble Supreme Court vide order dated 8th Dec 2021 in Civil Writ Petition No.13381/1984 M.C. Mehta V/s Union of India & Ors. in respect of the (TTZ), a representative of NEERI was coopted in SEAC. The representative of NEERI participated virtually in the SEAC meeting dated 22nd March 2022 for appraisal of this proposal. Details of the Project were also submitted by the project proponent to NEERI. The project was examined by NEERI, which included site visit by an expert. NEERI accorded its concurrence to the proposed project vide its letter No. NEERI-DZC/TTZ-Bh/2022/01 dated 21.03.2022 along with certain suggestions/conditions. The same have been incorporated by SEAC in its recommendations for the conditions to be imposed for grant of EC.*
>
> *The Authority after detailed deliberation, and based on the recommendation of SEAC, decided to approve EIA/EMP and grant EC incorporating the suggestions/conditions suggested by NEERI, in the EC along with the other conditions."*

40. It is further argued that the issues raised during the public hearing was duly considered and has been added with suggestions in the report of the committee. A report was also called from the SEIAA and the report has been filed which is on record. The submission of the Rajasthan SEIAA are that the Hon'ble Supreme Court in the matter of Writ Petition (Civil) No. 13381/1984, MC Mehta V/s Union of India & Ors (in respect of the Taj Trapezium Zone (TTZ))} ordered on 06/12/2019 and 08/12/2021 that-

i. *A representative of NEERI shall be included as a member in the Environmental Appraisal Committee (EAC) and state Environmental Appraisal Committee (SEAC) constituted by the Ministry of Environment, Change for dealing with industrial units falling in TTZ Area. Forest and Climate be cleared*
ii. *In respect of industrial units where the Air Pollution Score as per CPCB and UPPCB is between 11 & 20, sectorial guidelines shall be obtained from NEERI. No industrial units shall by the State till sectorial guidelines are obtained from NEERI.*
iii. *For those industrial units having Air Pollution more than 20, the concurrence/opinion of NEERI will have to be obtained.*
iv. *In compliance to the Hon'ble Supreme Court order, NEERI prepared Sectorial Guidelines for the proposed industrial units/activities with air pollution score between 1 & 20 and above, falling under TTZ area on 01/12/2022.*

v. *Director, CSIR-NEERI nominated NEERI representative, which was subsequently notified by the MoEF & CC on 01/04/2022.*

vi. *NEERI had not prepared Sectorial Guidelines for mining as mandated by Hon'ble Supreme Court vide order dated 08.12.2021 and the same were prepared on 01.12.2022. During the appraisal of the instant proposal, Dr. SK Goyal, Chief Scientist and Head of CSIR NEERI, Delhi Zonal Centre was co-opted as an expert member and concurrence/suggestions of Dr. SK Goyal (NEERI representative) were duly incorporated in EC.*

vii. *As per PCB Categorization of Industries issued in the Year 2016, mining activities are identified as Red category Industry Sector having Pollution Potentials Score of 20.*

viii. *With respect to the fifth query regarding the operations being eco-friendly or not, it is submitted that mining operations are not eco-friendly. Impact due to mining activity is assessed and Environmental Management Plan (EMP) is prepared to minimize the impact of mining on environment. Mining activities attracts prior environment clearance (EC) under the EIA Notification, 2006 issued under EP Act'1986."*

41. The main thrust of the applicant against the joint committee report are that the committee has not considered the order passed by the Tribunal in 2021 and that the matter of tree cutting has not been duly considered and whole exercise of denotification of an area is against the principle of sustainable development as prescribed under Section 20 of the National Green Tribunal Act, 2010 and causing irreparable loss to the biodiversity of the area.

42. In contention of the above version, the learned counsel for the CPCB has argued that a joint committee constituting the high officials of all the departments were constituted to submit the report and the report has been submitted finding no violation of rules in the notification issued by the MoEF&CC or the notification issued by the State of Rajasthan. Learned counsel for the CPCB has also submitted that the report of the joint committee is in accordance with the rules and directions issued by the Hon'ble Supreme Court of India.

43. In the matter of cutting of trees, it is argued that in case of the need for felling trees, the matter shall be referred to the CEC for its opinion and after that a declaration shall be accompanied by an affidavit and such declaration along with other documents shall be forwarded to the concerned District Forest Officer which shall be verified and suitably considered. In response to the above contention, the learned counsel for the respondent has submitted that the above criteria have been followed by the department concerned and nothing has been narrated by the applicant with regard to the violation of the above procedure.

44. The learned counsel for the respondent no. 5 has submitted that the Ministry of Environment, Forest & Climate Change has issued the Notifications and Amendments vide order dated 01.11.2009 which are required to be implemented and the statutory duty of the SEIAA is to evaluate the project with respect to environment's perspective and if found suitable, then issue an environmental clearance for the project. SEIAA, Rajasthan is not concerned about controlling the illegal mining in the forest area or within wildlife sanctuary, infact the responsibility to control the illegal mining lies with the authorities concerned. This

Tribunal vide order dated 21-03-2024 directed the State Pollution Control Board to examine the matters of illegal mining and vide reply submitted by the State PCB, it has been reported that necessary actions with regard to illegal minings have been done against the violators and the deficiencies which have been found were directed to be rectified immediately. It is further submitted that show-cause notices against the violating units have also been issued.

45. A separate report was called from the Department of Forest, Bharatpur and vide communication dated 9-07-2024, the Deputy Conservator of Forest has communicated that in between March to July, 2024, approximately 30 illegal minings have been reported in which, necessary action has been taken by the Forest Department including the seizure of the machine used for the illegal mining and imposition of penalty/compensation/damage.

46. It is further reported that :-

i. *"अवैध खनन प्रभावित क्षेत्र में अवैध खनन की पूर्ण रोकथाम हेतु लिखित में 24 घण्टे के लिए स्टाफ को मुख्य जगहों पर अवैध खनन की रोकथाम हेतु पाबन्द किया गया है।*

ii. *अवैध खनन/अवैध परिवहन की रोकथाम हेतु उक्त वन क्षेत्र में पिछले 02 वर्षों की अवधि में लगभग 03 किमी पक्की दीवार एवं 200 हैक्टेयर प्लान्टेशन कराकर वन क्षेत्र को उक्त गतिविधियों से सुरक्षित किया गया है।*

iii. *भरतपुर जिले में अवैध खनन एवं निर्गमन की प्रभावी रोकथाम हेतु जिला कलक्टर भरतपुर की अध्यक्षता में दिनांक 12.04.2024 को जिला स्तरीय कमेटी की बैठक आयोजित की गयी, जिसमें प्रशासन, पुलिस, वन विभाग, खनन विभाग, परिवहन विभाग एवं पोल्यूशन कंट्रोल बोर्ड के अधिकारी उपस्थित हुये। जिला कलक्टर, भरतपुर द्वारा सभी विभागों को संयुक्त रूप से कार्यवाही कर अवैध खनन की पूर्ण रोकथाम के निर्देश दिये गये तथा उप वन संरक्षक (वन्यजीव) भरतपुर एवं अधीक्षण खनि अभियन्ता भरतपुर को संयुक्त रूप से मौका निरीक्षण कर पालना रिपोर्ट प्रस्तुत करने हेतु निर्देश दिये गये। बैठक कार्यवाही विवरण दिनांक 12.04.2024 (एनेक्चर-1) एवं जिला कलक्टर के आदेश दिनांक 13.04.2024 (एनेक्चर-2) की प्रति संलग्न हैं।*

iv. *जिला कलक्टर भरतपुर के आदेश संख्या दिनांक 13.04.2024 की पालना में उप वन संरक्षक (वन्यजीव) भरतपुर एवं खनि अभियंता भरतपुर, सहायक खनि अभियन्ता रूपवास एवं क्षेत्रीय वन अधिकारी बंध बारैठा अभयारण्य मय स्टॉफ द्वारा दिनांक 17.04.2024 को वन्यजीव बंध बारैठा के अवैध खनन प्रभावित क्षेत्र गढी बाजना एवं दर्रबराहना क्षेत्र का मौका निरीक्षण किया गया। मौके पर कोई वाहन, मशीन, मजदूर इत्यादि नहीं पाये गये तथा अवैध खनन नहीं पाया गया। विभाग द्वारा चिन्हित स्थानों एवं लिप्त कच्चे रास्तों पर खाई खोदकर रास्ते बंद किये गये है तथा पाया कि उक्त क्षेत्र में काफी समय में अवैध खनन / निर्गमन बंद है।*

v. *बंध बारैठा वन्यजीव अभयारण में अवैध खनन की प्रभावी रोकथाम हेतु उप वन संरक्षक वन्यजीव, भरतपुर द्वारा आरएसी के जाब्ता हेतु पुलिस अधीक्षक भरतपुर को इस कार्यालय के पत्र कमांक 4855 दिनांक 22.09.2023, 6276 दिनांक 14.12.2023, 281 दिनांक 23.01.2024, 395 दिनांक 25.01.2024, 1485 दिनांक 12.03.2024, 3488 दिनांक 02.05.2024 बार-बार अनुरोध किया गया है जिसके कम में पुलिस अधीक्षक, जिला भरतपुर के पत्र कमांक 9997-10003 दिनांक 17.05.24 से "सी" कम्पनी 14वीं आरएसी की एक प्लाटून दिनांक 17.05.24 को उपलब्ध कराई गई एवं पत्र क्रमांक 4113 द्वारा दिनांक 18.06.2024 द्वारा पुनः आरएसी जाब्ता हेतु पुलिस अधीक्षक, जिला भरतपुर को निवेदन किया गया जिसके कम में 14वीं आरएसी की एक बटालियन प्लाटून दिनांक 19.06.2024 को उपलब्ध करवाई गई। द्वारा*

vi. *क्षेत्रीय वन अधिकारी गश्तीदल को क्षेत्रीय वन अधिकारी वन्यजीव बंध बारैठा के साथ सहयोग एवं समन्वय हेतु प्रभावी कार्यवाही हेतु निर्देशित किया गया है।*

vii. *बंध बारैठा वन्यजीव अभयारण्य में अवैध खनन की प्रभावी रोकथाम हेतु उत्तर प्रदेश वन विभाग के साथ संयुक्त रूप से गश्त की जा रही है एवं अंतिम बार दिनांक 11.06.2024 को संयुक्त रूप से गश्त की गई है।*

viii. *जिला कलेक्टर, भरतपुर के आदेश कमांक 47 दिनांक 13.4.2024 की पालना में अधीक्षण खनि अभिन्यता भरतपुर एवं उप वन संरक्षक, भरतपुर तथा दोनों विभागों के अन्य अधिकारियों के साथ बन्धबारैठा अभ्यारण एवं उसके बाहर वनक्षेत्र में अवैध खनन के सम्बन्ध में वनखण्ड बंशीपहाडपुर में मौका निरीक्षण किया गया। निरीक्षण के दौरान कहीं कहीं अवैध खनन के निशानात पाये गये परन्तु मौके पर कहीं भी अवैध खनन होता हुआ नही पाया गया। कुछ लीज धारकों द्वारा अवैध रूप से सेफटी जोन एवं वनक्षेत्र में डम्पिंग किया जा रहा था। जिस पर कार्यवाही कर एक डम्पर एवं एक हाइड्रा केन जप्त कर तथा एफ०आई०आर० दर्ज कर कार्यवाही की गई।*

ix. *वनक्षेत्र भरतपुर बंशीपहाडपुर A & B में अवैध खनन की पूर्ण रोकथाम हेतु कार्यालय पत्रांक 4785 दिनांक 11.6.24 द्वारा पुलिस अधिक्षक भरतपुर को निवेदन किया गया है। जिसके कम में पुलिस अधिक्षक भरतपुर द्वारा उनके पत्रांक 11982-87 दिनांक 5.7.24 (एनेक्चर-5) द्वारा अतिरिक्त महानिदेशक पुलिस, प्रशासन, कानून व्यवस्था, राजस्थान जयपुर को RAC जाप्ता स्थायी रूप से आवंटित करने हेतु निवेदन किया गया है।"*

47. A report was again called from the State of Rajasthan through Collector concerned. The matter was inquired and it has been reported that the members of the Mining Department, Pollution Control Board, Forest Department visited the site and examined Bansi Pahadpur, Block A and B in the forest area and found that :-

i. No illegal mining has been found.
ii. In lease plot nos. 12 and 13, some dump material has been found.

A- <u>LOCUS STANDI : AGGRIEVED PERSON –</u>

48. First issue as raised by the learned counsel for the Respondent is that the Applicant is not a person aggrieved or has no locus standi to institute the present application and he has relied on Vimal Bhai Vs MoEF&CC and Ors, [Appeal No. 5 of 2011] on 14th December, 2011, dealt with the interpretation of section 16 and section 18 to explain the meaning of "person aggrieved" under the NGT Act, 2010 and submitted that the person injured per-se as occurred in Section 18 (2) of the NGT Act is only for the purpose of claiming relief, compensation or settlement of disputes, is altogether different from the person aggrieved as available in Section 16. Person aggrieved and person injured are two different words which connote different meaning. Under Section 16, any person aggrieved can approach this Tribunal by way of filing an appeal, whereas, under Section 18 (2), the person injured per-se, whether it is an individual or a body of individual or a social organization or a Hindu joint family, etc. Further, under Section 14 and 16 any person can approach this Tribunal for appropriate relief including the relief under Section 18. The only exception to be made for treating an appeal/application as not maintainable could be a matter which falls beyond the seven (7) Acts as notified in Schedule I of the NGT Act, 2010 and in a case of mala-fide and vexatious litigation brought before this Tribunal and not otherwise.

49. In M.C. Mehta Vs University Grants Commission & Ors. on 17th July, 2014 (Original Application No.12 of 2014), this Tribunal has examined and explained intent of legislature and scope of Section 14,15 and 16 of the NGT Act, 2010. In the said decision, the Principal Bench spelt out that "jurisdiction under Section 16 of the Act is distinct from that of Ss.14 and 15" and held:-

> *"12. This Tribunal is vested with three different jurisdictions. Firstly, it has the original jurisdiction in terms of Section 14 of the 10 NGT Act to deal with all civil cases raising a substantial question relating to environment and where such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. Secondly, it is vested with appellate jurisdiction against the various orders / directions / decisions as stated in Section 16 (a) to (j) of the NGT Act. Thirdly it has a special jurisdiction in terms of Section 15 to grant relief of compensation and restitution as per the scheme contemplated under that provision. Admittedly, the present application has been filed under Section 14 of the NGT Act. Thus, it must plead and raise the following: It should be a civil case.*
>
> *Where a substantial question relating to environment or enforcement of any legal right relating to environment is involved. Such question arises out of implementation of enactment specified in Schedule I of the NGT Act. 13. Once these three ingredients are satisfied, then Section 14 does not appear to place any restriction on the locus or character of the Applicant who wishes to move an application under Section 14 of the Act. Similarly, Section 15 also does not describe the description of an Applicant who can move the Tribunal for seeking reliefs like compensation, restitution of the property and the environment. In contradistinction thereto, Section 16 restricts the Applicant entitled to file an Appeal to be 'any person aggrieved'. In other words, it is only a person aggrieved who can invoke the jurisdiction of the Tribunal under Section 16 and not any Applicant. Section 18 deals with the procedure which has to be followed by an applicant or applicants, who prefers to file an application or appeal before the Tribunal. It deals with all the three jurisdictions specified under Section 14, 15 and 16 of the NGT Act. However, Section 18 (2) of the NGT Act provides the details in regard to locus and character of an Applicant who is entitled to move the Tribunal by filing an Application for grant of relief or compensation or settlement of dispute. Section 18(2) has been worded by the legislature with wide amplitude besides covering any person aggrieved and the legal representatives of the various categories. In terms of Section 16, it includes various other persons as described under clauses (a) to (d) And (f) of sub-Section 2 of Section 18. The locus and character of an applicant specified under these provisions has to receive liberal construction and would cover variety of applicants. As far as Section 14 (1) of the NGT Act is concerned, the only restriction that appears to be imposed is that it must satisfy the prerequisites stated in that Section."*

50. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A petition is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the Applicant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which jurisdiction is

resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In-fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the Applicant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide: State of Orissa v. Madan Gopal Rungta MANU / SC / 0012 /1951MANU/SC /0012/1951: AIR 1952 SC 12; Saghir Ahmad and Anr. v. State of U.P. MANU/SC/0110/1954 MANU/SC/0110/1954:AIR 1954 SC 728; Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal and Ors. MANU/ SC / 0063 /1962 MANU/SC/0063/1962: AIR 1962 SC 1044; Rajendra Singh v. State of Madhya Pradesh MANU/SC/0690/1996 MANU /SC/0690/1996: AIR 1996 SC 736; and Tamilnadu Mercantile Bank Shareholders Welfare Association (2) v. S.C. Sekar and Ors. MANU/SC/8375/2008 MANU/SC /8375/2008 : (2009) 2 SCC 784).

51. In Anand Sharadchandra Oka v. University of Mumbai MANU/SC/7106/2008MANU/SC/7106/2008 : AIR 2008 SC 1289, a similar view was taken by Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.

52. In A. Subhash Babu v. State of A.P. MANU/S C /0845/2011 MANU/SC/0845/2011 : AIR 2011 SC 3031, the Court held:-

> *“The expression 'aggrieved person' denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant.”*

53. Hon’ble Court, even as regards the filing of a habeas corpus petition, has explained that the expression, 'next friend' means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody. (Vide: Charanjit Lal Chowdhury v. The Union of India and Ors. MANU /SC /0009 /1950MANU/SC/0009/1950 : AIR 1951 SC 41; Sunil Batra (II) v. Delhi Administration MANU /SC / 0184/ 1978MANU /SC /0184/1978 : AIR 1980 SC 1579; Mrs. Neelima Priyadarshini v. State of Bihar MANU/SC/0253/1987 MANU/SC/0253/1987 : AIR 1987 SC 2021; Simranjit Singh Mann v. Union of India MANU /SC/ 0058/1993MANU /SC/ 0058/1993 : AIR 1993 SC 280; Karamjeet Singh v. Union of India MANU/SC/0059 / 1993MANU/SC/0059/1993 : AIR 1993 SC 284; and Kishore Samrite v. State of U.P. and Ors. MANU/SC/0892/ 2012MANU/SC/0892/2012 : JT (2012) 10 SC 393)

54. The Hon'ble Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a Visa". Many societal pollutants create new problems of nonredressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide: P. S. R. Sadhanantham versus Arunachalam and another MANU/ SC /0083 /1980 MANU/SC/0083/1980 : AIR 1980 SC 856; Dalip Singh versus State of U.P. and others. MANU/SC/1886/ 2009MANU/SC/1886/2009: (2010) 2 SCC 114; State of Uttaranchal versus Balwant Singh Chaufal and others MANU/SC/0050/2010MANU/SC/0050/2010 : (2010) 3 SCC 402; and Amar Singh versus Union of India another MANU/SC/0596/2011MANU /SC /0596 /2011 : (2011) 7 SCC.

55. Even as regards the filing of a Public Interest Litigation, Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide: Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors. MANU/SC/0541/1998MANU/SC/0541/1998 : AIR 1999 SC 114; Dattaraj Natthuji Thaware v. State of Maharashtra MANU/SC/1 060/ 2004 MANU/SC/1060/2004 : AIR 2005 SC 540; and Neetu v. State of Punjab and Ors. MANU/SC/7008 /2007MANU/SC/ 7008/2007 : AIR 2007 SC 758).

56. In Ghulam Qadir v. Special Tribunal and Ors. MANU/SC/0608/2001MANU/SC/0608/2001 : (2002) 1 SCC 33, Court considered a similar issue and observed as under:-

> *"There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the Petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the Court has undergone a sea change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. ----In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be nonsuited on the ground of his not having the locus standi."*

57. The Hon'ble Supreme Court in Ravi Yashwant Bhoir v. District Collector, Raigad and Ors. MANU/SC/0186/2012MANU/SC /0186/2012 : (2012) 4 SCC 407, held as under:-

> *"Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result n injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called damnum sine injuria. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party ina lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim devoid of reasons. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party."*

58. A similar view has been re-iterated by Court in K. Manjusree v. State of Andhra Pradesh and Anr. MANU/SC/ 0925 /2008MANU/SC/0925/2008 : (2008) 3 SCC 512, wherein it was held that, the applicant before the High Court could not challenge the appointment of a person as she was in no way aggrieved, for she herself could not have been selected by adopting either method. Moreover, the appointment cannot be challenged at a belated stage and, hence, the petition should have been rejected by the High Court, on the grounds of delay and non- maintainability, alone.

59. In Balbir Kaur and Anr. v. Uttar Pradesh Secondary Education Services Selection Board, Allahabad and Ors. MANU/SC/7743/2008 MANU/SC/7743/2008 : (2008) 12 SCC 1, it has been held that a violation of the equality clauses, enshrined in Articles 14 and 16 of the Constitution, or discrimination in any form, can be alleged, provided that, the writ Petitioner demonstrates a certain appreciable disadvantage qua other similarly situated persons.

60. While dealing with the similar issue, The Court in Raju Ramsingh Vasave v. Mahesh Deorao Bhiavapurkar and Ors. MANU/SC/3754/2008MANU /SC / 3754/2008 : (2008) 9 SCC 54 held:-

> *"There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called damnum sine injuria. "We must now deal with the question of locus standi.*

A special leave petition ordinarily would not have been entertained at the instance of the Applicant. Validity of appointment or otherwise on the basis of a caste certificate granted by a committee is ordinarily a matter between the employer and the employee. This Court, however, when a question is raised, can take cognizance of a matter of such grave importance suo motu. It may not treat the special leave petition as a public interest litigation, but, as a public law litigation. It is, in a proceeding of that nature, permissible for the court to make a detailed enquiry with regard to the broader aspects of the matter although it was initiated at the instance of a person having a private interest. A deeper scrutiny can be made so as to enable the court to find out as to whether a party to a lis is guilty of commission of fraud on the Constitution. If such an enquiry subserves the greater public interest and has a far-reaching effect on the society, in our opinion, this Court will not shirk its responsibilities from doing so." (also: Manohar Joshi v. State of Maharashtra and Ors.(2012)3SCC619)"

61. In Vinoy Kumar v. State of U.P. MANU/SC/ 0252 / 2001 MANU/SC/0252/2001 : AIR 2001 SC 1739, Court held:

"Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of person is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief."

62. In response to the above contentions, the learned counsel for the Applicant has relied on MANU/GT/0104/2016: (Sameer Mehta Vs. Union of India & Ors.) and Vimal Bhai Vs. MoEF&CC & Ors. (quoted above). In response to the contention raised by the Respondent/ Project Proponent that the Applicant has no locus standi, the Applicant had submitted that:

"4. The legislative intent of the legislature in keeping the issue of locus standi before this Hon'ble Tribunal can also be seen from the 186th Law Commission Report -on 'proposal to constitute Environmental Courts' whereby it was proposed to constitute Green Tribunals. On the issue of locus standi the report advocates for a wide locus standi and clearly says that:- " . Locus Standi: So far as locus standi before the proposed Court in original petitions is concerned, it must be wide as it is today before the High Court/Supreme Court in writ jurisdiction in environment matters. This is the position in Austrlia and New Zealand also, any person or organization who or which is interested in the subject public matter or in interest must be able to approach the Court."

5. That in Vimal Bhai u Ministry of Environment and Forests (2lll) SCC Online NGT 16, giving a wide interpretation it was held by this Hon'ble Tribunal that "Once the mandate is of every citizen, any person can approach this Tribunal complaining environmental threat in the activities of the State or any organization or individual." The complete paragraph of the Judgment is reproduced as follows:- "A reading of Section z(j)(i) to (viii) would reveal that any individual, Hindu undivided family, Company, Firm, an association of persons or a body of individuals whether incorporated or not, trustees of a

trust a local authority and every artificial juridical person not falling within any of the preceding sub-clauses, would indicate "person" who can maintain an application/appeal under the NGT Act. But, it is the argument of the learned counsel of the Respondent that even the above defined person shall be a person either aggrieved or injured directly or indirectly and not otherwise. Then the question arises whether in the environmental matters, a person who is really aggrieved/ injured shall alone be permitted to approach this Tribunal. A combined reading of the above sections, would indicate that any person whether he is a resident of that particular area or not whether he is aggrieved and/or injured or not, can approach this Tribunal, In such situations, it is of course necessary to scan and find out the credentials of the applicant/appellant as to their true intentions and motives. No doubt that in the present case though the applicants have participated in the EC proceedings and they have not challenged the same. However, that does not mean that they cannot challenge the FC proceedings on any available legal grounds (However, it is to be noted that in the guise of challenging the FC, the applicants cannot be permitted to raise the grounds which might be raised, had the EC was challenged). applicants apprehend a great danger and disaster to the environment and ecology, if the project is not properly envisaged and does not satisfy the principles of sustainable development and precautionary principles as is mandated under Section 20 of the NGT Act. In the matters of environmental cases, any individual or persons and body of individuals can agitate as to the correctness of the study of environment and ecology made by the granting authority. Further, nothing substantial has been demonstrated to doubt the credential of the applicants except saying that they (applicants) are not aggrieved and/or injured person (s) under the Ad and they are a busy body and their motives are ulterior. The person injured per-se as occurred in Section 18 (2) of the NGT Act is only for the purpose of claiming relief, compensation or settlement of disputes, is altogether different from the person aggrieved as available in Section 16. Person aggrieved and person injured are two different words which connote different meaning. Under Section 16 any person aggrieved can approach this Tribunal by way of filing an appeal. Whereas, under Section 18 (2) the person injured per-se, whether it is an individual or a body of individual or a social organization or a Hindu joint family etc. Further under Section 14 and 16 any person can approach this Tribunal for appropriate relief including the relief under Section 18". From the above it is clear that the State shall endeavour and safeguard the environment and wild life and it is the fundamental duty of the citizen to improve the natural environment including forests, lakes, rivers, and wildlife and also to have compassion for living creatures. Once, the protection and improving the natural environment is the fundamental duty of a citizen, any person can approach this Tribunal and agitate his grievance as to protection and improvement of the natural environment. The statutory provisions are subservient to the constitutional mandates. The person as defined or person aggrieved as occurs in Section 2(j) 16 and 18 (2) of the NGT Act cannot be placed above "every citizen" as appears in Article 51(A) of the Constitution of India, Once the mandate is of every citizen, any person can approach this Tribunal complaining environmental threat in the activities of the State or any organization or individual. Therefore, we are of the view that the applicants are interested persons in the environment and ecology of the area, though they

are not directly affected/injured at this point of time, But, they can be definitely called aggrieved persons since they apprehend some danger, if the project is launched without taking proper precautions. The person aggrieved in environmental matters must be given a liberal construction and needs to be flexible. Therefore, we are of the considered opinion that persons like the applicants are also entitled to approach this Tribunal and the appeal is maintainable"

" 6 That in Save Mon Region Federation us. Union of India and OE, (M,A. NO. 704 OF 2O72 in Appeal No. 39 OF 2012) it has been held that:- "18. Law gives a right to 'any person' who is aggrieved by an order to prefer an appeal. The term 'any person' has to be widely construed. It is to include all legal entities so as to enable them to prefer an appeal, even if such an entity does not have any direct or indirect interest in a given project. The expression 'aggrieved again, has to be construed liberally, The framers of law intended to give the right to any person aggrieved, to prefer an appeal without any limitation as regards his locus or interest,"

7. The National Green Tribunal in Krishan Kant Singh vs. M/s Triveni Engg. Industries Ltd, [O.A NO.31 7/2014] held that: "Under the provisions of the NGT Act any aggrieved person can approach the Tribunal for redressal of his grievances in relation to environment within the ambit and scope of Sections 14, 16 and 18 of the NGT Ad. The legislative object appears to be to catalyse the access to environmental justice, which need not be circumscribed by strict rule of locus standi in legal prescriptions."

8. Therefore, while consideration of the above-stated judgments, it is very clear that in order to maintain the Appeal direct legal injury is not required and therefore, the applicants has the requisite locus standi in this case.

9. Further, in the case of Samata & Ann v. MoeF & Ors., 2076 SCC Online NGT 479 this Tribunal had held that:- "Both under Section 11 of the NEAA Ad, 1997 and Section 18 of the NGT Act, 2010 any person aggrieved by the grant of EC as shown above can maintain an appeal. The "aggrieved person" as contemplated in the Ad came up for interpretation before the Tribunal in a number of cases. An aggrieved person contemplated in the above provisions would refer to the substantial grievance as to denial of some personal, pecuniary or property right or imposing an obligation on a person. The grievance so ventilated should not be either fanciful or sentimental, but must be substantial. A person calling himself as an 'aggrieved' must have suffered a legal grievance that he has been wrongfully deprived of something or refused wrongfully. The aggrieved person can either be aggrieved either directly or indirectly. In so far as the environmental matters are concerned it cannot be stated that the person really aggrieved should alone be permitted to initiate an action. It is not necessary that the person, who initiates action, is a resident of that particular area wherein the proposed industrial site is located. It is true that the applicants have not participated in the proceedings of the public hearing. It is true that it is necessary to scan the credentials of the applicants as to their intention and motive. Even assuming that the applicants have not participated in the proceedings of the public hearing, to they would not lose their right challenge the approval or the EC. If the applicants come forward

with a case apprehending damage and danger to environment and ecology if the project in question was not properly not satisfy the Principles of Sustainable Development and Precautionary Principles, they can maintain the appeal and be allowed to agitate as to the correctness of the study made in respect of ecology and environment."

10. The issue of locus standi was also raised before this Tribunal in the case of Samir Mehta n Union of India & Ors., 2O16 SCC online NGT 479 before the PRINCIPAL BENCH of this Tribunal wherein after going through a plethora of cases discussing the issue this Hon'ble Tribunal held that:-

> *"From the above judgment it is clear that locus standi of an Applicant cannot be given a strict connotation under the environmental laws of our country. 'Environment, is not a subject which is person oriented but is society centric. The impact of environment is normally felt by a larger section of society. Whenever environment is diluted or eroded the results are not person specific. If we were to adopt the reasoning given by the Respondents then it would lead to undesirable results. The provisions of a statute must be examined in light of the scheme of the Act and the scheme of both enactments afore referred do not permit recourse to such narrower interpretation."*
>
> *11. That in Hanuman Laxman Aroskar vs, Union of India, (2019) 15 SCC 4O1, it has been held that:-*
>
> > *"164. Before we part with the present case, we consider it appropriate to record a finding on the bona fides of the applicants before this Court. It was briefly urged by the respondents that the applicants have invoked the jurisdiction of this Court based on a personal agenda and consequently, the present appeal is liable to be dismissed. This argument cannot be accepted. We accept the submission of Ms Shenoy, Learned counsel appearing on behalf of the applicants, that the non-consideration of vital issues by EAC has led to the invocation of the statutory remedy available to them under Section 22 of the NGT Act, 2010. Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment. If a court comes to the finding that the appeal before it was lacking bona fides, it may issue directions which it thinks appropriate in that case. In cases concerning environmental governance, it is a duty of courts to assess the case on its merits based on the materials present before it. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow."*

63. The learned counsel for the Applicant has further relied on (2022) 13 SCC 401: 2021 SCC OnLine SC 897 (Municipal Corporation of Greater Mumbai Vs. Ankita Sinha & Ors.), where public interest and environmental matters have been highlighted giving approach to the National Green Tribunal for taking cognizance in the cases where there is danger to environmental rules.

64. In view of the above, we are of the view that since a forum is required to be heard where the environmental issues have been raised, thus strict formula of 'person aggrieved' or locus standi is not strictly applicable and as per philosophy as discussed above, the environmental matter can be heard before the Tribunal. Issue as raised is decided accordingly.

65. The submissions of the learned counsel for the Applicant are that this application is maintainable because it is against the environmental laws but the submissions of the learned counsel for the Respondents are that there are procedure to file the application and appeal and if the Applicant has to challenge any order then the procedure for challenging is contained in Section 28, 29 and 33B of the Water Act (Prevention and Control of Pollution) Act, 1974. The relevant provisions are quoted below:-

> *"**28. Appeals**. (1) Any person aggrieved by an order made by the State Board under section 25, section 26 or section 27 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the appellate authority) as the State Government may think fit to constitute: Provided that the appellate authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (2) An appellate authority shall consist of a single person or three persons, as the State Government may think fit, to be appointed by that Government. (3) The form and manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the appellate authority shall be such as may be prescribed. (4) On receipt of an appeal preferred under sub-section (1), the appellate authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible. (5) If the appellate authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then, (a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable; (b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable.*
>
> ***29. Revision.** (1) The State Government may at any time either of its own motion or on an application made to it in this behalf, call for the records of any case where an order has been made by the State Board under section 25, section 26 or section 27 for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it may think it: Provided that the State Government shall not pass any order*

under this sub-section without affording the State Board and the person who may be affected by such order a reasonable opportunity of being heard in the matter. (2) The State Government shall not revise any order made under section 25, section 26 or section 27 where an appeal against that order lies to the appellate authority, but has not been preferred or where an appeal has been preferred such appeal is pending before the appellate authority.

33B. Appeal to National Green Tribunal.*-Any person aggrieved by,- (a) an order or decision of the appellate authority under section 28, made on or after the commencement of the National Green Tribunal Act, 2010*; or (b) an order passed by the State Government under Section 29, on or after the commencement of the National Green Tribunal Act, 2010*; or (c) directions issued under section 33A by a Board, on or after the commencement of the National Green Tribunal Act, 2010*, may file an appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.]"*

66. The Applicant has neither approached the competent authority as contained in Section 28 or never made any revision before the revisionist authority and not filed any appeal before this Tribunal as provided under Section 33B of the Water (Prevention and Control of Pollution) Act,1974.

67. The core challenge in the present Original Application is directed against the Notification issued by the MoEF&CC and State of Rajasthan and consent condition issued by the competent authority. This effectively renders the Original Application an appeal against a statutory order issued by the environmental authority. It is stated that the Original Application raises "substantial question related to environment" and that an appellate remedy may not be fully constituted, however, a direct challenge to a regulatory approval falls primarily within the appellate jurisdiction of this Tribunal. It is further stated that there is no record demonstrating the fact that the Appellant made any effort to appeal before the legally mandated forums within the period of limitation. It is also stated that the National Green Tribunal Act, 2010, provides for specific appellate mechanism under Section 16 for aggrieved parties to challenge orders passed by prescribed authorities. By framing this challenge as an Original Application, the Applicant circumvents the established legal process and attempts to bypass potential procedural requirements and limitations applicable to appeals, including strict timelines. This Tribunal has repeatedly emphasised the importance of adhering to proper legal avenues and not allowing parties to convert appellate matters into original applications. Furthermore, the provisions under Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974, have prescribed specific appellate authorities for challenging a Consent to Operate (CTO) order. It is stated that even though the instant application was an appeal in the garb of an Original Application, it is still hopelessly barred by limitation, which as per Section 14(3) of the NGT Act, 2010. Section 14(3) of the NGT Act 2010 reads as follows:-

.....No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose: Provided that the Tribunal may, if it is satisfied that the applicant was

prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days...".

68. The respondent, on the threshold, have raised their preliminary objections on the question of maintainability of the application on limitation and jurisdiction. They have raised all the contentions as narrated above. Speaking on the jurisdiction powers and proceedings of the Tribunal, Section 14 of the NGT Act, 2010, reads as follows:-

"14. Tribunal to settle disputes. – (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified on Schedule-I. (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon. (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose: Provided that the Tribunal may, if it is satisfied that the application was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

69. From the very reading of the above provisions of the NGT, it would be quite clear that the Tribunal has jurisdiction over all civil cases only where a substantial question relating to the environment including enforcement including enforcement of any legal right relating to environment is involved and also the said substantial question should also arise out of the implementation and is included in one of the seven enactments specified under the Schedule-I. Even if the Applicant is able to satisfy the above requisite, the Tribunal can adjudicate the dispute only if it is made within a period of limitation from the date on which the cause of action in such dispute first arose.

70. As in any civil case, to initiate proceedings and to seek relief before the Tribunal, as envisaged under the provisions of NGT Act, one should have the cause of action which consisting of bundle of facts which gives the affected party a right to claim relief. The expression generally means the situation or a set of acts that entitles a party to maintain an action in a Court or a Tribunal:-

"(e) Black's Law Dictionary defines Cause of Action as : "Cause of action is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. (f) In "Words and Phrases", the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (g) As per Halsbury Laws of England (Fourth Edition) "Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of

action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action. (h) It is judicially settled that the cause of action, in the restricted sense, means forming the infraction of the right or the immediate occasion for the action and in the wider sense, the necessary conditions for the maintenance of the proceedings not only the alleged infraction but also the infractions coupled with the right itself."

71. It would be apt and appropriate to reproduce the following observation made by the Principal Bench, NGT, New Delhi, in Appeal No.01 of 2013 Ms. Medha Patkar & Others Vs. Ministry of Environment & Forest, Union of India & Others, on the point of limitation:-

"The Tribunal must adopt a pragmatic and practical approach that would also be in consonance with the provisions of the Act providing limitation. Firstly, the limitation would never begin to run and no act would determine when such limitation would stop running as any one of the stakeholders may not satisfy or comply with all its obligations prescribed under the Act. To conclude that it is only when all the stakeholders had completed in entirety their respective obligations under the respective provisions, read with the notification of 2006, then alone the period of limitation shall begin to run, would be an interpretation which will frustrate the very object of the Act and would also cause serious prejudice to all concerned. Firstly, the completely frustrates the purpose of prescription of limitation. Secondly, a project proponent who has obtained environmental clearance and thereafter spent crores of rupees on establishment and operation of the project, would be exposed to uncertainty, dander of unnecessary litigation and even the possibility of jeopardizing the interest of his project after years have lapsed. This cannot be the intent of law. The framers of law have enacted the provisions of limitation with a clear intention of specifying the period within which an aggrieved person can invoke the jurisdiction of this Tribunal. It is a settled rule of law that once the law provides for limitation, then it must operate meaningfully and with its rigour. Equally true is that once the period of limitation starts running, then it does not stop. An applicant may be entitled to condonation or exclusion of period of limitation. Discharge of one set of obligations in its entirety by any stakeholder would trigger the period of limitation which then would not stop running and equally cannot be frustrated by mere non- compliance of its obligation to communicate or place the order in public domain by another stakeholder. The purpose of providing a limitation is not only to fix the time within which a party must approach the Tribunal but is also intended to bring finality to the orders passed on one hand and preventing endless litigation on the other. Thus both these purposes can be achieved by a proper interpretation of these provisions. A communication will be complete once the order granting environmental clearance is place in public domain by all the modes referred to by all or any of the stakeholders. The legislature in its wisdom has, under the provisions of the Act or in the notification of 2006, not provided any other indicator or language that could be the precept for the Tribunal to take any other view."

72. In construing a statutory provision, the first and foremost rule of construction is the literary construction. All that the Court has to see at the very outset is what does the provision

say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear. In a more recent judgment, the Supreme Court, in Balwant Singh (Dead) Vs. Jagdish Singh and Ors. (2010) 8 SCC 685, while dealing with the expression 'sufficient cause', elaborately stated the principles of condonation of delay. It also elucidated the approach to be adopted by a Court in such cases and held as under:-

> *"It must be kept in mind that whenever a law is enacted by the legislature, it is intended to be enforced in its proper perspective. It is an equally settled principle of law that the provisions of a statute, including every word, have to be given full effect, keeping the legislative intent in mind, in order to ensure that the projected object is achieved. In other words, no provisions can be treated to have been enacted purposelessly. Furthermore, it is also a well settled canon of interpretative jurisprudence that the Court should not give such an interpretation to provisions which would render the provision ineffective or odious. Once the legislature has enacted the provisions of Order 22, with particular reference to Rule 9, and the provisions of the Limitation Act are applied to the entertainment of such an application, all these provisions have to be given their true and correct meaning and must be applied wherever called for. If we accept the contention of the Learned Counsel appearing for the applicant that the Court should take a very liberal approach and interpret these provisions (Order 22 Rule 9 of the CPC and Section 5 of the Limitation Act) in such a manner and so liberally, irrespective of the period of delay, it would amount to practically rendering all these provisions redundant and inoperative. Such approach or interpretation would hardly be permissible in law. Liberal construction of the expression 'sufficient cause' is intended to advance substantial justice which itself presupposes no negligence or inaction on thepart of the applicant, to whom want of bona fide is imputable. There can be instances where the Court should condone the delay; equally there would be cases where the Court must exercise its discretion against the applicant for want of any of these ingredients or where it does not reflect 'sufficient cause' as understood in law. [Advanced Law Lexicon, P. Ramanatha Aiyar, 2nd Edition, 1997] The expression 'sufficient cause' implies the presence of legal and adequate reasons. The word sufficient means adequate adequate enough, as much as mh999 3153 essary to to ansus the the purpo purpose intended. It embraces no more than that which provides a plentitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. The sufficient cause should be such as it would persuade the Court, in exercise of its judicial discretion, to treat the delay as an excusable one. These provisions give the Courts enough power and discretion to apply a law in a meaningful manner, while assuring that the purpose of enacting such a law does not stand frustrated. We find it unnecessary to discuss the instances which would fall under either of these classes of cases. The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause*

is sufficient to see if it could have been avoided by the party by the exercise of due care and attention."

73. In light of these principles, the contention of the applicant/appellant that the National Green Tribunal is the forum to which first appeal is provided against the orders specified in Section 16 of the NGT Act and that these provisions should be construed liberally, can hardly be accepted. Also there is no question of deprivation of right to appellant. The right of appeal is a statutory right and can be exercised within the prescribed period of limitation. If a party chooses to sleep over its right and permits the remedy available to it to become barred by time, then it can hardly be heard to contend that it has lost a valuable right and the result is unjust. Such interpretation would be a normal corollary of application of rule of 'plain construction'. This would be in line with the object and purpose of the Act and would also sub serve the cause of justice. This interpretation would not preclude any litigant from taking recourse to an appropriate remedy prescribed in in accordance with law.

74. We cannot and shall not overlook mandate of the proviso appended to Section 16 of the NGT Act, 2010, which carve out exception to the general Rule provided under Section 16 of the NGT Act, 2010. It is well stated that 'proviso' is always an exception to the main Rule, which is set out in the provision of the Rules. Needless to say, the 'proviso' will not supersede the main provision. The language of proviso, appended to Section 16, would make it amply clear that the Tribunal "must be satisfied by the Appellant with tangible reasons, which prevented him from filing of the Appeal within prescribed period of limitation, in order to make him eligible to ask for concession for extension of time". True, interpretation of the proviso has to be primarily made and the same cannot be used as cobweb to deprive a genuine litigant from approaching the Tribunal. Still, however, in an appropriate case, where there is absolutely no acceptable explanation given by the Appellant, then extension of period of under the proviso, is unwarranted grant of premium in-spite of absence of satisfactory reason being stated in the delay condonation Application. Such an application cannot be granted just for asking by a litigant, who fails to explain reasons for the delay.

75. There is no provision in the Act to file one appeal against several or more than one orders. The relief as sought by the applicant contains more than one appealable order and appellant had right to file an appeal separately before the competent forum but, he adopted to file complaint/OA. This takes us to the question of maintainability of the Application in a composite form, which he says is dual- Appeal-cum-Application, filed in view of availability of plural remedies, in accordance with Rule 14 of the National Green Tribunal (Practices and Procedure) Rules, 2011. We shall deal with his contention, in order to set right the issue in as much as it is likely to be raised on similar ground. Rule 14 of the NGT (Practices and Procedure) Rules, 2011, reads as follows:-

"Rule 14. Plural remedies- An application or appeal, as the case may be, shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another."

76. Perusal of Rule 14, without any pre-judicial notions in the mind, will make it amply clear that any Application or Appeal, as the opening words imply are distinct remedies under

which the particular relief may be sought on single cause of action. Thus, if properly read, the Rule provides as follows:-

> *"i) There may be either single Application or Appeal. In other words, it cannot be a comprehensive or hybrid type of pleadings like Appeal-cum-Application, as captioned by the Appellant-cumApplicant, as in the present Application/Appeals. ii) The Appeal or Application, whatsoever it may, be must be filed on single cause of action. Thus, it cannot be filed on several causes of action. In other words, an Appeal cannot be filed with combined challenging different ECs or orders, nor an Application can be filed challenging different orders or different violations under the different Laws. iii) Still, however, choice given to Appellant/Applicant is to ask for grant of more than one relief in case such reliefs, are of consequential character. In other words, if a relief depends upon grant of another relief, then grant of more than one relief is permissible. For example; in case EC for grant of a project is challenged on the ground that there is no permission from CRZ Authority to the construction carried out, then consequential relief to demolish illegal construction carried out, without CRZ Authority's permission, which falls within CRZ area/NDZ area."*

77. We cannot overlook and brush aside main provisions of the NGT Act, which do not provide for any kind of permission to allow filing of two (2) Appeals, one against time barred EC, coupled with another EC for revised plan along with an Application under Sections 14,15 and 18 of the National Green Tribunal Act, 2010

78. Once we examine the provision of Section 16 of the NGT Act in the light of the above principle, it is clear that the provision is neither ambiguous nor indefinite. The expressions used by the legislature are clear and convey the legislative intent. The communication of an order granting the Environmental Clearance has to be made by the MoEF/SEIAA as well as the Project Proponent in adherence to law. The communication would be complete when it is undisputedly put in the public domain by the recognised modes, in accordance with the said provision. The limitation of 30 days would commence from that date. If the application is presented beyond the period of 30 days, in that event, it becomes obligatory upon the applicant to show sufficient cause explaining the delay. The delay must be bona fide and not a result of negligence or intentional inaction or mala fide and must not result in the abuse of process of law. Once these ingredients are satisfied the Tribunal shall adopt a balanced approach in light of the facts and circumstances of a given case".

> *"36. Trite law it is that the special law of limitation in any given enactment will always exclude the general law of limitation. The NGT Act, 2010, a special enactment specifically provides a period of limitation under section 14(2) and 15(3). The Principal Bench, NGT has already held in Jesurathinam v. MoEF, Union of India reported in 2012 (2) FLT 811 NGT that when a specific provision for limitation is provided under the special statute, the general provisions of the Limitation Act, 1963 are inapplicable. Hence, the Tribunal is afraid whether the theory of continuing cause of action can be made applicable to the present factual position of the case for*

which the specific period of limitation is available under the NGT Act, 2010."

79. Thus, the application for quashing the order/notification is barred by time and instead of filing the appeal against the order in accordance with the provisions contained in Section 28 of the Water (Prevention and Control of Pollution) Act, 1974, this application has been filed beyond time, and not maintainable.

80. Learned counsel for the Applicant has raised the issue that on the relief which has been claimed in the petition/application is maintainable while the contention of the learned counsel for the Respondent/Project Proponent is that there are more than two different causes of action for which two different applications lies before different forum in accordance with the provisions contained in the National Green Tribunal Act, 2010 and Water (Prevention and Control of Pollution) Act, 1974.

81. We have narrated the provisions in the above paragraphs, thus it would be quite clear that reliefs sought for on two distinct and different causes of action would be repugnant to rule 14 of the NGT Rules, 2011. The words 'consequential' to one another employed in rule 14 of the NGT Rules, 2011 would make the intention of the Legislature explicit that the reliefs sought for by the applicant or appellant can be more than one if they are consequential to one another but certainly not on two different causes of action. 'Consequential relief should flow directly as a natural sequence from the main and substantive relief and it can even be incidental also. But, it should be wholly connected to the main or the substantive relief and thus should arise from the same cause of action. In the instant case, two different and distinctive reliefs based on two separated causes of action are asked for by the appellant. The submission by the learned counsel for the appellant that the relief was for striking down notification/office memorandum and setting aside of CTO/EC are intrinsically linked is worth to be ignored. In the face of rule 14 of NGT Rules, 2011 as seen above, it would be futile to contend that the Rule 14 does not restrict the jurisdiction of cause of action. Perusal of Rule 14, without any prejudicial notions in the mind, will make it amply clear that any Application or Appeal, as the opening words imply are distinct remedies under which the particular relief may be sought on single cause of action. Thus, if properly read the rule provide as follows:-

i. *"There may be either single Application or Appeal. In other words, it cannot be a comprehensive or hybrid type of pleadings like Appeal-cum-Application, as captioned by the Appellant-cum-Applicant as in the present Application.*

ii. *The Appeal or Application, whatsoever it may be must be filed on single cause of action. Thus, it cannot be filed on several causes of action. In other words, an Appeal cannot be filed with combined causes challenging different ECs or orders, nor an Application can be filed challenging different orders or different violations under the different laws."*

82. Applying the principle laid down as above, we have no hesitation to hold that the appellant on two distinct and independent causes of action cannot maintain the present application. It is argued by the respondent that it is forum hunting and it is intended to

continue till the appellant does not achieve a desired goal. The platform of the Tribunal or the Courts cannot be made a platform to compel the opposite party to pass a desired order. The matter cannot be agitated and to be continued till infinity and it should come at rest. The Hon'ble Supreme Court in Dr. Buddhi Kota Subbarao Vs. K Parasaran & Ors., AIR 1996 SC 2687 has observed as under:-

> *"No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner he wishes. However, access to justice should not be misused as a licence to file misconceived and frivolous petitions."*
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> *Similar view has been reiterated by the Supreme Court in K.K. Modi Vs. K.N. Modi & Ors., (1998) 3 SCC 573.*
>
> *In Tamil Nadu Electricity Board & Anr. Vs. N. Raju Reddiar & Anr. AIR 1997 SC 1005 the Hon'ble Supreme Court held that filing successive misconceived and frivolous applications for clarification, modification or for seeking a review of the order interferes with the purity of the administration of law and salutary and healthy practice. Such a litigant must be dealt with a very heavy hand.*
>
> *In Sabia Khan & Ors. Vs. State of U.P. & Ors., (1999) 1 SCC 271, the Hon'ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such litigant is not required to be dealt with lightly.*
>
> *In Abdul Rahman Vs. Prasoni Bai & Anr., (2003) 1 SCC 488, the Hon'ble Supreme Court held that wherever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse the party from pursuing the remedy in law."*
>
> *"It is well established rule of interpretation of a statute by reference to the exposition it has received from contemporary authority. However, the Apex Court added the words of caution that such a rule must give way where the language of the statute is plain and unambiguous. Similarly, in Collector of Central Excise, Bombay-I & Anr. Vs. M/s. Parle Export (P) Ltd., AIR 1980 SC 644, the Hon'ble Supreme Court observed that the words used in the provision should be understood in the same way in which they have been understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. In Indian Metalsand Ferro Alloys Ltd., Cuttack Vs. The Collector of Central Excise, Bhubaneshwar, AIR 1991 SC 1028, the Hon'ble Supreme Court has applied the same rule of interpretation by holding that "contemporanea expositio by the administrative authority is a very useful and relevant guide to the interpretation of the expression used in a statutory instrument." Same view has been taken by the Hon'ble Supreme Court in State of Madhya Pradesh Vs. G.S. Daal and Flour Mills (Supra); and Y.P. Chawla & Ors. Vs. M.P. Tiwari and Anr., AIR 1992 SC 1360. In N. Suresh Nathan & Ors. Vs. Union of India & Ors, 1992 (Suppl) 1 SCC 584; and M.B. Joshi & Ors. Vs. Satish Kumar Pandey & Ors., 1993 (Suppl.) 2 SCC 419, the Apex Court observed that construction in consonance with long-standing practice prevailing in the concerned department is to be preferred."*

83. On the basis of above discussion, there are more than two causes of action or several causes of action. Thus, the application is not maintainable for the reasons mentioned above and the application is a form of forum hunting to achieve an intended target and not coming under the purview of a substantial question relating to the environment, and even if applicant is aggrieved against the order of MoEF&CC or the notification issued by the State Govt. or the consent condition granted by the appropriate authority, the aggrieved has every right to challenge the order by filing the appropriate application before the appropriate forum, for these reasons, the application is also not maintainable for relief.

B. SEIAA AND EXPERT OPINION

84. Submission of the learned counsel for the applicant is that the report of the SEAC is without application of any mind and should not be relied upon. In reply thereof, learned counsel for the Respondent/Project Proponent has submitted that it is valid, since it is expert body of approximately 12 members or more and was deliberated widely and thus binding till it is not declared void or cancelled by the competent authority.

