

**BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL
BENCH AT NEW DELHI
ORIGINAL APPLICATION NO. 176 OF 2022**

IN THE MATTER OF:

AMAN CHAUDHARY

...APPLICANT

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENT

NDOH: 21.05.2025

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New Delhi
Dated: 19.05.2025

PALLAVI PRATAP
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**BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL
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IN THE MATTER OF:

AMAN CHAUDHARY

...APPLICANT

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENT

**ADDITIONAL AFFIDAVIT ON BEHALF OF RESPONDENT NO. 2
IN COMPLIANCE WITH THE ORDER DATED 28.03.2025
PASSED BY THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

MOST RESPECTFULLY SHOWETH:

That I, Nagendra Singh, Son of Shri Ravendra Singh,
Resident of 113 MIG-2 Mahabalipuram, Kanpur Nagar,
State of Uttar Pradesh- 208017, do hereby solemnly affirm
and state on oath as under:



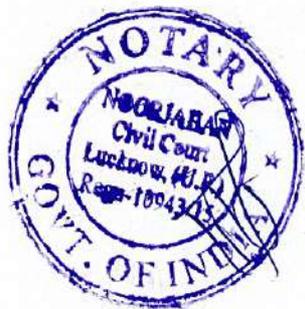
1. That I, am the respondent no. 2 and am acquainted with the facts and circumstances of the case and as such competent and authorized to swear this affidavit.
2. That the contents of the present affidavit have been drafted by my counsel on my instructions and the contents of the same are true to my knowledge and nothing material has been concealed therefrom.
3. That the Hon'ble National Green Tribunal, Principal Bench New Delhi (hereinafter referred to as "Hon'ble Tribunal") vide its order dated giving 28.03.2025 has directed the respondent no. 2 to file objections/reply to the additional affidavit filed by UPPCB and give any additional relevant facts supported by documents if necessary.
4. That as per the affidavit filed by the UPPCB, the period of violation with respect to non-obtainance of the consent to operate (Air/Water) is calculated to be 1034



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days i.e., from 07.04.2018 to 03.02.2021 and from 13.12.2021 to 02.04.2022.

5. That after obtaining the requisite Environmental Clearance, a mining lease was executed in favour of respondent No. 2 on 07.04.2018 for a period of five years. However, by notice dated 03.02.2021, mining activities were halted due to allegations of alleged illegal mining and a demand was raised. Aggrieved by this, respondent No. 2 filed Revision No. 48(R)/SM/2021 under Rule 78 of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963, which was dismissed on 09.08.2021. True copy of the notice dated 03.02.2021 is filed herewith as **Annexure no. 1.**
6. That thereafter, respondent No. 2 preferred Writ C No. 18966 of 2021 before the Hon'ble High Court at Allahabad, wherein interim protection was granted vide order dated 22.09.2021, directing the respondent to deposit 50% of the demanded amount and furnish



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security for the remaining sum. Accordingly, respondent No. 2 deposited ₹1,20,00,000/- through Challan No. AKV210012782 dated 20.11.2021 and submitted the required security before the District Magistrate, Kanpur Nagar.

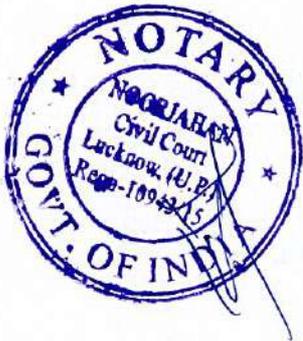
7. That the above-mentioned writ was subsequently allowed vide order dated 21.08.2023 wherein the matter was remitted back to the District Magistrate, Kanpur Nagar for passing a fresh order after taking into account the contentions of the petitioner.
8. That thereafter, the District Magistrate passed a fresh order against which is an Appeal is still pending before the Commissioner, Kanpur.
9. That meanwhile, the District Magistrate granted permission to resume mining operations vide letter dated 13.12.2021 for Gata No. 2Mi (10.50 hectares), situated in Village Katari Sunaudha, Tehsil Bilhaur, District Kanpur Nagar. respondent No. 2 resumed



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mining on 17.12.2021, which continued until 31.05.2022.

10. That, thereafter, mining operations were again halted on inspection conducted by the District Magistrate's office, and have remained non-operational since 31.05.2022.
11. That subsequent thereto, the mining lease granted to respondent No. 2 stood expired on 06.04.2023.
12. That in light of the above, it is submitted that the penalty imposed upon respondent No. 2 for not obtaining Consent to Establish (CTE) and Consent to Operate (CTO) under the Water/ Air Act is misconceived and without legal basis. The Hon'ble Tribunal in order dated 30.05.2023 passed in the present Original Application, has categorically held that it shall be mandatory for all project proponents of riverbed sand mining (except manual excavation) to obtain CTE/CTO from the concerned State Pollution Control Boards



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only **with effect from 01.09.2023**. The relevant extract is reproduced below for ready reference:

*“53.However in whichever category – red or orange – excavation of sand from the River Bed (excluding manual excavation) is so notified to fall, it shall be mandatory for all the project proponents to obtain CTE/CTO from concerned SPCB/PCC and with effect from **01.09.2023** no river sand mining will be allowed to continue to operate in the entire India without obtaining consents from Concerned SPCB/PCC...”*

True copy of the order dated 30.05.2023 is filed herewith as **Annexure no. 2.**

10. That in view of the above binding pronouncement, and considering the fact that :

(a) respondent No. 2's mining activities had ceased since 31.05.2022, and

(b) the lease itself expired on 06.04.2023 — both events occurring prior to the NGT-mandated cut off of 01.09.2023 — the imposition of penalty on the ground



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of absence of CTO/CTE is wholly unsustainable in law and deserves to be set aside.

11. That the respondent No. 2 most respectfully submits that the additional affidavit filed by the Uttar Pradesh Pollution Control Board (UPPCB) mentions the use of the following formula for calculating Environmental Compensation (EC) $EC = PI \times N \times R \times S \times LF$, where:

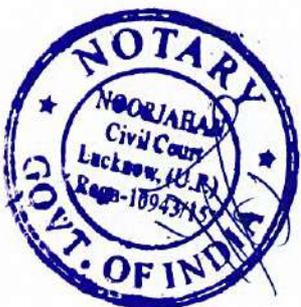
- PI is the Pollution Index of the industrial sector,
- N is the number of days of violation,
- R is a monetary factor (₹),
- S is the scale of operation, and
- LF is the location factor.

However, the affidavit fails to disclose the origin or legal basis for applying this formula to the respondent No. 2, nor does it establish how or why this methodology is appropriate in the facts and context of the instant case.



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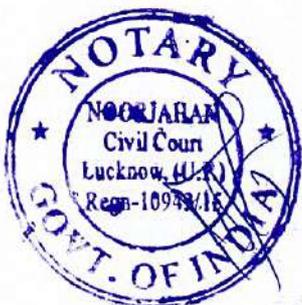
13. That it is respectfully submitted that this Hon'ble Tribunal in O.A. No. 593/2017, *Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors.*, had indeed directed the Central Pollution Control Board (CPCB) to constitute a committee for developing a uniform and rational method for calculating environmental compensation and penalty for industrial violations.
14. That pursuant thereto, the committee constituted by the CPCB recommended and the above-mentioned formula and the same was considered and accepted by this Hon'ble Tribunal in its order dated 20.05.2020. True copy of the order dated 20.05.2020 is annexed herewith and marked as **Annexure no. 3.**
15. That subsequent to the Tribunal's acceptance of the recommendations, the CPCB issued an Office Memorandum bearing No. F.No. B-400(S)IPC-



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III/2019-20 dated 04.09.2019, which clearly adopted the formula in a limited context, specifically for categories "a", "b", and "c", and expressly set aside all previous methods for imposition of environmental compensation. True copy of the said office memorandum dated 04.09.2019 is filed herewith and marked as **Annexure no. 4.**

16. That a plain and careful reading of the said Office Memorandum and the Tribunal's order dated 20.05.2020 demonstrates that the use of the formula is restricted only to specific classes of violations, and does not apply universally to all entities.
17. The respondent No. 2 does not fall within any of the categories "a", "b", or "c" as enumerated in the CPCB's own framework and memorandum. Therefore, the application of the said EC formula to the present matter is erroneous, arbitrary, and



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contrary to the binding guidelines laid down by both the CPCB and this Hon'ble Tribunal.

18. That the issue pertaining to the power of UPPCB to impose EC/Penalty and the methodology to be adopted for calculation of the same is sub judice in is WRIT - C No. - 1643 of 2023 M/S *Vaishnavi Enterprises Thru. Prop. Nagendra Singh And Anr Vs. State Of Uttar Pradesh.*
19. That in light of the above-mentioned facts and circumstances, it is humbly submitted that the formula adopted for calculation of EC/Penalty in the instant case is erroneously applied and therefore unsustainable in law.
20. That the Annexures annexed to the present Affidavit are true copy of their respective originals.
21. That the present Additional Affidavit on behalf of the respondent no. 2 Sh. Nagendra Singh, is being



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submitted before this Hon'ble Tribunal for your kind perusal and consideration.

DEPONENT



VERIFICATION

Verified at Lucknow on ^{NOTARY} 10 day of May, 2025 that the contents of above affidavit are true and correct to my knowledge based on records and information received and believed to be true, no part of it is false and nothing material has been concealed therefrom.

DEPONENT



Seen and Verified before me.

NOORJAHAN
Advocate & Notary
Civil Court, Lucknow
Registration No. 10943/18

Person & Identify the document/Executed who has signed/put the T.L. before me

ANNEXURE-NO-1

कार्यालय जिलाधिकारी, कानपुर नगर।

पत्रांक 443/सीए उपखनिज/2021

दिनांक 02.12.2021

श्री श्रीमती सुपुर्वाधिकारी, पी० भी नगेंद्र सिंह
निवासी 113 एम०आइ०जी०-2,
महाबलीपुरम कानपुर नगर

नोटिस

आपके पास में तहसील बिल्हौर विभाग साधारण बालू खनन क्षेत्र नाम कटरी सुगौदा को गाटा संख्या-2मि० रकबा 10.50हे० में ई-निविदा राह ई-मीलागी प्रणाली के माध्यम से 5 वर्षीय खनन पट्टा स्वीकृत था। आप द्वारा दिनांक 07.04.2018 को पट्टाविलेख का निष्पादन कराते हुये खनन कार्य प्रारम्भ किया गया। उक्त खनन क्षेत्र का निरीक्षण निदेशक महोदय द्वारा दिनांक 11.01.2021 को किया था, जिसमें स्वीकृत खनन पट्टे के बाउण्ड्री के कोऑर्डिनेट का सही विनियमन न होने से क्षेत्र में हो रहे खनन की स्थिति का सही आकलन न हो पाने के कारण विस्तृत पैमाइश एवं खनन के सही आकलन हेतु जी० टी० का गठन किया गया था।

उक्त टीम द्वारा आपके प्रतिनिधि की उपस्थिति में क्षेत्र की पैमाइश पट्टा अनुबन्ध में दिये गये सियाँ कोऑर्डिनेट्स के अनुसार की गयी तथा तदनुसार सीमा रत्तणों को चिन्हित किया गया। उक्त क्षेत्र का निरीक्षण पूर्व में उप जिलाधिकारी, बिल्हौर द्वारा दिनांक 11.12.2020 को भी किया गया था। उप जिलाधिकारी की निरीक्षण आख्या दिनांक 12.12.2020 में 54219 घनमीटर अवैध बालू का खनन/परिवहन स्वीकृत क्षेत्र से बाहर गाटा संख्या-1मि० से रकबा 5.4219हे० क्षेत्रफल में होना पाया गया था, जिसकी पुष्टि जी० टी० के निरीक्षण में हुई।

आपका उक्त कृत्य उ०प्र० उपखनिज (परिहार) नियमावली 1963 के नियम-3, 57, 70 व खान एवं खनिज (विकास एवं विनियमन) अधिनियम 1957 की धारा 4, 21 एवं पट्टा विलेख की शर्तों का उल्लंघन है।

उप जिलाधिकारी बिल्हौर की आख्या दिनांक 12.12.2020 एवं निदेशक महोदय के पत्र दिनांक 14.01.2021 के अनुसार आप द्वारा स्वीकृत क्षेत्र से बाहर गाटा संख्या-1मि० में रकबा 5.4219हे० क्षेत्रफल व 54219 घनमीटर साधारण बालू का अवैध खनन/परिवहन कर लिया गया है, जिसकी रायल्टी रू०-35,24,235.00, खनिज मूल्य रू०-1,76,21,175.00 (रायल्टी का पांच गुना) कुल रू०-2,11,45,410.00 (दो करोड़ पचास लाख पैतालिस हजार चार सौ दस रू० मात्र) एवं नियम-57 के अनुसार रू०-27,10,950.00 (पाँच लाख रू० प्रति हेक्टेयर की दर से) अर्धदण्ड होता है। साथ ही दिनांक 11.01.2021 को निदेशक महोदय के निरीक्षण के दौरान आपके खनन क्षेत्र से 02 ओवरलोड वाहन पकड कर थाना बिकूर की सुपुर्दगी में दिया गया, जिसमें प्रति वाहन, उ०प्र० उपखनिज (परिहार) नियमावली, 1963 के नियम-59(6) के अन्तर्गत प्रत्येक चूक पर रू०-25,000.00 की दर से शास्ति रू०-50,000.00 आरोपित किया जाता है। इस प्रकार आप पर कुल रू०-2,39,08,360.00 (दो करोड़ उन्तालिस लाख छः हजार तीन सौ साठ रू०) की देयता बनती है।

अतः आपको निर्देशित किया जाता है कि उक्त समस्त देय धनराशि रू०-2,39,08,360.00 (दो करोड़ उन्तालिस लाख छः हजार तीन सौ साठ रू०) नोटिस प्राप्ति तिथि से 15 दिवस के अन्दर जमा करें एवं समस्त देय धनराशि जमा किये जाने तक आपका खनन कार्य प्रतिबन्धित किया जाता है।

अपर जिलाधिकारी(वि०/रा)
कानपुर नगर।

प्रतिलिपि-

- 1-निदेशक, भूतत्व एवं खनिकर्म निदेशालय उ०प्र० खनिज भवन लखनऊ
- 2-जिलाधिकारी महोदय को सादर अवलोकनार्थ।
- 3-क्षेत्राधिकारी बिल्हौर कानपुर नगर को आवश्यक कार्यवाही हेतु।
- 4-तहसीलदार बिल्हौर को दो प्रति इस अनुरोध के साथ प्रेषित कि आख्या के तहत जमा राशि को जमा कर तासीला की एक प्रति इस कार्यालय को तत्काल उपलब्ध कराना।



अपर जिलाधिकारी(वि०/रा)
कानपुर नगर।

ANNEXURE-NO-2

Item No. 3

(Court No. 2)

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

(Through Physical Hearing with Hybrid VC Option)

Original Application No.176/2022

I.A No. 39/2023, I.A No. 40/2023 and I.A No. 592/2023

Aman Chaudhary

...Applicant

Versus

Union of India & Ors.

....Respondents

Date of hearing: 30.05.2023

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER.
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER.**

Applicant: None for the applicant.

Respondents: Mr. Somesh Chandra Jha and Ms. Aanya Shrotriya, Advocates for Respondent No. 1 with Dr. S. Kerketta, Scientist G and Mr. Pankaj Verma, Scientist E, MoEF & CC.
Ms. Pushpila Bisht, Ms. Pallavi Pratap and Mr. Akshay Singh, Advocates for Respondent No. 2.
Mr. Saurabh Balwani, Advocate for Respondent No. 3 with Mohamad Nizamuddin, Scientist F and Ms. Sonia, CPCB.
Mr. Pradeep Misra, Advocate for Respondent No. 4 with Mr. Ajay Kumar Sharma, Member Secretary, UPPCB.
Mr. Mukesh Verma, Advocate for Respondent No. 6 with Dr. Roshan Jacob, Director, Geology and Mining Department, U.P., Mr. Vipin Kumar Jain, Additional Director, Geology and Mining Department, U.P.
Mr. Vishak G., District Magistrate, Kanpur (through VC)
Mr. Raj Panjwani, Amicus Curiae.
None for respondent no. 5.

Application under Sections 14, 15 and 18 (1) of the National Green Tribunal Act, 2010.

ORDER

1. Grievances in the application are regarding illegal sand mining in the region of Kanpur and Unnao by Mr. Nagendra Singh (Respondent no.

2). The applicant also submitted that even an unauthorized bridge was constructed in the middle of the River Ganga by the Project Proponent due to which the river got divided into two Streams.

2. This Tribunal constituted a Joint Committee vide order dated 07.03.2022 which submitted its report vide email dated 10.08.2022. In its report Joint Committee *inter alia* recorded following observations and findings:

“Report of Joint Inspection team in compliance to Hon’ble NGT Order dated 07.03.2022 in the Original Application No. 176 of 2022 in the matter Aman Chaudhary Vs. Union of India and Others.

X X X X

13. In the EC issued by SEIAA, several conditions are imposed. The compliance of some (sic of) the major conditions are as given below-

- The proponent was to establish ambient air quality monitoring stations to monitor the ambient air during the mining operations. The proponent was also to submit monitoring reports of ambient air quality/water & waste water/flora & fauna, six monthly compliance report, annual environmental statement and detailed replenishment study report to SIA/PCB/district administration.
- No such data/compliance reports are submitted by the project proponent.
- The proponent was to carry out various Corporate Social Responsibility (CSR) activities including community development & income generating programs, maintenance of village road, free distribution of smoke less chulha, etc.
- No such data/compliance reports are submitted by the project proponent.
- The project proponent has to develop green cover belt in an area equivalent to 20% of the total leased area either on river bank or along road side.
- No such efforts have been made by the proponent.

X X X X

Findings of the visit:-

- River bed mining lease is sanctioned at Vill-Katari Sunaudha, Tahsil-Bilhaur, District-Kanpur Nagar. The Committee found the issues raised in the Hon’ble NGT order are matter of concerns w.r.t. construction of temporary bridge at mining site. During inspection no such temporary bridge was found in the mining lease area.
- According to Google Earth timeline map of dated 25.03.2018 & 18.04.2019, no such temporary bridge was observed.
- During inspection approach road was found at the mining lease site in the main stream area of River, which obstruct the flow of the River.
- Project proponent has not taken any significant measures for environmental safeguard and also not made any efforts/initiatives for conducting activities under CSR.

