



**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA  
APPEAL NO. - 13 OF 2024**

**IN THE MATTER OF**

Z1 RESIDENTS' WELFARE ASSOCIATION

APPELLANT

VERSUS

STATE POLLUTION CONTROL BOARD AND ANOTHER...

RESPONDENTS

**REJOINDER AFFIDAVIT ON BEHALF OF APPELLANT**

I, Bidhubhusan Nayak, aged about 48 years, Son of Shri Bishnu Charan Nayak presently serving as Secretary of the Z1 RESIDENTS' WELFARE ASSOCIATION having its registered office at Tower 1 , Flat No.1304 ,Z1 Estate, Nandankanan Road ,Kalarahanga, Patia, Bhubaneswar, Odisha -751024, hereby solemnly affirm, and declare as under:

1. That I am the Secretary of Appellant Organisation in the above-mentioned appeal AND authorised by the applicant society to swear this affidavit
2. That the present appeal has been filed challenging the impugned order dated 4<sup>th</sup> July 2024 passed by the Odisha State Pollution control Board demanding 2.235Cr of Rupees as Environment Compensation.
3. That the present appeal has been filed with the following grounds
  - I. That environment compensation cannot be levied against a person or body other than the project proponent who has been issued Consent and Environment Clearance.
  - II. That the state pollution control board is required to apply its mind independently if the Guideline of the CPCB of 2019 is applicable in the present case and the computation of environment compensation is purely mechanical and non-application of mind .

III. In order to compute the Environmental Compensation in response to the order of Hon'ble NGT order, the Guidelines laid down in the Notification dated 04.09.2019 Issued by Central Pollution Control Board was referred. The guideline has mentioned the cases (a to f) under which Environmental Compensation can be considered. But in the present case none of the 6 cases is applicable to the present Residents Welfare Association. Further there is no discharge to outside hence no damage to environment, and there is no intentional discharge to outside, and there is no injection of wastewater into ground water.

**That the Residents Welfare Association cannot be treated as an industry hence environment compensation can not be levied on the Resident Welfare Association, if any environment compensation is made out should have been issued in the name of developer/proponent against whom Environmental clearance/ CTO has been granted.**

IV. That the demand notice is bad in law as because no explanation given in the notice **detailing what kind of damage to environment caused by the Residents Welfare Association. At the cost of repetition it is stated that the treated water from STP is used for gardening inside the premises of the Housing Society and never ever discharged to public sewer or any water body hence no damage caused** to environment.

V. That the objections of the Appellant were completely ignored and the additional information sought by the appellant were also not provided, thereby the **order passed is without any reasonable opportunity of hearing.**

VI. **That since there is no case of any discharge to public sewer/drainage, hence the criteria laid down for environment compensation is not attracted**

VII. That the water of the **STP was reused in the gardening with in the campus** and hence there is no case of any discharge to land outside the premises.

VIII. That the maintenance of the **STP continues to be done by the agency engaged by the Project proponent, hence the maintenance issue cannot be shifted to the association. As such** the association has taken over the STP and it's maintenance "as is where is" basis which implies that the thing so contracted is transferred, by one person to another in its existing condition and the transferee has accepted it with all its faults and defects, whether or not immediately apparent.

IX. That the result of water analysis found the coliforms are much more than the acceptable standard. It is stated that the efficiency of the STP was never tested, hence the deficiency in the STP and its outcome cannot be attributed to the Residents Association as because the STP was setup by the proponent and for the first time the sample was taken for analysis after the filing of this original application

X. Similarly the committee report stated that the Project proponent has to install a separate organic convertor/composting machine for phase-I or to collect the biodegradable solid waste from phase-I building. Hence the liability is with the project proponent and not with Resident Associations.

XI. It is further stated that the **Consent to Operate and Environment Clearance is in the name of project proponent and hence the liability cannot be shifted at this stage without the**

**transfer to the association.** For all kind of non-compliances the legal liability still lies with the project proponent.

4. That the Respondent No.1&2 in paragraph 5 b. has admitted that they have not provided any document/information to the Appellant and also the Respondent No.1&2 has not given a full hearing to the Appellant prior to issuance of the impugned order **which is a violation of principle of natural justice**, hence the impugned order is required to be quashed.
5. That the Respondent No. 1&2 filed its counter affidavit on dated 19/03/2025 wherein in paragraph No. 5 c. it is categorically mentioned that environmental compensation has been assessed on the basis of violation of consent to operate condition. **it is pertinent to mention here that the CTO is in the name of the Project Proponent and not in the name of association**. Hence a document which is not in the name of the Appellant, the Respondent cannot claim for violation of the same attributing in the name of the Appellant.
6. It is further submitted that in paragraph 5d. of the affidavit dated 19/03/2025 filed by the Respondent No. 1&2 it is admitted that “*Consent to Operate has been accorded in favour of M/s Z Estate Pvt. Ltd. by the R. No. 1 Board under Section 25/26 of the Water (PCP) Act, 1974 and Section 21 of Air (PCP Act), 1981, which was issued as one time Consent to Operate for Phase-I*”, it is a fact that the M/s Z Estate Pvt. Ltd. has handed over the Phase-I of housing Residential Complex to the Appellant since 01/04/2021, however the **CTO has not been transferred to the name of Appellant society**, hence the claim of Environmental Compensation attributing to the Appellant society is not tenable.
7. It is further submitted that the Respondent board has calculated the Environmental Compensation from 01/04/2021 however the board has not given the specific evidence to the date of occurrence, **the board has**

**calculated the Environmental Compensation on the basis of date of the handing over of the housing residential complex to the society.**

8. It is further submitted that while taking sample from the STP neither part of the sample was given to the present appellant in sealed condition nor consent of the appellant has been obtained. On the contrary the appellant placed a test report from the laboratory of IMMT, Bhubaneswar, a central government laboratory which suggested the parameters are within standard but the same was not considered by regional office of the SPCB.
9. It is further submitted that in view of the Supreme Court order in Delhi Pollution Control Committee *Versus* Lodhi Property Co. Ltd. Etc in Civil Appeal No(s). 757-760 of 2013 DECIDED ON 4<sup>TH</sup> August 2025 held that the State Pollution Control Board cannot impose environment compensation in absence of a subordinate rule and para 39 (c) of the Judgement is reproduced as follows it is further directed that the power to impose or collect restitutionary or compensatory damages or the requirement to furnish bank guarantees as an *ex-ante* measure under Sections 33A and 31A of the Water and Air Acts shall be enforced only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation. Copy of the order passed by Hon'ble Supreme Court is annexed here unto as **ANNEXURE-1**.
10. Similarly in M/s Tata Bricks Company *Versus* Rajasthan Pollution Control Board and Ors, (S.B. Civil Writ Petition No. 645/2025) HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR on 30/10/2/025 held that the state pollution control board can not impose Environment Compensation in absence of any statutory backing and quashed the demand notices issued by Rajasthan State Pollution Control Board. Copy of the order passed by Hon'ble High Court of Rajasthan is annexed here unto as **ANNEXURE-2**.
11. That in the present case the state Pollution Control Board has not given a proper hearing to the Appellant and further has not given the documents as

requested in the letter dated 1/11/2023 and more importantly has not taken into account that there is no discharge to the public sewer and reused for gardening purpose with in the premises, thereby no environment damage occurred and the order is mechanically passed. Further the SPCB could not have issued demand notice for alleged malfunctioning of ETP which is in the name of the developer and the association is not the legal Occupier of STP even though handed over to the Association for overseeing the same.

12. That in view of the afore mentioned paras Hon'ble Tribunal may please to quash the impugned order dated 4<sup>th</sup> July 2024 passed by the Odisha State Pollution Control Board.

And for this act of kindness appellant shall remain ever grateful.

07/11/2025

Appellant Through

A handwritten signature in black ink, appearing to read 'S. Panigrahi', written over a horizontal line.

Advocate

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, KOLKATA  
APPEAL NO -13 OF 2024/EZ

IN THE MATTER OF:

Z1-RESIDENTS WELFARE ASSOCIATION... APPELLANTS

VERSUS

MEMBER SECRETARY ODISHA STATE POLLUTION CONTROL BOARD  
ODISHA AND ANOTHER..... RESPONDENTS

AFFIDAVIT 07 NOV 2025

I, Bidhubhusan Nayak, aged about 47 years, Son of Shri Bishnucharan Nayak presently serving as Secretary of the Z1 RESIDENTS' WELFARE ASSOCIATION having its registered office at Tower 1, Flat No. 1304 Z1 Estate, Nandankanan Road Kalarahanga, Patia, Bhubaneswar Odisha -751024, hereby solemnly affirm, and declare as under:

- 1. That I am the Secretary of the Appellant Organization in the above mentioned appeal AND authorised by the Appellant society to swear this affidavit.
- 2. I am fully conversant with the facts and circumstances of the case and therefore competent to swear this affidavit.
- 3. That I have read over the contents of the accompanying Rejoinder affidavit and the same is true and correct and drafted on my instruction

For Z1RWA  
Bidhubhusan Nayak  
SECRETARY  
DEPONENT

VERIFICATION

Verified on this 07 NOV 2025 day of 2025 at Patia that the contents of the above affidavit are true and correct. No part of it is false and nothing material has been concealed there from.