85. In a case reported in *2011 (3) SCC 364, Krishnadevi Malchand Kamathia v. Bombay Environmental Action Group*, it was held as follows:-

> *"16. It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In State of Kerala v. M.K. Kunhikannan Nambiar Man jeri Manikoth Naduvil, (1996) 1 SCC 435, Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., (1997) 3 SCC 443, M. Meenakshi v. Metadin Agarwal and Sneh Gupta v. Devi Sarup, (2009) 6 SCC 194, this court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.*
>
> *17. In State of Punjab V. Gurdev Singh this court held that a party aggrieved by the in validity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in Smith v. East Elloe RDC, wherein Lord Radchiffe observed: (AC pp. 769-70) "*
>
> *...An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity (on) its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."*
>
> *18. In Sultan Sadik v. Sanjay Raj Subba, (2004) 2 SCC 1377, this court took a view observing that once an order is declared non est by the court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity.*

86. Thus, from the above it emerges that even if the order/notification is void/voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it. It has to approach the court for seeking such declaration. The order may be hypothetically a nullity and even if its invalidity is challenged before the court in a given circumstance, the court may refuse to quash the same on various grounds including the standing of the petitioner or on the ground of delay or on the doctrine of waiver or any other legal reason. The order may be void for one purpose or for one person, it may not be so for another purpose or another person.

87. The SEIAA members are expert in their domain fields and apprised the proposal, through scrutiny and detailed deliberations are done by the members. Therefore, the deliberations taken place in the meeting are always of technical nature. The objections and clarifications of the Project Proponent have been complied on various issues raised by the SEAC members and the proposal was recommended. The expert finding cannot be questioned and this can be relied on the following law points:-

> ***"A. Rajeev Suri v. Delhi Development Authority [2021 SCC OnLine SC 7]***
>
> *"494. The minutes of the two meetings of EAC are selfexplanatory and reveal due application of mind, in light of the principles relating to application of mind enunciated above. We do not wish to repeat the same to avoid prolixity. EAC is an expert body and it is amply clear that it has been made aware of all relevant information relating to the project and it has applied its mind to the proposal. Even on settled principles of judicial review, it is clear that relevant material has been considered by the committee and no reliance has been pointed out on any irrelevant material. The specific recommendations given by the committee do indicate that the committee was aware of the need for precautionary measures in environmental matters and accordingly, it suggested requirement of further permissions on certain counts.*
>
> *495. Once an expert committee has duly applied its mind to an application for EC, any challenge to its decision has to be based on concrete material which reveals total absence of mind. Absent that material, due deference must be shown to the decisions of experts. The facts of the case do not reveal any deliberate concealment of fact/information from the EAC or supply of any misinformation....*
>
> *515. We, therefore, upon a thorough examination, decline to interfere in the grant of EC. The expertise developed by the EAC cannot be undermined in a light manner and as noted above, due deference must be accorded to expert agencies when their 384 decisions do not attract the taint of legal unjustness".*
>
> ***B. N.D. Jayal & Anr. vs. Union of India [2004 (9) SCC 362]: A 3-Judge Bench of the Hon'ble Supreme Court emphasized the exercise of judicial restraint in matters involving technical expertise.***
>
> *20. This Court cannot sit in judgment over the cutting edge of scientific analysis relating to the safety of any project. Experts in science may*

themselves differ in their opinions while taking decisions on matters related to safety and allied aspects. The opposing viewpoints of the experts will also have to be given due consideration after full application of mind. When the Government or the concerned authorities after due consideration of all viewpoints and full application of mind took a decision, then it is not appropriate for the Court to interfere. Such matters must be left to the mature wisdom of the Government or the implementing agency. It is their forte. In such cases, if the situation demands, the Courts should take only a detached decision based on the pattern of the well settled principles of administrative law. If any such decision is based on irrelevant consideration or non consideration of material or is thoroughly arbitrary, then the Court will get in the way. Here the only point to consider is whether the decision making agency took a well informed decision or not. If the answer is yes then there is no need to interfere. The consideration in such cases is in the process of decision and not in its merits.

21. In this context, reliance is sought to be placed on the decision of this Court in A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) and Ors., 1999 (2) SCC 718. In that decision, this Court viewed that in scientific matters of complex nature resulting in uncertainty, reference has to be made to a specialised technical/expert body and not merely decide the matter on well known principles of administrative law of court not reexamining the matter if all relevant considerations have been taken note of. In the present case when once a decision had been given by this Court on safety aspects on an earlier occasion and thereafter the matter was again examined by the Government through different agencies and had taken a decision as to the necessity of further test by way of abundant caution should be relevant or not, we do not think, we can sit in judgment over such decision, particularly when there is no difference of opinion among the Experts as to the safety of the dam.

C. Sam Built Well Private Limited vs Deepak Builders [2018 (2) SCC 176]:

This judgement was rendered by the Hon'ble Supreme Court in the context of judicial review of tenders. However, several observations were made qua exercising judicial restraint in matters involving technical expertise.

12. We have already noticed that three expert committees have scrutinized Respondent No. Is tender and found Respondent No. 1 to be ineligible. The impugned judgment of the Division Bench of the High Court expressly states that no malafides are involved in the present case. Equally, while setting aside the judgment of the learned Single Judge, the Division Bench does not state that the three expert committees have arrived at a perverse conclusion. To merely set aside the judgment of the learned Single Judge and then jump to the conclusion that Respondent No.1s tender was clearly eligible, would be directly contrary to the judgments aforestated. Not having found malafides or perversity in the technical expert reports, the principle of judicial restraint kicks in, and any appreciation by the Court

itself of technical evaluation, best left to technical experts, would be outside its ken. As a result, we find that the learned Single Judge was correct in his reliance on the three expert committee reports. The Division Bench, in setting aside the aforesaid judgment, has clearly gone outside the bounds of judicial review. We, therefore, set aside the judgment of the Division Bench and restore that of the learned Single Judge.

D. Bombay Environmental Action Group vs State of Maharashtra [1990 SCC OnLine Bom 357]:

The Hon'ble High Court of Bombay made several observations discouraging judicial interference in technical matters pertaining to the environment. 16. The, petitioners, as public spirited organisations and citizens, have, through their respective Counsel, done their duty by invoking this Courts writ jurisdiction and placing before us all such facts and circumstances as considered best by them. We in our turn, have done our duty by carefully examining all the facts and circumstances in the context of the rival contentions advanced before us on either side. In the course of this elaborate exercise and at every stage of the judicial process, we have kept asking ourselves the question -- Have the authorities shown such lack of awareness or have they been so oblivious of the needs of environment as to warrant Courts interference? We do not think so. On the contrary, considerable though deliberation, consultation and application of mind by all concerned authorities and experts has gone into the decision making process. We find on the part of the authorities, and experts all the seriousness while considering and deciding upon the varied factors and circumstances including environment in relation to this project. The indepth analysis, the conditions imposed and the precautions taken inspire Courts confidence and, if, at the end of it all, the Court finds that a very conscious decision has been taken in the light of all possible pros and cons, it would then not interfere. The decision of the authorities cannot be said to be arbitrary or capricious or one not in good faith or actuated by improper motive or extraneous considerations.

17. Environmental issues are relevant and deserve serious consideration. But the needs of the environment require to be balanced with the needs of the community at large and the needs of a developing country. If one finds, as in this case, that all possible environmental safe-guards have been taken, the check and control by way of judicial review should then come to an end. Once an elaborate and extensive exercise by all concerned including the environmentalists, the State and the Central authorities and expert-bodies is undertaken and effected and its end result judicially considered and reviewed, the matter thereafter should in all fairness stand concluded. Endless arguments, endless reviews and endless litigation in a matter such as this, can carry one to no end and may as well turn counterproductive. While public interest litigation is a welcome development, there are nevertheless limits beyond which it may as well cease to be in public interest any further."

C. SUSTAINABLE DEVELOPMENT:

88. While economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. Both development and environment must go hand in hand. In other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment [Indian council for enviro-legal action v union of India [1996]5 SCC 281]. The traditional concept that development and ecology are opposed to each other is no longer acceptable [Vellore Citizens Welfare Forum v. Union of India [1996] 5 SCC 647].

89. 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 focusing on the structural norms which guide institutional decision making, rule of law frameworks recognize 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 recognizes 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.

90. 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 recognizes 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 learning's 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 recognizes 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.

91. In its decision in *Hanuman Laxman Aroskar vs Union of India, [2019] 15 SCC 401* the Court, recognized the importance of protecting the environmental rule of law. The court observed:-

> *"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, 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 environmental laws and their requirements of 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 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 recognized 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."

92. In its first global report on environmental rule of law in January 2019, the United Nations Environment Programme ("UNEP") has presciently stated:-

"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"

93. 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 recognized principles that could inform environmental adjudication in a manner that was stable, certain and predictable. In an article in the Asia-Pacific Journal of Environmental Law (2014), Bruce Pardy describes this conundrum in the following terms:-

"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."

94. 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.

95. In an article in the 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:-

> *"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."*

96. In a recent decision of the Court in *Bengaluru Development Authority vs. Sudhakar Hegde 2020 SCC online SC 328,* the Hon'ble Supreme Court held:-

> *"107. 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 inherent component of development and growth... "*
>
> *108. 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... "*
>
> *109. 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 recognized 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."

97. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far from for more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and convenience and benefits to a larger section of the people has to get privacy over comparatively lesser hardship.

98. This indicates that while applying the concept of sustainable development one has to keep in mind the principal of proportionality based on the concept of balance. It is an exercise in which we have to balance a priorities of development on one hand and environmental protection on the other hand.

99. The contention as raised by the applicant has been raised before the SEIAA and SEAC and the competent authority, MoEF&CC and State Pollution Control Board the same has been considered and disposed of. As per report of the joint committee including the members of the MoEF&CC, CPCB, Environmental Engineer, TTZ, Agra and State Pollution Control Board, the decision has been taken in accordance with the directions issued by the Hon'ble Supreme Court of India in the matter quoted above and in accordance with the decision and recommendation of the NERRI which was duly recommended by the Environmental Appraisal Committee and the State Environmental Committee and in accordance with law.

100. Initially, this application was filed against the District Magistrate, State of Rajasthan, MoEF&CC, TTZ and SEIAIA, Rajasthan. Later on, at the stage of hearing, the applicant has also added the name of more than 42 persons at very belated stage and on the principle as laid-down above, these all are separate cases relating to separate mining lease and consent condition having a separate cause of action, thus, those individual matters have not been considered by this Tribunal. However, the State PCB is at liberty to take action according to rule in case of any violation and the aggrieved, if any, by the order of the State PCB or the state authority may file appropriate application before the appropriate forum. To clarify the position of ESZ, the learned counsel for the respondent/state and the SEIAA has relied on the report dated 24.03.2022 submitted by the members of the SEIAA (page no. 501 of paper book) that "DCF Wildlife Bharatpur in a certificate dated 22.03.2022 has stated that Bandh Bharatha Wildlife Sanctuary is 1.5 km and its declared ESZ is 0.1 km from applied area. It

further states that the applied area is outside of ESZ of Bandh Bharatha Wildlife Sanctuary. The DCF Wildlife National Chambal Ghariyal Sanctuary, vide his letter dated 09.03.2022 has stated that the applied area is at the distance of more than 30 km. from Kesar Bagh Sanctuary, Van Vihar Sanctuary, Ram Sagar Sanctuary and National Chambal Ghariyal Sanctuary. The Prabhagiya Nideshak Social Forestry, Agra has certified that the distance between inter-district and inter-state boundary is more than 10 km. which has Kheragad and Kirawali range and no sanctuary".

101. In view of the above discussions our conclusions and directions are as follows :-

i. In view of the sensitive regions we direct the respondent that the orders and directions issued by the Hon'ble Supreme Court of India in TTZ matters must be strictly complied with and Sustainable Sand Mining Management Guidelines, 2016 & The Enforcement and Monitoring Guidelines for Sand Mining, 2020 and its conditions must be observed. The recommendations suggested by the joint committee must be monitored by the Collector concerned.

ii. The Department of Mines and Geology is directed that the quality and extent of the plantation must be improved in the entire cluster and there be an appropriate plantation planning for entire cluster zone and the dense plantation with effective protection through barbed wire fencing to be carried out using Miyawaki Plantation Technique. There must be adequate maintenance of road network, demarcation of mining lease through pillars and planning for replenishment.

iii. Mandatory six (06) monthly compliance report must be examined and in case of non-compliance of the conditions, the data should be uploaded on the website and necessary action must be taken for compliance of various conditions. Revenue Department, Forest Department and Department of Geology and Mining to ensure that mining is done within allotted lease area and within permissible quantity and strict action to be taken against the concerned violation is observed during visit to be carried out on regular basis.

iv. The State PCB is directed to monitor ambient air quality at the locations where the air quality has deteriorated beyond permissible limits and air emissions are reported to be high due to vehicular movement in the cluster as well as in adjacent road network periodically. There must be permanent and regular water sprinkler installed on the main hallways, roads on the cluster and must be installed a Wheel washing facility at the individual mines and the road network in the cluster must be metalled so as to avoid any fugitive emissions.

v. The respondent/state is directed that the transportation route must be improved from the District Mineral Foundation Trust from the DMF Fund, subject to audit by the concerned department.

vi. The prayer for quashing the notification dated 26.12.2018 and 18.05.2021 issued by the MoEF&CC is time barred and not maintainable before this

Tribunal. The efficacious and alternate remedy for filing the appeal was available before the appellant/applicant, the same has not been adopted. If the applicant is aggrieved by any order of the competent authority the appropriate remedy under Section 16 of NGT Act, 2010 or any other law for challenging the notification is available. Thus, present original application as filed is not maintainable for the above relief.

vii. The prayer for quashing the environmental clearance dated 24.03.2022 and recommendation of SEAC dated 22.03.2022 with MoEF&CC permission dated 11.06.2021 is not within the limitation and barred by time. Further the applicant has efficacious remedy to file an appeal before the appropriate forum.

102. With these observations **Original Application No. 96/2023** alongwith **I.As** stand **disposed of.**

❖

Gareeb Guide (NGO) vs. State of Andhra Pradesh & Another

(Original Application No. 92 of 2020)
&
(Execution Application No. 03 of 2023)
Decided on: 8th July 2025(SZ)

The case concerns Kakarla Pond (Kakarlavani Cheruvu) situated in Survey Nos. 59 and 48/1 of Chinnadugam Village, Srikakulam District, Andhra Pradesh, classified in revenue records as government poramboke tank land. The applicant, Gareeb Guide (NGO), alleged that the tank has been extensively encroached upon with residential houses, a school, panchayat office, roads, temples, and agricultural occupation. Despite G.O. Ms. No.571 (14.09.2012), which prohibits alienation or regularization of tank beds, officials permitted or failed to prevent illegal constructions, causing the pond to disappear. The Joint Committee and district authorities confirmed encroachments over several decades, agricultural use over nearly 22 acres, and the presence of permanent public structures within the tank area.

The Tribunal examined the following issues: (1) Whether Survey Nos. 59 and 48/1 are legally recognized as tank poramboke lands protected under G.O. Ms. No. 571; (2) Whether the applicant's request for land allotment under this G.O. is legally sustainable; (3) Whether the permanent and agricultural encroachments were illegally permitted or regularized; (4) Whether the claim that the tank is defunct and unrestorable is supported by credible material; and (5) Whether the authorities complied with the Tribunal's earlier orders, and whether action against the District Collector is warranted for alleged non-compliance.

The Tribunal observed that all revenue records consistently classify Sy. Nos. 59 and 48/1 as tank poramboke, and therefore legally protected. The Joint Committee's reports confirmed widespread encroachments, including public buildings and long-standing residential colonies. The Tribunal rejected the officials' claim that the tank is defunct, noting that the Water Resources Department identifies it as an existing MI tank, with functional inlets and earlier renovation works. Citing the Supreme Court judgment in Hinch Lal Tiwari v. Kamala Devi, the Tribunal held that even disused water bodies must be protected and restored. However, the Tribunal accepted that removal of decades-old public structures may pose administrative and law-and-order challenges, and therefore non-compliance cannot be treated as wilful disobedience. The Tribunal held that the lands are tank poramboke and must be protected. It directed the District Collector and Irrigation Department to restore 22.01 acres of cleared tank land by deepening the pond, preserving and desilting inlets, and installing preventive measures such as fencing and signage. The Collector must seek State Government approval regarding removal or rehabilitation of long-standing public and private buildings within the tank bed. The road cutting across the tank should be examined for conversion into an elevated bridge to allow water flow. The feasibility of a feeder channel from the Narasannapeta Branch Canal must also be studied to ensure sustainable water supply.

The Tribunal disposed of the original application with these directions and closed the execution application, holding that action against the Collector was not warranted due to practical constraints rather than deliberate violation

Gareeb Guide (NGO) vs. State of Andhra Pradesh & Another

COUNSEL FOR APPLICANT(S):
Mr. D.V. Rao.

COUNSEL FOR RESPONDENT(S):
Mrs. Madhuri Donti Reddy

CORAM:
HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

RESERVED ON: 02nd June, 2025
PRONOUNCED ON: 08th July, 2025

JUDGEMENT

BY HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

1. Both the above-captioned Original Application and Execution Application have been filed by Gareeb Guide (NGO), represented by its President, highlighting grave environmental concerns arising from the unauthorized occupation and conversion of 'Kakarla Pond', located in Survey No.59 of Chinnadugam Village, Jalumuru Mandal, Srikakulam District, Andhra Pradesh.

2. It is alleged in the Original Application that despite the land being classified as 'Government poramboke' (tank), various unauthorized developments such as the construction of a school, panchayat office, temporary houses, and illegal cultivation have been permitted by the District Collector, Srikakulam District (Respondent No.2).

3. The Applicant has relied upon the report of the Tahsildar (vide R.C. No.197/2020, dated 07.05.2020), which states that the original tank has disappeared as a result of the encroachments. Further, the actions violate G.O. Ms. No.571 dated 14.09.2012, which prohibits alienation or reclassification of tank bed lands. Despite media reports highlighting the issue, no remedial action has been taken.

4. The Applicant also relied upon judicial precedents of the Hon'ble Supreme Court and Hon'ble High Court orders, which mandate the protection of water bodies and penal action against defaulting officials.

5. The Applicant further stated that the continued inaction of the authorities and the encroachments pose a substantial environmental question affecting the local ecosystem and the community at large. If not addressed, the damage to the environment will be irreversible.

6. Hence, the Applicant seeks directions from this Tribunal for legal action against authorities who facilitated illegal encroachments in Kakarla Pond (Sy. No.59), removal of

unauthorized structures such as schools, shops, and houses, and restoration of the pond to its original condition.

7. While issuing notices to the respondents, this Tribunal constituted a Joint Committee, vide Order dated 02.07.2020, to ascertain the genuineness of the allegations made in the application, comprising (i) a Senior Officer from the Ministry of Environment, Forests and Climate Change (MoEF&CC), Regional Office, Chennai, (ii) a Senior Officer from the Lake Protection Committee, Hyderabad and (iii) the District Collector, Srikakulam. Further, the Committee was directed to inspect the site, verify the revenue records to ascertain the existence, nature, and historical use of the pond in the subject area, determine the onset of encroachments, and examine the steps taken by the State authorities to remove such encroachments and protect the water body, and to submit a factual as well as action taken report in case of any violations found.

8. Upon notice, the respondents entered appearance through the standing counsel and both parties filed their respective pleadings.

9. The Joint Committee, appointed by this Tribunal, has filed a report on 01.02.2021, wherein it is stated that a joint inspection was conducted on 20.01.2021 at the site of Kakarla Pond (Sy. No. 59) by officials from the Revenue Department, Andhra Pradesh Pollution Control Board (APPCB), Irrigation Department, and other relevant authorities. As per revenue records (Settlement Fair Adangal, FMB, and VA No.3), the land measures 12.75 Acres and is classified as government poramboke tank land (“Kakarlavani Tank”). However, there is novisible tank structure on the ground.

10. With respect to encroachments and occupation, it is stated that 89 families are residing in the area; 32 possess valid house site pattas issued since 1988, while pattas for the remaining 57 are reportedly misplaced. 39 individuals are engaged in agricultural activity, occupying 7.24 Acres. Permanent structures observed include a school, panchayat office, housing colony, temple stage, and a CC road.

11. The report further states that the tank has been abandoned since the formation of the Narasannapeta Branch Canal in 1978 under the Vamsadhara Project. It has no ayacut, is not a percolation tank, and does not contribute to drinking water recharge. During the inspection, the officials observed that the pond is defunct and abandoned; encroachments are significant, with both residential and agricultural activities occupying the tank bed land; and the area is now developed, with no physical presence of a tank.

12. It is further stated in the report that as per the Govt. Memo dated 08.02.1999, relaxation of the ban on alienation of tank bed lands is permitted only in limited public interest cases where tanks are defunct or serve no useful purpose. Based on this, officials recommend regularizing house sites, while initiating eviction proceedings for agricultural encroachments. Finally, it is stated that the Tahsildar, Sub-Collector, and Panchayat officials have been instructed to proceed with the eviction of unauthorized agricultural occupation as per government norms.

13. It is noted from the record that, since the constitution of the Joint Committee, there has been a recurring cycle of events, in which the applicant has persistently filed objections and memos to the reports submitted by the Joint Committee and the District Collector, Srikakulam District, prompting corresponding responses from the authorities. Nevertheless, the action taken reports submitted by the District Collector, along with the objections raised by the Applicant, have been duly examined, and the key aspects of the same are set out below.

14. The District Collector, Srikakulam (Respondent No.2), through a series of action taken reports, has detailed the steps undertaken in compliance with the directions of this Tribunal and the Hon'ble High Court.

14.1. In the report dated 05.07.2022, it was stated that the applicant's alleged representation seeking allotment of 10 Acres under G.O. Ms. No. 571 was never received, and reiterated that Sy. No. 59 is classified as "Kakarla Pond," a tank poramboke, and hence ineligible for alienation. Pursuant to the Tribunal's directions, proceedings were issued addressing the applicant's objections, and agricultural encroachments over 7.68 Acres were evicted, with caution boards erected. An unauthorized compound wall constructed by an Anganwadi worker was also demolished.

14.2. In the subsequent report dated 02.08.2022, it was further clarified that the compound wall construction of the MPPE School had been stopped in 2020, and that the remaining public utility structures spread over 5.07 Acres were referred to the Chief Commissioner of Land Administration for further directions. It was noted that Sy. Nos. 59 and 48/1 are separate tanks, both lacking tank-like features, and there are no functional inlet or outlet canals.

14.3. In the report dated 16.04.2023, the Collector reiterated that apart from the cleared agricultural encroachments, no new unauthorized construction was allowed, and the tank remains defunct with non-functional inlets and outlets.

14.4. In the report dated 29.08.2023, the Collector submitted that joint inspections were conducted and reiterated that restoration is unfeasible due to the altered topography and presence of long-standing public structures. The Joint Committee's findings indicated that only 2.45 Acres remain as tank bed, and relocation of 108 permanent structures was not viable due to socio-cultural and practical constraints.

14.5. In the report dated 10.11.2024, further details were provided, including confirmation that three inlet channels are functional and unobstructed, while agricultural encroachments persisted in both Sy. Nos. 59 and 48/1. Status quo orders issued by the Hon'ble High Court in pending writ petitions were noted, and it was stated that final eviction of agricultural encroachments would be undertaken with police protection.

14.6. Finally, in the report dated 31.12.2024, it was confirmed that a joint inspection was conducted, agricultural encroachments were cleared, and permanent structures were identified. Despite re-encroachments in violation of court orders, preventive measures

were assured, and restoration efforts were sought only for areas free from permanent constructions.

15. Similarly, the Applicant, through a series of objections, has consistently raised concerns regarding the disproportionate application of G.O. Ms. No. 571 and the ongoing environmental degradation of Kakarla Pond, classified in Sy. Nos. 59 and 48 of Chinnadugam Village.

15.1. In the objection dated 13.11.2021, the applicant contended that the rejection of their request for allotment of 10 Acres under G.O. 571 was arbitrary, especially when similar allotments were made to institutions like KIMS Hospital and LV Prasad Eye Institute. Alleging discrimination, the applicant claimed to have spent Rs.24.43 lakhs on land development and temple maintenance, and questioned the selective eviction of only agricultural encroachments while leaving long-standing public structures intact.

15.2. In the objection dated 26.07.2022, the applicant reiterated the contradictions in the application of G.O. 571, citing that while their request was denied citing the land's tank poramboke status, permanent structures such as BPL houses, an MPP School, roads, and a temple have been permitted on the same land. Reference was made to G.O. Ms. No. 446 dated 14.10.2016, which allowed alienation of hillock land for a Vedic University, arguing that a similar public purpose use should have been considered here.

15.3. The objection dated 19.09.2022 detailed the voluntary handover of Sri Naga Devatha Temple by a former Panchayat Secretary to the applicant NGO and highlighted the ongoing maintenance and investment made by the NGO. The applicant reiterated the inconsistency in administrative actions, alleging favouritism and failure to act against other encroachers who obstruct inlets and outlets of the pond.

15.4. In the objection dated 06.09.2023, the applicant accused the authorities of ignoring Tribunal directions by allowing further developments within the pond, including the installation of electric poles using MP funds and sanctioning Page 6 of 17Rs.11 lakhs under MGNREGA for a school compound wall. It was also alleged that the outlets of the pond are illegally used to irrigate private lands and that the pond continues to exist as per WRD records (MI Tank ID: MI024999), having a storage capacity of 0.45 M.Cft and good water quality.

15.5. In the objection dated 15.11.2024, the applicant disputed claims of encroachment removal, citing photographic evidence of ongoing cultivation and illegal constructions, and pointed out that Rs.9.64 lakhs were spent under MGNREGA for renovation, contradicting the claim that the tank is defunct. The applicant alleged false reporting, non- compliance with both NGT and High Court orders, and contempt of court due to misleading affidavits and administrative inaction. The objections emphasized that continued illegal activities are affecting water flow, damaging ecological balance, and violating public rights, thereby warranting immediate restoration of the water body and strict legal enforcement.

16. During the pendency of the proceedings, vide Order dated 14.07.2022, this Tribunal directed the District Collector, Srikakulam, to clear all encroachments, restore the inlet and outlet of the water body and file a compliance report. In response, the District Collector submitted a report; however, it failed to address the restoration of the inlet and outlet channels. The report merely stated that there is no visible tank structure on the ground and that there are no identifiable inlet or outlet canals, except for certain outlets located in zeroyathi lands - north of the Narasannapeta Branch Canal, which are currently being used for irrigation and remain free from encroachment. In view of this, vide Order dated 01.12.2022, this Tribunal observed that being a pond, it may typically have inlets but not outlets, and the existence of an outlet would suggest it is a minor irrigation tank. The Tribunal accordingly reiterated its direction to the District Collector to remove the encroachments, restore the inlets, and file a detailed report along with relevant revenue records, including the D-Sketch and supporting photographs.

17. As the District Collector, Srikakulam District (Respondent No.2), had not fully complied with the directions issued by this Tribunal in its order dated 01.12.2022, the applicant filed Execution Application No. 03 of 2023 (SZ) under Sectio 25 (2) r/w Section 26 of the National Green Tribunal Act, 2010, contending that despite the Tribunal's clear direction to remove the encroachments and restore the inlets of the water body, Respondent No. 2 failed to take necessary action. Accordingly, the applicant sought enforcement of the said order and requested initiation of appropriate proceedings against the District Collector, Srikakulam District for non-compliance.

18. It is pertinent to note that Execution Application No. 03 of 2023 (SZ) has been filed specific11ally to enforce the directions issued by this Tribunal in the Original Application, particularly the order dated 01.12.2022. Pursuant to the said execution application, the District Collector, Srikakulam, submitted an action taken report. Given that the relief sought in the execution application is intrinsically linked to the directions issued in the Original Application, both matters are being considered together, as the outcome and findings in the Original Application will necessarily have a binding effect on the Execution Application.

19. Heard the learned counsel appearing for the applicant and the learned counsel appearing for the State of Andhra Pradesh and also perused the entire documents available on record.

20. The primordial submission of the Applicant is that Sy.Nos. 59 and 48 of Chinnadugam Village, classified as 'Kakarla Pond', have been extensively encroached upon with unauthorized constructions such as residential houses, a school, panchayat office, and agricultural activities, in violation of G.O. Ms. No.571 dated 14.09.2012. It was argued that public funds were used to support these constructions, despite judicial directions to protect and restore the tank. Alleging discrimination, the learned counsel for the Applicant contended that their request for land allotment for public welfare was denied, whereas similar benefits were extended to other institutions. The learned counsel for the Applicant also submitted that despite this Tribunal's specific direction dated 01.12.2022, directing the removal of encroachments and restoration of inlets to the water body, the District Collector, Srikakulam (Respondent No. 2), failed to comply. Consequently, the Applicant filed an Execution

Application seeking enforcement of the said order and initiation of appropriate action against the 2nd Respondent.

22. Refuting the allegations made, the learned counsel for the official respondents submitted that the subject land is a government tank poramboke and hence, ineligible for alienation under G.O. 571 dated 14.09.2012. It was contended that the tank has been defunct since 1978, with no ayacut or irrigation function. While agricultural encroachments have been evicted, the longstanding public structures could not be removed without government orders due to socio-legal complexities. It was emphasized that all administrative actions were taken in compliance with court directions, and that repeated claims by the applicant are legally untenable and unsupported by records.

23. The learned counsel further submitted that the official respondents have been diligently complying with the Tribunal's directions by conducting joint inspections and filing several compliance/action taken reports. It was stated that 7.68 Acres of agricultural encroachments in Sy. No. 59 have been cleared, and necessary steps are underway to address the remaining concerns. As per the latest assessment, only 2.45 Acres remain as tank area, and full restoration is not feasible due to the tank's defunct status, altered topography, and long-standing public structures. Citing these practical constraints, the learned counsel for the State of Andhra Pradesh prayed that the action taken by the District Collector, Srikakulam, may be accepted.

24. From the above, the issues that arise for determination is:

I. Whether Survey Nos.59 and 48/1 of Chinnadugam Village are classified as tank poramboke lands and protected under G.O. Ms. No.571, dated 14.09.2012?

II. Whether the applicant's claim for allotment of land under G.O. Ms. No.571 dated 14.09.2012 is legally sustainable?

III. Whether unauthorized encroachments, including permanent structures and agricultural use, have been illegally permitted or regularized?

IV. Whether the claim that the tank is defunct and restoration is unviable is supported by credible evidence?

V. Whether the authorities have complied with this Tribunal's directions, and if not, whether action against Respondent No.2 (as sought in the execution application) is warranted?

25. The case of the Applicant is that the alleged encroachments over Kakarla Pond, situated in Survey Nos. 59 and 48/1 of Chinnadugam Village, Srikakulam District, Andhra Pradesh, must be removed; the water body should be restored to its original condition; and appropriate action should be initiated against the officials who either enabled or failed to prevent such encroachments, relying on established legal and environmental principles governing the protection of water bodies.

26. The Joint Committee, following an inspection on 20.01.2021 at Kakarla Pond (Sy. No. 59), reported that the land measures 12.75 Acres and is classified as 'government

poramboke tank land'. However, no physical tank structure exists. The area is occupied by 89 families—32 with valid house site pattas issued since 1988, and 57 with reportedly misplaced pattas. Additionally, 39 individuals are engaged in agricultural activity over 7.24 Acres. The site hosts permanent structures such as a school, panchayat office, housing colony, temple stage, and a CC road. The tank has been defunct since 1978 following the formation of the Narasannapeta Branch Canal under the Vamsadhara Project, with no ayacut or contribution to groundwater recharge. Given the tank's abandonment and development, the report, citing Govt. Memo dated 08.02.1999, recommends regularizing house sites and initiating eviction proceedings for agricultural encroachments. Instructions to this effect have been issued to the Tahsildar, Sub- Collector, and Panchayat officials.

27. Pursuant to the Tribunal's directions, the District Collector, Srikakulam District, has filed the latest action taken report dated 31.12.2024. It is stated in the report that a Joint Committee has been constituted comprising officials from the Revenue, Irrigation, Electricity, and Survey Departments to inspect the subject tank encroachments in Chinnadugam Village, Jalumuru Mandal. Based on the joint inspection held on 06.06.2023, it was reported that Sy. No.48/1 (21.08 Acres), classified as Tank Poramboke (Kakarlavani Tank), includes 14.77 Acres under cultivation, 1.60 Acres covered by houses and sheds, and 2.45 Acres as the existing tank bed, among other minor structures. In Sy. No. 59, also classified as a tank, 5.07 Acres are occupied by long-standing structures such as an MPP School, Panchayat Office, BPL housing, a road, temples, and fieldchannels, most of which have existed for 25–40 years. Additionally, agricultural encroachments over 7.24 Acres and vacant land of 0.44 Acres were used for temple activities, which have since been cleared.

28. It was reported that Sy. No.59 was not included in thelist of tanks transferred to the Water Resources Department in the year 2005 and remains defunct, with no ayacut due to localization under the Narasannapeta Branch Canal of the Vamsadhara Project since 1978. A further joint inspection conducted on 19.06.2024 confirmed that agricultural activities in Sy. Nos. 48/1 and 48/3 had ceased, warning boards were installed, and the land was vacant. Though the tank has three functioning inlets, the topography has changed significantly due to permanent roads and other constructions, preventing water stagnation.

29. It was reiterated in the report that only 2.45 Acres remain as tank bed area. Encroachments over 8 Acres in Sy. No.48/1 were initially cleared, with the remainder pending eviction due to heavy rains. Later, on 17.12.2024, agricultural encroachments over 14.77 Acres in Sy. No. 48/1 and 7.24 Acres in Sy. No. 59 were evicted by the Tahsildar and RDO. However, despite the Hon'ble High Court orders in W.P. No. 14694 of 2024 to maintain the status quo, certain encroachers resumed cultivation in violation of court orders. It was assured that post- harvest, reoccupation would be prevented. Finally, the RDO addressed a letter to the Superintending Engineer, Irrigation Circle, Srikakulam, seeking restoration of the evicted portions of the tank in Sy. Nos. 48/1 and 59, excluding areas where permanent structures have existed for over three decades.

30. It is repeatedly affirmed in revenue records, including the Settlement Fair Adangal, FMB, and subsequent reports filed by the officials, that Sy. No.59 (12.75 Acres) and Sy. No.48/1 (21.08 Acres) are classified as tank poramboke lands, known locally as Kakarla Pond

or Kakarlavani Cheruvu. As per G.O. Ms. No.571, Revenue (Assignment-I) Department dated 14.09.2012, tank beds and other ecologically sensitive lands are barred from alienation, reclassification, or regularization. No contrary classification has been shown. Hence, this Tribunal concludes that the said lands are tank poramboke lands and deserve statutory and constitutional protection.

31. Joint inspection reports confirm widespread encroachments: (i) 89 residential houses, some with pattas issued since 1988, and others without any authorization; (ii) Public utilities such as MPP School, Panchayat Office, temples, field channels, and a CC road, occupying around 5.07 Acres; and (iii) Agricultural activity over 7.24 Acres in Sy. No. 59 and 14.77 Acres in Sy. No. 48/1.

32. The Applicant sought allotment of 10 Acres in Sy. No. 59 (Kakarlavani Pond), claiming it was for establishing a charitable institution. However, the land in question is classified as 'tank poramboke,' which is expressly excluded from allotment under Clauses 3(a)(ii) and 3(c)(viii) of G.O. Ms. No.571, Revenue (Assignment – I) Department, dated 14.09.2012. This G.O. categorically prohibits allotment or alienation of environmentally sensitive and fragile areas such as tank beds, river beds, and afforested hillocks. As per the settled legal principle "nemo dat quod non habet" (No one can give what they do not have), the State cannot transfer or allot what it is not legally empowered to convey. Thus, any such claim for allotment is inherently untenable. The applicant's comparison with allotments made to other institutions (e.g., Vedic University, hospitals) is misconceived, as those were made on unobjectionable poramboke lands and not on tank beds. Therefore, the applicant has no legal entitlement to claim allotment of any portion of Sy. Nos. 59 or 48/1 under the said G.O.

33. It is also relevant to note that the applicant had previously filed W.P. No. 8493 of 2020 before the Hon'ble High Court of Andhra Pradesh, seeking a direction to allot land in Sy. No. 59 for the construction of Gareeb Guide's Heaven (an old age and orphanage home). Upon failing to obtain a favorable order, the present proceedings were initiated before this Tribunal under the guise of seeking removal of encroachments, while indirectly reviving the claim for allotment of land that is impermissible under law.

34. While the respondents claimed partial eviction of agricultural encroachments and installation of cautionary boards, the Applicant produced photographic and documentary evidence demonstrating that encroachments persist and that fresh constructions, including works under MGNREGA, have been permitted even after the Tribunal's orders. This establishes the continued and unauthorized occupation of the tank poramboke without any legal sanction or reclassification. It is evident that both permanent structures and agricultural encroachments exist in contravention of statutory provisions and environmental safeguards.

35. The Hon'ble Supreme Court has consistently held that encroachments on government lands, particularly waterbodies, must be removed. Where eligible, rehabilitation may be considered in accordance with the State Government's policy, but no individual has the right to insist on continuing unlawful occupation. The applicant's specific allegation regarding fresh encroachments by farmers must be verified, and if found true, immediate eviction

should follow. Additionally, criminal action may be initiated against such trespassers, along with preventive measures to restrain further intrusion into the water body.

36. The authorities' claim that the tank is defunct—citing the absence of ayacut and canal water—is not supported by the record. Official data from the Water Resources Department identifies Kakarla Pond as MI Tank ID (MI024999), noting a capacity of 0.45 M.Cft, water spread of 3.44 Acres, and an ayacut of 9.07 Acres. Joint inspection reports also confirm that three inlet channels remain functional. Moreover, MGNREGA funds have been utilized for renovation works, which directly contradicts any assertion of abandonment. Although full restoration may be limited due to the presence of longstanding public structures, over 7 Acres of agricultural encroachments have already been cleared, leaving 2.45 Acres of tank bed available—making partial ecological rehabilitation both feasible and necessary.

37. The contention that encroachments have existed for the past 30 to 40 years cannot justify inaction. Likewise, the argument that the tank is obsolete for irrigation purposes due to the formation of the Narasannapeta Branch Canal under the Vamsadhara Project is misplaced. A waterbody serves multiple ecological and hydrological functions beyond irrigation—such as groundwater recharge, maintenance of the aquifer, support for flora and fauna, and improvement of drinking water availability for nearby habitations.

38. Furthermore, reliance by the Joint Committee on Government Memo No.65961/Assn.I(1)/97-11 dated 08.02.1999 is untenable in light of the binding precedent laid down by the Hon'ble Supreme Court in Hinch Lal Tiwari v. Kamala Devi & Ors., (2001) 6 SCC 496. The Apex Court has clearly held that even disused waterbodies must be rejuvenated and restored by the State. Accordingly, this Tribunal finds that the claim of defunct status is unsubstantiated and that restoration—at least in part—is both viable and mandated under law.

39. Despite repeated directions from this Tribunal and the Hon'ble High Court, compliance by the authorities has been incomplete and fragmented. While portions of agricultural encroachments in Sy. Nos. 59 and 48/1 have been removed, permanent structures remain untouched. No meaningful efforts have been made to restore the waterbody, re-establish natural inflow and outflow channels, or safeguard the functional inlets and outlets, as mandated. On the contrary, public funds—including those from MGNREGA and MP grants—have been utilized to create additional infrastructure within the pond area, in clear defiance of judicial orders. This reflects a lack of seriousness and commitment by the authorities in fulfilling their statutory obligations.

40. However, the District Administration has explained the practical constraints it faces in evicting long-standing encroachments involving both Government and private constructions—such as the MPP School, RBK, BPL houses, blacktop road, field channel, stage, and temple—which serve public utility purposes. These structures have been in existence for decades and any abrupt action may lead to serious law and order issues. Recognizing these complexities, the District Collector has sought specific guidance from the Chief Commissioner of Land Administration (vide Rc. No. 943/2020-83, dated 05.07.2022)

to initiate appropriate legal action in a manner that balances compliance with judicial directions and maintenance of public order.

41. In light of these mitigating circumstances, this Tribunal is of the considered view that the non-compliance cannot be attributed to wilful disobedience, but rather to administrative and practical constraints. Hence, the prayer in the execution application seeking action against the District Collector is not warranted at this stage. Nevertheless, the State Authorities are expected to continue pursuing lawful and feasible measures for progressive restoration of the waterbody and removal of unauthorized encroachments and permanent structures in accordance with applicable policies and judicial directives.

42. In view of the foregoing, the following directions are issued:

I. The District Collector, Srikakulam District and the Irrigation Department shall restore the full extent of tank poramboke lands in Sy. Nos. 48/1 and 59 of Chinnadugam Village, as per the report of the District Collector, Srikakulam dated 31.12.2024, ensuring the ecological rejuvenation of Kakarlavani Pond.

a) The area that is restored after the removal of encroachment i.e. 22.01 Acres (14.77 Acres in Sy. No. 48/1 + 7.24 Acres in Sy. No. 59) shall be deepened to enhance water storage capacity.

b) The existing inlet channels shall be preserved and desilted, and any blockages or diversions be removed under the District Collector’s supervision.

c) Preventive measures such as fencing, signage, and local monitoring shall be put in place to deter further encroachments.

II. The District Collector shall seek appropriate orders from the Chief Secretary to Government for the removal and rehabilitation of existing longstanding public and private structures within the tank bed, subject to the outcome of the writ petition pending before the Hon’ble High Court of Andhra Pradesh.

III. It is recommended that the road passing through the tank, the District Collector shall propose conversion into an elevated bridge to enable unobstructed water flow, by seeking Government sanction and funding.

IV. The feasibility of a feeder channel from the Narasannapeta Branch Canal under the Vamsadhara Project shall be explored to ensure a sustainable water supply to the restored pond.

43. With the above directions, the Original Application [O.A. No. 92 of 2020 (SZ)] stands disposed of.

44. Consequently, the Execution Application [E.A. No. 03 of 2023 (SZ) in O.A. No.92 of 2020 (SZ)] is closed, taking note of the partial compliance and the further directions issued herein.

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Ravula Lingaswamy & 3 Ors. vs. Union of India & 5 Ors.

(Original Application No. 97/2021)
Decided on: 6th August, 2025 (SZ)

CASE NOTE

Four individuals claiming to be residents of Anthammagudem Village filed an original application against Hazelo Lab Pvt. Ltd aggrieved by the pollution caused by them, a bulk-drug industry. It is the allegation that the industry discharges untreated chemical effluents into the borewell, polluting soil and groundwater, which resulted in financial loss, reduction in agricultural yield, closure of a poultry farm, contamination of drinking water and also the industry expanded its operations without environmental clearances. Accordingly, the applicant sought the assessment of environmental damage caused by the industry, compensation to the farmers, supply of safe drinking and irrigation water to the village.

With respect to the issue raised by the applicant the tribunal examined the reports submitted by the respondents and that the report of Pollution Control Board stated that the industry has zero liquid damage discharge, including the Multiple Effect Evaporation, Agitated Thin Film Dryer, biological Effluent Treatment Plan, followed by Reverse Osmosis plant. Environmental compensation of Rs.77,77,000 was already imposed and the industry had fully paid the same. The industry given stop production order based on the complaint raised by the public and was also given closure order for the non-compliance of stop production, later the order was revoked after compliance. The Agricultural department inspected the field and filed a report that none of the applicant in the present case own agricultural land. since the water has a saline content, it can be used for the specific type of crops with specific measures. The collector gave a report that the land in the affected survey numbers are not owned by the applicants.

Having heard the case and perusing the materials available on record, the Tribunal observed that the industry complied with all the conditions directed on them from time to time and also paid the compensation imposed, so there is no violation by the industry. Though the several industry operating in the region, the charge for the pollution cannot be attributed solely to the 6th respondent.

Since the applicants are not the land owners of the affected area they do not have the locus standi to claim compensation for the loss of crops as a result the original application was dismissed by the Tribunal.

Ravula Lingaswamy & 3 Ors. vs. Union of India & 5 Ors.

COUNSEL FOR APPLICANT(S):
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Ms. Mamatha Ralla.

COUNSEL FOR RESPONDENT(S):
Mrs. Me. Sarashwathy for R1.
Mrs. H. Yasmeen Ali for R2, R4 & R5.
Mr. T. Sai Krishnan for R3.
Mr. K.S. Viswanathan, Sr. Adv. a/w.
Mrs. T. Hemalatha for R6.
Ms. N. Nathami for CPCB.

CORAM:
HON'BLE Smt. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE Dr. SATYAGOPAL KORLAPATI, EXPERT MEMBER

RESERVED ON: 01st July, 2025
PRONOUNCED ON: 6th August, 2025

J U D G E M E N T

BY HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

1. The Applicants, who claimed to be residents of Anthammagudem Village and are aggrieved by the pollution caused by Respondent No.6 *(M/s. Hazelo Lab Private Limited)*, a bulk drug industry, have filed the Original Application, raising certain environmental concerns.

2. Respondent No.6 *(M/s. Hazelo Lab Private Limited)*, which is situated in Anthammagudem Village, Pochampally Mandal, Yadadri Bhuvanagiri District, is alleged to be discharging untreated sewage/chemical water in the bore well dug inside the plant, causing pollution.

3. It is also alleged that the industry has expanded unauthorizedly without the required approvals from the Ministry of Environment, Forests & Climate Change **(MoEF&CC)/** State Environmental Impact Assessment Authority (**SEIAA) -** Telangana and the Telangana State Pollution Control Board **(TGPCB).**

4. It is also stated that the industry had suffered various orders, including a stop production order, closure order, subsequent revocation order, etc. It is further stated that the undivided State of Andhra Pradesh and after the formation of Telangana State, the TGPCB had appointed a High-Level Committee to look into the pollution in a cluster of bulk drug industries at Pochampally and Choutuppal Mandals. Pursuant to the High-Level Committee's

recommendation, directions were issued to 45 industries only in vain. Thereafter, the Joint Committee formed by the Joint Collector, which had given certain recommendations that included a Zero Liquid Discharge **(ZLD**) system for the treatment and reuse of the effluents and the Common Effluent Treatment Plant **(CETP**) member industries shall regularly send the effluents to the CETP. The industries were also directed to use scrubbers regularly for control of the odour problem and also develop greenbelts in the vacant lands. As these industries did not comply with the said recommendations, several complaints were made by the villagers, including the applicants, about the massive pollution caused by the polluting industries.

5. It is further alleged that there has been financial loss due to the impact of pollution, which affected the yield of agriculture and closure of poultry farms, etc. The villagers were not even able to get drinking water due to chemical pollution in the groundwater.

6. Therefore, the applicants have prayed for conducting a cumulative impact of pollution and damages caused to the environment due to the industries and to assess the compensation payable to the farmers for the loss of agriculture and direct the State Government to provide safe water for drinking and agriculture in the village of Anthammagudem.

7. Upon notice, both the official and private respondents have entered appearance through their respective counsel and filed their pleadings.

8. **The Telangana State Pollution Control Board (TGPCB)** filed several reports during the pendency of the application from time to time. The first of **its report dated 12.07.2021,** which is after the inspection conducted on 17.06.2021, wherein it is stated that the 6th Respondent industry was established in the year 2002 in the name of *M/s. Venlar Labs* and later renamed as *M/s. Hazelo Lab Private Limited* in the year 2015. The industry obtained consent from the TGPCB on 30.05.2017, which was valid till 31.01.2022. The industry also had obtained Environmental Clearance for further expansion from the SEIAA - Telangana on 13.11.2020 for manufacturing of 35 products and also a Co-Generation Power Plant of 1 x 2 MW. The industry also had obtained appropriate consent from the TGPCB. The industry also had obtained Consent to Establish from the Board on 29.05.2021 for further expansion, which is under implementation.

9. The TGPCB also constituted a High-Level Committee in September 2011 to examine the issues of bulk drug industries in the district, the pollution issues and to note the other implications. As per the recommendations of the High-Level Committee, the TGPCB recommended to install the Multiple Effect Evaporation **(MEE)** system for all the industries. Accordingly, the 6th Respondent also installed the MEE system and it also has a full-fledged ZLD system consisting of Stripper, MEE, Agitated Thin Film Dryer **(ATFD),** biological Effluent Treatment Plant **(ETP),** followed by Reverse Osmosis **(RO)** plant.

10. It is also mentioned that the District Collector – Yadadri Bhuvanagiri District had constituted a Joint Committee in the year 2017 with the officials from the various departments, including the Revenue and Agriculture, to verify the pollution problem and assessment of crop damage due to the pollution in the Dothigudem area. Accordingly, a joint inspection was conducted and the groundwater samples from the bore wells were analysed

and recommended a compensation of Rs.77,55,800/- to the affected farmers, who are cultivating paddy situated in Dothigudem and Anthammagudem Villages.

11. It is stated that there are 11 industries located in the surroundings and the 6th Respondent (*M/s. Hazelo Lab Pvt. Ltd.)* has paid a sum of Rs.11,83,348/- as their share for crop damage compensation. In the meanwhile, there were public complaints followed by a stop production order to the 6th Respondent and also a closure order for non-compliance with the stop production order. Later, at the request of the 6th Respondent, the closure order was revoked. The industry was also reviewed by the TGPCB's Task Force Committee and the groundwater samples were taken for analysis. The analysis results of the groundwater sample showed that the value of the Total Hardness as CaCO3 exceeds the standards. The soil sample is not hazardous in nature. The R.O. permeate is recycled for cooling tower makeup and boiler feed makeup within the industries and there is no discharge of effluents. The boiler stack emissions are said to be meeting the standards, as also the Ambient Air Quality **(AAQ)** monitoring results are meeting the National Ambient Air Quality Standards.

12. The second **report** was filed on **08.12.2022,** though dealt with several other industries, observation regarding the 6th Respondent alone is relevant here. As per the report, the industry has provided online connectivity for CPCB and TGPCB's server for MEE condensate, High Total Dissolved Solids (HTDS), Low Total Dissolved Solids **(LTDS),** flowmeter and cameras at the gate and RO permeate.

13. In the **report** of the TGPCB dated **11.07.2024,** the details of the environmental compensation imposed and payment made by the industries are submitted. So far as the 6th Respondent is concerned, the environmental compensation levied was Rs.77,77,000/-, of which, 50% of the amount i.e. Rs.38,90,000/- was paid. In the said report, which is filed after the groundwater and soil quality analysis done by M/s. Environment Protection Training and Research Institute (EPTRI), Gachibowli, Hyderabad, it is stated that the bore wells are contaminated with chemicals and the same were matched with the products and derivatives of all the industries located in the area, including the 6th Respondent industry. Hence, a show cause notice was issued to the industry. The TGPCB also reviewed the industry before the Board's Task Force Committee and issued certain directions to comply with, including that of payment of environmental compensation.

14. The **latest report** of the TGPCB was filed on 17.02.2025, which states that the Consent to Operate obtained from the Board is valid till 31.01.2027. As per the report, the industry is operating the new ZLD system for treatment of effluents, which consists of MEE, RO, HTDS, and LTDS. The industry has also provided online connectivity with the CPCB and TGPCB's servers. Non-compliance of certain directions are now said to be complied with by the 6th Respondent industry.

15. Respondent No.4 is the **Commissioner of Agriculture Department,** who was directed to inspect the fields and file a report regarding the claim of the applicants, as the applicants had complained about the health issues apart from the groundwater pollution, reduction in agricultural yield, soil pollution, loss of cattle, poultry, etc. Accordingly, the Agriculture Department had visited the Anthammagudem Village and collected soil and water

samples from bore wells in the field and sent them for analysis. The detailed field inspection was also done by the 4th Respondent.

16. As per the report of the Agriculture Department, the applicants, namely Ravula Lingaswamy, Valluri Kumar, Ravula Srishailam and Banda Kistaiah are not having any agricultural land in Survey Nos.242, 247, 248 and 249 situated in Jiblakpally Revenue Village, Anthammagudem Gram Panchayat. It is clearly stated that in Sy. No.242, the 6th Respondent is having 9 Acres 13 Guntas and the remaining land is possessed by Gummi Narendar Reddy. In Sy. No.247, the individual farmers do not have agricultural land and the total extent is converted as non- agricultural land and is possessed by M/s. Hazelo Lab Pvt. Ltd. (Respondent No.6). In Sy. No.248, the 6th Respondent is having 6 Acres 31 Guntas and several other owners are having various extents of lands in the balance of the lands. Similarly, in Sy. No.249, of the 19 Acres 9 Guntas, Gummi Narender Reddy owns 4 Acres 22 Guntas, Valluri Nagaiah owns 1 Acre 35 Guntas, Kandi Yadi Reddy owns 1 Acre 21 Guntas and Vaspari Jangamma owns 34.5 Guntas.