- *Compliance of conditions of Environmental Clearance issued by SEIAA are not found.*

Hence, the Committee is in view that the lease holder may be directed to comply the conditions of Environmental Clearance and mining deed. Environmental compensation may be imposed for violation of various Norms and degradation of surrounding environment."

3. The matter was heard on different dates and in the course of hearing serious environmental violations were noticed including the factual position that the Project Proponent had not obtained CTE/CTO from UPPCB and therefore UPPCB had issued show cause notice for imposition of environmental compensation of Rs. 4,29,37,500/- to the Project Proponent.
4. This Tribunal, vide Order dated 29.09.2022, made the following observations with consequential directions as under :-

*"We find that the report of District Mines Officer, Kanpur Nagar referred to in the reply of the Director, Directorate of Geology and Mining, Government of Uttar Pradesh that **"the approach road is within the lease boundary. That approach road is three hundred meters away from the active channel of the river."** is contradictory to the report of the Joint Committee that **"During inspection approach road was found at the mining lease site in the main stream area of River, which obstruct the flow of the River."** Further, in its report the Joint Committee has mentioned that **"Project proponent has not taken any significant measures for environmental safeguard and also not made any efforts/initiatives for conducting activities under CSR."** and that **"Compliance of conditions of Environmental Clearance issued by SEIAA are not found"** and recommended that **"the lease holder may be directed to comply the conditions of Environmental Clearance and mining deed."** but in its reply the Director, Directorate of Geology and Mining, Government of Uttar Pradesh has merely mentioned that **"Mines Officer, Kanpur Nagar vide Letter dated 29.06.2022 has issued notice to the proponent in this regard"** and what further action has been taken on said notice is not mentioned in the reply which was **filed on 13.09.2022**. We have noticed that **"Mining lease deed was registered on 07.04.2018 for the period up to dt. 06.04.2023"** and out of five years lease period more than four years period has already expired without requisite compliance with environmental compliance conditions and without obtaining CTO from UPPCB. No doubt, UPPCB has imposed environmental compensation amounting to Rs.4,29,37,500/- on respondent No.6 the Project Proponent for not obtaining consent to operate from UPPCB under the Water (Prevention and Control of Pollution) Act, 1974 and Air*

(Prevention and Control of Pollution) Act, 1981 before commencement of mining but the same has been imposed after initiation of the present proceedings and such imposition appears to be without issuing any notice and giving opportunity of being heard to respondent No.6 the Project Proponent. Detailed guidelines have been laid down in **Sustainable Sand Mining Management Guidelines 2016** and **Enforcement & Monitoring Guidelines for Sand Mining 2020** issued by MoEF & CC and specific directions have also been issued by this Tribunal in **OA No. 360/2015 National Green Tribunal Bar Association Vs. Virender Singh** for operationalization of monitoring/supervisory/review mechanism and periodical audits/inspections/returns/reports for ensuring compliance with **environmental clearance and consent to operate conditions** and environmental norms, which prima facie, appear to have been flouted by the Director, Directorate of Geology and Mining, Government of Uttar Pradesh and UPPCB in the present case. However, before making any further observations in the matter we consider it appropriate to give them opportunity to file detailed replies and to direct them to give their account of measures taken by them for compliance with the guidelines issued by MOEF & CC and directions given by this Tribunal. In its reply the Director, Directorate of Geology and Mining, Government of Uttar Pradesh shall specifically mention as to (i) whether copy of environmental clearance/mining lease agreement was sent to UPPCB, if yes when and if no, why the same was not sent? (ii) whether any periodical returns were submitted by the project proponent, any audit/periodical inspection was made by designated third party/departmental agency regarding compliance with **environmental clearance and consent to operate conditions** and environmental norms by the project proponent, if yes produce copies of the same if not the reasons for the same? (iii) whether the project proponent was entitled to and could commence mining before grant of CTO by UPPCB if not why the project proponent was allowed to commence such mining without CTO from UPPCB and (iv) whether any notice for non compliance with **environmental clearance/consent to operate/environmental norms** was issued to the project proponent before initiation of the present proceedings and what action was taken against the project proponent on the basis thereof. In its reply the UPPCB shall specifically mention as to (i) whether copy of environmental clearance/ mining lease agreement was sent to UPPCB, if yes when and if no, whether any reference was made for obtaining the same? (ii) whether UPPCB conducted any inspection regarding mining in the mining site in question to ascertain compliance of environmental clearance conditions/obtaining of CTO before initiation of the present proceedings, if yes what action was taken on the basis thereof and if no, what are the reasons for the same? and in how many cases copies of environmental clearance/ mining lease agreement was not sent to UPPCB during the last five years and in how many cases mining was commenced without obtaining CTO from UPPCB. Reply/response by the Director, Directorate of Geology and Mining, Government of Uttar Pradesh be filed by within two months by e-mail at judicial-ngt@gov.in preferably in the form of

searchable PDF/OCR Support PDF and not in the form of Image PDF."

5. In compliance thereof affidavits have been filed by Dr. Roshan Jacob, Director, Geology and Mining Department, U.P. and Mr. Ajay Sharma, Member Secretary, UPPCB vide emails dated 21.04.2023.
6. The relevant part of the affidavit filed by Dr. Roshan Jacob, Director, Geology and Mining Department, U.P. is reproduced as under:-

"AFFIDAVIT OF COMPLIANCE

X X X X
 3. That in compliance of above direction of this Hon'ble Tribunal, it is submitted that in Chapter - 4 of U.P. Minor Mineral (Concession) Rules 2021 (previously Rule 1963) the lease deed of normal sand mining area, plot no.2m rakba 10.50 hectare of village Katri Sunada, Tehsil Billaur situated at the bank of Ganga River of the district was executed in favor of lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh R/o 113 MIG-2, Mahabali Puram, Kalyanpur, Kanpur Nagar on 07.04.2018 for the period of 05 years from 07.04.2018 to 06.04.2023. Now the lease has been expired.

4. Point no. (i) - Whether copy of environmental clearance / mining lease agreement was sent to UPPCB, if yes when and if no, why the same was not sent?

With reference to above point, it is submitted that the copy of environmental clearance certificate issued by State Environment Impact Assessment Authority (SEIAA) in favor of project proponent/lease holder vide letter no.174/environment/SEAC/4026/20 1 7 dated 12.02.2018 was forwarded to 07 persons/authorities, in which through S.No. 04 same was forwarded to Member Secretary, U.P. Pollution Control Board, Environment Bhawan, Vibhuti Khand, Lucknow. It is also pertinent to mention that a copy of environmental clearance certificate is available on Parivesh Portal which is in public domain. After issuance of environmental clearance certificate, it is considered that the lease deed will be executed and mining operation will start. Therefore, sending a copy of lease deed separately to UPPCB will be duplication of the same.

Considering this, it is not customary to send the copy of deed to UPPCB.

5. Point no.(ii) - Whether any periodical returns were submitted by the project proponent, any audit/periodical inspection was made by designated third party/departmental agency regarding compliance with environmental clearance and consent to operate conditions and environmental norms by the project proponent, if yes produce copies of the same if not the

reasons for the same?

In compliance of above direction of this Hon'ble Tribunal it is submitted that the lease holder /project proponent has not filed any periodical returns and in compliance of conditions of environment, the project proponent has not got any audit /periodical inspection done from any third party /departmental agency. It is mentioned in letter no.NGT-509/81-7-2022 dated 05.01.2023 of Secretary, Environment, Forest and Climate Change Section-7, U.P. Lucknow that the relevant part of the order dated 26.02.2021 passed by this Hon'ble Tribunal in O.A. no.360/2015 titled as National Green Tribunal Bar Association Vs. Virendra Singh (State of Gujarat &Ors.) is as follows:-

"....28. We further direct that periodic inspection be conducted by a five members Committee, headed and coordinated by the SEIAA and comprising CPCB (wherever it has regional office), State PCB and two expert members of SEAC dealing with the subject. Where CPCB regional office is not available, if MoEF&CC regional office is available, its Regional officer will be included in the Committee. Where neither CPCB nor MoEF&CC regional office exists, Chairman, SEIAA will tie up within the nearest institution of repute such as IIT to nominate an expert for being included in the Committee. Such inspection must be conducted at least thrice for each lease i.e. after expiry of 25% the lease period, then after 50% of the period and finally six months before expiry of the lease period for midway correction and assessment of damage, if any. The reports of such inspections be acted upon and placed on website of the SEIAA. Every lessee, undertaking mining, must have an environmental professional to facilitate sustainable mining in terms of the mining plan and environmental norms. This be overseen by the SEIAA. Environment Departments may also develop and appropriate mobile app for receiving and redressing the grievances against the sand mining, including connivance of the authorities and also mechanism to fix accountability of the concerned officers. Recommendations of the Oversight Committee for the State of U.P. quoted earlier may be duly taken into account..."

It is pertinent to mention here that site has been inspected from time to time for compliance of conditions of lease deed and UPMPCR, 2021 by the lease holder M/s Vaishnavi Enterprises Proprietor Nagendra Singh for the ordinary sand mining area village Katari Sunadha Plot no.2Miarea 10.50 hectare of Tehsil Bilhaur.

It is respectfully submitted that due to non-installation of CCTV Camera in mining area and violation of Rule 59(3),a

penalty of Rs.25,000.00 has been imposed vide notice dated 05.09.2019 against the Lease holder.

Sub Divisional Magistrate Bilhaur inspected the site on 07.12.2020, a passage of height same as water level was removed and an FIR was registered in concerned police station against unknown persons.

Vide letter no.446/ST-Misc./20 dated 12.12.2020 of Sub Divisional Magistrate, Bilhaur it was informed that the above lease holder has done illegal mining and transportation of ordinary sand of about 54219 cubic mtr. from plot no.01m of area 5.4219 hectare outside the approved mining area. With reference to above, a notice was issued on 22.12.2020 and direction was given to place its case within 15 days.

Director, Directorate of Geology and Mining, Lucknow inspected the area on 11.01.2021 and henceforth constituted a team for correct demarcation of boundary pillar of mining area and for detailed survey of the mined-out quantity. The Joint inspection team ratified the Sub Divisional Magistrate Billaur report dated 12.12.2020. In light of above the lease holder was again issued a notice on 03.02.2021 to deposit total amount of Rs.2,39,06,360.00 in Govt. Treasury within 15 days in lieu of illegal mining and transportation. Against above notice the lease holder filed Revision No.48(R)/SM/2021 to the Govt. which was dismissed by the Govt. on 09.08.2021. Thereafter, the lease holder filed Writ Petition No.18966/2021 in Hon'ble High Court of Allahabad Lucknow Bench. In compliance of order dated 22.09.2021 passed by Hon'ble High Court, permission was given to lease holder for mining and transportation of ordinary sand. Writ Petition No. 18966 of 2021 is pending before the High Court.

It is respectfully submitted that again in pursuance of joint inspection report dated 05.12.2021 notice dated 09.12.2021, a fine of Rs.72,500.00 was imposed on lease holder due to constructing passage /road without permission.

On the basis of inspection by DM. Kanpur Nagar on 31.05.2022 and report dated 21.06.2022 of inspection team constituted by DM, a notice dated 10.08.2022 was issued to the lease holder for depositing total amount of Rs. 11,55,837.00.

Thus periodical inspection of the lease has been constantly done by the District Administration, Kanpur and Director, Geology and Mining, Govt. Of Uttar Pradesh.

6. Point no.(iii) -Whether the project proponent was entitled to and could commence mining before of CTO by UPPCB if not why the project proponent was allowed to commence such mining without CTO from UPPCB?

In pursuance to this, it is humbly submitted that

- i. For harmonization of Classification of Industries under Red/Orange/Green/White Categories CPCB vide letter dated 19.08.2015 forwarded a copy of draft document on revised concept of categorization of industrial sectors to all SPCBs, PCCs and concerned ministries. CPCB further issued modified directions to revise/prepare categories of industrial sector in Red, Orange, Green and White as per final report to all SPCBs/PCCs on 07.03.2016.
- ii. That is further worthwhile to mention here that in compliance to the directions issued by CPCB, UPPCB in its meeting dated 29.03.2016 adopted the same categorizations of industries and issued letter dated 18.04.2016 to all concerned controlling officers of the UPPCB and Regional officers of the UPPCB to comply the same. A true copy of the letter dated 18.04.2016 is being annexed herewith as Annexure No-1.
- iii. That there are two additional notes in the list of Industrial Sectors mentioned in the final report and Note (ii) is being quoted as below;

Sl.No.	Origin at Sl. No.	Industry Sector	Original Category	Remarks
1	24	Excavation of sand from the River Bed (excluding manual excavation)	O	Since such type of activities cause ecological disturbances the instructions issued by the Government from time to time be followed to be categorized by MoEF & CC.

iii. That at Serial No. 1 which was originally at Sl.No 24 regarding excavation of Sand from the riverbed (excluding manual excavation), it has been mentioned in remark column that such type of activities cause ecological disturbances, the instructions issued by the Government (MoEF&CC) from time be followed. So, excavation of Sand from the riverbed (excluding manual excavation) has to be categorized by MoEF&CC separately.

iv. That pursuant to remarks made in categorization of sector up till now no categorization has been made by the MoEF&CC for excavation of sand from the riverbed therefore the sand mining is not covered under the categorization of the industrial Sector. It is also submitted that as per the MOEF&CC, EIA notification 2006, EC has been obtained in this particular case and also in cases of Sand Mining across the state.

v. Under the provisions of Water Act 1974 and Air Act 1981, industries, which causes underground/surface water and Air pollution, requires CTE /CTO from concerning SPCB. But in the case of Sand Mining no fugitive emissions are released. It is to be mentioned that neither permanent structure of any kind is erected during the mining operations of Sand/Morrum situated in the river bed nor heavy machinery are used in the mining operations. In the said mining operations, neither anything is added to the water nor is anything released, so water or air does not get polluted.

8. Point no. (iv) — Whether any notice for non-compliance with environmental clearance /consent to operate /environmental norms was issued to the project proponent before initiation of the present proceedings and what action was taken against the project proponent on the basis thereof?

In compliance Regular inspection was done by district authorities for compliance of the UPMMCR 2021 and the conditions of the lease deed. Notices were issued to project proponent when any irregularities were found during inspection, details are mentioned in point no. 06.

As per the facts mentioned in point no. 07, there is no requirement to obtain CTO.”

7. The relevant part of the affidavit filed by Mr. Ajay Sharma, Member Secretary, UPPCB is reproduced as under:-

“Affidavit on behalf of Member Secretary, UPPCB in pursuance to the order dated 29.09.2022 and 17.03.2023 passed by the Hon’ble National Green Tribunal

X X X X

3. That it is pertinent to mention here that the CPCB under the powers conferred under Section 18(1)(b) of the Water Act, 1974

and the Air Act, 1981 has issued direction dated 07.03.2016 regarding Harmonization of classification of Industrial Sectors under Red/Orange/Green/White categories. The directions dated 07.03.2016 are annexed here with as Annexure No-1 to this affidavit.

4. That it is further worthwhile to mention here that in compliance to the directions issued by Central Pollution Control Board, were adopted by the UP Pollution Control Board in its 96th Board meeting dated 29.03.2016 and direction dated 18.04.2016 were issued to all concerned officers of the Board. A true copy of the letter dated 18.04.2016 is being annexed herewith and marked as Annexure No.-2 to this affidavit.

5. That in the final List issued by CPCB on 07.03.216 of Orange Category of Industrial Sectors the following comment regarding "Excavation of sand from the river bed" has been mentioned.

"There are specific remarks in respect of some of the industrial sectors. These sectors are either merged with other relevant sectors or deleted due to duplication /vague category. The details are as follows:-

SL No.	Origin at SL No.	Industry Sector	Original Category	Remarks
1	24	Excavation of sand form the River Bed (excluding manual excavation)		Since such type of activities cause ecological disturbances, the instructions issued by the Government from time to time be followed. To be categorized by MoEF&CC

6. That pursuant to above remarks made in categorization of sector, until now no clarification of MoEF&CC regarding categorization of 'Excavation of sand from the river bed', has been received from CPCB. In compliance of the Hon'ble NGT order dated 17.03.2023 in aforesaid case the details as desired by Hon'ble NGT regarding the status of issuance of CTO/CTE, Environmental Clearance (EC) by SEIAA and action against defaulter units etc. are being annexed herewith and marked as Annexure no.-3 to this affidavit.

8. In view of the submissions made by Dr. Roshan Jacob, Director,

Geology and Mining Department, U.P. and Mr. Ajay Sharma, Member Secretary, UPPCB in their affidavits, this Tribunal vide order dated 26.04.2023 directed respondent no. 1-MoEF & CC and respondent no. 3-CPCB to file their detailed response about requirement of consent/NoC from UPPCB for the excavation of sand from the river bed (excluding manual excavation), since such activities are having ecological impacts on or before 18.05.2023.

9. In compliance thereof respondent no. 1-MoEF & CC has filed affidavit vide email dated 18.05.2023 and respondent No.3-CPCB has filed affidavit vide email dated 18.05.2023.

10. Relevant part of the affidavit filed by respondent no. 1-MoEF is reproduced below:

"It is humbly submitted that, the Environmental Clearance (EC) granted to the project/activity is strictly under the provisions of the Environmental Impact Assessment (EIA) Notification, 2006 and its amendments issued from time to time. It does not tantamount/ construe to approvals/ consent/ permissions etc. required to be obtained or standards/conditions to be followed under any other Acts/ Rules/ Subordinate legislation, etc., as may be applicable to the project. Further, the requirement of consent/ No objection Certificate (NOC) are issued by the respective State Pollution Control Board (SPCBs) as per provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

5. That, the State Pollution Control Board is the Nodal Authority in the State for dealing with the cases related to pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981.

6. It is submitted that the present reply may kindly be taken on record and into consideration and the Hon'ble Tribunal may pass appropriate Order(s)/Direction(s) as deemed fit and proper under the facts and circumstances of the present case. Further, the other ancillary issues raised in the application under reply do not pertain to the answering respondent."