For Z1RWA  
Bidhubhusan Nayak  
SECRETARY  
DEPONENT

Identified By  
Advocate



The above named deponent(s) being duly identified by S.P. Das Advocate, Bhubaneswar Appears before me on 07 NOV 2025 at Patia on oath the contents of the affidavit are true to the best of his / her / their knowledge and belief Notary, Bhubaneswar

JANMEJAYA RAUTRAY  
NOTARY, GOVT OF ODISHA  
BHUBANESWAR  
REGD. NO ON-8572012  
Mob No-7978581217

**2025 LiveLaw (SC) 766**

THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**PAMIDIGHANTAM SRI NARASIMHA; J., MANOJ MISRA; J.**

AUGUST 04, 2025

CIVIL APPEAL NO(S). 757-760; 1977-2011 OF 2013

**DELHI POLLUTION CONTROL COMMITTEE versus LODHI PROPERTY CO. LTD. ETC.**

**Environmental Law - Water (Prevention & Control of Pollution) Act, 1974 (Water Act) - Section 33A - Air (Prevention & Control of Pollution) Act, 1974 (Air Act) - Section 31A - Polluter Pays Principle – Compensatory / Restitutionary Damages vs. Penalties – Held, Pollution Control Boards can impose environmental compensation on polluting entities but was not empowered to levy compensatory damages under Section 33A of Water Act and Section 31A of Air Act as such actions amounted to imposition of penalties for which a specific procedure under Chapters VII & VI of respective Act was contemplated - There is distinction between a direction for payment of restitutionary and compensatory damage as a remedial measure for environmental damage and a punitive action of fine - Punitive action can only be taken through procedure prescribed in statute - Environmental restitution is a constitutional and statutory obligation, not punitive action. [Relied on *Vellore Citizens Welfare Forum v. Union of India* (1996) 5 SCC 647; *Indian Council for Environmental Action v Union of India* (1996) 3 SCC 212; Paras 19, 20, 27, 30]**

**Powers of Pollution Control Boards – Held, environmental regulators have a compelling duty to adopt and apply preventive measures irrespective of actual environmental damage - Ex-ante action is necessary for this purpose and a certain measure in exercise of powers under Section 33A and 31A of the Water and Air Acts is essential - The powers of Boards under above sections are identical to those under section 5 of Environment Protection Act, which includes power to direct polluting industries to pay amounts for remedial measures - Boards are empowered to take similar actions - Recent 2024 amendments to Water & Air Acts, introducing decriminalization and the office of “Adjudicatory Officer” do not create a conflict with the State Board’s power to direct payment of environmental damages - Boards have the discretion to decide appropriate action against a polluting entity, whether its punishment by penalty or immediate restoration, or both - This power must be guided by transparency and non-arbitrariness - Supreme Court directed that necessary subordinate legislation (Rules and Regulations) must be notified to ensure fair, transparent and non-arbitrary imposition of restitutionary and compensatory environmental damages, with procedural certainty - Appeal allowed. [Relied on *Bengaluru Development Authority v. Sudhakar Hegde* (2020) 15 SCC 63; Paras 10, 12, 27, 31, 33, 35, 36]**

*For Appellant(s) Mr. Ninad Laud, Adv. Mr. Saurabh Kulkarni, Adv. Ms. Rashika Narain, Adv. Ms. Ishani Shekhar, Adv. Mr. Dcosta Ivo Manuel Simon, AOR Mr. Pradeep Misra, AOR Mr. Daleep Dhyani, Adv. Mr. Suraj Singh, Adv.*

*For Respondent(s) Mr. Pinaki Mishra, Sr. Adv. Mr. B.B. Gupta, Sr. Adv. Mr. Pravin Bahadur, Adv. Mr. Kishan Rawat, Adv. Ms. Rubi Singh Ahuja, Adv. Ms. Kanika Gomber, Adv. Mr. Rajan Narain, AOR Mr. Umesh Kumar Khaitan, AOR Mr. Ajit Warriar, Adv. Mr. Angad Kochhar, Adv. Mr. S. S. Shroff, AOR Mr. S. D. Sanjay, A.S.G. Mr. Gurmeet Singh Makker, AOR Ms. Swarupma Chaturvedi, Sr. Adv. Ms. Ruchi Kohli, Adv. Mr. Chinmayee Chandra, Adv. Mr. Chitvan Singhal, Adv. Mr. Mohit D. Ram, AOR Ms. Nayan Gupta, Adv. Mrs. Priya Puri, AOR Mr. Kailash Vashudev, Sr. Adv. Mr. Navin Prakash, AOR Ms. Srishti Prakash, Adv. Mr. Satya Darshi Sanjay, A.S.G. Adv. Mr. Amit Sharma V, Adv. Dr. N. Visakamurthy, AOR Mr. Avijit Roy, AOR.*

**JUDGMENT**

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**1. Introduction.**

1. The Delhi Pollution Control Committee (DPCC)<sup>1</sup> is in appeal against the judgment of the Division Bench of the High Court holding that it is not empowered to levy compensatory damages in exercise of powers under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981<sup>2</sup> on the ground that such an action amounts to imposition of penalty provided for in Chapters VII and VI of the respective Acts, and as such, procedure contemplated thereunder will be the only method for imposing and collecting compensatory damage.

2. Having considered the principles that govern Indian environmental laws, we have held that the environmental regulators, the Pollution Control Boards exercising powers under the Water and Air Acts, can impose and collect restitutionary or compensatory damages in the form of fixed sum of monies or require furnishing of bank guarantees as an *ex-ante* measure to prevent potential environmental damage. These powers are incidental and ancillary to the empowerment under Sections 33A and 31A of the Water and Air Acts. At the same time, we have directed that the powers must be exercised as per procedure laid down by subordinate legislation incorporating necessary principles of natural justice, transparency and certainty.

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<sup>1</sup> DPCC is a regulatory body in the National Capital Territory of Delhi, established as a ‘State Board’. These Boards are constituted under section 4 of the Water Act and under section 4 or section 5 of the Air Act, and exercise powers granted under section 33A of the Water Act and section 31A of the Air Act. Our interpretation of section 33A and 31A herein will apply to any such body established under said Acts.

<sup>2</sup> Hereinafter referred to as the Water Act and Air Act respectively.

## 2. Facts.

3. It is the case of the Delhi Pollution Control Committee that pursuant to the directions of the Ministry of Environment, Forest and Climate Change (MoEFCC) to take appropriate action against certain entities operating in violation of the environmental norms, show cause notices were issued for violation of Section 25 of the Water Act and Sections 21 and 22 of the Air Act. These entities were either residential complexes, commercial complexes or shopping malls. The show cause notices were issued on the ground that they proceeded with construction and in fact, were operating without obtaining the mandatory “consent to establish” and “consent to operate” under Section 25 of the Water Act and Section 21 of the Air Act. The show cause notices were challenged by way of 38 writ petitions before the Delhi High Court. The challenge culminated in the judgement of a single judge dated 30.09.2010 in the case of *Splendor Landbase Ltd. v. DPCC*<sup>3</sup>. The learned single judge considered the question as to whether a State Board can levy environmental damages in the form of fixed sums of money or require an entity to furnish a bank guarantee as a condition for grant of consent under Section 33A of Water Act and/or Section 31A of Air Act. Similar writ petitions were considered and decided by another single judge bench in *Bharti Realty Ltd. v. DPCC* and *Anush Finlease and Construction v. DPCC* on 20.07.2011 and 15.09.2011 and were disposed of in terms of the decision in *Splendor Landbase Ltd. v. DPCC*. The reasoning adopted in the judgement and orders passed by the Single Judges are as follows.

## 3. Single Judge’s Judgement and Orders.

4. In *Splendor Landbase Ltd. v. DPCC*<sup>4</sup>, the Id. single judge by his judgement dated 30.09.2010 dealt with two major issues – firstly, whether proprietors of properties over 20,000 square meters are required to obtain *consent to establish* and *consent to operate* under Water Act and Air Act independently, despite obtaining EIA Clearance from the Ministry; and secondly, whether Boards can levy penalties, fines, environmental damages in form of fixed sums of monies or call for bank guaranties as a condition to grant consent under Water and Air Acts? While the first question was answered in the affirmative, the second was answered in the negative.

4.1 It was held that the power to levy penalty is in the nature of a penal power and as such a penalty cannot be imposed without there being an enabling statutory power. For this reason, the single judge held that Board has no power to levy penalty or damage, even on the basis of the general powers under Sections 31A or 33A of the Acts. The learned Judge criticized the monetary demand as a pre-condition for grant of consent under the Acts on the ground that it has no statutory backing.

4.2 In the other batch of cases i.e. in *Bharti Realty Ltd. v. DPCC* and *Anush Finlease and Construction Ltd. v. DPCC*, decided on 12.07.2011 and 15.09.2011, the learned Single Judge was constrained to enquire into the matter in detail as writ appeals against the judgement in *Splendor* were already pending before a Division Bench. Therefore, the Single Judge allowed the writ petitions following the decision in *Splendor* and holding that the Board has no power to impose and collect compensatory damages.

In these cases, the learned Judge also directed refund of the amounts collected. However, no interest was granted to the respondents as they chose to comply with the demand instead of challenging the same at the relevant point in time.

<sup>3</sup> 2012 (195) DLT 177.

<sup>4</sup> Hereinafter referred to as *Splendor*.

**4. Impugned Order of the Division Bench.**

5. The decisions of the single judges were challenged by the appellant before the Division Bench of the High Court. By the judgement impugned before us, the Division Bench upheld the findings of the Single Judge in *Splendor* that the power to issue directions under Sections 33A and 31A under the two Acts does not confer the power to levy 'penalty'. The High Court further observed that under Chapter VII and Chapter VI of the Water and Air Acts penalties can be levied only by courts and that too after taking cognizance of offences specified under the two Acts. Provided that the procedure so prescribed under the statute has to be followed mandatorily, the Division Bench held that the appellant would not be entitled to impose compensation or direct deposit of bank guarantees. The relevant portion of the Division Bench of the High Court is as follows –

*“37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that, the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent jurisdiction and no more.*

*40. The language of Sub-Section 5 of Section 25 of the Water Act makes it plain clear that the only solution to a situation of a building being constructed to establish an industry, operation or process without obtaining prior consent of the State Pollution Control Board is the power of the Board to serve upon the person concerned a notice imposing such conditions as might have been imposed on an application, seeking prior consent and we find that the learned Single Judge has correctly so opined and has rightly issued the direction that the only way out, pertaining to the Water Act is to permit DPCC to inspect the shopping malls and the shopping commercial complexes and if it is found that pertaining to discharge of sewage from these buildings any steps are required to prevent water pollution DPCC would be authorized to issue notices requiring the owner of the building to take steps in terms of the notice issued. Pertaining to the Air Act notwithstanding there being no similar provision, but the concept of a post decisional hearing may be made applicable with the modification that no hearing would be required inasmuch as there is no decision, but DPCC should be empowered to inspect the shopping malls and the shopping, commercial complexes and pertaining to air pollution, if the owners of the buildings do not take corrective action, DPCC would always have the power to file criminal complaints before the Courts of Competent Jurisdiction, which Courts would alone have the power to impose fine and additionally impose sentence of imprisonment upon the offending persons.*

*42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions of furnishing bank guarantee. The decision of the learned Single Judge is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as 1997 [5] SCC 535 *Mafatlal Industries Ltd. & Ors. Vs UOI & Ors.*, under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied without any jurisdiction. In the instant case the penalty levied*

is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned decisions where penalty levied has been directed to be refunded are upheld.”

## 5. Submissions.

6. Mr. Pradeep Mishra appearing on behalf of the appellant DPCC submitted that the High Court erred in holding that the State Boards are not empowered to impose environmental damages under Sections 33A and 31A of Water and Air Acts. He has argued that the application of the principle of *Polluter Pays* is distinct from the requirement of authority of law to impose tax or penalty.