17. From the detailed report of the 4th Respondent, none of the applicants in the present Original Application are owners of the properties situated in Sy. No.242, 247, 248 and 249 of Anthammagudem Village. However, the Agriculture Department has stated that the water is not suitable for irrigation under normal conditions with high salinity. The water can be used if the soil is permissible and arrangements for adequate drainage facilities and salt tolerance crops should be selected. So far as the soil quality is concerned, it is found to be suitable for raising the crop, having a pH range between 6.5 and 8.0 and the electrical conductivity (EC) is also less than 1.0, which is a suitable range for raising crops. The Agriculture Department has also produced a copy of the Soil Health Card.

18. The report of the 5th Respondent, who is the **District Collector – Yadadri Bhuvanagiri District,** assumes importance in the light of the reliefs claimed by the applicants. The District Collector also has stated that none of the applicants herein are having any agricultural land in the above survey numbers. The soil and water samples collected and sent for analysis show that the soil is suitable for cultivation, but the water sample is having very high electrical conductivity, which is not suitable for irrigation under ordinary conditions. On 03.04.2024, it was decided that the Additional Collector (Revenue), Agriculture Department and TGPCB would conduct crop cutting experiments involving Agriculture, Revenue and CPO departments to assess the yield loss around the field adjacent to the industries causing pollution. The details of the name of the farmers, village, the total extent owned by them, the extent cultivated and the yield, along with the quantity of the paddy sold at Paddy Procurement Centre (PPC) were furnished in a tabular form. As per the particulars furnished by the District Collector, the average yield of paddy in the district is 22 Quintals/Acre, but as per the experiments conducted in the fields adjoining the industry, the average yield is 19.33 Quintals/Acre i.e. deficit of 13%, except in two farmers field where the yield obtained is less than 50%. Further, it was stated that the plots which are nearer to the industries are affected due to the groundwater pollution and the crop damage is up to 50% with respect to yield loss of Rs.20,000/- to Rs.50,000/- per acre season.

19. **Respondent No.6,** who is the private respondent, has filed a reply, stating that they are operating the industry with ZLD and recycling the treated wastewater for boiler and cooling tower makeups. The industry is not discharging any wastewater, as alleged by the applicants. The industry has generated 13.7 Tons of waste and the same is disposed of at TSDF/ Cement Plants. Regarding the crop damage that is alleged, the 6th Respondent has already paid a sum of Rs.11,83,348/- to the District Authorities before the extension of revocation orders were granted to them. Accordingly, the 6th Respondent is complying with all the directions issued by the TGPCB from time to time. The closure order and the stop production order were issued only after an accident that happened during the Nitration reaction, which were later revoked. The industry is also having a collection tank above the ground level to avoid soil and groundwater pollution. Regarding the pollution of drinking water, the industry had stated that, as per the classification by the Central Ground Water Board **(CGWB),** the area is a *water-stressed area*. The samples of water tested by the TGPCB does not match the compounds in the effluents generated by the 6th Respondent. As there are also several other industries, admittedly in operation, in the industrial area.

20. From the above pleadings, it is to be examined whether the allegations of the applicants are true and to what relief they are entitled to.

21. So far as the allegation of pollution of groundwater and soil is concerned, the various reports of the TGPCB, Agriculture Department and the District Collector go to show that the area itself is classified as a *water-stressed area* and that the soil is capable of cultivation only for certain crops. The TGPCB also has stated that the industry has complied with all the conditions as directed by them from time to time. It is also admitted that there was a High-Level Committee and thereafter, a Joint Committee constituted by the District Collector for addressing the concerns expressed by the applicants.

22. It is also a definite statement of the 6th Respondent industry that every condition imposed is complied with by them dutifully for the smooth running of the industry. It is only the regulatory body, namely the TGPCB has to keep a vigil on the industry, periodically inspect the same and ensure that there is no violation of any of the conditions by the industry.

23. It is also stated that the environmental compensation amount of Rs.77,77,000/- levied by the TGPCB has been fully paid as on 20.08.2024, as confirmed by the TGPCB and evidenced by the memo dated 07.12.2024 filed by the 6th Respondent.

24. So far as the claim of compensation to the farmers for the loss of agriculture, cattle and health, due to the pollution caused by the 6th Respondent is concerned, it is not known why the applicants have not included the other industries situated within the industrial area, which also contribute to the pollution alleged. Having chosen only the 6th Respondent in this regard raises a suspicion about the intention of the applicants. This is more so because, as per the report of the District Collector as well as the Agriculture Department, the applicants in the Original Application are not owners of any piece of land in the survey numbers mentioned in the Original Application, and they are in no way connected to make any claim of compensation for loss of crops.

25. Notably, the actual owners of the lands have not made any claim in this regard. This is made evident only when the reports of the Commissioner of Agriculture Department and the District Collector are filed.

26. The learned counsel appearing for the applicants stated that the applicants are making the claim on behalf of the original owners. However, that is not mentioned in the application. In fact, the necessary fee, payable after quantifying the compensation amount, is not paid. Any relief by way of compensation to the victims of pollution, under Section 15 of the National Green Tribunal Act, 2010, requires quantification of the amount and payment of a court fee of one percent of the compensation claimed. In the present case, the original landowners have not been impleaded as parties, and the alleged loss suffered by them has also not been quantified through the Revenue and Agriculture Departments. Only when this Tribunal asked the said question, based on the reports of the Commissioner of Agriculture Department and the District Collector, it was stated so.

27. Therefore, without hesitation, we hold that the very application filed is speculative one with an ulterior motive. Accordingly, the applicants are not entitled to any indulgence and the application deserves to be dismissed.

28. **In the result, the Original Application [O.A. No. 97/ 2021 (SZ)] is dismissed.**

D. Vishnuvardhan Reddy & Anr. vs. The State of Andhra Pradesh & Ors.

(Original Application No. 193 of 2021)
Decided on: 4th July, 2025 (SZ)

CASE NOTE

The applicants (D. Vishnuvardhan Reddy & Perapogu Kishore), agriculturists and social workers from B. Thandrapadu Village, Kurnool Mandal, filed an Original Application to protect the Full Tank Level (FTL) and submersible area of Gangamma Cheruvu, particularly in Survey Nos. 81/1 and 299. They alleged that private respondents were filling these lands with gravel and murram to raise the ground level for housing and non-agricultural use, thereby reducing the tank's storage capacity and adversely affecting irrigation, groundwater recharge, local ecology, and the livelihood of ayacutdars and residents dependent on the Cheruvu. They relied on G.O. Ms. No.168 dated 07.04.2012 (Andhra Pradesh Building Rules, 2012), which prohibit building/development activity in the bed and FTL of water bodies such as cheruvus and kunta/shikam lands, and asserted that despite representations, the authorities had failed to stop the illegal levelling and conversion.

The issues involved in the case was: (i) whether Survey Nos. 81/1 and 299 of B. Thandrapadu Village fall within the Gangamma Cheruvu Full Tank Level/submersible area, and (ii) whether the private respondents (Respondents No. 7 to 11), claiming patta rights, were entitled to level and alter the land in their own right.

On considering the Joint Committee report, the District Collector's report and material from the Irrigation Department, the Tribunal observed that while revenue records treated Sy. Nos. 81/1 and 299 as patta lands, the survey conducted under G.O. Rt. No.479 (21.07.2015) fixed the FTL of Gangamma Cheruvu at +310.180 meters and showed these survey numbers within the submersible/FTL area. The Irrigation Department reported that Gangamma Cheruvu had an original capacity of 12.309 Mcft and an ayacut of about 25.22 hectares (62.29 acres), and that filling about 10.90 acres of foreshore land with murram had reduced tank capacity by 1.558 Mcft, affecting irrigation, groundwater recharge and cattle use to the nearby villages and institutions. The District Collector confirmed that water spreads over Sy. Nos. 76, 77, 78, 79, 80, 81, 299, 301, 309 and 310 during the rainy season and that the RDO had rejected the respondents' land-conversion request on 06.02.2023 on the ground that Sy. Nos. 81/1 and 299 lie in the submerged area of Gangamma Cheruvu. The private respondents, however, relied on pattas, Web Adangal entries, payment of conversion fees under G.O. Ms. No.98 dated 19.02.2018, and a civil suit for permanent injunction seeking peaceful possession. They claimed that there was no "Cheruvu land" in their holdings. The Tribunal held that, in light of Rule 3(a) of the Andhra Pradesh Building Rules, 2012, no building/development activity is permissible in the bed or FTL area of a lake/tank/cheruvu, irrespective of patta status.

Accordingly, the Tribunal held that Sy. Nos. 81/1 and 299 fall within the FTL and submersible area of Gangamma/B. Thandrapadu Cheruvu. It directed the Irrigation Department and the District Collector, Kurnool, to maintain these lands as agricultural lands within the FTL of Gangamma Cheruvu/Thandrapadu Tank, subject to the outcome of W.P. No. 20277 of 2024 before the High Court of Andhra Pradesh. The private respondents were ordered to remove the murram/spoil used to raise the level and restore the original ground level, though they may cultivate the land when not inundated. The District Collector was directed to ensure that the original storage capacity of Gangamma Cheruvu is fully restored. With the above directions, the OA was accordingly disposed of.

D. Vishnuvardhan Reddy & Anr. vs. The State of Andhra Pradesh & Ors.

COUNSELS FOR APPLICANTS:
Mr. S. Sai Sathya Jith
Ms. Aarti R Mundhra
Mr. B. Mohana Krishna.

COUNSELS FOR RESPONDENTS:
Mrs. Madhuri Donti Reddy for R1, R4 & R5.
Mr. M.R.S. Srinivas for R2, R3 & R6.
M/s. Arun Karthik Mohan & Suhrith Parthasarathy for R7 to R11.

CORAM:
HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER

RESERVED ON: 10th June, 2025
PRONOUNCED ON: 4th July, 2025

J U D G E M E N T

BY HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER

1. The above-captioned application was initially filed by two applicants, both agriculturists by profession and actively engaged in social work. During the pendency of the proceedings, the first applicant, Mr. D. Rajavardhan Reddy, passed away on 20.04.2022. Pursuant to this, his father was substituted in his place vide order dated 21.07.2022 in I.A. No. 120 of 2022 (SZ).

2. This is an application filed to protect the existing Gangamma Cheruvu Full Tank Level (**FTL**) in Survey Nos.81/1 and 299 of B. Thandrapadu Village, Kurnool Mandal, without being subjected to any other purposes, including conversion of land for construction of houses and direct the official respondents to deepen the said Gangamma Cheruvu for allowing free flow of water.

3. The applicants have alleged that the Sy. Nos.81/1 and 299 are falling within the submersible area of Gangamma Cheruvu as marked in the Village Plan and falling within the FTL boundary. It is also alleged that some private individuals are filling the said land with gravel and other materials, altering the geographical features, which will reduce the storage capacity of the tank and decrease the benefits derived by the ayacutdars. As per G.O. Ms. No.168 dated 07.04.2012 of Panchayatraj Department of Andhra Pradesh, no building/development activity shall be allowed in the bed of water bodies like river, nalla, lake, pond, cheruvu or kunta.

4. It is further stated that on 17.06.2021, the Tahsildar of Kurnool Mandal addressed a letter to the District Collector, Kurnool District, confirming that water was being stored on approximately 50 Acres in Survey Nos.76 to 81, 299, 309 and 310, and used for agriculture and further, the land in Survey Nos. 81/1 and 299 were being unlawfully levelled with mud by realtors.

5. Despite multiple representations by the applicants and residents of B. Thandrapadu Village, the respondent authorities have failed to take action against the illegal filling of land in Survey Nos. 81/1 and 299 with gravel and other materials. Furthermore, the private respondents are proceeding with the unlawful conversion of agricultural land to non-agricultural purposes to facilitate housing projects on Gangamma Cheruvu Tank. Such actions disregard the ecological significance of the area, which sustains hundreds of families and their livestock, and are in clear violation of established environmental and legal norms.

6. In view of the above, the applicants are left with no alternative but to seek the intervention of this Tribunal.

7. Upon notice, both the official and private respondents entered appearance through their counsels and filed their respective pleadings.

8. The **Joint Committee** comprising the District Collector – Kurnool District and the Superintending Engineer – Irrigation, Kurnool, was appointed by this Tribunal, to inspect the area in question and submit a factual and action taken report. The said Joint Committee had inspected the area in question on 05.10.2021 and filed the report, which specifically states that:

(i) As per the revenue records i.e. Resettlement Survey Register (**RSR**) of B. Thandrapadu Village, there is no extent for the Cheruvu in question. Whereas, the water is being stored in the rainy season in certain survey numbers, which include Sy. Nos.81 and 299.

(ii) The Government of Andhra Pradesh, vide G.O. (Ms.) No.216 dated 13.06.2005, had issued orders that all the MI Tanks under the control of Panchayat Raj Department shall be transferred to the Irrigation Department. Accordingly, the Panchayat Raj, Kurnool, had handed over the Gangamma Cheruvu with the condition of the tank satisfactory. Nonetheless, the FTL of the tank was not mentioned in the handing over report.

(iii) An administrative sanction for the work of investigation and preparation of the Detailed Project Report (**DPR**) to provide drinking water and irrigation facilities to upland areas in the jurisdiction of Minor Irrigation (W) Division, Kurnool through the HNSS Project was accorded on 21.07.2015 vide G.O. Rt. No.479 Water Resources (MIR) Department. In the said survey, around 106 tanks in Kurnool were surveyed

and arrived at the hydraulic particulars like capacity of the tank, FTL, sill level of sluices, tank bund length, weir length, water spread area, etc. As per the above survey, the FTL of the Gangamma Cheruvu in B. Thandrapadu Village arrived at +310.180 Meters.

(iv) It is also observed that the land in Sy. Nos.81/1 and 299 of B. Thandrapadu Village are being levelled by filling it up with murram/spoil. Upon enquiry, it is revealed that certain individuals have purchased land in Sy. No.81/1, an extent of 8.90 Acres and in Sy. No.299, an extent of 2 Acres and they obtained PPB/TDs vide Khata No.989, 991, 992 and 993 in their names. They have also paid land conversion fees in terms of G.O. (Ms.) No.98 dated 19.02.2018. The Tahsildar has further stated that the water is being stored in the rainy season in their fields and some of the villagers are creating problems, stating that the lands are not patta lands and are Cheruvu lands.

(v) It was also further ascertained that every year water is being stored in the above-said survey numbers during the rainy season and during other seasons, the pattadars are cultivating the land. Recently, pattadars in Sy. Nos.81/1 and 299 have levelled the land by filling it with murram/spoil.

(vi) The Tahsildar has further stated that all the specified lands in question are patta lands, except the land in Sy. No.78, an extent of 0.83 Acres, as per RSR of B. Thandrapadu Village.

9. The Superintending Engineer, Irrigation Circle, Kurnool, has filed a counter affidavit on behalf of **Respondents No.2, 3 and 6**, stating that the Hundri Neeva Sujala Sravanthi (**HNSS**) Canal is a lift irrigation system to cater to the irrigation requirements to about 6 Lakhs acres and drinking water needs for about 25 lakhs population. The said main canal starts from the foreshore of the Srisailam Reservoir with the discharge of 3850 cusecs through Kurnool, Ananthapur, Chittoor Districts and merges with Neeva River in Chittoor District, after travelling 550 Kms. It is stated that in the initial stage of the HNSS project, the formation of a canal for connecting Gangamma Cheruvu was not considered. However, it is stated that the Gangamma Cheruvu is the oldest being prior to 1940 established to provide irrigation to an ayacut of 62.29 Acres and mitigate the drinking water requirements of the public through percolation and also to meet the drinking water requirement for cattle. In view of the urbanization of Kurnool City, the ayacut to be irrigated has come down to 40.80 Acres. Therefore, even though the Gangamma Cheruvu is not connected to HNSS, water in the catchment area of the Cheruvu is harvested to supply 40.80 Acres of ayacut. It is also stated that the cultivators cannot be allowed to convert their lands to any other purpose other than cultivating.

10. The Irrigation Department has further stated that the said Gangamma Cheruvu is located on the Kurnool – Nandyal Highway at 8 Km distance from the Kurnool City and it is in the B. Thandrapadu Village, having a storage capacity of 12.309 Mcft. The original registered ayacut is an extent of 62.29 Acres (25.22 Hectares) and the FTL of the Cheruvu is

measured as +310.180 meters. The submersible area is stated to be 28.148 Hectares. Due to the filling of foreshore land to an extent of 10.90 Acres with an average depth of 1 Meter, the reduced storage capacity is 1.558 Mcft. Due to decrease in 1.558 Mcft of water in the tank capacity, the tail end will be affected by a shortage of irrigation water and the groundwater recharge also will be affected. Due to the decrease of the surface area of 10.90 Acres in the foreshore of the tank, cattle/animal feeding, flora and fauna, birds, water feeding and drinking water to the nearby villages like B. Thandrapadu, Pasupula, Sudireddypalli, Dinnedevarapadu, Nandanapalli, Rayalseema University area and G. Pullareddy Engineering & Dental Colleges are affected. As the Cheruvu is in the area of Kurnool Urban Development Authority, it will serve as a drinking water source for Kurnool Municipal Corporation and there is no other water body within a radius of 4 to 5 Kms. The private pattadars have only the right to cultivate when there is no water. It is also stated that as per G.O. (Ms.) No.216 dated 13.06.2005, all Minor Irrigation Tanks under the control of Panchayat Raj Department are transferred to the Irrigation Department, though the maintenance has to be done only by the Gram Panchayats concerned.

11. The **District Collector – Kurnool District**, has filed an independent **report dated 01.08.2024**, wherein it is stated that as per the revenue records, the term *'Gangamma Cheruvu'* does not exist in Sy. Nos.81/1 and 299 of B. Thandrapadu Village. As per the RSR, the said lands are patta lands. It is categorically stated that as per the revenue records, the land situated in Sy. Nos.81/1 and 299 is patta land and not government land. However, necessary instructions are issued to the Irrigation Department and Revenue Department to prevent further levelling and filling of the patta land. For the allegation of conversion of land, it is stated that the RDO, Kurnool, has already rejected the conversion application on **06.02.2023** on the ground that "*the land is in submerged area of Gangamma Cheruvu and submerged with full of water during rainy season"*. Therefore, the private respondents have not converted the said land into non-agricultural land.

12. It has been reported by the District Collector, in his letter dated 23.09.2021 addressed to the Chairperson, State Human Rights Commission, Andhra Pradesh, that the tank being called as *'Gangamma Cheruvu'* of B. Thandrapadu Village, Kurnool Rural Mandal is situated in Sy. No.76 and the water stored area is covered by the extents of Sy. Nos.76, 77, 78, 79, 80, 81, 299, 301, 309 and 310 of B. Thandrapadu Village and all those survey numbers, except Sy. No.78, are patta lands. The District Collector further states that the B. Thandrapadu Tank, being called as *'Gangamma Cheruvu'*, is vested with the Irrigation Department and as per the report of the Irrigation Department, the capacity of the tank is 12.31 mcft and the ayacut under this tank is 62.32 Acres.

13. The private respondents (**Respondents No.7 to 11**), in their reply, have stated that they are the owners of the properties holding a valid patta in respective lands in Sy. Nos.81/1 and 299 and in their capacity as owners, have undertaken the activity of levelling the land for use. As there is no extent of Cheruvu/Tank in existence, over these lands belonging to Respondents No.7 to 11, the question of reducing the tank storage capacity or decreasing the ayacut does not arise. These respondents have stated further that the land conversion to non-

agricultural use has been approved by the Government authorities taking into account the nature, classification and usage of the lands. Respondents No.7 to 11 also filed an *Original Suit No.46 of 2021* on the file of the Principal Senior Civil Judge, Kurnool, seeking a permanent injunction restraining the private respondents therein from interfering with their peaceful possession. In the said Original Suit also, Respondents No.7 to 11 have made their claim under specific sale deeds said to have been purchased in the years 2018 and 2019.

14. From the above pleadings, the questions that arise for consideration are:-

I. Whether the Sy. Nos.81/1 and 299 of B. Thandrapadu Village, Kurnool District are within the Gangamma Cheruvu Full Tank Level.

II. Whether the private respondents (Respondents No.7 to 11) are entitled to level the said land in their own right as claimed by them.

15. The applicant has knocked the doors of this Tribunal stating that the said Gangamma Cheruvu, located in B. Thandrapadu Village, was originally under the control of the Panchayat Raj Department and was subsequently handed over to the Minor Irrigation (Wing) Department in the year 2005. The applicants have also given the storage capacity of the Gangamma Cheruvu as 12.39 Mcft, catering to the ayacutdars of 25.22 Hectares. The FTL is stated to be +310.180 Meters and the submersible area of the tank is 28.148 Hectares.

16. The applicants have placed reliance on a letter from the Tahsildar, Kurnool Rural Mandal to the District Collector, Kurnool District dated 17.06.2021. In the said communication, the Sy. Nos.76 to 81, 299, 309 and 310 of B. Thandrapadu Village are used for storing water. As some of the realtors were seen levelling the lands, a request was made by the villagers to purchase the land for the purpose of storage of water.

17. In this regard, the Tahsildar has mentioned that as per the RSR, Sy. Nos.81/1 and 299 with an extent of 9.40 and 2.38 Hectares respectively are classified as *'Government Dry land'* and the names against that are given as *'Karim Khatubibi'*. As per Record of Rights (**ROR**), the Sy. Nos.81/1, an extent of 8.12 Ha. and Sy. No.299, an extent of 2.38 Ha. is in the name of Jawarila Baldev and Bahari Lal Baldev respectively. As per the Manual Adangal, the Sy. Nos.81/1 and 299 are in the names of Eqbal Hussain, Mohsin Hussain, Aarif Hussain, etc. and Sy. No.299 is in the name of Eqbal Hussain. Similarly, as per the Web Adangal, Sy. Nos.81/1 and 299 are in the names of Respondents No.7 to 11 herein.

18. The Mandal Surveyor has reported that the water is being stored in the following survey numbers of B. Thandrapadu Village, Kurnool Rural Mandal i.e. 76 to 80, 81/1, 299, 309 and 310. The report also observed that Sy. Nos.81/1 and 299 are being levelled by filling it with mud. Upon enquiry, it was learnt that Respondents No.7 to 11 have purchased the said land to an extent of 8.90 Acres in Sy. No.81/1 and 2 Acres in Sy. No.299 and their names are also entered in the Web Adangal.

19. Finally, it is stated that as per the revenue records i.e. RSR, ROR, Web Adangal, all the above-said survey numbers are patta lands, except the land in Sy. No.78, an extent of 0.83 Acres and acquisition of the land has taken place for the purpose of Gangamma Cheruvu, water is being stored in the above lands during the rainy season and when there is no water in the field, the pattadars are cultivating the above said lands.

20. However, in the letter dated 23.09.2021 addressed by the District Collector to the Chairperson, State Human Rights Commission, Andhra Pradesh, it is specifically stated as follows:

> *"I submit that after examining the report and verification of the Revenue Records etc., submitted by the Enquiry Committee constituted by this office, it is found that the Tank (being called as Gangamma Cheruvu) of B. Thandrapadu Village of Kurnool (Rural) Mandal, is situated in Sy. No.76 and water stored area is covered by the extents of Survey Numbers of 76, 77, 78, 79, 80, 81, 299, 301 309 and 310 of B. Thandrapadu Village and all these survey numbers (except Sy. No.78) are patta lands as per Land Records namely R.S.R., ROR, RH and webland adanagal of B. Thandrapadu Village of Kurnool (R) Mandal. With respect to Sy. No.78, extent 0.83 Acres, there was no pattadar name in column No.16 and no remarks in column 17 of R.S.R, in Webland Adangal, its classification is shown as 'Govt. land – Cheruvu' and as per R.H., Sy. No.78, extent 0.83 Acres, is shown under category of Porambokes."*

21. Subsequently, the Executive Engineer – Water Resources Department has issued a letter dated 29.06.2021, giving details of the submersible area. In the said letter, it is stated that the Panchayat Raj Department handed over the Gangamma Cheruvu to the Minor Irrigation (Wing) Division, Kurnool, in the year 2005. During the said occasion, the storage capacity of the Gangamma Cheruvu was 12.309 Mcft with ayacutdars for 25.22 Ha. The FTL was +310.180 meters with a submersible area of 28.148 Ha. As per the letter of the Tahsildar, Kurnool, the Sy. Nos.81/1 and 299 are falling within the submersible area and the FTL boundary of the Gangamma Cheruvu, as marked in the village plan. The said letter also mentions that some private owners are raising the land of Sy. Nos.81/1 and 299 by filing with the soil of the tank foreshore and disturbing the geographical features of the land. This will reduce the tank storage capacity and decrease the ayacut.

22. On the strength of the above-referred letters of the Tahsildar and the Water Resources Department, a representation was given to protect and restore the Gangamma Cheruvu FTL area through the District Collector vide letter dated 22.07.2021 by the Original Applicant.

23. This Tribunal had appointed a Joint Committee comprising **(i)** the District Collector, Kurnool and **(ii)** Superintending Engineer, Irrigation Circle, Kurnool, to ascertain the total extent of the Cheruvu prior to 1940 as per the original records; verify whether the FTL has been fixed; any encroachment has been done; and the damages (if any) caused to the environment. The Joint Committee along with other officials viz., Revenue Divisional

Officer (RDO), Kurnool and the Tahsildar, Kurnool Rural Mandal, caused an inspection 05.10.2021 and in the Joint Committee report dated 06.12.2021, it is stated that there is no extent for the Cheruvu in question and the water is being stored in Sy. Nos.76 to 81, 299, 309 and 310. However, a mention of the Cheruvu in the above survey numbers in RSR is not found.

24. The District Collector has filed a counter dated 01.08.2024 along with extracts of the Revenue Records. The Village Map (Page 13 of the counter) clearly shows the presence of water body named as *'B. Thandrapadu Cheruvu'* and the adangal reveals that Sy. No.76/1 is classified as 'Cheruvu' (Waterbody) and the extent being 17.35 Acres, though patta has been granted and Sy. No.76/2 is classified as *'National Highway'* and the extent being 2.90 Acres, which confirms the statement of the District Collector made before the State Human Rights Commission that the tank, being called *'Gangamma Cheruvu'* of B. Thandrapadu Village of Kurnool District, is situated in Sy. No.76. Further, the report submitted by the Tahsildar to the District Collector, Kurnool District, vide Rc.B.420/2021, dated 17.06.2021, reveals that Sy. Nos.76/1 and 76/2 are classified as Cheruvu lands and further, the Mandal Surveyor's report clearly indicates that the water is being stored in B. Thandrapadu Village of Kurnool Rural Mandal in the following survey numbers: 76, 77, 78, 79, 80, 81/1, 299, 309 and 310 (totalling 53.86 Acres).

25. With respect to the FTL, reference is made to G.O. Ms. No. 216 dated 13.06.2005 issued by the Panchayat Raj and Rural Development Department, which stipulates that all minor irrigation tanks under the control of the Panchayat Raj shall be transferred to the Irrigation Department. Accordingly, on 23.08.2005, the MI Tank in Kurnool was handed over to the Irrigation Department. While handing over the said Gangamma Cheruvu with an ayacut of 25.22 Ha. with the condition of the tank satisfactory, no FTL was mentioned in the handing over report.

26. While so, in G.O. Ms. No.479 Water Resources (MIR) Department dated 21.07.2015, an administrative sanction was granted for the work of investigation and preparation of DPR to provide the drinking water and irrigation facilities to upland the areas in the jurisdiction of MIR Kurnool through HNSS project. Accordingly, 106 tanks were surveyed and as per the above survey, the FTL of the Gangamma Cheruvu was arrived at +310.180 Meters. While so, during the inspection, it was found that Respondents No.7 to 11 were found levelling the lands with murram, as they have paid the conversion fees in terms of G.O. Ms. No.98 dated 19.02.2018.

27. It is also stated that water is stored during the rainy season in the fields and some of the villagers are creating problems, stating that the land is not a patta land and it is a Cheruvu land. The Tahsildar, Kurnool Mandal has also stated after ascertaining that water is being stored in the above-said survey numbers during the rainy season every year and during other seasons, the pattadars are cultivating the land. However, recently, the pattadars were found levelling the land. The report also further stated that excepting the Sy. No.78, an extent of 0.83 Acres in the said village, no assignment has been made in respect of the other

survey numbers, as they are patta lands.

28. Though the independent report of the District Collector – Kurnool District has specifically stated that the term *'Gangamma Cheruvu'* is not found in the revenue register pertaining to Sy. Nos.81/1 and 299, instructions were given to the Revenue and Irrigation Departments to prevent further levelling of the patta land.

29. The Irrigation Department has reported that the filling up of patta lands falling within the Full Tank Level (FTL) of Gangamma Cheruvu has resulted in a reduction of the tank's storage capacity by 1.558 Mcft, decreasing it from 12.309 Mcft. This clearly indicates that the act of raising the ground level of the patta lands has adversely impacted the tank's capacity and its associated ecosystem. Therefore, there is an urgent need to restore the original storage capacity of Gangamma Cheruvu by removing the dumped soil.

30. To be noted is that the conversion attempt by the purchasers was rejected by the RDO on 06.02.2023 and the same is under challenge before the Hon'ble High Court of Andhra Pradesh. The proceedings of the RDO dated 06.02.2023 has categorically stated that *"the land in Sy. Nos.81/1 and 299 of B. Thandrapadu Village are in submerged area of Gangamma Cheruvu and submerged with full of water during rainy season"*.

31. Though Respondents No.7 to 11 claim to have purchased the property in the years 2018 and 2019 and got their name registered in the Web Adangal, the fact remains that the said survey numbers are falling within the submersible area and FTL area of Gangamma Cheruvu/Thandrapadu Tank.

32. Along with the reply, Respondents No.7 to 11 have filed a copy of the plaint in *Original Suit No.46 of 2021* on the file of Principal Senior Civil Judge, Kurnool, wherein Respondents No.7 to 11 herein as plaintiffs have sought for permanent injunction restraining the defendants therein from disturbing their peaceful possession. The schedule of property mentioned therein includes Sy. No.81/1 and 299 along with other survey numbers of B. Thandrapadu Village, Kurnool.

33. Respondents No.7 to 11 also place a reliance on the G.O. (Ms.) No.168 dated 07.04.2012 issued by the Municipal Administration and Urban Development Department, Andhra Pradesh. The above G.O. refers to the Andhra Pradesh Building Rules, 2012, applicable to all Urban Development Authority areas and Urban Local Bodies together with Gram Panchayat areas in the State covered in Master Plans/ General Town Planning Schemes/ Outline Development Plans.

34. Rule 3 of the Andhra Pradesh Building Rules, 2012, refers to the restriction of building activity in the vicinity of certain areas. Rule 3 (a) is specific about the restriction of buildings in water bodies. Rule 3 (a) (i) and (ii) are extracted usefully for better understanding:.

"**3. Restriction of building activity in the vicinity of certain areas.**

(a) Water Bodies: -

(i) No building / development activity shall be allowed in the bed of water bodies like river or nala and in the Full Tank Level (FTL) of any lake, pond, cheruvu or kunta / shikam lands. Unless and otherwise stated, the area and the Full Tank Level (FTL) of a Lake / Kunta shall be reckoned as measured and as certified by the Irrigation Department and Revenue Department.

(ii) The above water bodies and courses shall be maintained as Recreational/Green Buffer Zone and no building activity shall be carried out within:

(1) 100m from the boundary of the River outside the Municipal Corporation / Municipality / Nagara Panchayat limits and 50m with in the Municipal Corporation / Municipality / Nagara Panchayat limits. The boundary of the river shall be as fixed and certified by the Irrigation Department and Revenue Department.
(2) 30m from the FTL boundary of Lakes / Tanks / Kuntas of area 10Ha and above.
(3) 9m from the FTL boundary of Lakes / Tanks / Kuntas of area less than 10Ha / shikam lands;
(4) 9m from the defined boundary of Canal, Vagu, Nala, Storm Water Drain of width more than 10m.
(5) 2m from the defined boundary of Canal, Vagu, Nala, Storm Water Drain of width up to 10m."

35. The above rules prohibit any building/development activity in the bed of water bodies like river or nallah and in the FTL of any lake, pond, cheruvu or kunta/shikam lands. Rule 2 also specifically prohibits any building activity to be carried out within 30 meters from the FTL boundary of the lake, etc.

36. Based on the findings of the Irrigation Department, which have been relied upon by the Revenue Department, that Sy. Nos. 81/1 and 299 of B. Thandrapadu Village fall within the submersible area and the FTL boundary as marked in the village plan, the activities of Respondents No. 7 to 11, even if they claim title to the property, are restricted in terms of the Andhra Pradesh Building Rules, 2012, as applicable to water bodies.

37. Therefore, in light of the above detailed discussions, the Sy. Nos.81/1 and 299 of B. Thandrapadu Village, Kurnool District, which are found to be falling within the submersible area and FTL boundary of the Gangamma Cheruvu, the authority, namely the Irrigation

Department and the District Collector – Kurnool District are directed to maintain the same as agricultural lands falling within the FTL of Gangamma Cheruvu/Thandrapadu Tank, subject to the outcome of the writ petition **[W.P. No.20277 of 2024]** pending before the Hon'ble High Court of Andhra Pradesh at Amaravathi.

38. The private respondents, who have raised the level in their respective lands as a result of which there is a reduction in the water storage capacity, are directed to restore the original level by removing the murram/spoil used for raising the level of the patta lands. However, the private respondents are at liberty to utilize the said lands for agricultural purposes when the lands are not inundated.

39. The District Collector, Kurnool District, shall ensure that the original storage capacity of Gangamma/B. Thandrapadu Cheruvu is fully restored.

40. **Accordingly, the Original Application [O.A. No.193 of 2021 (SZ)] is disposed of.**

❖

Tanaji Balasaheb Gambhire & Anr. vs. The Secretary, Environment Department, Government of Maharashtra & Ors.

(Original Application No.147/2016)

Decided on: 3rd September, 2025 (WZB)

CASE NOTE

In the present matter, the applicants approached the Tribunal alleging large-scale illegal construction by Respondent no. 4, M/s Arun Developers, at Survey Nos. 33/4 to 33/8, Thergaon, Pune, comprising multiple residential buildings, commercial structures, parking complexes and clubhouses. It was contended that the Project Proponent had executed construction exceeding 50,000 sq. m. without obtaining mandatory prior Environmental Clearance (EC) and Consent to Establish (CTE) under the EIA Notification, 2006. RTI replies from PCMC, MPCB and the Environment Department revealed that no EC or CTE had ever been granted for the development on Plots B and C. Therefore, the applicants sought demolition of the constructed structures and imposition of Environmental Damage Compensation (EDC) based on the "Polluter Pays" principle.

The issues before the Tribunal were to determine whether the Original Application was barred by limitation; whether the construction on Plots B and C formed one composite project or two separate projects for the purpose of assessing applicability of EC; and whether there had been violation of the EIA Notification, 2006, warranting computation and recovery of EDC. The determination of limitation and the characterization of the project were central to establishing jurisdiction and the extent of environmental non-compliance.

It was held that the challenge to construction on Plot B was time barred, as the cause of action arose in 2009 when development commenced. However, in respect of Plot C, the cause of action fell within limitation. On the basis of the sanctioned plans, amenities, approvals and timelines, the Tribunal concluded that Plots B and C constituted separate projects and were not a single integrated development. Consequently, while no claim survived against Plot B, the construction on Plot C was found to have breached the EIA Notification, 2006, as its total built-up area exceeded 20,000 sq. m. without obtaining prior EC. Applying the principles laid down by the Hon'ble Supreme Court in *M/s. Goel Ganga Developers India pvt. Ltd. v. Union of India &Ors.*, (2018) 18 SCC 257, the Tribunal computed project cost at Rs. 51 crores and determined 5% thereof as appropriate amount for EDC.

The Tribunal directed the Project Proponent to deposit Rs. 2.55 crores as EDC with the MPCB within two months, to be utilized for environmental improvement in the concerned area. All pending applications were disposed of with no order as to costs.

Tanaji Balasaheb Gambhire & Anr. vs. The Secretary, Environment Department, Government of Maharashtra & Ors.

COUNSEL FOR APPLICANT(S):
Applicant No.1 is present in person with
Mr. Vijay Mhaske, Advocate

COUNSEL FOR RESPONDENT(S):
Mr. Raghunath B. Mahabal, Advocate for R-1 and R-2
Mr. Manasi Joshi, Advocate for R-3 and R-4
Mr. Shivshankar Swaminathan, Advocate holding for
Mr. Shashikant Jagtap, Advocate for R-5 to R-8
Mr. Saket Mone, Advocate for R-12
Mr. Sangram Singh Bhosale, Advocate for R-13 to R-16 and R-18 to R-20
Mr. Aniruddha Kulkarni, Advocate for R-17

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

RESERVED ON: 17th June, 2025
PRONOUNCED ON: 03rd September, 2025

JUDGMENT

BY HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER

1. This Original Application has been filed with the prayers that a direction be issued to the respondents – Government Authorities to demolish the illegal structures at Survey Nos.33/4, 33/5, 33/6, 33/7 and 33/8 and their respective C.T.S. Nos.6298 to 6299 at village Thergaon, Taluka Mulashi, District Pune, constructed by respondent No.12 – M/s Arun Developers, which comprises eight residential buildings, two commercial buildings, two parking complexes on 10% open space and three club houses above parking complexes, which are alleged to have been constructed in violation of environmental laws and that Environmental Damage Compensation (EDC) be ordered to be levied on the principle of "Polluter Pays" from respondent No.12.

2. The facts of this case, in brief, are that according to the applicants, respondent No.12 – M/s Arun Developers – Project Proponent has illegally raised construction at the above site, which is mostly completed. The actual construction at the site without prior Environmental Clearance (EC) and Consent to Establish (CTE) is done to the extent of 50,041.19 sq.mtrs, which comprises 497 flats, 25 shops/offices. None of the buildings received completion

certificate/occupancy certificate till filing of complaint by the applicants on 02.04.2015 and until further enquiry with Pimpri-Chinchawad Municipal Corporation (PCMC). The entire development is under violation of Environment (Protection) Act, 1986. The buildings, D, E, F & G on Plot B have total number of 241 flats and 13 number of commercial units as per the PCMC sanctioned plan and the buildings H, I, J and K on Plot C have total number of 256 flats and 12 number of commercial units as per the PCMC sanctioned plan. The actual construction (Built-up Area) of the buildings, D, E, F, G, H, I, J and K, Commercial building and Club Houses is as per the following Table:

Sr. No.	**Description**	**Plot-B & C (Sq.Mtrs.)**
1	D & E – FSI	4594.58
2	F – FSI	3250.71
3	G – FSI	3058.49
4	PLOT-B COMM & RESI - FSI	352.07
5	H – FSI	3551.42
6	I-FSI	3478.62
7	J-FSI	4362.72
8	K-FSI	2726.07
9	PLOT-C COMM – FSI	228.32
10	BALCONY PROPOSED	3864.68
11	TERRACE	5023.46
12	PASSAGE	3460.43
13	STAIRCASE	1693.04
14	LIFT MC ROOM	209.81
15	LIFT AREA	56.86
16	PARKING	8995.05
17	REFUGEE AREA	447.12
18	CLUB HOUSE-1	131.42
19	CLUB HOUSE-2	44.75
20	SECURITY CABIN	20.00
21	OVERHEAD TANKS	400.00
22	UNDERGROUND TANKS	120.00
	TOTAL	50041.19

3. Further it is mentioned that respondent No.12 – Project Proponent has neither obtained prior EC for raising this construction, nor had moved any application for the same.

4. Further it is mentioned that respondent No.12 – Project Proponent applied for building permission from PCMC, which was granted on 30.03.2007 vide Commencement Certificate to develop plot `B'. There were six amendments/revisions in the building plans and layouts. From year 2007 to 2013, the construction is made under the name M/s Arun Developers through the PAH Mr. Ramsharan B. Gupta. The Project Proponent was granted amendment in

first sanction plan by PCMC vide Commencement Certificate dated 09.10.2009, which was for plot 'B' having residential buildings (D, E, F, E) and one commercial building.

5. It is further mentioned that the Project Proponent was allowed second revision/amendment in the sanction plan by PCMC vide Commencement Certificate dated 09.03.2010, which related to plot `B' having residential buildings D, E, F, E and one commercial building. The Project Proponent was allowed third amendment in sanction plan by PCMC vide Commencement Certificate dated 02.09.2011, which related to the same buildings as above. Further, the Project Proponent was allowed 4th amendment in the sanction plan by PCMC vide Commencement Certificate dated 03.03.2012.

6. With respect to plot `C', from the record it was revealed that there was no record available with PCMC with regard to the sanction of any construction on the said plot before 09.03.2010. The sanction given on 09.03.2010 was the original sanction for Plot `C' and the building permission on plot `C' was approved vide Commencement Certificate dated 09.03.2010, which related to four buildings, namely, H, I, J, K and one commercial building.

7. It is mentioned that thereafter, the Project Proponent was allowed to make first amendment in sanction plan by the PCMC vide Commencement Certificate dated 04.04.2012, which related to the above mentioned buildings. The Project Proponent was allowed second amendment to the sanction plan by the PCMC on 17.07.2013, relating to the said set of buildings as above. The said original sanction as well as revised ones are described in Table 4 as below:

Sr. No.	Plot	Sanction	Notice Date	Sanction Date	Sanction No.
1	B	Original		30.03.2007	BP/Thergaon/17/2007
2	B	Revised	01.07.2009	09.10.2009	BP/Thergaon/22/2009
3	B	Revised	17.12.2009	09.03.2010	BP/Thergaon/09/2010
4	B	Revised	29.05.2010	02.09.2011	BP/Thergaon/19/2011
5	B	Revised	22.12.2011	03.03.2012	BP/Layout/Thergaon/ 06/2012
6	C	Original	18.12.2009	09.03.2010	BP/Thergaon/08/2010
7	C	Revised	25.04.2011	04.04.2012	BP/Thergaon/16/2012
8	C	Revised	28.12.2012	17.07.2013	BP/Thergaon/22/2013

8. Respondent No. 5 – PCMC has issued Plinth Check Certificate for residential buildings D and E on plot `B' on 23.11.2009, Plinth Check Certificate for residential building `G' on 11.03.2010, Plinth Check Certificate for residential building `H' on plot `C'07.10.2011, Plinth Check Certificate for residential building `F' on plot `B' on 12.10.2011, Plinth Check Certificate for residential building `K' on plot `C' on 10.10.2012. No data is available for the Plinth Check Certificate for commercial building on Plot B and also for residential building J and commercial building on Plot C. The part of the buildings I and J are coming under the blue line of Pawana river regarding which various notices were issued by respondent No.5 –

PCMC to the Project Proponent, but the respondents did not bother. A summary of plinth check certificate in tabular form is given, which is as below:

Sr. No.	Plot	Building	Request Date	Certificate Date	Plinth Check No.
1	B	D	14.10.2009	23.11.2009	BP/Thergaon/135/2009
2		E	14.10.2009	23.11.2009	BP/Thergaon/135/2009
3		F	29.04.2010	12.10.2011	BP/Thergaon/67/2009
4		G		11.03.2010	BP/Thergaon/181/2009
5		Commercial			No Plinth check
6	C	H	03.08.2011	07.10.2011	BP/Thergaon/125/2011
7		I			No Plinth check
8		J			No Plinth check
9		K	05.09.2012	10.10.2012	BP/Thergaon/147/2012
10		Commercial			No Plinth check

9. Respondent No.5 – PCMC, despite there being a complaint on record about various violations, particularly there being no EC, issued completion/occupancy certificate. The Project Proponent has not left 10% open space, which was to be kept for a Recreational Ground to develop the garden and greenery in the project site as per the provisions of the DC Rules.

10. It is stated that the PCMC approved the proposal for four residential buildings and one commercial building having total built-up area of 13,348.42 sq.mtrs on plot B only with total residential tenements 140 and in the said sanction, no details for passage, staircase, lift area, covered parking area, refuge area were provided by project proponent intentionally. The breakup of the total built-up area of the buildings D, E, F and G is indicated in Table-6 as follows:

Sr. No.	Description	Plot B
1	D & E - FSI	3244.34
2	F- FSI	2500.24
3	G- FSI	2059.57
4	Plot – B COMM & RESL - FSI	70.97
5	BALCONY PROPOSED	1187.12
6	TERRACE	127.71
7	LEFT MC ROOM	95.76
8	PARKING	2918.71
	TOTAL	**13348.42**

The above breakup is provided by the applicants as per the authentic record provided by the PCMC.

11. The above plan was revised on 09.03.2010. The project proponent proposed eight multi-story residential buildings and two commercial buildings having built-up area of 28,174.21 sq. mtrs on plots B and C with total residential tenements of 323 (plot B – 165 and plot C – 158), but in this sanction also, there are no details for passage, staircase, lift area mentioned. It was essential for respondent No.12 – Project Proponent to obtain prior Environmental Clearance (EC) from SEIAA and Consent to Establish (CTE) from the MPCB because the proposed built-up area exceeded 20,000 sq. mtrs as the proposed built-up area was 28,174.21 sq. mtrs. But respondent No.12 – Project Proponent intentionally did not obtain the EC as well as CTE. The breakup of the total built-up area of the buildings D, E, F, G, H, I and J is given in Table-7 as below:

	Sanction No.	**09/2010,08/2010**	
	Date	**09.03.2010**	
Sr.	**Description**	**Plot -B**	**Plot -C**
1	D and E -FSI	3831.45	
2	F- FSI	2128.27	
3	G-FSI	2020.01	
4	PLOT -B COMM AND RESI. -FSI	70.97	
5	H-FSI		911.55
6	I- FSI		3479.29
7	J- FSI		4356.81
8	K- FSI		
9	Plot -COMM- FSI		88.56
10	BALCONY PROPOSED	1212.07	1332.76
11	TERRACE	1494.12	1604.58
12	PASSAGE		
13	STAIRCASE		
14	LEFT MC ROOM	97.06	74.50
15	LEFT AREA		
16	PARKING	2759.80	2484.57
17	REFUGEE AREA	97.9	129.94
18	CLUB HOUSE -1		
19	CLUB HOUSE-2		
	TOTAL	**13711.65**	**14462.56**

11. The Project Proponent obtained the revised sanction on 02.09.2011 from respondent No. 5 – PCMC, which approved the proposal for four residential buildings and one commercial building, having total built-up area of 20,942.76 sq.mtrs. on plot B only with total residential tenements of 234. It was mandatory, looking to the total built-up area for respondent No.12 – Project Proponent to obtain prior EC and CTE, as per EIA Notification, 2006. In Table-8, the breakup of total built-up area of buildings D, E, F and G has been given as below:

	Sanction No.	**19/2011**
	Date	**02.09.2011**
Sr.	**Description**	**Plot-B**
1	D & E - FSI	4613.53
2	F-FSI	3540.83
3	G-FSI	3058.49
4	Plot- B COMM & RESI. - FSI	70.97
5	BALCONY PROPOSED	1694.96
6	TERRACE	2123.50
7	PASSAGE	1405.51
8	STAIRCASE	536.03
9	LEFT MC ROOM	94.06
10	LEFT AREA	
11	PARKING	3601.31
12	REFUGEE AREA	202.57
13	CLUB HOUSE-1	
14	CLUB HOUSE-2	
	TOTAL	20941.76

It is alleged by the applicants that the above details have been provided from the authentic record provided by respondent No.5 – PCMC.

12. The sanction plan was got revised on 03.03.2012 and 04.04.2012, as per which the PCMC approved the proposal of eight residential buildings and two commercial buildings, having total built-up area of 49,452.46 sq.mtrs. on Plots B and C with total residential tenements 497 (Plot B -241 and Plot C -256). Hence, prior EC was mandatory, the area having been exceeded 20,000 sq.mtrs. But no such EC was intentionally obtained. The breakup of total built-up area of these buildings in tabular form in Table-9 is given as below, which is stated to have been prepared by the applicants from the authentic information provided by the PCMC.

	Sanction No	**06/2012,16/2012**		
	Date	**03.03.2012, 04.04.2012**		
Sr.	**Description**	**Plot-B**	**Plot-C**	**Total**
1	D&E- FSI	4594.58		
2	F-FSI	3250.71		
3	G-FSI	3058.49		
4	Plot B COMM& REAL- FSI	352.07		
5	H-FSI		3562.94	
6	I-FSI		3478.62	
7	J-FSI		4362.72	
8	K-FSI		2726.07	
9	Plot- C COMM- FSI		211.82	

10	BALCONY PROPOSED	1711.15	2142.01	
11	TERRACE	2080.40	2943.06	
12	PASSAGE	1358.87	2101.56	
13	STAIRCASE	820.57	851.76	
14	LEFT MC ROOM	97.06	112.75	
15	LEFT AREA	28.43		
16	PARKING	4215.69	4779.36	
17	REFUGEE AREA	202.57	233.03	
18	CLUB HOUSE-1	40.08	91.34	
19	CLUB HOUSE-2	44.75		
	Total	**21855.42**	**27597.04**	

13. The plan was got revised on 17.07.2013 thereby PCMC approved proposal of four residential buildings sand one commercial building, having total built-up area of 27,645.77 sq. mtrs on Plot C only with total residential tenements 256. Hence, prior EC was necessary. The breakup of these four residential buildings and one commercial building i.e. buildings H, I, J, K and Commercial building is given in tabular form in Table-10, which was prepared by the applicants on the basis of authentic record provided by respondent No.5 – PCMC, as below:

	Sanction No	**22/2013**
	Date	**17.07.2013**
Sr.	**Description**	**Plot C**
1	H-FSI	3551.42
2	I-FSI	3478.62
3	J-FSI	4362.72
4	K-FSI	2726.07
5	Plot- C COMM- FSI	228.32
6	BALCONY PROPOSED	2153.53
7	TERRACE	2943.06
8	PASSAGE	2101.56
9	STAIRCASE	872.47
10	LEFT MC ROOM	112.75
11	LEFT AREA	
12	PARKING	4779.36
13	REFUGEE AREA	244.55
14	CLUB HOUSE-1	91.34
15	CLUB HOUSE-2	
	Total	27645.77

14. It is further alleged that respondent No.12 – Project Proponent has made illegal construction in Blue Line and Red Line of river Pawana, which appears from show-cause

notice dated 21.02.2012 to have been issued. The PCMC received the flood line marking map from the Irrigation Department in February, 2009, which revealed that respondent No.5 – PCMC and respondent No.12 – Project Proponent were well aware that the part of plot C was coming under the river flow and blue line of Pawana river. Permission for the plot C is obtained for the first time on 09.03.2010. Therefore, it was within the knowledge of PCMC and Project Proponent that the part of building "I" is coming under the river flow and Red line, while buildings H, J and K are coming between Red Line and Blue Line, as stated in the site visit report of PCMC dated 12.01.2012. Even then the PCMC and Project Proponent have ignored this fact and the Project Proponent continued to raise construction in Blue Line of the river. The PCMC had issued a show-cause notice on 21.02.2012 under Section 51 of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act) for revocation of building permission issued on 09.10.2009 to the Project Proponent. A site visit was made by PCMC officer on 12.01.2012 and following observations were made:

> *"Plot-C, Building H (P+3) and Building 1 (P+12), J (P+12) are sanctioned and RCC work of all building is completed. Out of above buildings, Part of "I" Building is effecting and coming under River Flow & Blue line and remaining Part of Building I, H & J is coming between Blue Line and Red Line*."

It is stated that it is apparent that buildings on Plot B and Plot C are completely under red line, but even Then while granting revised permission, the PCMC overlooked this fact intentionally.