11. Relevant part of the affidavit filed by the CPCB is reproduced below:-

"2. That it is humbly submitted that the applicable law as well as relevant procedural requirement for any project proponent for the purposes of the excavation of sand from the river bed are provided below for perusal:

The Procedural requirement as laid down under the Central Acts of Water and Air Act along with EIA notification

i. Clause 25 of the Water Act 1974 relates to Consent of SPCB

"25. Restrictions on new outlets and new discharges -

(1) Subject to the provisions of this section, **no person shall, without the previous consent of the State Board -**

- (a) **establish or take any steps** to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, **which is likely to discharge sewage or trade effluent into a stream** or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or
- (b) bring into use any new or altered outlet for the discharge of sewage; or
- (c) begin to make any new discharge of sewage."

Definitions

"2 (g) "sewage effluent" means effluent from any sewerage system or sewage disposal works and includes sullage from open drains; "

"2 (k) "trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage"

ii. Clause in Air Act 1981 related to Consent of SPCB

"21. Restrictions on use of certain industrial plants -

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area

Definitions

"2(k) "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere; "

iii. Clause in EIA Notification 2006 related to Environment Clearance (EC)

The EIA Notification 2006 is issued under Section 3(2)(v) of Environment (Protection) Act 1986 which is related to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards and under Section 5 of Environment (Protection) Rules 1986 which is related to prohibitions and restrictions on the location of

industries and the carrying on processes and operations in different areas. The said notification prescribe as below:

"2. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

Projects / activities have been categorised into Category A and Category B in the Schedule.

iv. Categorisation of projects/activities by CPCB

CPCB has provided a uniform categorisation criteria of industries into Red, Orange, Green and White categories to SPCBs vide directions dated **07.03.20216**. The said criteria suggested different validly periods for consent as below:

"5. SPCBs/PCCs may issue consent to the industries:

- Red category of industries for 5 years.
- Orange category of industries for 10 years.
- Green category of industries for 15 years.
- No necessity of consent for non-polluting industries."

The Copy of the Directions dated 07.03.2016 is annexed herewith as Annexure

R-1.

3. That it is humbly submitted that the U.P. Mining and Geology Department and U.P. Pollution Control Board both have mentioned in their responses before Hon'ble NGT-PB in the present case that "Excavation of sand from river bed (excluding normal excavation)" has not been assigned Category under the above mentioned uniform categorisation by CPCB in 2016 because such type of activities cause ecological disturbances.

4. In this regard it is submitted that Central Government has already covered the mining of river bed material under Schedule of the EIA Notification 2006. In consideration of this,

the SPCBs themselves can categorise this activity for the purpose of deciding validly of the consent as already directed by CPCB for categorisation of any left out sector in the directions dated 07.03.2016. In the case of U.P., CPCB has informed U.P. Geology and Mining Department and UPPCB by a recent letter dated 24.03.2023 also that SPCB may categorise any left out sector by following the criteria / methodology prepared by CPCB. The Copy of the same is annexed herewith as Annexure R-2.

5. That it is further pertinent to note that the MOEF has already formulated the Sustainable Sand management guidelines 2016 & 2020 which primarily focuses on the management of Sand mining in India as well as the fact that section 23 C of the MMDDRR Act, 1957 further grant the relevant state government to make rules & policy to prevent any illegal mining, transportation and storage of minerals including sand. The Enforcement and monitoring guidelines for Sand Mining dated January 2020 contains specific guidelines for process and procedural requirements for approvals for the project proponents.

The Copy of the Enforcement and monitoring guidelines for Sand Mining dated January 2020 is annexed herewith as Annexure R-3.

6. The Hon'ble Supreme Court in its Judgment dated the 27.02.2012 in I.A. No.12-13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others etc. made prior environment clearance mandatory for mining of minor minerals irrespective of the area of mining lease. On 24.12.2013, the MoEF issued an OM which mandates that "EC will be valid for the lease period subjected to a ceiling of 5 years". Thereafter, in 2016 the MOEF issued the Sustainable Sand Mining Management Guidelines, 2016 (hereinafter referred to as SMMG, 2016), inter alia, with an endeavor to ensure that sand and gravel mining is done in an environmentally sustainable and socially responsible manner, and to further ensure the conservation of river equilibrium and its natural environment by protection and restoration of the ecological system. The same was again updated in 2020 and the same made it a sine qua non that EC is valid only for a period of 5 years, after which the same has to be renewed only with prior permission of the nodal agencies.

7. It is humbly submitted that continuation of sand mining in the absence of environmental clearances obtained by the Project Proponent contravenes the various decisions passed by the Hon'ble Supreme Court in its Judgment dated the 27th February 2012 in I.A. No.12- 13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others etc. and various directions of this Hon'ble Tribunal in order dated 13th January, 2015 in the case of Himmat Singh Shekhawat v. State of Rajasthan and Ors., 2015 ALL (I) NGT Reporter (1) (Delhi) 44, National Green Tribunal Bar Association Vs Ministry of Environment and Forest & Ors. in Original Application No. 364

Of 2015 and Order dated 04.09.2018 in O.A. 173/2018 in the matter of Sudarsan Das vs. State of West Bengal & Ors and MoEF & CC guidelines for Sustainable Sand Mining Management Guidelines 2016 & 2020 for scientific and sustainable sand mining in the Country.

8. That in view of the facts indicated in earlier paras it is respectfully prayed that necessary directions be passed and the Respondent No.3 confirms that it shall abide by any order or direction, passed by this Hon'ble Tribunal."

12. Reply was filed by the Respondent no. 2- the project proponent vide email dated 01.02.2023. In his reply Respondent no. 2- the project proponent has made vague and general averments regarding carrying out of mining by him in accordance with environmental clearance granted to him while denying allegations regarding illegal mining and construction of temporary bridge. In his reply Respondent no. 2 has not specifically replied and given any specific response with respect to the findings of the Joint Committee regarding violations of conditions of environmental clearance and mining lease deed and has also not mentioned anything regarding requirement of obtaining CTE/CTO from UPPCB and also show cause notice dated 02.12.2022 for imposition of environmental compensation issued to him by Chief Environment Officer, Circle-2, U.P. Pollution Control Board Lucknow.

13. We have learned Counsel for the respondents and learned Amicus Curiae on the question of requirement of CTE/CTO from SPCBs/PCCs for Excavation of sand from the River Bed (excluding manual excavation) and gone through the relevant material.

14. In the directions issued by CPCB in June 2012 in the context of categorization of industries as Red, Orange & Green, mining and ore beneficiation were included at serial no. 35 of Table G-2:Final List of Red category of Industrial Sectors. Respondent no. 3-CPCB vide letter dated 19.08.2015 forwarded a copy of draft document on revised concept of categorization of industrial sectors to all SPCBs/PCCs and concerned

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-16-

Ministries for harmonization of classification of industries under Red, Orange, Green and white categories in which "excavation of the sand from the river bed (excluding manual excavation)" was mentioned at serial no. 24. Based on the revised criteria, Respondent no. 3-CPCB evolved the 'Final Report on Revised Categorization of Industrial Sectors under Red/Orange/Green/White' with number of industries in Red, Orange, Green and newly introduced White categories in the above said final list being 60, 83, 63 and 36 respectively. Accordingly, the earlier Directions issued in June 2012 in the context of categorisation of industries as Red, Orange & Green were withdrawn and modified directions were issued vide letter no. B-29012/ESS(CPA)/2015-16 dated 07.03.2016.

15. Even though in the draft list of Orange category of industries "excavation of the sand from the river bed (excluding manual excavation)" was mentioned at serial no. 24 but the CPCB did not finalize said categorization and made the remarks "since such type of activities cause ecological disturbances, the instructions issued by the Government from time to time be followed" and left the industrial sector for being categorized by MoEF & CC.

16. No categorization has been done by MoEF & CC so far. On the other hand, in the affidavit filed on behalf of respondent no. 1-MoEF & CC, it has been mentioned that the State PCB is the nodal authority for dealing with the cases related to pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. In the response filed on behalf of respondent no. 3-CPCB, it has been submitted that the Central Government has already covered the mining of river bed material under Schedule of the EIA Notification 2006. In consideration of this, the SPCBs/PCCs themselves can categorise this

activity for the purpose of deciding validly of the consent as already directed by CPCB for categorisation of any left out sector in the directions dated 07.03.2016.

17. It may also be observed here that vide above referred letter no. B-29012/ESS(CPA)/2015-16 dated 07.03.2016 following 'Directions' were issued for compliance by all SPCBs and PCCs :

"1. That the SPCBs and PCCs shall adopt the Revised Criteria of categorization of industrial sectors as detailed in table nos. F1, F2, F3 and F4 and Revised Lists of Red, Orange, Green and White categories of industrial sectors, presented at table no. G2, G3, G4 and G5 respectively, in the 'Final Report' as attached herewith immediately.

2. That all pending applications for consideration of 'Consent to Establish' and 'Consent to Operate' and future such applications shall be processed as per revised criteria.

3. That the SPCBs and PCCs will provide the list of industries identified in each category existing in the State which have been considered for grant of consents. SPCBs/PCCs will forward the list of such industries before 31.05.2016 and the same will be uploaded on the websites of respective SPCB/PCC.

4. That the 'Revised Lists of Red, Orange, Green and White category of industrial sectors' shall be used by the SPCBs and PCCs for Consent Management and inventorization of industries under Red, Orange, Green and White categories. Siting of industries shall be only in conforming areas. SPCBs / PCCs shall evolve sector specific plans for control of pollution and industrial surveillance for verifying compliance.

5. That the SPCBs and PCCs shall revise / prepare the inventory of Red, Orange, Green and White categories of industries operating in their jurisdiction based on the revised criteria specified in the Final Report and submit the same to CPCB within 90 days i.e., before 30.05.2016 in hard copy as well as soft copy.

6. That the listed category of industries or those identified later-on under different categories shall not be linked to sanction of loan / finance or bank proceedings.

7. That any further addition of any new or left-over industrial sector and their categorization which is not listed in the revised list of Red, Orange, Green and White industrial sectors, shall be done at the level of concerned SPCB / PCC following revised criteria & guidelines as detailed in the attached document and no concurrence of CPCB shall normally be required. It is further clarified that while categorizing the

industries, fractional numbers shall be rounded off to nearest integer."

18. In the response filed on behalf of respondent no. 3-CPCB, it has also been mentioned that in the case of State of U.P., CPCB has informed U.P. Geology and Mining Department and UPPCB by a recent letter dated 24.03.2023 also that SPCB may categorise any left out sector by following the criteria / methodology prepared by CPCB.

19. Even after receipt of the above said letter no categorization has been done by UPPCB so far. The attendant facts and circumstance show that despite the Union of India and the States being under Constitutional obligation under Article 48A of the Constitution of India to protect and improve the environment, their executive agencies/instrumentalities have slept over the issues/concerns raised and have therefore allowed confusion and contradictions to prevail, suffered massive violations of environmental laws, ignored the dangers involved and brushed aside the questions of their accountability.

20. We find that the respective stands taken by Department of Geology and Mining and UPPCB have resulted into utter confusion leading to contradictory practices in the State of Uttar Pradesh regarding enforcement of the regime of environmental norms including mandatory requirement of obtaining of CTE/CTO from UPPCB. The UPPCB is indulging in contradictory practices. On the one hand UPPCB is claiming that there is no mandatory requirement of CTE/CTO from UPPCB for river bed sand mining and on the other hand UPPCB is issuing show cause notices and passing orders for imposition of environmental compensation for not obtaining CTE/CTO from UPPCB.

21. In O.A No. 485/2022 titled as Gautam Sharma Vs. State of U.P. and Others pending before this Tribunal, UPPCB has taken the stand in its reply that CPCB has issued a letter dated 02.02.2017 regarding

mechanism to be followed for granting Consent to Operate (CTO) under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, for certain category of industries and that as per said letter the projects which have obtained Environmental Clearance (EC) from SEIAA and installed requisite pollution control system, may be issued Consent to Operate (CTO) directly.

22. In O.A No. 160/2022 titled as Om Pal and others Vs. State of U.P. and others pending before this Tribunal the Project Proponent filed Civil Appeal No. 8872/2022 before Hon'ble Supreme Court against restraint order passed by this Tribunal by asserting compliance with the environmental norms on the basis of the Joint Committee reports and in view of the directions of the Hon'ble Supreme Court, this Tribunal vacated the restraint order on 08.12.2022 and directed the Project Proponent to file compliance status report and the Director, Geology and Mining Department, U.P. and UPPCB to file joint report after verifying the same. In the Joint Report filed by the Director, Geology and Mining Department, U.P. and UPPCB vide email dated 24.03.2023 the Project Proponent is stated to be non-compliant inter alia on the ground that the Project Proponent obtained CTO from the UPPCB on 05.01.2023 and condition no. 8 of the EC was violated as mining was started before obtaining CTO.

23. The Extent of such contradictory practices is revealed by the table in annexure III appended to the affidavit filed by the Member Secretary, UPPCB vide email dated 21.04.2023 which is reproduced as under.

“Consolidated Status of Mining Leases in UP

- *Total Number of Mining Leases (As per the information received by concerned Regional officer from the District Mining Officer) : 1232*
- *Total No. of CTO Granted to Mining Leases : 444*
- *Total No. of CTO Rejected of Mining Leases : 18*
- *Total No. of CTO pending of Mining Leases : 62*

- *Total No. of Mining Leases which have not applied for CTO : 708*
- *Total Number of Cases Carrying Out Mining without Grant of CTO by UPPCB : 577*
- *Total No. of E.C. issued by SEIAA to Mining Leases : 1232*
- *Total Number of Cases in which Environmental Compensation has been Imposed on Mining Units : 18"*
- *Total Number of Cases in which Show Cause for Environmental Compensation has been issued on Mining Units: 639*
- *Total Amount of Environmental Compensation has been Imposed on Mining Units : Rs. 35,92,30,032 /-*
- *Total Number of Cases in which Environmental Compensation has been Recovered/Realized from Mining Units : 04*
- *Total Amount of Environmental Compensation that has been Recovered/Realized from Mining Units: Rs. 71,90,000 /-*
- *Total Number of Cases in which Recovery of Environmental Compensation is Pending from Mining Units : 14"*

24. UPPCB cannot be allowed to create confusion and take such contradictory stands and indulge in such legally untenable contradictory practices, when the legal position is clear and unambiguous. We do not find any reason for such confusion and any scope for contradictory practices and divergent views in applicability of environmental laws, directions given by Hon'ble Supreme Court and this Tribunal and guidelines issued by MOEF&CC and CPCB.

Directions Given by Hon'ble Supreme Court.

25. The Department of Mines and Geology, Government of Haryana issued an auction notice dated 3.6.2011 proposing to auction the extraction of minor mineral boulder, gravel and sand quarries of an area not exceeding 4.5 hectares in each case in the District of Panchkula, auction notices dated 8.8.2011 in the District of Panchkula, Ambala and Yamuna Nagar exceeding 5 hectares and above, quarrying minor mineral, road metal and masonry stone mines in the District of Bhiwani, stone, sand mines in the District of Mohindergarh, slate stone mines in the District of Rewari, and also in the Districts of Kurukshetra, Karnal, Faridabad and Palwal, with certain restrictions for quarrying in

the river beds of Yamuna, Tangri, Markanda, Ghaggar, Krishnavati River basin, Dohan River basin etc. The validity of the auction notices was challenged before Hon'ble Supreme Court, apart from the complaint of illegal mining going on in the State of Rajasthan and Uttar Pradesh in **I.A. No.12-13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009**, in the matter of **Deepak Kumar etc. Vs. State of Haryana and Others** etc. In its order dated 27.02.2012 Hon'ble Supreme Court noticed the adverse impact of sand mining on river ecology and aquatic life and observed as under:-

"7. We have no materials before us to come to the conclusion that the removal of minor mineral boulder, gravel, sand quarries etc. covered by the auction notices dated 3.6.2011 and 8.8.2011, in the places notified therein and also in the river beds of Yamuna, Ghaggar, Tangri, Markanda, Krishnavati river basin, Dohan river basin etc. would not cause environmental degradation or threat to the biodiversity, destroy riverine vegetation, cause erosion, pollute water sources etc. Sand mining on either side of the rivers, upstream and in-stream, is one of the causes for environmental degradation and also a threat to the biodiversity. Over the years, India's rivers and Riparian ecology have been badly affected by the alarming rate of unrestricted sand mining which damage the ecosystem of rivers and the safety of bridges, weakening of river beds, destruction of natural habitats of organisms living on the river beds, affects fish breeding and migration, spells disaster for the conservation of many bird species, increases saline water in the rivers etc. Extraction of alluvial material from within or near a streambed has a direct impact on the stream's physical habitat characteristics. These characteristics include bed elevation, substrate composition and stability, in-stream roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Altering these habitat characteristics can have deleterious impacts on both in-stream biota and the associated riparian habitat. The demand for sand continues to increase day by day as building and construction of new infrastructures and expansion of existing ones is continuous thereby placing immense pressure on the supply of the sand resource and hence mining activities are going on legally and illegally without any restrictions. Lack of proper planning and sand management cause disturbance of marine ecosystem and also upset the ability of natural marine processes to replenish the sand.

8. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3.6.2011 and 8.8.2011 have permitted quarrying mining and removal of sand from in-stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and

perennial rivers and river beds and sand extraction may have an adverse effect on bio-diversity as well. Further it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. Rivers mentioned in the auction notices are on the foothills of the fragile Shivalik hills. Shivalik hills are the source of rivers like Ghaggar, Tangri, Markanda etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, river Yamuna."

26. In the above mentioned case Hon'ble Supreme Court, while directing all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, made prior environment clearance mandatory for mining of minor minerals irrespective of the area of mining lease. The Relevant part of the order is reproduced as under:-

"14. We are of the view that all State Governments/Union Territories have to give due weight to the above mentioned recommendations of the MoEF which are made in consultation with all the State Governments and Union Territories. Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and biodiversity point of view and therefore the State Governments have to frame proper rules in accordance with the recommendations, under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.