7. On behalf of the respondents, Mr. Ninad Laud has submitted that as per broad scheme of the Acts and also the statement of objects and reasons, State Boards are empowered to act on their own while enforcing Sections 25 and 26 and also while issuing directions under Sections 33A and 31A. However, when faced with non-compliances, recourse to judicial process is contemplated under Sections 49 and 43 of Water and Air Acts respectively. Further, neither Rule 34 of Water (Prevention & Control of Pollution) Rules 1975 nor Rule 20A of Air (Prevention & Control of Pollution) Rules 1983, while providing a mechanism to administer Section 33A and Section 31A, contemplate monetary penalties. Countering the submission of Mr. Pradeep Misra on the principle of *Polluter Pays* to encourage reading the power to impose and collect environmental damages under Sections 33A and 31A of the respective Acts, he would submit such an approach is impermissible as the said power is specifically and separately provided under Chapters VII and VI therein. Relying on the decision of this Court in *MC Mehta v. Kamal Nath*<sup>5</sup>, he would submit, after considering the scheme of penal provisions under Water Act, Air Act and Environment (Protection) Act 1986, the Supreme Court held that penalties under the Acts befall a person only after finding of guilt upon trial by a court of law. Referring to the legitimacy of State Board's action demanding bank guarantees to secure compliance with conditions, he would submit that no penalty, other than that contemplated in the statute or statutory scheme can be imposed.<sup>6</sup> We have also heard Mr. Pinaki Misra, Senior Advocate and other learned counsel and they have strongly supported the decision of the Division Bench.

7.1 Counsel for M/s Laxmi Buildtech Pvt Ltd<sup>7</sup> has submitted that they have neither violated nor acted in breach of any provision of environmental laws and therefore they cannot be subjected to any penalty or criminal prosecution. Counsel for other respondents further submitted that they have deemed consent as well as EIA clearance from the Ministry. They have also submitted that imposition and collection of damages by the State Boards is outside the powers vested in them under the Water and Air Acts.

7.2 Counsel for M/s Bharti Realty Ltd has submitted that it is a settled principle of law that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and no other.<sup>8</sup> This principle, according to the learned counsel, squarely applies to the present case as Chapter VII and Chapter VI of the Water and Air Acts have a prescribed procedure to be followed before imposing penalties. It is further argued that the role of any State Board is in the nature of a complainant and not that of an adjudicatory authority. In this vein, it is submitted that any other interpretation would render the chapter on 'Penalties and Procedures' nugatory and otiose. It is also submitted that the power to

<sup>5</sup> (2000) 6 SCC 213, para 13-17.

<sup>6</sup> *State of MP v. Centre for Environment Protection Research & Development*, (2020) 9 SCC 781.

<sup>7</sup> Civil Appeal No. 2001 of 2013.

<sup>8</sup> *Chandra Kishore Jha v. Mahavir Prasad & Ors*, (1999) 8 SCC 266.

give directions under Sections 33A and 31A of the Water and Air Acts is “subject to provisions of this Act”. Written submissions also refer to the recent amendments to the Water and Air Acts, empowering an Adjudicating Officer, not below the rank of Joint Secretary of Government of India or Secretary to State Government, for imposing penalties for contravention of provisions of the Acts.

**6. Issue.**

8. The core question in these appeals is - whether the regulatory boards can, in exercise of powers under Section 33A of the Water Act and Section 31A of the Air Act, impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential environmental damage?

**7. Existing Legal Regime for Pollution Control in India.**

9. Under the Water Act and the Air Act, the State Boards have a broad statutory mandate to prevent, control and abate water pollution and air pollution. Under Section 17 of the Water Act, the State Boards are to shoulder enormous responsibilities and their functions are reproduced herein for ready reference -

**“Section 17. Functions of State Board – (1) Subject to the provisions of this Act, the functions of a State Board shall be— (a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;**

**(b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution; (c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof; (d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;**

**(e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto; (f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;**

**(g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;**

**(h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;**

**(i) to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;**

**(j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;**

**(k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;**

**(l) to make, vary or revoke any order—**

- (i) for the prevention, control or abatement of discharges of waste into streams or wells;
  - (ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or adopt such remedial measures as are necessary to prevent, control or abate water pollution;
  - (m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;
  - (n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;
  - (o) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.
- (2) The Board may establish or recognize a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.”

**10.** Section 17 of the Air Act<sup>9</sup>, substantially similar to its equivalent under the Water Act, also indicates the crucial responsibilities of the State Boards in discharge of their mandate. Chapter V of the Water Act and Chapter IV of the Air Act include provisions that prescribe the regulatory powers of the State Boards. These powers include the power to issue,

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<sup>9</sup> Section 17 of Air Act states –

**17. Functions of State Boards.**— (1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974, the functions of a State Board shall be—

- (a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;
  - (b) to advise the State Government on any matter concerning the prevention, control or abatement relating to air pollution;
  - (c) to collect and disseminate information relating to air pollution;
  - (d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise a mass-education programme relating thereto;
  - (e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution; (f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;
  - (g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft: Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;
  - (h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;
  - (i) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;
  - (j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.
- (2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.

modify or withdraw consent<sup>10</sup>, power to obtain information<sup>11</sup>, power of entry and inspection<sup>12</sup> and power to take samples<sup>13</sup>.

**8. Insertion of Sections 33A & 31A in Water and Air Acts.**

**11.** In 1988, both Acts were amended. Notably, through amendments the State Boards were further empowered to give directions under Section 33A of the Water Act and Section 31A<sup>14</sup> of the Air Act. These two provisions are identically worded. Section 33A of the Water Act is as under;

**“Section 33A. Power to give directions.**—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

*Explanation.*—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service.”

**12.** The directions contemplated under Sections 33A and 31A of the Water and Air Acts must be in furtherance of the powers and functions of the Boards and they must be in writing. These provisions, declares that the power to issue directions will include the power to direct closure, prohibition or regulation of any industry, operation or process. Further, this power extends to directing the stoppage or regulation of supply of electricity, water or any other service. The power to give directions has been worded broadly, and it allows the Boards significant flexibility in deciding the nature of directions. The legislative intention of granting these powers through the 1988 amendment can be inferred from the Statement of Objects and Reasons of the Water Act, which reads as follows –

*“2. The Water Act is implemented by the Central and State Governments and the Central and State Pollution Control Boards. Over the past few years, the implementing agencies have experienced some more administrative and practical difficulties in effectively implementing the provisions of the Act. The ways and means to remove these difficulties have been thoroughly examined in consultation with the implementing agencies. Taking into account the views expressed, it is proposed to amend certain provisions of the Act in order to remove such difficulties....*

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<sup>10</sup> Sections 25, 27 of Water Act and Section 21 of Air Act

<sup>11</sup> Section 20 of Water Act and Section 25 of Air Act

<sup>12</sup> Section 23 of Water Act and Section 24 of Air Act

<sup>13</sup> Section 21 of Water Act and Section 26 of Air Act

<sup>14</sup> Section 31A of the Air Act states –

**31A. Power to give directions.**—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

*Explanation.*—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

- (a) the closure, prohibition or regulation of any industry, operation or process; or (b) the stoppage or regulation of supply of electricity, water or any other service.

3. *The Bill, inter alia, seeks to make the following amendments in the Act, namely:— ....*

*(iv) in order to effectively prevent water pollution, the penal provisions of the Act are proposed to be made stricter and bring them at par with the punishments prescribed in the Air (Prevention and Control of Pollution) Act, 1981 as amended by Act 47 of 1987; ....*

*(vi) it is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending industry, operation or process or stoppage or regulation of supply of services such as water and electricity;”*

**13.** Similar objective is expressed for the amendment introduced in the Air Act.<sup>15</sup>

**14.** An appeal against directions issued under Section 33A of the Water Act by the State Board can be filed before the National Green Tribunal under Section 33B, introduced in 2010<sup>16</sup>. Unlike the Water Act there is no specific Appeal provision against directions issued under Section 31A of the Air Act. This asymmetry must be addressed legislatively.

**15.** Offences and penalties under the two Acts, and the related procedures, are covered in Chapter VII of the Water Act and Chapter VI of the Air Act. These chapters have undergone significant and substantial amendments. Prior to the amendments, the two Acts stipulated penalties in the form of imprisonment, monetary fine or both for offences under the statute. Courts could only take cognizance of an offence if a complaint was filed by a Board or any officer authorized by it, or by any person who had given notice of the alleged offence and of his intention to make a complaint. No court inferior to that of a Metropolitan Magistrate or a Judicial magistrate of the first class can try an offence punishable under the two Acts. Be that as it may, for the present purpose we have to examine and interpret Sections 33A and 31A of the Water and Air Acts.

## **9. Interpretation of and for Environmental Institutions.**

**16.** Our constitutionalism bears the hallmark of an expansive interpretation of fundamental rights. But such creative expansion is only a job half done if the depth of the remedies, consequent upon infringement, remain shallow. In other words, remedial jurisprudence must keep pace with expanding rights and regulatory challenges. It is not sufficient that courts adopt injunctory, mandatory and compensatory remedies, but our regulators also must be empowered in that regard. However, the legislative grammar must be elastic for us to infuse the regulators with power to fashion different remedies. This infusion must also be tampered with the necessary guidelines and parameters of exercise of remedial powers, failing which such infusion would aid arbitrary use. Our firm view is

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<sup>15</sup> Statement of Objects and Reasons for Air Act states, “2. *The Air Act is implemented by the Central and State Governments and the Central and State Boards. Over the past few years, the implementing agencies have experienced some administrative and practical difficulties in effectively implementing the provisions of this Act and have brought these to the notice of Government. The ways and means to remove these difficulties have been thoroughly examined in consultation with the concerned Central Government departments, the State Governments and the Central and State Boards. Taking into account the views expressed, the Government have decided to make certain amendments to the Act in order to remove such difficulties.* 3. *The Bill, inter alia, seeks to make the following amendments in the Act, namely— ....*

*iv) In order to prevent effectively air pollution, the punishments provided in the Act are proposed to be made stricter.*

....

