

SUPPLEMENTARY REPORT OF COMMITTEE CONSTITUTED TO ASSESS THE ENVIRONMENTAL COMPENSATION FOR THE ALLEGED VIOLATIONS BY THE SEVENTH RESPONDENT IN THE ORIGINAL APPLICATION NO. 136 OF 2016 (SZ) FILED BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE, CHENNAI

1 Background

Original Application No. 136/2016 (SZ) was filed by M/s. Capt. B.S. Prakash Applicant, before the Hon'ble NGT on 17/06/2016, alleging violation of environmental conditions and Coastal Zone Clearance granted for the project by the seventh respondent. The Hon'ble National Green Tribunal (NGT) in its order dated 18.03.2020 directed constitution of a Committee comprising of representatives of Regional Office, Ministry of Environment, Forest and Climate Change (MoEF&CC), Bangalore, Kerala State Coastal Zone Management Authority (KCZMA) and Kerala State Pollution Control Board (KSPCB) with orders to inspect the project, submit a status report and also propose action if any violation is found regarding the conditions imposed including the Coastal Zone Regulation. The Hon'ble NGT also directed the Committee to impose environmental compensation against the seventh respondent for violation of any of the conditions imposed in the environmental clearance as well as the Coastal Zone Clearance granted in respect of the project, as has been directed by the Hon'ble NGT in several cases of this nature, on the basis of the guidelines given by the Central Pollution Control Board (CPCB) in this regard.

The Committee submitted its report and the matter came up for hearing before the Hon'ble NGT on 20/01/2021. The Hon'ble NGT in its order dated 20/01/2021 observed that the committee has not assessed the environmental compensation in respect of CRZ violations though certain violations were noted and directed the committee to co-opt any expert of their choice for the purpose of assessing environmental compensation for the alleged violation and submit a further report. Thus, the Regional Office, Ministry of Environment, Forest and Climate Change (MoEF&CC), Bangalore approached the National Centre for Sustainable Coastal Management (NCSCM), Ministry of Environment, Forest and Climate Change, Chennai, to nominate an expert member for the purpose and

accordingly Shri. M Dharma Raj, Senior Scientific Consultant, NCSCM was nominated by Director, NCSCM.

2. Project details

As already noted by the Committee in its original report, M/s Green Gateway Leisure Limited (GGLL) is the special purpose vehicle formed by M/s Air Travel Enterprises (ATE) for executing the project Bekal Beach Resort and Spa. The proposal relates to construction and development of a resort and spa in Survey No.117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 131, 133 and 134 of Kikan Village 1(P) of Chittari at Bekal in Kasargod District, Kerala in 58 acres of leased land. Total built area of the project was envisaged to be 19041 m² with 137 cottages. As per the clearance granted under CRZ 1991, the project site falls in Coastal Regulation Zone (CRZ)-III area. Total water requirement for the project was envisaged to be 60,000 l/day. The Capital cost of the project is Rs 22 Crores. The validity of the CRZ clearance obtained from the Ministry of Environment, Forest and Climate Change (MoEFCC) vide No. 16-4/2008 IA-III dated 02.01.2009, expired on 01.01.2014.

3 Issues before the Reconstituted Committee

The reconstituted Committee considered the following issues for deliberations and for submitting the report to the Hon'ble NGT, based on the issues raised in the order dated 20/01/2021 of the Hon'ble NGT.

- a) Violation of any of the conditions imposed in the environmental clearance as well as the CRZ Clearance, observed by the previous Committee.
- b) Calculate the environmental compensation against the seventh respondent for such violation, as has been directed by the Hon'ble NGT in several cases of this nature, on the basis of the guidelines given by the Central Pollution Control Board (CPCB) in this regard.
- c) Damage to Ecologically Sensitive Areas (ESAs), if any.

The reconstituted Committee accordingly met online through Video conferencing on 11/03/2021 and deliberated on the issues in detail.

3.1 Violation of environmental clearance conditions / CRZ Clearance, observed by the previous Committee.

The previous Committee had observed the following in its report submitted to the Hon'ble NGT.

- a) *The Joint Committee on the day of the visit, noted that construction of the project was abandoned halfway, and the project was not in operation since past 2-3 years and heavy bushes and grass of more than 5-6 feet has grown all over the project site area except some natural walkways. The Committee has searched for the existence of bore wells in the project site but could not locate any.*
- b) *Accordingly, the Joint Committee concludes that there is no substantial evidence to prove that there exist bore-wells in the project site for drawl of ground water.*
- c) *The Joint Committee on the day of the visit noted that the project has not been completed yet and not in operation. Hence, there is no generation of sewage and accordingly, the project authorities have not installed a Sewage Treatment Plant (STP) till date.*
- d) *The Committee also noted that the project has not been completed yet and about 40-50% of the project work is still pending and prior to operationalization of this project, project authorities have to invariably establish an STP, without which they will not be able to obtain Consent to Operate (CTO) from KSPCB.*
- e) *The Joint Committee based on the records evidenced during the inspection held on 19.11.2020 noted that few water canals have been constructed artificially in the project site and water has been diverted into the resort from the adjacent Chittari River and the same has been noted as per Google Images.*
- f) *The Committee noted that a Senior Scientist, KSCSTE inspected the project on 28.10.2016 and noted the following:*

“large scale digging/ excavation of earth to create new water canals with width of 10m and above within 500 m from HTL was noted. The CRZ Notification 1991 clearly states that “Extraction of sand,

levelling or digging of sandy stretches except of foundation of building, swimming pool shall not be permitted within 500 m of HTL of sea and hence the digging within 500 m from HTL amounts to violation of provisions of CRZ Notification".

g) *The project authority has created few water canals artificially without clearance from Ministry/ KCZMA.*

Thus, as per the inspection report of Senior Scientist, KSCSTE and as per the report of the Committee submitted to the Hon'ble NGT, the seventh respondent has violated the CRZ clearance/CRZ Notification by digging canals within 500 m from HTL, without clearance from MoEF&CC/ KCZMA, which amounts to causing damage to the environment.

3.2 Guidelines issued by the Central Pollution Control Board (CPCB) for calculating environmental compensation.

The Hon'ble NGT in its order dated 20/01/2021 has directed the Committee to impose environmental compensation against the seventh respondent for violation of any of the conditions imposed in the environmental clearance as well as the Coastal Zone Clearance granted in respect of the project, as has been directed by the Hon'ble NGT in several cases of this nature, on the basis of the guidelines given by the Central Pollution Control Board (CPCB) in this regard.

In this regard, the guidelines issued by the Central Pollution Control Board and the methodology for calculating environmental compensation (copy enclosed as Annexure R-1) are available in the CPCB portal at: <https://cpcb.nic.in/uploads/report-15.07.2019.pdf>. The same methodology for calculating environmental compensation for violating the Provisions of EP Act based on the guidelines issued by CPCB has also been reported in detail in the order dated 16/12/2020 passed by the Hon'ble NGT (SZ) in OA No. 49 of 2019 (SZ) (copy enclosed as Annexure R-2). The methodology is reproduced below.

The formula for calculating environmental compensation based on the guidelines issued by CPCB is given below.

Environmental Compensation Formula $EC = PI \times N \times R \times S \times LF$

Where EC – Environmental Compensation

PI – Pollution Index of Industry Sector

N – Number days of Violation took place

R – A factor in Rs for EC

S – Factor for scale of operation

LF – Location factor

i. The industrial sectors have been categorized into Red, Orange and Green based on their pollution index in the range of 60-100, 41-59 and 21-40 respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green Categories of industries respectively.

ii. N, number of days for which violation took place is the period between the day of violation observed/due date of directions compliance and the day of compliance verified by PCB/SPCB/CPCB.

iii. R, is a factor in rupees, which may be minimum of 100 and maximum of 500.

iv. S is based on small/medium/large industries categorization which may be 0.5 for micro or small, 1 for medium and 1.5 for large units.

v. LF (Location Factor), is based on the population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or upto 10km distance from the municipal boundary of the city/town, following factors (LF) may be used.

Sl. No.	Population (million)	Location Factor (LF)
1.	1 to < 5	1.25
2.	5 to < 10	1.5
3.	10 and above	2

Note: #LF will be 1.0 in case unit is located >10km from municipal boundary and LF is presumed as 1 for city/town having population less than one million. For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0.

4 Environmental Compensation:

The Committee has been mandated to assess the quantum of Environmental Compensation as per the specific directions given in para 34 of the order dated 18/03/2020 passed by the Hon'ble NGT in the present case, which states as follows.

“34. If there is any damage caused to environment on account of the violation, then the committee is also directed to impose environmental compensation against the seventh respondent for the violations on any of the conditions imposed in the environmental clearance as well as the Coastal Zone Clearance granted in respect of the project as has been directed by this Tribunal in several cases of this nature on the basis of the guidelines given by the Central Pollution Control Board in this regard”.

4.1 Calculation of Environmental Compensation

As per the formula for calculating environmental compensation based on the guidelines issued by CPCB is given in para 3.2 above,

Environmental Compensation Formula $EC = PI \times N \times R \times S \times LF$

The input values are assessed as given below

- i. In the present Bekal project case, the pollution index PI is taken as 50 (Orange category), as this project has a built-up area which is almost equal to 20,000 m² and the sewage generation will be from the proposed 137 Keys/Cottages. As per para 2 of the Environmental Clearance issued for the project vide MoEF letter dated 2/01/2009, the 'Total Water Requirement' for the project is 60 KLD. By considering 85% of the total water requirement/total water demand will be converted into sewage, the quantity of sewage/waste water will be $0.85 \times 60 = 51$ KLD.

Thus, as per the CPCB norms, the pollution index for this project with a built-up area of about 20,000 m² and sewage quantity of 51 KLD, will be **50** (Orange category).

- ii. In the absence of any other date of observation/reporting of the violation, the date of filing of the OA in the Hon'ble NGT i.e. 17/06/2016 is taken as the date of reporting of the violation. Similarly, in the absence of any rectification/compliance order issued by PCB/SPCB/CPCB/KSCSTE etc and the date of such compliance by the 7th respondent, the date of inspection i.e. 28/10/2016 by Senior Scientist, KSCSTE is taken as the date of confirmation. Thus, the number of days of violation N is taken from 17/06/2016 to 28/10/2016 and it works out to **134** days.
- iii. R is taken as **100**, as the project has been abandoned midway after initial construction.
- iv. The project is considered as medium hence S value is taken as **1**.
- v. LF is taken as **1.5**

$$\begin{aligned}\text{Environmental Compensation (EC)} &= \text{PI} \times \text{N} \times \text{R} \times \text{S} \times \text{LF} \\ &= 50 \times 134 \times 100 \times 1 \times 1.5\end{aligned}$$

= Rs 10,05,000 (Rupees 10.05 lakhs).

4.2 Assessment of damage, if any, to Ecologically Sensitive Areas (ESAs) in the project site:

The approved Coastal Zone Management Plan (CZMP) of the Bekal area has been published by the Kerala Coastal Zone Management Authority (KCZMA) and the same is available at, http://keralaczma.gov.in/hearing/records/Trivandrum/KL_78.pdf. The approved CZMP indicating the various CRZ categories/areas such as CRZ-IA, CRZ-IB, CRZ-II, CRZ-III, CRZ-IVA, CRZ-IVB etc includes the Chittari river and the adjacent project site and is enclosed as Annexure R-3.

It is seen from the approved CZMP that there are no ESAs in the Survey numbers 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 131, 133 and 134 of the project site except some patches of Mangroves in the Island in the river. Thus, no additional compensation in lieu of destruction of ESAs is involved in the present case.

4.3 Environmental Compensation imposed by the Hon'ble NGT (SZ) in OA 49/2019:

In paras 22 and 23 of the order dated 16/12/2020 passed by the Hon'ble NGT (SZ) in OA No. 49 of 2019 (SZ) (Annexure R-2), the Hon'ble NGT has observed the following.

22. The dictum laid down in the decision reported in Ganga Goyal Vs. Union of India 2018 (18) SCC 257 as such is not applicable to this fact of the case as in that case the entire project was completed without getting Environmental Clearance (EC) and other clearances and so the Hon'ble Apex Court had fixed the environmental damages of Rs.100 Crores or 10 percent of the project cost whichever is higher. But in this case, it is only in the preliminary stage and the project cost is only Rs.40 Crores.

23. So, considering the circumstances, we feel that taking 0.5% of the project cost and imposing that amount as environmental compensation will be sufficient, instead of adopting the compensation fixed by the committee on the basis of the number of days violation alone and that will meet the ends of justice.

The reconstituted Committee has noted that as per the above formula, considering 0.5% of the project cost as the environmental compensation, in the present Bekal project case, the environmental compensation works out to be as given below:

Environmental compensation = 0.5% of project cost

= 0.5 (Rs 2200/100) lakhs = **Rs 11 lakhs**

5 Recommendations of the Reconstituted Committee:

The reconstituted Committee recommends that the maximum of Rs 11 lakhs and Rs 10.05 lakhs calculated in paras 4.1 and 4.3 above which is Rs 11 lakhs be charged to the seventh respondent as Environmental Compensation for violation of conditions imposed in the environmental clearance as well as the CRZ Clearance.

Reconstituted Committee



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**Report of the CPCB In-house Committee on
Methodology for Assessing Environmental
Compensation and Action Plan to Utilize the Fund**



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Abstract

Environmental compensation is a policy instrument for the protection of the environment which works on the Polluter Pay Principal. Environmental compensation has already been implemented in various countries, although limited in scope. Experiences from these implementations are mixed and tend to stress the importance of certain principles in order to achieve the overall objective of protection of the environment.