15. Quarrying of river sand, it is true, is an important economic activity in the country with river sand forming a crucial raw material for the infrastructural development and for the construction industry but excessive in-stream sand and gravel mining causes the degradation of rivers. Instream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the streambed and along coastal areas causes the deepening of rivers which may result in destruction of aquatic and riparian habitats as well. Extraction of alluvial material as already mentioned from within or near a streambed has a direct impact on the stream's physical habitat characteristics.

16. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care

of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio assessment protocol. Sand mining, it may be noted, may have an adverse effect on biodiversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution.

17. The State of Haryana and various other States have not so far implemented the above recommendations of the MoEF or the guidelines issued by the Ministry of Mines before issuing auction notices granting short term permits by way of auction of minor mineral boulders, gravel, sand etc., in the river beds and elsewhere of less than 5 hectares. We, therefore, direct to all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months from today and submit their compliance reports.

18. Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules 2010 at the earliest. State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Govt. of India. Communicate the copy of this order to the MoEF, Secretary, Ministry of Mines, New Delhi, Ministry of Water Resources, Central Government Water Authority, the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the concerned Departments.

19. We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from the MoEF."

Proactive Role of Pollution Control Board/Committees for protection of Environment.

27. In **Goa Foundation v. Union of India (SC)- 2014(6) SCC 590**

Hon'ble Supreme Court emphasized the powers and role of Pollution Control Board and observed as under:-

"72. The Goa State Pollution Control Board has immense

powers under the Water (Prevention & Control of Pollution) Act, 1974 (for short 'the 1974 Act') to prevent pollution of water. Section 33A of the 1974 Act which confers on the State Pollution Control Board the power to give directions is quoted here in below:

"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."

73. Similarly, the Air(Prevention and Control of Pollution) Act, 1981(for short 'the 1981 Act') confers immense powers on the State Pollution Control Board to prevent air pollution. Section 31A of the 1981 Act which confers powers on the State Pollution Control Board to give directions is quoted here in below:

"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."

74. It will be clear from the aforesaid provisions of Section 33A of the 1974 Act and Section 31A of the 1981 Act that the Goa State Pollution Control Board had powers to issue any direction including the power to close, prohibit or regulate mining operations or even to stop or regulate supply of electricity, water or any other service with a view to prevent water pollution or air pollution. Yet, from the report of the Expert Committee as well as the reports of ISM, Dhanbad and NEERI, it is clear that iron ore production in Goa has led to massive negative impacts on all ecosystems leading to enhanced air, water and soil pollution affecting quality of life across Goa. The Goa State Pollution Control Board in its note filed in Writ Petition (C) No.435 of 2012, however, states:

"Details of monitoring of water quality (with regards to mining leases) from 2007 to 2012 - The Board conducts inspections during the monsoon and other seasons also to verify the discharge of surface runoff/discharge from the pit outside the mining lease and also collects samples for analyzing in the Board Laboratory. Wherever the parameters exceed the prescribed limits necessary directions are issued to the mining

units to take remedial measures for controlling the waste water being discharged into the water bodies/fields without treatment. Directions are also issued to provide settling ponds, arrestor walls, filter beds so as to ensure that no untreated waste water is discharged into the water bodies/fields.

Details of monitoring of air quality (with regards to mining leases) from 2007 to 2012 - The Board is presently carrying out the periodic monitoring of Air Quality in pre-selected areas throughout the State to comply with one of the mandates of the Central Pollution Control Board (CPCB) under National Ambient Monitoring Programme (NAMP) at 16 stations."

75. We do not agree with Mr. Arvind Datar, learned senior counsel for the Goa State Pollution Control Board, that sincere efforts were made by the Pollution Control Board to monitor the water quality and air quality in the mining areas. Rather, it appears that the Goa State Pollution Control Board, though conferred with immense statutory powers, has failed to discharge its statutory functions and duties. We hope that in future the Goa State Pollution Control Board exercises strict vigil and monitors the water quality and air quality in accordance with the provisions of the two Acts and if necessary, exercises the powers conferred on it to close down mining operation of a lessee, if the lessee does not conform to the air emission and water discharge standards while carrying on mining operations and does not take other preventive measures as directed by the State Pollution Control Board.

28. Central Government has already covered the mining of river bed material under "Mining of Minerals" at serial no. 1 (a) in the Schedule of the EIA Notification 2006. The MOEF&CC issued the "Sustainable Sand Mining Management Guidelines" in 2016 and "Enforcement & Monitoring Guidelines for Sand Mining-2020 in 2020, inter-alia, with an endeavor to ensure that sand and gravel mining is done in an environmentally sustainable and socially responsible manner, and to further ensure the conservation of river equilibrium and its natural environment by protection and restoration of the ecological system. CPCB has provided a uniform categorisation criteria of industries into Red, Orange, Green and White categories to SPCBs/PCCs vide directions dated 07.03.20216 with different validly periods of consent of 5, 10 and 15 years for Red, Orange and Green categories. It was specifically mentioned therein that there shall be no necessity of obtaining the Consent to Operate for White category of industries and an intimation to concerned SPCB /PCC shall

suffice.

29. In 2012 categorization of industries by CPCB "mining and ore beneficiation" were mentioned at serial number 49 in Table 7.3: List of Red Category of Industries. Modification thereof was proposed by including "excavation of the sand from the river bed (excluding manual excavation)" in the draft list of orange category of the industrial sectors but the same was not finalized by the CPCB which aborted the proposed modification with the remarks that since such type of activities cause ecological disturbances the instructions issued by the Government from time to time be followed and to be categorized by the MoEF & CC". In 2016 final categorisation of industries issued by CPCB vide letter dated 07.03.2016 "mining and ore beneficiation" is mentioned at serial number 35 in Table G2: Final List of Red Category of Industrial Sectors which will continue to prevail with "excavation of the sand from the river bed (excluding manual excavation)" as part of the same. Since the CPCB did not convert the same to any other Orange, Green or White category and merely remarked that MOEF&CC may categorize "excavation of the sand from the river bed (excluding manual excavation)", categorization of "Mining and Ore beneficiation" as red category industry by CPCB will continue to prevail regarding excavation of the sand from the river bed (excluding manual excavation)" till any modification is made by MOEF&CC by making any such categorization. Consequently, "excavation of the sand from the river bed (excluding manual excavation)" cannot be even considered to be left over category.

30. Even otherwise, even if the same be held to be left over category due to the reason that CPCB did not finalize draft categorization of Excavation of sand form the River Bed (excluding manual excavation) in orange category, the remarks made by (CPCB "since such type of activities cause ecological disturbances, the instructions issued by the

Government from time to time be followed. To be categorized by MoEF&CC"), did not bar UPPCB from categorizing the same, which is also now the stand of both MOEF&CC and CPCB. UPPCB has not done so even on receipt of letter dated 24.03.2023 from CPCB. However, it is pertinent to observe even in the absence of any such categorization, when it is acknowledged, (as also observed by the Hon'ble Supreme Court) that excavation of the sand from the river bed (excluding manual excavation) may cause ecological degradation/disturbances, as also observed by the Hon'ble Supreme Court, the excavation of the sand from the river bed (excluding manual excavation) cannot be treated, by any stretch of imagination to fall in the **White category of Industrial Sectors** and in which ever of the other three categories **Red, Orange or Green** the same is considered to fall as per the revised criteria, obtaining of consent from SPCBs/PCCs will be mandatory in all eventualities.

31. In any case, even CPCB, while leaving categorization to MOEF&CC, also recommended that due to excavation of sand form the River Bed (excluding manual excavation) causing ecological disturbances, the instructions issued by the Government from time to time be followed. MOEF&CC while granting EC for sand mining from river bed is imposing condition requiring the Project Proponent to obtain consent from concerned SPCB.

32. Reference in this regard may be made to O.A No. 581/2022 titled as Vikas Kumar Vs. State of Haryana and Others pending before this Tribunal. In para no. 11 part A Specific Conditions clause (iv) of EC F.No.-J-11015\112\2015-IA-II (M) dated 28.01.2016 granted by MoEF & CC for Mining of Sand (Minor Mineral) in the Mines of "Jainpur-2 Sand Unit" 44 hectares mainly laying on the bed of river Yamuna (34.40 Ha) and partly outside river bed (10.0 Ha) with production capacity of 16 lakh TPA Sand (Minor Mineral) by M/s Yodha Mines and Minerals

may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms. Section 2(a) of the Air (Prevention of Control of Pollution) Act, 1981 defines air pollutant to mean any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment and Section 2(b) of the above said Act defines air pollution to mean the presence in the atmosphere of any air pollutant. Sections 24 and 25 of the Water (Prevention and Control of Pollution) Act, 1974 and Sections 21 and 22 of the Air (Prevention of Control of Pollution) Act, 1981 have to be interpreted in view of the above said definitions. It is now universally acknowledged that excavation of minor mineral may disturb or change the underlying soil characteristics of the river bed/catchment/basin; may disturb the velocity and flow pattern (discharge) of the river water and may also adversely affect river morphology/ecology, the ground water regime and habitat of wild fauna in the river bed significantly. The river bed sand mining involves causing of air pollution due to generation of dust during excavation of dry sand and also fugitive emissions from the heavy vehicles used for transportation of the mined material. Such river bed sand mining requires setting up of temporary habitation camps for accommodating the labour employed for mining and also utilization of river/ground water for human consumption and sprinkling to control dust pollution. Discharge of waste water from temporary human habitation camps and mobile toilets may pollute the river water. Transportation of such river bed sand mining material also requires construction of road/pathways. In cases where heavy quantity of sand mining is permitted from the river

bed, deployment of large number of heavy vehicles for transportation of sand also results in fugitive emissions and dust generation thereby affecting the residents of neighbouring villages. Consequently, the stand taken by Dr. Roshan Jacob, Director, Geology and Mining Department, U.P. that river sand mining does not cause air and water pollution is factually and scientifically wrong.

36. Further, the stand taken by the Director, Geology and Mining Department, U.P., that sand mining from river bed does not cause Water and Air Pollution ignores condition no. 8 imposed in the EC granted in favor of the Project Proponent that "all necessary statutory clearances shall be obtained before start of mining operations. If this condition is violated, the clearance shall be automatically deemed to have been cancelled". Condition No.2 of the EC provided that forest clearance shall be taken by the proponent as necessary under law. Condition No.36 of the EC provided that environmental clearance is subject to obtaining clearance under the Wildlife (Protection) Act, 1972 from the competent authority, if applicable to this project. Condition no. 8 of the EC essentially refers to requirement of consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. No reference was ever made by the Director, Geology and Mining Department, U.P. to SEIAA, U.P. to clarify that consent under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 were not required and some other statutory clearances were required to be obtained before commencement of the mining. The stand taken by the Director, Geology and Mining Department, U.P. that CTE/CTO from UPPCB was not mandatory/ necessary is illogical and illegal in view of the prevailing Environmental Acts/Rules.

37. It is also pertinent to observe that even in the present case

X X X X
 27. Waste water, from temporary habitation campus be property collected & treated before discharging into water bodies the treated effluent should conform to the standards prescribed by MoEF/CPCB.

X X X X
 29. Special Measures shall be adopted to protect the nearby settlements from the impacts of mining activities. Maintenance of village roads through which transportation of minor minerals is to be undertaken, shall be carried-out by the project proponent regularly at his own expenses.

X X X X
 32. Under corporate social responsibility a sum of 5% of the total project cost or total income whichever is higher is to be earmarked for total lease period. Its budget is to be separately maintained. CSR component shall be prepared based on need of local habitant. Income generating measures which can help in upliftment of poor section of society, consistent with the traditional skills of the people shall be identified. The programme can include activities such as development of fodder farm, fruit bearing orchards, free distribution of smokeless Chula etc.

X X X X
 34. The funds earmarked for environmental protection measures should be kept in separate account and should not be diverted for other purpose. Year wise expenditure should be reported to the Ministry of Environment and Forests and its Regional Office located at Lucknow, SEIAA, U.P and UPPCB.

35. Action plan with respect to suggestion/improvement and recommendations made and agreed during Public Hearing shall be submitted to the District mines Officer, concern Regional Officer of UPPCB and SEIAA within 02 months.

X X X X
 40. Appropriate mitigative measures shall be taken to prevent pollution of the river in consultation with the State Pollution Control Board. It shall be ensured that there is no leakage of oil and grease in the river from the vehicles used for transportation.

X X X X
 45. The environmental statement for each financial year ending 31st March in Form-V as is mandated to be submitted by the project proponent to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the company along with the status of compliance of environmental clearance conditions and shall also be sent to the Regional Office of the Ministry of Environment and Forests, Lucknow by e-mail.

Specific Condition

X X X X
 14. Total Project Cost has been submitted as Rs. 81.0 lac. A

CSR plan with minimum 5% work to be executed with installation of five hand pumps for drinking water, solar light in villages of streets, construction of two numbers of toilets at the primary school with name displayed and address and details of beneficiary and gram pradhan along with phone number, photographs should be submitted to Directorate as well as to the District magistrate / Chief Development officers, Kanpur nagar, U.P.

X X X X
26. *The mining work will be open-cast and manual/semi mechanized (subject to order of Hon'ble NGT/Hon'ble Courts (s)). No drilling/blasting should be involved at any stage.*

X X X X
29. *The project proponent shall adhere to mining in conformity to plan submitted for the mine lease conditions and the Rules prescribed in this regard clearly showing the no work zone in the mine lease i.e. the distance from the bank of river to be left un-worked (Non mining area), distance from the bridges etc. It shall be ensured that no mining shall be carried out during the monsoon season.*

X X X X
32. *The critical parameters such as PM10, PM2.5, SO2 and NOx in the ambient air within the impact zone shall be monitored periodically. Further, quality of discharged water if any shall also be monitored HMS, DO, pH, Fecal Coliform and Total Suspended Solids (TSS).*

X X X X
42. *Digital processing of the entire lease area in the district using remote sensing technique should be done regularly once in three years for monitoring the change of river course by Directorate of Geology and Mining, Govt of Uttar Pradesh. The record of such study to be maintained and report be submitted to Regional office of MoEF, SEIAA, U.P. and UPPCB.*

X X X X
44. *State Pollution Control Board shall display a copy of the clearance letter at the Regional office, District Industry Centre and Collectors office/Tehsildar's Office for 30 days.*

45. *The project authorities shall advertise at least in two local newspapers widely circulated, one of which shall be in the vernacular language of the locality concerned, within 7 days of the issue of the clearance letter informing that the project has been accorded environmental clearance and a copy of the clearance letter is available with the State Pollution Control Board and also at web site of the SEIAA at <http://www.seiaaup.in> and a copy of the same shall be forwarded to the Regional Office of the Ministry located in Lucknow, CPCB, State PCB."*

38. These conditions envisaged proper consultation by the Project Proponent with UPPCB before commencement and during continuance of sand mining and also periodical monitoring by UPPCB. For this purpose

sending of copy of lease deed by the concerned District Magistrate to UPPCB was essentially required. Since the Project Proponent was legally bound to obtain CTE/CTO from UPPCB before commencement of mining, the District Magistrate and the District Mining Officer were legally bound not to allow commencement of mining before grant of consent by UPPCB. However, in the present case, the Project Proponent was allowed to carry out mining without such statutory consent throughout the five year term of the lease which has expired in April, 2023.

39. It may be observed that in the present case there are serious violations of the SSMG 2016 and EMGSM 2020 and EC conditions by the Project Proponent. In the affidavit of the Director, Geology and Mining Department, U.P. it is admitted that the lease holder /project proponent has not filed any periodical returns and the project proponent has not got any audit /periodical inspection done from any third party /departmental agency. In its report the Joint Committee had also mentioned non-compliance of EC conditions by the project proponent. Even there was non-compliance with SSMG 2016 and EMGSM 2020 by the project proponent in the present case. The Project Proponent did not install CCTV Camera in mining area for which merely penalty of Rs.25,000/-was imposed without verifying whether CCTV camera was subsequently installed. In the present case the Project Proponent is alleged to have indulged in illegal mining and transported ordinary sand about 54219 cubic mtrs. from plot no.01m of area 5.4219 hectare outside the approved mining area. Efforts have been made to project the same as incident of wrong demarcation and action regarding such illegal mining was not taken regarding the same as per EMGSM 2020 and directions of this Tribunal in OA 360 of 2015 titled as National Green Tribunal Bar Association Vs. Virender Singh (State of Gujarat). The facts and circumstances of the present case reveal serious violations of

environmental laws/norms by the Respondent no. 2-project proponent and serious derelictions of duty by concerned officers of the Department of Geology and Mining, U.P. and UPPCB.

Illegal Mining has to be dealt with sternly by visiting the same with all consequences without any leniency.

40. Section 21(1) of the MMDR Act provides that whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area. Section 21 (6) of the MMDR Act empowers the police to investigate offence punishable under Section 21 of the MMDR Act by providing that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.

41. In **Lalita Kumari vs. Govt. of U.P. (SC) : 2013(4) R.C.R.(Criminal) 979 : 399 :2014(2) SCC 1** Hon'ble Supreme Court held that registration of FIR is mandatory under Section 154 of the Code of Criminal Procedure, 1973, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation and if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

42. In **State of NCT of Delhi vs. Sanjay, (2014) 9 SCC 772**, Hon'ble Supreme Court considered the question whether the provisions contained in Sections 21, 22 and other sections of MMDR Act operate as bar against prosecution of a person who has been charged with allegations which constitute offences under Section 379/114 and other provisions of the Indian Penal Code, 1860 (the IPC). In other words,

whether the provisions of MMDR Act explicitly or impliedly excludes the provisions of the IPC when the act of an accused is an offence both under the IPC and under the provisions of the MMDR Act. Since conflicting views had been taken by Gujarat High Court, Delhi High Court, Kerala High Court, Calcutta High Court, Madras High Court and Jharkhand High Court, Hon'ble Supreme Court proceeded to settle the question and on detailed analysis of the relevant statutory provisions and judicial precedents, Hon'ble Supreme Court observed as under:-

"69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the ground water levels.

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.

71. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the

State, is liable to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

72. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, I.P.C., it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in section 190 (1)(d) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-a-vis the Code of Criminal Procedure and the Indian Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMRD Act. Consequently the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled....."