*(vii) It is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending establishments or stoppage or regulation of supply of services such as, water and electricity. (viii) It is proposed to empower the Boards to approach courts to obtain orders restraining any person from causing air pollution.”*

<sup>16</sup> Act 19 of 2010.

that remedial powers or restitutionary directives are a necessary concomitant of both the fundamental rights of citizens who suffer environmental wrongs and an equal concomitant of the duties of a statutory regulator, which are informed by Part IV A of the constitution. To that extent, the functions and powers of a regulator must be inspired by the obligation in Part IV A and Article 48 A. The State's '*endeavour to protect and improve the environment*' will be partial, if it does not encompass a duty to retribute.

**17.** Of all the duties imposed under Article 51A, the obligation to conserve and protect water and air, is perhaps the most significant, amidst our climate change crisis. The Water Act and the Air Act institutionalised all efforts and actions that need to be taken to protect air that we breathe and water that we consume by creating the Pollution Control Boards. These Boards functioning as our environment regulators are expected to act with *institutional foresight* by evolving necessary policy perspectives and action plans. Working with perpetual seal and succession, they are to develop and retain *institutional memory* so that they can act on the basis of the experience, data and information that they would have gathered and processed. *Institutional expertise* is critical, and these bodies are to employ human resource which have domain expertise and talent. These bodies are intended to maintain *institutional integrity* by taking independent and objective decisions without governmental or industrial control. These values flow naturally if there is *institutional transparency and accountability*. It is in this perspective that we need to interpret Section 33A of the Water Act and 31A of the Air Act.

**10. Duty to Restitute v. Power to Punish and Penalise.**

**18.** There is a distinction between an action for environmental damages for restitution or remediation and imposition of penalties or fines levied at the culmination of a punitive action. This Court in *M.C. Mehta* (supra), while referring to the provisions of the Water Act, Air Act and the Environment Protection Act observed –

*“17. All the three Acts, referred to above, also contemplate the taking of the cognizance of the offences by the court. Thus, a person guilty of contravention of provisions of any of the three Acts which constitutes an offence has to be prosecuted for such offence and in case the offence is found proved then alone can he be punished with imprisonment and fine or both. The sine qua non for punishment of imprisonment and fine is a fair trial in a competent court. The punishment of imprisonment or fine can be imposed only after the person is found guilty.”*

*“24. Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender....”*

**19.** Therefore, Indian law distinguishes between the imposition of a monetary penalty or fine, which constitutes punitive action following a determination of guilt after adherence to the statutorily prescribed procedure, and the payment of damages for restitution or remediation as compensatory relief.

**20.** In this context, it is important to turn to one of the key principles of Indian environmental law – the *Polluter Pays* principle. This principle has been a part of Indian jurisprudence since 1996. In *Indian Council for Enviro-Legal Action v. Union of India*<sup>17</sup>, this Court held that according to the *Polluter Pays* principle the responsibility for repairing the damage is that of the offending industry. The Court further held that the powers of the

<sup>17</sup> (1996) 3 SCC 212

Central Government to issue directions under Section 5 read with Section 3 of the Environment Protection Act include the power to impose costs for remedial measures -

*“60. ... Section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government (or its delegate, as the case may be) to “take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment...”. Section 5 clothes the Central Government (or its delegate) with the power to issue directions for achieving the objects of the Act. Read with the wide definition of ‘environment’ in Section 2(a), Sections 3 and 5 clothe the Central Government with all such powers as are “necessary or expedient for the purpose of protecting and improving the quality of the environment”. The Central Government is empowered to take all measures and issue all such directions as are called for for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilise the amount so recovered for carrying out remedial measures. This Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case this Court finds that such directions are warranted. ...*

*67. The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the “Polluter Pays” principle. ...Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment (Protection) Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, RPCB or such other agency or authority, as they think fit.”*

(emphasis added)

**21.** Subsequently, the Court in *Vellore Citizens’ Welfare Forum v. Union of India*<sup>18</sup>, has held that the liability for environmental damage includes both a compensatory aspect and a restorative or remedial aspect-

*“12. ... The “Polluter Pays Principle” as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of “Sustainable Development” and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.”*

(emphasis added)

**22.** Application of the *Polluter Pays* principle not only includes payment for restoring the damaged environment, taking remedial action to deal with the damage and compensating for the direct harm caused, but also for avoiding pollution. In *Research Foundation for Science (18) v. Union of India*<sup>19</sup>, this Court held -

*“29. The polluter-pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The principle*

<sup>18</sup> (1996) 5 SCC 647

<sup>19</sup> (2005) 13 SCC 186.

also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case.”

(emphasis added)

**23.** The Court further held that the observations of the Court in *Deepak Nitrite Ltd. v. State of Gujarat*<sup>20</sup> that “mere violation of the law in not observing the norms would result in degradation of environment would not be correct” were confined to the facts of that case. The Court clarified that the actual degradation of the environment is not a necessary condition for the application of polluter pays principle, as long as the offending activities have the potential of degrading the environment -

*“30...The decision also cannot be said to have laid down a proposition that in the absence of actual degradation of environment by the offending activities, the payment for repair on application of the polluter-pays principle cannot be ordered. The said case is not relevant for considering cases like the present one where offending activities have the potential of degrading the environment. In any case, in the present case, the point simply is about the payments to be made for the expenditure to be incurred for the destruction of imported hazardous waste and amount spent for conducting tests for determining whether it is such a waste or not...”*

(emphasis added)

**24.** The distinction between a punitive action and a direction to pay environmental damages was made by the National Green Tribunal in *State Pollution Control Board, Odisha v M/s Swastik Ispat Pvt Ltd and Others*<sup>21</sup>. The Tribunal in this case was considering the legality of forfeiture of bank guarantees in case a defaulting industry did not comply with the regulatory conditions within the stipulated timeframe. The Tribunal expressly considered the opinion of the High Court in the impugned judgment before us today and held -

*“45. It is evident from the above facts and the reasoning that there was actual levy of penalty or damages by the DPCC and it was in consequence of such imposition of penalty/damages that the Units were called upon to furnish bank guarantees for granting of consent. In other words, bank guarantee was required to be furnished in furtherance to the imposition of a penalty or damages in that case. It was not an act de hors the imposition of penalty and had the element of punitive action. In the present case, it is not a consequence of a punitive or penal action but is in exercise of the powers vested in the Board in relation to recalling the conditions of consent and ensuring their implementation while also making compensatory provision for remedying the apprehended wrong to the environment. In the cases in hand, the Board has not imposed any penalty upon the units but has granted consent to them on certain conditions, none of which is punitive. They squarely fall within the power of the Board to prevent and control pollution in consonance with the scheme of the Acts concerned. Thus, on facts, the judgments of the High Court in *Splendor* (supra) do not have any application to the present case. In any case, we are of the considered view that asking for a bank guarantee as an interim measure for due performance of the conditions of the consent order being compensatory in nature, is not punitive.*

*46. We have already noticed above that there is a clear distinction between a penal and a compensatory provision. In such matters, the paramount question that would normally fall for determination before a court or tribunal would be whether the action contemplated is penal or compensatory. This issue shall have to be decided with reference to the facts of the case, the provisions of the law applicable and the intent of the authority concerned. Once it falls in the ‘compensatory’ field, then it will necessarily be beyond the purview of penalty....”*

(emphasis added)

<sup>20</sup> (2004) 6 SCC 402

<sup>21</sup> 2014 SCC OnLine NGT 13.

25. In *Swastik Ispat*, the Green Tribunal correctly interpreted Sections 33A and 31A of the Water and Air Acts. The judgment of the High Court in *Splendor* had not yet been taken up or considered by this Court at that time, the Tribunal had to distinguish the facts of *Splendor* to arrive at its own conclusion. In view of our reasoning and interpretation of Sections 33A and 31A of the Water and Air Acts, we have no hesitation to hold that the Green Tribunal is correct in its approach.

26. More recently, in *T.N. Godavarman Thirumulpad, In Re v. Union of India*<sup>22</sup>, this Court while considering the issue of illegal construction in the Corbett Tiger Reserve drew the distinction between action against persons violating the law and measures for restoration of the environmental damage. The Court held -

*“173. ... However, the principle of restoration of damaged ecosystem would require the States to promote the recovery of threatened species. We are of the considered view that the States would be required to take steps for the identification and effective implementation of active restoration measures that are localised to the particular ecosystem that was damaged. The focus has to be on restoration of the ecosystem as close and similar as possible to the specific one that was damaged.*

*175. We find that, bringing the culprits to face the proceedings is a different matter and restoration of the damage already done is a different matter. We are of the considered view that the State cannot run away from its responsibilities to restore the damage done to the forest. The State, apart from preventing such acts in the future, should take immediate steps for restoration of the damage already done; undertake an exercise for determining the valuation of the damage done and recover it from the persons found responsible for causing such a damage.”*

(emphasis added)

## 11. Principles.

27. Based on a review of precedents on this issue, the following legal position emerges—

I. There is a distinction between a direction for payment of restitutionary and compensatory damages as a remedial measure for environmental damage or as an *ex-ante* measure towards potential environmental damage on the one hand; and a punitive action of fine or imprisonment for violations under Chapters VII of the Water Act and VI of the Air Act on the other hand.

II. If directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute for example under chapters VII and VI of the Water and Air Acts respectively.

III. Indian environmental law has assimilated<sup>23</sup> the principle of *Polluter Pays* and there is also a statutory incorporation of this principle in our laws.<sup>24</sup> The invocation of this principle is triggered in the situations<sup>25</sup>; i) when an established threshold or prescribed requirement is exceeded or breached, and it does result in environmental damage, ii) when an established threshold or prescribed requirement is not exceeded or breached, nevertheless the act in question results in environmental damage and also iii) when a

<sup>22</sup> (2025) 2 SCC 641

<sup>23</sup> *Indian Council for Enviro-Legal Action* (supra n.12); *Vellore* (supra n 13).

<sup>24</sup> **Section 20. Tribunal to apply certain principles-** *The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.*

<sup>25</sup> Loveleen Bhullar, ‘The Polluter Pays Principle: Scope and Limits or Judicial Decisions’; in Shibani Ghosh (ed.), *Indian Environmental Law* (Orient BlackSwan 2019).

potential risk or a likely adverse impact to the environment is anticipated, irrespective of whether or not prescribed thresholds or requirements are exceeded or breached.

IV. Environmental regulators have a compelling duty to adopt and apply preventive measures irrespective of actual environmental damage. *Ex-ante* action shall be taken by these regulators and for this purpose a certain measure in exercise of powers under Sections 33A and 31A of the Water and Air Acts is necessary.

V. The powers of the Boards under Sections 33A and 31A of the Water and Air Acts are identical to that of Section 5 of the Environment Protection Act. Under Section 5, the Central Government or its delegate has the power to issue directions to the polluting industry to pay certain amounts and utilise the said fund for carrying out remedial measures. The Boards are empowered to take similar actions under Sections 33A and 31A of the Acts.