The Hon'ble National Green Tribunal through its various judgments has empowered the Central Pollution Control Board to lay down the methodology to assess and recover compensation for damage to the environment and utilize such amount in terms of an action plan for protection of the environment.

An attempt has been made by the CPCB in-house Committee to develop a methodology for assessing environmental compensation to be levied on concerned industry, authority, individual etc. for the protection of environment. Expert institutions/ NGOs like The Energy and Resources Institute, Centre for Science and Environment-India, Institute of Economic Growth etc. were also consulted to finalize the report. Overall objective is to develop self-sense of responsibility towards the environment and to make defaulters realize their mistake by imposing compensation, which will be utilized for the protection/restoration of the environment.

Although, this is the first attempt in India towards development of methodology for assessing environmental compensation, however, efforts have been made to simplifying the process so that regulatory institutions can easily adopt the methodology for implementation.

Chapter-I: Environment Compensation to be levied on Industrial Units

1.1 Background

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. directed Central Pollution Control Board (CPCB) that:

“The CPCB may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs. CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the CPCB within three months” (Annexure-I).

1.2 Constitution of the Committee

In this context, Chairman, CPCB constituted a Committee under the Chairmanship of Shri A. Sudhakar, I/c WQM-I with Shri A. K. Vidyarthi, I/c WQM-II, Shri P. K. Gupta, I/c IPC-VI, Shri Nazimuddin I/c IPC-II and Dr. S. K. Paliwal, Scientist 'D' as members. The Committee was asked to deliberate on this issue and come up with a draft formulation before 15.9.2018.

1.3 Methodology for Assessing Environmental Compensation

The Committee discussed the issue on 4.9.2018, 13.9.2018, 17.9.2018 and 09.10.2018. A meeting was also held with Senior Officers of CPCB Head Office and Regional Directorates through video conferencing on 28.09.2018 to discuss the draft report and to seek comments/feedbacks. The comments/feedbacks received and deliberations of the Committee on the same are given in **Annexure-II**.

As per the Hon'ble NGT suggestion, CPCB has invited comments of 3 expert institution, namely, Centre for Science and Environment (CSE), Institute of Economic Growth (IEG) and The Energy Research Institute (TERI). A meeting to incorporate the comments of the expert institutions and to finalize the report, was held on 27/03/2019. The CPCB in-house committee on Environmental Compensation has deliberated on the comments and finalized the report accordingly. The Committee's deliberations are attached as **Annexure-III**.

It was deliberated for developing a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies and this is the first attempt made. The committee discussed that environmental compensation should be based on "Polluter Pay Principle". The Committee decided to list the instances for taking cognizance of cases fit for violation and levy environmental compensation.

Cases considered for levying Environmental Compensation (EC):

- a) Discharges in violation of consent conditions, mainly prescribed standards / consent limits.
- b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
- c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
- d) Accidental discharges lasting for short durations resulting into damage to the environment.
- e) Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.
- f) Injection of treated/partially treated/ untreated effluents to ground water.

1.3.1 In the instances as mentioned at *a, b and c* above, Pollution Index may be used as a basis to levy the Environmental Compensation. CPCB has published guidelines for categorization of industries into Red, Orange, Green and White based on concept of Pollution Index (PI). The Pollution Index is arrived after considering quantity & quality of emissions/ effluents generated, types of hazardous wastes generated and consumption of resources. Pollution Index of an industrial sector is a numerical number in the range of 0 to 100 and can be represented as follows:

$$PI = f(\text{Water Pollution Score, Air Pollution Score \& HW Generation Score})$$

Pollution Index is a number from 0 to 100 and increasing value of PI denotes the increasing degree of pollution *hazard from the industrial sector*.

CPCB has issued directions to all SPCBs/PCCs on 07.03.2016 to adopt the methodology and follow guidelines prepared by CPCB for categorization of industrial sectors into Red, Orange, Green and White.

The concept of Pollution Index, which was deliberated widely with all stakeholders and agreed, shall be used for calculating Environmental Compensation. This may help in implementation of such provision throughout the country, a successful initiative in vital field of industrial pollution control.

After considering various factors including the policy implementation issues, Committee has come up with following formula for levying the Environmental Compensation in instances as mentioned at *a, b and c* including non-compliance of the environmental standards / violation of directions.

The Environmental Compensation shall be based on the following formula:

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

The formula incorporates the anticipated severity of environmental pollution in terms of Pollution Index, duration of violation in terms of number of days, scale of operation in terms of micro & small/medium/large industry and location in terms of proximity to the large habitations.

Note:

- a. The industrial sectors have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.
- b. N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.
- c. R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.
- d. S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.
- e. LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

Table No. 1.1: Location Factor Values

S. No.	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

**Population of the city/town as per the latest Census of India*

#LF will be 1.0 in case unit is located >10km from municipal boundary

LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. However, for critically Polluted Areas, LF may be explored in future.

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.
- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.
- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange and Green category of industries varies from 3,750 to 60,000 ₹/day.

Table No. 1.2: A sample calculation for Environmental Compensation

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	10,000-60,000	6,250-37,500	5,000-22,500

1.3.2 In other instances i.e. *d, e and f*, the environmental compensation may contain two parts – one requires providing immediate relief and other long-term measures such as remediation. In all these cases, detailed investigations are required from expert institutions/organizations based on which environmental compensation will be decided. CPCB shall list the expert institutions for this purpose.

In such cases, comprehensive plan for remediation of environmental pollution may be prepared and executed under the supervision of a committee with representatives of SPCB, CPCB and expert institutions/organizations.

1.4 Action Plan for Utilization of Environmental Compensation Fund

The Committee discussed about the utilization of funds, which will be received by imposing Environmental Compensation. The following Action Plan is proposed to utilize the fund for protection of the environment.

1.4.1. When Environmental Compensation is calculated through the Pollution Index:

The amount received by imposing the Environmental Compensation to the industries / organization non-complying with the environmental standards / violating any CPCB's directions shall be deposited in a separate bank account. The amount accumulated will be utilized for Protection of Environment. The following schemes were identified, which may be considered for utilization of Environmental Compensation Fund:

- a. Industrial Inspections for compliance verification
- b. Installation of Continuous water quality monitoring stations / Continuous ambient air quality monitoring stations for strengthening of existing monitoring network
- c. Preparation of Comprehensive Industry Documents on Industrial Sectors / clean technology
- d. Investigations of environmental damages, preparation of DPRs
- e. Remediation of contaminated sites
- f. Infrastructure augmentation of Urban Local Bodies (ULBs) /capacity building of SPCBs/PCCs

The above proposed list may include other schemes also, depending upon the requirement.

Considering the availability of accumulated funds, CPCB will finalize the scheme, keeping in mind the priority, to utilize the funds of Environmental Compensation.

1.4.2. When Environmental Compensation is assessed based on actual damage to the environment by Expert Organization/ Agency:

The amount of Environmental Compensation under this case will be remediation costs, measures requiring immediate and short-term actions, compensation towards loss of ecology, etc., and will be utilized exclusively for the purpose at specific site, based on the detailed investigations by the Expert Organizations/ agencies.

1.5 Recommendations

The Committee made following recommendations:

- 1.5.1 To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, b and c, Environmental Compensation may be calculated based on the formula "EC = PI x N x R x S x LF", wherein, PI may be taken as 80, 50 and 30 for red, orange and green category of industries, respectively, and R may be taken as 250. S and LF may be taken as prescribed in the preceding paragraphs.

- 1.5.2 In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.
- 1.5.3 The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.
- 1.5.4 EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules.

Chapter-II: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in NCR.

2.1 Background

The CPCB In-house Committee also discussed that the EC shall also be levied on all violations of Graded Response Action Plan (GRAP) in NCR. The implementing agencies for each activity have been identified and the EC will be levied on these agencies. These violations attract graded amounts of EC depending on the state of ambient air quality, which is given in table below:

Table No. 2.1: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.

Activity	State Of Air Quality	Environmental Compensation ()
Industrial Emissions	Severe +/-Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh
	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh
Vapour Recovery System (VRS) at Outlets of Oil Companies		
i. Not installed	Target Date	Rs 1.0 Crore
ii. Non-functional	Very poor to Severe +	Rs 50.0 Lakh
	Moderate to Poor	Rs 25.0 Lakh
Construction sites (Offending plot more than 20,000 Sq.m.)	Severe +/-Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh
	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh
Solid waste/ garbage dumping in Industrial Estates	Very poor to Severe +	Rs 25.0 Lakh
	Moderate to Poor	Rs 10.0 Lakh
Failure to water sprinkling on unpaved roads		
a) Hot-spots	Very poor to Severe +	Rs 25.0 Lakh
b) Other than Hot-spots	Very poor to Severe +	Rs 10.0 Lakh

2.2 Action Plan for Utilization of Environmental Compensation Fund

EC levied on all violations of Graded Response Action Plan (GRAP) in Delhi NCR will be deposited in the same fund and will be utilized in the same manner as mentioned in para 1.4.1 of Chapter-I of this report.

Chapter-III: Environmental Compensation to be levied in case of failure of preventing the pollutants being discharged in water bodies and failure to implement waste management rules

3.1 Background

The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed State Governments (including the concerned Union Territories) to set-up Sewage Treatment Plants (STPs), which are already under implementation, within the time lines already postulated. Further, the STPs, which are yet to set-up, to be completed within a period of three years, from today, i.e. by 22.02.2020.

The Hon'ble NGT in its order dated 06.12.2018 (**Annexure-III**) in the matter of Court of its own motion v/s State of Karnataka (Original Application No. 125/2017 and M.A. No. 1337/2018) has given following directions:

“Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.”

3.2 Ideology of Environmental Compensation Formula

In compliance of the directions of the Hon'ble Tribunal, the Committee deliberated on the issue of environmental compensation to be recovered from individuals/authorities in case of failure of preventing the pollutants being discharged in water bodies and failure to implement solid and other waste management rules. The Committee has suggested that environmental compensation in these cases should be comprised of two components i.e.

1. Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage management system; and
2. Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because of insufficient capacity of waste/sewage management/treatment facility.

Cost saved/benefits achieved by not having proper waste/sewage management system includes the interest on capital cost of the waste/sewage management facility and daily operation and maintenance (O&M) cost associated with the facility.

The Committee suggested that annual interest rate as 10% on loan amount, borrowed by concerned individual/authority for setting-up waste/sewage management facility, may be assumed as Capital Cost Factor for calculation of environment compensation. Further, as whole O&M cost is saved by concerned individual/authority for not managing required waste/sewage management system, 100% of the O&M cost saved may be considered as O&M cost factor.

Therefore, generalized formula for Environmental Compensation may be described as:

$$EC = \text{Capital Cost Factor} \times \text{Marginal Average Capital Cost for Establishment of Waste or Sewage Management or Treatment Facility} \times (\text{Waste or Sewage Management or Treatment Capacity Gap}) + \text{O\&M Cost Factor} \times \text{Marginal Average O\&M Cost} \times (\text{Waste or Sewage Management or Treatment Capacity Gap}) \times \text{No. of Days for which facility was not available} + \text{Environmental Externality}$$

Cost to the environment due to untreated/partially treated waste/sewage discharge by concerned individual/authority may be assumed as recommended by the committee, which is mentioned below:

Table No. 3.1: Environmental externality for untreated/partially treated sewage discharge

Sewage Treatment Capacity Gap (MLD)	Marginal Cost of Environmental Externality (Rs. per MLD/day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
Up to 200	75	Min. 0.05, Max. 0.10
201-500	85	Min. 0.25, Max. 0.35
501 and above	90	Min. 0.60, Max. 0.80

Table No. 3.2: Environmental externality for improper municipal solid waste management

Municipal Solid Waste Management Capacity Gap (TPD)	Marginal Cost of Environmental Externality (Rs. per ton per day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
Up to 200	15	Min. 0.01, Max. 0.05
201-500	30	Min. 0.10, Max. 0.15
501-1000	35	Min. 0.25, Max. 0.35
1001-2000	40	Min. 0.50, Max. 0.60
Above 2000		Max. 0.80

The Committee further decided to fix a cap for minimum and maximum cost for capital and O&M component for Environmental Compensation, which are given in below tables:

Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 2000 Max. 20000	Min. 1000 Max. 10000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5

Table No. 3.4: Minimum and Maximum EC to be levied for improper municipal solid waste management

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0

The application of formula for calculation of EC may be further understood with the example of two typical cases.