43. In **Jayant vs. State of Madhya Pradesh(SC)** : Law Finder Doc Id

1776867 Hon'ble Supreme Court observed as under :-

"After giving our thoughtful consideration in the matter, in the light of the relevant provisions of the MMDR Act and the Rules made thereunder vis a vis the Code of Criminal Procedure and the Penal Code, and the law laid down by this Court in the cases referred to hereinabove and for the reasons stated hereinabove, our conclusions are as under:

i) that the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct

the concerned Incharge/ SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted;

ii) the bar under Section 22 of the MMDR Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the MMDR Act and Rules made thereunder and orders issuance of process/summons for the offences under the MMDR Act and Rules made thereunder;

iii) for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder; and

iv) that in respect of violation of various provisions of the MMDR Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the concerned Incharge/ SHO of the police station to register/lodge the crime case/FIR in respect of the violation of various provisions of the Act and Rules made thereunder and thereafter after investigation the concerned Incharge of the police station/investigating officer submits a report, the same can be sent to the concerned Magistrate as well as to the concerned authorised officer as mentioned in Section 22 of the MMDR Act and thereafter the concerned authorised officer may file the complaint before the learned Magistrate along with the report submitted by the concerned investigating officer and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the MMDR Act and Rules made thereunder and at that stage it can be said that cognizance has been taken by the learned Magistrate.

v) in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section 1 of Section 23A, considering subsection 2 of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under subsection 2 of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further."

44. The settled position of law which emerges is that in a case where

there is a theft of sand and gravels from the river bed, the police can register a case, investigate the same and submit a final report under Section 173 of the Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in section 190 (1)(d) of the Cr.P.C. It may be observed here that the Parliament has made offence punishable under Section 21 of the MMDR Act cognizable only for the purpose to enable the Police to register FIR and investigate the same. Arrest and custodial interrogation of the offenders may be mandatorily required in cases of illegal mining and/or illegal transportation of illegally mined minor mineral for ascertaining the place of illegal mining, seizure of the mined mineral, tools, equipment, vehicles used and other persons involved in the commission of the offences. No doubt the Mining Officer is authorized to file complaint under Section 22 of the MMDR Act but due to having no power to arrest and interrogate the offenders, the Mining Officer may not be able to collect the factual information and legal evidence to fasten criminal liability to the accused complained against. For the commission of offence punishable under Section 379 of the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMDR Act. For the commission of offence under Section 21 of the MMDR Act the Magistrate having jurisdiction can take cognizance of the said offence on the basis of complaint that may be filed by the authorized officer in respect of violation of various provisions of the MMDR Act along with the report under Section 173 (2) of the Cr.P.C. filed by the Police.

45. In EMGSM 2020 detailed guidelines have been incorporated for effectively dealing with cases of illegal mining and guidance has been provided for taking action against illegal excavation and transport. The

relevant of the same reads as under:-

"9.6 Actions against illegal excavation and transport

Solapur district administration in Maharashtra had adopted a multi-pronged strategy to penalize the persons involved in illegal excavation and transport which resulted in a significant increase in revenue earned by the state. Following rules and procedures as mentioned in these guidelines will add to the costs of PP. Those involved in illegal activities are not required to bear these costs and this will make their supply in the market cheaper (though illegal). This will put the players running their business by following rules and procedures laid down by the government to disadvantage as far as the selling price is considered. Therefore, it is necessary to come down heavily on those involved in illegal excavation/transport, so that there is no incentive for players to abide by the rules.

The following action may be taken to achieve this deterrence against illegal business:

1. *The action should be taken under all legal options available simultaneously. Thus, after identifying the case of illegal excavation, storage and/or transport of minor minerals (including sand), fine should be levied as per the land revenue laws/code(s) of the state. In addition, FIR should be lodged in the police station under relevant sections of law including sec 379 IPC. In addition, action under the Motor Vehicle Act, 1989 and relevant rules should initiate to cancel/suspend the driving license of the driver and permit of the vehicle. Further, action should be initiated under provisions in the Income Tax Act, 1961 for unaccounted income and under the Central Goods and Services Act, 2017 for non- payment of GST. (Earlier this was done under the state act pertaining to Value Added Tax/Sales Tax). Habitual offenders should also be taken up under local state laws for extermment and/or preventive action. It is clarified that as per law, it is possible to take all actions under various laws simultaneously for one offence. What is prohibited in law is an action under the same law for the same act more than once.*

2. *The action should be taken against all persons responsible. Often, there is a tendency to penalize only the drivers of the vehicles. The mafia of illegal mining and transport is much bigger and drivers are only one part of the system. It is necessary to identify all those involved in the offence. It is usually not possible to reach the place of excavation without creating a motorable pathway up to the same through land which may be private land. Such role of such landowners needs to be looked into for each offence and proceeded against simultaneously. Further, the role of vehicle owners needs to be probed. Role of the person who allowed his land to be used for illegal excavation and storage should also be examined. Lastly, the person who purchases such sand should also be probed. The legal proceedings stated*

above needs to be initiated against all of these together. An attempt should be made to fix the financial responsibility in joint and several ways so that recovery is easier.

3. *There may be discretion available in law about the extent of the penalty to be levied. If such discretion is very wide, then it is advisable that guidelines may be laid down to reduce such discretion in law for levying penalties. For example, in Maharashtra, Land Revenue Code, fine of any amount of penalty up to thrice the value of the sand can be levied. Solapur district administration had instructed Tahsildars and SDMs not to use discretion and levy the fine of three times the value. Availability of discretion makes junior level functionaries susceptible to pressures and it may also lead to corrupt practices.*

4. *It is emphasized that actions, as stated above, are most important to ensure that the IT-based system works. If these exemplary actions are not taken against everyone, it shall create a strong disincentive to those involved in legal excavation and transportation. For IT-based (or any other) legal system to work, it is necessary to ensure that illegal system stops working altogether."*

46. In OA 360 of 2015 titled as National Green Tribunal Bar Association Vs. Virender Singh (State of Gujarat) this Tribunal in its order dated 26.02.2021 emphasized the measures to deal with the menace of illegal mining. The closing paragraphs containing the directions are reproduced below:-

"Enforcement of Monitoring Mechanism and review by the Chief Secretary at State level and Secretary MoEF&CC at National level

27. *We direct all the States/UTs to strictly follow the SSMG-2016 read with EMGSM-2020 reinforced by mechanism for preparation of DSRs (in terms of directions of this Tribunal dated 14.10.2020 in Pawan Kumar, supra and 04.11.2020 in Rupesh Pethe, supra), Environment Management Plans, replenishment studies, mine closure plans, grant of EC (in terms of direction dated 13.09.2018 in Satendra Pandey, supra), assessment and recovery of compensation (as per discussion in Para 25), seizure and release of vehicles involved in illegal mining (in terms of order dated 19.02.2020 in Mushtakeem, supra), other safeguards against violations, grievance redressal, accountability of the designated officers and periodical review at higher levels. As already noted, EMGSM-2020 contemplates extensive use of digital technology, including remote sensing.*

28. *We further direct that periodic inspection be conducted by a*

five-members Committee, headed and coordinated by the SEIAA and comprising CPCB (wherever it has regional office), State PCB and two expert members of SEAC dealing with the subject. Where CPCB regional office is not available, if MoEF&CC regional office is available, its Regional Officer will be included in the Committee. Where neither CPCB nor MoEF&CC regional office exists, Chairman, SEIAA will tie up with the nearest institution of repute such as IIT to nominate an expert for being included in the Committee. Such inspection must be conducted at least thrice for each lease i.e. after expiry of 25% the lease period, then after 50% of the period and finally six months before expiry of the lease period for midway correction and assessment of damage, if any. The reports of such inspections be acted upon and placed on website of the SEIAA. Every lessee, undertaking mining, must have an environment professional to facilitate sustainable mining in terms of the mining plan and environmental norms. This be overseen by the SEIAA. Environment Departments may also develop an appropriate mobile App for receiving and redressing the grievances against the sand mining, including connivance of the authorities and also a mechanism to fix accountability of the concerned officers. Recommendations of the Oversight Committee for the State of UP quoted earlier may be duly taken into account.

The mechanism must provide for review at the level of the Chief Secretary at least once in every quarter, in a meeting with all concerned Departments in the State. The Chief Secretary UP may ensure further action in the light of the report of the Oversight Committee.

Similarly, at National level, such review needs to be conducted atleast once in a year by the Secretary, Environment in coordination with the Secretaries Mining and Jalshakti Ministries the CPCB.

Publication of Annual Reports

29. We further direct all the States/UTs to publish their annual reports on the subject and such annual reports may be furnished to MoEF&CC by 30th April every year giving status till 31st March. First such report as on 31.03.2022 may be filed with the MoEF&CC by all the States/UTs on or before 30.04.2022. The report may also be simultaneously posted on the website of the Environment Department of the States/UTs. Based on such reports, MoEF&CC may consider supplementing its Guidelines from time to time. The MoEF&CC may prepare a consolidated report considering the reports from the States/UTs and publish its own report on the subject, preferably by 31st May every year.

Interaction at National Level

30. We direct the Secretary MoEF to convene a meeting in coordination with the CPCB and Mining and Jalshakti Ministries of Central Government and such other experts/individuals at National level and representatives of States within three months for interaction on the subject which may be followed by such meetings being convened by the Chief Secretaries in all States in next three months. Holding of such

meetings will provide clarity on enforcement strategies and help protection of environment."

Failure to comply with award, order, decision of this Tribunal constitutes an offence.

47. Section 25 of the National Green Tribunal Act, 2010 provides that an award or order or decision of the Tribunal under the above said act shall be executable by this Tribunal as a decree of a civil court and for this purpose this Tribunal shall have all the powers of a civil court. Sections 37 to 40 and Order 21 and Rules 37 to 40 of the Code of Civil Procedure, 1908 empowers the Civil Court to execute its decree by arrest and detention of the Judgment debtor in the civil prison. This Tribunal is also empowered by these statutory provisions to execute its award/order/decision by arrest and detention of the defaulters in civil prison besides other coercive methods.

48. Section 26 of the National Green Tribunal Act, 2010 visits the failure to comply with orders of this Tribunal with penal consequences and the same reads as under: -

"26 Penalty for failure to comply with orders of Tribunal.

- (1) Whoever, fails to comply with any order or award or decision of the Tribunal under this Act, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten crore rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to twenty-five thousand rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention: Provided that in case a company fails to comply with any order or award or a decision of the Tribunal under this Act, such company shall be punishable with fine which may extend to twenty-five crore rupees, and in case the failure or contravention continues, with additional fine which may extend to one lakh rupees for every day during which such failure or contravention continues after conviction for the first such failure or contravention.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence under this Act shall be deemed to be non-cognizable within the meaning of the said Code"

49. It may also be observed here that the Parliament while enacting the

National Green Tribunal Act, 2010 contemplated the situations where the failure to comply with any order/award/decision of this Tribunal may be by a Department of the Government and in such an eventuality made provision in Section 28 of the National Green Tribunal Act, 2010 for punishment of the Head of the Department which reads as under:-

“28 Offences by Government Department. - (1) *Where any Department of the Government fails to comply with any order or award or decision of the Tribunal under this Act, the Head of the Department shall be deemed to be guilty of such failure and shall be liable to be proceeded against for having committed an offence under this Act and punished accordingly: Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.*

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

50. However, the offence punishable under Section 26 of the National Green Tribunal Act, 2010 has been made non-cognizable and Section 30 of the National Green Tribunal Act, 2010 which provides for cognizance of offences reads as under:-

“30 Cognizance of offences. - (1) *No court shall take cognizance of any offence under this Act except on a complaint made by-*

(a) the Central Government or any authority or officer authorised in this behalf by that Government; or

(b) any person who has given notice of not less than sixty days in such manner as may be prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

(2) No court inferior to that of a Metropolitan Magistrate or, a Judicial Magistrate of the first class shall try any offence punishable under this Act.”

51. On a cursory reading of the provisions of Section 30 of the National

Green Tribunal Act, 2010 one may gather the impression that in cases where this Tribunal passes order/award/decision by taking cognizance *suo motu* without there being any complainant the matter of prosecution of defaulters has been left entirely to the Central Government or authority/officers authorised by the Central Government but even in such cases this Tribunal can order prosecution of the defaulters and on an analogy to clause (b) of Section 30 of the National Green Tribunal Act, 2010, copy of order served on the concerned Authority/Officers authorised by the Central Government shall be liable to be treated as notice for filing of such complaint and in case of failure to file complaint against the defaulters within sixty days, the Registrar of this Tribunal will be entitled to file such complaints against the defaulters in view of clause (b) of Section 30 of the National Green Tribunal Act, 2010.

52. Even though the serious violations revealed by the affidavits filed in the present case warrant an order for prosecution of the concerned officers, but instead of having recourse to said remedy we consider it appropriate to impress and direct upon the concerned Officers/Authorities to take requisite action for protection and improvement of the environment. However, we also consider it appropriate to forewarn that in case such state of affairs of non-compliance with environments laws/norms continues, we shall be constrained to order prosecution of the concerned Officers besides the concerned Project Proponent and also to execute order/award/decision of this Tribunal by arrest and detention of the defaulting Officers.

53. In view of above discussion, CPCB and MoEF & CC are directed to look into the matter of categorization of Excavation of sand from the River Bed (excluding manual excavation) in red or orange category and issue appropriate Notification clarifying categorization thereof as red or orange category within a period of two months from the date of receipt of

a copy of this order. Till issuance of such Notification, river sand mining shall continue to be treated to fall in red category. However in whichever category- red or orange excavation of sand from the River Bed (excluding manual excavation) is so notified to fall, it shall be mandatory for all the Project Proponents to obtain CTE/CTOs from concerned SPCB/PCC and with effect from 01.09.2023 no river sand mining will be allowed to continue to operate in the entire India without obtaining consents from concerned SPCB/PCC and all the concerned Directors, Geology and Mining Department, the District Magistrates and the Commissioners/Superintendents of Police of the concerned Districts shall ensure that no such mining is continued/operative without obtaining CTE/CTO from concerned SPCB/PCC. MOEF&CC is also directed to issue appropriate guidelines/OM within a period of two months from the date of receipt of a copy of this order for ensuring that the requirement of obtaining CTE/CTO from concerned SPCB/PCC is uniformly made applicable to all the river bed sand mining projects throughout India.

54. Affidavit in this regard be filed by respondent no. 1-MoEF & CC on or before 15.09.2023 by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

55. Cases have come to the notice of this Tribunal in which short term permits for sand mining in river bed/agricultural land have been issued by the District Magistrate in the State of U.P. without environmental clearance by SEIAA in violation of direction given by the Hon'ble Supreme Court in Deepak Kumar's case (Supra) and this Tribunal and therefore the Director, Geology and Mining Department, Uttar Pradesh is directed to ensure no such short term permits are issued without EC and strict compliance with statutory provisions, SSMG, 2016 and EMGSM, 2020,

Environment Protection Act, 2016 environmental clearance/consent conditions and directions given by the Hon'ble Supreme Court and this Tribunal is made by all the Project Proponents and to take action against all the Project Proponents who have not complied with the same. The UPPCB is directed to periodically inspect all mining lease sites in the State of Uttar Pradesh and monitor mining activities for verifying status regarding compliance with statutory provisions, SSMG-2016, EMGSM-2020, Environment Act, 2016 and directions given by Hon'ble Supreme Court and this Tribunal and take appropriate remedial action.

56. The Director, Geology and Mining Department, U.P. and UPPCB is also directed to take appropriate action against Respondent No. 2 – the Project Proponent for violation of SSMG, 2016, EMGSM, 2020 and environmental clearance conditions.

57. The Director, Geology and Mining Department, U.P. and Member Secretary, UPPCB are also directed to file Compliance Reports regarding compliance with above referred aspects/directions as well as status report regarding action taken against the Project Proponent on or before 15.09.2023 by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Supported PDF and not in the form of Image PDF.

58. UPPCB has filed interim application no. 592/2023 stating that UPPCB is unable to pay the honorarium and expenses to the amicus curie from the concerned fund and the same may be directed to be spent from environmental compensation fund.

59. We have heard the learned counsel and gone through the relevant record.

60. The case involves the questions relating to environment arising out of the implementation of the enactments specified in Schedule I of the National Green Tribunal Act, 2010 in the State of Uttar Pradesh. Vide order dated 26.04.2023, Mr. Raj Panjwani, Senior Advocate was

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appointed as *amicus curie* to assist this Tribunal in just and fair adjudication of environmental questions involved in the case. In the facts and circumstances of the case we consider it to be appropriate that honorarium and expenses payable to the *amicus curie* be paid out of environmental compensation deposited with UPPCB as such appointment of *amicus curie* is meant to serve ultimately the cause of protection of environment.

61. In view of the above, **interim application no. 592/2023 is disposed of** with the direction that honorarium and expenses be paid to the *amicus curie* by UPPCB out of amount/funds of environmental compensation deposited with UPPCB.

62. List for further consideration on 25.09.2023.

63. A copy of this order be forwarded by email to the applicant and learned Amicus Curiae for information and to the Secretary, MoEF & CC, Chief Secretary, Government of Uttar Pradesh, Member Secretary, CPCB, Member Secretary, UPPCB, Director, Geology and Mining Department, Uttar Pradesh and District Magistrate, Kanpur Nagar for compliance.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

May 30, 2023
AG

ANNEXURE-NO 3

Item Nos. 01 & 02

Court No. 1

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

(By Video Conferencing)

Original Application No. 593/2017

(arising from W.P. (Civil) No. 375/2012 on the file of the Hon'ble
Supreme Court)

(With Report dated 13.02.2020 and 14.05.2020)

WITH

Original Application No. 148/2016

(With Report dated 15.05.2020)

Paryavaran Suraksha Samiti & Anr.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

With

Mahesh Chandra Saxena

Applicant(s)

Versus

South Delhi Municipal Corporation & Ors.