**28.** Having considered the principles that govern our environmental laws and on interpretation of Sections 33A and 31A of the Water and Air Acts, we are of the opinion that that the Division Bench of the High Court was not correct in restrictively reading powers of the Boards. We are of the opinion that these regulators in exercise of these powers can impose and collect, as restitutionary or compensatory damages fixed sum of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential or actual environmental damage.

**29.** There is no doubt that Section 33A of the Water Act and Section 31A of the Air Act give the State Boards powers to issue necessary directions for environmental restoration, remediation and compensation and for the payment of costs for the same. The National Green Tribunal's judgment in *Swastik Ispat* correctly identified the Boards powers to issue directions for payment of environmental damages under Section 33A of the Water Act and the Section 31A of the Air Act. A restrictive interpretation which fails to differentiate between environmental damages and punitive action significantly encumbers the Boards ability to discharge its duties.

**30.** The Board's powers under Section 33A of the Water Act and Section 31A of the Air Act have to be read in light of the legal position on the application of *Polluter Pays* principle as formulated and explained. This means that State Board cannot impose environmental damages in case of every contravention or offence under the Water Act and Air Act. It is only when the State Board has made a determination that some form of environmental damage or harm has been caused by the erring entity, or the same is so imminent, that the State Board must initiate action under Section 33A of the Water Act and Section 31A of the Air Act.

**31.** At this stage, we must also take note of the recent 2024 amendments<sup>26</sup> to the Water and Air Acts. Two major changes relevant for our consideration are that of

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<sup>26</sup> The Water (Prevention and Control of Pollution) Amendment Act, 2024, Jan Vishwas (Amendment of Provisions) Act, 2023.

decriminalisation<sup>27</sup> and introduction of the office of “Adjudicatory Officer”<sup>28</sup>. Even after the amendments, in our opinion, there is no conflict between the powers of the State Boards to direct payment of environmental damages under Sections 33A and 31A of the Water and Air Acts and the powers of the Adjudicating Officer to impose penalties under Chapter VII of the Water Act and Chapter VI of the Air Act. The decriminalization of offences under these Chapters has not removed the punitive nature of actions that can be taken under them. There remains a clear distinction between the nature of directions that the State Boards can issue under Sections 33A and 31A of the Water and Air Acts for payment of environmental damage and the determination by Adjudicating Officers. The former is compensatory in nature and will be resorted to when remedial measures are being undertaken to restore the degraded environment or pollution caused. The latter is a penalty for an offence under the law and is imposed with the objective of punishing the offender. This penalty collected here will not be specifically directed towards the restoration of the degraded environment (for instance, to decontaminate a pond that has been and impose penalties under sections 41, 41A, 42, 43, 44, 45A and 48. Appeal against such imposition lies before the National Green Tribunal as per section 45C. The Adjudicating Officer is further empowered to file a complaint for cognizance under section 49. Corresponding additions have been made under the Air Act as well under sections 39A (Adjudicating Officer), 39B (Appeal to NGT) and 43 (Cognizance of offences). polluted due to discharge of untreated sewage). It will be deposited in the Environmental Protection Fund that is to be set up under Section 16 of the Environment (Protection) Act. According to Section 16(3) of the EP Act, the Fund shall be used for, (a) the promotion of awareness, education and research for the protection of environment; (b) the expenses for achieving the objects and for purposes of the Air (Prevention and Control of Pollution) Act, 1981(14 of 1981) and under this Act; and (c) such other purposes, as may be prescribed.

#### **A. Board's Responsibility to Choose Appropriate Course of Action.**

**32.** Given their broad statutory mandate and the significant duty towards public health and environmental protection the Boards must have the power and distinction to decide the appropriate action against a polluting entity. It is essential that the Boards function effectively and efficiently by adopting such measures as is necessary in a given situation. The Boards can decide whether a polluting entity needs to be punished by imposition of penalty or if the situation demands immediate restoration of the environmental damage by the polluter or both.

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<sup>27</sup> Section 41 in the erstwhile Water Act has been substituted by sections 41 and 41A, whereby contravention of directions issued under section 20 (for obtaining information), 32 (for imposing emergency measures in case of pollution), 33 (for restraining apprehended pollution) or 33A would now be punishable by penalty alone; thereby replacing the earlier penal framework comprising of imprisonment *and* fine. Similar amendments done for section 42 (penalty for certain acts), section 43 for contravention of directions under section 24 (prohibiting use of stream or well), section 44 (prohibiting alteration of meter, etc.), and section 45A (residuary). Correspondingly, under the Air Act criminal liability under section 37 for contravention of directions under section 22 (restricting emission beyond standards) or section 31A has been restricted to fine alone. Similar amendments have been brought in section 38 and 39 (residuary). Punishment for imprisonment has been retained only for violation of section 21 and failure to pay penalty or additional penalty under section 39D.

<sup>28</sup> In the Water Act, section 45B puts in place a new office by the title of ‘Adjudicating Officer’, who would be an officer not below the rank of Joint Secretary to the Centre or Secretary to the State, appointed by the Central Government. Adjudicating Officer is empowered to inquire

### **B. Powers Must Be Guided by Transparency and NonArbitrariness.**

**33.** While we hold that the Boards have the power to direct the payment of environmental damages, we make it clear that this power must always be guided by two overarching principles. First, that the power cannot be exercised in an arbitrary manner; and second, the process of exercising this power must be infused with transparency.

**34.** This Court has underscored the importance of strong institutional frameworks in environmental governance that are effective, accountable and transparent. In *Bengaluru Development Authority v. Sudhakar Hegde*<sup>29</sup>, this Court held -

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

(emphasis added)

**35.** To ensure that the Boards impose restitutionary and the compensatory environmental damages in a fair transparent, nonarbitrary manner, with procedural certainty, necessary subordinate legislation in the form of rules and regulations must be notified. This shall include methods by which environmental damage is determined, and the consequent quantum of damages are assessed. They may also incorporate certain basic principles of natural justice for fairness in action. At present environmental damages are being levied by the Boards on the basis of certain guidelines issued by the Central Pollution Control Board in its document “*General framework for imposing environmental damage compensation*” issue in December, 2022. These guidelines seem to have been issued pursuant to the directions of the NGT.<sup>30</sup> It is important that these guidelines are reviewed thoroughly and issued in the form of Rules and Regulations. This will enable declaration of a law that applies and ensures its recognition and easy implementation.

**36.** These Rules must also create enabling framework for citizens to file complaints about environmental damage. Public participation in environmental protection has assumed great importance with climate change threatening to drastically disrupt our way of living. Boards, being the first line of defence against polluting activities, must provide easy accessibility and encourage public participation in their function and decision making.

**37.** While we have reversed the decision of the High Court on the principle of law and hold that the environmental regulators, the Pollution Control Boards, can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts, we issue the following consequential directions.

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<sup>29</sup> (2020) 15 SCC 63

<sup>30</sup> Pursuant to the NGT in its order in O.A. No. 606/2018 dated 24.04.2019.

**38.** In view of the fact that the show cause notices in these cases relate to the year 2006 and those show cause notices were set aside by the Single as well as by the Division Benches of the High Court, we are of the opinion that no purpose will be served in reviving the said show cause notices at this point of time. In the facts and circumstances of the case while we allow the appeal on the principle of law there shall not be any consequential direction for reviving the show cause notices which have been set-aside concurrently by the Single as well as by the Division Bench of the High Court. If certain amounts have been collected on the basis of the said show cause notices they shall be returned by DPCC within a period of six weeks from the date of this order, and if amounts are not deposited or collected the appellant, DPCC shall not take any further action.

**39.** For the reasons stated above:

(a) we allow these appeals and set aside the judgement and order dated 23.01.2012, passed by the Division Bench of the High Court of Delhi to the extent of declaration of law but direct that the show cause notices that have been set aside by the High Court shall not be revived.

(b) we direct that the Pollution Control Boards can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an *ex-ante* measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts.

(c) it is further directed that the power to impose or collect restitutionary or compensatory damages or the requirement to furnish bank guarantees as an *ex-ante* measure under Sections 33A and 31A of the Water and Air Acts shall be enforced only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation.

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[2025:RJ-JD:44705]



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil Writ Petition No. 645/2025

M/s. Tata Bricks Company (Old Name Vip Int Udyog), Chakk-66 G.b., Tehsil - Anoopgarh, District Sri Ganganagar Through Its Proprietor Jitin Kumar S/o Amarjeet Kumar, Aged About 27 Years, R/o Ward No. 11, Sri Vijaynagar, District Sri Ganganagar (Raj.).

----Petitioner

Versus

1. Rajasthan State Pollution Control Board, Through Its Member Secretary, Jhalana Industrial Area, Jhalana Dungari, Jaipur.
2. Environment Engineer (Env. Comp.), Rajasthan State Pollution Control Board, Headquarter, 4 Institutional Area, Jhalana Dungari, Jaipur.
3. Regional Officer, Rajasthan State Pollution Control Board, Plot No. Spl-33, Bichhwal Industrial Area, Bikaner

----Respondents

For Petitioner(s) : Mr. Manish Shishodia, Sr. Advocate  
with Mr. D.S. Thind  
Mr. Harshvardhan Rathore  
Mr. Vijay Kumar Aggarwal  
Mr. Hemant Kumar Jain  
Mr. Bhuvneshwar Singh Sodha  
Mr. Deepesh Birla  
Mr. Amit Kumar  
Ms. Sonika Punia  
Mr. S.R. Godara  
Mr. Hans Raj Choudhary

For Respondent(s) : Mr. Sajjan Singh Rathore, AAG with  
Mr. Pravin Kumar Choudhary  
Mr. Mahendra Bishnoi  
Mr. Sanjay Raj Paliwal  
Ms. Neelam Sharma, AGC

**HON'BLE MR. JUSTICE SUNIL BENIWAL**

**Order**

**Reportable**



**Reserved on** : **23/09/2025**

**Pronounced on** : **30/10/2025**

1. Learned Senior Counsel, Mr. Manish Shishodia, appearing on behalf of the petitioners, at the outset, submitted that he proposes to make some preliminary submissions, which are identical in the present writ petition, along with other writ petitions mentioned in **Schedule-A**, attached with this order, which may be treated as part of this order.