3.3 Environment Compensation for Discharge of Untreated/Partially Treated Sewage by Concerned Individual/Authority:

BIS IS-1172:1993 suggests that for communities with population above 100,000, minimum of 150 to 200 lpcd of water demand is to be supplied. Further, 85% of return rate (CPHEEO Manual on Sewerage and Sewage Treatment Systems, 2013), may be considered for calculation of total sewage generation in a city. CPCB Report on “Performance evaluation of sewage treatment plants under NRCD, 2013”, describes that the capital cost for 1 MLD STP ranges from 0.63 Cr. to 3 Cr. and O&M cost is around Rs. 30,000 per month. After detail deliberations, the Committee suggested to assume capital cost for STPs as Rs. 1.75 Cr/MLD (marginal average cost). Further, expected cost for conveyance system is assumed as Rs. 5.55 Cr./MLD (marginal average cost) and annual O&M cost as 10% of the combined capital cost. Population of the city may be taken as per the latest Census of India. Based on these assumptions, Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

EC= Capital Cost Factor x [Marginal Average Capital Cost for Treatment Facility x (Total Generation-Installed Capacity) + Marginal Average Capital Cost for Conveyance Facility x (Total Generation -Operational Capacity)] + O&M Cost Factor x Marginal Average O&M Cost x (Total Generation- Operational Capacity) x No. of Days for which facility was not available + Environmental Externality x No. of Days for which facility was not available

Alternatively;

EC (Lacs Rs.) = [17.5(Total Sewage Generation – Installed Treatment Capacity) + 55.5(Total Sewage Generation-Operational Capacity)] + 0.2(Sewage Generation-Operational Capacity) x N + Marginal Cost of Environmental Externality x (Total Sewage Generation-Operational Capacity) x N

Where; N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Quantity of Sewage is in MLD

Table No. 3.5: Sample calculation for EC to be levied for discharge of untreated/partial treated Sewage

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Sewage Generation (MLD) (as per the latest data available with CPCB)	4195	381	486	37
Installed Treatment Capacity (MLD) (as per the latest data available with CPCB)	2500	220	404	45.5
Operational Capacity (MLD) (as per the latest data available with CPCB)	1900	140	300	24.5
Treatment Capacity Gap (MLD)	2295	241	186	12.5
Calculated EC (capital cost component for STPs) in Lacs Rs.	29662.50	2817.50	1435.00	0.00
Calculated EC (capital cost component for Conveyance System) in Lacs. Rs.	127372.50	13375.50	10323.00	693.75
Calculated EC (Total capital cost component) in Lacs Rs.	157035.00	16193.00	11758.00	693.75
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 2000 Max. 20000	Min. 1000 Max. 10000	Min. 100 Max. 1000	Min. 100 Max. 1000
Final EC (Total Capital Cost Component) in Lacs Rs.	20000.00	10000.00	1000.00	693.75
Calculated EC (O&M Component in Lacs Rs./day)	459.00	48.20	37.20	2.50
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5	Min. 0.5 Max. 5
Final EC (O&M Component) in Lacs. Rs./Day	20.00	10.00	5.00	2.50
Calculated Environmental Externality (Lacs Rs .Per Day)	2.0655	0.2049	0.1395	0.0094
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)	Min. 0.60 Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.05 Max. 0.10	Min. 0.05 Max. 0.10
Final Environmental Externality (Lacs Rs. Per day)	0.80	0.25	0.10	0.05

3.4 Environment Compensation to be Levied on Concerned Individual/Authority for Improper Solid Waste Management:

It is known that estimated MSW generation is approximately 1.5 lakh MT/Day in India (MoHUA Report-2016). As per the principles of SWM Rules, 2016 and PWM Rules 2016, as amended in 2018, the total cost of Municipal Solid Waste management in a city/town includes cost for door to door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of MSW and disposal through facility like composting, biomethanation, recycling, co-processing in cement kilns etc.

In view of above, it is estimated that the total cost of processing and treatment of MSW for a city having population size of 1 lakh and generating approximately 50 tons/day of MSW is Rs.15.5 Crores, including capital cost (one time) and O & M cost for one year. The expenditure for subsequent years would be only Rs. 3.5 crores/annum.

CPCB sponsored a survey to ascertain the status of municipal solid waste disposal in 59 cities/towns of India. The survey was conducted by the Environment Protection Training Research Institute (EPTRI), Hyderabad. As per the survey, it is estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes. Based on these assumptions, Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

EC = Capital Cost Factor x Marginal Average Cost for Waste Management x (Per day waste generation-Per day waste disposed as per the Rules) + O&M Cost Factor x Marginal Average O&M Cost x (Per day waste generation-Per day waste disposed as per the Rules) x Number of days violation took place + Environmental Externality x N

Where;

Waste Quantity in tons per day (TPD)

N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Simplifying;

EC (Lacs Rs.) = 2.4(Waste Generation - Waste Disposed as per the Rules) +0.02 (Waste Generation - Waste Disposed as per the Rules) x N + Marginal Cost of Environmental Externality x (Waste Generation - Waste Disposed as per the Rules) x N

Table No. 3.6: Sample calculation for EC to be levied for improper management of Municipal Solid Waste

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Waste Generation (kg. per person per day)	0.6	0.5	0.4	0.4
Waste Generation (TPD)	9809.90	880.14	350.79	200.31
Waste Disposal as per Rules (TPD) (<i>assumed as 25% of waste generation for sample calculation</i>)	2452.47	220.04	87.70	50.08
Waste Management Capacity Gap (TPD)	7357.42	660.11	263.09	150.23
Calculated EC (capital cost component) in Lacs. Rs.	17657.82	1584.26	631.42	360.56
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000	Min. 100 Max. 1000
Final EC (capital cost component) in Lacs. Rs.	10000.00	1584.26	631.42	360.56
Calculated EC (O&M Component) in Lacs. Rs./Day	147.15	13.20	5.26	3.00
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./Day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0	Min. 0.1 Max. 1.0
Final EC (O&M Component) in Lacs. Rs./Day	10.00	5.00	1.00	1.00
Calculated Environmental Externality (Lacs Rs. Per Day)	2.58	0.18	0.03	0.02
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)	Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.01 Max. 0.05	Min. 0.01 Max. 0.05
Final Environmental Externality (Lacs Rs. per day)	0.80	0.25	0.03	0.02

3.3 Action Plan for Utilization of Environmental Compensation Fund

EC levied in case of failure of preventing the pollutants being discharged in water bodies and failure to implement waste management rules will be deposited in the same fund and will be utilized in the same manner as mentioned in para 1.4.1 of Chapter-I of this report.

3.4 Recommendations

1. The Committee recommended that to begin with, Environmental Compensation to be recovered from individuals/authorities in case of failure of preventing the pollutants being discharged in water bodies and failure to implement solid waste management rules may be calculated with the methodology described in the report.
2. If mixing of Bio-medical Waste or Hazardous Waste is found in Municipal Solid Waste than capital cost component of EC may be increased by a multiplication factor of 1.5.

3. In order to include deterrent effect for continuous violations, component of O&M and Environmental Externality in EC formula may be increased on exponential basis by 2, 4, and 8 times after every six-months, beyond the time prescribed by authority for ensuring complete treatment of sewage/waste of the city/town.

Chapter-IV: Environmental Compensation in Case of Illegal Extraction of Ground Water

4.1 Background

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of Shailesh Singh v/s Central Ground Water Board & Ors. (Original Application No. 327/2018) vide order dated 03/01/2019 (**Annexure-V**) directed Central Pollution Control Board (CPCB) that:

“CPCB may constitute a mechanism to deal with individual cases of violation of norms, as existed prior to Notification of 12/12/2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law.”

4.2 Constitution of the Committee

In compliance to Hon'ble NGT dated 03/01/2019, CPCB constituted a committee under the Chairmanship of Shri A. Sudhakar, DH, WQM-I Division with Shri P. K. Gupta, DH, IPC-VI, Shri Vishal Gandhi, Sc. D, UPC-I Division and Smt. Suniti Parashar, Scientist B, WQM-I Division as members. The committee was asked to deliberate on this issue and come up with draft formulation of mechanism to determine the Environmental Compensation for illegal extraction of ground water.

4.3 Methodology for Assessing Environmental Compensation

The committee discussed the issue on 07/02/2019, 07/03/2019 and 20/3/2019. The committee deliberated on the issue of Environmental Compensation to be recovered from individuals/industries such as domestic, packaging drinking water units, mining & infrastructure projects and industrial units in case of illegal extraction of ground water. The Guidelines/Criteria for evaluation of proposals/requests for Ground Water Abstraction, 2015 were also discussed and based on this further formulation to levy Environmental Compensation has been evolved.

4.4 Ideology of Environmental Compensation w.r.to illegal extraction of ground water

Ground water is becoming an increasingly scarce resource because of its unabated and indiscriminate over-exploitation. Growth in ground water exploitation, however, has led to a steep fall in water table in several parts of the country. Use of ground water is becoming unsustainable day by day. The falling water table is a matter of special concern since it tends to reduce the accessibility of the resource to small and marginal farmers due to increase in costs of extractions.

Specific conditions applicable in Notified/Non-Notified areas for various users, as mentioned in Guidelines/Criteria for evaluation of proposals/requests for Ground Water Abstraction, 2015 are given below:

For Notified Areas:

1. Permission to abstract ground water through any energized means will not be accorded for any purpose other than drinking water.

2. Central Ground Water Authority (CGWA) so far has notified 162 areas, in the country for the purpose of regulation of ground water development.
3. Regulation of Ground Water development in Notified areas is through District Administrative Heads assisted by Advisory Committees under the provisions of Section 4 of the Environment (Protection) Act, 1986.
4. In Notified areas, ground water use in individual houses, infrastructure complexes like group housing societies, hospitals, schools etc. and drinking water requirements of workers in industries can be allowed.
5. NOC for ground water withdrawal will be considered only if Water Supplying Department is not providing adequate water in the area/premises. Proof for this is to be produced from the concerned authority by the applicant.
6. For individual houses, the maximum diameter of the tube-well should be restricted to 4 inch only and the capacity of the pump should not exceed 1HP. For infrastructure projects, maximum diameter of the ground water abstraction structures should be restricted to 150 mm (6 inches) only and capacity of the pump should not exceed 5 HP.
7. Any violation of the above conditions will attract legal action under Section 15 of the Environment (Protection) Act, 1986.

For Non-Notified Areas:

NOC for ground water withdrawal will be considered for industries/infrastructure/packaging as per safe, semi critical, critical and over-exploited criteria.

4.5 Formula for Environmental Compensation for illegal extraction of ground water

The committee decided that the formula should be based on water consumption (Pump Yield & Time duration) and rates for imposing Environmental Compensation for violation of illegal abstraction of ground water. The committee has proposed following formula for calculation of Environmental Compensation (EC_{GW}):

EC_{GW}	=	Water Consumption per Day x No. of Days x Environmental Compensation Rate for illegal extraction of ground water (ECR_{GW})
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Where water Consumption is in m^3/day and ECR_{GW} in $Rs./m^3$

Yield of the pump varies based on the capacity/power of pump, water head etc. For reference purpose, yield of the pump may be assumed as given in **Annexure-VI**.

Time duration will be the period from which pump is operated illegally.

In case of illegal extraction of ground water, quantity of discharge as per the meter reading or as calculated with assumptions of yield and time may be used for calculation of EC_{GW} .

4.6 Environmental Compensation Rate (ECR_{GW}) for illegal use of Ground Water

The committee decided that the Environmental Compensation Rate (ECR_{GW}) for illegal extraction of ground water should increase with increase in water consumption as well as water scarcity in the area. Further, ECR_{GW} are kept relaxed for drinking and domestic use as compared to other uses, considering the basic need of human being.

As per CGWB, safe, semi-critical, critical and over-exploited areas are categorized from the ground water resources point of view (CGWB, 2017). List of safe, semi-critical, critical and over-exploited areas are available on the website of CGWB and can be accessed from- <http://cgwa-noc.gov.in/LandingPage/NotifiedAreas/CategorizationOfAssessmentUnits.pdf#ZOOM=150>.

Environmental Compensation Rates (EC_{GW}) for illegal use of ground water (EC_{GW}) for various purposes such as drinking/domestic use, packaging units, mining and industrial sectors as finalized by the committee are given in tables below:

4.6.1 EC_{GW} for Drinking and Domestic use:

Drinking and Domestic use means uses of ground water in households, institutional activity, hospitals, commercial complexes, townships etc.

Sl. No.	Area Category	Water Consumption (m^3/day)			
		<2	2 to <5	5 to <25	25 & above
Environmental Compensation Rate (EC_{GW}) in Rs./ m^3					
1	Safe	4	6	8	10
2	Semi Critical	12	14	16	20
3	Critical	22	24	26	30
4	Over-Exploited	32	34	36	40
Minimum EC_{GW}=Rs 10,000/- (for households) and Rs. 50,000 (for institutional activity, commercial complexes, townships etc.)					

4.6.2 EC_{GW} for Packaged drinking water units:

Sl. No.	Area Category	Water Consumption (m^3/day)			
		<200	200 to <1000	1000 to <5000	5000 & above
Environmental Compensation Rate (EC_{GW}) in Rs./ m^3					
1	Safe	12	18	24	30
2	Semi critical	24	36	48	60
3	Critical	36	48	66	90
4	Over-exploited	48	72	96	120
Minimum EC_{GW}=Rs 1,00,000/-					

4.6.3 EC_{GW} for Mining, Infrastructure and Dewatering Projects

Sl. No.	Area Category	Water Consumption (m^3/day)			
		<200	200 to <1000	1000 to <5000	5000 & above
Environmental Compensation Rate (EC_{GW}) in Rs./ m^3					
1	Safe	15	21	30	40
2	Semi critical	30	45	60	75
3	Critical	45	60	85	115
4	Over-exploited	60	90	120	150
Minimum EC_{GW}=Rs 1,00,000/-					

4.6.4 ECR_{GW} for Industrial Units:

Sl. No.	Area Category	Water Consumption (m ³ /day)			
		<200	200 to <1000	1000 to <5000	5000 & above
Environmental Compensation Rate (ECR _{GW}) in Rs./m ³					
1	Safe	20	30	40	50
2	Semi critical	40	60	80	100
3	Critical	60	80	110	150
4	Over-exploited	80	120	160	200
Minimum ECR_{GW}=Rs 1,00,000/-					

For better understanding of implementation of ECR_{GW} policy, some example calculations are given below:

Example No. 1 (For drinking and domestic Use):

It is observed that a household in safe zone is extracting ground water illegally from past 2 year and 3 months with the help of 1 HP pump, dia 4 inches and head as 25 meter. It is assumed that the house-owner runs the pump for 0.5 hr/day. What Environmental Compensation (EC_{GW}) will be charged to the owner?