Respondent(s)

Date of hearing: 21.05.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant(s): Mr. Rahul Khurana, Advocate

Respondent(s): Mr. Raj Kumar, Advocate for CPCB
Mr. Balendu Shekhar, Advocate for EDMC
Mr. A.K. Prasad, Advocate for CGWA
Mr. Narendra Pal Singh, Advocate for DPCC

ORDER**INDEX**

Background: Transfer of proceedings to this Tribunal by the Hon'ble Supreme Court vide order in (2017) 5 SCC 326 to monitor compliance of directions to set up STPs/ETPs/CETPs by 31.3.2018 (as per para 10 of the order of Hon'ble Supreme Court) by concerned Industries and Local Bodies to prevent water pollution.	Para 1
Proceedings before this Tribunal: Significant orders dated 3.8.2018, 19.2.2019 and 28.8.2019 in the light of data furnished by the CPCB based on information furnished by State PCBs/PCCs.	Para 2 - 8
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ORIGINAL APPLICATION NO. 593/2017 (PARYAVARAN SURAKSHA SAMITI & ANR. VS. UNION OF INDIA & ORS.)

Background: Transfer of proceedings to this Tribunal by the Hon'ble Supreme Court vide order in (2017) 5 SCC 326 to monitor compliance of directions to set up STPs/ETPs/CETPs by 31.3.2018 (as per para 10 of the order of Hon'ble Supreme Court) by concerned Industries and Local Bodies to prevent water pollution:

1. Proceedings in this matter are consequential to the order of the Hon'ble Supreme Court dated 22.02.2017 in *Paryavaran Suraksha*

*Samiti Vs. Union of India*¹ transferring the proceedings in *W.P. (Civil) No. 375/2012* for monitoring compliance of the orders of the Hon'ble Supreme court. The order of the Hon'ble Supreme Court requires establishment and functioning of requisite ETPs/CETPs/STPs and in default to close industrial activities discharging effluents without treatment and to take action against local bodies for failing to install STPs and discharging sewage without treatment. Some of the observations in the judgment of the Hon'ble Supreme Court are:

“7. Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants. We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50%, that of the State Government concerned (including the Union Territory concerned) is 25%. The balance 25%, is to be arranged by way of loans from banks. The above loans, are to be repaid, by the industrial areas, and/or industrial clusters. We are also informed that the setting up of a common effluent treatment plant, would ordinarily take approximately two years (in cases where the process has yet to be commenced). The reason for the above prolonged period, for setting up “common effluent treatment plants”, according to the learned counsel, is not only financial, but also, the requirement of land acquisition, for the same.

10. Given the responsibility vested in municipalities under Article 243-W of the Constitution, as also, in Item 6 of Schedule XII, wherein the aforesaid obligation, pointedly extends to “public health, sanitation conservancy and solid waste management”, we are of the view that the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). Given the aforesaid responsibility, the municipalities (and/or local bodies) concerned, cannot be permitted to shy away from discharging this onerous duty. In case there are further financial constraints, the remedy lies in Articles 243-X and 243-Y of the Constitution. It will be open to the municipalities (and/or local bodies) concerned, to evolve norms to recover funds, for the purpose of generating finances to install and run all the “common effluent treatment plants”, within the purview of the provisions referred to

¹ (2017) 5 SCC 326

hereinabove. Needless to mention that such norms as may be evolved for generating financial resources, may include all or any of the commercial, industrial and domestic beneficiaries, of the facility. The process of evolving the above norms, shall be supervised by the State Government (Union Territory) concerned, through the Secretaries, Urban Development and Local Bodies, respectively (depending on the location of the respective common effluent treatment plant). The norms for generating funds for setting up and/or operating the "common effluent treatment plant" shall be finalised, on or before 31-3-2017, so as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement of the next financial year, the State Governments (or the Union Territories) concerned, shall cater to the financial requirements, of running the "common effluent treatment plants", which are presently dysfunctional, from their own financial resources.

11. *Just in the manner suggested hereinabove, for the purpose of setting up of "common effluent treatment plants", the State Governments concerned (including, the Union Territories concerned) will prioritise such cities, towns and villages, which discharge **industrial pollutants and sewer, directly into rivers and water bodies.***
12. *We are of the view that in the manner suggested above, **the malady of sewer treatment, should also be dealt with simultaneously.** We, therefore, hereby direct that "sewage treatment plants" shall also be set up and made functional, within the timelines and the format, expressed hereinabove.*
13. *We are of the view that **mere directions are inconsequential, unless a rigid implementation mechanism is laid down.** We, therefore, hereby provide that the directions pertaining to continuation of industrial activity only when there is in place a functional "primary effluent treatment plants", and the setting up of functional "common effluent treatment plants" within the timelines, expressed above, shall be of the Member Secretaries of the Pollution Control Boards concerned. **The Secretary of the Department of Environment, of the State Government concerned (and the Union Territory concerned), shall be answerable in case of default. The Secretaries to the Government concerned shall be responsible for monitoring the progress and issuing necessary directions to the Pollution Control Board concerned, as may be required, for the implementation of the above directions.** They shall be also responsible for collecting and maintaining records of data, in respect of the*

*directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data and shall furnish the same to the Bench of the jurisdictional **National Green Tribunal**.*

- 14. To supervise complaints of non-implementation of the instant directions, the Benches concerned of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The abovementioned case files will be listed periodically. The Pollution Control Board concerned is also hereby directed to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters."**

(emphasis supplied)

Proceedings before this Tribunal: Significant orders dated 3.8.2018, 19.2.2019 and 28.8.2019 in the light of data furnished by the CPCB based on information furnished by State PCBs/PCCs:

2. Accordingly, on 25.05.2017, notice was issued to the Central Pollution Control Board (CPCB), the State Pollution Control Boards (SPCBs)/ Pollution Control Committees (PCCs) and the Ministry of Environment, Forest and Climate Change (MoEF&CC). They filed their status reports showing gaps in waste generated and treatment capacity. It was further stated that action had been initiated to remedy the situation. After considering the status report, the Tribunal, vide orders dated 04.07.2017, 18.09.2017 and 11.10.2017, sought information about the steps taken by the SPCBs/PCCs.
3. Vide order dated 03.08.2018, the matter was reviewed and after noting that in absence of functional ETPs/CETPs/STPs, untreated effluents were being discharged in water bodies leading to contamination of surface and ground water which causes various diseases and also has adverse consequence on aquatic organism due to decreased level of oxygen. The Tribunal directed the CPCB to

prepare an action plan. Direction was also given for monitoring by a Committee of two officers – one each representing MoEF&CC and CPCB at least once in every month. CPCB was required to place the progress report every three months on the website and take penal action for failure by way of recovery of compensation for damage to the environment, apart from other steps.

4. Vide order dated 19.02.2019, after considering the status report furnished by the CPCB, based on the reports furnished by the States/UTs, this Tribunal after referring to orders passed in O.A NO. 673/2018 for remedial action in respect of 351 polluted river stretches, which had direct nexus with the steps for ETPs/CETPs/STPs and order passed in O.A No. 606/2018 requiring Chief Secretaries to monitor progress *inter alia* on the subject of control of pollution of the river stretches, directed that the Chief Secretaries may look into the subject of setting up and proper functioning of ETPs/CETPs/STPs in their respective States/ UTs. Further direction issued was to prepare a report on assessment of compensation on account of discharge of untreated sewage and dumping of solid waste, loss to ecological services due to illegal mining, deforestation, after taking inputs from expert bodies. The Tribunal also directed the CPCB to compile its monitoring report with regard to 97 CETPs (assuming the total number of CETPs in the country to be 97) installed in different States. CPCB was also directed to furnish its report in O.A. No. 95/2018, *Aryavart Foundation Vs. M/s Vapi Green Enviro Ltd. & Ors.* which concerned the issue of inadequate functioning CETP leading to water pollution.

Further proceedings:

5. In the light of directions of this Tribunal dated 19.02.2019, the CPCB furnished reports dated 30.05.2019 updated on 19.07.2019 and 14.08.2019 giving the status of setting up of ETPs/CETPs/STPs with regard to methodology for assessment of environmental compensation and monitoring of CETPs. The reports were considered exhaustively vide order dated 28.08.2019. Before we advert to the observations of this Tribunal with regard to the reports, we may refer to the observations on the main issue:

- “1. *The issue for consideration is establishment and functioning of ETPs/CETPs/STPs to prevent untreated sewage/effluents being discharged in water bodies, including rivers and canals meeting such rivers or otherwise. The magnitude of the problem is well acknowledged. In the year 1962 Gol set up a Committee for prevention of water pollution. The recommendations led to enactment of the Water (Prevention and Control of Pollution) Act, 1974 (“Water Act”) in pursuance of Article 252 of the Constitution. The Water Act provides for the constitution of a Central Board and State Boards/Committees. No polluted matter can be discharged into a stream or well or on land, and no industry, operation or process can be established and no out-let for discharge of sewage used without consent of the State Board. The Water Act provides powers to give directions for closing any such activity as well as for prosecution. Power to give directions implicitly includes recovery of compensation on ‘Polluter Pays’ principle.*
2. *In spite of above statutory regime we are faced with serious problem of water pollution. The Hon’ble Supreme Court noted² that the water pollution caused serious diseases, including Cholera and Typhoid. Water pollution could not be ignored and adequate measures for prevention and control are necessary. Polluting industries were directed to be shifted on ‘Precautionary’ principle. It is not necessary to refer to all the judgments of the Hon’ble Supreme Court dealing with the significance of water and need to prevent pollution of water. We may only refer to the observations that everyone has right to have access to drinking water in quantum and equality equal to the basic needs. This is fundamental to life and part of Article 21.³*

² (1988) 1 SCC 471

³ APPCB vs. Prof. M.V Nayudu (2001) 2 SCC 62 at para 3, 4, State of Orissa Vs. Government of India (2009) 5 SCC 492, at para 58 **“Rivers in India are drying up, groundwater is being**

3. **As per CPCB's report 2016⁴, it has been estimated that 61,948 million liters per day (mld) sewage is generated from the urban areas of which treatment capacity of 23,277 mld is currently existent in India. Thereby the deficit in capacity of waste treatment is of 62%. There is no data available with regard to generation of sewage in the rural areas.**
4. **We may note that discharge of untreated effluents and sewage is the principal cause of water pollution in the country as noted in cases relating to pollution of rivers.⁵ Similarly, in the case of 100 polluted industrial clusters being dealt with by this Tribunal⁶, water pollution is one of the factors polluting the said industrial clusters. As already noted, official data of CPCB is to the effect that 351 river stretches in the Country are polluted. The Tribunal held that remedial action for restoration of the said river stretches is necessary.⁷ In the said order, it was observed:**

"As already noted, well known causes of pollution of rivers are *dumping of untreated sewage and industrial waste, garbage, plastic waste, e-waste, bio-medical waste, municipal solid waste, diversion of river waters, encroachments of catchment areas and floodplains, over drawl of groundwater, river bank erosion on account of illegal sand mining. In spite of directions to install Effluent Treatment Plants (ETPs), Common Effluent Treatment Plants (CETPs), Sewage Treatment Plants (STPs), and adopting other anti-pollution measures, satisfactory situation has not been achieved. Tough governance is the need of the hour. If pollution does not stop, the industry has to be stopped. If sewage dumping*

rapidly depleted, and canals are polluted. Yamuna in Delhi looks like a black drain. Several perennial rivers like Ganga and Brahmaputra are rapidly becoming seasonal. Rivers are dying or declining, and aquifers are getting over pumped. Industries, hotels, etc. are pumping out groundwater at an alarming rate, causing sharp decline in the groundwater levels."

⁴http://www.sulabhenvi.nic.in/Database/STST_wastewater_2090.aspx July 16, updated on December 6, 2016

⁵ O.A No. 673 of 2018 this Tribunal is considering remedial action to rejuvenate 351 polluted river stretches. Therein, other cases of river pollution are mentioned thus "This Tribunal also considered the issue of pollution of river Yamuna, in Manoj Mishra Vs. Union of India, river Ganga in M.C. Mehta Vs. Union of India, river Ramganga which is a tributary of river Ganga in Mahendra Pandey Vs. Union of India & Ors., rivers Sutlej and Beas in the case of Sobha Singh & Ors. Vs. State of Punjab & Ors., river Son in Nityanand Mishra Vs. State of M.P. & Ors., river Ghaggar in Stench Grips Mansa's Sacred Ghaggar River (Suo-Moto Case)", river Hindon in Doaba Paryavaran Samiti Vs. State of U.P. & Ors., river Kasardi in Arvind Pundalik Mhatre Vs. Ministry of Environment, Forest and Climate Change & Ors., River Ami, Tapti, Rohani and Ramgarh lake in Meera Shukla Vs. Municipal Corporation, Gorakhpur & Ors., rivers Chenab and Tawi in the case of Amresh Singh Vs. Union of India & Ors. and Subarnarekha in Sudarsan Das Vs. State of West Bengal & Ors. and issued directions from time to time"

⁶ O.A No. 1038/2018

⁷ O. A No.673/2018, order dated 08.04.2019

does not stop, local bodies have to be made accountable and their heads are to be prosecuted. Steps have to be taken for awareness and public involvement.”

5. All the States and UTs where polluted river stretches exist are required to constitute River Rejuvenation Committees to prepare actions plans for restoration (which are to be reviewed by the highest authority in the States, i.e Chief Secretary) to be monitored by CPCB and thereafter to be further monitored by this Tribunal. Accordingly, the action plans have been prepared which broadly envisage action to prevent discharge of untreated effluent/sewage. The same are being monitored by the CPCB and by this Tribunal and the matter is now listed for hearing on 29.11.2019. In O.A 606/2018 while dealing with the compliance of Solid Waste Management Rules, 2016, this Tribunal vide order dated 16.01.2019 directed personal appearance of all the Chief Secretaries with their monitoring reports on major environment issues including the rejuvenation of polluted river stretches. **The Chief Secretaries of all States/UTs have accordingly appeared and furnished their reports which envisages steps for setting up of ETPs/CETPs/STPs to prevent water pollution. The Chief Secretaries have to appear before this Tribunal with further progress reports on the subjects.**
6. Further, control of pollution of river Ganga is being monitored by this Tribunal in O. A No. 200/2014 after transfer from the Hon'ble Supreme Court. Therein timelines have been prescribed to the effect that STPs be set up in time bound manner and no a drop of pollution be discharged in the river. The Tribunal observed:

“Bioremediation and/or phytoremediation or any other remediation measures may start as an interim measure positively from 01.11.2019, failing which the State may be liable to pay compensation of Rs. 5 Lakhs per month per drain to be deposited with the CPCB. This however, is not to be taken as an excuse to delay the installation of STPs. For delay of the work, the Chief Secretary must identify the officers responsible and assign specific responsibilities. Wherever there are violations, adverse entries in the ACRs must be made in respect of such identified officers. For delay in setting up of STPs and sewerage network beyond prescribed timelines, State may be liable to pay Rs. 10 Lakhs per month per STP and its network. It will be open to the State to recover the said amount from the erring officers/contractors.

With regard to works under construction, after 01.07.2020, direction for payment of environmental compensation of Rs. 10 lakhs per month to CPCB for discharging untreated sewage in any drain

connected to river Ganga or its tributaries and Rs. 10 lakhs per month to CPCB per incomplete STP and its sewerage network will apply. Further with regard to the sectors where STP and sewerage network works have not yet started, the State has to pay an Environmental Compensation of Rs. 10 lakhs per month after 31.12.2020. The NMCG will also be equally liable for its failure to the extent of 50% of the amount to be paid. Till such compliance, bioremediation or any other appropriate interim measure may start from 01.11.2019."

(emphasis supplied)

6. We now refer to the observations of this Tribunal while considering the reports dated 30.05.2019 updated on 19.07.2019 and 14.08.2019:

"I. Report dated 30.05.2019 updated on 19.07.2019

13. According to updated report dated 19.07.2019, out of 62,897 number of industries requiring ETPs, 60,944 industries are operating with functional ETPs and 1949 industries are operating without ETPs. 59,258 industries are complying with environmental standards and 1,524 industries are non-complying. There are total 192 CETPs, out of which 133 CETPs are complying with environmental standards and 59 CETPs are non-complying. There are total 13,709 STPs (Municipal and other than municipal), out of which, 13,113 STPs are complying with environmental standards and 637 STPs are non-complying. 73 CETPs in construction/proposal stage, whereas, for STPs, 1164 projects (municipal and non-municipal) are under construction/proposal stage.
14. A report has also been prepared on the scale of environmental compensation to be recovered from individual/authorities for causing pollution or failure for preventing causing pollution, apart from illegal extraction of ground water, failure to implement Solid waste Management Rules, damage to environment by mining and steps taken to explore preparation of an annual environmental plan for the country. Extracts from the report which are considered significant for this order are:

"I. Environment Compensation to be levied on Industrial Units

Recommendations

The Committee made following recommendations:

1.5.1 To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, band c, Environmental Compensation may be calculated based on the formula "EC= Pl x N x Rx S x LF", wherein, Pl

may be taken as 80, 50 and 30 for red, orange and green category of industries, respectively, and R may be taken as 250. Sand LF may be taken as prescribed in the preceding paragraphs

1.5.2 In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.

1.5.3 The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.

1.5.4 EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules.

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

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

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

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

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

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

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

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

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

BIS 15-1172:1993 suggests that for communities with population above 100,000, minimum of 150 to 200 lpcd of water demand is to be supplied. Further, 85% of return rate (CPHEEO Manual on Sewerage and Sewage Treatment Systems, 2013), may be considered for calculation of total sewage generation in a city. CPCB Report on "Performance evaluation of sewage treatment plants under NRCD, 2013", describes that the capital cost for 1 MLD STP ranges from 0.63 Cr. to 3 Cr. and O&M cost is around Rs. 30,000 per month. After detail deliberations, the Committee suggested to assume capital cost for STPs as Rs. 1.75 Cr/MLD (marginal average cost). Further, expected cost for conveyance system is assumed

as Rs. 5.55 Cr./MLD (marginal average cost) and annual O&M cost as 10% of the combined capital cost. Population of the city may be taken as per the latest Census of India. Based on these assumptions, Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

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

Alternatively;

EC (Lacs Rs.)= [17.S/Total Sewage Generation - Installed Treatment Capacity)+ 55.S/(Total Sewage Generation-Operational Capacity)] + 0.2(Sewage Generation-Operational Capacity) x N + Marginal Cost of Environmental Externality x (Total Sewage Generation-Operational Capacity) X N

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

Quantity of Sewage is in MLD

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

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Sewage Generation (MLD) (as per the latest data available with CPCB)	4195	381	486	37
Installed Treatment Capacity (MLD) (as per the latest data available with CPCB)	2500	220	404	45.5
Operational Capacity (MLD) (as per the latest data available with CPCB)	1900	140	300	24.5