15. It is further stated that the Project Proponent has illegally used, for constructing parking, club house and swimming pool, the mandatory 10% open space for 3530 sq. mtrs. It is stated that as per 7/12 extract of land Survey No.33 Part 4 to 8, the area is 35,300 sq. mtrs, which is shown in tabular form in Table 13, as below:

Sr. No.	**Survey Number**	**Area in Sq. Mtrs.**
1	33/4	8600
2	33/5	7100
3	33/6	6000
4	33/7	9300
5	33/8	4300
Total Area In sq. Mtrs.		35300
24 Mtrs. Road		2868.37
Bus Terminus Reservation		8000
Area of Plot		24431.27

It was clarified that the area remaining for development comes to only 24,431.27 sq.mtrs. This area is subdivided in three plots, namely, plot Nos. A, B and C. The sub-division of the plots is given in Table 14 as below:

Sr	Plot Number	Min Area	Area Under Road	Area in Sq. Mtrs	Open Space	Net Area of Plot
1	Plot-A	6400.32	789.32	5611	561.10	5049.90
2	Plot-B	8960.00		8960	896.00	8064.00
3	Plot-C	11939.68	2079.41	9860.27	986.07	8874.20
4	RESERVATION	8000				
Gross Area In sq. Mtrs.		35300	2868.73	24431.27	2443.17	21988.10

16. The record would reveal that it was agreed between the parties that Plot "A" of 5611.00 sq. mtrs will be developed by M/s Khivansara Sawant Associates and Plot B and Plot C both will be developed by M/s Arun Developers. It is stated that it may also be observed from the consent agreements executed and registered between the Project Proponents and the original land owners for the compromise of the legal dispute and the agreements, which are registered at Serial Nos.3311/2009, 3312/2009 and 3313/2009 at Haveli-11 dated 29.04.2009. A list of development rights of the Project Proponents is given in tabular form in Table 15 as below:

Sr.	Survey No.	3311/09	3312/09	3313/09	Total
1	33/4	8600	5292.30	1415.60	6707.90
2	33/5	7100	4369.30	1134.70	5504.00
3	33/6	6000	3692.30	987.60	4679.90
4	33/7	9300	5723.10	1530.90	7254.00
5	33/8	4300	2646.20	707.80	3354.00
Total		35300	21723.20	5776.6	27499.80

17. Having cited the above table pertaining to the project area, it is submitted that area of

Sr.	Date	DCR No.	Area of DCR Utilised (Sq. Mtrs)	Remark
1	23/03/2011	552	344	Plot-B

the project is more than 20,000 sq.mtrs despite sub-division and illegal reduction of reservation area.

2	25/03/2011	560	2323	Plot-B
2	25/03/2011	576	560	Plot-B
3	20/04/2011	787	3400	Plot-C
	Total		6627	

18. The present Project Proponent has used the total Transfer of Development Rights (TDRs) of 6627 sq.mtrs in addition to the FSI of 16,938.20 sq.mtrs. Respondent No.5 – PCMC is allowing the Project Proponent to use TDR to make additional construction. The effect of

TDR loading is that the Project Proponent has made excess construction, which has right to affect additional population or occupancy and additional load on the public services generating the waste water, solid waste, excess energy consumption, temperature increase of the surrounding areas, etc. It has resulted in drastic increase in CO2 generation, causing environmental damage. The details of the TDR loading are given in Table-16 as below:

19. It is further stated that respondent No.12 – Project Proponent has started the illegal use without completion/occupancy certificate obtained from PCMC of 225 residential units out of 241 units from May, 2012 of buildings D, E, F & G and 210 residential units out of 256 units from March, 2014 of buildings H, I, J and K. This act of the Project Proponent has given rise to the overburden to the basic infrastructure of the PCMC for water supply, drainage line and solid waste disposal system affecting the quality of life of the people living in the same project as well as the people living in the vicinity. The Project Proponent has utilized the ground-water for construction purposes without permission from the Ground Water Department and till the date of filing of this Original Application, is using the water for construction without permission.

20. The details of the consumption of water is also calculated and the same is given from May, 2012 per person per day, the same is stated to 145 litres and number of occupant per unit is considered to be five (5) as per the DC Rules and the same has been calculated and given in Table-17 as below:

Unit	**Total Occupancy**	**Daily Water Consumption**	**Total Water Consumed Per day**	**Total water Consumed till today**
225	1125	145	163125	257737500
210	1050	145	152250	133980000

Thus, it is stated that the total consumption of water would come to 39,17,17,500 litres.

21. Similarly, regarding waste water generation, the calculation is made at the rate of per person, consumption of 45 litres per day, so it has been arrived at total waste water generated in the PCMC line, if the burden on PCMC drainage system, would be 12,15,67,500 litres.

22. It is further stated that the solid waste generated is also calculated at the rate of 0.6 kg per day and the same is arrived at 16,20,900 kgs. Further it is mentioned that the DG sets are being used by the Project Proponent without any permission, which is creating air pollution.

23. Having made the above pleadings and having relied on several case-laws, which are mentioned in these pleadings, the above prayers have been made by the applicants in this Original Application.

24. The respondents were served and thereafter their responses have been submitted from their respective sides.

25. From the side of respondent No.12 – Project Proponent, vide their reply dated 23.11.2016, submissions have been made that the present application is time-barred because as per Section 14 sub-clause (3) of the National Green Tribunal Act, 2010 (NGT Act, 2010), limitation to file any application is six months from the date of cause of action first arose and in the present case, the first cause of action arose in October, 2009 because actual development work of plot B started in the month of October, 2009 and that of plot C started in March, 2010, when the commencement certificates were issued by the PCMC. The project is completed or is on the verge of completion on the date of filing of this application. Thereafter, the Plinth Checking Certificates of buildings D and E were issued on 23.11.2009 and for wing F, it was issued on 12.10.2011, for wing G, it was issued on 11.03.2010. Thus, in the present case, development of plot B firstly commenced in the month of October, 2009. Therefore, the first cause of action arose in the month of October, 2009 for the reliefs being sought while these reliefs ought to have been sought within six months from October, 2009, which are claimed in para 44 (A), (B), (C), (D) and (E). So far as the reliefs claimed in para 45 (B), (D), (E), (F), (G) and (H) of the application are concerned, the application ought to have been moved within five years from the date of first cause of action i.e. from October, 2009 as per Section 15 (3) of the NGT Act, 2010. Moreover, the applicants are not entitled to move this application for damages because they are not the victims nor are they concerned with the development of Plots B and C.

26. It is stated that for building “H”, the Plinth Check Certificate was issued on 07.10.2011, for buildings I and J, the same was issued on 07.10.2011, for building K, it was issued on 10.10.2012. In the case in hand, the development of plot “C” was first commenced in March, 2010 after receipt of the Commencement Certificate. Therefore, the first cause of action arose in March, 2010 in respect of the reliefs, claimed in para 44 (A), (B), (C), (D) and (E) and in para 45 (B), (D), (E), (F), (G) and (H) of the application.

27. It is further stated that this Original Application is not maintainable because the Sub-Regional Officer of Maharashtra Pollution Control Board (MPCB) had a surprise visit to the project on 15.11.2011 and asked for clarification from the answering respondent regarding development of Plots B and C, and it was responded to by the answering respondent by saying that four buildings are being developed on plot B, admeasuring about 8960 sq.mtrs as per the Commencement Certificate issued by PCMC on 02.09.2011 and further, it was informed that plot B was a separate plot admeasuring 9860.27 sq.mtrs. The development of plot B commenced as per Commencement Certificate dated 09.03.2010. It was further

clarified by the answering respondent that both the plots were different with separate sanctioned plans and therefore, separate ECs and clearances from MPCB under EIA Notification, 2006 were not required. There was no query made by the MPCB, but they were satisfied with the explanation given by the answering respondent and hence, there was no necessity to take CTO from MPCB, nor there was any need to obtain prior EC.

28. It is further stated by the answering respondent that the applicants have malafidely interpreted that EIA Notification, 2006 is applicable to the projects developed by the answering respondent on Plot nos. B and C. The answering respondent has developed separate project on Plot B, admeasuring about 8960 sq.mtrs and plot C, admeasuring 11,939.68 sq.mtrs. Even Fire NOCs for buildings constructed on plots B and C have been obtained separately.

29. In para 4 of the affidavit, the circumstances and litigation between the parties have been indicated, which led to a decision on the part of the answering respondent to decide to divide the area into two separate plots i.e. Plot B and Plot C. The answering respondent had decided to develop half area for which title is clear which is shown as plot No. B and to postpone development of plot C. Dispute between the parties was got settled in the month of December, 2009 and thereafter, the process of finalizing the documents was initiated and several litigations took place in the meantime, which are referred to in this affidavit. Further it is stated that because of the disputes, which are cited in para 4, point Nos.4. to 4.4 of this affidavit. The answering respondent was required to submit sub-division plan to the original layouts dated 30.03.2007 of the land bearing Survey No.33 Hissa Nos.4, 5, 6 7 and 8 of Thergaon, admeasuring about 35,300 sq.mtrs. The answering respondent submitted sub-division plan for the said land and PCMC sanctioned the layout of sub-division on 09.10.2009, as per which plot A, admeasuring about 6400.32 sq.mtrs, plot B, admeasuring 8960.00 sq.mtrs, plot C, admeasuring about 11,939.68 sq.mtrs and reservation plot admeasuring about 8000 sq.mtrs. Therefore, it is clear that Plots A, B and C and reservation plot are separate and distinct plots. Plot A is with Khiwansara & Lunawat and the answering respondent has nothing to do with that plot. None of the above plots in the said layouts are beyond 20,000 sq.mtrs. As per applicable law when the commencement of Plots B and C happened, the built-up area of both plots B and C was not more than 20,000 sq.mtrs. Therefore, no EC was required for the development, which is being carried out on the said plots B and C by the answering respondent. It has developed these two plots on the aforesaid layout. It is further stated that on plot No. B, there are four wings consisting of residential units and one commercial building. The answering respondent has formed separate society for each wing and for plot No. B, following four separate Cooperative Housing Societies have been registered:

Name of Society	Registration no.	Date of registration
Ganga Aahiyana "D" Co-operative Housing Society Ltd.	PNA/PNA/(3)/HSG/TC/15081/2013	31/05/2013

Ganga Aahiyana "E" Co-operative Housing Society Ltd.	PNA/PNA/(3)/HSG/TC/15082/2013	31/05/2013
Ganga Aahiyana "F" Co-operative Housing Society Ltd.	PNA/PNA/(3)/HSG/TC/15147/2013	13/09/2013
Ganga Aahiyana "G" Co-operative Housing Society Ltd.	PNA/PNA/(3)/HSG/TC/15148/2013	13/09/2013

30. It is further mentioned by the answering respondent that on plot C, there are four wings consisting of residential units and one commercial building. The answering respondent has formed separate society for each wing for plot C, following four separate Cooperative Housing Societies have been registered:

Name of Society	Registration no.	Date Of registration
Ganga Aahiyana "H" Co-operative Housing Society Ltd.	PNA/PNA/(3)/HSG/TC/16402/2014	27/11/2014
Ganga Aahiyana "I" Co-operative Housing Society Ltd.	PNA/PNA/(3)/HSG/TC/16401/2014	27/11/2014
Ganga Aahiyana "J" Co-operative Housing Society Ltd.	PNA/PNA/(3)/HSG/TC/16403/2014	27/11/2014
Ganga Aahiyana "K" Co-operative Housing Society Ltd.	PNA/PNA/(3)/HSG/TC/16974/2014	02/032016

31. The details of development of plot B, as are given by the answering respondent in their affidavit, are as follows:

> *i.Development of the Plot B adm. about 8980 sq.mtrs was commenced as per revised sanctioned plan dt.9/10/2009 bearing commencement certificate no.B.P.Thergaon/22/2009. As per the said plan permission was granted for one commercial building, and 1 building consisting of 4 wings viz. D, E, F, & G. Total permissible available FSI was 1 and total Built-up area consumed is 7880.97 sq.mtrs including excess balcony area though permissible FSI was 8064.00 sq.mtrs.*
>
> *ii.The said building plan was revised on 9/3/2010 as per commencement certificate no.Thergaon/09/2010 and as per commencement certificate no.Thergaon/19/2011 dt. 2/9/2011. As per the said sanctioned plan total permissible FSI was 1 and permissible TDR was 3225.60 sq.mtrs, and proposed built-up area was 11289.60 sq.mtrs.*
>
> *iii. The said building plan was further revised on 3/3/2012 as per commencement certificate no.Thergaon/6/2012. As per the said sanctioned plan total permissible floor area including TDR was*

shown as 11289.50 sq.mtrs and total FSI consumed was shown as 11278.62 sq.mtrs. As per the said revised sanction plan dt.3/3/2012, Built-up area of Plot B is 11255.85 sq.mtrs + excess balcony 22.77 sq.mtrs = Total built-up area 11278.62 sq.mtrs and two Club houses adm about 84.83 Sq.mtrs.

iv. This respondent submits that as per the practise in PCMC the building plans were initially submitted for the net plot and area of road widening is to be added by revision plan only after the road widening area is handed over to PCMC. Therefore, in initial plan of Plot B area of net plot is shown and in subsequent revision plan area under road widening is shown. In case of Plot B TDR is loaded, and no FSI area under road widening is taken. Similarly, so far as Plot C is concerned both TDR and road FSI is used. This respondent submits, that no TDR has been loaded on I wing."

32. With respect to plot "C", it is submitted by the answering respondent as follows:

"i. Development of the Plot C adm. about 9860.27 Sq. Mtrs was commenced as per revised sanctioned plan dt.9/3/2010 bearing commencement certificate no. B.P. Thergaon/8/2010 on Plot C. As per the said sanctioned plan permission to construct 1 residential building with 4 wings i.e H, I, J, & K and one commercial building is given. Total FSI permissible was 8874.24 sq.mtrs and FSI consumed was 8843.54 sq. mtrs including excess balcony area of 7.33 sq.mtrs.

ii. The said building plan was further revised on 4/4/2012 as per revised commencement certificate no. B.P. Thergaon/16/2012 including TDR total permissible area was shown as 14349.99 sq. mtrs and proposed balcony area shown as 2142.01 sq.mtrs and total built-up area was shown as 14342.17 sq. rntrs.

iii. The said building plan was further revised on 17/7/2013 as per revised commencement certificate no. B.P. Thergaon/22/2013 and thereafter as per commencement certificate B.P. Thergaon/18/2016 dt.30/4/2016. As per the said plan total permissible area 14517.99 sq. mtrs including TDR and area under road widening."

33. Further it is submitted that the City Engineer of PCMC has issued show-cause notice dated 21.02.2012 to the answering respondent stating therein that as per the plans of Irrigation Department, part of plot No. C, fell within the Blue line area and as per the decision of the State of Maharashtra dated 21.01.1989, no construction was permitted in Blue line area and therefore, why the permission should not be cancelled. The response was submitted by the answering respondent to the said notice and after hearing the answering respondent, the City Engineer of PCMC has passed an order with directions that TDR should not be transferred on building affected by blue flood line and parking level of the building should be kept above blue line and accordingly, building permission may be taken. Further it is mentioned that the

construction of the plinth was completed considering the Principle of Committed Development, the permission to construct I Wing was given because building plans for I wing were already sanctioned.

34. It is further submitted that plot "C" has separate identity and has already been completed. The Occupancy Certificate has already been issued by the PCMC on 30.04.2016, in which following details have been given:

a) H wing having 12 floors and consisting of 71 residential units with total built up area of 3583.62 sq.mtrs.
b) I wing having 12 floors and consisting of 69 residential units with total built up area of 3478.62 sq.mtrs.
c) J wing having 12 floors and consisting of 69 residential units with total built up area of 4401.60 sq.mtrs.
d) K wing having 12 floors and consisting of 47 residential units with total built up area of 2748.34 sq.mtrs.
e) Commercial building having Talmajla and consisting of 1 commercial unit with total built up area of 228.32 sq.mtrs.
f) Club house with total built up area of 91.34 sq.mtrs having only ground floor.

Thus, built-up area of H, I, J, & K buildings having 256 residential flats is 1424.62 sq.mtrs and commercial area 228.32 sq.mtrs and dub house area 91.34 sq.mtrs.

35. In rest of the paragraphs of this affidavit, Para wise replies of the averments of the applicants are given, which contains nothing but denial of the allegations made against the answering respondents and defence of the answering respondent No.12 has been reiterated therein. So, we do not find it essential to reproduce those paragraphs herein again.

36. The response of respondent Nos.5 to 8 - PCMC, through their affidavit dated 06.12.2016, is filed, wherein it is submitted that the applicants were shown entire record by the answering respondents on 21.01.2016 pursuant to the application of the applicants under RTI Act dated 08.01.2016 and that no information has been suppressed by it. The applicants had requested to stop the said construction of the project and demolish the construction, which had already been completed and occupied by the respective unit holders/purchasers since 2014. The answering respondents have sanctioned the building plan of the property bearing Survey No.33/4 to 33/8 (Part) of village Mauje Thergaon, Taluka Haveli, District Pune, having total area of the plot of 35,300 sq.mtrs; the area covered under Road Widening of 2868.73 sq.mtrs; area of reservation of 8000 sq.mtrs and remaining area of plot as 24,431.27 sq.mtrs. Further, the area of Plot A is stated as 5611.00 sq.mtrs, open area of the plot as 561.10 sq.mtrs and balance area of the plot as 5049.90 sq.mtrs. As regards plot No.B, its plot area is shown as 8960.00 sq.mtr, open area of the plot as 896.00 sq.mtr and balance area of the plot is stated as 8064.00 sq.mtr. The area of Plot No.C is shown as 11,939.68 sq.mtrs, open area of the plot as 986.00 sq.mtrs and balance area of the plot as 8874.24 sq.mtrs.

37. In view of above sub-division of the plot, sub-divisions as plot Nos. A, B and C are in existence, sanctioned layout is annexed as Annexure-A. It is submitted by the answering

respondents that the applicants are falsely representing and referring the entire construction on three plots and thereby pointing out the alleged violations of the environment. The applicants have raised objections on the construction on plots B and C; however, there are four buildings on each plot No. B and C, respectively. There are two independent plots. Therefore, it is neither legal nor proper to consider the entire construction jointly. The applicants are falsely representing the picture of the project with a view to point out the alleged environment violations. The construction of the project is not covered under EIA Notification, 2006. The construction on plot No. B and Plot No. C was already completed on 30.03.2012 and September, 2013 and October, 2015, respectively. It is falsely stated by the applicants that none of the buildings have received completion/occupancy till filing of the complaint dated 02.04.2015. The Occupancy Certificates were already issued to the buildings on Plot No. B on 30.03.2012 and occupancy certificate on 30.04.2016 to buildings on Plot C, copies of which are annexed as Annexure-B and Annexure-C, respectively. The answering respondents have sanctioned building plans of buildings D, E, F & G on plot No. B, having total number of 241 flats and 12 nos. of commercial units. The answering respondents have sanctioned the building plans of buildings H, I, J and K on plot No. C, having total number of 256 flats and 12 nos. of commercial units. According to the answering respondents, the applicants have dishonestly calculated entire slab area of two independent plots with a view to raise alleged violation of environment. The definition of Built-Up Area as per Development Control Rules "*Ground area covered immediately above the plinth level by the building or external area of any upper floor, whichever is more, except (a) to (r) as listed below*:

a) A basement or stilt floor space constructed under a building and used as parking space.

b) A basement constructed under a building and used as a residential common interest or flat buyers with no dividing wall in building having tenements only.

c) A basement structure under building and used as locker, safe deposit vaults a strong room of the bank situated in the same building with special permission in writing by the Municipal Commissioner.

d) A basement constructed under a building and used for air conditioning plant, meter room electric substation (use accessory to the principal use)

e) Areas converted by stair case rooms for stair flights of width 0. 75mm.And above in case of row housing, penthouses and duplexes 1.2 m and above in case of residential 1.5 m and above in case of commercial/industrial/institutional and special building subject to premium be decided by the Municipal Commissioner. However, no premium shall be charged for Government, Semi-Government offices.

f) Lift -rooms, lift -wells or Architectural Features, Chimneys and elevated tanks of permissible area of fire escape stairways and lifts with cantilevered fire escape passages according to the Chief Fire Officer's requirements.

g) In every residential building constructed or proposed to be constructed for the use of a co-operative housing society or an apartment owners association, an office room will be permitted on the ground floor 1. In an already developed property, it may be on an upper floor. The area of the room shall be limited to 12 Sq.mtr. If the number of tenements in the building does not exceed 20 and 20 Sq.mtr. otherwise.

h) *Area of sanitary blocks consisting of bathroom and water closet for each wing of each floor of a building of prescribed dimensions deriving access from common passage as required for the use of domestic servants engaged in the premises.*

i) *Area covered by -i) Lofts, ii) Meter Rooms, iii) Porches, iv) Canopies, v) Air - conditioning Plant Rooms, vi) Electric Substations vii) Service Floors of height non-exceeding 1.5mtr with the special permissions of the Commissioner.*

j) *Area of structures for an effluent treatment plan as required to provided by industries as per requirements of the Maharashtra Pollution Control Board or other relevant authority.*

k) *Areas covered by service ducts, pump rooms, electric, sub-stations, niches up to 1mtrs. depth below window sill passages and additional amenity of lift and or staircase beyond those required under the regulations.*

l) *Area of one milk booth under the public distribution systems with the permission of the Commissioner.*

m) *Rookery well and well structures plant nursery, water pool, swimming pool (if uncovered) platform round a tree trunk foundation bench, cohabiters with open top unclosed sides by wall, ramps, compound wall, gate, side swing overhead water tanks on the top of the building provided that the distance between terrace and soffit of tank is less than 1.50meters.*

n) *Area of one telephone booth and one telephone exchange (P B X) per building with the permission of the Commissioner.*

o) *Area of one room for installation of telephone concentrators as per requirements of Mahanagar Telephone Nigam Limited but not exceeding 20 Sq. mtrs. per building with the permission of the Commissioner.*

p) *Area of separate letter box on the ground floor of residential and commercial building with 5 or more storeys to satisfaction of Commissioner.*

q) *Area of a covered passages of clear width not more than 1.52 mtr leading from a lift exit at a terrace level to the existing stair case so as to enable descent to the lower floors in a building to reach tenements not having direct access to a new lift in building without an existing lift.*

r) *Areas of one fitness centre for a Co-op. Housing Society or Apartment owners Association as provided in regulation on M.1.(17).*

38. It is further stated by the answering respondent that Proforma-I of Development Control Rules speaks how to measure various areas as described in the Schedule. As per serial nos.6 and 13 mentioned in the Schedule, it is stated that Built-Up Area = Floor Area (built up area and floor area is equal) and therefore, the then Competent Authority had sanctioned the building permission by taking into consideration the same area. The answering respondent has further stated that Built-Up Area of Plot B is admeasuring 11,289.60 sq.mtrs and built-up area of plot C is admeasuring 14,349.99 sq.mtrs and therefore, there was no need of prior EC.

39. It is further stated by the answering respondent that in the year 2011, an amendment has been made in Built-Up Area in the following manner:

> "*The Built-Up Area or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects*."

A copy of the same is annexed as Annexure-F. It is further stated by the answering respondent that in the said definition, there is no clear explanation. However, in earlier definition, basement and other services were covered in Built-Up Area. There is neither clear explanation of service areas, nor defined in the Development Control Rules. There is no service floor in the said project. As per the Notification dated 30.01.2014, issued by the Environment Department, it specifically states that where the EC is applicable and as per the said Notification, the same is applicable to an area of 20,000 sq.mtr or more (including FSI and Non-FSI). A copy of the said Notification is annexed as Annexure-G. Further it is mentioned that the applicants have wrongly calculated construction jointly (FSI and Non-FSI) as per Notification of 2014 and wrongly claimed that prior EC is required. However, the permission of the construction and the construction on the building had already completed prior to 2014. Therefore, the said Rule is not applicable.

40. Further it is stated that the answering respondents inspected the plinth of commercial building on Plot C of Conveyance Shoppe on 21.09.2013 and buildings I and J on plot C on 07.10.2011. A copy of the same is annexed as Annexure-H. It is stated that only small portion of building I is covered under blue flood line area. The answering respondents have already issued Completion Certificate to the buildings on plot B and plot C and the developer had kept open space as per the Rule. An area admeasuring 152.58 sq.mtr out of total area admeasuring 843.54 sq.mtr of plot C is affected by blue flood line. A copy of the sheet showing drawing is annexed as Annexure-I. The answering respondent issued notice and after hearing, permission has been granted by imposing certain conditions, because, according to them, red line is out of demarcation and therefore, not considered. Except the area under the Blue line, remaining plot is in Red and blue lines are buildable area imposing some conditions and there is marking of Blue line on measurement map. The part of building "I" came within Blue line area and other buildings are within blue and Red lines. The answering respondent have properly calculated the area of road widening. Regarding N.A. permissions, it is stated that there is no violation.

41. Further it is mentioned that the area of reservation as per DP is kept and there is no change in it. TDR is permissible as per Sanctioned Development Control Rules and Occupancy Certificates of the buildings were already issued. Thus, those who are using the premises prior to getting occupancy certificate, have been charged compounding fee as per the existing Rules. The developer has constructed grey water recycle plant and therefore, there is less quantity of waste water.

42. With above pleadings, it is prayed by the answering respondent Nos.5 to 8 that the Original Application be dismissed.

43. From the side of respondent No. 1 – Environment Department and respondent No.2 – SEIAA, Maharashtra, the stand taken from their side, through their affidavit-in-reply dated 04.01.2017, is that as per EIA Notification, 1994, expansion or modernization of any activity (if pollution load is to exceed the existing one) or a new project listed in Schedule-I requires

Environmental Clearance (EC) by the Central Government in accordance with the procedure laid down in EIA Notification, 1994. As per the amended EIA Notification, 2004, EC is required for project with population above 1000 persons, or sewage generated more than 50 m^3/day, or project cost above Rs.50 crores. A copy of the EIA Notification, 2004 is annexed as Annexure-A. The Central Government superseding the previous EIA Notification, has notified EIA Notification dated 14.09.2006, as per which, EC is required for projects having built-up area above 20,000 sq.mtrs and projects above 1,50,000 sq.mtr built-up area would be requiring Environment Impact Assessment and EC both. In the case in hand, as per the record available with SEAC and SEIAA, there no application from respondent No.12 for obtaining prior EC for their project in question. The Member Secretary, MPCB, vide their letter dated 29.11.2016, submitted the site visit report done by officials of the MPCB of the site in question. Copy of the said letter dated 29.11.2016 is annexed as Annexure-C. As per the report, it is prima facie observed that Project Proponent carried out construction of total built-up area exceeding 20,000 sq.mtrs at site without obtaining the prior EC.

44. It is further stated that the Environment Department issued a show-cause notice dated 02.01.2017 to the Project Proponent under Section 5 of the Environment (Protection) Act, 1986 read with Rule 4 of the Environment (Protection) Rules, 1986 and EIA Notification, 2006, which is annexed as Annexure-D. Thereafter, it is submitted that if the allegations made against the Project Proponent are found to be correct, it would amount to violation under Environment (Protection) Act, 1986 read with EIA Notification, 2006. The answering respondents support the grant of interim relief as prayed for, to the extent of stopping the work on site, till the initial scrutiny, which has been initiated by the Environment Department, is over. The answering respondent have already issued the show-cause notice under Section 5 of the Environment (Protection) Act, 1986 and liberty may be granted to them to initiate action against respondent No.12 in accordance with law.

45. A perusal of this affidavit filed by respondent Nos.1 and 2 would indicate that the answering respondents have held respondent No.12 – Project Proponent to be guilty for not obtaining prior EC because during the site inspection, they had found that the total built-up area constructed by the Project Proponent at the site in question to be exceeding 20,000 sq.mtrs. although details of that construction over 20,000 sq.mtrs. have not been given as to whether this area has been said to be combined area of the construction raised at plot “B” and plot “C” or whether the construction made on plot “B”, which has exceeded 20,000 sq.mtrs.

46. While considering the matter, we have to decide the issue, in addition to other issues, as to whether construction on these two plots B and C should be treated to be two different projects as stated by respondent No.5 – PCMC or should it be taken to be one combined project as is being claimed by the applicants.

47. From the side of respondent Nos.3 and 4 – MPCB, they have filed affidavit dated 01.12.2015, wherein it is submitted that the Board had carried out visit of the site in question on 07.11.2016 and found that respondent No.12 had completed construction of Ganga Ashiyana Phase-I and Phase-II at survey number in question, total built-up area of which is more than 20,000 sq.mtrs and that respondent No.12 has not obtained EC therefor and yet, it has completed the construction.

48. This reply of MPCB does not reflect as to whether the MPCB is treating the construction at plot B and plot C to be single project or two separate projects and whether this area of more than 20,000 sq.mtrs is taken to be of construction made on both plots or the construction of each plot was found to be exceeding 20,000 sq.mtrs. We have already stated that an issue in this regard will be decided while considering the matter.

49. According to us, in case they are treated to be two different projects, then we will have to see the total built-up area of construction of each plot separately and if on any of the plots, the area exceeds 20,000 sq.mtrs of construction, that would require prior EC and in case the same is not obtained by the Project Proponent – respondent No.12, the Project Proponent would be treated to have caused violation of environmental law and accordingly, the Environmental Damage Compensation (EDC) would have to be calculated and levied upon respondent No.12 – Project Proponent. In case, we come to the conclusion that the construction on both plots should be treated to be one project, we will have to see combined area of both plots and if we find that the total built-up area of construction exceeds 20,000 sq.mtrs, in that case also, it will be treated that prior EC was required and if the same was not obtained, the Project Proponent would be held to be in default of this provision.

50. From the side of respondent No.10 – Irrigation Department, reply dated 28.12.2016 has been filed, wherein we do not find anything of substance for arriving at a conclusion to be drawn in this case.

51. From the side of the applicants, rejoinder-affidavit dated 13.02.2017 has been filed to the affidavit-in-reply filed by respondent No.12 – Project Proponent dated 23.11.2016, reply respondent Nos.5 to 8 (PCMC) and that of respondent Nos.3 and 4, wherein we find the same facts have been reiterated, which we have considered above.

52. Further rejoinder dated 07.04.2017 has been filed by the applicants to the affidavit of respondent No.12, reply of respondent Nos.5 to 8 and that of respondent Nos.3 to 4. After having gone through the same, we find that the same facts, which we have already considered in this judgment above, have been reiterated and nothing of any substance has been found therein.

53. Further affidavit dated 14.02.2017 has been filed on behalf of the applicants on computation of carbon footprint and expansion, explanation of prayers sought. We have gone through this affidavit and we do not find it appropriate to record the facts therefrom in this judgment for disposal of present dispute.

54. Additional affidavit-in-reply dated 07.07.2017 has been filed by respondent Nos.5 to 8 – PCMC, which we have gone through and nothing of any substance is found therein to decide the dispute involved in the present case.

55. Affidavit-in-reply dated 21.09.2017 has been filed by respondent No.12 to the additional affidavit dated 07.04.2017 filed by the applicants, wherein we find that submissions made by the applicants have been rebutted by the answering respondents.

56. Affidavit-in-reply dated 14.09.2018 has been filed by respondent No.10 to the additional affidavit dated 07.04.2017 filed by the applicants, nothing of any substance is found therein by us.

57. Reply dated 20.02.2024 has been filed on behalf of respondent Nos.13 to 16 and respondent Nos.18 to 20, wherein it is recorded that the construction of the buildings of respondent Nos.13 to 20 was carried out in accordance with law and respondent No.12 – Project Proponent has taken permission from time to time. The answering respondents have raised preliminary objection to the maintainability of the present application. Locus standi of the applicants has also been questioned in this reply.

58. Reply-affidavit has been filed by the applicants to I.A. No.221/2023 filed by respondent No.12 – Project Proponent and rejoinder to the reply of respondent Nos.13 to 16 and respondent Nos.18 to 20 – Cooperative Housing Societies, has also been filed, in which the same facts have been reiterated, which have been stated by the applicants in the Original Application. Hence, we need not reproduce the same here.

59. Respondent No.17 – Ganga Ashiyana "H" Cooperative Housing Society has filed reply-affidavit dated 21.05.2024, in which it is recorded that respondent No.12 has divided plots B and C with tin sheets giving access to Plot C – occupants, to the amenities in Plot B. Members of all the societies in Plot B and C were frustrated with a division between the two plots and by common understanding between them, they removed all the tin sheets. However, when the present case was initiated against respondent No.12, he put a common concrete wall between both the plots and now members of the answering respondents as well as Society Building No. I, J, K in plot C are deprived of direct unrestricted access to all the common amenities located in plot B as well as 55 parking slots. It is further stated by the answering respondents that the Societies I, J and K filed a complaint against respondent No.12 and Societies D, E, F and G with the Cooperative Societies Registrar. Similarly, they have filed a Civil Suit bearing Special Civil Suit No.1927 of 2022 in the Court of Civil Judge, Senior Division, Pune. They have even filed Writ Petition No.6224/2024 before the Hon'ble High Court of Bombay for modification of the deemed conveyance orders passed by the Registrar, Cooperative Societies. The said Societies have not done any construction activity, hence, they cannot be held responsible, nor should they suffer for whatever environmental non-compliances respondent No.12 has committed. If any demolition order is passed by this Tribunal, they will be rendered homeless and respondent No.12 will be utterly responsible for such loss and that he should provide alternate accommodation with full ownership rights to the members of the answering respondents.

60. We have considered the pleadings of the applicants as well as that of respective parties, perused the record and after having heard the arguments of the learned counsel for the contesting parties, following issues have been framed by us for being decided in this Original Application:

(I) Whether this Original Application is barred by limitation?

(II) Whether two plots B and C and the construction thereon should be treated to be two different projects as stated by respondent No.5 – PCMC or should it be treated to be one combined project as is being claimed by the applicants?

(III) Whether respondent No.12 – Project Proponent has violated the requirements of EIA Notification, 2006? and if Yes, what is the amount of Environmental Damage Compensation (EDC) to be calculated and levied from respondent No.12 – Project Proponent?

FINDINGS:

Issue No. (I) :

61. According to this issue, we have to decide as to whether this Original Application is barred by limitation.

62. Record reveals that the present Original Application has been filed on 16.09.2016, alleging in paragraph No.42 of the application with regard to limitation that the applicants had sent first notice dated 02.04.2016 to the respondents with available information for stopping the said violations and strict action thereon, but the violations continued till the filing of the application. Therefore, cause of action to file the present application arose on 19.05.2019 when the applicants got sufficient information and knowledge of the gross violation of various environmental laws.

63. The application, by which the applicants had sought information from respondent No. 5 – PCMC, was moved on 08.01.2016, pursuant to which, they were provided information on 27.01.2016 regarding details of the construction area, illegality in the project and plans. Thereafter, the applicant No.1, by an application dated 19.01.2016, sought information from the MPCB, which was replied to vide letter dated 04.02.2016, clearly stating that there is no data available for prior EC and no Consent to Establish was granted to respondent No.12 for the said project. Thereafter, applicant No.1, through application dated 31.01.2016, sought information from the Environment Department and it was responded to by letter dated 15.04.2016, stating that there is no prior EC granted and even no application for grant of EC was moved for the said project. So, based on the available information, the applicants had moved a complaint on 02.04.2016 to the PCMC – respondent No.5, requesting to stop the construction and demolish the illegal construction. The PCMC had responded to the complaint of the applicants vide their reply dated 27.01.2016, the reply of MPCB dated 19.02.2016 and reply of Environment Department dated 15.04.2016 and thus, the applicants allege that the cause of action arose on 19.05.2016.

64. As against this, from the side of respondent No.12 – Project Proponent, it is submitted that the applicants have challenged the development of Plot No. B and C being done by respondent No.12 in violation of EIA Notification, 2006. The Project Proponent – Respondent No.12 had commenced the development of Plot No. B as per Commencement Certificate dated 09.10.2009 in the month of October, 2009 itself. Therefore, the first cause of action so far as development of Plot No. B is concerned, arose in 2009 itself. Thereafter, on the basis of Commencement Certificate dated 09.03.2010 started construction in the month of

March, 2011 itself. Therefore, first cause of action so far as plot No. C is concerned, arose in March, 2011. Thus, in terms of the provisions of Section 14 (C) of the National Green Tribunal Act, 2010, the limitation to file Original Application is six months from the cause of action first arose. The present Original Application is highly time barred. From the record, we find at page 94 of the paper-book, Occupancy Certificate, issued by respondent No.5 – PCMC, which has been filed by the applicants, which is with respect to the completion of construction on plot No. B, whereupon buildings D, E, F, G and commercial wing "C" are shown to have been completed by 30.03.2012. So with regard to the construction regarding these buildings on this plot, the cause of action could have been brought within six months, which obviously has already expired and thereafter only, this matter has been filed by the applicants.

65. We find on record Completion Certificate with respect to the construction made on plot "C" pertaining to the buildings H, I, J and K and one commercial building to have been issued on 30.04.2016, which is also corroborated by PCMC, which is found to have been annexed at page 56 of Misc. Application No.410 of 2016 in O.A. No.147 of 2016, which also stands corroborated by the summary provided by the applicants across the bar to us, which is taken on record and marked "X" for the purpose of identification.

66. In view of above, if we consider these two plots B and C to be separate projects, then we will have to come to the conclusion that the issue with respect to illegal construction on plot No. B could not have been raised, being time-barred, but as regards the construction raised on plot No. C, it could have been raised because the present application has been filed within six months from the expiry of the date of limitation. However, in case we consider the project to be a joint one, which means the construction on both plot No. B and C is treated to be one single project, in that case, the cause of action would be reckoned from 30.04.2016 and in these circumstances, the whole project would be treated barred by limitation. This issue is decided accordingly.

Issue No. (II) :

67. As per this issue, we have to decide as to whether two plots B and C and the construction thereon should be treated to be two different projects as stated by respondent No.5 – PCMC or should it be treated to be one combined project as is being claimed by the applicants. In this regard, we do not have an established yardstick or norms which we can apply and arrive on a conclusion, but in our opinion, it would be appropriate for us to see on the basis of documentary evidence produced by the parties on record, as to whether construction on these two plots was got sanctioned separately or was there combined sanction. Further, whether the amenities provided for the residents residing in the buildings constructed on these two plots would be enjoyed jointly, such as car parking, club-house and all other amenities, or were they to be enjoyed separately.

68. We find that the approval to the construction to be raised on plot No. B, of four buildings and the commercial buildings was obtained from respondent No. 5 – PCMC on 09.10.2009 initially, while the first sanction of approval for construction of the buildings on plot No. C was obtained on 09.03.2010 from PCMC. It has also come to light in the evidence that the construction on plot No. C could be started separately because of some dispute being

there while construction on plot No. B had started in March, 2010 prior to that. As regards amenities, the car parking and the club houses are provided for the buildings separately on plot No. B and C. Thus, this would lead us to believe that the construction on plot No. B and C should be treated to be separate scheme and not one scheme. Issue No. (II) is decided accordingly.

Issue No. (III):

69. As per this issue, we have to decide as to whether respondent No.12 – Project Proponent has violated the requirements of EIA Notification, 2006? and if yes, what is the amount of Environmental Damage Compensation (EDC) to be calculated and levied from respondent No.12 – Project Proponent. In this regard, while observing with respect to Issue No. (II) above, we found that the construction which has been raised on plot No. B, against the same, the applicants cannot raise any objection with regard to the construction being in violation of EIA Notification, 2006, because the same is time-barred. However, with respect to the construction on plot No. C, we find that the construction could have been questioned as the same is alleged to have been done in violation of EIA Notification, 2006 as no prior EC was obtained while the same was essential, the total built-up area being beyond 20,000 sq.mtrs., which is calculated by us as below.

70. As per the layout for Plot C, last approval is accorded on 17.07.2013 for built-up area of buildings H, I, J, K and commercial building, details of which are given in the following table.

	Sanction No	**22/2013**
	Date	**17.07.2013**
Sr.	**Description**	**Plot-C**
1	H-FSI	3551.42
2	I-FSI	3478.62
3	J-FSI	4362.72
4	K-FSI	2726.07
5	Plot-C COMM-FSI	228.32
6	BALCONY PROPOSED	2153.53
7	TERRACE	2943.06
8	PASSAGE	2101.56
9	STAIRCASE	872.47
10	LEFT MC ROOM	112.75
11	LEFT AREA	
12	PARKING	4779.36
13	REFUGEE AREA	244.55
14	CLUB HOUSE-1	91.34
15	CLUB HOUSE-2	
	TOTAL	**27645.77**

Hence, for Plot "C", Terrace area is 2943.06 sq.mtrs., balcony area is 2153.53 sq.mtrs. and open parking area is (1174.00 sq.mtrs. + 923.70 sq.mtrs), totaling 7193.59 sq.mtrs., which will have to be deducted from Total Built-Up Area of 27,645.77 sq.mtrs. Hence, Total Built-Up Area as per EIA Notification, 2006 will be 27,645.77 sq.mtrs – 7193.59 sq.mtrs = 20,452.18 sq.mtrs.

71. As per "Construction Cost Guide book India - 2024 Project & Development Services – India" (https://www.jll.co.in/content/dam/jll-com/documents/pdf/research/apac/india/jll-construction-cost-guide-book), India construction cost for residential buildings with floors less than 12 in 2024 in Pune is reported as Rs. 2250 to Rs. 2650/sq ft. This Cost/sq ft. represents the average of the competitive tender prices as on Q4 2023. The cost/sq ft. is based on construction floor areas measured to the outside face of the external walls / external perimeter including lift shafts, stair wells, water tanks, plant rooms and like and excludes cost of Demolition of existing buildings, tenant fit-out, FF & E (furniture, fitting and equipment unless otherwise specified), Cost escalation, professional fees, land, finance, Approvals etc. where applicable. Hence, total construction cost in 2024 can be taken as Rs. 2500/sq. ft in Pune. With TBUA as 20,452.18 sq.mtrs. the construction cost of project works out as Rs. 51 Crores. We wish to mention that as per NGT order dated December 6, 2018 in O.A 125/2017 for delay in payment of Environmental Compensation, an interest @12% will be payable. Thus, escalation and interest rate balance each other. Hence, we have worked out project cost as per construction cost guidebook of the year 2024.

72. In the judgment of the Hon'ble Supreme Court in Civil Appeal No. 10854 Of 2016 dated 10.08.2018 in the case of ***M/s Goel Ganga Developers India Private Ltd. Vs. Union of India, through Secretary Ministry of Environment and Forests and others; (2018) 8 SCC 257***, following is held:

> *"57. 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…."*

Hence, EDC to be levied and recovered from R-12-PP works out as 5% of Rs. 51 Crore at Rs. 2.55 Crore.

73. Since we find that there is clear violation of EIA Notification, 2006 as regards the construction made on plot No. C, we deem it appropriate to direct respondent No.12 – Project Proponent to deposit the EDC of Rs.2.55 Crores (Two Crores Fifty Five Lakhs only), calculated by us as above in terms of the law laid down in the judgment of the Hon'ble Supreme Court dated 10.08.2018 in the case of ***M/s Goel Ganga Developers India Private Ltd.*** Issue No. (III) is decided accordingly.

74. We dispose of this Original Application with directions that the amount of EDC of Rs.2.55 Crores (Rupees Two Crores Fifty five Lakhs) shall be deposited by respondent No.12 – Project Proponent with respondent No.3 – MPCB within two months from the date of

uploading of this judgment, which shall be utilized for improvement of the environment in the area concerned.

73. In view of disposal of Original Application, all pending I.As./M.As. stand disposed of.

74. No order as to costs.

❖

Banda Nagaraj Kumar & Anr. vs. Maharashtra Maritime Board & Ors.
(Original Application No. 77/2023)
Decided on: 16th September, 2025 (WZB)

CASE NOTE

In this matter, the applicants challenged the construction activity undertaken by Respondent No.1, Maharashtra Maritime Board (MMB), at Aksa Beach, Mumbai, a beach entirely falling within CRZ-I under the CRZ Notification, 2011. The applicants stated that in July, 2022, MMB had deployed JCB machines to excavate sand, level the beach and concretize a stretch approximately 4 metres in width and 600 metres in length, building a cement road or promenade bordered by a cement wall and boulders forming a "gabion wall," directly in the middle of the beach. The applicants further stated that MMB had presented the project as an erosion-control measure despite Maharashtra Coastal Zone Management Authority (MCZMA) previously discouraging solid construction on the beach and despite restrictions under CRZ Notification, 2011, which prohibit construction in CRZ-I areas except in limited circumstances.

The issues before the Tribunal included whether MMB had complied with conditions of the CRZ clearance dated 05.03.2019; whether the construction of the promenade and road was permissible within the CRZ-I area; whether the project exceeded the scope of approvals granted for an anti-sea-erosion bund; whether soft-shore protection measures such as beach nourishment had been considered; and whether the CRZ clearance was liable to be revoked. The Tribunal examined the record including reports of Central Water and Power Research Station (CWPRS), Pune and IIT, Bombay, minutes of multiple MCZMA meetings, the EIA extract, and the superimposed approved CZMP map. The Tribunal also considered the contention raised by the applicants that construction of roads in CRZ-I areas is generally prohibited, that exceptions require approvals from MoEFCC and must not affect tidal flow and that MMB had excavated and laid concrete in intertidal CRZ-I areas by way of reclamation, contrary to the said Notification.

Upon review, the Tribunal found that only the anti-sea erosion bund (retaining wall) was permissible as an erosion-control measure under the CRZ Notification, 2011. The approved plans showed the bund as a black line located between the HTL and LTL. It concluded that the promenade constructed by MMB was not part of the approved proposal, noting that photographs showed a broad cemented promenade, wide enough for a four-wheeler, which could not be considered landscaping or recreational ground permitted in CRZ-II areas. The Tribunal accepted the MCZMA decision that constructions such as plaza, restaurant, gym and wooden shacks on the seaward side were not permissible and held that MMB had exceeded its approval by making the promenade. The Tribunal found no basis to revoke the CRZ clearance, as the anti-sea-erosion bund had been rightly approved but held that the promenade was clearly beyond the sanctioned scope.

In view of these findings, the Tribunal directed that while the CRZ clearance dated 05.03.2019 need not be revoked, the promenade constructed beyond the approved anti-sea-erosion bund shall be removed within two months from the date of uploading of the judgment. With these directions, the Tribunal disposed of the matter.

Banda Nagaraj Kumar & Anr. vs. Maharashtra Maritime Board & Ors.

COUNSEL FOR THE APPLICANT(S):
Mr. Zoru Darayus Bhathena, Applicant No.2

COUNSEL FOR THE RESPONDENT(S):
Mr. Saket Mone, Advocate along-with
Ms. Anchita Nair, Advocate for R-1/MMB
Mr. Aniruddha Kulkarni, Advocate along-with
Mr. Savyasachi Bharadwaj, Advocate for R-2/MCZMA, R-3/Envt. Deptt. & R-4/SEIAA
Mr. Pushkal Mishra, Advocate for R-5/MoEF&CC.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER

RESERVED ON: 11th August, 2025
PRONOUNCED ON: 16th September, 2025

JUDGMENT

BY HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER

1. The present Original Application has been preferred with the prayers that the papers and proceedings related to the CRZ Clearance for the project "Sea front development and beautification at Aksa Beach, Madh, Mumbai *S*uburban" and the amended CRZ Clearance may be called for; Respondent No.2- MCZMA and Respondent No.4- SEIAA, Maharashtra may be directed to revoke the CRZ Clearance dated 05.03.2019 for the project on account of the fact that the conditions stipulated in the CRZ Clearance were not being complied with by Respondent No.1- MMB; and Respondent No.1 may be held liable for damage caused to the eco-system and is liable to pay environmental compensation on the basis of 'Polluter Pays Principle'.

2. In brief, the facts of this case are that the Aksa Beach in Madh, Mumbai Suburban District is a popular tourist destination in Mumbai, on account of being considered one of the cleanest beaches within the city, which is located within the suburb of Malad, and it's pristine, sandy stretches have hitherto been free from any construction work. The entire beach falls within the category of CRZ- I area under the CRZ Notification, 2011. The presence of the beach serves a crucial purpose of acting as a natural barrier protecting the region from flooding during monsoon months.

3. It is further mentioned in this application that the waterfront has the base of the Indian navy- INS Hamla on one end, and a small beach- Dana Paani on the other. In the month of

July 2022, Respondent No.1- MMB deployed a team of JCB machines to excavate the sand, level the beach and concretize a wide span of the Aksa Beach evidently to construct a concrete road or promenade spanning approximately 4 m in width and 600 m in length. The road is bordered on the seaward side by a cement wall, which is further bordered by boulders, which allegedly constitutes a "gabion wall". The Applicants were shocked to see such construction work directly on the beach, merely a few feet away from the Arabian Sea.

4. It is further mentioned in this application that the sea-wall and its adjoining road divide the beach into two, as it is being constructed right in the middle of the beach. A portion of the beach falling toward the landward side of the road will be completely eroded if the wall is permitted to exist, as the wall and the road will disallow natural deposition of sediments/sand on the other side of the wall/road. Images of the construction work being undertaken at the behest of Respondent No.1 has been annexed as Annexure A-1. The Applicants immediately made enquiries about the construction work being undertaken by Respondent No.1 for the purpose of developing the sea-front and "beautifying" Aksa beach, for which Respondent No. 1 had allegedly obtained CRZ permissions. The Applicants also came to learn after perusing the minutes of meeting of the MCZMA that Respondent No.1- MMB had sought to portray the proposed project as being necessary for the sake of preventing erosion of the beach by constructing a "gabion" wall, when it is settled law, and is also well established in terms of best practices pertaining to maintenance of beaches, that building of sea-walls and bunds are widely considered to be antithetical for the preservation of beaches and protection against flooding. The futility of sea-walls, whether gabion technology or not, was confirmed by Respondent No.2- MCZMA itself in its 115th meeting, while rejecting Respondent No.1- MMB proposal, as is evident from Item No.23 of the Minutes of the Meeting. The Authority felt that the beach may be eroded due to the solid construction on the beach. Moreover, solid construction is not permissible as per the CRZ Notification, 2011.

5. It is further mentioned in this application that the use of "Gabion technology" was explored in depth by the Hon'ble Bombay High Court in the matter of PIL (L) No. 23928/2021, wherein the decision of the Municipal Corporation of Greater Mumbai to use Gabion Technology to construct a "cycle track" and walkway on the border of the Powai Lake in Mumbai was set aside vide its Judgment and noted in its judgment that Gabion Technology was not *"sufficiently proven technology or is backed and supported by scientific study about its utility sans failures".*

6. It is further mentioned in this application that the entirety of the Aksa Beach falls completely within CRZ - IA and CRZ- IB areas, either in the form of sand dunes, or in the form of the tidally influenced land, falling between the low tide line and high tide line. It is further submitted that the sand dunes act, as one of the most effective natural barriers against storms and cyclones and the ingress & inundation of sea waters, is crucial in protecting the integrity of the coastal land and safeguarding human population and development. The dressing or altering of sand dunes is prohibited under Clause 3(xiii) of the CRZ notification and Clause 7 (i)A(c) protects sand dunes as CRZ IA areas. In fact, Clause

3(ix) of the CRZ Notification prohibits reclamation of CRZ areas for commercial purposes such as, *inter alia*, hotels and entertainment activities. Clause 8(III)(V)(3)(xiii) of the CRZ Notification of 2011 prohibits *"Dressing or altering the sand dunes, hills, natural features including landscape change for beautification, recreation and other such purpose"*. Therefore, no construction activity could ever have been permitted for the purpose of beautifying Aksa beach, on account of the fact that such activity would involve dressing and altering the natural landscape of the sandy beach for a superficial and unnecessary purpose of "beautifying" the beach.

7. It is further mentioned in this application that tidally influenced portions of the beach are classified to be CRZ-IB areas under Clause 7(i)(B) of the 2011 Notification, which are lands between the Low Tide Line and High Tide Line. The reclamation, bunding and disturbing the natural course of sea water is prohibited in CRZ areas under clause 3(iv) of the CRZ Notification of 2011 unless essential for activities permitted under the CRZ Notification of 2011. A perusal of Clause 3(iv) (b) of the CRZ Notification of 2011 makes it evident that *"measures for control of erosion"* that result in land reclamation or bunding or disturbing the natural course of sea water can only be undertaken if *"based on a scientific study including Environmental Impact Assessment (EIA) studies"*. It is, therefore, evident that a condition precedent to undertaking any erosion control measures on the beach is the preparation of an EIA study. While such an EIA study has been referenced in the very first meeting of the MCZMA where the present project was being considered for recommendation (115th Meeting on 17th - 18th January, 2017), in which the EIA study is not available in the public domain.

8. It is further mentioned in this application that the proposed project has been shrouded in a cloud of secrecy and vital documents pertaining to the project have not been made available in the public domain. At the time of filing the present Application, no documents pertaining to the project, including the EIA report, the 1:4000 scale CZMP map made under the CRZ Notification of 2011 and the CRZ clearances granted to the project are available on the website of the MCZMA at https://mczma.gov.in or the website/portal of the SEIAA.