Solution: Pump Yield (Please refer Annexure-VI) = 3 m³/hr

Daily Consumption = 3 x 0.5 = 1.5 m³

ECR_{GW} = 4 Rs./m³ (Please refer para 4.6.1)

EC to be levied = 4 x 1.5 = 6 Rs./day

Total time period = 820 days

Then, ECR_{GW} = 6 x 820

Calculated ECR_{GW} = 4,920 Rs.

EC_{GW} to be levied = 10,000 Rs. (minimum prescribed ECR_{GW}, please refer para 4.6.1)

Example 2 (For Industrial Units):

It is observed that an industry in critical zone is extracting ground water illegally from past 1 year with the help of 5 HP pump, dia 6 inches and head as 50 meter. It is assumed that the industry runs the pump for 3 hrs/day. What Environmental Compensation (EC_{GW}) will be charged to the owner?

Solution: Pump Yield (Please refer Annexure-VI) = 12 m³/hr

Daily Consumption = 12 x 3 = 36 m³/day

ECR_{GW} = 60 Rs./m³ (Please refer para 4.6.4)

EC to be levied = 60 x 36 = 2,160 Rs./day

Total time period = 365 days

Then, ECR_{GW} = 2,160 x 365

EC_{GW} = 7,88,400 Rs.

4.7 Relaxation

Central Ground Water Authority (CGWA) reserves to right to relax or interpret these mechanisms in case of any exigency or situation of National strategic importance, as per Guidelines/Criteria for evaluation of proposals/requests for Ground Water Abstraction, 2015.

4.8 Recommendations

The committee has given following recommendations:

- The minimum Environmental Compensation for illegal extraction of ground water for domestic purpose will be Rs. 10,000, for institutional/commercial use will be 50,000 and for other uses will be 1,00,000.
- In case of fixation of liability, it always lies with current owner of the premises where illegal extraction is taking place.
- Time duration may be assumed to be one year in case where no evidence for period of installation of bore well could be established.
- For Drinking and Domestic use, where metering is not present but storage tank facility is available, minimum water consumption per day may be assumed as similar to the storage capacity of the tank.
- For industrial ground water use, where metering is not available, water consumption may be assumed as per the consent conditions. Further, where in case industry is operating without consent, water consumption may be calculated based on the plant capacity (on the recommendation of SPCB/PCC, if required). SPCB/PCC may bring the issue of illegal extraction of ground water in industries in to the notice of CGWA for appropriate action by CGWA.
- Authorities assigned for levy EC and taking penal action are listed below:

S. No.	Actions	Authority
1.	To seal the illegal bore-well/tube-well to stop extraction of water and further closure of project	District Collector
2.	To levy EC _{GW} as per prescribed method	District Collector, CGWA
3.	To levy EC on water pollution, as per the method prescribed in report of CPCB- "EC on industrial pollution"	CPCB/SPCB/PCC
4.	Prosecution of violator	CGWA under EP Act SPCB/PCC under Air and Water Act

- CGWA may maintain a separate account for collection and utilization of fund, collected through the prescribed methodology in this report.

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

**Original Application No. 593/2017
(W.P. (Civil) No. 375/2012)**

In the matter of:

**Paryavaran Suraksha Samiti & Anr.
Vs.
Union of India & Ors.**

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Present: Applicant: Mr. Rohit Prajapati, Applicant in person
Amicus Curiae: Mr. Jai A. Dehadrai, Adv.
Respondent Nos. Mr. Nishe Rajan Shonker, Adv. for State of Kerala
Mr. Tarunvir Singh Khehar, Ms. Guneet Khehar
Mr. Sandeep Mishra Advs. for GNCTD
Mr. Anil Shrivastava Mr Rituraj Bswas and
Ms. Sujaya Bardhan, Advs. for State of Arunachal Pradesh
Mr. Jogy Scaria, Ms. Beena Victor, Advs. for Kerala State Pollution Control Board
Mr. Avijit Roy, Adv. for Assam Pollution Control Board
Mr. Leishangthem Roshmani Kh, Ms. Maibam Babina, Advs. for State of Manipur
Mr. Nikhil Nayyar, Mr. Dhananjay Baijal, Advs. for APCCB and TSPCB
Mr. Mukesh Verma, Adv.
Mr. Tarunvir Singh Khehar, Adv., Mr. Sandeep Mishra and Ms. Guneet Khehar, Adv.
Mr. Dinesh Jindal, LO for DPCC
Ms. Aruna Mathur, Mr. Avneesh Arputham, Ms. Simraj Jeet and Ms. Anuradha Arputham, Advs. for State of Sikkim
Mr. Raja Chatterjee, Mr. Piyush Sachdev, Ms. Abhinandini Yadav, Advs. and Advs. for State of WB
Mr. Edward Belho, AAG, Mr. K. Luikang Michael and Ms. Hoinethiam, Advs. for State of Nagaland
Ms. Enatoli Sema, Adv. for State of Nagaland and Pollution Control Board
Mr. M. Paikaray and Mr. A.K. Panda, Advs. for SPCCB, Odisha
Mr. Dhruv Pal, Adv. for State of Gujarat
Mr. V.K. Shukla, Adv. for State of MP
Mr. Jayesh Gaurav, Adv. for R-47
Mr. Tayenjam Momo Singh, Adv. for Meghalaya Pollution Control Board
Mr. Shlok Chandra and Mr. Ritesh Kumar Sharma, Advs.
Mr. Gautam Singh and Mr. Shoeab Alam, Advs. for State of Bihar
Ms. Aprajita Mukherjee, Adv.
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Mr. Balendu Shekhar, Mr. Sriansh Prakash and Mr. Rajkumar Maurya, Advs. for Ministry of Environment, Forest and Climate Change
Ms. Puja Kalra, Adv. for SDMC & NDMC
Mr. Anil Grover, AAG, Mr. Rahul Khurana and Mr. Mishal Vij, Advs. for State of Haryana and HSPCB

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 Mr. Shuvodeep Roy, Adv. and Mr. Rituraj Biswas, Adv. for State of Tripura & Tripura Pollution Control Board
 Mr. Shashank Bajpai and Mr. Shakun S. Shukla, Adv. for State of Odisha
 Ms. Asha Nayar Basu and Ms. Aradhita Ghosh Mandal, Adv.
 Ms. Priyanka Sinha, Adv. for State of Jharkhand
 Mr. Rajul Shrivastav, Adv. for MPPCB
 Mr. Pradeep Misra and Mr. Daleep Dhyani Adv. for UPPCB
 Mr. R. Rakesh Sharma and Mr. V. Mowli, Adv. for State of TN & TNPCB
 Mr. Shubham Bhalla, Adv.
 Mr. Shiv Mangal Sharma, AAG, Mr. Saurabh Rajpal, Mr. Adhiraj Singh, Ms. Shikha Sandhu and Mr. Vikrmjeet singh, Adv. for State of Rajasthan and Pollution Control Board
 Mr. G. M. Kawoosa, Adv. for State of J & K
 Mr. Divya Prakash Pande, Adv. For HPSPCB
 Mr. Manish Kumar, Adv.

Date and Remarks	Orders of the Tribunal
<p>Item No. 12 August 03, 2018 A</p>	<p>1. This matter was taken by this Tribunal in furtherance to the orders of the Hon'ble Supreme Court dated 22.02.2017 <i>Paryavaran Suraksha Samiti Vs. Union of India</i> (2017) 5 SCC 326, establishment and functioning of ETPs/CETP/STPs.</p> <p>2. Vide order dated 25.05.2017, Notice was issued to Central Pollution Control Board and all the States Pollution Control Boards/Committees and the Ministry of Environment, Forest and Climate Change. They were directed to file status-cum-compliance report in terms of the orders of the Hon'ble Supreme Court. Accordingly, various status reports have been filed. An affidavit has been filed by the Ministry of Environment, Forest and Climate Change dated 04th July, 2017 stating as follows:</p> <p style="padding-left: 40px;"><i>"4. That the answering Respondent is engaged in policy formulation, prescribing standards and its implementation through the Central Pollution Control Board (CPCB), State Pollution Control Boards (SPCBs) and Pollution Control Committees (PCCs) for UTs. This Ministry has written to all SPCBs and PCCs as well as to CPCB to ensure compliance of the judgment of the Hon'ble Supreme Court and to submit detailed compliance report.</i></p>

	<p>Item No. 12</p> <p>August 03, 2018</p> <p>A</p>	<p>5. That the CPCB has also followed up with all SPCBs and PCCs through letters and review meetings to ensure compliance of the aforementioned judgment and that the matter was also discussed in the 62nd Conference of the Chairmen and Member Secretaries of SPCBs and PCCs held on 27.06.2017. That 26 SPCBs/PCCs have submitted the compliance report, which has been summarized at Annexure-I.</p> <p>6. That the CPCB has also carried out inspections of 17 categories of industries to verify compliance with its directions issued on online effluent/emission monitoring system and to cross-verify online results with manual sampling. During February-June, 2017, 64 industries were inspected and directions under section 5 of the Environment (Protection) Act, 1986 have been issued to 24 non-complying industries; 18 industries were complying; 8 were found closed and inspection reports of 14 industries are under process.</p> <p>7. That the CPCB and NMCG through 11 technical institutions, inspected 751 industries located in the River Ganga main stem during March-April, 2017 to verify the status of installation and connectivity of industries discharging effluents as well as their compliance with the standards. Closure directions have been issued to 154 industries; show cause notices issue to 36 industries; 149 industries were found complying and direction issued to 91 self-closed Grossly Polluting Industries (GPI) to remain closed; 93 GPI units were found closed as per directions; 38 GPI units found operational in violation of closure directions and inspection reports of 190 industries are under process".</p> <p>3. We have heard learned Amicus Curiae Sh. Jai A. Dehadrai and the learned counsel for Ministry of Environment, Forest and Climate Change, Central Pollution Control Board, various State Pollution Control Boards and the Pollution Control Committees.</p> <p>4. Learned Amicus Curiae has drawn our attention to orders dated 04.07.2017, 18.09.2017 and 11.10.2017 of the Tribunal directing the State Pollution Control Boards to file a statement as to how many Industrial Units discharging trade effluents or causing emissions exist in the State, how many are having their own STPs, ETPs and/or connected to Common Effluent Treatment Plant</p>
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	<p>Item No. 12</p> <p>August 03, 2018</p> <p>A</p>	<p>(CETP), whether any such CETP or ETP or STP is properly functioning and treating the effluents as per prescribed limits or not.</p> <p>5. Learned Amicus Curiae submitted that contamination of water due to industrial effluents can lead to various diseases and adverse consequences on the aquatic organism due to decreased level of oxygen. The use of technology can help reduction of adverse consequences. However, the best solution is to prevent pollution by soil conservation and proper disposal of toxics and chemicals which may include chemical recycling.</p> <p>6. Having monitored the matter for the last more than one year on several dates, we are of the view that the matter requires continuous monitoring by statutory authorities as per directions which we proceed to issue today.</p> <p>(i) We direct the Central Pollution Control Board (CPCB) to forthwith prepare an action plan after looking into all the status reports. The action plans must have mechanism to ensure compliance or all the directions in the order of the Hon'ble Supreme Court. To enable this to be done, a Nodal officer must be identified to deal with the issue of CETPs/ETPs/STPs.</p> <p>(ii) A representative of the Ministry of Environment, Forest and Climate Change may be associated with the Nodal Officer of the CETP for monitoring. The Monitoring by the said two officers- the representative of the MoEF and the Nodal Officer of the CPCB must be held atleast once in a month and on the basis of such meeting and the feedback taken further follow up action must be taken and</p>
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	<p>Item No. 12</p> <p>August 03, 2018</p> <p>A</p>	<p>appropriate directions issued. This process may be a continuous process.</p> <p>(iii) It must be ensured that STPs, CETPs and ETPs are functional and meet the requisite standards.</p> <p>(iv) There is already a direction in the above judgment under which 50% of the funds for the purpose are to be provided by the Central Government, 25% by the States and remaining 25% to be arranged by way of loans which is to be re-paid by the user industries. Local bodies and the States have duties as clearly stipulated in the judgment. There has to be online monitoring system by each State to display emission levels in public domain in terms of paragraph 17 of the order of the Hon'ble Supreme Court.</p> <p>(v) A report of the steps taken may be placed on the website of the Central Pollution Control Board atleast once in three months. Deficiencies if any may also be so displayed.</p> <p>(vi) The Central Pollution Control Board may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs Central Pollution Control Board may also assess and recover compensation for damage to the environment and the said fund be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the Central Pollution Control Board within three months from today.</p> <p>(vii) A compliance report in terms of the above order may be furnished to this Tribunal within four months from today by e-mail at filing.ngt@gmail.com.</p>
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	<p>Item No. 12</p> <p>August 03, 2018</p> <p>A</p>	<p>(7) Proceedings are disposed of.</p> <p>However, the report received from the Central Pollution Control Board may be placed for consideration before this Tribunal on 04.09.2018.</p> <p>We place on record our appreciation for the services rendered by the learned Amicus Curiae.</p> <p>....., CP (Adarsh Kumar Goel)</p> <p>....., JM (Dr. Jawad Rahim)</p> <p>....., JM (S.P. Wangdi)</p> <p>....., EM (Dr. Nagin Nanda)</p> <p>03.08.2018</p>
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Annexure-II
Comments Received from Various RDs on Draft Report for Environmental Compensation