Treatment Capacity Gap (MID)	2295	241	186	12.5
Calculated EC (capital cost component for STPs) in Lacs Rs.	29662.50	2817.50	1435.00	0.00
Calculated EC (capital cost component for Conveyance System) in Lacs. Rs.	127372.50	13375.50	10323.00	693.75
Calculated EC (Total capital cost component) in Lacs Rs.	157035.00	16193.00	11758.00	693.75
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 2000 Max. 20000	Min. 1000 Max. 10000	Min. 100 Max. 1000	Min. 100 Max. 1000
Final EC (Total Capital Cost Component) in Lacs Rs.	20000.00	10000.00	1000.00	693.75
Calculated EC (O&M Component in Lacs Rs./day)	459.00	48.20	37.20	2.50
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5	Min. 0.5 Max. 5
Final EC (O&M Component) in Lacs. Rs./Day	20.00	10.00	5.00	2.50
Calculated Environmental Externality (Lacs Rs .Per Day)	2.0655	0.2049	0.1395	0.0094
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)	Min. 0.60 Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.05 Max. 0.10	Min. 0.05 Max. 0.10
Final Environmental Externality (Lacs Rs. Per day)	0.80	0.25	0.10	0.05

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

Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

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

Where;

Waste Quantity in tons per day (TPD)

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

Simplifying;

$EC \text{ (Lacs Rs.)} = 2.4(\text{Waste Generation} - \text{Waste Disposed as per the Rules}) + 0.02 (\text{Waste Generation} - \text{Waste Disposed as per the Rules}) \times N + \text{Marginal Cost of Environmental Externality} \times (\text{Waste Generation} - \text{Waste Disposed as per the Rules}) \times N$

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

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Waste Generation (kg. per person per day)	0.6	0.5	0.4	0.4
Waste Generation (TPD)	9809.90	880.14	350.79	200.31
Waste Disposal as per Rules (TPD) (assumed as 25% of waste generation for sample calculation)	2452.47	220.04	87.70	50.08
Waste Management Capacity Gap (TPD)	7357.42	660.11	263.09	150.23
Calculated EC (capital cost component) in Lacs. Rs.	17657.82	1584.26	631.42	360.56
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000	Min. 100 Max. 1000

Final EC (capital cost component) in Lacs. Rs.	10000.00	1584.26	631.42	360.56
Calculated EC (O&M Component) in Lacs. Rs./Day	147.15	13.20	5.26	3.00
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./Day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0	Min. 0.1 Max. 1.0
Final EC (O&M Component) in Lacs. Rs./Day	10.00	5.00	1.00	1.00
Calculated Environmental Externality (Lacs Rs. Per Day)	2.58	0.18	0.03	0.02
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)	Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.01 Max. 0.05	Min. 0.01 Max. 0.05
Final Environmental Externality (Lacs Rs. per day)	0.80	0.25	0.03	0.02

IV. Environmental Compensation in Case of Illegal Extraction of Ground Water

4.5 Formula for Environmental Compensation for illegal extraction of ground water

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

$$EC_{Gw} = \text{Water Consumption per Day} \times \text{No. of Days} \times \text{Environmental Compensation Rate for illegal extraction of ground water (ECR}_{Gw})$$

Where water Consumption is in m^3/day and ECR_{Gw} in $Rs./m^3$

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

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

In case of illegal extraction of ground water, quantity of discharge as per the meter reading or as

calculated with assumptions of yield and time may be used for calculation of EC_{Gw} .

4.6 Environmental Compensation Rate (ECRGw) for illegal use of Ground Water:

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

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

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

4.6.1 ECRGw for Drinking and Domestic use:

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

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

4.6.2 ECRGw for Packaged drinking water units:

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

4.6.3 ECR_{Gw} for Mining, Infrastructure and Dewatering Projects

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

4.6.4 ECR_{Gw} for Industrial Units:

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

4.8 Recommendations

The committee has given following recommendations:

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

- Authorities assigned for levy EC and taking penal action are listed below:

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

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

"Discussion on the report dated 30.05.2019 updated on 19.07.2019

15. It is clear from the order of the Hon'ble Supreme Court⁸ that the responsibility of operating STPs under Article 243W and item 6 of Schedule XII to the Constitution is of local bodies who have to evolve norms to recover funds for the purpose which is to be supervised by the States/UTs. The norms were to be finalized upto 31.03.2017 to be implemented from the next year, i.e 01.04.2018. In absence thereof, the States/UTs have to cater to the financial requirement from its own resources. The States/UTs are to prioritize the cities, towns, villages discharging effluents/sewage directly into the water bodies. Industrial activity without proper treatment plants (ETPs and CETPs) is not to be allowed by the State PCBs and the Secretaries, Environment of the States/UTs are to be answerable. Thus, the source for financial resources for the STPs, stands finalized under the binding judgment of the Hon'ble Supreme Court. Authorities and persons accountable are identified. Rigid implementation has been laid down. This Tribunal has been required to monitor compliance of the directions and timelines.
16. It is in this background that the present report needs to be appraised and further directions given. As regards the Environmental compensation regime fixed for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. With regard to setting up of STPs, while we appreciate the extensive work of the CPCB based on information furnished by States/UTs, the challenge remains about verification of the said data on the one hand and analysis of the steps taken and required on

⁸ Para 10-13 in *Paryavaran Suraksha Samiti Vs. Union of India, Supra*

the other. There is already a database available with the CPCB with regard to ETPs, CETPs, STPs, MSW facilities, Legacy Waste sites. This needs to be collated and river basinwise macro picture needs to be prepared by the CPCB in terms of need for interventions, existing infrastructure and gaps therein. The States have given timelines which need to be effectively monitored both by the CPCB and the Chief Secretaries in terms of its execution.

17. As already noted, prevention of pollution of water is directly linked to access to potable water as well as food safety. Restoration of pristine glory of rivers is also of cultural and ecological significance. This necessitates effective steps to ensure that no pollution is discharged in water bodies. Doing so is a criminal offence under the Water Act and is harmful to the environment and public health. 'Precautionary' principle of environmental law is to be enforced. Thus, the mandate of law is that there must be 100% treatment of sewage as well as trade effluents. This Tribunal has already directed in the case of river Ganga that timelines laid down therein be adhered to for setting up of STPs and till then, interim measures be taken for treatment of sewage. There is no reason why this direction be not followed, so as to control pollution of all the river stretches in the country. The issue of ETPs/CETPs is being dealt with by an appropriate action against polluting industries. Setting up of STPs and MSW facilities is the responsibility of Local Bodies and in case of their default, of the States. Their failure on the subject has to be adequately monitored. Recovery of compensation on 'Polluter Pays' principle is a part of enforcement strategy but not a substitute for compliance. It is thus necessary to issue directions to all the States/UTs to enforce the compensation regime, latest with effect from 01.04.2020. We may not be taken to be condoning any past violations. The States/UTs have to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies. On failure of the States/UTs, the States/UTs themselves have to pay the requisite amount of compensation to be deposited with the CPCB for restoration of environment. The Chief Secretaries of all the States may furnish their respective compliance reports as per directions already issued in O.A. No. 606/2018."

"II. Report dated 14.08.2019 with regard to monitoring of CETPs

18. The Committee inspected 127 CETPs in 14 States. Figure of CETP assumed to be 97 was not correct. 66 CETPs were found to be non-compliant. CPCB directed SPCBs to take following steps:
- "1. SPCBs shall direct non-complying CETPs to take immediate corrective actions to comply with the environmental standards.

2. CETP should be directed to take action as per the recommendations provided at Annexure A-N within a time frame.
3. In case of non-complying CETPs, action as deemed fit including levying of environmental compensation may be taken.
4. In case, OCEMS are not connected with CPCB & SPCB servers, ensure a robust system of physical inspections to verify compliance by drawing samples."

"Discussion on the report dated 14.08.2019

19. We accept the recommendation of the CPCB and direct the Chief Secretaries, State Governments, Union Territories and the SPCBs/PCCs to take further action accordingly and furnish an action taken report accordingly. The CPCB to meanwhile compile and collate information with regard to ETPs, CETPs, STPs, MSW Facilities, Legacy Waste dump sites and complete the pending task on the subject before the next date and furnish a report.
20. The environmental compensation regime for CETP not meeting the prescribed norms need to be evolved by the CPCB."

(emphasis supplied)

7. After the above discussion, this Tribunal proceeded to issue following directions:

"Directions

21. We may now sum up our directions:
 - (i) The Environmental compensation regime fixed for industrial units, GRAP, solid waste, sewage and ground water in the report dated 30.05.2019 is accepted and the same may be acted upon as an interim measure.
 - (ii) SPCBs/PCCs may ensure remedial action against non-compliant CETPs or individual industries in terms of not having ETPs/fully compliant ETPs or operating without consent or in violation of consent conditions. This may be overseen by the CPCB. CPCB may continue to compile information on this subject and furnish quarterly reports to this Tribunal which may also be uploaded on its website.
 - (iii) All the Local Bodies and or the concerned departments of the State Government have to ensure 100% treatment of the generated sewage and in default to pay compensation which is to be recovered by the States/UTs, with effect from 01.04.2020. In default of such collection, the States/UTs are liable to pay such compensation. The CPCB is to collect the same and utilize for restoration of the environment.**

- (iv) *The CPCB needs to collate the available data base with regard to ETPs, CETPs, STPs, MSW facilities, Legacy Waste sites and prepare a river basin-wise macro picture in terms of gaps and needed interventions.*
- (v) ***The Chief Secretaries of all the States/UTs may furnish their respective compliance reports on this subject also in O.A. No. 606/2018.***

List for further consideration on 21.05.2020, unless required earlier. A copy of this order be placed on the file of O.A. No. 606/2018 relating to all States/UTs and be sent to Chief Secretaries of all States/UTs, Secretary MoEF&CC, Secretary Jal Shakti and Secretary, MoHUA.

(emphasis supplied)

8. Before proceeding further, we may also note further order of this Tribunal dated 06.12.2019 in O.A. No. 673/2018 directing as follows:

“XII. Directions:

47. We now sum up our directions as follows:

- i. 100% treatment of sewage may be ensured as directed by this Tribunal vide order dated 28.08.2019 in O.A. No. 593/2017 by 31.03.2020 atleast to the extent of in-situ remediation and before the said date, commencement of setting up of STPs and the work of connecting all the drains and other sources of generation of sewage to the STPs must be ensured. If this is not done, the local bodies and the concerned departments of the States/UTs will be liable to pay compensation as already directed vide order dated 22.08.2019 in the case of river Ganga i.e. Rs. 5 lakhs per month per drain, for default in in-situ remediation and Rs. 5 lakhs per STP for default in commencement of setting up of the STP.***
- ii. Timeline for completing all steps of action plans including completion of setting up STPs and their commissioning till 31.03.2021 in terms of order dated 08.04.2019 in the present case will remain as already directed. In default, compensation will be liable to be paid at the scale laid down in the order of this Tribunal dated 22.08.2019 in the case of river Ganga i.e. Rs. 10 lakhs per month per STP.***
- iii. We further direct that an institutional mechanism be evolved for ensuring compliance of above directions. For***

this purpose, monitoring may be done by the Chief Secretaries of all the States/UTs at State level and at National level by the Secretary, Ministry of Jal Shakti with the assistance of NMCG and CPCB.

- iv. For above purpose, a meeting at central level must be held with the Chief Secretaries of all the States/UTs atleast once in a month (option of video conferencing facility is open) to take stock of the progress and to plan further action. NMCG will be the nodal agency for compliance who may take assistance of CPCB and may give its quarterly report to this Tribunal commencing 01.04.2020.**
- v. The Chief Secretaries may set up appropriate monitoring mechanism at State level specifying accountability of nodal authorities not below the Secretary level and ensuring appropriate adverse entries in the ACRs of erring officers. Monitoring at State level must take place on fortnightly basis and record of progress maintained. The Chief Secretaries may have an accountable person attached in his office for this purpose.*
- vi. Monthly progress report may be furnished by the States/UTs to Secretary, Ministry of Jal Shakti with a copy to CPCB. Any default must be visited with serious consequences at every level, including initiation of prosecution, disciplinary action and entries in ACRs of the erring officers.*
- vii. As already mentioned, procedures for DPRs/tender process needs to be shortened and if found viable business model developed at central/state level.**
- viii. Wherever work is awarded to any contractor, performance guarantee must be taken in above terms.**
- ix. CPCB may finalize its recommendations for action plans relating to P-III and P-IV as has been done for P-I and P-II on or before 31.03.2020. This will not be a ground to delay the execution of the action plans prepared by the States which may start forthwith, if not already started.*
- x. The action plan prepared by the Delhi Government which is to be approved by the CPCB has to follow the action points delineated in the order of this Tribunal dated 11.09.2019 in O.A. No. 06/2012.*
- xi. Since the report of the CPCB has focused only on BOD and FC without other parameters for analysis such as pH, COD, DO and other recalcitrant toxic pollutants having tendency of bio magnification, a survey may now be conducted with reference to all the said parameters by involving the SPCB/PCCs within three months. Monitoring gaps be identified and upgraded so to cover upstream and downstream locations of major*

discharges to the river. CPCB may file a report on the subject before the next date by e-mail at judicial-ngl@qov.in.

- xii. *Rivers which have been identified as clean may be maintained."*

(emphasis supplied)

Latest CPCB report dated 14.5.2020 furnishing status of compliance:

9. The CPCB has filed two reports:
- (i). Report dated 13.02.2020 titled "Steps taken Report".
- (ii). Report dated 14.05.2020 titled "Compliance Report".
10. Since report dated 14.05.2020 covers the entire subject, it is not necessary to refer to the report dated 13.02.2020 in detail. Report dated 14.05.2020 mentions the compliance status of ETPs/CETPs & STPs, as reported by State PCBs/PCCs as on 05.05.2020, which has been given in a tabular form and the summary is given as follows:
- "i. **As per the data received from SPCBs/PCCs, out of total 65,135 number of industries requiring ETPs, 63,108 industries are operating with functional ETPs and 2,027 industries are operating without ETPs. Show-cause notices and closure directions have been issued to 968 and 881 industries, respectively for operating without ETPs. Legal cases have been filed against 7 industries and action is under process against 269 industries. Out of 63,108 operational industries, 61,346 industries are complying with environmental standards and 1,616 industries are non-complying. Show-cause notices and closure directions have been issued to 921 and 260 industries, respectively for non-compliance. Legal cases have been filed against 22 industries and action is under process against 798 industries.**
- ii. **As per the data received from SPCBs/PCCs, there are total 191 CETPs, out of which 128 CETPs are complying with environmental standards and 63 CETPs are non-complying. Show-cause notices and closure directions have been issued to 18 and 4 CETPs, respectively, for non-compliance. Legal cases have**

been filed against 9 CETPs and action is under process against remaining 32 CETPs.

- iii. **As per the data received from SPCBs/PCCs, there are total 15,403 STPs (Municipal and other than municipal), out of which, 14,795 STPs are complying with environmental standards and 608 STPs are non-complying. Show-cause notices and closure directions have been issued to 340 and 38 STPs, respectively for non-compliance. Legal cases have been filed against 15 STPs and action is under process against 215 STPs.**
- iv. **As per the data received from SPCBs/PCCs, there are 82 CETPs in construction/proposal stage, whereas, for STPs, 1084 projects (municipal and non-municipal) are under construction/proposal stage.**
- v. **As per the data received from 36 SPCBs/PCCs, 14 SPCBs/PCCs (namely- Andhra Pradesh, Assam, Bihar, Goa, Haryana, Himachal Pradesh, Jharkhand, Kerala, Madhya Pradesh, Odisha, Puducherry, Tamil Nadu, Telangana, West Bengal) are displaying OCEMS data in public domain. The link provided by Maharashtra and Gujarat is password protected and data is not available in public domain. The 4 SPCBs (namely, Chhattisgarh, Jammu & Kashmir, Punjab and Sikkim) have not provided appropriate web links. Further, Chandigarh PCC has clarified that Data will be displayed after upgradation of STPs. Mizoram SPCB has informed that there is no industry requiring OCEMS connectivity. Lakshadweep PCC informed that there is no industry in the Union Territory of Lakshadweep.**
- 13 SPCBs/PCCs (Andaman & Nicobar, Arunachal Pradesh, Daman & Diu, Dadra Nagar Haveli, Delhi, Karnataka, Manipur, Meghalaya, Nagaland, Rajasthan, Tripura, Uttar Pradesh and Uttarakhand) are not displaying OCEMS data in public domain.”**

(emphasis supplied)

11. Action taken has been mentioned as 'river basin-wise data collection and analysis by CPCB for compliance of Hon'ble NGT directions dated 28.08.2019'; Status of Non-complying CTEPs; Meeting of the Monitoring Committee and Quarterly Steps Taken Reports. Extracts from the report are:

“3.0 Action taken by CPCB for compliance of Hon'ble NGT directions dated 28.08.2019:

i. River basin wise macro picture of ETPs, CETPs, STPs, MSW facilities, Legacy Waste sites:

The issue was deliberated in the meetings of the Monitoring Committee, wherein, it was observed that specific river basin wise data regarding location (latitude & longitude), waste generation and treatment etc. for each and every industry, CETP, STP, MSW facility and Legacy Waste Site is not available with CPCB. Further, to find out river-basin wise gaps in treatment system and needed interventions for particular sector, unit-wise data regarding actual generation, treatment and discharge of effluent/waste etc. is required. Therefore, to compile such a compressive database, it was decided that information will be collected through online portal, by developing specific formats for each sector. This database will also be helpful for policy makers and regulators to critically analyse the needed interventions/measures for abatement and control of pollution.

CPCB has finalized the formats for collection of information from concerned SPCBs/PCCs, for preparation of river basin wise macro picture related to ETPs and CETPs (**Annexure-II & III**). An online portal has also been developed by CPCB, which is available on the following weblink: <http://125.19.52.219/qpi/riverbasin/>. CPCB vide email dated 12.05.2020 (**Annexure-IV**) requested all SPCBs/PCCs to provide the information on the portal by 31st May, 2020. The formats for STPs, MSW facilities and Legacy Waste Sites have been finalized and the same are given at **Annexure-V, Annexure-VI and Annexure-VII**, respectively. However, portal development for STPs, MSW facilities, Legacy Waste sites is in the process.