9. It is further mentioned in this application that within the said MCZMA meeting, which has been described in great detail, the EIA report was referred by the MCZMA to indicate that the study of the project in fact showed that the project would be detrimental to the natural *"habitat"* and natural ecology of the region. Perusal of the photographs of the project would show that Respondent No.1- MMB has essentially constructed a cement road directly in the middle of the beach by levelling and reclaiming the sandy beach, despite the fact that construction of roads are prohibited in CRZ areas under the provisions of the CRZ Notification of 2011, unless specifically built to avoid disturbance of the natural tidal flow of seawater. However, Respondent No.1 has evidently excavated the sand and laid down cement/concrete onto the beach and in the intertidal CRZ-I areas to build a road by way of reclamation. Therefore, the proposed project thus does not only comprise of a "gabion wall" to allegedly control and prevent erosion of the sand/flooding by sea water, but also comprises a second element of a cement road/promenade.

10. It is further mentioned in this application that Regulation- 8 of the CRZ Notification prohibits all new construction in CRZ I areas, with the exception of certain activities, *inter alia*, as provided under Clause 8(i)I(i)(e) which permits *"construction of trans harbour sea link and without affecting the tidal flow of water, between LTL and HTL"* in CRZ I areas and Clause 8(i)I(ii)(g) which permits *"construction of trans harbour sea links, roads on stilts or pillars without affecting the tidal flow of water"* in areas between LTL and HTL which are not ecologically sensitive. Similarly, Clause 8 (V) (1), lays out special provisions for CRZ areas falling within municipal limits of Greater Mumbai. Clause 8 (V) (1) (i) (A) (a) permits the, *"Construction of roads, approach roads and missing link roads approved in the Developmental Plan of Greater Mumbai on stilts ensuring that the free flow of tidal water is not affected"*.

11. It is further mentioned in this application that Regulation- 4 lists the full range of activities in CRZ areas that are regulated under the Notification. Clause 4 (i) (g) provides that the *"construction of road by way of reclamation in CRZ area shall only be in exceptional cases, to be recommended by the concerned CZMA and approved by MoEF...."*. Similarly Clause 3(iv) prohibits reclamation in CRZ areas, except for, *inter alia*, *"bridges, sea link, road on stilt, road on reclaimed surface without affecting tidal flow of water"*.

12. It is further mentioned in this application that a combined reading of Clause 8, Clause 4(i) (g) and Clause 3(iv) indicates that (a) Roads in CRZ areas are only to be permitted under exceptional circumstances; (b) such roads must be built with prior permission of the MoEFCC; (c) such roads are to be built on stilts so as to not disturb the tidal flow of water; (d) even when constructed through reclamation with prior permission, such roads cannot affect the tidal flow of water; and (e) such constructions of roads require to be specifically permitted under the CRZ notification of 2011 *prior* to being constructed. In view of these, it is submitted that the present project irrefutably obstructs the natural tidal flow of water, and should not have been permitted under the CRZ Notification of 2011, as the road does not meet any of the requisite conditions, which evidently would obstruct the natural flow of water. It has not been granted permission by the MoEFCC and are not warranted by exceptional circumstances.

13. It is further mentioned in this application that the proposed project was first considered in the 115th meeting of the Maharashtra Coastal Zone Management Authority (MCZMA) dated January 17th & 18th, 2017, wherein following was observed:

> *"Officials from Maharashtra Maritime Board (MMB) presented the proposal of beautification of Aksa Beach at Madh, Mumbai Suburban. The proposal involves construction of a Gabion Wall at Aksa Beach. The Authority instructed MMB to explore other options such as eco system based solutions for beatification of Aksa Beach, instead of solid construction on beach. The Authority felt that the beach may be eroded due to the solid construction on beach. Further, solid construction is not permissible as per the CRZ Notification, 2011." (Emphasis supplied)*

14. A perusal of the above-mentioned Minutes of the Meeting of MCZMA makes it evident that the MCZMA was firmly opposed to any solid construction, including that of a gabion wall on Aksa beach. The MCZMA cautioned that any such construction would result in erosion of the beach. The proposed project was pitched by Respondent No.1- MMB at the time of a beautification project.

15. It is further mentioned in this application that subsequently, during the course of the 127th meeting of MCZMA dated 02.11.2018, the project proposal was once again considered. The said meeting reflects the following discussion for the proposed project:-

> *"Item No 29: Proposed beautification of Aksa Beach at Madh, Mumbai suburb.*
>
> *The MMB officials presented that the proposal is for Anti-Sea erosion measures at Aksa Beach. The project involves repairs of old bund, construction of pathway, construction of parapet wall, providing solar street lights, up to 300 mtr. The proposal project is situated in CRZ 1 area. As per the EIA, clearing, stripping, and levelling of anti-sea erosion measures, earth filling and excavation for foundation will lead to disturbances to the habitats. The MCZMA in its meeting on 17th & 18th January 2017 observed that the solid construction on beach may erode the beach and discouraged the project. However, the MMB officials presented that considering the erosion problem at the Aksa Beach, solid construction in the form of anti-sea erosion bund is required. The MMB further assured that the solid construction will be restricted to landward side. of the Hightide Line and beach area will not be used for construction and no construction debris will be dumped on beach.*
>
> *After deliberations, the Authority decided to recommend the proposal of anti-sea erosion bund to SEAA with subject to the following conditions:*
>
> 1. *MMB to ensure that no construction is allowed in intertidal or beach area i.e. CRZ area. Solid construction should be restricted to landward side of the Hightide Line. (emphasis supplied)*
> 2. *MMB to ensure that construction debris is not dumped in the beach and CRZ area.*
> 3. *Mangroves if any should not be destroyed/cut.*
> 4. *All other required permissions from different statutory authorities should be obtained.*
> 5. *In case of present (presence) of mangroves no construction should be undertaken in mangrove and its' 50 mtr buffer zone."*

16. A perusal of the above minutes would indicate the contradictory nature of the observations made by the MCZMA. On one hand, the MCZMA noted that the EIA report for the proposed project itself records that the "clearing, stripping, and levelling of anti-sea erosion measures, earth filling and excavation for foundation will lead disturbances to the habitats". The MCZMA further noted that it had previously discouraged the project, when proposed as a "beautification project" due to the erosion it would cause. However, the MCZMA, with complete non-application of mind proceeded to recommend the project for CRZ clearance, seemingly choosing not to take cognizance of the fact that the proposed project would further exacerbate the very issue, i.e. erosion of the beach instead of the same being resolved. The MCZMA imposed some restrictions on the project, including that no construction would be permitted on the inter-tidal or beach or CRZ area. During the course of the 127th meeting, Respondent No.1- MMB had changed its tune and alleged that the present project was being built as an "anti-sea erosion bund" and not just a "beautification" project. It was further discussed during the meeting that an old, existing bund would be repaired by the MMB. A copy of the relevant portion of the said minutes of meeting of the MCZMA has been annexed as Annexure A- 4.

17. It is further mentioned in this application that Respondent No.1-MMB did not explore other options to fortify the beach and undertake anti- erosion activities, such as beach nourishment, despite being directed to do so by Respondent No.2- MCZMA in its 115th Meeting. After the recommendation was granted by Respondent No.2- MCZMA, the Respondent No.4- SEIAA then proceeded to grant a final CRZ clearance to the project on 05.03.2019. Subsequently, during the course of the 148th meeting of MCZMA dated 24.11.2020, an amendment to the CRZ clearance granted by Respondent No.4- SEIAA on 05.03.2019 was considered by the MCZMA. The said amendment was sought by the MMB, which sought to expand the scope of the project to "sea-front development and beautification at Aksa Beach, Madh, Mumbai Suburban". A perusal of the minutes of the 148th meeting of the MCZMA would show that the revised project included "a) garden for senior citizens and children play area, b) entrance and parking, c) food plaza, d) lawns and toilets, e) gym and space for yoga, f) wooden shacks and steps, g) bamboo shades and step and h) volley ball courts".

18. It is further mentioned in this application that during the 148th meeting of the MCZMA, the MCZMA concluded the meeting by stating that it required to consider the proposed project by superimposing the layout on 1:4000 scale CZMP map under the 2011 CRZ Notification, in order to ascertain the CRZ zones affected in the project. A copy of the relevant portion of the said minutes is annexed as Annexure A-5. During the course of the 159th meeting of MCZMA on 10th to 11th June, 2021, the relevant portion of the minutes, of which is annexed as Annexure A-6, the proposed project was discussed further as follows:

> *"Item No 6: Proposed sea front development & beautification of Aksa Beach, Madh, Mumbai Suburban by MMB.*
>
> *Chief Engineer, MMB, presented the project before the Authority. The MMB presented that earlier the MCZMA in its 127"' meeting on 2-11-*

2018 granted recommendation to the proposal of anti-sea erosion measures at Aksa Beach Mumbai. The project involves repairs of an old bund, construction of pathway, construction of parapet wall, providing solar street light, length 300 m.

Subsequently the said proposal has received CRZ clearance on 5-3-2019 by the SEMA as per the 158"' meeting of SEIAA.

Now the MMB is seeking amendment in CRZ clearance for anti-sea erosion measures to sea front development & beautification of Aksa Beach, Madh, Mumbai suburban. The proposed activities involves a) Garden for senior citizens and children play area, b) entrance for parking, c) food plaza, d) lawns & toilets, e) gym and space for yoga, wooden shacks and steps, g) bamboo shade an steps, h) volleyball court.

Earlier, the Authority at its 148th meeting held on 2-11-2020 discussed the proposal and noted that the activities are proposed to along the Aksa Beach. The Authority felt that MMB need to superimpose the layout of the project on approved CZMP in 1:4000 scale in order to ascertain the project activities biz a viz (vis a vis) its CRZ status. Accordingly, the Authority decided to defer the proposal for compliance by MMB as stated above. MMV vide letter dated 30-03-2021 submitted the superimposition of layout of the project on approved CZMP, 2011 in 1:4000 scale and stating that proposed activities are in CRZ II area.

The Authority deliberated on the proposal and observed that the project site is along the Aksa Beach and MMB has proposed activities like plaza/restaurant/gym/wooden shacks on seaward side which is not permissible as per the provisions of the CRZ Notification 2011. However, landscaping, playground/recreational ground/garden could be allowed in CRZ-II area, MMB to strictly ensure no construction is allowed on Aksa Beach. (Emphasis supplied).

In the light of the above, the Authority after deliberations decided to grant recommendation to the proposed activities of landscaping, playground/recreation ground/garden only from CRZ point of view to Planning Authority.

The Authority further decided that activities like plaza/restaurant/gym/wooden shacks on seaward side are not permissible as per the provisions of the CRZ Notification 2011."

19. It is further mentioned in this application that a perusal of the Minutes of Meetings of the MCZMA makes it evident that since its inception, the intention of Respondent No.1-MMB was to undertake "beautification" projects to commercialise and develop Aksa beach with no regard to how their constructions would impact the natural tidal flow of water and

erosion of the beach. When the MCZMA took umbrage to the permissions sought to "beautify" Aksa beach, Respondent No.1 changed its tune and claimed that the project was actually for erosion control. By obtaining a permission to construct a sea-wall bund in the name of erosion control, Respondent No.1 managed to initiate the process of levelling and concretising the beach and through its application to amend the CRZ clearance, further sought to enhance the development, construction work and commercial activities that could be permissible in the CRZ area, including parking spots and restaurants.

20. It is further mentioned in this application that the proposed project is entirely prohibited under the provisions of the CRZ Notification of 2011, and that it is the malafide and perverse intention of Respondent No.1- MMB to implement the commercialisation and development of the beach under the garb of being an anti-erosion technique, which is evident from a perusal of the Minutes of Meeting of the MCZMA. It is further submitted that Respondent No.1 has defiantly, recklessly and illegally flouted the terms of the recommendation of the MCZMA granted to the project and has clearly constructed the project on the sandy beach in CRZ I areas, in direct and blatant breach of the conditions of the recommendation granted by the MCZMA. Hence the above-mentioned prayers have been made by the applicants in the present Original Application.

21. This matter was first considered by this Tribunal on 19.05.2023 and thereafter on 03.07.2023, when the said Original Application was admitted and thereafter, a direction was issued to the Registry to issue notices to the Respondents.

22. Respondent No.1- Maharashtra Maritime Board (MMB) has filed reply affidavit dated 27.06.2023, wherein it is submitted that the Answering Respondent has carried out the construction of anti-sea erosion bund and Sea Front Development & beautification at Aksa Beach, Madh, Mumbai Suburban. The purpose of the project is *inter alia* to construct anti-sea erosion bund, as the site is an eroding site and existing structures therein were affected by erosion and to prevent existing electric poles from collapsing due to erosion.

23. It is further submitted in this affidavit by Respondent No.1- MMB that the present Original Application is time barred, in terms of the Section 14(3) of the National Green Tribunal Act, 2010, which provides six months' period from the date of cause of action first arose. In the present case, Respondent No.1 made a proposal for the said project to Respondent No.2 first time in the year 2017. Thereafter, the Answering Respondent took all the steps for obtaining necessary permissions from the authorities and subsequently, Respondent No.4- the State Environmental Impact Assessment Authority (SEIAA) granted the CRZ Clearance on 05th March 2019 for the said project. The present Original Application is filed on 10.05.2023, which is beyond the period of limitation. But during argument, this point was not pressed by learned counsel for Respondent No.1.

24. It is further submitted in this affidavit by Respondent No.1- MMB that the Answering Respondent has obtained the CRZ Clearance prior to commencement of the said Project. A bare perusal of the pleadings as well as the prayers of the present Application, would indicate that the Original Applicants have sought to raise various grievances and issues with

respect to the said CRZ Clearance and that the same has not been assailed in this Original Application, as it could have been assailed only in an appeal. But even this point was not pressed by learned counsel for Respondent No.1 at the time of argument.

25. On merits, it is further submitted in this affidavit by Respondent No.1- MMB that the Answering Respondent had obtained CRZ clearance, under the applicable CRZ Notification for the construction of Anti-Erosion bund and beautification. In the year 2017, Respondent No.1 first made a proposal to Respondent No.2 - Maharashtra Coastal Zone Management Authority for the proposal of beautification of Aksa Beach at Madh, Mumbai which involved the construction of a gabion wall, which was considered by Respondent No.2 in their 115th Meeting held on 17th and 18th January, 2017 and instructed Respondent No.1 to explore other solutions instead of solid construction on the beach. Thereafter, in the year 2018, Respondent No.1 made an application to Respondent No.2 for the said Project for construction of anti-sea erosion measure at Aksa Beach involving construction of pathway, parapet wall, providing solar street light, in light of the erosion problem prevalent at Aksa Beach. Respondent No. 2 considered the said proposal in its 127th Meeting held on 02nd November, 2018 and decided to recommend the proposal to Respondent No.4 - SEIAA for CRZ Clearance. Respondent No. 4- SEIAA considered the proposal of Respondent No. 1 in its 158th Meeting dated 27th February, 2019 and on 5th March 2019 and granted CRZ Clearance to Respondent No. 1 for the said Project.

26. It is further submitted in this affidavit by Respondent No.1- MMB that on 27th August 2020, Respondent No. 1 made an application to Respondent No. 2- MCZMA for amendment in CRZ Clearance dated 05th March, 2019, so as to incorporate additional scope in the said project. On 24th November, 2020, Respondent No.2 considered the proposal for amendment of CRZ Clearance in its 148th Meeting and noted that Respondent No.1 needed to superimpose the layout of the project on approved CZMP- 2011 in 1:4000 scale to ascertain the project activities viz- a-viz its CRZ status and thereafter, deferred the proposal for compliance. On 30th March, 2021, Respondent No. 1 submitted the superimposition of layout of the project on approved CZMP- 2011 in compliance with the 148th MCZMA's Minutes of Meeting dated 24th November 2020, which clearly indicates that the proposed activity was in CRZ-II area and is a permissible activity.

27. It is further submitted in this affidavit by Respondent No.1- MMB that on 10th and 11th June, 2021, Respondent No.2 deliberated the said proposal in its 155th Meeting and decided to grant recommendation to the proposed activities of landscaping, playground/ recreational ground/ garden from CRZ point of view. In pursuance thereof, on 30th June 2021, Respondent No. 2 granted CRZ Clearance to the proposed activities of landscaping, playground/ recreational ground/ garden from CRZ point of view. The *said Project is a permissible activity under the CRZ Notification*.

28. It is further submitted in this affidavit by Respondent No.1- MMB that the Ministry of Environment and Forest (MoEF) issued the CRZ Notification for the purpose of declaring coastal stretches as coastal regulation zone and for classification of lands falling into various CRZ categories, such as CRZ I, II, III, IV, etc. Under the Notification, every activity in CRZ

areas could be categorized as prohibited, permitted and regulated activity under the Notification. The said project of construction of an anti-sea erosion bund is a permissible activity under CRZ Notification 2011 as well as 2019. The relevant clauses of CRZ Notification 2011 as well as 2019 are reproduced herein below:

> *"CRZ Notification 2011*
>
> *3. Prohibited activities within CRZ — The following are declared as prohibited activities within the CRZ-*
> *(iv) Land reclamation, blinding or disturbing the natural course of seawater except those-*
> *(b)* ***measures for control of*** *erosion, based on scientific including Environmental Impact Assessment (hereinafter referred to as the* ***EIA) studies"***
> *CRZ Notification 2019*
> *"5.1.2 CRZ-IB - The inter tidal areas:*
> *Activities shall be regulated or permissible in the CRZ-I B areas as under: -*
> *(i) Land reclamation, blinding, etc. shall be permitted only for activities such as,-*
> *(d) measures for control of erosion;"*

29. It is further submitted in this affidavit by Respondent No.1- MMB that Sub-clause (iv) (b) of Regulation 3 provides that land reclamation, bunding or disturbing the natural course of seawater is a permissible activity under the CRZ Notification where it is a measure for control of erosion based on scientific EIA studies. Respondent No.1 has conducted the EIA studies which is a pre-requisite for CRZ Clearance and a detailed EIA Report was submitted to the authorities who considered the said report and thereafter duly granted the CRZ Clearance. The Answering Respondent states that the construction of the said project is a permissible activity under the provisions of the Coastal Regulation Zone Notification 2011 as well as 2019.

30. It is further submitted in this affidavit by Respondent No.1- MMB that the Answering Respondent sought advice of an expert body, Department of Water Resources, River Development and Ganga Rejuvenation, Central Water and Power Research Station, Pune (CWPRS) for the design of coastal protection work at Aksa Beach. Accordingly, CWPRS carried out a detailed mathematical study for protection measures for Aksa Beach. On 06th April, 2023, Respondent No. 1 wrote to the Indian Institute of Technology, Bombay (IIT Bombay) to provide expert opinion about the appropriability of location of placement of the said project. In pursuance thereof, a site visit was conducted by the officials of IIT Bombay on 10th April 2023 to assess the site condition and status of the said project and accordingly, on 17th April, 2023 a site report was submitted to Respondent No. 1, which makes a categorical finding that Aksa Beach is an eroding site and the existing structures are affected by erosion. The Report also analysed the site condition before construction of the said project, wherein it was found that the electric poles at the site were found exposed due to

erosion and at several places, the severe erosion led to failure of foundation and falling of electric poles. Hence, there is need to provide anti-sea erosion bund to protect existing as well as future infrastructure from collapsing due to erosion and the alignment chosen to construct the anti-erosion measure seems appropriate, as the existing electric poles were collapsing due to erosion.

31. It is further submitted in this affidavit by Respondent No.1- MMB that on 28th April, 2023, the CWPRS conducted another site visit to review the construction of coastal protection work and *inter alia* opined that the seawall/ toe-berm protection was necessary to protect boundary wall and the proposed beautification. The Answering Respondent sought an expert opinion to review the construction of the said project and the expert bodies have opined after due study of the project that there is a necessity of anti-sea erosion bund at the project site.

32. It is further submitted in this affidavit by Respondent No.1- MMB that on 16th March, 2022, a Work Order was issued by Respondent No.1 for the said Project. Thereafter, the Answering Respondent commenced construction of the said project, in terms of the work order and is almost on the verge of completion. The details of the progress of the work for the said Project is as below:-

Sr. No	**Name of work**	**Scope of work**	**W.O Amount/Date** (Amount in Lakhs)	**Completed scope of work**	**Percentage of work completed**
1.	Providing anti sea corrosion measures from 0/00 m to 0/475m at Aksa Beach, Madh, Mumbai Suburban.	• UCR Wall 375m • Anti-Sea Erosion Bund	438.18 16.03.22	• UCR Wall 360m • Anti-Sea Erosion Bund 360m	95%
2.	Providing anti sea corrosion measures from 0/475m to 0/950m at Aksa Beach, Madh, Mumbai Suburban.	• UCR Wall 375m • Anti-Sea Erosion Bund	438.18 16.03.22	• UCR Wall 375m • Anti- Sea Erosion Bund 375m	98%
3.	Providing Sea front development and basic facilities	• Pathway using cobble stone • Landscaping	414.79 16.03.22	• Pathway- 375m • Electric Poles –	25%

	for tourists at Aksa Beach, Madh, Mumbai Suburban.	• Electrification • Irrigation • Open gym		61 nos.	
4.	Beautification & other allied facilities at Aksa Beach, Madh, Mumbai Suburban.	• Pathway using cobble stone. • Landscaping • Fixing Gazebo & Bamboo Shalks • Fixing Sculptures	412.90 16.03.22	• Pathway 295m • Seating benches – 66 nos.	23%

33. The above table clearly shows that the construction of the said Project is almost complete, and the Applicants are attempting to challenge it now at a belated stage.

34. It is further submitted in this affidavit by Respondent No.1- MMB that the Answering Respondent till date has spent amounts to the tune of Rs. 11,83,85,204/- (Eleven Crores Eighty-Three Lakhs Eighty-Five Thousand Two Hundred and Four Rupees) out of the public exchequer for implementing the said project.

35. Applicants have filed rejoinder affidavit dated 31.08.2023 to the reply affidavit of Respondent No.1 dated 27.06.2023, wherein it is submitted that subsequent to the recommendation for the amendment to the CRZ clearance granted by the MCZMA on 30th June, 2021, no final CRZ clearance has been granted to Respondent No. 1 by the SEIAA and in fact Respondent No. 1 has been illegally proceeding with the construction for the project without a CRZ clearance.

36. It is further mentioned in this rejoinder affidavit by the applicants that Respondent No.1 is wrongfully pretending the present project to pass as one for preventing erosion of the beach, whereas actually it is a project for beautification and commercial development of the beach, which is evident from the proposal for the project submitted by Respondent No. 1 (as reflected in the agenda items titles of the MCZMA minutes when the present project was being considered) as well as the admission made by Respondent No.1 in para 13 of its affidavit.

37. With regard to the reports of the CWPRS and IIT Bombay, it is further mentioned in this rejoinder affidavit by the applicants that the statements made in the report, which was prepared by the IIT Bombay, would show that the beach is found to be "marginally eroding"; the beach is found to be very "plat" [sic: flat] unlike other locations where it is protected by dunes. Accordingly, the said portion of Aksa Beach would actually be suitable for beach nourishment as an erosion control technique instead of the construction of a concrete sea

wall. The said issue deserves to be examined by this Tribunal, considering the fact that the MCZMA and SEIAA has categorically disallowed construction work on Aksa Beach and/or its inter-tidal areas. Further at page 553 of the Affidavit, it is recorded by the IIT Bombay that sea water reaches the project site where lamp posts were previously present. This indicates that the portion of the beach, on which the present project is being constructed, is most certainly a tidally influenced portion of the beach and is therefore CRZ I-A area, and not CRZ-II as has been wrongly claimed by Respondent No.1. Therefore, the region is evidently an inter-tidal area wherein construction cannot be allowed as per the provisions of the CRZ clearance dated 05.03.2019.

38. With regards to the reports and documentation submitted by Respondent No.1 in its affidavit, which recommends the construction of a seawall on the Aksa beach for the purpose of preventing erosion of the beach, it is further mentioned in this rejoinder affidavit by the applicants that not a single document is produced by Respondent No.1, which was prepared either by the CWPRS or by the IIT Bombay which would show any recommendation for the construction of the road and commercial development of the beach. The said documents also do not show any consideration of the feasibility of "soft" erosion control techniques, such as beach/sand nourishment which were directed for by the Tribunal in the matter of *C.H Balamohan v Union of India* (OA No. 04/2013 with Appeal No. 18/2017). Therefore, it is necessary to consider the feasibility of soft measures, such as beach nourishment, to ensure the permanent strengthening of the beach, instead of only hard measures such as constructions of sea walls and groynes.

39. It is further mentioned in this rejoinder affidavit by the applicants that at page 298 of the affidavit of Respondent No.1, a paragraph within the EIA report itself notes that *"the best natural defense against erosion is an adequate beach, which causes waves to dissipate their energy, without eroding the coast".* It is universally accepted that the most effective technique to ensure long-term protection of the beach and to prevent erosion of beaches is to supplement and strengthen beaches, instead of constructing tidally obstructive "hard constructions" which block the natural tidal flow of water. It increases the flood prone nature of the area and results in a lack of sand passing on to the landward side of the hard construction. It ultimately leads to the complete erosion of landward portion of beach beyond the hard construction.

40. Another affidavit dated 08.11.2023 has been filed by the applicants, wherein it is submitted that under RTI, it came to the knowledge of the applicants in October 2023 that Respondent No.1- Maharashtra Maritime Board had addressed a letter dated 28.06.2023 to the Maharashtra Coastal Zone Management Authority seeking deletion of specific condition no. I put forth for the proposed project pertaining to the construction of the anti-sea erosion bund and sea front development and beautification at Aksa Beach, commissioned by Respondent No.1- MMB. The condition that Respondent No.1- MMB had sought to be deleted, stipulated *"MMB to ensure that no construction is allowed in intertidal or beach area i.e. CRZ area. Solid construction should be restricted to landward side of the High Tide Line".* It was mandated by the MCZMA while recommending the Project to the State

Environmental Impact Assessment Authority (SEIAA) from the CRZ point of view. This issue was discussed in the 127th meeting of the MCZMA held in November, 2018.

41. It is further mentioned in this affidavit by the applicants that Respondent No.1- MMB's proposal to the MCZMA seeking deletion of the aforementioned condition no.I prohibiting construction in the CRZ area was addressed on 28.06.2023, i.e. after O.A. No. 77 of 2023 was filed on 10.05.2023 seeking, *inter alia*, the revocation of the CRZ clearance dated 05.03.2019, on account of the non-compliance with the conditions stipulated in the CRZ clearance by Respondent No.1- MMB. Therefore, it is very clear that as an afterthought, a drastic alteration is being sought in the condition recommended by the MCZMA. This cannot be done without modifying the earlier CRZ clearance dated 05.03.2019, and further, Respondent No.1 cannot obtain *post-facto* permission from the MCZMA. In fact, a fresh CRZ clearance has to be obtained. Therefore, the same would clearly indicate that though Respondent No.1- MMB has repeatedly emphasized that it has complied with all the conditions stipulated in the CRZ clearance, it has, in fact, violated the conditions imposed by the MCZMA and SEIAA, and has been illegally constructing a road on top of the beach without any permission to do so.

42. It is further mentioned in this affidavit by the applicants that Respondent No.1- MMB has, while seeking deletion of the MCZMA recommendation, stated that there are existing private properties along the landward side of the High Tide Line, hence it is not possible to keep the anti-sea erosion bund on the landward side of the High Tide Line as directed in the CRZ clearance dated 05.03.2019. Hence, it approached the CWPRS, Pune and IIT, Mumbai which has submitted a report stating therein that the construction of the anti-sea erosion bund is needed, as Aksa Beach is an eroding site, and that the alignment chosen to construct the said anti-sea erosion bund seems appropriate, as the existing electric poles were collapsing due to erosion. If Respondent No.1- MMB was aware of the topography of the site proposed by it for the project, it should have raised the concern regarding the existence of private properties along the landward side of the High Tide Line prior to the CRZ clearance being granted. The fact that this concern has been raised at such a belated stage makes it evident that Respondent No.1 did not intend to comply with the CRZ clearance and that it has been constructing the seawall in complete violation of the CRZ Clearance dated 05.03.2019.

43. It is further mentioned in this affidavit by the applicants that Respondent No.1- MMB also did not provide any scientific studies indicating therein that Aksa Beach is an eroding site, making it necessary to construct the anti-sea erosion bund or that the construction is required at the site proposed by it.

44. Respondent No.1- MMB has filed additional affidavit dated 22.02.2024, wherein it is submitted that the purpose of construction of the said project, being anti-sea erosion bund, was to prevent erosion of the beach and also to prevent further destruction and collapsing of existing electric poles due to the same. As indicated in the studies carried out by CWPRS dated 18th January 2022 and 12th May 2023 and IIT Bombay dated 17th April 2023, it was noted that the said project is aligned with the existing electric poles and that the same is between High Tide Line and Low Tide Line which is a permissible activity in CRZ-IB of the

CRZ Notification, 2011. Hence, due to this, the Specific Condition No.1 imposed by Respondent No. 2-MCZMA necessitated to be deleted, as the same was not in line with the purpose of the said project in the first place.

45. It is further mentioned in this additional affidavit by Respondent No.1- MMB that on 28th June 2023, Respondent No.1 applied to Respondent No. 2- MCZMA to delete the specific condition-I of the CRZ Clearance dated 5th March 2019 because Respondent No. 1 observed that the existing electric poles were collapsing due to erosion and damage was being caused to the existing private properties and proposed public facilities along the landward side of the High Tide Line. Due to this, the anti-sea erosion bund could not be on the landward side of the High Tide Line. On 10th August 2023, Respondent No.2- MCZMA considered the said proposal of Respondent No.1- MMB and recorded therein that there were existing poles and proposed public facilities nearby, hence, it was not possible to keep anti-sea erosion bund on landward side of HTL. On deliberation, Respondent No. 2-MCZMA requested Respondent No.1 to submit a scientific study from erosion point of view from a competent organization.

46. It is further mentioned in this additional affidavit by Respondent No.1- MMB that on 10th October 2023, Respondent No. 1- MMB requested Indian Institute of Technology (IIT), Bombay to carry out shoreline change analysis to ascertain the coastal erosion at Aksa Beach. The said report categorically concludes that Aksa beach is an eroding site and the existing structures are affected by erosion. Due to this, there was need to provide anti-sea erosion bund to protect the facilities being developed. It also concluded that the alignment chosen to construct the anti-sea erosion measure was appropriate, as the existing electric poles were collapsing due to erosion. It was further noted that the sediment analysis shows the erosion along the Aksa beach and accretion near off-shore of Aksa beach. The flat region above high tide line is likely prone to erosion during storm and monsoon weather. Therefore, erosion protection measures should be implemented to protect the beach and infrastructure adjoining the beach. On 02nd February, 2024 the meeting was scheduled for considering the said proposal, wherein Respondent No.1- MMB presented the shoreline studies to ascertain the coastal erosion for Aksa beach, Mumbai, Maharashtra, which was conducted by the IIT Mumbai. In these facts and circumstances, it is stated that Respondent No. 1- MMB has submitted the requisite scientific study to MCZMA in compliance with the Order dated 01st December, 2023 passed in the present matter by this Tribunal. Therefore, it is reiterated that the said project is a permissible activity under CRZ Notification, 2011 and there has been no infirmity on the part of Answering Respondent in carrying out the construction of the said project in accordance with law.

47. Respondent No.2- MCZMA has filed reply affidavit dated 22.02.2024, wherein it is submitted that the applicants have not challenged the CRZ Clearance dated 05.03.2019, hence under the garb of filing the present application, the said clearance cannot be assailed.

48. It is further mentioned in this affidavit by Respondent No.2- MCZMA that Applicant No.2 had raised a similar issue against the anti-sea erosion bund in Village Versova, Mumbai

in Original Application No. 64/2021 (*Zoru Daryus Bhathena v State of Maharashtra)*, which was rejected by this Tribunal vide final Order and Judgment dated 23rd May, 2023.

49. It is further mentioned in this affidavit by Respondent No.2- MCZMA that firstly, application made by Respondent No.1- MMB was considered by the MCZMA in their 115th Meeting held between 17th - 18th January, 2017. Respondent No.1 had proposed construction of Gabion Wall, but MCZMA instructed the MMB to explore other options such as ecosystem based solutions for beautification, instead of solid construction on beach and decided to reject the proposal from CRZ point of view. Thereafter, the same details are given upto para no.19, which we have already dealt with in the reply affidavit of Respondent No.1.

50. In para no.20 of the affidavit by Respondent No.2- MCZMA, it is further mentioned that the Authority after deliberation decided to recommend the proposal to SEIAA for modification of the specific condition no. (I) to the effect *"MMB to ensure that Anti Sea Erosion bund shall occupy minimum intertidal area which is necessary"*. This was held in the Minutes of the 172nd meeting of the MCZMA held on 05th February, 2024, which is annexed as Annexure 8 to this affidavit.

51. Applicants have filed rejoinder affidavit dated 19.08.2024 against the reply affidavit of Respondent No.2- MCZMA, wherein it is submitted that Respondent No.2, while considering the proposal for the Project, has categorically disallowed any construction on the beach and has only allowed some landscaping activities and activities permissible under the CRZ Notification, 2011. The construction activities undertaken by Respondent No. 1- MMB, particularly the construction of a road directly on the natural sandy beach, have been expressly disallowed by the MCZMA. Therefore, the Applicants are not challenging the CRZ Clearance dated 05.03.2019, but in fact, are seeking the revocation of the CRZ Clearances dated 05.03.2019 and 10.06.2021 & 11.06.2021 granted to Respondent No. 1- MMB on the grounds that Respondent No.1- MMB has significantly exceeded and flagrantly violated the terms & conditions of the CRZ clearance issued to it.

52. It is further mentioned in this rejoinder affidavit by the applicants that subsequently, in the 127th Meeting of the MCZMA held on 02.11.2018, the Project was considered once again where Respondent No.1- MMB changed its stance, asserting that the Project was intended as an "anti-sea erosion bund", involving, *inter alia*, repair of an existing old bund.

53. It is further mentioned in this rejoinder affidavit by the applicants with reference to Para nos.14 & 15 of the Affidavit-in-Reply of Respondent No. 2 that a perusal of the 155th Minutes of Meeting of the MCZMA, denotes that Respondent No.2 declined the permission for plaza/restaurant/gym/wooden shacks since the same is not permissible as per the provisions of the CRZ Notification, 2011, and allowed landscaping, playgrounds/recreation grounds and gardens in CRZ-II areas, specifically directing that no construction be allowed on Aksa Beach. However, Aksa Beach entirely falls within CRZ-IA and CRZ-IB zones either in the form of sand dunes or in the form of tidally influenced land falling between the low tide line and the high tide line and none of it is a CRZ-II area. CRZ-I areas are

environmentally most critical as per the Coastal Regulation Zone Notification, 2019. The CRZ-II area falls beyond the beach area.

54. It is further mentioned in this rejoinder affidavit by the applicants that it came to the Applicants' attention in October 2023, through a response dated 21.09.2023 under RTI query dated 17.02.2023, that Respondent No. 1 had sent a letter dated 28.06.2023 to Respondent No. 2, requesting therein for deletion of specific Condition- I imposed by Respondent No. 2 while recommending the Project to Respondent No. 4 from the CRZ point of view. This issue was discussed at the 127th meeting of the MCZMA held on 02.11.2018. Specific condition no. I mandated Respondent No. 1 to ensure that "no construction is allowed in intertidal or beach area i.e., CRZ area. Solid construction should be restricted to landward side of the HTL." Respondent No. 1's request for deletion of specific condition No. I came after the present Application was filed on 10.05.2023 seeking, *inter alia*, revocation of the CRZ clearance dated 05.03.2019 on account of Respondent No.1 failing to comply with the conditions stipulated therein, which clearly demonstrates that Respondent No. 1 has illegally proceeded with construction of a road directly on the beach, contrary to the conditions stipulated by Respondent Nos.2 & 4 for the Project, and is now seeking a drastic alteration to those conditions *post-facto*.

55. It is further mentioned in this rejoinder affidavit by the applicants that it is universally accepted that the most effective technique to ensure long-term protection of beaches and to prevent erosion of beaches is to supplement and strengthen beaches, instead of constructing tidally obstructive "hard constructions" which block the natural tidal flow of water. This would increase the flood prone nature of the area due to lack of sand and sediment passing on to the landward side of the hard construction. It would ultimately lead to the complete erosion of the said sediment towards landward portion beyond the hard construction. It is therefore, worth considering why Respondent No. 2- MCZMA did not direct Respondent No. 1- MMB to replace or fortify the eroded poles or explore the feasibility of "soft" erosion control techniques such as beach/sand nourishment, which were directed for by the Tribunal, vide its order dated 11.04.2022 *in C.H. Balamohan v. Union of India (OA No. 04/2013 with Appeal No. 18/2017)*. Respondent No. 2- MCZMA, in its 172nd Meeting held on 05.02.2024, noted that "now, it came to the notice of the Authority from the representation of MMB and various report of IIT & CWPRS called by the Authority that there are constraints and that the seawall could not be restricted on landward side of HTL", and accordingly, opined that the condition stipulated by it earlier requires to be amended. However, Respondent No. 2- MCZMA failed to consider that Respondent No.1 was aware of the topography of the site proposed by it for the Project, and should have addressed the issue of allegedly existing private properties and proposed public facilities along the landward side of the High Tide Line, prior to the grant of the CRZ clearance dated 05.03.2019. The fact that this concern has been raised at such a belated stage makes it evident that Respondent No.1 did not intend to comply with the CRZ clearance.

56. It is further mentioned in this rejoinder affidavit by the applicants that there is no provision either in CRZ Notification, 2011 or CRZ Notification, 2019, which permits a

motorable road, together with benches, to be constructed on beaches on sand dunes which are CRZ-1A areas. Neither is the construction of concrete seawalls mentioned as a permissible activity in the CRZ Notification. Instead the CRZ notification only permits "bunding" as erosion control techniques. At page no.553 of the paper book in the Affidavit-in-Reply of Respondent No. 1, it is recorded by IIT Bombay that sea water reaches the Project site where lamp posts were previously present, thus clearly indicates that the portion of the beach, on which the Project is being constructed, is a tidally influenced portion of the beach and hence, a CRZ I-A area, and not a CRZ-II. Therefore, the region is evidently an inter-tidal area wherein construction cannot be allowed as per the CRZ clearance dated 05.03.2019.

57. It is further mentioned in this rejoinder affidavit by the applicants that Respondent No.2 recommended a proposal to Respondent No.4- SEIAA for modification of specific condition no. I stating therein that "MMB to ensure that Anti-Sea Erosion bund shall occupy minimum intertidal area which is necessary". However, there is no clarity or specificity regarding the definition of "minimal intertidal area". This lack of clarity will further expand the scope for Respondent No.1- MMB to undertake construction of the Project in flagrant violation of environmental norms. Respondent No.2- MCZMA has not even suggested a monitoring mechanism for the construction activities being carried out by Respondent No. 1- MMB, particularly, given the construction already carried out by Respondent No.1- MMB. The Project will result in the portion of the beach falling towards the landward side of the road to be completely eroded if the wall is permitted to exist, as the wall and the road will disallow natural deposition of sediments/ sand on the other side of the wall/road. At any rate, Respondent No.2- MCZMA cannot grant *post-facto* permission to Respondent No.1- MMB, especially considering Respondent No.2 had itself rejected Respondent No.1' s proposal in the past on the ground that that beach may be eroded due to solid construction on the beach and expressly disallowed any construction on the beach.

58. Short additional affidavit dated 17.03.2025 has also been filed by Respondent No.1- MMB, in which we find that nothing new fact has been stated, rather the facts, which have already been mentioned by us above while dealing with the reply affidavit of Respondent No.1, has been submitted. Besides, in para no.14 of this affidavit, it is prayed that the present Original Application may be dismissed with costs.

59. We have heard the argument of learned counsel for the applicants as well as that of learned counsel for the other parties and perused the entire record in depth.

60. We had heard the arguments of learned counsel for the parties at length on 11.08.2025 and have quoted the same in the order of the said date. Therefore, order dated 11.08.2025 shall be part of this Judgment as well.

61. After having gone through the pleadings, we are of the view that this Tribunal has to decide as to whether CRZ clearance dated 05.03.2019 for the project “Sea front development and beautification at Aksa Beach, Madh, Mumbai Suburban” and the amended CRZ Clearance dated 19.07.2024 (annexed at page no.883 of the paper book) can be revoked on account of the fact that the conditions stipulated therein have not been complied with.

62. In regard to the above, we find that the CRZ Clearance dated 05.03.2019 is annexed at Exhibit- D at page nos.389 to 398 of the paper book and in the 158th Meeting of SEIAA held on 27.02.2019, which is annexed at Exhibit- 'C' at page nos.379 to 388 of the paper book, SEIAA has taken decision (at page no.388 of the paper book) and imposed specific condition no.1 to the effect that MMB to ensure that no construction is allowed in intertidal or beach area i.e. CRZ area. Solid construction shall be restricted to landward side of the High Tide Line. This condition was amended by the SEIAA through their letter dated 19.07.2024 addressed to Respondent No.1- MMB and the said condition has been changed to the effect "*Specific condition no.1- MMB to ensure that Anti Sea erosion bund shall occupy minimum intertidal area which is necessary"*.

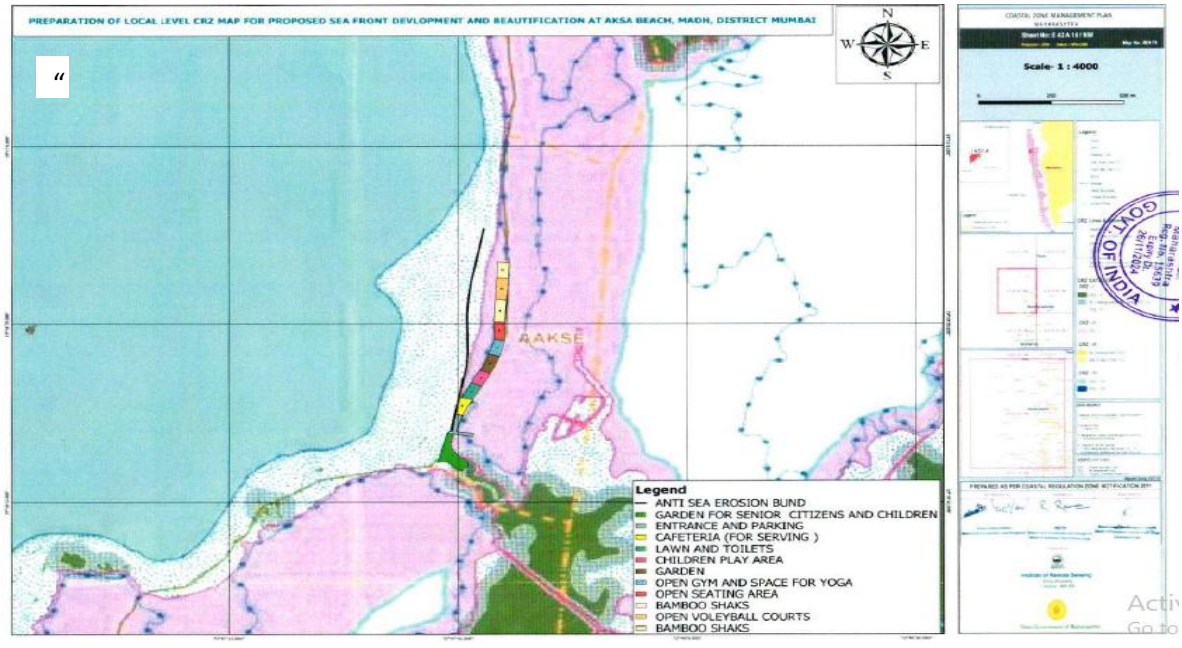
63. Now, we would come to the EIA Report, which is annexed at page nos.283 to 377 of the paper book, in which need for the project has been recorded to the effect *"Maharashtra Maritime Board, Mumbai wishes to provide the facilities for constructing Anti-Sea Erosion Measure, main objective of the provision of anti-sea erosion measure is to protect people, livestock and agricultural fields from the sea coast erosion. This tract is famous for its long coastline and convenient harbours. Also, a large number of commercial apartments are located along the coastline. The erosion of the land is frequently happening due to the waves of Sea water. Therefore, there should be some protection provided to reduce this erosion of the alluvial land soil. By considering the above scenario, the decision is taken to implement the Environmental Impact report for the construction of the Anti- sea erosion measure at the coastal region situated at Aksa Beach in Mumbai Tehsil in Mumbai Suburban District of Maharashtra. …"*

64. From the above, it is clear from the objective that it was to protect a large number of commercial apartments, which are located along the coastline as well as to protect the people, livestock and agricultural fields from the sea coast erosion etc., for which sea erosion bund was proposed to be constructed.

65. Now, we would come to page no.429 of the paper book, which is Environmental Impact Assessment for Proposed Sea Forest Development and Beautification at Aksa Beach, Madh, District Mumbai, wherein Sea Erosion Bund is shown by black line, which is located between the HTL and LTL, which is close to the HTL but not towards the landward side of the HTL.

66. We find the condition in the first CRZ Clearance, which was put by the MCZMA that it should be towards the landward side of the HTL, was found to be incorrect and hence, the same was got modified to the effect that MMB to ensure that Anti-Sea erosion bund shall occupy minimum intertidal area which is necessary. So, this sea erosion bund clearly appears to be located, as per this recommendation, in the intertidal area, which is located naturally between the HTL and LTL.

67. Next, we would come to page no.539 of the paper book, which is a Project Layout superimposed on Approved CZMP (1:4000). The same is reproduced herein below for the sake of convenience:



68. In the above Map, the sea erosion bund approved to be built is shown by black line, which is located within LTL and HTL, and beyond HTL are shown the other proposals, which were made by Respondent No.1 to be constructed at the said area, i.e. garden for senior citizens and children play area; entrance and parking; food plaza; lawns and toilets; gym and space for yoga; wooden shacks and steps; bamboo shades and step; and volleyball courts. These constructions, which were to be constructed in CRZ-II area, were rejected by the MCZMA through their letter dated 30.06.2021, which is annexed at page nos.540 to 541 of the paper book and instead of these constructions, the only constructions, which were permitted, were the landscaping, playground/recreational ground/garden in CRZ- II area.

69. Learned counsel for the applicants has argued that the promenade, which has been made besides the sea erosion bund (retaining wall), would be covered in the landscaping. But in our estimation, the same cannot fall in that definition because landscaping is altogether different thing, nor would the same be covered under playground/ recreational ground or garden. The photographs of the said promenade are shown at Exhibit- K at page nos.556 to 557 of the paper book etc. The said promenade is shown prominently in these photographs after the sea erosion bund. This promenade definitely appears to be quite broad, on which even a four-wheeler can easily be run.

70. In regard to the above, we would like to quote here relevant provision of the CRZ Notification, 2011 as follows:-

> *"3. Prohibited activities within CRZ,- The following are declared as prohibited activities within the CRZ, -*

(i) Setting up of new industries and expansion of existing industries except,-

(a) Those directly related to waterfront or directly needing foreshore facilities:

Explanation: The expression "foreshore facilities" means those activities permissible under this notification and they require waterfront for their operations such as ports and harbours, jetties, quays, wharves, erosion control measures, breakwaters, pipelines, lighthouses, navigational safety facilitie3s, coastal police stations and the like;

*(b) to (e) ******

*(ii) & (iii) ******

(iv) Land reclamation, bunding or disturbing the natural course of seawater except those,-

(a) Required for setting up , construction or modernization or expansion of foreshore facilities like ports, harbours, jetties, wharves, quays, slipways, bridges, sealink, road on stilts (road on reclaimed surface] and such as meant for defence and security purpose and for other facilities that are essential for activities permissible under the notification; Provided that such roads shall not be taken as authorized for permitting development on landward side of such roads till existing High Tide Line. Provided further that the use of reclaimed land may be permitted for roads, mass rapid or multimodal transit system, construction and installation, on landward side of such roads, of all necessary associated public utilities and infrastructure to operate such transit or transport system including those for electrical or electronic signal system, transit stopover of permitted designs; except for any industrial operation, repair and maintenance.

(b) Measures for control of erosion, based on scientific including Environmental Impact Assessment (hereinafter referred to as the EIA) studies.

*(c) & (d) *****"*

71. A close scrutiny of the above provision would indicate that any kind of construction is prohibited in that area, except which has been cited above, which include erosion control measures. In the case in hand, the only permissible activity is the construction of sea erosion bund (retaining wall) to be constructed and beyond that, nothing pakka could have been constructed at the site in question, which is in CRZ area. In the case in hand, the photographs would clearly indicate that the Project Proponent has tried to exceed its permission by making promenade at the site of sea erosion bund without any such proposal having been approved by MCZMA. Even at page no.550 of the paper book, the report of

IIT, Mumbai has not shown any promenade, which is apparent from perusal of the same, as follows:

"

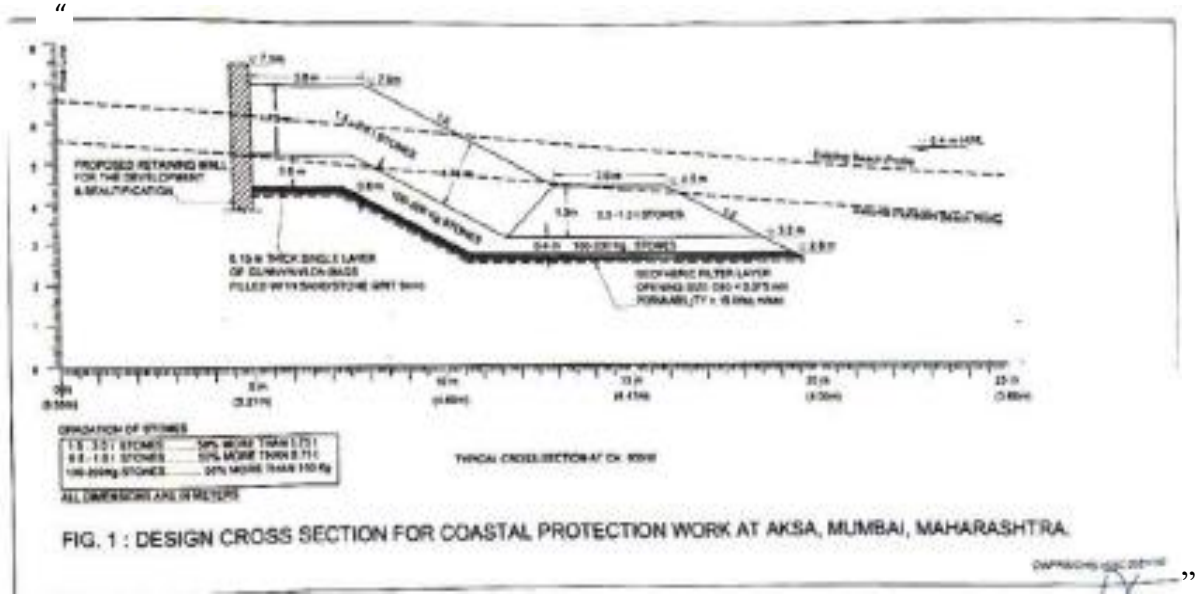


FIG. 1 : DESIGN CROSS SECTION FOR COASTAL PROTECTION WORK AT AKSA, MUMBAI, MAHARASHTRA.

"

72. Therefore, promenade is certainly over-stretching the permission by Respondent No.1- MMB.

73. In view of above observations, we are of the view that the said anti- sea erosion bund of the project is rightly built at the site in question, however, the promenade was never part of approvals. CRZ Clearance need not be revoked. Therefore, the said promenade shall be removed within two months from the date of uploading of this Judgment.

74. With the above observations/direction, we dispose of the present Original Application accordingly.

75. There shall be no order as to costs.

❖

Pratap Lal Teli vs. The Secretary, Environment Department, Government of Maharashtra & Ors.

(Original Application No. 49/2024)
Decided on: 26th September, 2025 (WZB)

CASE NOTE

In the present matter, the applicant challenged the construction being undertaken by Respondent No.5, M/s Indian Film Combine Private Limited, on land at Bandra Kurla Complex, alleging that construction activities over nearly 20 acres were being carried out without obtaining Environmental Clearance (EC) under the EIA Notification, 2006 and that the development fell within a highly restrictive Mangrove Buffer Zone in violation of CRZ Notifications of 1991, 2011 and 2019. The applicant further alleged that the project was divided into two phases, the second beginning in 2007 and therefore, EC was mandatory and sought directions for demolition of the structure and the imposition of environmental cost using the "polluter pays" principle. The respondents, relying on records including the CRZ clearance dated 06.08.1999, commencement certificates and site inspection reports, submitted that the project fell in CRZ-II, that no mangroves were found within the site and that the construction was on the landward side of existing authorised structures.