S. No.	Item	RD Kolkata	RD Vadodara	RD Bengaluru	RD Lucknow	Committee Deliberations
1	Case- a, b & c	By passing of effluent/emission should be given special consideration. EC levied on ROG categories of industries should be on the basis of inspection by CPCB, complaint verification and routine inspection.	Instead of "Compensation", "Penalty" word should be used. In case common facilities like CETPs, factor may be introduced based on member industries. Clarify the applicability of penalty in addition to closure directions for pro-longed and gross non-compliance.			The Committee discussed that the points highlighted by RD Kolkata are already the part of cases fit for violation and levy environmental compensation. However, as mentioned by RD Vadodara, word "Penalty" may be used for case a, b and c. For CETPs, a factor may be considered in future based on the capacity of the plant.
2	Case- d, e & f	Higher rates for irreparable damages crop, soil, health etc. Leakages/spillage should have different compensation value.	It should be mentioned that instances d, e & f shall be dealt for environmental compensation in line with the polluter pays principle, besides of environmental penalty for cases a, b and c.	Similar to 'Guidelines on Liabilities for Environmental Damages due to Handling & Disposal of Hazardous Waste and Penalty', Guidelines may be prepared.		Suggestions made by RD Kolkata and Vadodara has already been taken care. Concept of environmental compensation is based on the philosophy of "polluters pay" and for grievance injury to environment, compensation will be charged as per the assessment of remediation cost, on case to case basis.
3	Pollution Index (PI)			Instead of average PI, Actual PI may be used.		Committee suggested that to make the implementation of EC simple and easy, use of average PI may be considered for calculation of EC.
4	R-factor	Should be based on pollution load. For ex. Amount of BOD/NOx etc. discharged.		May be classified based on the contribution of pollution load based on quantity of effluent, concentration, emissions	May be as per the category of industry, for ex. Red-500, Orange-300, Green-100.	As PI is based on the pollution load, suggestion of RDs are already taken care in the formula.
5	L-factor			May be redefined based on the features, activities involved and habitation.		L-factor may be covered in future as already indicated in the report.

S. No.	Item	RD Kolkata	RD Vadodara	RD Bengaluru	RD Lucknow	Committee Deliberations
6	Defining period of violations for which EC will be levied		Duration of violations needs more clarity.	For industry having OCEMS, no. of days may be counted based on the recorded data. Industry without OCEMS- based on break down of ETP/APCD, disturbance of power supply or any failure of auxiliary machineries w.r.t. control system.	May be clearly defined as the period between the day of violation observed and the day of compliance verified by CPCB/SPCB/PCC.	The committee agreed that period of violation for which EC may be levied will be the period between the day of violation observed and the day of compliance verified by CPCB/SPCB/PCC.
7	Repeated Violations		Some number of days may be specified after which the penalty amount may get a factor of 1.5 or 2.		Multiplying factor for repeated violations may be included. For ex. 1 st Repetition- 25% 2 nd Repetition- 50% 3 rd Repetition- 100%	For habitual offenders, higher amount of penalty/compensation may be charged in future.
8	Utilization of fund	An environmental damage assessment cell may be created. Expertise in the field may be achieved by involving scientist/engineers and providing them training in country/abroad.	Amount should not be utilized for a) Industrial Inspections for compliance verification, b) Installation of Continuous water quality monitoring stations / Continuous ambient air quality monitoring stations for strengthening of existing monitoring network, c) Preparation of Comprehensive Industry Documents on Industrial Sectors / clean technology f) Funding to financially weaker municipalities for installation of STPs The amount should be utilized solely for damage assessment, remediation of affected sites, orphan contaminated sites and creating awareness. The purpose should not get inclined towards revenue generation.			RD Vadodara suggested that amount should be utilized only for remediation purpose. However, committee discussed that the proposal for utilization of fund is prepared considering the other aspects (i.e. direct and indirect) for protection of environment, which include research, monitoring etc. Suggestion of RD Kolkata may be considered in future.

9	Others	Higher EC for non-installation of pollution control measures. Expected sources should have different scoring methodology based on their weightage.	Thus, the functional fabric of CPCB shall remain intact.				The committee discussed that CPCB is already taking appropriate action including closure direction against the industries found operating without pollution control measures.
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Comments Received from Various Expert Institutions on the Report on Environmental Compensation

As per the Hon'ble NGT suggestion, CPCB has invited comments of 3 expert institution, namely, Centre for Science and Environment (CSE), Institute of Economic Growth (IEG) and The Energy Research Institute (TERI). The CPCB in-house committee on Environmental Compensation has deliberated on the comments and finalized the report accordingly. The Committee's deliberations are summarized in table below:

S. No.	Item	Comments from TERI	Comments of CSE	Comments of IEG	Committee's Deliberations
1	Cases d, e and f	Distinction between categories "a, b, c" and "d, e, f" is not clear. Case specific investigations should be minimized. Proposed cases deals separately with intentional and accidental cases but sometimes they are not easy to establish.	-	Why cases 'e' and 'f' are left for later remediation and study?	There may be a varied damage to the environment as considered in cases 'e' and 'f'. Such damage assessment requires detailed case specific study and remediation measures. Therefore, whenever such case comes into the notice, Environmental Compensation may be levied based on the detailed investigation made by Expert Institutions/Organizations.
2	R-factor	-	R-factor should be Rs. 1,000/day.	Why R-factor is kept as 250, although the value ranges between 100 to 500?	In the Environmental Compensation policy, average value of the R-factor as 250 is recommended, keeping in view both its practicability as well as to make it significantly deterrent, which may be further revised in future.
3	L-factor	-	L-factor should be based on the population density of surroundings, instead of population of the nearby city/town. For critically polluted areas/ ecologically fragile areas LF should be considered as 2.	For nearby city, having population less than 1 million, the LF is 1. This implies that we care only for populated regions only. Industries located in critically polluted and ecologically fragile area should be closed down.	Population density for surrounding of industrial units will be complex because it will vary depending on area used in calculation of population density as industrial units are generally away from population. More weightage is given to the higher population exposure to the risk. In case the industry is located in the city of population less than one million than the LF Factor will be 1. Depending on the local environmental conditions, the restrictions on expansion and modernization of industries in critically polluted areas are imposed as per the prevailing policy of the Government of India. Similarly, industries in ecologically fragile areas are permitted after careful examination, as per prevailing policy of MoEFCC/SPCB, The Committee agreed that for notified ecologically fragile areas, LF may be considered as 2. However, LF for critically polluted areas may be explored in future.

S. No.	Item	Comments of CSE	Comments of IEG	Committee's Deliberations
4	S-factor	Classification of industries should be based on profit/turnover basis.	-	Presently industrial units are classified into small, medium and large category (MSME Act, 2006) based on the data of assets/infrastructure available with them. The data for profit/turnover of industrial units are not available with SPCBs/PCCs and S-factor based on profit/turnover will complicate the procedure for calculation of EC. This may be considered in future when SPCBs/PCCs will have such type of data.
5	Level of non-compliance	Pollution Index does not measure the level of pollution. Further, averaging PI eliminates the variation in the nature/ impact of pollution that PI tries to capture. Further, the Red Category itself is too wide and some sort of sub-classification should be undertaken The rate of the penalty should increase with the period of violation. The penalty should increase exponentially in case of repeated violations. The objective should be that units should choose to shut down operations when violations cannot be brought under control in the specified time.	-	Pollution Index (PI) itself covers the potential of environmental pollution as its calculation considers variation in pollution load. The industrial sectors have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. As PI is not available for all the industrial sectors, calculating PI for rest of the sectors will delay the processing. Therefore, for calculating the Environmental Compensation average PI as 80, 50 and 30 may be used for Red, Orange and Green category of industries, respectively. To keep the formula simple for better implementation, the IV factor may not be considered as there are different environmental parameters such as environmental standards and for each standard calculation of level of violation and its weightage will be a tedious task, which may bring difficulty in implementation of EC concept. The Committee has agreed that in order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2, 4 and 8 times on each similar violation. Further, if the violator continues its operations beyond 3 months then EC may be increased by 2, 4 and 8 times for 2 nd , 3 rd and 4 th quarter, respectively. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.
6	Utilization of fund	Funds may be utilized for building monitoring and enforcement capacity of SPCBs and strengthening the pollution compliance especially in the MSME sector.	Incentives to regulators where no violations are observed and incentives to public for reporting violations may be provided.	EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts. Scheme of infrastructure augmentation of Urban Local Bodies (ULBs) /capacity building of SPCBs/PCCs is already covered in the report Further, schemes such as incentives to regulators where no violations are observed and incentives to public for reporting violations may be considered separately.

S. No.	Item	Comments of CSE	Comments of IEG	Committee's Deliberations
7	GRAP	-	Size of the construction sites more than 20,000 sqm. area are considered for EC. Although, small sites cumulatively impact significantly. Illegal dumping of municipal solid waste regardless of the place should be penalized.	As per the EIA Notification, 2006, building construction projects more than 20,000 sqm. area are required to have environmental clearance, therefore, the same cut-off is maintained here. Issue of illegal dumping of municipal solid waste is being covered in separate report of EC.
8	Others: (a)	Severity of violations should be measured in terms of hours of violation because for some pollutants even a few hours of violation can have serious environmental and health consequences. This would require continuous monitoring of stacks, which is not the case presently for most units. Therefore, continuous monitoring should be implemented urgently, to begin with for all red and orange categories.	-	Currently, online continuous effluent/emission monitoring system (OCEMS) is installed in only in 17 categories of highly polluting industries and some other industrial sectors. Further, in current practice the compliance of industries is only verified by physical monitoring and compensation may be imposed based on the manual testing. The idea of measurement of violation on hourly basis may be considered in future, when OCEMS is widely installed and included in policy.
	(b)	CETP should be categorized under Red Category of industries. Some sub-classification should be undertaken under red categories of industries.	-	CETPs are already categorized under Red Category of Industries
	(c)	Based on the spirit behind the proposed charge, it should therefore be called an "environmental penalty" rather than "environmental compensation".	-	The power of imposing "Penalty" lies in the jurisdiction of the Hon'ble Courts and NGT only. The CPCB is empowered to levy environmental compensation by the Hon'ble NGT in its order dated 03.08.2018 (OA No.593/2017). Therefore, term "Environmental Penalty" is avoidable.

Item Nos. 01 & 02

Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 125/2017
(M.A. No. 1337/2018)

With

Original Application No. 217/2017
(M.A. Nos. 761/2017, 1073/2017,
1098/2017 & 1471/2017)

Court on its own Motion
State of Karnataka

Versus

Applicant(s)

Respondent(s)

With

D. Kupendra Reddy

Versus

Applicant(s)

State of Karnataka

Respondent(s)

Date of hearing: 06.12.2018

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Original Application No. 125/2017
(M.A. No. 1337/2018)

For Applicant(s): Mr. Sajan Poovayya, Sr. Advocate and Mr. Saransh Jain,
Advocate for impleaded applicant - Namma Bengaluru
Foundation
Mr. Vikram Hegde, Advocate for impleaded applicant

For Respondents (s): Mr. Devraj Ashok, Advocate
Mr. Rajkumar, Advocate and Ms. Sonia, LA
Ms. Nidhi Mehrotra, Advocate

Original Application No. 217/2017
(M.A. Nos. 761/2017, 1073/2017,
1098/2017 & 1471/2017)

For Applicant(s): Ms. Guneet Khehar, Mr. Tarunvir Singh Khehar, Mr.
P. Ramaprakash and Mr. Sandeep Mishra, Advocates

For Respondents (s): Dr. Abhishek Atrey, Advocate
Mr. Rajkumar, Advocate and Ms. Sonia, LA

ORDER

1. The issue for consideration in the two matters, one initiated by the Tribunal on its own motion and the other filed by an individual relates to contamination of water bodies at Bengaluru - Bellandur lake, Agara lake and Varthur lake *inter-alia*, on account of discharge of untreated sewage and other effluents from

their performance should be recorded and considered favourably or otherwise for their career progression.

xv. Similar exercise as (xiv) may be undertaken to identify officers responsible for failure in the past. Such exercise may be completed within three months from today.

xvi. Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.

xvii. MoEF&CC may specify limit for phosphorus in soaps and detergents to prevent damage to the environment and public health.

27. The above amount in the present case has been determined having regard to the estimated cost of setting up of STPs, based on the data available, which has been assessed with the assistance of the learned Counsel for the parties.

28. We have nominated Justice Santosh Hegde on information being provided during the hearing that he is agreeable to undertake the above job.

29. Justice Hegde will be entitled to a token honorarium of Rs. 2.5 Lakh per month from the date he assumes the charge. Justice Hegde will be entitled to assistance of persons of his choice for which remuneration will be paid by the SPCB, Karnataka as may be determined by Justice Hegde.