2. It is submitted by the learned Senior counsel that the present bunch of petitions have been filed feeling aggrieved of the imposition of environmental compensation by the respondent – Rajasthan State Pollution Control Board ("RSPCB"), pursuant to the directions issued by the National Green Tribunal ("NGT").

2.1 It is further submitted by the learned Senior Counsel that his preliminary submissions may be considered and decided first, without going into the merits of individual writ petitions and if his preliminary submissions are decided and are accepted, then the entire bunch of writ petitions could be decided accordingly. It is also submitted that if this Court is not inclined to accept the preliminary submissions, then the writ petitions may be posted again for deciding the same on merits.

2.2 Considering the submissions made above, the preliminary submissions are being considered and decided first.

3. At this stage, although this Court is not deliberating the factual aspects involved in this bunch of writ petitions, however, it would be relevant to produce background of the matter for clarity. Hence, for brevity, the facts of writ petition No.645/2025 are considered.





3.1 The petitioner, to operate as a brick kiln, had applied to RSPCB for grant of Consent to Operate on 26.11.2021 and the same was granted on 13.02.2022 (Annex.3) for the period from 26.11.2021 to 31.10.2031. However, in the meanwhile, a show cause notice dated 19.01.2022 (Annex.4) was issued by RSPCB in pursuance of directions issued by the NGT vide order dated 10.11.2021 in the case of Hakam Singh & Anr. Vs. State of Rajasthan & Ors.; O.A. No.262/2020 and imposition of Environmental Compensation was sought alleging operation of unit without obtaining Consent to Operate.

3.2 Thereafter, Environmental Compensation to the tune of Rs.15,60,000/- was levied vide order dated 08.03.2022 (Annex.5) passed by RSPCB. Aggrieved of the same, the petitioner preferred a writ petition being SBCWP No.7580/2022, which is pending and is tagged with the present bunch of writ petitions.

3.3 The petitioner also approached the NGT seeking impleadment as party in the aforesaid case pending before it. The NGT, while disposing of the application for impleadment on 11.07.2022, directed that the order dated 08.03.2022 (Annex.5) be treated a notice and granted time to the petitioner to file response to the same.

3.4 The petitioner thereafter submitted a reply pursuant to the aforesaid order passed by the NGT and thereafter the impugned show cause notice dated 18.12.2024 (Annex.7) came to be passed seeking to revoke consent to operate on account of non-deposition of Environmental Compensation been imposed vide order dated 08.03.2022.





3.5 In similar manner, Environmental Compensation has been imposed by RSPCB on the petitioners alleging operation of brick kilns without Consent to Operate. The said imposition of Environmental Compensation has been challenged in the present bunch of writ petitions alleging the same to have been levied without jurisdiction/authority.

4. The preliminary submission, which is common in all the writ petitions, is that the RSPCB is not competent under the law to impose Environmental Compensation. In support of such submission, learned Senior Counsel, Mr. Shishodia, made the following submissions:-

4.1 The RSPCB has exceeded its jurisdiction in imposing Environmental Compensation upon the petitioner as it has no authority under the law to do so and has relied upon the judgment passed by the Division Bench of the Allahabad High Court (Lucknow Bench) in the case of **Suez India Pvt. Ltd. Vs. Uttar Pradesh Pollution Control Board & other connected matters**, decided on 17.07.2025. While relying on the aforesaid judgment, the learned Senior Counsel has referred to para Nos.2, 13, 39, 43, 44, 47, 51, 54, 63, 66, 67, 78, 70, 80, 82 and 83 and while taking this Court to the above referred paragraphs of the judgment, he argued that the State Pollution Control Board has no power to impose Environmental Compensation on any person or industry and it can merely file an application before the NGT under Section 15 read with Section 18 of the National Green Tribunal Act, 2010 ("NGT Act") for issuance of a direction to the person concerned for demand of the same.



4.2. He also placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of **Kantha Vibhag Yuva Koli Samaj Parivartan Vs. State of Gujarat & Ors. [(2023) 13 SCC 525]** and referred to para Nos.3, 5, 6 and 14 to 17 of the aforesaid judgment and submitted that the NGT could not abdicate its jurisdiction and could not entrust judicial function to any administrative expert body. Such function is not delegable. He argued that Section 15 of the NGT Act empowers the NGT to award compensation to the victim of pollution and the environmental damages to provide for restitution of property, which has been damaged and for the restitution of environment. He also argued that it is the NGT alone, who has been entrusted by the Act and it is rather core adjudicatory function, which cannot be delegated to any administrative expert body.

4.3. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **D.P.C.C. Vs. Lodhi Property Co. Ltd. & other connected matters, [2025 SCC OnLine SC 1601]** while contending that power to impose or collect restitution or compensatory damages can be imposed only after detailing the principle and the procedure incorporating basic principles of natural justice in the subordinate legislation.

He further contended that the Hon'ble Apex Court has clearly opined that without there being any legislative regulatory mechanism, the State Pollution Control Board cannot demand Environmental Compensation.

The Hon'ble Apex Court, in the aforesaid judgment in the case of Lodhi Property Co. Ltd. (supra), has laid down that guidelines issued by the Central Pollution Control Board, in its





document "General Framework for Imposing Environmental Damages" which were issued in December, 2022, are required to reviewed thoroughly and issued in form of Rules & Regulations as this will enable declaration of law and ensure its recognition and easy implementation. While elaborating his submission, learned Senior Counsel has referred to para Nos.2, 3, 6, 12, 30, 31, 33, 35, 37 and 39 of the aforesaid judgment and while taking this Court to the above referred paragraphs of the said judgment, he submitted that the Hon'ble Apex Court, in concluding para, has specifically observed that the State Pollution Control Board, shall impose or collect restitutionary or compensatory damages only after detailing the principle and procedure incorporation basic principles of natural justice in the subordinate legislation. That being so, unless the necessary Rules & Regulations are framed and are incorporated and declared as a law, the State Pollution Control Board has no authority to impose Environmental Compensation upon the petitioners, based on the guidelines which have no legislative competence.

4.4. The Environmental Compensation has been calculated without any formula and there is no transparency as to on what basis the figure mentioned as Environmental Compensation has been arrived at by the RSPCB. He submitted that the alleged mechanism does not carry any statutory force as it has not been notified in the official gazette. There is no material available on record nor any impugned orders to reflect as to who has suffered damages or harmed. The impugned orders have been passed in cyclostyled manner without due application of mind.





Based on the above, learned Senior Counsel Mr. Shishodia submitted that the present bunch of petitions deserves to be allowed on the above preliminary submissions and the impugned orders passed in the present bunch of petitions are required to be quashed and set aside on this count alone and any amount recovered towards Environmental Compensation from the petitioners, during pendency of the present bunch of petitions, is required to be refunded.

5. Learned counsel Mr. Vijay Kumar Aggarwal, appearing in SBCWP No.6090/2022 while adopting the arguments as advanced by learned Senior Counsel Mr. Shishodia, submitted that appeal against the impugned order is not maintainable as they are composite orders passed under both the Air (Prevention and Control of Pollution) Act, 1981 ("Act of 1981") and the Water (Prevention and Control of Pollution) Act, 1974 ("Act of 1974"). He submitted that there is no provision provided under the Act of 1981 to appeal against the directions issued under Section 31 of the said Act. The remedy available under the Act of 1974 cannot be availed to appeal against the composite impugned orders and, therefore, the objections as raised by the respondents in their reply with regard to the maintainability of the present writ petitions deserve to be rejected.

5.1. He placed reliance on the judgment of the Hon'ble Apex Court in the case of **Tamil Nadu Pollution Control Board Vs. Sterlite Industries (I) Ltd. & Ors. [(2019) 19 SCC 479]**.

5.2. He also submitted that brick-kilns work on different scale and level, meaning thereby, the capability and investment, therefore,





mechanism to impose Environmental Compensation, without any prescribed mode of calculation, is also not comprehensible.

6. Learned Counsel Mr. Hemant Kumar Jain, appearing in SBCWP No.3088/2023 while adopting the arguments as advanced by learned Senior Counsel Mr. Shishodia and Mr. Vijay Kumar Aggarwal, further submitted that even if appeal is to be preferred, the same cannot be done as the Appellate Authority at Jaipur is not functioning and, therefore, writ petitions are required to be heard on merit.

7. Per contra, learned counsel for the RSPCB as well as the State, made the following submissions:-

7.1 The respondent-RSPCB was right in imposing Environmental Compensation upon the petitioner as an inspection was carried out in view of the direction issued by the NGT and during inspection, it was noted that the brick kilns, being operated by the petitioners, were running without Consent to Operate or in some cases, without seeking necessary conversion.

It is submitted that the Environmental Compensation is calculated for the period in which the petitioners-industries were found to be running without Consent to Operate and, therefore, the RSPCB was fully justified in imposing environmental compensation.

It is submitted that penalty for violation and environmental damages are two different subjects and as far as penalty is concerned, the same is for the purpose of penalizing the person for not adhering to the norms and the guidelines under which he is supposed to run brick-kilns and environmental compensation is a compensation, which is levied on the default for causing





environmental pollution and the environmental compensation is recovered as to restore the damage caused on account of such environmental damage.

7.2 The State Pollution Control Board is under obligation to consider the direction issued by the Central Pollution Control Board as per Section 18(1)(b) of the Act of 1981. Thus, in view of the same and considering the judgment rendered by the Hon'ble Apex Court in the case of **Paryavaran Suraksha Samiti & Ors. Vs. Union of India & Ors. [(2017) 5 SCC 326]**, the mechanism of calculation, imposition and recovery of environmental compensation has been formulated, which under clause (2) provides the procedure for calculating amount of environmental compensation. That being so, the action of the respondent-RSPCB in imposing Environmental Compensation cannot be held to be illegal or arbitrary in any manner.

7.3 The NGT, vide its order dated 11.02.2021, has delegated to the State Pollution Control Boards, the authority to assess and recover compensation from brick kilns, therefore, the impugned orders were rightly passed.

7.4 While responding to the submission made with regard to direction issued in the case of Lodhi Properties (supra), it is submitted on behalf of the respondents that the Hon'ble Apex Court has not declared the method of calculating as unconstitutional and, therefore, it cannot be concluded that there is anything wrong in the formula for calculation, rather, the direction has been given only to give statutory colour to the guidelines.





7.5 While responding the submissions with regard to damage suffered, it is submitted by the respondents that compensation has been imposed on the petitioners on account of non-compliance with requisite of obtaining/renewing Consent to Operate and, therefore, the question as to who has suffered damage does not arise.