The Tribunal considered the issues of whether EC was required under the EIA Notification 1994/2006; whether Phase-II commenced in 2007 necessitating EC; whether the project fell within 50m of a Mangrove Buffer Zone; whether the OA suffered from suppression of material facts; and whether it was barred by limitation. It examined the CRZ Notification 1991 and 2000 amendments, noting that the project fell in CRZ-II where no mangrove buffer requirement existed and considered subsequent clarifications by the State Government and MCZMA. The Tribunal also noted that the issue of Mangrove Buffer Zone violation was already pending decision before the MCZMA pursuant to the Hon'ble High Court of Bombay directions, and therefore Issue III could not be decided on merits at this stage.

On merits, the Tribunal found that the applicant had failed to establish any violation of environmental norms by Respondent No.5. The Tribunal placed reliance on official findings, including CRZ clearances, commencement certificates, MPCB communications and reports of the Mangrove Cell confirming that no mangroves were found at the site and that the plot was outside the notified mangrove area. It further found that several material facts such as the applicant's prior complaints of 2016 and 2017, the withdrawal of the MCZMA stop-work order on 15/16.09.2017, the *ex-parte* order of the Magistrate dated 06.06.2019, and the subsequent High Court stay, had been suppressed by the applicant. Owing to such suppression and the applicant's inability to prove any illegality, the Tribunal held that no ground for relief was made out.

The Tribunal held that the applicant failed to establish any violation of environmental norms and, therefore, no case for demolition of the structure or for imposing environmental compensation was made out. The Original Application was accordingly dismissed, and all pending applications were disposed of.

Pratap Lal Teli vs. The Secretary, Environment Department, Government of Maharashtra & Ors.

COUNSEL FOR APPLICANT(S):
Mr. Aditya Pratap for the Applicant.

COUNSEL FOR RESPONDENT(S):
Mr. Aniruddha Kulkarni, Advocate for R-1/Envt. Deptt., R-3/MCZMA and R-4/SEIAA.
Mr. Karan Bharihoke, Advocate along-with Mr. Saket Mone, Mr. Amey Nabar, Ms. Swati Jain and Ms. Anchita Nair, Advocates for R-5/PP.
Mr. D.M. Gupte, Advocate for R-6/Addl. PCCF.

CORAM:
HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER
HON'BLE DR. SUJIT KUMAR BAJPAYEE, EXPERT MEMBER

RESERVED ON: 16th September, 2025
PRONOUNCED ON: 26th September, 2025

ORDER

BY HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON

1. In this original application, the applicant has raised an objection in respect of the construction being raised on land bearing Survey No. 341 (Part), CTS No. 629 (Part) of Bandra & Survey No. 4 (Part), CTS No. 8 (Part) of Parighkhar, Mumbai (popularly known as Bandra Kurla Complex). The applicant alleges that the construction is going-on in about 20 acres of land without obtaining the Environment Clearance (EC) in terms of the EIA Notification of 2006 though the construction is much in excess of threshold limit. The applicant further alleges that the construction is going on in the highly restrictive Mangrove Buffer Zone in violation of the CRZ Notification of 1991, 2011 and 2019. The applicant also alleges that the project is in two phases and Phase-I of the project was in non-CRZ area, hence, developer could not have sought any exemption from EIA Notification of 1994. He further alleges that the Phase-II of the project commenced in 2007, therefore, in terms of the EIA Notification of 2006, the EC was required. On the basis of the above allegations, the applicant has prayed for a direction to demolish the structure and also to impose the environmental cost invoking the "polluter pays" principle and the precautionary principle.

2. This case has a checkered history therefore, the brief facts which have been pointed out by the counsel for the respondent no. 5 and which have not been disputed during the course of hearing are noted hereinafter. The respondent no. 5 was granted a leasehold right

for the land in question for 99 years on 28.04.1971. On 23.12.1977, the MCGM had approved the plans for a drive-in-theatre. The construction was completed and the OC was granted to the respondent no. 5, in terms of the law prevailing at that time. On 14.06.1999, the respondent no. 5 had made an application to the state government for CRZ clearance to redevelop the plot proposing an integrated composite project comprising of a reduced capacity drive-in-theatre, office building and hospitality component. On 06.08.1999, CRZ clearance was granted by the State of Maharashtra in accordance with the CRZ notification 1999.

3. On 05.12.2001, the layout plan was approved by MCGM and the commencement certificate was issued by MMRDA. The amendment to the approved layout plan was approved by MMRDA by issuance of CC on 25.11.2002.

4. On 27.06.2003, redevelopment/construction commenced and a work start notice was issued by the respondent no. 5 to MMRDA and MCGM. Government of Maharashtra in terms of directions of MoEF dated 16.04.2002 was to prepare a revised CZMP on the scale of 1:4000 as per approved development plan, therefore, respondent no. 5 on 04.07.2003 had requested clarification if the said plot would be affected by it. The UDD, Government of Maharashtra vide communication dated 17.10.2003 had clarified that there was no impediment to the redevelopment of the project which was in accordance with the CRZ clearance dt. 06.08.1999 as the entire proposed development on the plot was on the landward side of the existing authorised structure/imaginary line. The respondent no. 5 had applied to the MMRDA for amendment to the approved layout plan on 06.02.2004 which was refused by the MMRDA on 14/16.12.2004 noting certain deficiencies. The respondent no. 5 had filed an appeal under section 47 of the MR&TP Act, 1966 before the appellate authority, the Chief Minister (Government of Maharashtra) and by order dated 15.01.2007, the appellate authority had set aside the order of the MMRDA dated 14/16.12.2004 and granting permission to the respondent no. 5 to carryout the project as per the amendment plans with certain modifications. According to the respondent no. 5, this order constitutes planning permission. The MPCB granted consent to Establish incorporating the condition to obtain EC as per EIA Notification and CRZ clearance from MCZMA. In response, the respondent no. 5 by a representation had informed the MPCB of the order dated 15.01.2007 passed by the appellate authority clarifying that no such clearances were required. The MPCB on 23.02.2016 had requested the Environment Department, Government of Maharashtra to clarify if respondent no. 5 was required to obtain prior EC and CRZ clearance. The present applicant had filed the complaint dated 27.07.2016 to MMRDA and MCZMA alleging illegal construction in the project of the respondent no. 5 raising the same grievance which is raised in this OA. The MCZMA in its meeting dated 28/30.06.2017 considered the complaint of one Mr. Santosh Daundhkar regarding illegal construction in the project on 11.08.2017 had directed to stop the work of the project. Thereafter the MCZMA considering the details and with due deliberations decided to withdraw the stop work order in its meeting dated 15/16.09.2017. Vide communication dated 11.01.2018, a copy of this decision was sent to the MMRDA and also to the applicant in the present OA. This decision of MCZMA was not objected to by any of them and had attained finality. The MMRDA had also sent a communication dated

16.02.2018 to the MCZMA intimating that all the conditions were complied with by the project and no action was warranted against the project.

5. The Environment Department, Government of Maharashtra had sent response to the MPCB letter dated 23.02.2016 clarifying that the project was a composite one and had received sanction from the MMRDA as a composite project on 05.12.2001 after the issuance of CRZ Clearance by UDD. It was also clarified that the project was granted commencement certificate on 05.12.2001 from MMRDA and CRZ clearances on 06.08.1999 from the State Government and that the EIA Notification 1994 with the amendment thereto dated 07.07.2004 was not applicable.

6. The Consent to Operate for the project was granted by MPCB on 27.03.2018. The Forest Conservation Mangroves Unit in its communication dated 30.06.2018 the DFO, Mumbai Mangrove Conservation Cell had conveyed that in the inspection at the site no mangroves were found nearby and on the wall at the plot had existed since a long time and the notified mangrove area was up to 400m from the wall and the construction was not done by destroying mangrove and the site was outside the notified mangrove area.

7. The present applicant on 10.08.2017, had filed criminal complaint no. 182/2017 before the court of Metropolitan Magistrate (MM), Bandra against the respondent no. 5 and its Directors seeking registration of FIR against the parties for illegal construction of the project on the same grounds which are raised in this OA. Ld. MM had passed an *ex-parte* order dated 06.06.2019 issuing process against the respondent no. 5 and its directors in criminal complaint no. 182/2017. The Writ Petition No. 1386/2020 under Section 482 of the Cr.PC has been filed by the respondent no. 5 and its directors for quashing the order dated 06.06.2019 and the order has been stayed. The writ petition is pending for hearing.

8. Based on another complaint the MCZMA on 04.02.2022 took a view that the area of the project was within 50m of Mangrove Buffer Zone, therefore, prior permission of the High Court was required. This was informed to the respondent no. 5 by letter dated 04.03.2022. On 25.04.2022, the respondent no. 5 had made a representation to the MCZM to remove the condition of seeking permission from the High Court. The Division Bench of the High Court in writ petition no. 15318/2023 in the matter of ***Shivtej Builders & Developers v. Navi Mumbai Municipal Corporation & Ors.*** by order dated 11.12.2023 had militated against the proposition that any permission from the High Court was required. The respondent no. 5 had sent the representations dated 26.06.2024 and 28.04.2025 to the MCZMA referring to its undecided representation dated 25.04.2022 and pointed out the order of the High Court in the matter of ***Shivtej Builders & Developers v. Navi Mumbai Municipal Corporation & Ors.***

9. The Division Bench of the Bombay High Court in WP(L) No. 2010/2025 had disposed of the petition filed by the respondent no. 5 directing the MCZMA to decide the representation dated 28.04.2025. In compliance with the order of the High Court dated 10.07.2025, the MCZMA considered the representation of the respondent no. 5 in its 186th meeting held on 01.08.2025 and has sought certain documents from the respondent no. 5 and also directed the Mangrove cell to submit its report. The matter is pending before the MCZMA in this regard at this stage.

10. Pressing the OA, learned counsel for the applicant submits that project is covered by the EIA notification 2006. The project built-up area is more than the threshold limit provided under the EIA Notification 2006, therefore, EC for the project was necessary. He has further submitted that the construction proposed for the Phase-II of the project in 2007 was an expansion of the earlier project, therefore, the Phase-II could not have been proceeded with without obtaining an EC under the notification of 2006. He submits that the order dated 15.01.2007, issued by the Chief Minister stating that there was no need to obtain EC under the EIA notification 2006 is not legally tenable. He has also submitted that since the first phase of construction project had not reached the plinth level on cut-off date of 07.07.2004, EC was mandatory even for Phase-I construction. The counsel for the applicant further submits that the construction has been done in Mangrove Buffer Zone, where no construction is permitted. He submits that in the CZMP prepared on 27.09.1996, it was clearly stipulated that all mangroves within an area of 1000 sqm or more would be classified as CRZ-I with a buffer zone of atleast 50m and the same was also provided in CRZ Notification 2011 and 2019, therefore, the construction could not have been permitted in Mangrove Buffer Zone. In this regard, he has also placed reliance upon the order of the Bombay High Court dated 17.09.2018 in PIL No. 87/2006 ***(Bombay Environmental Action Group & Anr. v. State of Maharashtra & Ors.)***. His further submission is that even the permission of the UDD dated 06.08.1999 reckoned as CRZ Clearance, is not tenable in view of the order of the Bombay High Court dated 29.04.2016 in the case of ***Adarsh Co-operative Housing Unit Ltd.*** in Original Side Writ Petition No. 369/2011. He has also submitted that neither the UDD nor the Environment Department, Government of Maharashtra was authorized to grant clearance during the period 09.07.1997 to 21.04.2003, as during this period the Environment Department was the competent authority. He has further submitted that since the above violations have been done by the respondent no. 5, therefore, the construction raised by the respondent no. 5 is liable to be demolished.

11. Learned Counsel for the respondent no. 5 has opposed submission of applicant. He has submitted that the project does not attract the provisions of EIA Notification 1994, the amendment dated 07.07.2004 or the EIA Notification 2006. He submits that the requisite CRZ clearance applicable to the project was duly obtained. He has further submitted that the project does not fall within 50m of Mangrove Buffer Zone and that as per approved CZMP of 2000, the project falls in CRZ-II area and that in CRZ notification 1991 there was no provision for a Buffer Zone in respect of Mangrove for CRZ-II. He has further submitted that in CRZ Notification 2011 also the project falls in CRZ-II, as the project is covered by the definition of “developed area”. He has submitted that the issue is covered by the orders of the Bombay High Court and also the Hon’ble Supreme Court. He has further submitted that the UDD, Government of Maharashtra was authorized to grant clearance during the relevant period and the same has been duly granted in accordance with law. Further submission of the learned counsel for the respondent no. 5 is that the OA suffers from the serious defect of suppression of material facts and is also barred by limitation.

12. Learned Counsel appearing for the respondents no. 1, 3 and 4 has also submitted that the respondent no. 5 has the due permissions and the project does not violate any environmental norm. Learned Counsel for the respondent no. 6 has referred to the report filed

as Exhibit B along with its reply and has submitted that no Mangroves have been found at the site during the site visit and no part of it is a Reserved Forest.

13. We have heard the learned counsel for the parties and perused the records.

14. The following issues are involved in this OA:

I. Whether the project suffers from illegality for not obtaining the EC under the EIA Notification of 1994 as amended in 2004 and EIA Notification of 2006 though the built-up area of the project exceeds the threshold limit provided in the Notification?

II. Whether the project of the respondent no. 5 was in two phases and the second phase of the project was started in 2007, therefore, EC was required to be taken in terms of EIA Notification 2006?

III. Whether the construction of the project falls within 50m of the Mangrove Buffer Zone which is impermissible under the order of the High Court of 2005 and 2018 and also as per CRZ Notification 1991, 2011 and 2019?

IV. Whether OA filed by the applicant is liable to be dismissed on the ground of suppression of material facts?

V. Whether OA is liable to be dismissed as barred by limitation?

Issue No. I and II

15. Issue No. I and II are interconnected, therefore, they are being decided together. Before examining the applicability of EIA Notification, it would be relevant to take note of the clearances obtained by respondent no. 5 under CRZ Notifications.

The CRZ Notification dated 19.02.1991 declaring coastal stretches as Coastal Regulation Zone (CRZ) and regulating the activity in the CRZ was issued by the MoEF under section 3(1) and section 3(2)(v) of the Environment (Protection) Act, 1986 and rule 5(3)(d) of the Environment (Protection) Rules, 1986. By the Notification dated 09.07.1997, the Notification dated 19.02.1991 was amended and in para 3 sub-para (2) of clauses II and IV, following clauses were substituted:

> ***"****(3) "(iv) All other activities with investment exceeding rupees five crores except those activities which are to be regulated by the concerned authorities at the State/Union Territory level in accordance with the provisions of paragraph 6, subparagraph (2) of Annexure I of the notification."****"***

16. By the above amendment of 1997, the power was delegated to the State Government for granting CRZ clearance for projects with investment of INR 5 crores. The respondent no. 5 submitted an application to the State Government for CRZ clearance. By order dated 06.08.1999, the UDD, Government of Maharashtra had granted CRZ clearance in accordance with the CRZ Notification 1991 and CZMP by observing as under: -

"3.As per Ministry of Environment and Forests Department, Government of India Notification dt. 19th February, 1991, the State Government prepared the Coastal Zone Management Plan for the coastal area of Maharashtra State and submitted to MOEF for approval which is approved by MOEF vide letter dt. 27/9/1996 with some conditions and modifications. As per these conditions CZ MP of the State Coastal area is revised in which plot under reference is included in CRZ-II. In CRZ-II area development is permitted as per Development Control Rules prevailing as on 19/2/1991.

4. It is observed that the plot under reference is partly affected by Coastal Regulation Zone. In the circumstances, there is no objection to develop the unaffected portion of the plot as per prevailing regulations. However, in respect of portion of plot coming within C.R.Z. the same may be allowed to be developed subject to conditions that proposed construction shall be on the landward side of existing authorised structure and imaginary line drawn from the creek ward side of existing authorised structures and as per relevant rules and regulations."

17. The MMRDA had approved the layout plan and had issued the commencement certificate on 05.12.2001. The amendment of the approved layout plan was also approved by the MMRDA by issuing the CC dated 25.11.2002.

18. The CRZ Notification of 1991 was again amended by the Notification dated 22.04.2003. By the amendment dated 22.04.2003 clause v of para 3, sub-para 2 of the Notification dated 19.02.1991 was substituted by the clauses iv and v: -

"(iv) Demolition or reconstruction of-

(i) buildings of archaeological or historical importance;
(ii)heritage buildings; and
(iii) buildings under public use.

Explanation :- For the purpose of this clause iv, 'public use' shall include use for purposes of worship, education, medical care and cultural activities.

(v) All other activities with investment of five crore rupees or more:

Provided that activities involving investment of less than five crore rupees shall be regulated by the concerned authorities at the State or Union territory level in accordance with the provisions of sub-paragraph (2) of paragraph 6 of Annexure-I of this notification."

19. The above sequence of events and amendments in CRZ Notification reveal that the respondent no. 5 had obtained the requisite CRZ clearance from the concerned authority between the period from 2001 to 2003 in terms of the prevailing provisions of CRZ Notification 1991 when the power was vested with the State for such projects.

20. The applicant has raised a grievance that the EC was not obtained under the Environment Impact Assessment (EIA) notification.

21. The EIA Notification dated 27.01.1994 was issued under the Environment (Protection) Act, 1986 read with Environment (Protection) Rules, 1986. Under this notification, the projects covered by clause 2 and schedule I to the notification were required to have EC. It has been pointed out by the counsel of the respondent no. 5 that the construction projects were not covered under clause 2 or Schedule I to the Notification dated 27.01.1994. The EIA Notification dated 27.01.1994 was amended by the Notification dated 07.07.2004, inserting following sub para (g) and (h) after sub para (f) in clause 2(II):-

> ***"****(ii) after sub-para (f), the following shall be inserted, namely: -*
>
> *"(g) any construction project falling under entry 31 of Schedule-I including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals and office complexes for 1,000 (one thousand) persons or below or discharging sewage of 50,000 (fifty thousand) litres per day or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below.*
>
> *(h) any industrial estate falling under entry 32 of Schedule-I including industrial estates accommodating industrial units in an area of 50 hectares or below but excluding the industrial estates irrespective of area if their pollution potential is high.*
>
> *Explanation.–*
>
> *(i) New construction projects which were undertaken without obtaining the clearance required under this notification and where construction work has not come up to the plinth level, shall require clearance under this notification with effect from the 7th day of July, 2004.*
>
> *(ii) In the case of new Industrial Estates which were undertaken without obtaining the clearance required under this notification and where the construction work has not commenced or the expenditure does not exceed 25% of the total sanctioned cost, shall require clearance under this notification with effect from the 7th day of July, 2004.*

(iii) Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules, shall be required to submit the details of the entire project covering all phases or modules for appraisal under this notification";"

22. It has been pointed out by the counsel for the respondent no. 5 that the construction of the project had started on 27.06.2003 in pursuance of the work commencement notice dated 04.07.2003 and the plinths of building (b) and (c) were constructed prior to 15.05.2004.

23. The explanation (i) added through the amendment notification dated 07.07.2004 required EC to be obtained by the projects where the construction work had not come up to the plinth level till the cut-off date of 07.07.2004, i.e., till the date of issuance of the amendment notification. The applicant has failed to point out any material in contradiction to the plea of the respondent no. 5 that the construction up to the plinth level of buildings b and c had taken place prior to 15.05.2004, i.e., prior to the cut-off date of 07.07.2004. Therefore, it could not be demonstrated by the counsel for the applicant in terms of the amendment notification dated 07.07.2004 that EC was required to be obtained by the respondent no. 5.

24. Similar issue had come-up before the High Court of Judicature at Bombay in WP No. 363/2020 in the matter of ***Haroon Ebrahim Patel v. The State of Maharashtra & Ors.,*** wherein the Division Bench of the High Court by order dated 06.08.2024 after considering the Notification dated 27.01.1994 as amended by the Notifications dated 07.07.2004 and 14.09.2006 had found as under:

"9.*Upon a perusal of the Notification dated 27th January 1994, as amended by the Notifications dated 7th July 2004 and 14th September 2006, It Is evident that clause (2) of the Notification dated 27th January 1994 requires Environmental Clearance to be obtained by any person who desires to undertake any new project in any part of India or the expansion or modernization of any existing industry or project listed in Schedule-I MOEF. The Notification dated 7th July 2004 Introduces clause (3)(g), which requires environmental clearance for any construction project falling under entry 31 of Schedule-1, including new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals, and office complexes for 1000 persons or below or with an investment of Rs.50 crores. The explanation to clause (3)(i) states that the clearance as required by the Notification dated 27th January 1994, as amended by the Notification dated 7th July 2004, shall be necessary for new construction projects that were undertaken without obtaining the Environmental Clearance required under the said Notification and where construction work has not progressed up to the plinth level. In other words, the clearance required under the Notification shall not be necessary for such projects where construction has reached the plinth level. It is undisputed that the construction up to*

the plinth level of Building No. 2 was already completed before the issuance of the Notification dated 7th July 2004. Therefore, both conditions outlined in the explanation to clause (3) of the Notification dated 27th January 1994, as amended by the Notification dated 7th July 2004, are met, as it was a new construction project without the required clearance under the Notification, and the construction work had not progressed up to the plinth level.

10.The general principle regarding the applicability of statutes governing building permissions is that the law prevailing on the date of the grant of permission must be applied by the planning authority, as new liabilities imposed after the grant of valid development permission may Infringe upon the vested right to develop immovable property, as conferred under the provisions of the Maharashtra Regional and Town Planning, Act, 1966. However, this unqualified Interpretation may not be strictly applicable to matters of environmental law. Nonetheless, by analogy to the aforementioned general principle, the explanation to clause (3)(9) of the Notification dated 27th January 1994 must be construed to imply that construction up to the plinth level of a building within the project constitutes a new project for the purposes of clause (3)(g) of the said Notification. Accordingly, environmental clearance for the project in question shall not be required."

25. Thus, the case of the respondent no. 5 in this regard is covered by the above judgment of the Division Bench of the Bombay High Court.

26. The EIA Notification dated 14.09.2006 was issued by the Central Government under the provisions of the Environment (Protection) Act, 1986 and Environment (Protection) Rules, 1986 in supersession of the Notification dated 27.01.1994. In the Notification dated 14.09.2006 the things done or omitted to be done before supersession were saved. In the opening paragraph of the Notification dated 14.09.2006 it was specifically provided that: -

"*Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and in supersession of the notification number S.O. 60 (E) dated the 27th January, 1994,* ***except in respect of things done or omitted to be done before such supersession,*** *the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from*

the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification."

Emphasis provided

27. That apart appellate authority under Section 47 of the MR&TP Act, 1966 in the order dated 15.01.2007, while allowing the appeal and granting permission to the respondent no. 5 to carry out the redevelopment of his land in terms of the amended plan, had also recorded that the entire project is approved under CRZ provisions and is excluded from the scope of EIA Notification. The appellate authority in order dated 15.01.2007 had clearly recorded as under: -

"6.5 E) Reg. Environmental Impact Assessment (EIA) Clearance

The Respondents have taken a stand that the appellant is required to obtain the EIA Clearance under the provisions of Notification No. S.O. No. 801(E), dated 7th Jully, 2004 issued by MoEF, GOI.

6.5.1 With regards to respondents objection, the Appellant stated that the said Notification No. 801(E) dated 7th July, 2004 is, in fact, amended version of earlier Notification No. SO 60(E) dated 27th January, 1994, consequent to which paragraph 3 thereof clearly spells out exception in respect of certain projects to which this 'Notification does not apply. This exceptions clearly include projects covered by CRZ Notification No. SO 114 (E) dated 20.02.1991, more over the respondents themselves have stated that any redevelopment affected by CRZ will not require EIA clearance. It was therefore emphasized by the Appellant that Respondent's requirement with regard to EIA is unwarranted as the instant project falls within scope of CRZ Notification and EIA Notification does not apply here as CRZ clearance pertains to whole project and not part of it.

6.5.2 On consideration of the submissions of the parties, I am of the view that this contention of the Respondents is misplaced. The Appellant's entire project has been approved under CRZ provisions and is accordingly excluded from the scope of Notification No. SO-60(E) dated 27.1.1994 its amended by Notification No. S.O.801(E) dated 7.7.2004. Accordingly, the objection of the respondent in this regard is rejected."

28. The above order of the appellate authority has attained finality and has not been challenged thereafter. The plea of the respondent no. 5 is that the EIA Notification 2006 could not have been considered by the appellate authority since it came into existence after

the hearing of the appeal has also not been controverted. The applicant has submitted that though the appeal was heard earlier but the appellate authority had passed the order subsequent to issuance of EIA Notification 2006.

29. The Environment Department, Government of Maharashtra in its communication by Additional Chief Secretary dated 05.03.2018 to the Member Secretary, MPCB had also clarified this position about non-applicability of the EIA Notification by clearly stating as under: -

> *"3.It is noted that the project is a composite one and has received sanction from the MMRDA as a composite project on 05.12.2001 after issuance of CRZ Clearance by the U.D.D. vide letter dtd. 6.8.1999. Hence CRZ and non-CRZ portion cannot be practically separated. In conclusion, it is found that the Notification 1994 amended on 07.07.2004 is not applicable to the project due to the exclusions at para 3 (a) thereof.*
>
> *4. Further also it is seen that the project dimensions have changed negatively i.e. area under construction is less than the initial proposed area and it is an ongoing project. Therefore, EIA Notification dtd. 14.9.2006 is also not applicable to this project."*

30. In view of the above, the EIA Notification dated 27.01.1994 as amended by Notification dated 07.03.2004 and EIA Notification dated 14.09.2006 had no applicability to this project which was already sanctioned and in which the construction work had commenced based upon the clearance granted under the CRZ Notification dated 19.11.1991, as amended from time to time. It has been pointed out by the counsel for the respondent no. 5 that the area of the project has subsequently been reduced. The plea of the respondent no. 5 that no additional area is intended to be included in the project has not been controverted, therefore, there is no material to treat the project either as a new project or an expansion, or a capacity addition to the existing project under EIA Notification 2006.

31. Further argument of counsel for the applicant is that the project was in two phases and second phase of the project commenced in 2007. As against this, learned Counsel for the respondent no. 5 has referred to the order dated 17.01.2007 passed by the appellate authority in an appeal under section 47 of the MMRDA which indicates that the project is an integrated project having CRZ clearance and building permissions. The counsel for the respondent no. 5 has also shown the commencement certificate dated 05.12.2001 in support of the plea that there was no subdivision of the plot and that the layout and FSI for the entire integrated project were approved by the MMRDA through this layout approval. Though applicant has raised such a plea, but has not pointed out any material to show that the project was in two phases. Thus, the plea of the applicant that the project was in two phases is unsubstantiated.

32. In view of the above analysis, we find that the applicant has failed to establish that EC was required under the EIA Notification dated 27.01.1994 as amended by the Notification

dated 07.07.2004 or by the EIA Notification dated 04.09.2006 or the project was sanctioned in two phases, hence, the issues no. I & II are answered against the applicant.

Issue No. III

33. So far as the issue no. III, is concerned, the plea of the applicant is that the construction of the project is illegal because it is being carried out within 50m of Mangrove Buffer Zone without any prior permission. The stand of the respondent no. 5 is that the project does not fall within 50m Mangrove Buffer Zone.

34. The CRZ Notification dated 19.02.1991 was issued under the provisions of the Environment (Protection) Act, 1986. The classification in respect of the CRZ-I and CRZ-II given in Annexure-I of this notification, relevant part for the present purpose is as under: -

> *"**Classification of Coastal Regulation Zone:***
>
> *6(1) For regulating development activities, the coastal stretches within 500 meters of High Tide Line on the landward side are classified into four categories, namely:*
> ***Category I (CRZ-I):***
>
> *(i) Areas that are ecologically sensitive and important, such as national parks/marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, areas close to breeding and spawning grounds of fish and other marine life, areas of outstanding natural beauty/historically/heritage areas, areas rich in genetic diversity, areas likely to be inundated due to rise in sea level consequent upon global warming and such other areas as may be declared by the Central Government or the concerned authorities at the State/Union Territory level from time to time.*
>
> *(ii)Area between Low Tide Line and the high Tide Line.*
>
> ***Category-II (CRZ-II):***
>
> *The areas that have already been developed up to or close to the shoreline. For this purpose, "developed area" is referred to as that area within the municipal limits or in other legally designated urban areas which is already substantially built up and which has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewerage mains.**"***

35. The CRZ Notification 1991 did not contain any provision for a Buffer Zone in respect of Mangrove for CRZ-II areas. The CRZ clearance dated 06.08.1999 quoted in earlier part of this order clearly mentions that the project falls in CRZ-II.

36. The CRZ Notification of 19.02.1991 was superseded by the CRZ Notification dated 06.01.2011. The clause 7 of this Notification contains the classification of the CRZ. Relevant clauses for the present controversy classifying CRZ-I and CRZ-II in the Notification dated 06.01.2011 are quoted below: -

> *"7.Classification of the CRZ-For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely: -*
>
> *(i) CRZ-I-*
> *A. The area that are ecologically sensitive and the geomorphological features which play a role in the maintaining the integrity of the coast,-*
> *(a) Mangroves, in case mangrove area is more than 1000 sq mts, a buffer of 50meters along the mangroves shall be provided;*
> *…*
> *(ii) CRZ-II-*
> *The areas that have been developed upto or close to the shoreline.*
> ***Explanation***.- *For the purposes of the expression "developed area" is referred to as that area within the existing municipal limits or in other existing legally designated urban areas which are substantially built-up and has been provided with drainage and approach roads and other infrastructural facilities, such as water supply and sewage mains;"*

37. Clause 8 of this Notification of 2011 contains the norms and regulation of activities permissible under the said Notification and the permissible activities in CRZ-II are specified as follows: -

> *"8.Norms for regulation of activities permissible under this notification,-*
> **…**
> *II. CRZ-II,-*
> *(i) Buildings shall be permitted only on the landward side of the existing road, or on the landward side of existing authorized structures;"*

38. The plea of the respondent no. 5 is that the construction is on the landward side of the existing authorised structure.

39. The counsel for the applicant has placed reliance upon the interim order of the Bombay High Court in PIL 87/2006, whereby the construction within 50m on all sides of the mangroves was restrained and also the final judgment of the Bombay High Court dated 17.09.2018 in this regard.

40. The PIL 87/2006, in the matter of ***The Bombay Environmental Action Group v. The State of Maharashtra & Ors.*** was filed seeking directions for protection of the mangroves. In the PIL along with the connected writ petitions following interim order was passed by the High Court on 06.10.2005: -

> *"8.The State Government is directed to designate a Senior Officer not below the rank of concerned District Magistrate and Collector and Deputy Commissioner of Police/Superintendent of Police to oversee the implementation of the following directions. They would entertain complaints from citizens in respect of mangrove destruction. The name, address and contact information of such officers shall be advertised prominently in one English newspaper and two Marathi newspapers, apart from the official websites of the Maharashtra Government and the Forest Department.*
>
> *(i) That there shall be a total freeze on the destruction and cutting of mangroves in the entire State of Maharashtra. We take note of the fact that in T.N. Godavarman Thirumulkpad vs. Union of India and Ors. etc. [Writ Petition (C)No. 202 of 1995 and 171 of 1996], an affidavit was filed on behalf of the State of Maharashtra by the Chief Conservator of Forests (Administration), in which on the basis of a report of an Expert Committee, it was stated that in the Mumbai Urban Area alone, 1,534 hectares of land were, inter alia, classified as mangrove areas.*
>
> *(ii) All construction and rubble/garbage dumping on the mangrove areas shall be stopped forthwith;*
>
> ***(iii) Regardless of ownership of the land, all construction taking place within 50meters on all sides of all mangroves shall be forthwith stopped;***
>
> ***(iv) No development permission whatsoever shall be issued by any authority in the State of Maharashtra in respect of any area under mangroves.***
>
> *(v) The Municipal Commissioner of Greater Mumbai shall forthwith issue the necessary directions to the Municipal Corporation of Greater Mumbai Building Proposals Department not to entertain any applications for development (as defined in the Maharashtra Regional and Town Planning Act, 1966) on or in respect of the mangrove lands, regardless of the nature of ownership;*

(vi) The State Government and the Maharashtra Coastal Zone Management Authority (MCZMA) are directed to file monthly report on the above action plan to this Court. The first report will be submitted within four weeks from today. The report shall specifically state, in addition to the progress/action taken,

(a) the number of complaints received, if any,
(b) the action taken thereon, if any,
(c) the number of offenders named, and
(d) the details of prosecutions/action launched/taken against such offenders.

(vii) The State of Maharashtra is directed to file in Court and furnish to the petitioners copies of the maps referred to in paragraph 10 of the affidavit dated 16th August, 2005, filed by Mr. Gajanand Varade, Director, Environment Department, State of Maharashtra (Page 346 on the record), within four weeks from today;

(viii) The areas shown as mangrove area in the satellite study report "Mapping of mangroves in the Maharashtra State using Satellite Remote Sensing" dated August, 2005, prepared by the Maharashtra Remote Sensing Application Centre (MRSAC) for the MCZMA which was submitted to this Court on 29th August, 2005, form part of Phase I of the mapping by MRSAC. The MRSAC will, in Phase II, carry out mangroves study using high resolution for detailed mapping of mangroves with a view to identify more precisely mangrove areas in Mumbai and Navi Mumbai. After receiving the said satellite data, transfer of mangrove details on city survey/village maps (cadastral map) will be carried out within a period of 6 months from today;

(ix) After the aforesaid process in clause (viii) is completed, the areas so identified which are government owned shall be declared and notified as "protected forests" in accordance with law after carrying out ground survey etc. The areas so identified that are privately owned shall be declared and notified as "forests" in accordance with law, after carrying out ground survey etc. The said declaration/notification will be completed within a period of 8 weeks of the completion of Phase II mapping;

(x) The mangrove areas that are on government owned lands will be handed over to the Forest Department within a period of 12 weeks from the declaration of the same as "protected forests";

(xi) From the list of "mangrove areas" so identified, Government owned lands will automatically be declared/notified as "protected forests". Likewise, privately owned lands from the list of mangrove areas so identified, the same will be declared/notified as "forests";

(xii) The Secretary, Revenue Department, shall from the said date of taking over possession of the Government owned land by the Forest Department, update all the revenue records to ensure that the said Government lands are shown as "protected forests" in the said revenue records within a period of 12 weeks from the same being declared as "protected forests". In the case of lands that are private owned, the secretary, Revenue Department, shall update all the revenue records to ensure that the said private lands are shown as "forests" in the said revenue records within a period of 12 weeks of completion of the steps in clause (x) above;

(xiii) In respect of Government lands, the Forest Department and other authorities of the State of Maharashtra shall take the following necessary steps of protection, conservation and regeneration of the areas that would be declared/notified as "protected forests: in terms of clause (x) above :

(a) Removal of all obstructions that are impeding the growth of mangroves as also the impediments which restrict the flow of sea water in the mangrove areas;

(b) Wherever mangrove growth is found to be sparse and denuded (i.e. with forest density less than 0.4 which means canopy less than 40%) within these identified areas, taking necessary steps for rejuvenation;

(c) On identification of the areas as forest, the Municipal Corporation of Greater Mumbai would remove garbage and debris within these areas within a period of three months as per the instructions of the Forest Department. These areas shall be rejuvenated with mangroves;

(d) The Forest Department is directed to take necessary action against the offenders in accordance with law for damaging or destroying mangroves.

9. The Officers so designated in paragraph 8 above shall submit a report on the above action plan every three months to this Court. The first of such reports shall be submitted within four weeks from the date of declaration/notification as "protected forest". In addition to

the progress/action taken, the reports shall specifically state the action taken as regards (a) number of complaints received, if any, (b) the action taken thereon, if any, (c) the number of offenders named, and (d) the details of the prosecutions/action launched/taken against such offenders.

10. The State Government shall provide the necessary staff and funds for implementing the aforesaid directions to all concerned departments of the State.

11. The Principal Secretaries of (i) Environment, (ii) Revenue and (iii) Forest Departments, Government of Maharashtra, shall be overall incharge of ensuring total compliance of this order.

12. This order shall partly modify the order dated 9th June, 2004 of this Court passed in Writ Petition No. 2208 of 2004.

13. The Chief Secretary of the State of Maharashtra is directed to send a circular to all concerned Collectors/Deputy Commissioners of Police/Superintendents of Police and all other concerned officials to ensure meticulous compliance of this order.

14. A copy of this order shall be sent to the Chief Secretary of the State of Maharashtra with a special messenger."

By the above interim directions, the construction activities in the Buffer Zone of 50m of mangroves were prohibited.

41. Subsequently, the Division Bench of the High Court while considering the chamber summons no. 172/2007 in PIL No. 87/2006 and connected petitions by the order dated 29.07.2015 had noted the reasons for passing the interim order dated 06.10.2005 because there was no such restriction in the CRZ Notification dated 19.02.1991. The High Court also took note of the restriction which was incorporated by the Notification dated 06.01.2011 and accordingly clarified as under: -

"28. It was because there was no such restriction in the CRZ Notification dated 19 February 1991 that this Court had introduced additional safeguard for protection of mangroves, that construction activity was prohibited in the buffer zone area by interim order dated 6 October 2005. Since the restriction is now incorporated in the Notification dated 6 January 2011, as per interpretation placed by us on CRZ Notification dated 6 January 2011, where plot of land falls in 50meters buffer zone but it was already part of an approved layout with infrastructure facilities within a municipal area or in an existing

legally designated urban area as on 6 January 2011, then it would have to be treated as falling in CRZII, provided the area was substantially developed as per explanation given in CRZ Notification and as explained in this order. In respect of the plots outside the aforesaid approved MoEF layouts, the concerned persons shall move the competent regulatory authority (MCZMA or MoEF), and not this Court.

*29.It is clarified that when any CRZ clearance is sought, MCZMA will have to satisfy itself that the plot in question is beyond the existing concrete/tar road towards landward side and is a part of the developed area, as explained in this judgment.***"**

42. The above order of the Division Bench of the High Court was modified by the order dated 03.09.2015 and the time limit to file the affidavit was extended. Against these orders, SLP Civil (CC) No. 533-539/2016 were preferred before the Hon'ble Supreme Court which were dismissed finding no merit in the SLP, by observing as under: -

"*Permission to file the special leave petitions is granted.*

We do not find any merit in these special leave petitions, which are hereby dismissed. **"**

43. The High Court by the above orders had settled that the CRZ clearance could be granted in respect of a plot falling within 50m Buffer Zone if the plot in question was on the landward side of the existing road or landward side of the existing authorised structures. The Government of Maharashtra also issued a circular dated 05.03.2018 directing all the concerned authorities to take cognizance of the above decision of the High Court while making recommendations of such cases to the MCZMA.

44. The applicant has relied upon another judgment of the Bombay High Court dated 17.09.2018 passed in PIL No. 87/2006, whereby the subsequent Division Bench continued the interim direction dated 06.10.2005 on the terms stated therein and further directed a total freeze on destruction and cutting of mangroves in the entire State of Maharashtra.

45. The conflict created by virtue of the order dated 29.07.2015 passed by the Division Bench of the Bombay High Court in CHS/172/2007 in PIL No. 87/2006 and subsequent order dated 17.09.2018 in PIL No. 87/2006 has been resolved by the Hon'ble Supreme Court by the judgment dated 25.02.2025 passed in Civil Appeal No. 3225/2025 in the matter of ***M/s. Blue Star Realtors Pvt. Ltd. v. The Bombay Environmental Action Group & Ors.*** by observing and holding as under:

"*3.The appellants had earlier preferred before the High Court of Bombay either writ petitions, i.e., Writ Petition Nos. 176/2015, 180/2015, 187/2015, 188/2015, 190/2015, 249/2015, 251/2015, or*

Chamber Summons Nos. 169/2015 & 172/2007, which were disposed of, vide judgment dated 29.07.2015.

4. Dealing with the issues raised, the said judgment, inter alia, held that mangroves were a lifeline and no breach of the directions of the Maharashtra Coastal Zone Management Authority could be tolerated. The layouts, forming part of the petitions and other proceedings, were to be taken into consideration before any directions were issued for regularization. In case any plot owner or developer violated the conditions, the plot in question had to be restored to the original state after demolition of the existing structures, at the risk and cost of the developer and the society. Accordingly, Notice of Motion No. 234/2015 taken out by Maharashtra Housing and Area Development Board was allowed and it was permitted to exclude the plots in the layouts for which environmental clearance was granted by the Ministry of Environment and Forests on 10.02.2003 and 10.11.2005 from the operation of the 50meters buffer zone requirement, but subject to the observations therein.

5. As there was no further restriction in the Coastal Regulation Zone Notification dated 19.02.1991, the High Court of Bombay introduced additional safeguards for protection of mangroves, by barring construction activity in the prohibited buffer zone, by interim order dated 06.10.2005. The additional safeguards in the form of directions given in the interim order dated 06.10.2005, were later on incorporated in the Notification dated 06.01.2011. However, the interim order dated 06.10.2005, and the Notification dated 06.01.2011, exempted a plot of land even if it fell in the 50meters buffer zone if it was already a part of an approved layout plan with infrastructural facilities within a municipal area or in an existing legally designated urban area as on 06.01.2011. We need not pronounce on the said cutoff date for the purpose of the present order and judgment as an issue may arise whether the relevant cutoff date should have been the date of the interim order, which is 06.10.2005.

6. In order to carry out the said exercise, i.e., to identify the plots outside the aforesaid approved Ministry of Environment and Forests layouts, the parties concerned were required to move the competent regulatory authority, i.e., the MCZMA or Ministry of Environment and Forests, and not the High Court of Bombay. It was also recorded that when any CRZ clearance was sought, the MCZMA had to satisfy itself that the plot in question was beyond the existing concrete/tar roads towards the landward side and was a part of a developed area; a concept which was explained in the judgment.

7. Our attention is also drawn to the Notification dated 19.01.2000, issued by the Ministry of Environment and Forests, Government of India, on the Coastal Zone Management Plan of Maharashtra and categorization based on High Tide Level and Low Tide Level. Paragraphs 6 and 7 of the said Notification, dealing with the buffer zone around mangroves, read as under:

"(6) Buffer around mangroves:

The 50meter buffer zone around mangroves of area 1000 sq. meters and above, will not be required on the landward side provided the road abutting such mangroves was constructed prior to February, 1991.

(7) Development of MHADA layout:

Status quo shall be maintained in respect of MHADA Layout at Charkop."

8. As noticed above, the aforesaid Notification was issued prior to the interim order passed by the High Court of Bombay on 06.10.2005.

9. The order dated 29.07.2015 was challenged before this Court in a special leave petition, and the same was dismissed.

10.The impugned judgment dated 17.09.2018, in paragraph '74' refers to the Chamber Summons, which became the subject matter of the judgment dated 29.07.2015. Thereupon, it states that, while passing the judgment dated 29.07.2015, the attention of the Court was not drawn to condition no. xiii imposed in the letter/order dated 27.09.1996, of the Central Government, by which, the Coastal Zone Management Plan for the State of Maharashtra was sanctioned. It was the condition of the said plan that where mangroves with an area of 1000 sq. meters or more existed, the buffer zone of 50meters would form part of CRZ I. However, it is an admitted fact that the requirement laid down in the Coastal Zone Management Plan of a 50meter buffer zone around mangroves of an area of 1000 sq. meters and above, was modified by the Notification dated 19.01.2000, upon satisfaction of the condition stated therein that the buffer zone will not be required on the landward side provided the road abutting such mangroves was constructed prior to February, 1991.

11. In other words, where the road on the landward side abutting the mangroves was constructed prior to February, 1991, the buffer zone of 50meters was not required. The impugned judgment dated 17.09.2018, disposed of the PIL with several directions, including stoppage of all constructions taking place within 50meters on all sides of mangroves, regardless of the ownership of the land having such mangroves and the area of the land.

12. In view of the aforesaid position, we may only clarify that the impugned judgment dated 17.09.2018, shall not be read as having modified or altered the conditions which were imposed, vide judgment dated 29.07.2015, in the writ petitions/chamber summons filed by the appellants, provided all the applicable rules and regulations, including the conditions mentioned in the applicable law and in terms of the judgment dated 29.07.2015, are duly met.

*13. We further clarify that the observations and findings recorded in above paragraph only pertain to the nine plots, which were the subject matter of the judgment dated 29.07.2015. The said judgment specifically records the details of the nine plots in question and also notes that the said plots were allotted during the period 1987 to 1994 and the infrastructure in the form of laying of roads, etc., had been completed long ago. In other words, as the development has already been completed, it would be impossible to create a buffer zone of 50meters because of the construction and other development activities which happened long before the interim order dated 06.10.2005. It goes without saying that in case it is possible to create a buffer zone of 50meters, that aspect must be kept in mind by the authorities concerned while granting approvals…..***"***

46. The Hon'ble Supreme Court, after considering the earlier judgments and CRZ Notification found that the said 9 plots, in question, were allotted during the period 1987 to 1994 and the infrastructure in the form of laying of the roads had been completed long ago meaning that the development had already been completed, therefore, it would be impossible to create a Buffer Zone of 50m because of the construction and other development activities which had taken place before the order dated 06.10.2005.

47. Though, the Supreme Court in the above judgement had taken into consideration the factual situation of the nine plots under consideration in the judgment dated 29.07.2015 but learned counsel for the respondent no. 5 placing reliance upon the judgment of the Bombay High Court dated 25.04.1989 in the matter of the ***D. Naveen Chandra & Company v. Union of India*** reported in 1989 (43) ELT 266 (BOM) and the judgment of the Gujarat High Court dated 29.09.1993 in the matter ***Textile Labour Association v. State of Gujarat*** reported in 1993 SCC online GJ 140 has submitted that the facts of the present case are identical.

Therefore, the respondent no. 5 is entitled to the benefit of the judgment of the Hon'ble Supreme Court.

48. In order to draw parity with the cases which were under consideration before the High Court in the judgment dated 29.07.2015 and the order of the Hon'ble Supreme Court dated 25.02.2025, the learned counsel for the respondent no. 5 has stated that the plot was allotted for development of drive-in-theatre to the respondent no. 5 in the 1970s and developed in 1977-78 and that the re-development of the plot with existing structure on the landward side of the boundary wall was granted to the respondent no. 5 on 06.08.1999. The layout plan for the development of the integrated project was approved by the MCZM and a commencement certificate was issued by MMRDA on 05.12.2001 under the CZMP 2000 and amendment was also sanctioned by the MMRDA on 25.11.2002 and the construction of the said project started on 27.06.2003 and the plinth of building C was constructed prior to 15.05.2004. The construction in the project is on the landward side of the imaginary line from the authorised structure, as recorded in 121st meeting of the MCZMA held on 15/16.09.2017 (page 373). As per approved CZMP, 2000 there is no 50m Mangrove Buffer Zone applicable to the project and the project is in the CRZ-II zone. The MMRDA had approved the plan of the respondent no. 5 and had issued the necessary approval in 2001, issued the commencement certificate and part occupancy certificate (OC).

49. Thus, on the basis of the above facts, the learned counsel for the respondent no. 5 has raised the submission that the case of the respondent no. 5 stands on the same footing as those plots which were subject matter of consideration by the Bombay High Court in the judgment dated 29.07.2015 and the Hon'ble Supreme Court dated 25.02.2025.

50. Learned Counsel for the respondent no. 5 in regard to the Buffer Zone has also relied upon the stand of the MMRDA taken in 2017 as under: -

> **"***.....The MMRDA officials further submitted that the mangroves are not present on the plot under reference, however, at present, the plot boundary may be situated between 50m mangroves buffer zone, which is subject to verification as it is dynamic matter.....***"**

51. He has further pointed out that MCZMA had considered the above submissions while revoking the stop work order. He has further pointed out that the Forest Conservator, Mumbai Mangroves Conservation unit, upon a complaint after site inspection had recorded findings on 03.06.2018 as under: -

> **"***....prima facie it was found that there were no mangroves found nearby at the actual site of construction. An old wall was found at the site. GPS reading of the site was taken for checking on Google Earth and colour photograph of the wall is attached here.*
>
> *As per the above GPS reading, while checking the plans of the plot on the Google Earth App, the wall at the plot mentioned in the complaint*

> *exists since long time, and the notified mangrove area is up to 400 meters from the wall. The construction mentioned in the said application is not being done by destroying the mangroves. The said site is outside the notified mangrove area...*"

52. The minutes of the 157th meeting of the MCZMA held on 04.02.2022 have been placed on record as Exhibit W (page 436), wherein while considering the complaint against the respondent no. 5 the MCZMA had taken note of the earlier minutes of the meeting of the MCZMA and also the report of the Mangroves Cell stating that the area falls within 50m of the Buffer Zone from the nearby mangrove area and also requiring the respondent no. 5 to take prior High Court permission since the area is within 50m of the Mangrove Buffer Area as reported to the Mangroves Cell.

53. Learned Counsel for the respondent no. 5 has pointed out in a challenge to similar condition, the Bombay High Court had passed the order dated 11.12.2023 in WP No. 15318/2023 in the matter of ***Shivtej Builders and Developers v. Navi Mumbai Municipal Corporation & Ors.,*** holding that: -

> "*1.For some reason that we cannot understand, the Maharashtra Coastal Zone Management Authority ("MCZMA") insisted on 10th August 2023 that the Navi Mumbai Municipal Corporation ("NMMC") had to "ensure" that the Petitioner "obtained permission" from this High Court before it granted an Occupation Certificate to the Petitioner.*
>
> *2. At least as currently advised, this court is not bound by such directions of the MCZMA. That would require a substantial amendment to the Constitution of India. Nobody has proposed it yet.*
>
> *3. We direct the NMMC to take up and process the Petitioner's application for an Occupation Certificate in accordance with law, without any regard whatever to Item 2 of the MCZMA order of 10th August 2023 at page 46. We clarify that it is not for the MCZMA to direct that this High Court's permission should or should not be obtained.*
>
> *4. Mr Dande, Learned Counsel for Respondent No 1, states that the application will be processed expeditiously. We request that this be done in any event within eight to twelve weeks from today.*"

54. He has submitted that this order of the Bombay High Court was enclosed with the representation but the representation has been kept pending.

55. The counsel for the respondent no. 5 has pointed out that the representation dated 25.04.2022 was made to MCZMA for removal of the condition of seeking prior permission

from the High Court. It has been pointed out that another representation dated 26.06.2024 was made to the MCZMA in continuation of the earlier representation which remained undecided resulting in filing of Writ Petition (L) No. 20106/2025 in the matter of ***The Indian Film Combine Private Limited v. Director, Env. & Ors.*** which was disposed of by the Division Bench of the High Court of judicature at Bombay by order dated 10.07.2025 by directing as under: -

> ***"****1. In this Writ Petition, the Petitioner interalia prays for direction to the Respondent to decide the representation dated 28 April 2025 submitted by it seeking permission to complete the project.*
> *2. We have heard learned counsel for the parties at length. After hearing the learned counsel for the parties and taking into account the fact that the representation dated 28 April 2025 submitted by the Petitioner is pending for consideration, we direct that the representation be decided by passing a speaking order thereon.*
> *3. Needless to state that the Respondent shall give an opportunity of hearing in person or to the representative of the Petitioner before deciding the representation. It is made clear that this Court has not expressed any opinion on merits. Accordingly, Writ Petition is disposed of.****"***

56. From the above, it is clear that the issue relating to the violation of norms concerning the Mangroves Buffer Zone is pending before the MCZMA and that the direction to decide the representation has already been issued by the Bombay High Court. Therefore, we are hopeful that the said issue will be decided by the MCZMA, keeping in view, the plea of the respondent no. 5 noted above. Hence, it would not be proper to decide Issue No. III on merit at this stage.

Issue No. IV

57. So far as the issue no. IV, is concerned, we find that the applicant in this OA had filed a complaint on the same grounds to the MMRDA and MCZMA regarding the illegal construction in the project by the respondent no. 5 on 27.07.2016 but this fact has been suppressed in the OA. The applicant had further filed criminal complaint no. 182/2017 before the Court of MM, Bandra against the respondent no. 5 for registration of an FIR for illegal construction in the project on the same ground on 10.08.2017 but this fact has also been suppressed in the OA. He also suppressed the decision of the MCZMA dated 15/16.09.2017 relating to withdrawal of the stop work order dated 11.08.2017, a copy of which was sent to the present applicant. The applicant has also suppressed the *ex-parte* order dated 06.06.2019 passed by the Court of MM, Bandra, issuing process to directors of respondent no. 5 in the criminal complaint no. 182/2017. He has also suppressed the stay order dated 06.06.2019 passed by the High Court in WP No. 1386/2020 filed by the respondent no. 5 and its directors. Thus, we find that the applicant has not approached the Tribunal with the clean hands, therefore, in addition to the fact that the applicant has failed to establish his case on merits even otherwise he is not entitled to any relief.