Item Nos. 1 to 11

Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 176/2015
(M.A. No. 1332/2015)
&
Original Application No. 59/2012
(M.A. No. 34/2016 & M.A. No. 190/2016)
&
Original Application No. 108/2013
(M.A. No. 489/2015)
&
Original Application No. 179/2013
(M.A. No. 866/2014 & M.A. NO. 644/2015)
&
Appeal No. 67/2015
(M.A. No. 652/2015)
And

Original Application No. 484/2015
(M.A. No. 155/2017, M.A. No. 567/2017
& M.A. No. 927/2017)
And
Original Application No. 327/2018
(M. A. No. 1282/2018)
And
Original Application No. 115/2017
(M.A. No. 442/2017)
And
Original Application No. 411 of 2018
And
Original Application No. 613/2017
And
Original Application No. 614/2017

Shailesh Singh		Respondent(s)
	Versus	
Hotel Holiday Regency, Moradabad & Ors.		Applicant(s)
With		
Legal Aid, National Green Tribunal Bar Association		Applicant(s)
	Versus	
NCT of Delhi & Ors.		Respondent(s)
With		
Raj Hans Bansal		Applicant(s)
	Versus	
Ministry of Water Resources & Ors.		Respondent(s)
With		
Apex Chambers of Commerce and Industries of N.C.T. of Delhi & Ors.		Applicant(s)
	Versus	
Govt. of NCT Delhi & Ors.		Respondent(s)
With		
Vikrant Tongad		Applicant(s)

Versus

Union of India & Ors. Respondent(s)

With
Shailesh Singh Applicant(s)

Versus

Hotel The Oberoi Amarvilas & Ors. Respondent(s)

With
Shailesh Singh Applicant(s)

Versus

Panchsheel Buildtech Pvt. Ltd. & Ors. Respondent(s)

With
Shailesh Singh Applicant(s)

Versus

Central Ground Water Board & Ors. Respondent(s)

With
M/s A-One Mineral Water Industry Applicant(s)

Versus

Central Ground Water Authority & Ors. Respondent(s)

With
Mohd. Javed Asghar Applicant(s)

Versus

M/s Upper Ganges Sugar and Industries Ltd.
(Distillery Unit) & Ors. Respondent(s)

With
Mohd. Javed Asghar Applicant(s)

Versus

State of U.P. & Ors. Respondent(s)

Hearing concluded on: 18.12.2018

Order uploaded on: 03.01.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s): Mr. Raj Pajwani, Senior Advocate and Mr. Rahul Choudhary, Advocate (In O.A. Nos. 59/2012 & 108/2013)
Ms. Preeti Singh, Mr. S. Porwal, Mr. Shivam Jaiswal, Advocates (In O.A. Nos. 176/2015, 484/2015, 327/2018 & 115/2017)
Mr. Amrendra Kumar Dubey, Advocate (O.A. No. 411/2018)

For Respondent (s): Ms. Sakshi Popli, Advocate for DJB (O.A. No. 59/2012)
Mr. Sumeet Pushkarna, Mr. Devanshu, Advocates with Mr. Sudhir Chauhan, E.E., Delhi Jal Board (O.A. No. 108/2013)
Mr. Ajay Jain, Advocate for GNCTD
Mr. Ardhendumauli Kumar Prasad, Mr. Shashank Saxena, Ms. Diksha Gera, Mr. Amrithesh Raj, Advocates for CGWA
Mr. Pradeep Mishra, Mr. Daleep Dhyani, Advocates for UPPCB
Ms. Sakshi Popli, Advocate for NDMC
Mr. Amit Tiwari, Mr. Rohit Pratap Singh, Advocates for State of UP

appropriate mechanism can be introduced consistent with the needs of environment.

29. The MoEF&CC is directed to constitute an Expert Committee by including representatives from IIT Delhi, IIT Roorkee, IIM Ahmedabad, CPCB, NITI Ayog and any other concerned agency or department to examine the issue of appropriate policy for conservation of ground water with a robust institutional mechanism for surveillance and monitoring with a view to enhance access to ground water for drinking purposes in OCS areas by way of appropriate replenishment practices which can be properly accounted and measured for as well as to sustain the floodplains of rivers in terms of e-flows and other water bodies. The MoEF & CC and MoWR may finalize the issue of subject remain *inter-se* with regard to ground water reserve and its quality.

30. The Committee may be constituted in two weeks and report of the Committee may be furnished to the MoEF &CC and this Tribunal in two months by e-mail at ngt.filing@gmail.com.

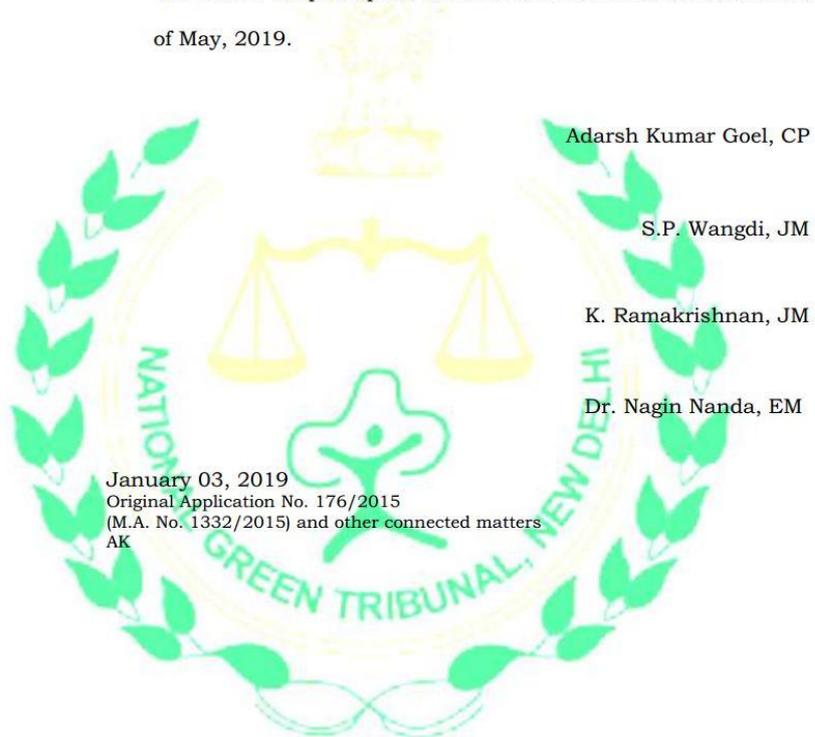
31. The Committee may also indicate the projection of its impact study in light of projected data for the next 50 years (in phased manner with action plan for each decade). Thereafter, fresh guidelines be issued by the concerned Ministry and the report furnished to the Tribunal on or before 30.04.2019.

32. The CPCB may constitute a mechanism to deal with individual cases of violations of norms, as existed prior to Notification of 12.12.2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per

law. All the matters relating to illegal extraction of ground water by individuals are disposed of with these directions.

33. The Expert Committee report, the new policy and challenge to orders of authorities, if any, will be considered on the next date.

The matter be put up for above consideration in the first week of May, 2019.



CRITERIA TO CALCULATE WATER CONSUMPTION**Table 1: Discharge of 4" Dia and 1 HP Pump**

Sl. No.	Depth (Meter)	Discharge	
		LPM	m ³ /hr
1	25	50	3
2	43	40	2.4
3	59	30	1.8
4	69	20	1.2
5	77	10	0.6

Table 2: Discharge of 4" Dia and 2 HP Pump

Sl. No.	Depth (Meter)	Discharge	
		LPM	m ³ /hr
1	60	50	3
2	98	40	2.4
3	124	30	1.8
4	141	20	1.2
5	165	10	0.6

Table 3: Discharge of 6" Dia and 3 HP Pump

Sl. No.	Depth (Meter)	Discharge	
		LPM	m ³ /hr
1	17	200	12
2	29	175	10.5
3	41	150	9
4	50	130	7.8
5	62	100	6

Table 4: Discharge of 6" Dia and 5 HP Pump

Sl. No.	Depth (Meter)	Discharge	
		LPM	m ³ /hr
1	26	225	13.5
2	50	200	12
3	70	175	10.5
4	86	150	9
5	92	140	8.4

References

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Item No.07:

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Original Application No. 49 of 2019 (SZ)

(Through Video Conference)

IN THE MATTER OF

Meenava Thanthai K.R. Selvaraj Kumar,
Meenavar Nala Sangam
Rep. by its President, M.R. Thiyagarajan,
S/o. Late C. Rajalingam,
Office at No.48, East Madha Church Street,
Royapuram, Chennai - 600013.

...Applicant(s)

Versus

- 1) State of Tamil Nadu,
Through the Chief Secretary,
Govt. of Tamil Nadu,
Secretariat, Chennai - 600 009.
- 2) Tamil Nadu State Environment Impact Assessment Authority,
Through the Chairman,
Ground Floor, Panagal Maligai,
No.1, Jeenis Road, Saidapet,
Chennai - 600 015.
- 3) Tamil Nadu State Expert Appraisal Committee,
Through the Chairman,
3rd Floor, Panagal Maligai,
No.1, Jeenis Road, Saidapet,
Chennai - 600 015.
- 4) Voora Property Developers Private Limited,
Through the Director,
Voora JK Tower, 4th Floor,
No.28, Bazullah Road, T-Nagar,
Chennai - 600 017.
- 5) Tamil Nadu Pollution Control Board,
76, Anna Salai, Guindy,
Chennai- 600 032.
(R-5 impleaded as Suo Motu as per
Order dated 19.12.2019)

...Respondent(s)

For Applicant(s): Sri. G. Stanley Hebzon Singh.

For Respondent(s): Sri. Dr. V.R. Thirunarayanan for R1.
Sri. Bharat B. Jain for R4.
Sri. C. Kasirajan through
M/s. Meena for R5.

Date of Judgment: 16th December, 2020.

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

Whether the Judgement is allowed to be published on the Internet - Yes/No

Whether the Judgement is to be published in the All India NGT Reporter - Yes/No

JUDGMENT

1. The above case has been filed by the applicant alleging that the 4th respondent was proceeding with a building project in the CRZ Zone without getting necessary prior Environmental Clearance (EC) and other statutory documents. According to the applicant, the project that was being undertaken by the 4th respondent is "B-Category" project for which prior Environmental Clearance (EC) is required under the EIA Notification, 2006 which though applied, had not been granted thus far and they were proceeding with the construction without getting Environmental Clearance (EC). So, the applicant filed this application seeking the following reliefs:-

"(i) Issue direction to respondent Mo.2 and 3 to initiate appropriate action against the fourth respondent for continuing illegal and unauthorised constructions of 27 floor apartments at R.S.No.4061/4 of Block No.78 Old S.Nos. 3761, 3762 and 3763 of Tondaiarpeta Village, Tondaiarpeta Taluk, Chennai, Tamil Nadu without

obtaining prior environment clearance under the Category "B" of Item. 8(a) "Building and Construction projects" of the Schedule to the EIA Notification, 2006.

(ii) Direct the fourth respondent to remove the entire unauthorised constructions in so far as they have deliberately violated the law laid down under the EIA Notification, 2006 with respect to Constructions activities."

2. This Tribunal by order dated, 19.12.2019 had appointed a Joint Committee comprising of (i) State Environmental Impact Assessment Authority (SEIAA) and (ii) Tamil Nadu Pollution Control Board (TNPCB) to inspect the area in question and submit a factual as well as action taken report, if there is any violation found and also directed them to take appropriate action in accordance with law, if there is any violation found.
3. Originally, the Tamil Nadu Pollution Control Board (TNPCB) was not made as a party to the proceedings. By order dated 19.12.2019, this Tribunal had Suo-Motu impleaded the Tamil Nadu Pollution Control Board (TNPCB) as additional 5th respondent to this proceeding.
4. The matter was taken up on 16.01.2020 and considered the report submitted by the Joint Committee which was extracted in that order as follows:-

"The joint committee inspected the above site of M/s. Voora Property Developers on 10.01.2020 and observed the following:

- (i) No work was undergoing at the time of inspection.*
- (ii) The foundation work for the entire building has been completed. The entire site is fenced temporarily with tin sheet and temporary tin sheet Labour shed have also been constructed.*
- (iii) The unit has obtained CRZ clearance vide proc.No.P1/211/2019, dated 8.3.19 for the construction of residential building with built up area of 25,774.28 Sq.m. in the above said property.*

- (iv) The project proponent has obtained planning permission, vide Lr.No.C3(N)/15600/2018, dated 22.5.19 from the CMDA.
- (v) Building plan was approved by Greater Chennai Corporation vide permit No.11963 dated 22.5.19 for the proposed construction.
- (vi) The proponent has applied for Environmental Clearance on 05.04.2019 and the same was appraised by the SEAC Committee on its 129th meeting held on 17.05.2019.
- (vii) Based on the minutes of the 129th SEAC meeting, the proponent has presented the project in 130th SEAC meeting 10.06.2019.
- (viii) For the queries minuted in the 130th SEAC meeting, the proponent has given reply to the SEAC on 17.7.2019 and the same was placed in the 136th SEAC meeting held on 20.9.2019.
- (ix) Meanwhile, a petition was received from Thiru. M.R. Thiyagarajan, President, Meenava Thanthai K.R. Selvaraj Kumar Meenavar Nala Sangam on 9.9.2019 and the same was discussed in the SEAC meeting held on 20.9.2019 and decided to constitute a sub-committee to have an on the spot inspection to assess the status of the project.

As per the MoEF Notification dated 14th September, 2006 issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules 1986, prior Environmental Clearance is required before any construction work is started on the project. No activity relating to any project covered under this notification including civil construction can be undertaken at site without obtaining prior environmental clearance except fencing of the site to protect it from getting encroached and construction of temporary sheds for the guards. Any contravention of the EIA notification amounts to violation of Environmental (Protection) Act 1986."