7.6 The petitioners have not challenged the order dated 11.02.2021, passed by the NGT, pursuant to which, the impugned orders/notices have been issued to the petitioners imposing Environmental Compensation. The said order of NGT is the whole genesis in this litigation as every action ranging from site inspection to issuance of the impugned orders has been carried out as per direction issued in the said order and, therefore, without challenging the same, the present writ petitions are not maintainable. In support of this submission, learned counsel has placed reliance on the judgment of the Meghalaya High Court rendered in the case of **Dayanidhi Ventures Pvt. Ltd. Vs. Meghalaya State Pollution Control Board & Ors. [WP(C) No.338/2021, decided on 16.12.2021]**.

7.7 The judgment rendered in the case of Lodhi Properties (supra), does not help the petitioners as the impugned communications, passed due to the non-compliance of possessing Consent to Operate. Further, the Court has, in no manner, denied the authority of State Pollution Control Boards to levy environmental compensation.

7.8 The action of the RSPCB cannot be said to be arbitrary or unreasonable as show cause notices were issued to which respective replies were filed by the petitioners and subsequent



thereto, the impugned communications were issued. The 'Polluter Pays Principle' not only applies to emission of actual pollution but also to non-compliance of requisite permissions to maintain the environmental law compliance concerning pollution and Consent to Operate comes within the ambit of such compliance as action plan as to how the work will be carried and emissions would be maintained has to be submitted before NOC can be issued.

7.9 The Allahabad High Court, in the case of **M/s. Ramesh Dyeing and Washing, Ghaziabad Vs. State of U.P. [Writ(C) No.7305/2025]**, decided on 21.08.2025], dismissed the writ petition while relying on the judgment of the Hon'ble Apex Court in the case of Lodhi Properties (supra) and observed that Pollution Control Board has jurisdiction to impose Environmental Compensation.

7.10 In response to the submission made by Mr. Vijay Kumar Aggarwal, it is submitted that the impugned communications are composite in nature, however, remedy of petitioners lies before the NGT itself as the communications have been issued in compliance of the direction of the NGT.

7.11 While responding to the submissions made by Mr. Hemant Kumar Jain, it is submitted that the appellate authority has been notified on 18.09.2025 and, therefore, the submission made by him is incorrect on the face of it. Thus, the petitioner very well has an alternative remedy to approach the Appellate Authority. Reliance has been placed on the judgment of Allahabad High Court delivered in the case of **Nagar Palika Parishad Vs. State of UP & Ors. [(2024) ILR 12 All. 741]**.





8. Heard learned counsel for the parties and perused the record.

9. One of the argument raised by the respondents is with regard to the maintainability of writ petitions in view of the fact that the petitioners have equally efficacious alternative remedy.

9.1 This Court deems it appropriate to deal with the issue of alternative remedy at first.

9.2 The counsel for the petitioners, while making preliminary submissions, have submitted that RSPCB exceeded its jurisdiction in calculating and imposing Environmental Compensation upon the petitioners, more particularly in view of not having legislative competence to take such action.

9.3 It may also be noted that order/show cause notice is challenged by the petitioners on ground of it being without jurisdiction. If order/action is without jurisdiction, then writ petition is maintainable despite alternative remedy being available, as has been held by the Hon'ble Apex Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors. [(1998) 8 SCC 1]**, wherein it was observed as under:-

*"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Qua Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*

*15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that*



*if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.*

**But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.**

*There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.*

16. *Rashid Ahmad v. Municipal Board, kairana, [1950]1SCR566, laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting Writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. The Income Tax Investigation Commissioner, [1954]25ITR167(SC) which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that Writ Petition under Article 226 could still be entertained in exceptional circumstances.*

XXX XXX

*20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."*

9.4 It is further to be noted that the impugned orders are composite in nature as they have been passed under the Act of 1981 so also Act of 1974, thus remedy of appeal cannot be availed as held by the Hon'ble Apex Court in the case of Sterlite Industries (supra) wherein the Court observed as under:-





“35...At this juncture, it is important to state that Section 33B of the Water Act and Section 31B of the Air Act were both enacted on 18.10.2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued Under Section 33A of the Water Act are appealable to the NGT, directions issued Under Section 31A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given Under Section 31A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders.....However, Shri Sundaram argued, with particular reference to the explanation to Section 31A of the Air Act that "directions" partake of the nature of "orders" when closure of any particular industry or stoppage of supply of electricity qua any single industry is made, and therefore, such directions are appealable as orders Under Section 31 of the Air Act. This argument is also of no avail as Section 33A of the Water Act contains an identical explanation to that contained in Section 31A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable.”

Thus, this Court is well within its jurisdiction to entertain the present writ petitions.

10. Now, I propose to deal with the issue submitted in the form of preliminary submission, which is as to whether Rajasthan State Pollution Control Board is competent to impose Environmental Compensation, as has been imposed in the orders impugned in the present bunch of petitions.

10.1 In order to adjudicate the above issue, it would be appropriate to first consider the judgment of the Hon'ble Apex Court in the case of Lodhi Properties (supra). Before considering the said judgment, it would be appropriate to reproduce certain relevant paragraphs of the judgment, which are reproduced as under:-





“31. At this stage, we must also take note of the recent 2024 amendments to the Water and Air Acts. Two major changes relevant for our consideration are that of decriminalisation and introduction of the office of “Adjudicatory Officer”. Even after the amendments, in our opinion, there is no conflict between the powers of the State Boards to direct payment of environmental damages under Sections 33A and 31A of the Water and Air Acts and the powers of the Adjudicating Officer to impose penalties under Chapter VII of the Water Act and Chapter VI of the Air Act. The decriminalization of offences under these Chapters has not removed the punitive nature of actions that can be taken under them. There remains a clear distinction between the nature of directions that the State Boards can issue under Sections 33A and 31A of the Water and Air Acts for payment of environmental damage and the determination by Adjudicating Officers. The former is compensatory in nature and will be resorted to when remedial measures are being undertaken to restore the degraded environment or pollution caused. The latter is a penalty for an offence under the law and is imposed with the objective of punishing the offender. This penalty collected here will not be specifically directed towards the restoration of the degraded environment (for instance, to decontaminate a pond that has been polluted due to discharge of untreated sewage). It will be deposited in the Environmental Protection Fund that is to be set up under Section 16 of the Environment (Protection) Act. According to Section 16(3) of the EP Act, the Fund shall be used for; (a) the promotion of awareness, education and research for the protection of environment; (b) the expenses for achieving the objects and for purposes of the Air (Prevention and Control of Pollution) Act, 1981(14 of 1981) and under this Act; and (c) such other purposes, as may be prescribed.

**A. Board’s Responsibility to Choose Appropriate Course of Action.**

32. Given their broad statutory mandate and the significant duty towards public health and environmental protection the Boards must have the power and distinction to decide the appropriate action against a polluting entity. It is essential that the Boards function effectively and efficiently by adopting such measures as is necessary in a given situation. The Boards can decide whether a polluting entity needs to be punished by imposition of penalty or if the situation demands immediate restoration of the environmental damage by the polluter or both.

**B. Powers Must Be Guided by Transparency and Non-Arbitrariness.**

33. While we hold that the Boards have the power to direct the payment of environmental damages, we make it clear that





*this power must always be guided by two overarching principles. First, that the power cannot be exercised in an arbitrary manner; and second, the process of exercising this power must be infused with transparency.*

...

**35. To ensure that the Boards impose restitutionary and the compensatory environmental damages in a fair transparent, non- arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of rules and regulations must be notified. This shall include methods by which environmental damage is determined, and the consequent quantum of damages are assessed. They may also incorporate certain basic principles of natural justice for fairness in action. At present environmental damages are being levied by the Boards on the basis of certain guidelines issued by the Central Pollution Control Board in its document "General framework for imposing environmental damage compensation" issue in December, 2022. These guidelines seem to have been issued pursuant to the directions of the NGT. It is important that these guidelines are reviewed thoroughly and issued in the form of Rules and Regulations. This will enable declaration of a law that applies and ensures its recognition and easy implementation.**

36. These Rules must also create enabling framework for citizens to file complaints about environmental damage. Public participation in environmental protection has assumed great importance with climate change threatening to drastically disrupt our way of living. Boards, being the first line of defence against polluting activities, must provide easy accessibility and encourage public participation in their function and decision making.

37. While we have reversed the decision of the High Court on the principle of law and hold that the environmental regulators, the Pollution Control Boards, can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an ex-ante measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts, we issue the following consequential directions.

39. For the reasons stated above:

- (a) we allow these appeals and set aside the judgement and order dated 23.01.2012, passed by the Division Bench of the High Court of Delhi to the extent of declaration of law but direct that the show cause notices that have been set aside by the High Court shall not be revived.
- (b) we direct that the Pollution Control Boards can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank





*guarantees as an ex-ante measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts.*

- (c) *it is further directed that the power to impose or collect restitutionary or compensatory damages or the requirement to furnish bank guarantees as an ex-ante measure under Sections 33A and 31A of the Water and Air Acts shall be enforced only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation.”*

10.2 A perusal of the above judgment, more particularly, the paragraphs as reproduced above, reflects that the Hon'ble Apex Court, in para No.39 of the judgment, has specifically concluded and directed that power to impose or collect restitutionary or compensatory damages or requirement of furnishing a bank guarantee as an ex-ante measure under Sections 33A and 31A of the Water and Air Act respectively shall be imposed only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation. Meaning thereby, the Hon'ble Apex Court, while considering the issue of imposition of the Environmental Compensation by the State Pollution Control Boards, observed that the State Pollution Control Boards can impose restitutionary or compensatory environmental damages but only after having competence of subordinate legislation in the form of Rules & Regulations.

In para No.35 of the said judgment, the Hon'ble Apex Court has further observed that to ensure that the Boards can impose restitutionary and compensatory damages in a fair, transparent, and non-arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of Rules and Regulations must be notified. This shall include methods by which environmental damages is determined, and the consequent quantum of damages



are assessed. While bringing such Rules & Regulations, it may also incorporate certain principles of natural justice for fairness in action.

It is further observed that presently there is no legislation providing method of calculating Environmental Compensation and environmental damages being levied by the Boards on the basis of the certain guidelines issued by the Central Pollution Control Board in its document "General Framework for imposing environmental damage compensation" issued in December, 2022. It is noted by the Hon'ble Apex Court that these guidelines seem to have been issued pursuant to the directions of the NGT and the same are required to be reviewed thoroughly and are required to be issued in the form of Rules & Regulations.