Issue No. V

58. So far as the issue of limitation is concerned, since the plea of recurring cause of action has raised and the issue relating to violation of environmental norms is involved, therefore, we do not deem it proper to dismiss this OA on the ground of limitation.

59. Having regard to the above analysis, we find that the applicant has failed to establish any violation of environmental norms by the respondent no. 5. Therefore, no case for granting the prayer for demolition of construction/ structure or imposition of environmental compensation is made out.

60. OA is accordingly dismissed.

❖

Dinesh Kumar Suman vs. State of Bihar

(OA No. 63/2025/EZ)
Decided on: 11th August, 2025 (EZ)

CASE NOTE

Applicant had written a letter petition dated 12.03.2025 to the National Green Tribunal, Eastern Zone Bench, Kolkata alleging that the fishermen in the area in collusion with the Forest Range Officer, Dighwara, Sonpur, District- Saran and Forest Guard Officer, Dariyapur are using machinery day and night to drain out the water from the HaldiyaChaur Wetland.

The moot issues before the Tribunal to adjudicate upon are as follows:

1. Whether the concerned water body qualifies as a Wetland?
2. If it is a Wetland, whether its nature is being altered and thereby causing environmental violation?

The Hon'ble Tribunal took cognizance of the letter petition and issued notice to various government authorities. The Bihar State Wetland Authority had filed counter affidavit dated 23.07.2025 and its stand was that the Haldia Chaur Waterbody is located to the west of Mattkara village, Tarwa Mangapal, Dariyapur Block in Saran district, Bihar and is a natural waterbody spreadover an area of 37.714 ha on Government land. It was also stated that the Notification of HaldiaChaur has a 'Wetland' under the Wetland (Conservation and Management) Rules 2017 was under process for publication in the Official Gazette, as approved, in the meeting of the Bihar State Wetland Authority held on 09.09.2024. It is also stated that surprise patrolling was carried out on 15.11.2024 and 13.12.2024 and The no evidence of poaching of migratory birds was found as complained by the Applicant. It was further stated that during inspection carried out on10.07.2025, no one was found extracting water from the waterbody for fishing. So far as question of tree plantation around the waterbody is concerned, it was stated that the same will be considered after preparation of the Integrated Management Plan for Haldia Chaur Wetland waterbody. The fact of no poaching of migratory birds was also supported by the Affidavit of District Magistrate, Saran.

Therefore, recording and considering the abovementioned facts on Affidavit, the Hon'ble Tribunal disposed of the matter with a direction to the Respondent Wetland Authority as well as the District Magistrate, Saran to take steps for notifying the Haldia Chaur Waterbody as a protected wetland in view of the resolution of the District Wetland Committee under the Wetland (Conservation and Management) Rules 2017 and also for preparation of the Integrated Management Plan for the same as proposed by them.

Dinesh Kumar Suman vs. State of Bihar

COUNSEL FOR APPLICANT(S):
None

COUNSEL FOR RESPONDENT(S):
Mr. Surendra Kumar, Advocate for R-1, 2, 3 & 4

CORAM:
HON'BLE MR.JUSTICEB AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

HEARD ON: 11th August, 2025
PRONOUNCED ON: 11th August, 2025

ORDER

BY HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER

1. This Original Application was registered on the basis of a complaint letter dated 12.03.2025 sent by the Applicant, Dinesh Kumar Suman, resident of Prakhand (Block)-Dariyapur, District Saran, Bihar, Pin- 841101. The allegation in the letter petition is that the fishermen in the area in collusion with the Forest Range Officer, Dighwara, Sonpur, District-Saran and Forest Guard Officer, Dariyapur are using machinery day and night to drain out the water from the Haldiya Chaur Wetland.

2. It is also alleged that the said two officers, i.e., Forest Range Officer, Dighwara, Sonpur and the Forest Guard Officer, Dariyapur have not planted a single tree in the area of 37 acres of the Haldiya Chaur Wetland to improve the climate conditions or develop the area for tourism.

3. Along with the complaint letter, the Applicant has also filed by way of documentary evidence the letter of the Chief Conservator of Forest dated 04.03.2025 addressed to the District Magistrate, District- Saran, Bihar and to the Van Pramandal Padadhikari (Divisional Forest Officer) (DFO), Saran complaining that he has been informed by the Applicant that fishermen are draining water from the Haldiya Chaur Wetland and the matter may be looked into.

4. Several photographs of dead migratory birds have also been filed.

5. Copy of a Draft Notification has also been filed with a map of the Haldia Chaur Wetland, Saran stating that the Bihar State Wetland Authority has proposed to issue the same in exercise of powers conferred under Rule 7 of the Wetlands (Conservation and Management) Rules, 2017 read with the Environment (Protection) Act, 1986 placed on

record the draft of the notification dated 11.03.2024 by the Bihar State Wetland Authority duly approved by the District Wetland Committee.

6. The Bihar State Wetland Authority has filed counter affidavit dated 23.07.2025 and its stand is that the Haldia Chaur Waterbody is located to the west of Mattkara village, Tarwa Mangapal, Dariyapur Block in Saran district, Bihar and is a natural waterbody spread over an area of 37.714 ha on Government land. It is also stated that the Notification of Haldia Chaur has a 'Wetland' under the Wetland (Conservation and Management) Rules 2017 is under process for publication in the Official Gazette, as approved, in the meeting of the Bihar State Wetland Authority held on 09.09.2024. It is also stated that surprise patrolling was carried out on 15.11.2024 and 13.12.2024 and no evidence of poaching of migratory birds was found as complained by the Applicant.

7. It is further stated that during inspection carried out on 10.07.2025, no one was found extracting water from the waterbody for fishing. So far as question of tree plantation around the waterbody is concerned, it is stated that the same will be considered after preparation of the Integrated Management Plan for Haldia Chaur Wetland waterbody.

8. It is stated that during preparation of the Integrated Management Plan, the requirement of tree plantation, regulation of fishing and water management will be considered.

9. The District Magistrate, Saran has filed affidavit dated 24.07.2025 and it is stated that in view of the complaint of illegal poaching of migratory birds, inspection was carried out on 14.12.2023 by the Divisional Forest Officer, Saran personally and no evidence was found to support the claims of the Applicant that migratory birds were being poached by local inhabitants.

10. It is further stated that the matter of allegation of illegal bird poaching was discussed in the District Level Wetland Committee Meeting held on 21.08.2023 and officials from various concerned departments, including Fisheries, Agriculture, Panchayati Raj and Police were specifically alerted to regularly monitor the wetland and report against any illegal bird hunting activities. It is also stated that the District Wetland Committee through an unanimous consent of stakeholders has passed a resolution on 11.03.2024 to declare the Haldia Chaur waterbody as a protected wetland under the Wetland (Conservation and Management) Rules 2017. It is also stated that this formal declaration provides enhanced legal protection to the wetland and strengthen conservation efforts.

11. In view of the above, nothing further remains for adjudication in the present Original Application. This Original Application is disposed of with a direction to the Respondent Wetland Authority as well as the District Magistrate, Saran to take steps for notifying the Haldia Chaur Waterbody as a protected wetland in view of the resolution of the District

Wetland Committee under the Wetland (Conservation and Management) Rules 2017 and also for preparation of the Integrated Management Plan for the same as proposed by them.

12. I.As., if any, stand disposed of accordingly.

13. There shall be no order as to costs.

❖

Lakhya Jyoti Medhi vs. State of Assam

(OA No. 66/2025/EZ)
Decided on: 11th August, 2025 (EZ)

CASE NOTE

The Applicant had sent a letter petition dated 19th March, 2025 to the National Green Tribunal, Eastern Zone Bench, Kolkata alleging that some Stone Smuggler of Bheluguri Gaon, P.S.-Doboka, District- Hojai, Assam has been extracting minor minerals from the said Stone Mahal since 04.01.2024 without a valid Forest Clearance or Environmental Clearance (EC) from the State Environment Impact Assessment Authority (SEIAA), Assam. It was further stated in the letter petition, that a complaint in this regard was also submitted by the Applicant before the Divisional Forest Officer (T), Nagaon on 27.01.2025 but till date no action has been taken. It was also stated that the Bheluguri Pahar is the only source of drinking water for the downstream villagers which is at a distance of 300 meters and more than 1000 houses depend upon the water source.

The central issue before the Tribunal to adjudicate upon, which is as follows:

1. Whether there exists smuggling of minor minerals from the said Stone Mahal by such persons having no valid and/or proper Forest Clearance or Environmental Clearance (EC) from the State Environment Impact Assessment Authority (SEIAA), Assam?

The Hon'ble Tribunal taking cognizance of the letter petition, constituted a Fact-Finding Committee. In the Affidavit of the Committee, it was revealed that during site inspection, no mining activities were found being carried out in the fields and there were no tracks of vehicle observed. It was revealed that some of the local villagers depend entirely and solely collecting large stones and breaking them into small pieces and selling them for their livelihood and thus, such illegal mining of minor minerals was done by local miscreants and no excavators/mining machinery was observed at the time of visit.

The Hon'ble Tribunal took note the Mahal concerned is Bheluguri Stone Mahal and no permission has been granted here to carry on mining activity by any authority. It held that merely because it is stated that mining has been done by local villagers whose livelihood depends upon it, the same does not condone illegal mining. Illegal mining is an offence against the State causing loss to the State Exchequer and Revenue as well as causes environmental stress. It was directed to the Pollution Control Board should be constantly vigilant to check illegal mining and take immediate action against persons involved in illegal mining and recover penalty, royalty as well as environmental compensation from such persons. The matter was disposed of with the direction to the District Magistrate & Collector, District – Hojai, Assam to take steps in consultation with State Pollution Control Board for determination and recovery of environmental compensation from persons involved in the illegal mining in terms of the report of the Divisional Forest Officer, Nagaon Division, Assam Forest Department dated 22.05.2025. And it was further directed that the determination of environmental compensation shall be completed within one month hereafter and the District Magistrate shall proceed to recover the same from the violators within a further one month.

Lakhya Jyoti Medhi vs. State of Assam

COUNSEL FOR APPLICANT(S):
None

COUNSEL FOR RESPONDENT(S):

Ms. Malabika Roy Dey, Advocate for R-1, 2, 56,
State Respondents (in Virtual Mode),
Mr.SurendraKumar, Advocate for R-3

CORAM:

HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

HEARD ON: August 11th, 2025
PRONOUNCED ON: August 11th, 2025

ORDER

BY HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER

1. The present Original Application was being registered on the basis of a letter petition dated 19.03.2025 sent to the National Green Tribunal, Eastern Zone Bench, Kolkata by the Applicant, Lakhya Jyoti Medhi, President, Sanatan Jagrato Senani, Assam.

2. The allegation in the letter petition is that some Stone Smuggler of Bheluguri Gaon, P.S.- Doboka, District- Hojai, Assam has been extracting minor minerals from the said Stone Mahal since 04.01.2024 without a valid Forest Clearance or Environmental Clearance (EC) from the State Environment Impact Assessment Authority (SEIAA), Assam.

3. It is stated that a complaint in this regard was also submitted by the Applicant before the Divisional Forest Officer (T), Nagaon on 27.01.2025 but till date no action has been taken.

4. It is also stated that the Bheluguri Pahar is the only source of drinking water for the downstream villagers which is at a distance of 300 meters and more than 1000 houses depend upon the water source.

5. At the time of admission, the Tribunal constituted a Fact Finding Committee comprising of the following Members:-

i. District Magistrate & Collector, District- Hojai, Assam or his representative not below the rank of Additional District Magistrate (ADM);
ii. Senior Scientist, Assam State Pollution Control Board;

iii. *Directorate of Geology & Mining (DGM), through its Director; and*

iv. *State Environment Impact Assessment Authority (SEIAA), Assam, through its Member Secretary.*

The Committee was directed to visit the site in question and thereafter submit a Fact Finding Report on affidavit within four weeks with regard to the allegations made in the Original Application.

6. Along with the letter petition, photographs have been filed from page nos.7 to 11 of the paperbook (colly) showing mining operations using JCB machines and also showing degradation of the area.

7. Affidavit dated 03.08.2025 has been filed by the Divisional Forest Officer, Nagaon Division, Assam Forest Department. Along with this affidavit, an Inspection Report has been filed of an inspection carried out on 22.05.2025 which reads as under:-

"Inspection Report in the matter NGT Case No.66/2025/EZ Lakhya Jyoti Medhi Vs State of Assam

1.0 Background:

The Hon'ble NGT, Eastern Zone Bench, Kolkata has taken up a complaint (by Lakhya Jyoti Medhi and Others) against illegal Mining is being carried out in the Bheleuguri Gaon, P.S.- Doboka, Dist.- Hojai, Assam without any Forest Clearance or Environmental Clearance from Competent Authority.

Hearing the matter the Hon'ble Court has in its order dated 21.05.2025 has directed all the respondents to file counter affidavit within four weeks.

The Hon'ble Court in the above mentioned matter constituted a four Member Committee consisting of members from different organization as below:

Sl No.	***Members & Organization***
1	*District Magistrate & Collector, District Hojai, Assam or his representative not below the rank of Additional District Magistrate (A.D.M.)*
2	*Senior Scientist, Assam Pollution Control Board*
3	*Directorate of Geology & Mining (DGM), through its Director*
4	*State Environmental Impact Assessment Authority (SEIAA), Assam through its Member Secretary*

Accordingly, the Committee consisting of nominated members from the different organizations, as tabulated below, visited the site on 22/05/2025.

Sl No.	***Members***
1	*Sri Bidyut Bikash Bhagwati, ACS, District Commissioner, Hojai (D.C.) District- Hojai, Assam*
2	*Sri Pratap Kumar Sarmah, Addl. Chief Env. Scientist, Assam Pollution Control Board*
3	*Smt. Barnalee Nath, Joint Director, Directorate of Geology & Mining (DGM)*
4	*Smt. Mouchumi Baruah, ACS, Member Secretary, State Environmental Impact Assessment Authority (SEIAA), Assam*

2.0 Field Inspection :

The committee visited the site on 22/05/2025 and made inspection to ascertain the allegation made in the original application (O.A.) which are as tabulated below :

Sl No.	***Allegation in the Original Application***	***Present Status as observed on the day of inspection***
i	*The allegation in the letter petition is that some Stone Smuggler of Bheluguri Gaon, P.S. Doboka, District Hojai, Assam has been extracting minor minerals from the said Stone Mahal since 04.01.2024 without Forest Clearance or Environmental Clearance (EC) from State Environment Impact Assessment Authority (SEIAA), Assam*	*EC has been obtained for concerned Mahal. But FC is yet to obtained and proposal for same is pending at GoI. No permission for running mahal has been allowed by any authority. However, local villagers and miscreants occasionally taking out sporadic mining*

		where forest department has ensured immediate action.
ii	*It is stated that a complaint in this regard was also submitted by the Applicant before the Divisional Forest Officer (1), Nagaon on 27.01.2025 but till date no action has been taken.*	*Due action has been taken and forest department has ensured immediate action. Also the original applicant has further informed in writing letter that there is no such illegality occurring in said field and he would like to withdraw the concerned petition.*
iii	*It is also stated that the Bheluguri Pahar is the only source of drinking water for the downstream villagers which is at a distance of 300 meters and more than 1000 houses depend upon the water source.*	*It is found that before issuing EC, SEAC (State Environmental Appraisal Committee) has inspected the concerned mahal area and suggested measure for ensuring the water availability. The Committee is recommending same measure. Further District Administration has recently*

		established a water supply scheme under Jal Jivan Mission which will completely absolve the need of villagers from water availability from concerned Hilly area.

3.0 Overall Observations :

The overall observations during the inspections are as follows:

3.1 No mining was being carried out at the time of inspection on 22/05/2025. Mining has been done by the local villagers (whose livelihood depend on it) and local miscreants.

3.2 No excavator/mining machinery was observed at the time of visit.

3.3 As informed by DFO, Nagaon, mining is going in concerned area since 2000 year after obtaining forest clearance and other necessary clearance.

4.0 Recommendations :

In view of the above findings and observations it is recommended as follows :

4.1 Mining whenever allowed, should be allowed in Scientific manner as per prepared mining plan from Directorate of Geology and Mining, Assam

4.2 Forest Department should ensure regular patrolling area and take due action against illegal mining.

4.3 As the process of issuing Environment Clearance (EC) needs prior Forest Clearance (FC0, earlier issued EC may be revoked at present. EC should be taken freshly again after obtaining FC.

4.4 Measures suggested as per SEAC committee inspection report shall be followed in before allowing any mining in concerned area. i.e.

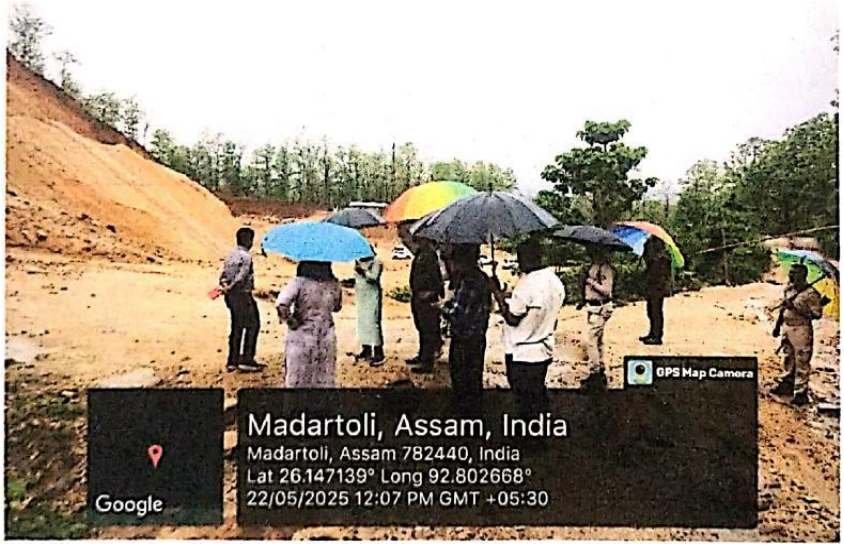
"Drinking water availability is the riparian right and should not be ignored even though the water tapping site being located within the Reserve Forest in the periphery of the revenue village, as well as no contamination of the Bheluguri Juri in the immediate downstream of the mining site if mine become operational should be observed".

The forest department shall also take views of Public Health Department in this regard before starting of any mining in that area officially."

Photos of Inspection of Bheluguri Mahal area during visit of Fact Finding

Committee.

Photos of Inspection of Bheluguri Mahal area during visit of Fact Finding Committee.



Photos of Inspection of Bhelugurl Mahal area during visit of Fact Finding Committee.

Photos of Local villagers whose livelihood depends upon selling Hand-broken stone

8. It is stated that during site inspection, no mining activities were found being carried out in the fields and there were no tracks of vehicle observed.

9. It is stated that local villagers depend solely on collecting large stones and breaking them into small pieces and selling them for their livelihood.

10. It is also stated that the Mahal concerned is Bheluguri Stone Mahal and no permission has been granted here to carry on mining activity by any authority.

11. Further, it is stated that there are certain illegal mining activites going on where immediate action has been taken by the Forest Department.

12. With regard to the allegations of water pollution being caused due to illegal mining activities, it is stated that while issuing the Environment Clearance Certificate, the issue of alleged water pollution is considered by SEIAA and a committee also visited the area for the same and suggested certain measures to be taken before starting mining operations and such measures will be implemented before allowing mining in the said area.

13. The Inspection Report shows that no mining was seen at the time of site inspection on 22.05.2025 and that mining has only been done by local villagers (whose livelihood depends upon it) and local miscreants and no excavators/mining machinery was observed at the time of visit.

14. We have heard learned Counsel for the parties and perused the documents on record. Merely because it is stated that mining has been done by local villagers whose livelihood depends upon it, the same does not condone illegal mining. Illegal mining is an offence against the State causing loss to the State Exchequer and Revenue as well as causes environmental stress and since in paragraph no.6 of the affidavit it is admitted that there are certain illegal mining activities where immediate action has been taken by the Forest Department, the Pollution Control Board should be constantly vigilant to check illegal mining and take immediate action against persons involved in illegal mining and recover penalty, royalty as well as environmental compensation from such persons.

15. Along with the affidavit, the Inspection Report dated 22.05.2025 of the Divisional Forest Officer, Nagaon Division, Assam Forest Department has been filed as Annexure-C which determines the Royalty and fine as well as the Offence No. and date in five cases and the total amount of Fine/Monopoly charges imposed including taxes is shown to be Rs. 13,32,337/- (Thirteen lakh thirty two thousand three hundred thirty seven) only against illegalities around Kathiatoli range and Kampur range area.

16. This Report does not mention recovery of environmental compensation.

17. We, therefore, dispose of this Original Application No.66/2025/EZ with a direction to the District Magistrate & Collector, District – Hojai, Assam to take steps in consultation with State Pollution Control Board for determination and recovery of environmental compensation from persons involved in the illegal mining in terms of the report of the Divisional Forest Officer, Nagaon Division, Assam Forest Department dated 22.05.2025.

18. The determination of environmental compensation shall be completed within one month hereafter and the District Magistrate shall proceed to recover the same from the violators within a further one month.

19. Affidavit of compliance shall be filed by the District Magistrate & Collector, District – Hojai, Assam by 15.11.2025.

20. I.As., if any, stand disposed of accordingly.

21. There shall be no order as to costs.

❖

Jinti Deka & Ors. vs. State of Assam & Ors.

(OA No. 169/2023/EZ)
Decided on: July 23rd, 2025 (EZ)

CASE NOTE

The Applicants, being local residents of village Chatabori in the District of Morigaon, Assam had written a letter petition to the National Green Tribunal, Eastern Zone Bench, Kolkata alleging that the river Kopili has been flowing along the village Chatabori and the petitioners are residing on both banks of river Kopili. It was alleged that since 2019 they noticed regular sand mining being carried out by one Jugal Bharali at their village which is marked as Nakhula Beat Sand Mining Permit Area No.3 under Morigaon Forest Range. The allegation was that sand mining is being carried on by the said Jugal Bharali, the Lease Holder, using excavator and sand mining machine which is not permissible being in violation of the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM). It was also alleged that the lease holder is using Homen Borgohai Road (Bhakatgaon to Narengi) and Bhakatgaon to Boha-Borpak Road to transport these materials which is connected with Pobitara Wildlife Sanctuary and transportation of sand has been observed during night on this road. It was also alleged that sand mining was also carried out during the current monsoon period.

The central issue before the Tribunal to adjudicate upon is as follows:
1. Whether the lease holder is engaged in the environmental offence of illegal sand mining and transporting it further on?

The Hon'ble Tribunal took cognizance of the letter petition and constituted a Fact-Finding Committee. The Hon'ble Tribunal after taking various documents on record and hearing the matter on merit, arrived at the finding that the certificate granted in favour of the Lessee, the Respondent No.7, has nowhere any mention of permission to carry out mining inside the river and away from the active banks keeping a distance of 7.5 meters or 10% of the total width of the river. The Tribunal, while examining the Mining plan as produced in the record, found out that the Kopili River has a variation of its width, the average width in proposed Mining Contract area is 80m. So therefore, the Hon'ble Tribunal propounded that the minable width of the river is central 80 m x ¾ = 60 m.

Therefore, the Hon'ble Tribunal, relying upon the Mining Plan and the Inspection Report of the site inspection carried out on 08.12.2020, held that it was absolutely clear that the Mining Plan was granted in favour of the Respondent No.7 by the Director of Geology and Mining, Assam in absolute violation of the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM) which clearly prohibits mining of sand in the riverbed. The Hon'ble Tribunal also found SEIAA, Assam guilty of not applying its mind to the grave errors and illegalities in the Mining Plan, approved by the Director of Geology and Mines in gross violation of the Sustainable Sand Mining Guidelines 2016. It was further held that such mistakes cause immense loss to the State Exchequer by way of loss of Revenue. Therefore, the Hon'ble Tribunal disposed of the matter with directions to the District Magistrate, Morigaon, Assam and the District Mining Officer, Morigaon, Assam to ensure that the Sand Mining in the Nakhula Beat Sand Mining Permit Area No.3, district – Morigaon, Assam is closed. The State Authority was further directed to compute Environmental Compensation against the Respondent No.7. The matter was further referred by Hon'ble Tribunal to the Chief Secretary, Assam for appropriate action against the Director of Geology and Mining, the Respondent No.8.

Jinti Deka & Ors. vs. State of Assam & Ors.

COUNSEL FOR APPLICANT(S):
Ms. Indrani Gupta, Adv.

COUNSEL FOR RESPONDENT(S):
Ms. Malabika Roy Dey, Adv. for R-1,4 & 6 (in Virtual Mode),
Ms. Amrita Pandey, Adv. for R-2 (in Virtual Mode),
Mr. Surendra Kumar, Adv. for R-3 & 5

CORAM:
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

RESERVED ON: 23rd July, 2025
PRONOUNCED ON: 23rd July, 2025

ORDER

BY HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER

1. The present Original Application was taken up on a complaint/ letter petition dated 13.09.2023 filed by some residents of village Chatabori in the District of Morigaon, Assam. It is alleged that the river Kopili has been flowing along the village Chatabori and the petitioners are residing on both banks of river Kopili. It is alleged that from 2019 they noticed regular sand mining being carried out by one Jugal Bharali at their village which is marked as Nakhula Beat Sand Mining Permit Area No.3 under Morigaon Forest Range. The allegation is that sand mining is being carried on by the said Jugal Bharali, the Lease Holder, using excavator and sand mining machine which is not permissible being in violation of the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM).

2. It is also alleged that the lease holder is using Homen Borgohai Road (Bhakatgaon to Narengi) and Bhakatgaon to Boha-Borpak Road to transport these materials which is connected with Pobitara Wildlife Sanctuary and transportation of sand has been observed during night on this road. It is also alleged that sand mining was also carried out during the current monsoon period.

3. At the stage of admission, this Tribunal constituted a Fact Finding Committee comprising of the following members :-

i) Senior Scientist, Assam State Pollution Control Board;
ii) Senior Scientist, Central Pollution Control Board;

iii) Senior Scientist, State Environment Impact Assessment Authority (SEIAA), Assam;
iv) District Magistrate, Morigaon, Assam or his representative Officer not below the rank of Additional District Magistrate (A.D.M.)

The Committee was directed to visit the site and submit its Report with regard to the allegations made in the Original Application.

4. The Assam State Pollution Control Board (ASPCB) has filed affidavit dated 10.01.2024 bringing on record a Field Inspection Report of an inspection carried out on 08.12.2023 which reads as under :-

"Inspection Report in the matter OA 169/2023/EZ
Jinti Deka & Anr. Vs State of Assam

1.0 Back ground

The Hon'ble NGT, Eastern Zone Bench, Kolkata has Suo Motu taken up a complaint (by Jinti Deka and Others) against Sand Mining being carried out by using excavator and Sand Mining Machines in Kapili river at Village Chatabori violation of Sustainable Sand Mining Management Guidelines 2016 (SSMMG 2016) and Enforcement and Monitoring Guidelines for Sand Mining 2020 (EMGSS 2020).

Hearing the matter the Hon'ble Court has in its order dated 24.11.2023 (copy enclosed as Annexure-I) has directed all the respondents to file counter affidavit within four weeks.

The Hon'ble Court in the above mentioned matter constituted a four Member Committee consisting of members from different organization as below:

Sl no.	*Members 86 Organization*
1.	*Senior Scientist , Assam Pollution Control Board*
2.	*Senior Scientist , Central Pollution Control Board*
3.	*Member, State EnvironmentalImpact Assessment Authority (SEIAA) ,Assam*
4.	*District Magistrate, Morigaon, Assam or his representative not below the rank of Additional District magistrate (A.D.M.)*

Accordingly the Committee consisting of nominated members from the different organizations, as tabulated below, visited the site on 8.12.2023.

Sl no.	*Members*
1.	*Sri Pranjal Baruah, ACS, Additional District Commissioner (A.D.C.) District Morigaon , Assam*
2.	*Sri Mridul Dev Adhikary, Senior Environmental Scientist , Assam Pollution Control Board*
3.	*Dr. G. P. Singh, Scientist-D, Central Pollution Control Board, Regional Directorate, Shillong*
4.	*Dr. Sarat Phukan, Member, State Environmental Impact Assessment Authority(SEIAA), Assam*

2.0 Field Inspection

The committee visited the site on 8.12.2023 and made inspection to ascertain the allegation made in the original application (0.A.) which are as tabulated below:

S1 no.	***Allegation in the Original Application***	***Present status as observed on the day of inspection.***
i.	*Under such circumstances, from 2019 we noticed regular sand mining by one Jugal Bharali at our villages which is marked as Nakhula Beat Sand Mining permit area no. 3 under Morigaon Forest Range .Against the aforesaid sand mining, that too, by using excavator & sand Mining Machines which is not permissible, we lodged several complains before the competent authorities steps were taken refraining him from carrying out the same. Due to not taking of any action our agricultural field, transportation road & Important Historical*	• The Naokhola Beat Sand Permit Area No. 3 is located 508 meters downstream of the Bhakatgaon Bridge (refer to Fig. 1). The Pillar No. 1 (see Fig. 2) and Pillar No. 5 (see Fig. 3) of the permit area are marked on the Google Map (Fig. 1). • No mining was going on at the time of inspection. Neither any excavator/ mining was observed at the site. • The sand mining permit for Nakhula beat sand Permit area no. 3 for the period 2022-2024 to Sri Jugal Bharali on 27.4.2023 to Mr Jugal Bharali which is valid for 2 years (22-

	monuments are going to dissolve in the Kapili River bank erosion, some of the area are totally dissolve in Kapili river. They use Homen Borgohai Road (Bhakatgaonb to Narengi) and Bhakatgaon to Boha-Borpak road to transport this material. This are the road which is connected with Pobitara Wildlife Sanctuary and tourist use this road, but due to this day night sand mining activity we are affected.	24) However since the mining permit was awarded on 27.4.2023 , the lease holder has been granted permit till 26.4.2025. • The copy of Challan issued by the lease holder (starts from 17.5.2023 enclosed as indicates that the mining by the lease holder has been done after the grant of lease permit by the Divisional Forest officer
ii.	*It is no longer in dispute that Assam monsoon stars from the month of April and the said Jugal Bharali who is the reportedly the lessee of the Beat Sand Permit Area no. 3 has once again started sand Mining from the very beginning of the present monsoon period, that too by using excavator and Sand Mining Machines.* *It is pertinent to mention that during monsoon the river flows in its full swing and that at the juncture sand Mining in the river bed , that too by using excavator and sand mining machines in nothing but an invitation to the people living on the bank of river to fall prey of erosion.* *Having Noticed the same , We have also once gain knocked the door of different authorities*	• *Monsoon period starts from - 5thJune till 15thOctober (as per SSMMG 2016. However the mining has been continued during that period as well. As reported by the lease holder Form MMP-1 sand mining has been continued in the month of June to Oct 2023.* • *Bank side bars are notably absent along the river within the permit area, and sand extraction has taken place from beneath the water. The extracted sand is subsequently dumped downstream of the permit area, as illustrated on the Google Map. Transportation from the permit area to the dumping site is facilitated by boat, with the sand being manually conveyed to the riverbank for dumping. The lease area declared by*

	including the forest authorities expressing our deep concern over the issue but all our efforts proved to be futile till today as the sand mining is being carried out in full swing and as a result our residents are in the verge of being eroded.	*Department of Geology and Mining which is in violation of the Sand mining Guideline 2016 which clearly states that mining can only be allowed keeping a safe distance from the river bank and the depth of mining can be restricted to 3m or water level which ever is less. But mining has been done in the river water itself, as observed.*
iii.	*It is admitted that sand mining is a means of generating the revenue for the Govt. but the same cannot be done at the cost of the poor people like us in as much as if the such same is not stopped immediately we all lose our residents within a short span of time.*	*No comment*
iv.	*It is also to mention here that the residences of around 300-400 families of village Chatabori are on the bank of River Kapili and due to such sand mining , that too , with excavator , our residences have come under great threat and may be eroded at any time.*	*The river bank is not at all demarcated. Signs of bank erosion are evident along both riverbanks. The right bank, immediately downstream of the Bhakatgaon Bridge (Fig. 4) and upstream of the Naokhola permit area, is fortified with geobags. Further protection on the immediate upstream side of the permit area is provided by a boulder apron on the left bank of the river. The riverbank's erosion-prone nature is highlighted by its near-vertical posture despite being made up of alluvial material.*

3.0 Overall Observations:

The overall observations during the inspections are as follows:

3.1 No mining was being carried out at the time of inspection on 8.12.2023. Mining has been done by the lease holder during monsoon too (June to October)

3.2 No excavator/mining machinery was observed at the time of visit.

3.3 No display board was observed at the allotted mining permit site.

3.4 As reported by district administration, illegal mining has been done since long back and necessary action has been taken by the district administration by collecting fines from the different sand storage points near the river bank.

3.5 As reported by the Director Geology and Mining office there is no District Survey Report (DSR) for Morigaon District.

3.6 It is very surprising that reserve estimation of sand has been done without District Survey Report which is contrary to the Sustainable sand Mining Management Guidelines 2016(SSMMG 2016) as well as Enforcement 86 Monitoring Guidelines for Sand Mining 2020 (EMGSM2020).The reserve estimation of sand has been done by the Office of the Forest Range; Morigaon Range, Morigaon, Assam dated 12-05-2022.

3.7 Some of the points as mentioned in the sand mining guide lines of MoEF86CC which requires District Survey Report as the most important documents for sand mining are as follows:

3.7.1 District Survey Report for sand mining shall be prepared before the auction/ e-auction/ grant of the mining lease/letter of Intent(Lol) by Mining department or department dealing the mining activity in respective states (Point a of 4.11 Preparation of District Survey Report page 15 of EMGSM 2020).

3.7.2 The State shall issue letter of Intent as per the procedure laid down in their Minor Mineral Concession Rule, 2013 with due consideration of the final district Survey report. (4.2 under Grant of letter of Intent to those mining leases which are falling in potential mining zone page 20 of EMGSM 2020)

3.7.3 District Level Survey Report should be prepared and the area suitable for mining and area prohibited for mining be identified (point no 8 of Standard Environmental conditions for sand mining of SSMMG 2016)

3.7.4 mining should be done only in the area /stretch identified in the District Level Survey Report suitable for sand mining and so certified by the Sub Divisional Level Committee after site visit point

no 20 of standard Environmental conditions for sand mining of SSMMG 2016)

3.7.5 The depth of mining in the river bed shall not exceed one meter or the water level whichever is less , provided that where the joint inspection committee certifies about Excessive deposit or over accumulation of mineral in certain reaches requiring channelization it can go upto 3m on the defined reaches of the river. (point no 9 of standard Environmental conditions for sand mining of SSMMG 2016)

3.7.6 To Maintain safety and Stability of River banks i.e.3 meter or 10% of the river width of the River whichever is more will be left intact as no mining zone (point no 16 of SSMMG 2016)

3.8 It is also very surprising that the Mining Plan approved by Directorate of Geology and Mining, Assam declares mining area inside the river which comes under restricted area as per the sand mining guide lines. EMGSM 2020(Point r of the guideline Page 24 states River bed sand mining shall be restricted within the central 3/4th width of the river/rivulet or 7.5 meters (inward) from river banks but upto 10% of the width of the river, as the case may be and decided by regulatory authority while granting environmental clearances in consultation with irrigation department.

Whereas the Mining plan approved by Directorate of Geology and Mining, Assam clearly states (point no 6 of page 13 of mining plan) that the mineable width of the river as central 80m X 3/4+= 60m (Fig Sketch map) which allows mining inside the river in violation of the Sustainable Sand Mining Management Guideline 2016 as well as EMGSM 2020.

4.0 Recommendations:

It view of the above findings and observations it is recommended as follows:

4.1 Sand Mining should be stopped and be allowed in compliance to guidelines only.

4.2 District Survey Report (DSR) should be prepared in line with Sustainable Sand Mining Guidelines 2016 and Enforcement 86 Monitoring Guidelines for Sand Mining 2020. DSR should make assessment of mineable reserve in the region and mining be permitted in accordance with these guidelines only.

4.3 The existing mining plan should be cancelled and be prepared in compliance with the Sustainable Sand Mining Guidelines, 2016 and Enforcement 85 Monitoring Guidelines for Sand Mining, 2020.

4.4 The lease/permit granted to the lease holder should be reviewed immediately and be granted in compliance with the guidelines (SSMMG 2016 85 EMGSM 2020.)

4.5 The lease holder shall mandatorily obtain Consent to Establish (CTE) and CTO (consent to Operate) from the State Pollution Control Board, Assam as per guidelines of Central Pollution Control Board, MoEF85CC, GOI bearing no. PCBA/ LGL-196/2023/ NGT/ 10 dated 06-12-2023."

5. *The Director of Geology and Mining, Assam, Kahilipara has filed its affidavit dated 21.03.2024. In para 3 of this affidavit, the GPS Coordinates of the Nakhula Beat Sand Mining Permit Area No.3 situate in Village Bhakatgaon under Morigaon district operated by the Respondent No.7 over an area of 4.1 Ha. has been given. Para 3 of the affidavit reads as under :-*

"3. That the answering deponent categorically and emphatically denies the allegations of violating any Act, guidelines in allowing the sand mining by respondent No.7 (Jugal Bharali) at Nakhula Beat Sand Area No.3. That it is a fact, that sand mine at Nakhula Beat Sand Area No.3, village Bhakatgaon under Morigaon district is undertaken by respondent No. 7 (Jugal Bharali)covering an area of 4.1 hectare within the GPS location given below:

(1) $26^0$10'-33.74 N – $92^0$12'49.2 E
(2) $26^0$10'-35.12 N – $29^0$12'48.32 E
(3) $26^0$10'-31.32 N – $29^0$12'34.57 E
(4) $26^0$10'-35.11 N – $29^0$12'34.79 E
(5) $26^0$10'-42.36 N – $29^0$12'22.60 E
(6) $26^0$10'-42.12 N – $26^0$12'24.06 E

That the allotment was subsequent to certificate 25.12.22 issued by on Dr. Moloy Bora (Recognised Qualified Person) bearing Reg. No.DGM/RQP/18/2017, followed by approved mining plan and Environmental Clearance Certificate dated 10.04.23 by SEIAA."

6. It is stated that the Mining Plan was approved on 25.12.2022 and Environmental Clearance was granted on 10.04.2023 and the Sand Mahal was handed over to the Respondent No.7 on 28.08.2023 after following and completing all the requisite formalities as required by law. It is stated that the Mining Plan of Respondent No.7 was approved for a total of 27,000 Cum. sand for a period of two years as per the Enforcement and Monitoring Guidelines for Sand Mining, 2020 ('EMGSM' for short). It was provided that riverbed mining shall be restricted within the central $¾_{th}$ width of the river/rivulet or 7.5 meters

(inward) from the river bank but upto 10% of the width of the river as the case may be and as decided by the Regulatory Authority while granting Environmental Clearance in consultation with the Irrigation Department ensuring that mining activities would be done inside the river and away from the active banks keeping a distance of 7.5 meters or 10% of the total width of the river. It is stated that the Mining Plan of Nakhula Beat Sand Mining Permit Area No.3 was approved on 19.01.2023 and the zone approved for mining has been demarcated at the centre ¾$_{th}$ of the Kopili Riverbed at Nakhula, Morigaon. It is stated that the distance between the active bank of Kopili river and the approved mining zone at the location is 10 meters from each bank i.e. 25% of the total width of 80 meters of the river at the site in question.

7. It is further stated that the Directorate of Geology and Mining, Assam also constituted a two member team comprising of Senior Geologists to inspect the Nakhula Beat Sand Mining Permit Area No.3 for onsite verification of facts. The team visited the site on 05.10.2023 and submitted its Report.

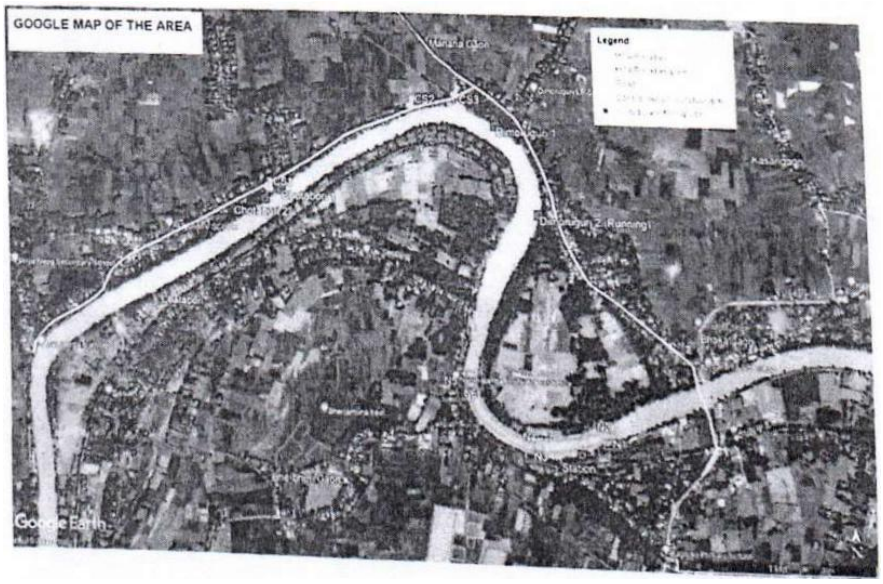
8. The "Report on Inspection of Sand Mining Activities in Nakhula Mining Permit Areas of Morigaon District" has been filed at page 176 to 177 of the paper book which is as under :-

> ***"REPORT ON INSPECTION OF SAND MINING ACTIVITIES IN NAKHULA MINING PERMIT AREAS OF MORIGAON DISTRICT***
>
> ***1.0 Introduction:***
>
> *In pursuance of letter No. GM/O/159 dated Guwahati, the 3^{1d} of October a team of Directorate of Geology and Mining, Assam carried out Field Inspection at Nakhula Mining Permit Area and adjacent sites along Kopili River of Morigaon District, Assam. The team consisting of Monoj Gogoi Senior Geologist, Parkash Borah Senior Geologist Dibakar Das, Assistant Geologist, and Anupam Dutta Surveyor, had carried out the field inspection on dated 5th of October under. The team was accompanied by staffs from the Forest Department and local villagers during inspection. The area is under Morigaon Forest Range under Nagaon Forest Division.*
>
> *As per official instruction the purpose of visit was mainly inspection of the area viz. Nakhula Mining Permit areas to check the adherence rules to be followed during mining and extraction of sand as per approval of Mining Plan and to verify the legitimacy of the Public Complaint submitted by the villagers of Chotabori Area, Morigaon District.*
>
> *As the river Brahmaputra flows along with the northern boundary of the Morigaon District, while the major rivers like Killing, Kollong and Kopili rivers flow through the southern part of the district. The river Killing meets Kopili at the Matiparbat*

where from Kopili moves westward. Kollong joins Kopili at the Jagi Dui Khuti Mukh and from here they jointly flow into the Brahmaputra. The area under inspection is near Bhakatgaon River Bridge over Kopili River, which is main source of sand mining under Morigaon Forest Range.

2.0 Field Observations:

1. The Google map of the inspection area is as follows:



2. No mining or extraction of sand presently going on within the Mining Concession Area. As sand is included in Y-Schedule of the AMMCR-2013, the Forest Department and the (Divisional Forest Officer) DFO is the controlling authority and the Range Officer Morigaon informed that the sand mining has been stopped in the Nakhula Sand Mahal.

3.0 Recommendation and Conclusion:

1. As revealed from Google Earth Images of 2022 and images of 2002 that the river had shifted about 10 -12 meters towards the roadside within this area. The concave bank of the meander (road side bank) is the zone of erosion due to the dynamic factors of the river morphology and the convex hank of the meander is the zone of deposition (opposite bank).

2. As informed by local villagers and Forest Officials the Bhakatgaon bridge over Koplil River is too narrow and weak to heavy loaded vehicle, therefore the movement of heavy vehicle are prohibited across this bridge

3. No sign of Mining Activity was visible within the Mining Concession Area."

9. The Respondent No.7 has filed affidavit giving the GPS locations Coordinates of the sand site Nakhula Beat Sand Mining Permit Area No.3 in village-Bhakatgaon/Barjari, district - Morigaon and it is stated that he is carrying on mining over an area of 4.1 Ha. The GPS locations given in his affidavit are as under :-

"$26^0$10'-33.74 N – $92^0$12'49.2 E
$26^0$10'-35.12 N – $29^0$12'48.32 E
$26^0$10'-31.32 N – $29^0$12'34.57 E
$26^0$10'-35.11 N – $29^0$12'34.79 E
$26^0$10'-42.36 N – $29^0$12'22.60 E
$26^0$10'-42.12 N – $26^0$12'24.06 E"

10. It is stated that the Sand Mahal site was handed over to him by the Divisional Forest Officer, Nagaon Division on 28.08.2023. The said Respondent has reiterated that as per Sand Mining Plan, he was granted approval for mining a total amount of 27,000 Cum sand for a period of two years and the riverbed mining would be restricted within the central $¾_{th}$ width of the river/rivulet or 7.5 meters (inward) from the river bank but upto 10% of the width of the river. The said Respondent has categorically denied that he is carrying on sand mining at a different location not allotted to him.

11. The State Environment Impact Assessment Authority ('SEIAA' for short), Assam has filed affidavit dated 18.05.2024 and it is stated that in the affidavit of the Director of Geology and Mining, Guwahati, Assam, concern has been raised that the site visited by the Inspecting Team was other than the site allotted to the Respondent No.7 and in fact, the team had visited the site at a different GPS locations namely Dimoruguri Village and Chatabari Village. It is stated that the Committee constituted by the Tribunal did not include a representative of the Director of Geology and Mining, Assam. However, it is stated that the Inspection Report covers the Nakhula Beat Sand Mining Permit Area No.3 and Google Earth Map for Nakhula Beat Sand Mining Permit Area No.3 was annexed alongwith the Inspection Report. It is stated that the photographs in Fig. No.1 to 3 belong to Nakhula Beat Sand Mining Permit Area No.3 ; photographs submitted in Fig. No.4 is immediate downstream of the Nakhula Beat Sand Mining Permit Area No.3 ; photographs submitted in Fig. Nos.5 and 6 is immediately upstream of the permit area ; photographs submitted in Fig. No.7 (sand dumping site) to 8 (ramp constructed on the river bank to facilitate transportation of sand from riverbed) which are about 2.0 kms downstream of the Nakhula Beat Sand Mining Permit Area No.3. Along with this affidavit, an Inspection Report of an inspection carried out on 08.12.2023 has been filed which has already been extracted hereinabove.

12. The Applicant has filed supplementary affidavit dated 02.08.2024 wherein referring to the GPS Coordinates of the Sand Beat in question, it is stated that the first permit issued by the Divisional Forest Officer, Nagaon Forest Division dated 01.05.2023 under whose jurisdiction Nakhula Beat Sand Mining Permit Area No.3 falls, defines the boundary details

of the concerned Permit No.846996346 (vide Kisti no.1/8) (page 336 of paper book) which is as under :-

North - Dimoroguri
South - Baghjap
East - Bhakatgaon RCC Bridge,
West - Dungabori
Village – Borjari, P.O. – Barpak, P.S. – Jagiroad, District – Morigaon, Assam.

13. We have heard the Counsel for the parties and perused the documents on records.

14. Learned Counsel for the Applicant vehemently submitted that the boundary shown in the Sand Beat Permit is different from the Geo Coordinates of the Nakhula Beat Sand Mining Permit Area No.3 and therefore, the Inspection Report is wholly unreliable since the Inspecting Team has visited a different site for inspection and not the site prescribed in the Permit No.8469969846 (vide Kisti no.1/8).

15. The Applicant has also filed the "Ministry of Environment, Forest and Climate Change Notification" dated 25.07.2018 which lays down the "Procedure For Preparation Of District Survey Report For Sand Mining Or River Bed Mining".

16. So far as the objection of the Applicant that the Inspection Report is based on an area which is wholly different from that of the Sand Permit, is concerned, we have examined the matter and we find that the Permit only defines the geographical area of the Nakhula Beat Sand Mining Permit Area No.3 and does not give the GPS location Coordinates.

17. We may note that the Permit may show a larger area defined by geographical boundaries but mining has to be carried out strictly as per the Mining Plan and within the Geo Coordinates of the Sand site locations. The Applicant has not succeeded in demolishing the contention of the Respondents that the Respondent No.7 was carrying on sand mining at a GPS Sand site location other than the sand site location given in the affidavit of the Director of Geology and Mining, Assam. In fact, the Applicant has not been able to disprove the GPS location coordinates given in para 3 of the affidavit of the Director of Geology and Mining, Guwahati, Assam with regard to the Nakhula Beat Sand Mining Permit Area No.3 covering an area of 4.1 Ha. of the lease holder Respondent No.7 in village Bhakatgaon, Morigaon district. Merely because the GPS location coordinates are not mentioned in the Mining Permit, it does not thereby necessarily imply, by inference or otherwise, that the Respondent No.7 is carrying on sand mining illegally at an area/location different to that from the given GPS coordinates.

18. At this stage, we may also refer to the Mining Plan dated 19.12.2022 of the Nakhula Beat Sand Mining Permit Area No.3 of the Respondent No.7 issued by the Directorate of

Geology and Mining, Government of Assam which has been filed at page 187 to 221 of the paper book.

19. The GPS location Coordinates as well as the boundary description of the Sand site in question have been given in Schedule-A of the said area by the Government of Assam, Department of Environment and Forest, Assam. The Boundary description in Schedule-A is as under :-

> ***Boundary Description***
> *North - NH-37*
> *South - Killing River & Nakhula Beat Sand Permit Area No.1*
> *East - Palahguri village*
> *West - Debarghat Village*
>
> *Thereafter, GPS location Coordinates have been given which are identical to those given in the affidavit of the Respondent which has been extracted hereinabove.*
>
> *This Mining Plan mentions the stipulated quantity of minor minerals in contract area as 270000 m^3 of Sand (Our Field assessment Only) ;*
>
> *Mining contract quantity - 20,000 m^3 ;*
>
> *Government Permit quantity - 7,000 m^3 (page 218) ;*
>
> *Area in Hectare – 4.10 Hectare.*

20. The Schedule-A further mentions the grant of Mining Contract for collection of Sand in the mining area as Total Quantity – 27000 m^3 ; Period of Lease/Contract – 2 years from the date of possession. The Schedule – A under the heading "Information Memorandum" reads as under :-

> ***"Schedule-A***
> ***"Information Memorandum"***
> *1. Name of the Mineral Concession Area:* ***Nakhula Beat Sand Permit Area No.3 (Revenue Portion) of 2022-24.***
> *2. Status of Land:* ***Non-Forest***
> *3. Grant of Mining Contract for collection of* ***Sand*** *in the mining area.*
> *(a) Area of Estimated Reserves = 4.10 Ha with 27000 cu.m sand.*
> *(b) Mahal quantity = 20,000 m^3*
> *(c) Stipulated quantity in Govt. Permit = 7,000 m^3 of Stone.*
> *(d) Total Quantity = 27,000 m^3*

(e) Period of Lease Contract = 2 years from date of possession.

(f) Reserve Price: Rs.37,40,000.00 (Rs. Thirty seven Lakhs forty thousand) only.

(g) Earnest Money

10% on reserve price. i.e. Rs.3,74,000.00 (Rs. Three lakhs seventy four thousand only). However, 50% of this amount if bidder is an individual and belongs to S.T/S.C/OBC. i.e. Rs.1,87,000.00 (Rupees One lakh eighty seven thousand only).

(h) G.P.S. Coordinates of the corners of mine area: The boundary pillars shall be installed on site by the successful bidder at these and other intermediate locations, as per the directions of competent authority, before start of mining operation.