5. On that day, we heard the learned counsel appearing for the project proponent and also the applicant and other official respondents and the counsel appearing for the project proponent had submitted that they have stopped the work and the application for Environmental Clearance (EC) is pending with the State Environmental Impact Assessment Authority

(SEIAA) and they will proceed with the work only, after getting necessary Environmental Clearance (EC). So, considering the undertaking given by the project proponent and also after considering the report submitted by the Joint Committee appointed by this Tribunal, this Tribunal had disposed of the matter by order dated, 16.01.2020 which reads as follows:-

"Mr. Bharat-B-Jain, learned counsel entered appearance for the fourth respondent and submitted that they want to file a detailed counter. According to them, they stopped the work and application of Environmental Clearance (EC) is pending with State Environment Impact Assessment Authority (SEIAA) and they will proceed with the work only after getting necessary Environmental Clearance. There is already an admission that certain part of the construction work has already started without obtaining Environmental Clearance and the application for granting Environmental Clearance is pending with the SEIAA and as per the EIA Notification, 2006, the project cannot proceed without getting prior Environmental Clearance except to the extent of construction of temporary fencing and some temporary sheds for the guards. The photographs show that foundation work has been done without getting Environmental Clearance.

Under such circumstances, we feel it appropriate to dispose of the matter by issuing following directions:

(1)The fourth respondent is restrained from proceeding with further construction in the disputed land where the project is being to be implemented by the fourth respondent without getting Environmental Clearance and other required conditions

(2)The respective regulatory authorities are directed to initiate action against the project proponent, the fourth respondent for the violation in accordance with law after giving them reasonable opportunity to meet their case.

(3)The Committee is directed to assess the environmental compensation for the violation committed by the fourth respondent in the Coastal Zone Regulation area as the construction is being done without getting prior Environmental Clearance, though it appears from the report that CRZ clearance has been obtained for that purpose after giving them

opportunity to meet their case and take steps to realise the environmental compensation so imposed from the fourth respondent in accordance with law.

(4)The Committee shall complete this exercise within a period of two months and submit the compliance report as directed by this Tribunal in this order regarding further action taken.

With the above directions and observations, the application is disposed of.

For consideration of compliance of the report alone post the matter on 07.04.2020."

6. Thereafter, the matter was posted for consideration of the committee's report regarding the environmental compensation to be imposed against the project proponent for their violation committed by them against the provisions of the Coastal Regulation Zone Clearance in the coastal zone enumerated under that notification and also under the EIA Notification, 2006. By this order, this Tribunal had restrained the 4th respondent from proceeding with further construction in the disputed land where the project is proposed to be established without getting Environmental Clearance (EC) and other required conditions as well. The case was posted to 07.04.2020 for consideration of the report sought for regarding the question of imposing environmental compensation alone against the 4th respondent.

7. Thereafter, the matter was taken up on 04.06.2020 and considered the report submitted by the Joint Committee which was sent through e-mail dated, 20.03.2020 and the same was extracted in Para 6 of the order as follows:-

"The Joint committee inspected the above said site of M/s. Voora property Developers on 10.01.2020 and observed the following:

- 1. No work was undergoing at the time of inspection.*
- 2. The foundation work for the entire building has been completed.*

The entire site was fenced temporarily with tin sheet and temporary tin sheet Labour sheds have also been constructed.

- 3. The unit has obtained CRZ clearance vide proc. No.P1/211/2019, dt.08.03.2019 for the construction of residential building with built up area of 25,774.28 Sq.M. in the above said property.*
- 4. The project proponent has obtained planning permission, vide Lr. No. C3 (N)/15600/2018, dated 22.05.2019 from the CMDA.*
- 5. Building plan was approved by Greater Chennai Corporation vide permit No. 11963 dated 22.05.2019 for the proposed construction.*
- 6. The proponent has applied for Environmental Clearance on 05.04.2019 and the same was appraised by the SEAC Committee on its 129th meeting held on 17.05.2019.*
- 7. Based on the minutes of the 129th SEAC meeting the proponent has presented the project in 130th SEAC meeting held on 10.06.2019.*
- 8. For the queries minutes in the 130th SEAC meeting, the proponent has given reply to the SEAC on 17.07.2019 and the same was placed in the 136th SEAC meeting held on 20.09.2019.*
- 9. Meanwhile, a petition was received from Thiru. M.R. Thiyagarajan, President, Meenva Thanthai K.R. Selvaraj Kumar Meenavar Nala Sangam on 09.09.2019, and the same was discussed in the SEAC meeting held on 20.09.2019 and decided to constitute a sub-committee to have an on the spot inspection to assess the status of the project.*

As per the MoEF Notification dated 14th September 2006 issued under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986, prior Environmental Clearance is required before any construction work is started on the project. No activity relating to any project covered under this notification including civil construction can be undertaken at site without obtaining prior environmental clearance except fencing of the site to protect it from getting encroached and construction of temporary sheds for the guards. Any contravention of the E.I.A. notification amounts to violation of Environmental (Protection) Act 1986."

- 8. At the request of the applicant, the matter was adjourned for filing objections to the committee's report and the project proponent was also directed to submit the project report showing the estimated cost of the*

project before this Tribunal so as to ascertain as to whether the compensation fixed by the committee is proper or inadequate and posted the case to 30.06.2020 for that purpose.

9. The matter was again taken up on 27.07.2020, and this Tribunal had considered the objections raised by the applicant to the committee's report and also the submission made by him, that in view of the decision of the Hon'ble Apex Court reported in *M.C. Mehta Vs. Kamal Nath 2002 (3) SCC 653*, *Sterlite India Limited Vs. Union of India 2013 (4) SCC 575* and *Ganga Goyal Vs. Union of India 2018 (18) SCC 257* and also the manner in which the compensation assessed was not proper as submitted by the counsel appearing for the applicant. Accordingly, we directed the committee to consider the objections and submit a further report. It was also noticed in that order that the environmental compensation of Rs.11,47,500/- (Rupees Eleven Lakh Forty Seven Thousand and Five Hundred only) fixed by the Joint Committee, taking note of number of days of violation as **102 days** from **09.09.2019** to **19.12.2019** has already been deposited by the project proponent. However, this Tribunal had considered all the submissions and directed the committee to consider the question of number of days violation, afresh and also consider the question as to whether any illegal extraction of ground water was done by the project proponent in connection with their project and that will also have to be taken into account while fixing the amount of compensation payable and directed them to submit a further report and posted the case to 22.09.2020 for that purpose.

10. The matter was again taken up on 06.10.2020 and considered the revised report, reassessing the environmental compensation by the committee which was extracted in Para 3 of the order as follows:-

"Report on revised environmental compensation for the violation committed by M/s. Voora Property Developers Private Limited at R.S.No. 4061/4 of Block No. 78 Old S.Nos. 3761, 3762 & 3763 of Tondiarpet Village, Tondiarpet Taluk, Chennai District, Tamil Nadu as per Hon'ble NGT in the order dated:27.07.2020 in O.A.No.49 of 2019.

Hon'ble NGT in the order dated:27.07.2020 in O.A.No:49 of 2019 (SZ), issued the following direction

"This tribunal feels that it is necessary to direct the committee to revisit the quantum of compensation fixed, considering the probable damage caused to the environment especially in CRZ zone, in respect of illegal extraction of ground water, if any, and also recalculating the period of violation and also after considering the objections filed by the applicant regarding the R- Index fixed by the committee and also the amount so far invested and the actual cost of project, in order to assess the environmental compensation and submit a fresh report before Tribunal on or before 22.09.2020 by e-filing". Subsequently, Hon'ble NGT in the Order Dt:22.09.2020 postponed next hearing to 06.10.2020.

As per the direction of the Hon'ble NGT (SZ) dt: 27.07.2020, the joint committee consisting of the following members,

- 1. Thiru. T. Murugu Subramonian, Member-SEAC,*
- 2. Thiru. B. Sugirtharaj Koilpillai, Member-SEAC,*
- 3. Thiru. Dr. R. Umaiyakunjaram, District Environmental Engineer, TNPCB,*

inspected the Voora Properties work site again on 02.10.2020 and observed the following.

- 1. It is submitted that there was no bore well (or) open well in the site area to draw water. The project proponent informed that all the construction works area carried out using Ready Mix Concrete (RMC) Purchased from out side agency and water*

required for curing was purchased from outside and transported by water tankers. The old bore well in the site was closed and the water in the old bore well was unfit for any purpose. The committee observed and verified the documents furnished by the project proponent and concluded that no ground water was extracted in the project site. The contention of the petitioner in this regard is imaginary.

2. It is submitted that the R factor fixed by the committee was correct for the following reasons. The scope of R value was fixed by CPCB for the projects which are operational and have violated norms in setting up and maintaining STP's, CETP's & ETP's and other violations only. This will be applicable to projects which has been completed.

In this case, the project was launched on 16.08.2019 only and according to the proponent the actual ground work for the construction has been commenced on 08.09.2019 only. But the committee has assumed the date of commencement as 01.09.2019. to calculate the number of days.

It is submitted that the committee noticed that the building work is at foundation level and the set backs are as per approved plan and there is no violation in this regard. The STP or ETP as stated in the CPCB guidelines was not yet been constructed and also there is no chance of generating hazardous waste and solid waste at this stage. Since this is a building project at the preliminary stage, there is no Environmental Damage notified by the committee for which the R value should be taken as 0 (Zero). However the committee works out the damage by fixing the R value as 100 since the work was commenced without getting the Environmental clearance from SEIAA. Violation is commencing work without getting Environmental Clearance only.

The total cost of project is Rs. 40.00 crores and the project proponent has furnished details of expenditure which works out to Rs. 3.80 crores which is acceptable.

The Project proponent has informed that the project was started on 08.09.2019 and the works were stopped on 19.12.2019. The number of days works out 102 days. The committee feel that this period is almost technically sufficient for carrying out the quantum of works done in the site. The foundation floor area is about 2000 sq.m. only.

The committee feels that there is no possibility of commencing the work before launching the project. The petitioner has not furnished any evidence as to the date of commencement of work. Before commencement of the foundation work, the project proponent has to do some baseline works like leveling, marking, temporary storage facilities for materials etc., which would take a minimum of 15 days.

Hence the committee arrived the date of commencement of work as follows.

Date of launching - 16.08.2019

Date of complaint - 09.09.2019

The date of commencement of work is assumed as 01.09.2019 for the aforesaid reasons and the revised environmental compensation is worked out for commencing work before obtaining Environmental Clearance.

In this regard, It is respectfully submitted that the revised environmental compensation for violating the Provisions of EP Act is calculated based on the guidelines issued by CPCB.

Revised Calculation of Environmental Compensation based on the CPCB Guidelines

1) Environmental Compensation Formula

$$EC = PI \times N \times R \times S \times LF$$

Where

EC - Environmental Compensation

PI - Pollution Index of Industry Sector

N - Number days of Violation took place

R - A factor in Rs for EC

S - Factor for scale of operation

LF - Location factor

- i. The industrial sector have been categorized into Red, Orange and Green based on their pollution index in the range of 60-100, 41-59 and 21-40 respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green Categories of industries respectively.

In this case, the pollution index PI is taken as 50, as this project is having built up area more than 20,000 m² and the sewage generation is 97 KLD (Orange category).

- ii. *N*, number of days for which violation took place is the period between the day of violation observed/ due date of directions compliance and the day of compliance verified by PCB/SPCB/CPCB.

The, *N* is taken from 01.09.2019 to 19.12.2019 and it works out to 110 days.

- iii. *R*, is a factor in rupees, which may be minimum of 100 and maximum of 500.

R is taken as 100 for this case, as the works are in initial stage only and the environmental damage is negligible.

- iv. *S* is based on small/medium/large industries categorisation which may be 0.5 for micro or small, 1 for medium and 1.5 for large units.

This project is considered as Large project, hence *S* value is taken as 1.5.

- v. *LF*, is based on the population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or upto 10km distance from the municipal boundary of the city/town, following factors (*LF*) may be used.

S. No.	Population (million)	Location Factor (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

Location Factor Values

For this project *LF* value is taken as 1.5, as the population of the locality is between 5 to 10 million (Within Chennai Corporation).

Environmental Compensation

$$\begin{aligned}
 (EC) &= PI \times N \times R \times S \times LF \\
 &= 50 \times 110 \times 100 \times 1.5 \times 1.5 \\
 &= \text{Rs. } 12,37,500 \text{ (Rupees Twelve Lakhs thirty seven thousand five hundred only)}
 \end{aligned}$$

It is respectfully submitted that the Hon'ble NGT(SZ), Chennai may impose the Environmental Compensation as deemed fit."

11. As per the present calculation, they have reassessed the environmental compensation payable as Rs.12,37,500/- (Rupees Twelve Lakh Thirty Seven Thousand and Five Hundred only) instead of Rs.11,47,500/- (Rupees Eleven Lakh Forty Seven Thousand and Five Hundred only) as assessed earlier.
12. The learned counsel appearing for the applicant pointed out that there was an existence of an old bore well in the CRZ Zone which was noticed by the committee but there was no whisper regarding as to who had dug the same and whether that was used by the project proponent for extracting the ground water. By order dated 06.10.2020, this Tribunal had directed the committee to consider the question as to who had dug the bore well which they had found in the property and if there was any extraction of ground water by the project proponent from that bore well, then it will have to be taken into account for assessing environmental compensation and directed them to file a further report on this aspect and the case was posted for that purpose to 29.09.2020. Thereafter, it was being adjourned from time to time by notification and lastly, as per notification dated 24.11.2020, it was posted to today.
13. Heard the counsel Sri. G. Stanley Hebzon Singh for the applicant, Sri. Dr. V.R. Thirunarayanan for 1st respondent, Sri. Bharat B. Jain for 4th respondent and Sri. C. Kasirajan through M/s. Meena for 5th respondent.
14. The learned counsel appearing for the applicant submitted that the amount of compensation fixed is not adequate, considering the fact that the violation committed by them is in the coastal zone area.
15. On the other hand, the learned counsel appearing for the 4th respondent submitted that all the relevant aspects were considered.