10.3 Considering the observations made by the Hon'ble Apex Court, this Court is of the firm opinion that the RSPCB could not have demanded Environmental Compensation while considering the fact that there is no statutory backing with regard to the mechanism to calculate Environmental Compensation so also to have an authority to demand such Environmental Compensation.

10.4 Counsel for the respondents have stated that the Allahabad High Court, after considering the judgment of the Hon'ble Apex Court in the case of Lodhi Properties (supra), dismissed the writ petitions, however, it is noted that the Allahabad High Court has considered the only issue with regard to competence of the State Pollution Control Board and has not considered the directions issued by the Hon'ble Apex Court, which mandated that the State Pollution Control Boards could demand Environmental Compensation only after framing Rules & Regulations.





10.5 There is no dispute to the fact that presently the formula, as applied by the RSPCB is based on the guidelines "Mechanism of Calculation, Imposition and Recovery of Environmental Compensation". These guidelines have no statutory backing and, therefore, considering the judgment of the Hon'ble Apex Court, the RSPCB has no authority of law in demanding such Environmental Compensation. It is also to be noted that in the present case, demands were raised in the year 2022-23. The Hon'ble Apex Court has though decided the issue regard to the competency of State Pollution Control Boards to impose Environmental Compensation recently in the case of Lodhi Property (supra) which was decided on 04.08.2025, and the demands raised in the present writ petitions are prior to it, yet considering the settled law on the prospective and retrospective operation of the judgments rendered by the Courts, which does not require much deliberation, it is clear that the observations made by the Hon'ble Apex Court in the said case would apply to impugned orders in the present bunch of writ petitions. The said of proposition of law was recently discussed by the Hon'ble Apex Court in the case of **Kanishk Sinha & Anr. Vs. The State of West Bengal & Anr.; 2025 INSC 278** wherein the Court observed that whereas the law made by the Legislature is always prospective in nature unless it has been specifically stated retrospective, the reverse is true for judicial pronouncements. The judgment of the Court will always be retrospective in nature unless judgment itself specifically states that the judgment will operate prospectively. That being so, once it is held by the Hon'ble Apex Court that the Environmental Compensation could only be





imposed by the State Pollution Control Boards after it attains the legislative colour, the demand raised by the State Pollution Control Boards could not be allowed to stand and the impugned orders in the present bunch of petitions deserves to be quashed and set aside.

11. Another ground which has been raised by the learned counsel for the respondents to the effect that the order passed by NGT in pursuance of which the impugned orders have been passed by the RSPCB, has not been challenged before this Court, this Court is of the opinion that when the entire exercise of inspection and imposition of the environmental compensation has been carried out by the RSPCB then, it can be safely concluded that the said exercise constitutes an independent action which can be challenged under writ jurisdiction without challenging the order of NGT considering the fact that the impugned orders are composite in nature; more particularly, when the core issue is with regard to the competence and jurisdiction of the RSPCB to levy environmental compensation.

12. Some additional submissions have also been made by the petitioners as well as by the respondents on some other issues but this Court does not deem it necessary to examine the same as the core issue is only with regard to the competence of the RSPCB to impose impose Environmental Compensation in absence of statutory backing.

13. In view of the above, the preliminary submissions, as raised by the petitioners, is accepted. The writ petitions are allowed. The impugned orders/notices/communications in the present writ petitions are hereby quashed and set aside.



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14. It is hereby directed that if any amount has been collected or deposited in lieu of demand raised vide impugned orders/notices/communications, the same shall be refunded to the respective petitioners within a period of six weeks from the date of receipt of certified copy of this order and if amounts are not deposited or collected, the respondent-RSPCB shall not take any further action.

15. However, the respondent-RSPCB can impose and collect restitutionary and compensatory damages so also damages qua potential environmental damage while exercising powers under Sections 33A of the Act of 1974 and 31A of the Act of 1981 provided the subordinate legislation is enacted detailing the principles and procedure incorporating basic principles of natural justice.

16. All pending applications, if any, shall also stand disposed of accordingly.

**(SUNIL BENIWAL),J**

skm/-


**Schedule-A**

S.No.	Case No.	Title
1.	CW 6090/2022	Sagar Bricks Vs. Raj. State Pollution Control Board
2.	CW 6434/2022	Tara Bricks Ind Vs. Raj. State Pollution Control Board
3.	CW 7580/2022	Tata Brick Co. Vs. Raj. State Pollution Control Board
4.	CW 7588/2022	Tata Brick Vs. Raj. State Pollution Control Board
5.	CW 7683/2022	Tata Brick Chak 7 APM Vs. Raj. State Pollution Control Board
6.	CW 8086/2022	Shree Mahadev Int Udyog Vs. Raj. State Pollution Control Board
7.	CW 9250/2022	M/s Anil Bricks Co. Vs. Raj. State Pollution Control Board
8.	CW 10175/2022	Shree Gurunanak Bricks Vs. Raj. State Pollution Control Board
9.	CW 10401/2022	Jai Sri Krishna Int Udyog Vs. Raj. State Pollution Control Board
10.	CW 12532/2022	M/s. Mandeep Singh Ranjeet Singh Vs. Raj. State Pollution Control Board
11.	CW 14698/2022	Satya Narayan Shiv Kumar Vs. Raj. State Pollution Control Board
12.	CW 15928/2022	Satguru Int Udyog Vs. Raj. State Pollution Control Board
13.	CW 15941/2022	Sri Balaji Bricks Udhog Vs. Raj. State Pollution Control Board
14.	CW 16809/2022	M/s. Saharan Int Ydyog, Chak 5 MLD Vs. Raj. State Pollution Control Board
15.	CW 16810/2022	M/s. Shree Shyam Kilan Company Vs. Raj. State Pollution Control Board
16.	CW 16836/2022	Sagar Bricks Vs. Raj. State Pollution Control Board
17.	CW 16934/2022	M/s. Balaji Suppliers Vs. Raj. State Pollution Control Board
18.	CW 17254/2022	M/s. Choudhary Bricks Udyog Vs. Raj. State Pollution Control Board
19.	CW 17569/2022	M/s. Kamal Int Udhog Vs. Raj. State Pollution Control Board
20.	CW 17590/2022	M/s. Bika Bricks Vs. Raj. State Pollution Control Board
21.	CW 17854/2022	M/s. Shree Shyam Bricks Vs. Raj. State Pollution Control Board
22.	CW 18322/2022	Jai Vaishno Int Udhog Vs. Raj. State Pollution Control Board
23.	CW 19022/2022	M/s. Jyani Bricks Industries Vs. Raj. State Pollution Control Board
24.	CW 19179/2022	M/s. Khan Int Udyog Vs. Raj. State Pollution Control Board
25.	CW 19187/2022	M/s. Mohan Lal Jakhar Bricks Vs. Raj. State Pollution Control Board
26.	CW 19422/2022	M/s. Jyani Int Udyog Vs. Raj. State Pollution Control Board





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27.	CW 1/2023	M/s. Murliwala Int Udhyog Vs. Raj. State Pollution Control Board
28.	CW 77/2023	M/s. Prince Bricks Co. Vs. Raj. State Pollution Control Board
29.	CW 340/2023	M/s. Bhadu Kiln Udhyog Vs. Raj. State Pollution Control Board
30.	CW 1167/2023	M/s. Angri Devi Vs. Raj. State Pollution Control Board
31.	CW 1171/2023	M/s. Jai Bricks Vs. Raj. State Pollution Control Board
32.	CW 2065/2023	M/s. Bika Int Udhyog Vs. Raj. State Pollution Control Board
33.	CW 2454/2023	M/s. Akal Int Udhyog Vs. Raj. State Pollution Control Board
34.	CW 3087/2023	M/s. Balaji Bricks Vs. Raj. State Pollution Control Board
35.	CW 3088/2023	M/s. S.S. Bricks Industries Vs. Raj. State Pollution Control Board
36.	CW 12951/2023	Shri Veer Tejaji Int Udhyog Vs. Raj. State Pollution Control Board
37.	CW 13152/2023	M/s. Champa Devi Bricks Udhyog Vs. Raj. State Pollution Control Board
38.	CW 15138/2023	M/s. Shri Balaji Int Udhyog Vs. Raj. State Pollution Control Board
39.	CW 17165/2023	M/s. Jai Durga Int Udhyog Vs. Raj. State Pollution Control Board
40.	CW 17755/2023	M/s. Kooldiya Int Udhyog Vs. Raj. State Pollution Control Board
41.	CW 14245/2024	KBI Industries Vs. Raj. State Pollution Control Board
42.	CW 16120/2024	M/s. Kalgidhar Bricks Vs. Raj. State Pollution Control Board
43.	CW 17118/2024	M/s. Kamra Kiln Company Vs. Raj. State Pollution Control Board
44.	CW 17895/2024	M/s. Shri Ganesh Int Udhyog Vs. Raj. State Pollution Control Board
45.	CW 18137/2024	M/s. Waheguru Int Udhyog Vs. Raj. State Pollution Control Board
46.	CW 18573/2024	M/s. Balana Int Udhyog Vs. Raj. State Pollution Control Board
47.	CW 99/2025	M/s. Raj Int Udhyog Vs. Raj. State Pollution Control Board
48.	CW 189/2025	M/s. Chug Brick Industries Vs. Raj. State Pollution Control Board
49.	CW 657/2025	M/s. Shree Shyam Int Udhyog Vs. Raj. State Pollution Control Board
50.	CW 664/2025	M/s. Tata Bricks Vs. Raj. State Pollution Control Board
51.	CW 669/2025	M/s Tata Brick Vs. Raj. State Pollution Control Board
52.	CW 673/2025	M/s. Arora Bricks Industries Vs. Raj. State Pollution Control Board

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53.	CW 678/2025	M/s. Tata Bricks Industries Vs. Raj. State Pollution Control Board
54.	CW 818/2025	M/s. Mandeep Singh Ranjeet Singh Vs. Raj. State Pollution Control Board
55.	CW 3105/2025	M/s. S.M. Bricks Suppliers Vs. Raj. State Pollution Control Board
56.	CW 19009/2024	M/s. Rishabh Traders Vs. Raj. State Pollution Control Board





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**REJOINDER AFFIDAVIT ONBEHALF OF APPELLANT IN APPEAL 13 OF 2024, NGT-EZ.**

1 message

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**Sankar Pani** <sankarprasadpani@gmail.com>  
To: Papiya Banerjee Bihani <pbanerjeebihani@gmail.com>

Thu, Dec 11, 2025 at 5:31 PM

Dear Sir/Madam, please find the attachment.

--

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