***North** – NH-37*

***South** – Killing River & Nakhula Beat Sand Permit Area No.1*

***East** – Palahguri Village*

***West** – Debarghat Village*

Sl.No	***Ha***	***LAT/LONG***
1	*4.10*	*N 26^{0}10'-33.74" – E 092^{0}12'49.02"*
2		*N 26^{0}10'-35.12" – E 092^{0}12'48.32"*
3		*N 26^{0}10'-31.32" – E 092^{0}12'34.57"*
4		*N 26^{0}10'-33.11" – E 092^{0}12'34.79"*
5		*N 26^{0}10'-42.38" – E 092^{0}12'22.60"*
6		*N 26^{0}10'-42.12" – E 092^{0}12'24.06"*

"

21. The Environmental Clearance for the sand mining site area issued by SEIAA, Assam dated 23.06.2023 has also been filed with the affidavit of the Respondent No.7 dated 09.04.2024 which is in conformity with the Mining Plan giving the quantity of sand to be mined within two years and also giving the GPS Coordinates which have not been denied or disputed by the Applicant.

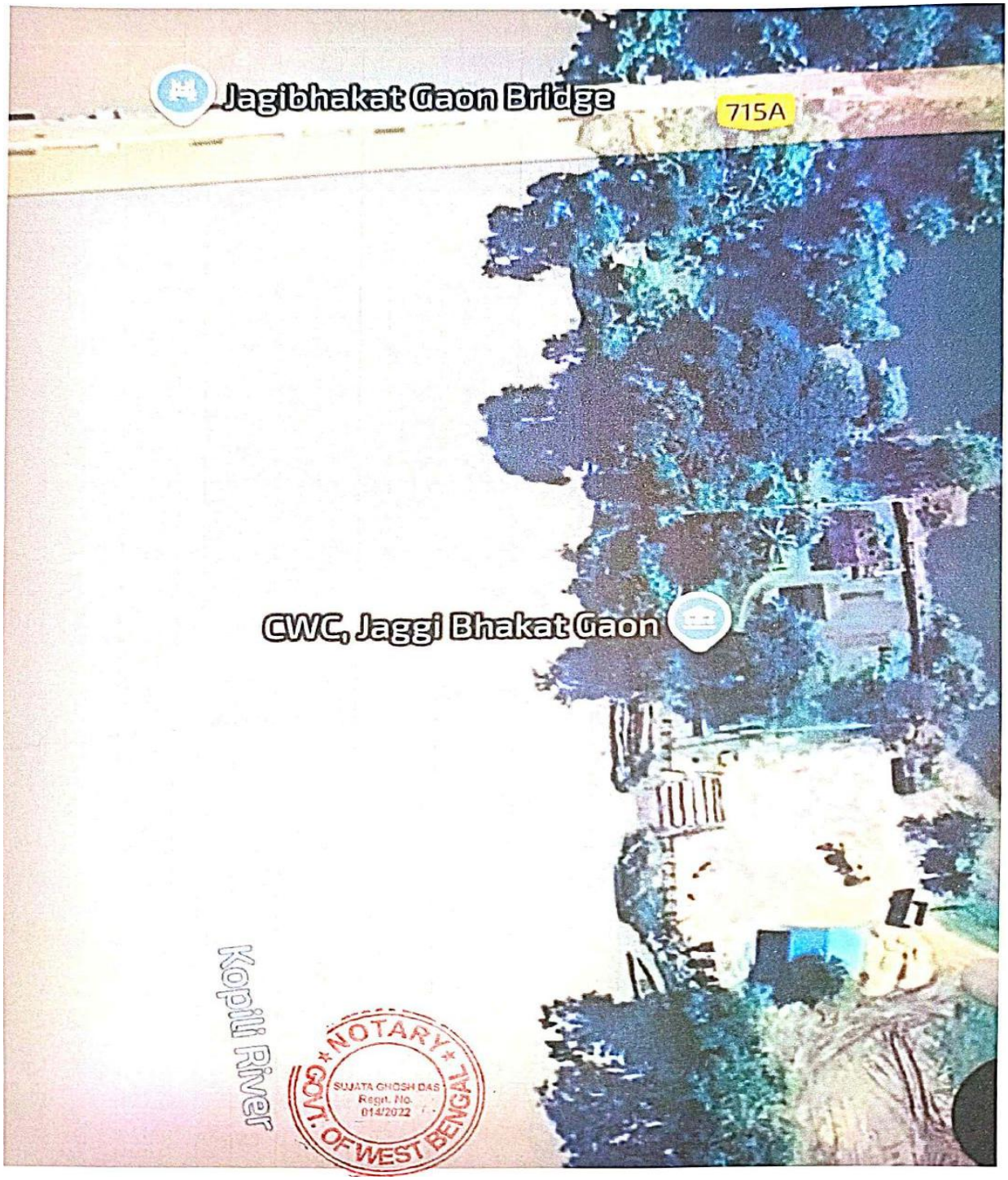
22. The Letter of Intent (LoI) granting Mining Permit for the Sand site in question was issued on 17.12.2022 (at page 222-223 of the paper book) to allow Minor Mineral in respect of the Mining Area – Nakhula Beat Sand Mining Permit Area No.3 of 2022-24 and mentions that the bid of the Respondent No.7 is Rs.41,10,000/- (Rupees forty one lakh ten thousand only) for mining of 20,000 m^3 of sand for a period of two years from "*Nakhula Beat Sand*

Mining Permit Area No.3" under Morigaon Range, Morigaon of the Nagaon Forest Division. The Respondent No.7 was requested to deposit the said amount within fifteen days from the date of issue of the provisional Letter of Intent (LoI) and obtain an approved Mining Plan/Pre-Feasibility Report and Form-IM along with EIA Clearance from the competent authority within forty five days for signing Permit Agreement in Form-MPS-I. This shows that the Permit was granted prior to approval and grant of Mining Plan to the Nakhula Beat Sand Mining Permit Area No.3 and therefore, unless the Mining Plan is approved and granted to the Lessee, the Respondent No.7, the GPS Coordinates of the Mining area could not have been mentioned in the Mining Permit which was itself subject to an approved Mining Plan and EIA Clearance.

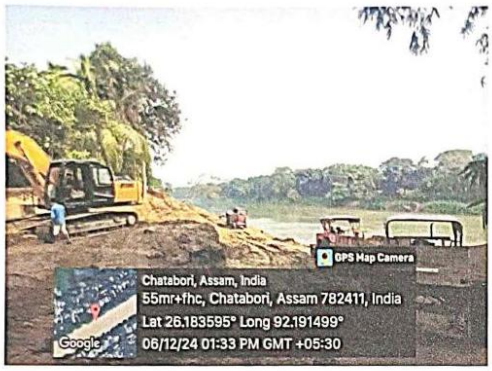
23. The Environmental Clearance granted to the Sand site in question by the State Environment Impact Assessment Authority (SEIAA), Assam dated 23.06.2023 (at page 229 to 234 of the paper book) also gives the GPS Coordinates which have already been extracted hereinabove as well as the Quantity of sand of 27000 Cum to be excavated within a period of two years and the Environmental Clearance also clearly mentions that the Sand and Gravel shall be extracted manually (**as per Mining Plan**) from Nakhula Beat Sand Mining Permit Area No.3 under Nagaon Forest Division, district Assam and that the operational area must be confined to the given 4.1 Ha. proposed area 'bound by the Coordinates' mentioned in the Environmental Clearance and shall not be any other area of extraction contiguous to this area.

24. We have already noted that the Applicant has not disputed the geographical GPS location Coordinates of the Nakhula Beat Sand Mining Permit Area No.3.

25. The Applicant has also submitted certain documents with photographs from page 340 to 347 of the paper book and submits that illegal mining is going on in this area which is Dimoruguri, Manaha Gaon, Assam which have been going on from October 2024 which are as under :-


Jagibhakat Gaon Bridge
715A
CWC, Jaggi Bhakat Gaon
Kopili River
NOTARY
SUJATA GHOSH DAS
Regn. No.
014/2022
GOVT. OF WEST BENGAL

HYUNDAI
GPS Map Camera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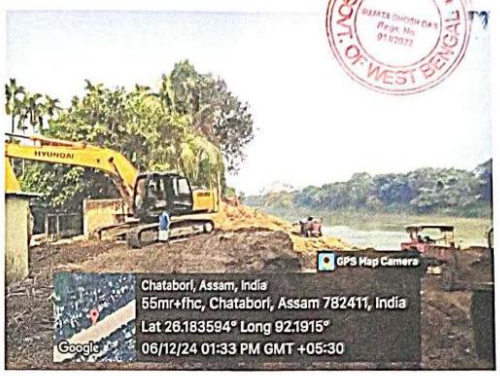
Google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Google

HYUNDAI

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HYUNDAI
GPS Map Camera
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GPS Map Camera
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Google

HYUNDAI
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Google

HYUNDAI
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55mr+fhc, Chatabori, Assam 782411, India
Lat 26.183595° Long 92.191499°
06/12/24 01:33 PM GMT +05:30
Google

HYUNDAI

GPS Map Camera
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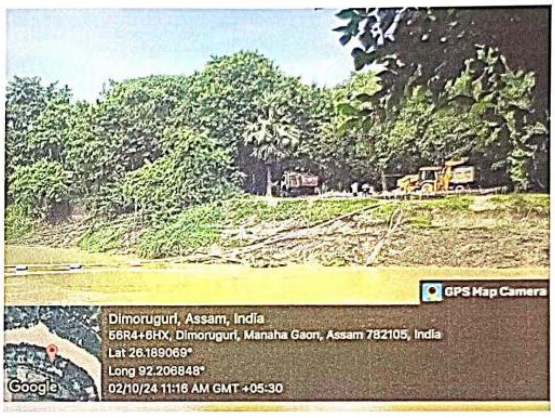
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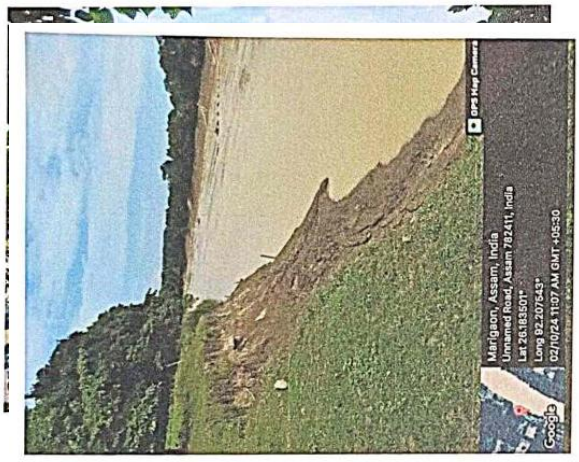
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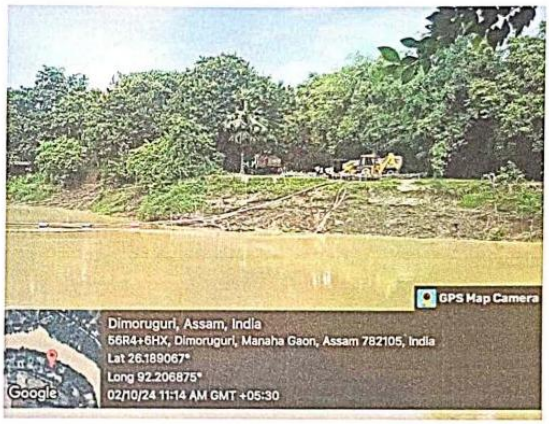
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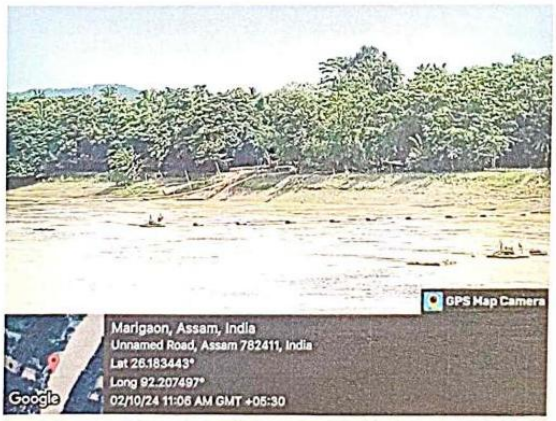
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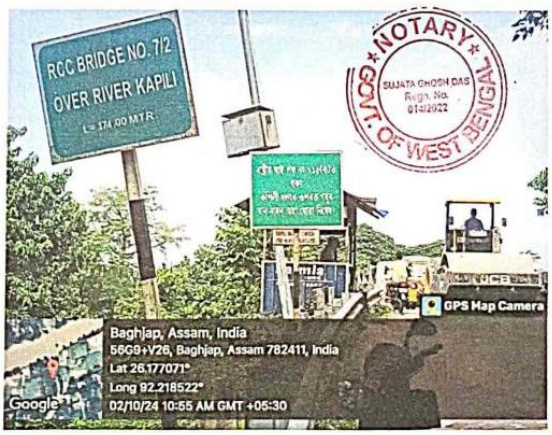
Long 92.207497°
02/10/24 11:06 AM GMT +05:30
Google


RCC BRIDGE NO. 7/2
OVER RIVER KAPILI
L= 174.00 MTR.
NOTARY
SUJATA GHOSH DAS
Regn. No.
01/2022
GOVT. OF WEST BENGAL
GPS Map Camera
Baghjap, Assam, India
56G9+V26, Baghjap, Assam 782411, India
Lat 26.177071°
Long 92.218522°
02/10/24 10:55 AM GMT +05:30
Google

26. From the perusal of the photographs it cannot be said that illegal mining is going on in the area covered by these photographs or that the same is necessarily been carried on by the Respondent No.7.

27. The learned Counsel for the Applicant has also referred to the judgment of the Hon'ble Supreme Court in I.A. No.12-13 of 2011 in Special Leave Petition (C) No.19628 to 19629 of 2009 *Dipak Kumar Etc. Versus State of Haryana & Others etc.*

28. Reference has also been made to the judgment of the Hon'ble Supreme Court in *T.N.Godavarman Thirumulpad Vs. Union of India & Ors.* in I.A. No.3949 of 2016 in Writ Petition (C) No.202 of 1995 as well as judgment of the National Green Tribunal, New Delhi in Original Application No.818/2022 (I.A. No.74/2023) *Suo motu action in illegal mining for excavation of Morrum at Araji No.824 KHA (Khand 3 & 4) in area 16.194 and 12.368 Hectares, Respectively at Village Agori Khas, Tehsil Obra, District Sonbhadra Vs. Union of India and Ors.* (at page 386 of the paper book).

29. Other judgments of the National Green Tribunal have also been relied upon by the Applicant which have been filed at the time of submission of the documents. However, the learned Counsel for the Applicant has not been able to show that the Respondents have in any manner disregarded the directions of ethos of these judicial pronouncements.

30. The Applicant has filed further affidavit dated 15.01.2025 stating that he has personally visited the aforementioned location and documented the activities with photographs via GPS enabled devices. Along with this affidavit a Joint Verification Report has also been filed of a site visit carried out on 16.11.2024 which reads as under :-

> ***"REPORT OF THE JOINT VERIFICATION***
>
> ***Regarding: Nakhula Beat Sand Mining Permit No. 3 at Kopili River, Morigaon District, Assam***
>
> *Reference: NGT Case OA No. 169/2023/EZ (Iinti Deka &ors vs. State of Assam & Ors)*
>
> ***1. Introduction***
>
> *This joint verification team was constituted by the State Environment Impact Assessment Authority (SEIAA), Assam, vide notification no. SEIAA.3601/2023/119/231 dated 30-10-2024, to conduct a verification in response to the* ***NG1*** *case bearing OA 169/2023/EZ (Jinti Deka ors. Vs State of Assam&ors.).*
>
> ***2. Joint verification team***

The following members constituted the Joint Verification Team, as per the aforesaid notification of the SEIAA, Assam.

Sl No.	***Name of Member***	***Designation and Office Address***
1	*Shri Anupam Phukan*	*Senior Geologist, Directorate of Geology and Mining (DGM), Kahilipara, Guwahati-781019*
2	*Shri Monoj Gogoi*	*Senior Geologist, Directorate of Geology and Mining (DGM), Kahilipara, Guwahatl-781019*
3	*Prof. Sarat Phukan*	*Member, State Environment Impact Assessment Authority (SEIAA), Assam, Bamunimaidam, Guwahati-781021*

3. Background

A discrepancy had emerged regarding the precise location of the Nakhula Sand Mining Permit No. 3 at the Kopili River between SEIAA-Assam and the Directorate of Geology and Mining, Government of Assam. This confusion was partly attributed to the absence of DGM representation in the committee originally constituted by Hon'ble National Green Tribunal, Eastern Zone Bench, In its order dated 2411-2023 for site verification in the Nakhula Sand Mining Permit No. 3.

4. Inspection Details

- ***Date of Inspection:*** *November 16, 2024*
- ***Location:*** *Nakhula Sand Mining Permit No. 3, Kopili River, Morigaon District, Assam*
- ***Purpose:*** *To verify the exact location and current status of mining activities*

5. Key Findings

1. Location Verification:

- *The committee conclusively confirmed* ***that both*** *SEIAA-Assam and DGM, Assam were referring to the same location for the Nakhula Sand Mining Permit No. 3.*

2. Current Status:

- *No signs of active sand mining were observed in the permit area during the inspection.*

6. Photographic Evidence

The following photographic documentation was collected:

1. Boundary Demarcation:

- *Figure 1: Current photograph of Pillar No. 1 (taken on 16-11-2024), captured by the present inspection team.*
- *Figure 2: Previous photograph of Pillar No. 1 (taken on 08.12-2023), captured by the previous committee constituted for inspection at the Nakhula Sand Permit No. 3 as per the order of Hon'ble NGT dated 24-11-2023.*

2. Bank protection measure at the immediate upstream of the sand permit:

- *Figure 3: Current photograph of geobag protection measures on the right bank along the right bank of the Kopili River at the immediate upstream of the Nakhula Sand Permit No, 3 (taken on 16-11-2024) captured by the present inspection team.*
- *Figure 4: Previous photograph ofthe geobag protection measures on the right bank along the right bank of the Kopill River at the immediate upstream of the Nakhula Sand Permit No. 3 (taken on 08-12-2023), captured by the previous committee constituted for inspection at the Nakhula Sand Permit No. 3 as per the order of Hon'ble NGT dated 2411.2023.*
- *This photographs conclusively prove that the both organization meant the same location of the Nakhula Sand Permit Area No. 3.*

7. Conclusion

The joint verification successfully resolved the location ambiguity between the concerned departments. The site inspection revealed no current mining activities in the permitted area."

Figure 1. *Pillar No. 1 of the Nakhula Sand Mining Permit No. 3 as seen during the present inspection visit.*

Figure 2, *The photograph of the pillar No. I of the Nakhula Beat Sand Permit Area No. 3, Included in the Inspection report submitted by the earlier committee to the Hon'ble NGT. This inspection was carried out p8-12.2023.*

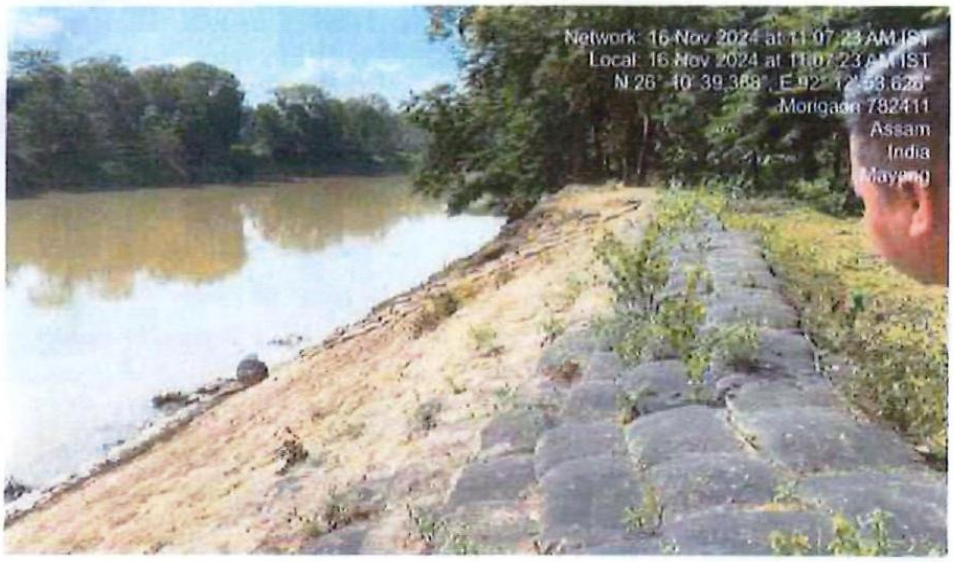


Figure 3. Bank protection measures (geobag) on the right bank of the river immediate downstream of the Bhakatgaon bridge and upstream of the Nakhula Beat Sand Permit Area No. 3. This photo was captured during the present inspection visit on 16-11-2024.

Figure 4. Bank protection measures (geobag) on the right bank of the river immediate downstream of the Bhakatgaon bridge and upstream of the Nakhula Beat Sand Permit Area No. 3. This photo was captured during the inspection visit of the earlier committee on 08-12-2023. This photo was included in the report submitted to the Hon'ble NGT by the earlier committee.

31. This Report clearly mentions that a discrepancy had emerged regarding the precise location of the Nakhula Beat Sand Mining Permit Area No.3 at the Kopili river between State Environment Impact Assessment Authority (SEIAA), Assam and the Directorate of Geology and Mining, Government of Assam which was partly attributed to the absence of representation of the Director of Geology and Mining in the Committee constituted by the National Green Tribunal for site verification. The Committee has noted that the local verification has established that both State Environment Impact Assessment Authority (SEIAA), Assam and Director of Geology and Mining, Assam were referring to the same location for the Nakhula Beat Sand Mining Permit Area No.3. There are no signs of active sand mining in the Permit area during inspection.

32. The Figure No.1 (pages 689 Colly) are the current photographs of Pillar No.1 taken on 16.11.2024 and 08.12.2023 ; Figure No.3 dated 16.11.2024 is a photograph of the Geobag protection measures along with right bank of Kopili river at the immediate upstream of the Nakhula Beat Sand Mining Permit Area No.3 ; the Figure No.4 dated 08.12.2023 is the photograph of the Geobag protection measures on the right bank of Kopili river at the immediate upstream of Nakhula Beat Sand Mining Permit Area No.3 taken by the previous Committee and it is stated that the above four photographs are of the same locations of the Nakhula Beat Sand Mining Permit Area No.3.

33. The Applicant has also filed the **ACTION PLAN FOR KOPILI RIVER – PRIORITY V** (at page 639 to 658 of the paper book) which do not relate to the sand site in question nor does it anywhere mention that illegal sand mining is being carried on by the Respondent No.7 at the sand site leased to him.

34. The State Environment Impact Assessment Authority (SEIAA), Assam has also filed affidavit bringing on record the same Inspection Report of the inspection carried out on 08.12.2023 which has already been extracted.

35. Affidavit has been filed by the Additional District Commissioner, Assam dated 22.07.2025 also bringing on record the Inspection Report of the inspection carried out on 08.12.2023 which has already been extracted hereinabove.

36. We may also refer to the Inspection Report of the inspection carried out on 08.12.2023 which confirms that no mining was going on at the site at the time of inspection nor any machinery or excavator was used in sand mining. It is stated that the Mining Permit was awarded on 27.04.2023 valid upto 26.04.2025. This Report however mentions that the Lease Area declared by the Department of Geology and Mining is in violation of the Sustainable Sand Mining Management Guidelines, 2016 which clearly mentions that mining can only be allowed keeping a safe distance from the river bank and that the depth of mining can be restricted to 3 mtrs. or water level whichever is less but here, in the present case, mining has been done in the river water itself as observed by the Committee. The Committee has also noted that the river bank is not demarcated and there are signs of bank erosion along

both river banks. The overall observation of the Committee is that illegal mining has been done since long back and necessary action has been taken by the District Administration by collecting fines from different sand storage points near the river bank itself. The Committee has also mentioned that there is no District Survey Report ('DSR' for short) for district Morigaon.

37. The Committee has also referred to the Mining Plan and observed that the Mining Plan approved by the Directorate of Geology and Mining, Assam clearly states that *the minable width of the river as central 80 m ¾th = 60 m (Fig. Sketch map)* allows mining inside the river in violation of the Sustainable Sand Mining Management Guidelines, 2016 as well as the Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM). The Committee has therefore recommended that sand mining should be stopped immediately and should be allowed strictly in accordance with the Guidelines.

38. We may refer to the Ministry of Environment, Forests and Climate Change (MoEF&CC) Notification dated 25.07.2018 which clearly provides the "Procedure For Preparation Of District Survey Report For Sand Mining Or River Bed Mining" and provides that the District Survey Report (DSR) shall be prepared in the district and its draft shall be placed in public domain by keeping its copy in the Collectorate and posting it on the District's Website for 21 days. The comments received shall be considered and if found correct, shall be incorporated in the final District Survey Report to be duly approved by State Environment Impact Assessment Authority. *The District Survey Report shall form the basis for application for Environmental Clearance preparation of Reports and appraisal of Projects. The Report shall be updated once every five years.*

39. Subsequently the Ministry of Environment, Forests and Climate Change (MoEF&CC), Impact Assessment Division issued Office Memorandum dated 12.12.2018 noting the direction given by the National Green Tribunal, New Delhi vide order dated 13.09.2018 passed in Original Application No.186 of 2016 *Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr.* The Office Memorandum dated 12.12.2018 reads as under :-

"F. No. L-11011/175/2018-IA-II (M)
Government of India
Ministry of Environment, Forest & Climate Change
Impact Assessment Division
* * *

3RD Floor, Vayu Wing,
Indira paryavaran Bhawan,
Jorbagh Road, Aliganj,
New Delhi – 110 003
Email: rb.lal@nic.in

Phone/Fax: 011-24695362

Office Memorandum

Sub: Order dated 04th September, 2018 & 13th September, 2018 passed by the Hon'ble National Green Tribunal, New Delhi in O.A. No.173 of 2018 & O.A. No. 186 of 2016 in the matters titled "Sudarsan Das Vs State of West Bengal & ors" & "Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr." Respectively – regarding.

This is with reference to the recent orders of the Hon'ble NGT dated 04th September, 2018 in the matter titled Sudarsan Das Vs State of West Bengal & Ors & and other dated 13th September, 2018 in the matter Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr. Copies of the orders are enclosed herewith for ready reference.

2. The Hon'ble NGT vide order dated 13th September, 2018 in O.A. No. 186 of 2016 (Satendra Pandey Vs Ministry of Environment Forest & Climate Change & Anr) has inter-alia directed as follows:-

"(i) Providing for EIA, EMP and therefore, Public Consultation for all areas from 5 to 25 ha falling member Category B-2 at par with Category B-1 by SEAC/SEIAA as well as for cluster situation wherever it is not provided:

(ii) Form-1M be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA;

(iii) if a cluster or an individual lease size exceeds 5 ha the EIA/EMP be made applicable in the process of grant of prior environmental clearance;

(iv) EIA and/or EMP be prepared for the entire cluster in terms of recommendation 5 (supra) of the Guidelines for the purpose of recommendations 6, 7 and 8 thereof;

(v) revise the procedure to also incorporate procedure with respect to annual rate of replenishment and timeframe for replenishment after mining closure in an area;

(vi) the MoEF&CC to prepare guidelines for calculation of the cost of restitution of damage caused to mined-out areas along with the Net

Present Value of Ecological Services forgone because of illegal or unscientific mining."

3. In view of the above, the undersigned is directed to forward the copy of the aforementioned order for necessary compliance and inform the Ministry about the action taken.

4. This issues with the approval of the Competent Authority.

Yours faithfully,

Encl: As above

(Dr. R. B. Lal)
Scientist 'E' "

40. Environmental Clearance to the Respondent No.7, the Lessee for the sand sairat in question was granted on 23.06.2023 by State Environment Impact Assessment Authority (SEIAA), Assam.

41. The Divisional Forest Officer (DFO), Nagaon Forest Division by his letter dated 17.12.2022 requested the Director of Geology and Mining, Assam to prepare the Mining Plan of the Nakhula Beat Sand Mining Permit Area No.3 (at page 216 of the paper book).

42. The Mining Plan was thereafter prepared and issued under Certificate dated 25.12.2022 at page 187 (Colly) of the paper book. In this Mining Plan, GPS Coordinates have been given which permits sand mining upto a depth of 3 mtrs from the top level of the riverbed and extraction of minerals upto a depth of 1.0 mtr. and 1.5 mtrs. width (at page 205 of the paper book) which have not been disputed by the Applicant.

43. The Mining Contract under SECTION-B under the heading 'MINING' Condition no.8 allows the Mining Permit holder, i.e. the Respondent No.7 therein, to extract sand from the Kopili Riverbed (at page 205 of the paper book). It further provides that *the depth of the mining will not any ways exceed 3 (three) meters at any point in the Contract area from the top of the unmined surface of riverbed as per Rule 39(iii) of Assam Minor Mineral Concession Rules, 2013*.

44. The Mining Plan further under the heading 'PROGRESSIVE MINE CLOSURE PLAN' (at page 206 of the paper book) provides that the *Mining is to be done for production of Sand from Riverbed* and *mining of minerals must be carried out by maintaining three numbers of benches up to a maximum depth of 3 metres*.

45. We have examined the Mining Aplan in detail and we have not been able to find anywhere that the certificate granted in favour of the Lessee, the Respondent No.7 has anywhere permitted the Lessee to carry out mining *inside the river and away from the active banks keeping a distance of 7.5 meters or 10% of the total width of the river* but the Mining

Plan at page 133 of the paper book mentions that *the Kopili River has a variation of its width, the average width in proposed Mining Contract area is 80m. So, minable width of the river is central 80 m x ¾ = 60 m"*.

46. The Mining Plan in SECTION-A under the heading 'LOCATION OF THE PROPOSED CONTRACT AREA' (page 136 of the paper book) mentions that *The proposed site is a Riverbed under the jurisdiction of Morigaon Range, Morigaon of the Nagaon Forest Division, Nagaon, District of Nagaon, Assam*.

47. The Minable area at Item No.5 of the Chart at page 136 of the paper book mentions that the total mining area is *4.10 hectares, area calculated as per GPS Coordinates*.

48. In SECTION-B under the heading 'MINING' at Item 6 (at page 143 of the paper book) it is mentioned that *The Kopili River has a variation of its width, the Average width is 80m, so the Minable width of the river is central 80 m x ¾ = 60 m*.

49. Thus from perusal of the Mining Plan and the Inspection Report of the site inspection carried out on 08.12.2023, it is absolutely clear that the Mining Plan was granted in favour of the Respondent No.7 by the Director of Geology and Mining, Assam in absolute violation of the Sustainable Sand Mining Management Guidelines, 2016 and Enforcement and Monitoring Guidelines for Sand Mining, 2020 (EMGSM) which clearly prohibits mining of sand in the riverbed.

50. We also find that State Environment Impact Assessment Authority, Assam has not applied its mind to the grave errors and illegalities in the Mining Plan, approved by the Director of Geology and Mines in gross violation of the Sustainable Sand Mining Guidelines 2016, and has mechanically issued the Environmental Clearance based on an illegal Mining Plan.

51. We find that the Director of Geology and Mining, Government of Assam has acted with complete non-application of mind to the Sand Mining Guidelines while granting approval to the Mining Plan and thereby causing immense loss to the State exchequer by way of loss of revenue.

52. The Committee has recommended that the mining at the Site must be closed immediately.

53. We therefore dispose of this Original Application with a direction to the District Magistrate, Morigaon, Assam and the District Mining Officer, Morigaon, Assam to ensure that the Sand Mining in the Nakhula Beat Sand Mining Permit Area No.3, district – Morigaon, Assam is closed. The State Authority shall also proceed to compute Environmental Compensation against the Respondent No.7. We also refer the matter to the Chief Secretary, Assam for appropriate action against the Director of Geology and Mining, the Respondent No.8.

54. I.As, if any, stand disposed of accordingly.

55. There shall be no orders as to costs.

❖

Jai Gopal Rai vs. State of Jharkhand

(O.A. No 199/2024/EZ)
Decided on: 3rd July, 2025 (EZ)

CASE NOTE

The applicant had written a letter petition to the national green tribunal, eastern zone bench, kolkata seeking protection and restoration of a tank in Hazaribagh town spread over an area of nearly 16 acres in the heart of the town. It was alleged in the letter petition that the tank is facing threat of destruction by way of its conversion into a commercial estate. It was further stated in the letter petition that resumption of the renovation and restoration work of the said tank was sanctioned by the district mining fund trust – DMFT and zila parishad, Hazaribagh in 2023.it was further alleged that some local mafia have created a garbage dump over the tank encouraging the throwing of garbage from all sides into the tank thereby destroying and poisoning it with a view to change the nature of the pond and turn it into a commercial estate.

The central issue before the tribunal to adjudicate upon, which is as follows:

1. Whether the tank in question is being polluted, destroyed and converted into a commercial estate as alleged by the applicant in the letter petition?

The Hon'ble Tribunal took note of the Affidavit containing an Action Plan for Conservation of Okni Talabby the Hazaribagh Municipal Corporation and found that in paragraph no.4. A.1, a stand has been taken that the rejuvenation of the Okni Talab fully lies with the Zila Parishad, Hazaribagh as Okni Talab has not been handed over to the Hazaribagh Municipal Corporation by the District Administration, Hazaribagh. The Hon'ble Tribunal did not go into the question as to whether the Talab should be rejuvenated by the Zila Parishad, Hazaribagh or by the Hazaribagh Municipal Corporation or whether it has been handed over to the Hazaribagh Municipal Corporation or not.

The Hon'ble Tribunal found that the allegations made by the Applicant in his letter petition have been admitted by the Respondent themselves in their Counter Affidavits that that residential drains are being allowed by the Municipal Corporation, Hazaribagh to flow into the Okni pond and that garbage is scattered all around the said pond. Therefore, the District Magistrate, Hazaribagh was directed to determine as to who is responsible for the rejuvenation and maintenance of the Okni pond and to ensure that the Action Plan for Conservation of Okni Talab prepared by the Hazaribagh Municipal Corporation is implemented and completed within one year and the project is completed positively by 03.07.2026 since work order has already been issued on 26.04.2025. The District Magistrate, Hazaribagh was further directed that he shall issue such necessary orders to the Hazaribagh Municipal Corporation or the Zila Parishad, Hazaribagh as the case may be in this regard.

Jai Gopal Rai vs. State of Jharkhand

COUNSEL FOR APPLICANT(S):
Mr. Anil Kumar Singh, Adv. (in Virtual Mode)

COUNSEL FOR RESPONDENT(S):
Ms. Aishwarya Rajyashree, Adv. for R-1 & 3 (in Virtual Mode),
Mr. Imran Siddiqui, Adv. for R-2 (in Virtual Mode),
Mr. Surendra Kumar, Adv. for R-4,
Ms. Rashhmi Singhee, Adv. for R-5 (in Virtual Mode)

CORAM:
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

HEARD ON: 03rd July, 2025
PRONOUNCED ON:03rd July, 2025

ORDER

BY HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER

1. Mr. Anil Kumar Singh, learned Counsel is present (in Virtual Mode) on behalf of the Applicant.

2. This Original Application was taken up on the basis of a letter petition addressed to the National Green Tribunal, Eastern Zone Bench, Kolkata.

3. The Applicant is seeking protection and restoration of a tank in Hazaribagh town spread over an area of nearly 16 acres in the heart of the town and it is alleged that the same is facing threat of destruction by way of its conversion into a commercial estate. It is stated that resumption of the renovation and restoration work of the said tank was sanctioned by the District Mining Fund Trust – DMFT and Zila Parishad, Hazaribagh in 2023.

4. The tank is stated to be located in the western part of Hazaribagh close to the market area in the Hazaribagh Municipal Corporation area and is spread over an area of about 14.62 acres in khata no.- 62, Plot no.- 122 of revenue village Okni of Sadar Anchal Hazaribagh and is recorded in the last cadastral survey as per information provided by the Anchal Adhikari (Circle Officer) of Sadar Anchal Hazaribagh.

5. It is stated that some local Mafia have created a garbage dump over the tank encouraging the throwing of garbage from all sides into the tank thereby destroying and poisoning it with a view to change the nature of the pond and turn it into a commercial estate.

6. It is stated that on the demand of the community, the local administration has prepared a scheme for restoration and renovation of the tank sanctioned by the District Mining Fund Trust (DMFT) and Zila Parishad, Hazaribagh entailing an estimated cost of Rs. 1,39,02,600/- (One crore Thirty Nine lakhs two thousand and six hundred only).

7. At the time of admission, the Tribunal constituted a committee comprising of the following Members:-

i) Senior Scientist, Jharkhand State Pollution Control Board;
ii) District Magistrate or his representative of Senior rank not below the rank of Additional District Magistrate (ADM).

The Committee was required to visit the site in question and submit a factfinding Report with regard to the allegations made in the Original Application.

8. The District Magistrate, Hazaribagh, Jharkhand has filed an affidavit dated 10.03.2025 bringing on record an Inspection Report of an inspection carried out on 12.12.2024 which reads as under:-

Annexure - A

"In compliance with the order of N.G.T. in O.A. No. 199/2024/EZ Dated 01.10.2024, the Deputy Commissioner of District Hazaribagh, had constituted a committee vide letter number 3268/Vidhi, dated 06.11.2024. The order passed by the Hon'ble Court on 01.10.2024 read as under:-

Paragraph 15:- Considering the allegations made, we deem it appropriate to constitute a Committee comprising of the following members:-

i) Senior Scientist, Jharkhand State Pollution Control Board;

ii) District Magistrate or his representative of Senior rank not below the rank of Additional District Magistrate (ADM).

Paragraph 17:- The Committee shall visit the site in question and thereafter submit a Fact Finding Report with regard to the allegations made in the Original Application.

In compliance with the aforementioned order; the inspection team had conducted an on-site inspection of the concerned location on 12.12.2024 and documentary evidence was adduced from the Circle Officer, Sadar Hazaribagh, and the Municipal Commissioner, Municipal Corporation Hazaribagh.

Following observations were made during the Inspection:-

1) Residential buildings has been constructed on all the four sides of the pond. The Municipal Corporation/Nagar Nigam has made arrangements to facilitate discharge of drain water from the residential buildings located on the North side and East side into the Okni pond. Drain water from nearby localities of Hazaribagh town also falls in the pond from eastern side of the pond.

2) Hazaribagh Municipal Corporation has placed dustbin towards the south side of the pond but still garbage was found scattered on all sides of the pond.

3) Fencing around the pond was found on the western side which was damaged at some places. Towards the southern side of the pond, brick wall has been constructed of approx. 1-1.5 ft height. Plantation has been carried out all the along the pond by the local residents. At some places plants were found inside the gabion.

4) For the beautification of the pond, Zila Parishad-Hazaribagh had dug up the pond soil and dumped on the western side of the pond in a plan to create a paver block pathway (for pedestrians) on all side. However, due to stay order of the Hon'ble High Court of Jharkhand in W.P.(C) No. 7143/2023 the construction and beautification of the Pond Remains incomplete. About 15-20m length pathway has been constructed. At present this filled up land towards the west side of the pond is used by locals to commute.

5) Pond was found filled with hyacinth and green plants and only a small portion of open water could be seen.

The Remediation measures that can be followed are as under which:-

1) Arrangements should be made to prevent the drains from falling into the pond.

2) Water Hyacinth and green plants must be removed from the pond.

3) Garbage dumped on sides of the pond should be cleaned and Municipal corporation shall place more dustbins around the pond and shall ensure regular collection of waste from these bins.

4) Fencing could be done on remaining sides to prevent dumping of waste in the pond and also to restrict the movement of stray animals towards the pond.

5) "As per the interim order passed by the Hon'ble Supreme Court of India in Civil Appeal No(s). 1904/2020 dated 01/10/2024, the Hon'ble Court emphasized that…"

"We must record here with a great deal the paramount duty of the State not of emphasis that it is only to protect the ponds/lakes/water bodies in the State but also to ensure that ponds/lakes/water bodies, which have been illegally filled in, are restored. It is the Constitutional duty of the State to do so".

6) <u>The Chapter-15 of Jharkhand Municipal Act 2011 read as under:-</u>

125. Power to acquire and hold property- The municipality shall, for the purposes of this Act, have power to acquire and hold by gift, purchase or otherwise, movable and immovable properties or any interest therein, whether within or outside the limits of the municipal area.

126. Vesting of property-Notwithstanding anything contained in any other law for the time being in force, the movable and the immovable properties and all interest whatsoever nature or kind therein of the following categories within the limits of a municipal area, shall vest in the municipality-

'Public tanks, streams reservoirs, and wells;'

7) It is also necessary to mention here that, in light of the application submitted by the applicant Shahnawaz Jamil for the mutation of the aforementioned land (i.e., Khata No. 62, Plot No. 122, Area 14.62 acres), the Circle Officer, Sadar Hazaribagh had rejected the mutation case No.- 2898/2024-25 as it has been found that the land in question is being used for public purposes. A substantial portion of the land contains an Ahara (a traditional water reservoir) which is utilized by the general public."

9. The Respondent No.2, Hazaribagh Municipal Corporation has also filed affidavit dated 28.03.2025.

10. Heard learned Counsel for the parties and perused the documents on record.

11. A perusal of the Inspection Report would show that residential buildings have been constructed on all the four sides of the pond in question and the Municipal Corporation/Nagar Nigam has made arrangements to facilitate discharge of drain water from the residential buildings located on the North side and East side into the Okni pond; it is noted that drain water from nearby localities of Hazaribagh town also pours into the pond in question from its eastern side. This is a shocking state of affairs that the Municipal Corporation, Hazaribagh has allowed drain water from residential buildings to drain into the Okni pond which will ultimately result in the pond itself dying out completely and become a cesspool.

12. The Committee has also noted that there was garbage on all sides of the pond and even the fencing around the pond was found damaged on the western side, and towards the southern side of the pond, a brick wall has been constructed to a height of approximately 1-1.5 ft height. The Committee also noted that plantation has been carried out along the pond by local residents. It is also noted that the Zila Parishad, Hazaribagh had dug up the pond soil and dumped the same on the western side of the pond in order to create a paver block pathway (for pedestrians) on all sides. It, however, appears that W.P.(C) No. 7143/2023 was filed in the Hon'ble High Court of Jharkhand against the said activity and there is a stay order granted by the High Court which has however not been placed before us.

13. The Committee also found that the pond was filled with hyacinth and green plants and only a small portion of open water could be seen.

14. The Committee has also mentioned that an application was submitted by one Shahnawaz Jamil for the mutation of the aforementioned land (i.e., Khata No. 62, Plot No. 122, Area 14.62 acres), but the Circle Officer, Sadar Hazaribagh had rejected the mutation case No.-2898/2024-25 as it was found that the land in question is being used for public purposes and a substantial portion of the land contains an Ahara (a traditional water reservoir) which is utilized by the general public.

15. The Hazaribagh Municipal Corporation has filed an Action Plan for Conservation of Okni Talab which reads as under:-

ANNEXURE-'A' (4)

Action Plan for Conservation of Okni Talab

Ref : Original Application No.199/2024/EZ

March2025

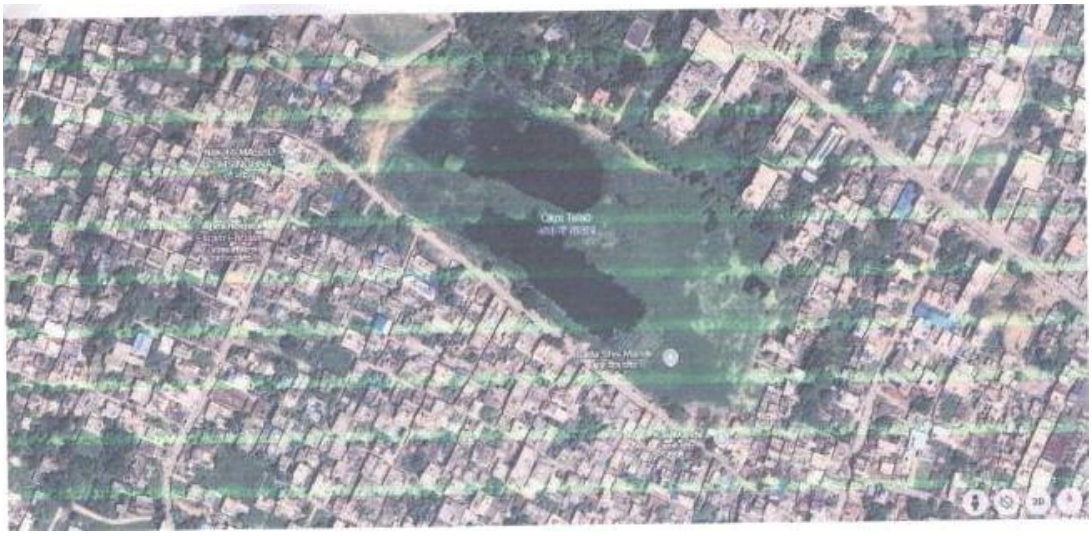
Hazaribagh Municipal Corporation,
Hazaribagh

T. N. MISHRA
GOVT. JHARKHAND
NOTARY
LAW 50/2003
HAZARIBAG, JHARKHAND, INDIA

Chapter -1: Introduction

1. Okni Talab

- *The pond is situated in Okni area (Sadar Block) near Kaali Mandir Hazaribagh Jharkhand. In earlier days this pond was used for irrigation purpose. Presently it is used for water chestnut cultivation by a private party.*
- ***Area :*** *The gross area of pond is 14.62 acre and water body area is about 3.5 acre and perimeter is about 1061.21 m.*
- ***Location :*** *Coordinates 24º0´6´´N,85º21´4´´E*
- ***Topography :*** *The area is surrounded by approx 60-65 residential houses and roads on its perimeter. It is moderately populated area.*
- ***Land use :*** *Land around the pond is mainly used for residential purpose.*
- ***Agriculture :*** *This pond has no agricultural purpose at present.*
- ***Mining :*** *No mining area is there in proximity of this pond.*
- ***Residential, Commercial and industrial :*** *As per data there are approximately 62-65 residential houses and there is no industrial and commercial units set up till date.*
- ***Depth of Pond/Lake & deposits :*** *The actual depth of pond is around 2m and the level of deposits is around 0.15 m.*
- ***Aquatic and other life forms :*** *Small fishes are found and water hyacinth/lotus/lilies/weed are present in the pond which is used as habitat by some birds like Teal, Water Hen.*
- ***Current uses :*** *This pond is used for water chestnut cultivation by a private party.*
- ***Drainage :*** *Sewerage water from nearby residential building located on the North side and East side is coming to the said pond.*



Google Image of Okni Talab in Hazaribagh

2. *The tentative sewerage generation worked out by the Junior Engineer, Municipal Corporation, Hazaribag is 0.0351 MLD (Million litre per day) from the Kuccha Drain of 60-65 adjacent residential building to the pond.*

Annexure – I

2.1 Industrial effluent disposal: No industrial effluent into the pond as no industrial unit nearby.

2.2 Already big dustbin have been placed by the Municipal Corporation, Hazaribag. Due to lack of awareness, some residents throw/scatter garbage nearby the dustbins.

2.3 C & D waste disposal to talab.
No C & D waste is being dumped in Okni Talab, Separate vehicle has been deputed for collection of C & D waste.

3. SHORT TERMS MEASURES:

3.1 As per requirement more dustbins would be immediately placed near the pond.
3.2 The owner of the nearby apartment has been served a notice for immediately stopping flow of dirty water in the pond.

Annexure – II

3.3 The signboards with warning of disciplinary action against release of dirty water and garbage into the pond would be fixed around the pond.

4. LONG TERMS MEASURES:

4.1 Solid waste Management : *Tipper is deputed for this ward for the door-to-door collection of domestic waste from households.*

4.2 Diversion of waste water by construction of drain into nearest Nala.

4.a.1 Rejuvenation of Okni Talab *fully lies with the* ***Zila Parishad, Hazaribag*** *as Okni Talab has* ***not*** *been handed over to Hazaribag Municipal Corporation by the* ***District Administration, Hazaribag****. Local Administration has prepared a scheme for restoration and renovation of the pond sanctioned by the district Mining Fund Trust (DMFT) and Zila Parishad, Hazaribag entailing an estimated cost of Rs. 1,39,02,600/- (One crore thirty nine lac two thousand six hundred only).*

5. ENCROACHMENT : *Encroachment of any land under okni talab will be handled by* ***CO, Sadar Hazaribag/Zila Parshad, Hazaribag/District Administration, Hazaribag***

6. IMPLEMENTATION OF ACTION PLAN BY HMC

6.1 *Estimate for diversion of incoming small near by drain has been prepared by Hazaribag Municipal Corporation in Ward no. 18*

- *Estimated Amount - 9,23,927.00*
- *Technical Sanction 9,23,927.00*

Annexure - III

- *Administrative Sanction Date - 25.02.2025*

Annexure – IV

6.2 *Fund Tie up for the implementation.*

- *Civic amenities fund. (Govt. Grant)*

6.3 *Tendering and implementation*

- *Tender published date : 27.03.2025*
- *Tender finalization date : 17.04.2025*
- *Work order issue date : 26.04.2025*

6.4 *Cleaning around the pond has been done on regular basis and installation of dustbin has been done.*

7.SUSTENANCE PHASE :

	Programs	***Implementation of programs***
7.1	*Creation of awareness among citizens groups, resident welfare associations, local organizations, political organizations, educational organizations and Government agencies.*	***Nukkad Nataks*** *and wall painting are done to create awareness among the community. NSS (National Social Service) in local colleges, organize awareness programs in the district area.*
7.2	*Dissemination of Information.*	*Signboards, Hoardings at chowks near to water bodies are fixed and advertisement in newspapers are done to disseminate information to the people.*
7.3	*Organizing periodic trainings through Identified and reputed Institutions.*	*District Administration encourages Educational, Institutions to organize Environmental awareness programs in the district. Namely N.C.C. & N.S.S. in Colleges perform Co-curricular activities to create awareness and training to the students.*
7.4	*Creation of Recreational centers*	*A number of parks near to water bodies have been developed as recreation center for the public.*
7.5	*Promoting Public participation.*	*Time to time meeting of the stakeholders (Owner's of Shops/Malls, Contractors, and representative of different wards and voluntary public participation is encouraged.*

16. It is stated that an Action Plan has been prepared for taking steps for protection and conservation of the Okni Talab i.e. the pond in question, which includes construction of RCC Drain and Box Culvert from H/O Aditya Narayan to the existing Drain near Okni Talab.

17. We have gone through the Action Plan and we find that in **paragraph no.4.a.1**, a stand has been taken that the rejuvenation of the Okni Talab fully lies with the Zila Parishad, Hazaribagh as Okni Talab has not been handed over to the Hazaribagh Municipal Corporation by the District Administration, Hazaribagh. It is stated that the Local Administration has prepared a scheme for restoration and renovation of the pond sanctioned by the District Mining Fund Trust (DMFT) and Zila Parishad, Hazaribagh at an estimated cost of Rs. 1,39,02,600/- (One crore thirty nine lac two thousand six hundred only).

18. The learned Counsel for the Hazaribagh Municipal Corporation referring to the paragraph no.4.a.1 submitted that the Okni Talab has not been handed over to the Hazaribagh Municipal Corporation and it's development and rejuvenation lies with the Zila Parishad, Hazaribagh.

19. We are not required to go into those questions as to whether the Talab should be rejuvenated by the Zila Parishad, Hazaribagh or by the Hazaribagh Municipal Corporation or whether it has been handed over to the Hazaribagh Municipal Corporation or not.

20. On the facts as admitted in the present Original Application by the Respondents themselves that residential drains are being allowed by the Municipal Corporation, Hazaribagh to flow into the Okni pond and that garbage is scattered all around the said pond, we direct the District Magistrate, Hazaribagh (Respondent No.3 herein) to determine as to who is responsible for the rejuvenation and maintenance of the Okni pond and to ensure that the Action Plan for Conservation of Okni Talab prepared by the Hazaribagh Municipal Corporation is implemented and completed within one year and the project is completed positively by 03.07.2026 since work order has already been issued on 26.04.2025. The District Magistrate, Hazaribagh shall issue such necessary orders to the Hazaribagh Municipal Corporation or the Zila Parishad, Hazaribagh as the case may be in this regard.

21. The District Magistrate, Hazaribagh shall file Compliance Report by **15.07.2026**.

22. The Original Application No.199/2024/EZ is disposed of with the aforesaid directions.

23. I.As., if any, stand disposed of accordingly.

24. There shall be no order as to costs.

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National Green Tribunal
Faridkot House, Copernicus Marg
New Delhi, 110001