16. We have received the report submitted by the committee on 01.12.2020

which reads as follows:-

"Report on assessing environmental compensation for the withdrawal of ground water in CRZ area by M/s. Voora Property Developers Private Limited at R.S. No.4061/4 of Block No.78, Old S.No.3761, 3762 & 3763 of Tondiarpet Village, Tondiarpet Taluk, Chennai District, Tamil Nadu as per Hon'ble NGT order dt.06.10.2020 in O.A. No.49 of 2019.

It is respectfully submitted that Hon'ble NGT (SZ), Chennai in the order dt.06.10.2020 in O.A. No.49 of 2019 (SZ) issued the following direction.

"We direct the committee to consider the question as to who has dug the old bore well which they found in the property and if there is any extraction of water by the 4th respondent, then they will have to take that also into account for the purpose of assessing environmental compensation. In the mean time, they are directed to serve copy of the further report to the fourth respondent as well so that if they want, they can file objection to the same. They are directed to file further report, taking into account the observations made above, after considering the objection to be raised by the project proponent in this regard, while making site inspection for addressing this aspect."

It is respectfully submitted that the Joint Committee comprising of the following members

- 1) Thiru. T. Murugu Subramonian, Member-SEAC*
- 2) Thiru. B. Sugirtharaj Koilpillai, Member-SEAC and*
- 3) Thiru. S. Vijayarajan, District Environmental Engineer, TNPCB.*

Inspected the Voora Properties project site on 10.01.2020 and 11.02.2020 based on the directions issued by Honb'le NGT (SZ), Chennai in the order dt.19.12.2019 and 16.01.2020 respectively and assessed the environmental compensation for violating the provisions of Environment Protection Act as Rs.11,47,500 (Rupees Eleven Lakhs Forty Seven Thousand and Five Hundred only) and submitted the following report.

- 1) The project is in its foundation level (below ground level) and there appears to be no variation between the approved plan and field measurements.*
- 2) The Green Belt area works out to 1065 Sq.M., and the proponent has provided sufficient space all along the*

boundary (minimum 3 mts) to form the green belt on completion of the project.

- 3) No Objection Certificates from Fire Service and Airports Authority of India have been obtained. Clearance from Coastal Zone Management Authority has also been obtained.
- 4) The Structural Design has been approved by the Professor, Division of Structural Engineering, Department of Civil Engineering, Anna University, Chennai and reviewed and found to be in order by Executive Engineer, PWD, Buildings Centre and Conservation Division, Chepauk, Chennai.
- 5) The Committee observed that violation is commencing the work before getting Environmental Clearance as per Environment Protection Act, 1986 from State Environment Impact Assessment Authority, Tamil Nadu. As the work is at foundation level, the environmental damage caused is negligible.

Subsequently, as per the direction of the Hon'ble NGT (SZ) dt. 27.07.2020, the Joint Committee consisting of the following members

- 1) Thiru. T. Murugu Subramonian, Member-SEAC
- 2) Thiru. B. Sugirtharaj Koilpillai, Member-SEAC and
- 3) Thiru. R. Umaiyakunjaram, District Environmental Engineer, TNPCB.

Inspected the Voora Properties site again on 02.10.2020, reassessed the environmental compensation for violating the provisions of Environment Protection Act as Rs.12,37,500 (Rupees Twelve Lakhs Thirty Seven Thousand Five Hundred only) and submitted the following report.

It is submitted that there was no bore well or open well in the project site at the time of inspection on 10.01.2020. The project proponent had informed the Joint Committee that all the construction works were carried out using Ready Mix Concrete (RMC) purchased from outside agencies and water required for curing was purchased from outside and transported by water tanks. The project proponent also informed that there was an old bore well in the site at the time of purchase which was closed as the water in the old bore well was unfit for any purpose. The committee observed and verified the documents furnished by the project proponent and concluded

that no ground water was extracted in the project site. The contention of the petitioner in this regard may be dismissed unless the petitioner produces any material evidence.

It is respectfully submitted that during the inspections on 10.01.2020, 11.02.2020 and 02.10.2020, the committee has not noticed any bore well in the said project area and the same was reported to the Hon'ble NGT (SZ). However as per the direction of the Hon'ble NGT (SZ) dt. 06.10.2020, the Joint Committee examined the documents of the project site and CRZ clearance issued to the project and observed in none of the records the availability or utilization of any bore well was mentioned.

It is respectfully submitted that if the petitioner furnishes any evidence regarding the availability of bore well in the project site at the time of execution of foundation works and drawal of ground water from the bore well for the construction purpose, the environmental compensation may be revised based on the material evidence produced by the petitioner and submitted to Hon'ble NGT (SZ)."

17. It is mentioned in the report that at the time of inspection, they did not find any bore well in the property and as such, there is no evidence on record to presume that the project proponent had dug the bore well in violation of the CRZ Notification and extracted the ground water for re assessing the environmental compensation and according to them, the amount of Rs.12,37,500/- (Rupees Twelve Lakh Thirty Seven Thousand and Five Hundred only) is adequate, considering the nature of work done by them at the time of inspection before getting the Environmental Clearance (EC) though, they have already obtained necessary CRZ Clearance for this purpose earlier.
18. The applicant has also not produced any documents to show that the bore well was dug by the 4th respondent and they have extracted the water from the same.

19. On the other hand, the learned counsel appearing for the 4th respondent submitted that at the time, when they purchased the property itself, there was an old bore well which they had closed for the purpose of their construction activities and they have not extracted any water, and hence not violated the conditions imposed in CRZ Clearance granted to them for the purpose. As such there is no material before this Tribunal to come to the conclusion that the bore well was dug by the project proponent and any ground water was extracted using that bore well from the CRZ zone in violation of the CRZ Notification, 2011 and the conditions of the CRZ Clearance granted to the 4th respondent. So, the 4th respondent is not liable to pay any compensation for unauthorized extraction of ground water using the bore well for their project purpose.

20. As regards the environmental compensation is concerned, we have perused the earlier reports as well as the subsequent reports on the question of assessment of environmental compensation as directed by this Tribunal. The period of violation was revised as directed by this Tribunal in the earlier order mentioned above and the committee had reassessed the environmental compensation payable by the 4th respondent as Rs.12,37,500/- (Rupees Twelve Lakh Thirty Seven Thousand and Five Hundred only) instead of Rs.11,47,500/- (Rupees Eleven Lakh Forty Seven Thousand and Five Hundred only) earlier assessed and the earlier assessed amount was deposited by the 4th respondent which is evident from the memo submitted by them before this Tribunal being the letter said to have been sent by them dated 20.03.2020 along with the Demand Draft No.986168 dated 20.03.2020 for Rs.11,47,500/- (Rupees Eleven Lakh Forty Seven Thousand and Five Hundred only) issued by Karur Vysya Bank Limited

towards the environmental compensation fund as assessed by the committee mentioned above.

21. The 4th respondent also produced the details regarding the project in which they have mentioned that the total cost of the project is Rs.40 Crores and the work was only in preliminary stage, at the time when it was stopped.

22. The dictum laid down in the decision reported in *Ganga Goyal Vs. Union of India 2018 (18) SCC 257* as such is not applicable to this fact of the case as in that case the entire project was completed without getting Environmental Clearance (EC) and other clearances and so the Hon'ble Apex Court had fixed the environmental damages of Rs.100 Crores or 10 percent of the project cost whichever is higher. But in this case, it is only in the preliminary stage and the project cost is only Rs.40 Crores.

23. So, considering the circumstances, we feel that taking 0.5% of the project cost and imposing that amount as environmental compensation will be sufficient, instead of adopting the compensation fixed by the committee on the basis of the number of days violation alone and that will meet the ends of justice.

24. If this is adopted, the amount payable as environmental compensation will come to Rs.20,00,000/- (Rupees Twenty Lakhs only) [$\text{Rs.40 Crore} \times 0.5\% = \text{Rs.20 Lakhs}$] and that can be imposed as environmental compensation for the violation committed by the project proponent and this Tribunal feels that will meet the ends of justice.

25. So, the project proponent is directed to pay the environmental compensation of Rs.20,00,000/- (Rupees Twenty Lakhs only) instead of Rs.12,37,500/- (Rupees Twelve Lakh Thirty seven Thousand and Five Hundred only) fixed by the committee as revised environmental

compensation and the project proponent is directed to pay the balance amount over and above the environmental compensation deposited by them earlier viz., Rs.11,47,500/- (Rupees Eleven Lakh Forty Seven Thousand and Five Hundred only) with the Tamil Nadu Pollution Control Board (TNPCB) within a period of 2 (Two) months.

26. So, the application is finally disposed of as follows:-

(i) The 4th respondent is directed not to proceed with the work without getting the necessary Environmental Clearance (EC) for the project and if they have obtained the same, then they are at liberty to proceed with the work complying with the conditions imposed in the Environmental Clearance (EC) and other permissions granted, after obtaining the same from the other departments as required.

(ii) The 4th respondent is directed to pay an environmental compensation of **Rs.20,00,000/- (Rupees Twenty Lakhs only)** for the violation committed by them in proceeding with the work without obtaining Environmental Clearance (EC) and they are directed to deposit the balance amount with the Tamil Nadu Pollution Control Board (TNPCB) over and above the amount already deposited by them viz., Rs.11,47,500/- (Rupees Eleven Lakhs Forty Seven Thousand and Five Hundred only) within a period of **2 (Two) months**.

(iii) If the amount is not paid within that time, then the Tamil Nadu Pollution Control (TNPCB) is at liberty to realize that amount from the 4th respondent in accordance with law.

(iv) Considering the circumstances, the parties are directed to bear their respective costs in the application.

27. With the above observations and directions, this application is finally disposed of.

.....J.M.
(Justice K. Ramakrishnan)

.....E.M.
(Shri. Saibal Dasgupta)

O.A. No.49/2019
16th December, 2020. Mn.

NGGT

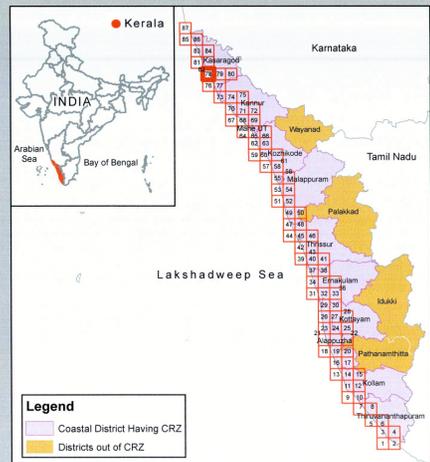
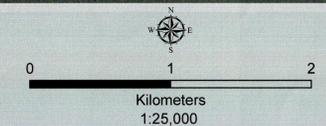


COASTAL ZONE MANAGEMENT PLAN KERALA

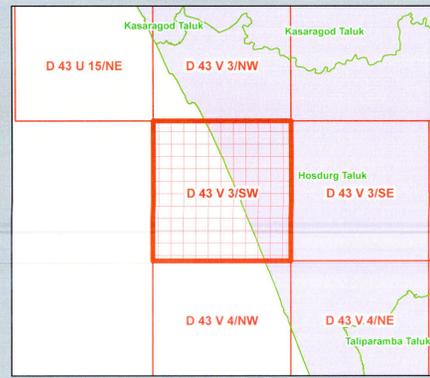
Sheet No: D 43 V 3/SW

Projection :- UTM Datum :- WGS 1984

Map No : KL 78



- Legend**
- Lighthouse
 - Road
 - Railway Line
 - High Tide Line (HTL)
 - Low Tide Line (LTL)
 - Seawall
 - Bund
 - Village Boundary
 - Municipal / Other Urban Areas
 - Taluk Boundary
 - District Boundary
 - Suvey Plots
 - Pier
 - Groins
 - Jetty/Breakwater
 - Community Reserve
- CRZ Lines & Boundary**
- Hazard Line
 - 100m Line in CRZ III Area
 - 200m CRZ Line - NDZ
 - CVCA Boundary
 - CRZ Boundary
 - (500m Line, 100m for Bay, 50m for Backwater Island, 100m or width of the creek whichever is less along the tidal influenced waterbodies)
- CRZ CATEGORY**
- CRZ - I**
- CRZ - IA
 - 50m Mangrove Buffer Zone - CRZ IA
 - CRZ - IB
- CRZ - II**
- CRZ II
- CRZ - III**
- No Development Zone
 - 200m to 500m from HTL
- CRZ - IV**
- CRZ IVA
 - CRZ IVB



- DATA SOURCE**
- I) National Centre for Sustainable Coastal Management
 - 1) HTL, 2) CRZ - IA, 3) CVCA
 - II) Survey of India
 - 1) Hazard Line
 - III) Kerala Coastal Zone Management Authority
 - 1) Administrative Boundaries
 - IV) National Centre for Earth Science Studies
 - 1) CRZ Categories and Lines (except CRZ - IA)
 - 2) Infrastructure facilities such as Lighthouse, Road, Railway Line, Seawall, Breakwater, Jetty etc.
- ABBREVIATIONS**
- CRZ : Coastal Regulation Zone
 - NDZ : No Development Zone
 - CVCA : Critically Vulnerable Coastal Areas
- Mapped During 2017-18

PREPARED AS PER COASTAL REGULATION ZONE NOTIFICATION 2011

Scrutinized by	Certified by	Concurred by	Approved by
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Prepared For



Department of Environment
Government of Kerala