It is to be noted that following river basin, as classified by Central Water Commission, Ministry of Jal Shakti, Government of India, are being considered for the data collection and analysis:

1. Indus
- 2(a). Ganga (Upto Border)
- 2(b). Brahmaputra (Upto Border)
- 2(c). Barak etc. (Upto Border)
3. Godavari
4. Krishna
5. Cauvery
6. Pennar
0. East flowing rivers between Krishna and Pennar and between Mahanadi and Godavari
7. East flowing rivers between Krishna and Kanyakumari
8. Mahanadi
1. Brahmani and Baitarani

2. Subernarekha
3. Sabarmati
4. Mahi
5. West flowing rivers of Kutch and Kathiawar including Luni
6. Narmada
7. Tapi
8. West flowing rivers from Tapi to Tadri
9. West flowing rivers from Tadri to Kanyakumari
10. Area of Inland drainage in Rajasthan
11. Minor river basins drainage to Bangladesh & Burma

(Source: <http://www.cwc.gov.in/river-basin-planning>)

ii. Status of Non-complying CETPs:

a) In compliance of Hon'ble NGT directions, during March-May, 2019, CPCB inspected a total number of 144 CETPs in 14 states, out of which 17 were found closed. As per the monitoring, 66 CETPs were found non-complying in terms of outlet standards. The compiled inspection-cum-monitoring reports and action taken by CPCB were submitted to Hon'ble NGT on 14.08.2019. CPCB has directed all concerned SPCBs, through directions u/s 18(1)(b) of Air and Water Act, issued on 13.08.2019, to take following actions against defaulting CETPs:

1. SPCBs shall direct non-complying CETPs to take immediate corrective actions to comply with the environmental standards.
2. SPCBs shall direct all non-complying CETPs to take action as per the recommendations of CPCB, within a time frame.
3. In case of non-complying CETPs, action as deemed fit including levying of environmental compensation may be taken.
4. In case, OCEMS are not connected with CPCB & SPCB servers, ensure a robust system of physical inspections to verify compliance by drawing samples.

CPCB has been following-up the matter with the concerned SPCBs/PCCs. Action Taken Reports, w.r.t. 66 non-complying CETPs has been received from all the 14 SPCBs. The dates of ATRs submitted by SPCBs/PCCs, are given at **Annexure-VIII**.

As per the information received from concerned SPCBs, out of 66 noncomplying CETPs, 26 CETPs have complied the directions, however, 40 CETPs are still non-complying. Environmental compensation has been levied on 13

CETPs. Actions for levying EC / legal action are under process against 10 CETPs. The state-wise summary status of 66 non-complying CETPs and action taken by concerned SPCBs is given at **Annexure-IX**. Further, CETP-wise compliance status of CPCB's directions and recommendations is attached at **Annexure-X**.

- b) Regarding evolving environmental compensation regime for CETPs, it is to submit that in compliance of Hon'ble NGT order dated 03.08.2017, in the matter of OA No. 593/2017 (Paryavaran Suraksha Samiti v/s UoI), CPCB has earlier finalized the following formula, which is primarily based on the Pollution Index (PI) of the concerned sector, for levying environmental compensation on a defaulting industry:

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

Where,

EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

Presently, considering the PI value as 80, the same formula is being used for levying EC on non-complying CETPs. Further, as per the Hon'ble NGT directions CPCB is in the process of revising EC regime for non-complying CETPs. The issue was discussed in the Committee, dealing with the EC matter, on 17.02.2020 and 04.03.2020. CPCB will finalize the revised EC regime for non-complying CETPs, shortly.

iii. Meeting of the Monitoring Committee:

CPCB has been conducting meetings of the Monitoring Committee on regular basis to review the compliance status of ETPs/CETPs/STPs submitted by SPCBs/PCCs and to deliberate on issues for ensuring the compliance of Hon'ble NGT's directions. So far, fifteen meetings of the Monitoring Committee have been conducted. Since the date last hearing i.e. 28.08.2019, meetings of the Monitoring Committee were held on 27th September 2019, 9th December 2019, 13th February, 2019 at CPCB Head Office, Delhi.

iv. Quarterly Steps Taken Reports:

CPCB has been uploading Steps Taken Reports on its website, as directed by the Hon'ble Tribunal. The reports can be accessed through the URL-<https://cpcb.nic.in/ngt-court-cases/>. So far, six reports with the status as on 26.10.2018, 23.01.2019, 15.04.2019, 19.07.2019, 22.10.2019 and 04.02.2020 have been uploaded. The copies of the Steps Taken Report i.e. 22.10.2019 and

04.02.2020 were also submitted to the Hon'ble NGT through e-filing."

12. The report further mentions preparation of formats for collection of information from concerned States PCBs/PCCs, development of online portal. Compliance status is found to be as follow:

"As per the information received from concerned SPCBs, out of 66 noncomplying CETPs, 26 CETPs have complied the directions, however, 40 CETPs are still non-complying. Environmental compensation has been levied on 13 CETPs. Actions for levying EC / legal action are under process against 10 CETPs. The state-wise summary status of 66 non-complying CETPs and action taken by concerned SPCBs is given at Annexure-IX. Further, CETP-wise compliance status of CPCB's directions and recommendations is attached at Annexure-X."

Analysis of the report dated 14.5.2020:

13. The above report shows that some steps have been initiated against non-compliant ETPs/CETPs/STPs while further steps need to be taken. With regard to industries not having ETP or not connected to CETP, pending construction of CETPs as mentioned in the above report, the State PCBs/PCCs may ensure that there is no discharge of any untreated pollutants by the industries and such polluting activities must be stopped and compensation recovered for the non-compliance, if any, apart from any other legal action in accordance with law. As regards non-compliant STPs, further action may be completed by the State PCBs/PCCs and it may be ensured that there is 100% treatment of sewage and till STPs are set up, atleast in-situ remediation takes place. However, on account of Corona pandemic which has affected several on-going activities, the timeline of levy of compensation in terms of order dated 28.08.2019 in O.A. No. 593/2017 read with order dated 06.12.2019 in O.A. No. 673/2018, of 01.04.2020 may be read as 01.07.2020 and 01.04.2021 may be

read as 01.07.2021. Further reports may be taken by the CPCB from all the State PCBs/PCCs as per the system evolved by the CPCB from time to time.

14. At this stage, it will also be appropriate to mention the proceedings in another matter pending before this Tribunal which have bearing on the present case namely *O.A. No. 1038, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels"* which was last dealt with on 14.11.2019. Brief reference to same has been made in earlier order also. The issue therein was remedial action against pollution of industrial clusters, classified as such, based on Comprehensive Environmental Pollution Index (CEPI) prepared by CPCB on the basis of data furnished by the State PCBs/PCCs. The said data shows that 100 industrial clusters are polluted in terms of air, water and soil. Some of the salient observations in the said order are as follows:

"9. In view of the above, since the data compiled so far shows increasing trend of air, water and soil pollution, meaningful action must result in reversing such trend and the violators of law cannot be allowed to have a free run at the core of environment and public health. Inaction by the statutory authorities is also at the cost of Rule of Law which is the mandate of the Constitution and is necessary for meaningful enforcement of legitimate constitutional rights of citizens and basic duty of a welfare State under the Constitution.

10. We may note the observation of the Hon'ble Supreme Court in the subject of accountability of authorities for failing to discharge their duties. In *M.C. Mehta v. UOI & Ors.*, W.P Civil No. 13029/1985 vide order dated 04.11.2019, the Hon'ble Supreme Court observed:

".....Obviously, it is writ large that the State Governments, Government of NCT of Delhi and civic bodies have miserably failed to discharge their liability as per the directive principles of State

Policy which have found statutory expression, they are being made statutory mockery and also the directions of this Court and High Courts in this regard are being violated with impunity.

.... Time has come when we have to fix the accountability for this kind of situation which has arisen and is destroying right to life itself in gross violation of Article 21 of the Constitution of India.

.... Everybody has to be answerable including the top state machinery percolating down to the level of gram panchayat. The very purpose of giving administration power up to the panchayat level is that there has to be proper administration and there is no room for such activities. The action is clearly tortuous one and is clearly punishable under statutory provisions, besides the violation of the Court's order."

In **Techi Tagi Tara vs. Rajendra Singh Bhandari and Ors.**, (2018) 11 SSC 734, it was observed:

"2..... There can be no doubt that the protection and preservation of the environment is extremely vital for all of us and unless this responsibility is taken very seriously, particularly by the State Governments and the SPCBs, we are inviting trouble that will have adverse consequences for future generations. Issues of sustainable development, public trust and intergenerational equity are not mere catch words, but are concepts of great importance in environmental jurisprudence.

4. One of the principal attributes of good governance is the establishment of viable institutions comprising professionally competent persons and the strengthening of such institutions so that the duties and responsibilities conferred on them are performed with dedication and sincerity in public interest. This is applicable not only to administrative bodies but more so to statutory authorities—more so, because statutory authorities are the creation of a law made by a competent legislature, representing the will of the people."

- 11. The Tribunal has thus no option except to reiterate that meaningful action has to be taken by the State PCBs/PCCs as already directed and action taken report furnished showing the number of identified polluters in polluted industrial areas mentioned above, the extent of closure of polluting activities, the extent of environmental compensation recovered, the cost of restoration of the damage to the environment of the said areas, otherwise there will be no meaningful environmental governance. This may be failure of rule of law and breach of trust reposed in statutory authorities rendering their existence useless and burden on the society.***

On default, the Tribunal will have no option except to proceed against the Chairmen and the Member Secretaries of the State PCBs/PCCs by way of coercive action under Section 25 of the National Green Tribunal Act, 2010 read with Section 51 CPC. Such action may include replacement of persons heading such PCBs/PCCs or direction for stopping their salaries till meaningful action for compliance of order of this Tribunal. The Tribunal may also consider deterrent compensation to be recovered from the State PCBs/PCCs. Such action taken reports strictly in terms of law and order of this Tribunal referred to above may be furnished by the State PCBs/PCCS on or before 31.01.2020 to the CPCB. The CPCB may prepare a tabulated analysis of the same and file a consolidated report before this Tribunal before February 15, 2020 by email at judicial-ngt@gov.in. The CPCB may also revise its mechanism for expansion and new activities by red and orange category of industries in critically/ severely polluted areas consistent with the spirit of the earlier orders of this Tribunal and principles of environmental law to bring down the pollution load and ensure that activities do not further add to such load."

15. We may also refer to the proceedings in another connected matter being O.A. No. 606/2018 dealing with the solid waste management and other issues. The same has also been briefly referred to earlier. The said matter was taken up in pursuance of the order of the Hon'ble Supreme Court dated 02.09.2014 in *Writ Petition No. 888/1996, Almitra H. Patel Vs. Union of India & Ors.*⁹ In the said matter, this Tribunal flagged important environmental issues including solid waste and liquid waste management in the light of orders of the Hon'ble Supreme Court. On account of continuous non-compliance for a long period, the Chief Secretaries of all States/UTs were required to appear before this Tribunal vide order

⁹ Operative part of the order of the Hon'ble Supreme Court reads:

"Enforcement of the Rules and efforts to upgrade the technology relevant to the handling of solid municipal waste is a perennial challenge and would require constant efforts and monitoring with a view to making the municipal authorities concerned accountable, taking note of dereliction, if any, issuing suitable directions consistent with the said Rules and direction incidental to the purpose underlying the Rules such as upgradation of technology wherever possible. **All these matters can, in our opinion, be best left to be handled by the National Green Tribunal established under the National Green Tribunal Act, 2010.** The Tribunal, it is common ground, is not only equipped with the necessary expertise to examine and deal with the environment related issues but is also competent to issue in appropriate cases directions considered necessary for enforcing the statutory provisions."

dated 16.01.2019. The Tribunal issued directions in the presence of the Chief Secretaries of all the States/UTs by separate orders. Since Chief Secretaries sought time for compliance, they were required to appear again with progress report on crucial issues, including water pollution leading to pollution of rivers and industrial clusters and other issues. Further order dated 12.09.2019 was passed with regard to the schedule of appearance of the Chief Secretaries in second round. Some of the Chief Secretaries have already appeared. It may be sufficient to refer to order dated 28.02.2020 (other orders be almost on same lines) inter-alia directing as follows:

*“3. The matter was earlier considered by the Hon’ble Supreme Court inter-alia vide judgments reported in (2000) 2 SCC 679 and (2004) 13 SCC 538 directing scientific disposal of waste by setting up of compost plants/processing plants, preventing water percolation through heaps of garbage, creating focused ‘solid waste management cells’ in all States and complying with the Municipal Solid Waste Management Rules, 2016 (SWM Rules, 2016) on urgent basis. **It was observed that the local authorities constituted for providing services to the citizens are lethargic and insufficient in their functioning which is impermissible. Non-accountability has led to lack of effort on the part of the employees. Domestic garbage and sewage along with poor drainage system in an unplanned manner contribute heavily to the problem of solid waste. The number of slums have multiplied significantly occupying large areas of public land. Promise of free land attracts more land grabbers. Instead of “slum clearance” there is “slum creation” in cities which is further aggravating the problem of domestic waste being strewn in the open.** Accordingly, the Court directed that provisions pertaining to sanitation and public health be complied with, streets and public premises be cleaned daily, **statutory authorities levy and recover charges from any person violating laws and ensure scientific disposal of waste, landfill sites be identified keeping in mind requirement of the city for next 20 years and environmental considerations, sites be identified for setting up of compost plants, steps be taken to prevent fresh encroachments and compliance report be submitted within eight weeks.***

4. Further observations in the judgment of the Hon'ble Supreme Court¹⁰ are:

"3. The petitioner has handed over a note in the Court showing the progress that has been made in some of the States and also setting out some of the suggestions, including the suggestion for creation of solid waste management cell, so as to put a focus on the issue and also to provide incentives to those who perform well as was tried in some of the States. The said note states as under:

- "1. As a result of the Hon'ble Supreme Court's orders on 26-7-2004, in Maharashtra the number of authorisations granted for solid waste management (SWM) has increased from 32% to 98%, in Gujarat from 58% to 92% and in M.P. from NIL to 34%. No affidavits at all have been received from the 24 other States/UTs for which CPCB reported NIL or less than 3% authorisations in February 2004. All these States and their SPCBs can study and learn from Karnataka, Maharashtra and Gujarat's successes.
2. **All States/UTs and their SPCBs/PCCs have totally ignored the improvement of existing open dumps, due by 31-12-2001, let alone identifying and monitoring the existing sites. Simple steps can be taken immediately at almost no cost by every single ULB to prevent monsoon water percolation through the heaps, which produces highly polluting black run-off (leachate). Waste heaps can be made convex to eliminate standing water, upslope diversion drains can prevent water inflow, downslope diversion drains can capture leachate for recirculation onto the heaps, and disused heaps can be given soil cover for vegetative healing.**
3. **Lack of funds is no excuse for inaction. Smaller towns in every State should go and learn from Suryapet in A.P. (population 103,000) and Namakkal in T.N. (population 53,000) which have both seen dustbin-free 'zero garbage towns' complying with the MSW Rules since 2003 with no financial input from the State or the Centre, just good management and a sense of commitment.**
4. **States seem to use the Rules as an excuse to milk funds from the Centre, by making that a precondition for action and inflating waste processing costs 2-3 fold. The Supreme Court Committee recommended 1/3 contribution each from the city, State and Centre. Before**

¹⁰ (2004) 13 SCC 538

seeking 70-80% Centre's contribution, every State should first ensure that each city first spends its own share to immediately make its wastes non-polluting by simple sanitising/stabilising, which is always the first step in composting viz. inoculate the waste with cow dung solution or bio culture and placing it in windrows (long heaps) which are turned at least once or twice over a period of 45 to 60 days.

5. *Unless each State creates a focussed 'solid waste management cell' and rewards its cities for good performance, both of which Maharashtra has done, compliance with the MSW Rules seems to be an illusion.*
6. *The admitted position is that the MSW Rules have not been complied with even after four years. None of the functionaries have bothered or discharged their duties to ensure compliance. Even existing dumps have not been improved. Thus, deeper thought and urgent and immediate action is necessary to ensure compliance in future."*
26. *As per available statistics, there is huge gap in generation and treatment of solid and liquid waste in the country. As per CPCB report 2016 (06.12.2016), as against 61948 MLD sewage generated in urban areas in India, the treatment capacity is 23277 MLD. The deficit in capacity is 62%. There is no data of sewage generation in rural areas. As per CPCB estimate of solid waste¹¹, about 65 million tonnes of waste is generated annually in the country out of which about 62 million tonnes is Municipal Solid Waste (MSW). Only about 75-80% of the municipal waste gets collected and out of this only 22- 28% is processed and treated and remaining is deposited indiscriminately at dump yards. It is projected that by the year 2031, the MSW generation shall increase to 165 million tonnes and to 436 million tonnes by 2050. There are more than 4000 dump sites as per CPCB data¹² which need to be remediated to avoid harmful impact on environment and public health.*
37. *The Chief Secretaries mentioned that the central assistance was inadequate which cannot be a justification for failure of the State in managing its waste. Waste management is responsibility of the State and Local Bodies, as already held by the Hon'ble Supreme Court in the judgments referred to above. If the funds available are inadequate, the State has to raise the same from the generators of waste.*

¹¹

http://164.100.47.193/Isscommittee/Urban%20Development/16_Urban_Development_25.pdf

¹² Order dated 18.10.2019 in O.A. No. 606/2018 para 6

38. *The Chief Secretaries must ensure adverse entries in the service records of erring officers in respect of liquid waste management atleast from 01.04.2020.*
41. *In view of above, consistent with the directions referred to in Para 29 issued on 10.01.2020 in the case of UP, Punjab and Chandigarh which have also been repeated for other States in matters already dealt with, we direct:*
- a. *In view of the fact that most of the statutory timelines have expired and directions of the Hon'ble Supreme Court and this Tribunal to comply with Solid Waste Management Rules, 2016 remain unexecuted, interim compensation scale is hereby laid down for continued failure after 31.03.2020. The compliance of the Rules requires taking of several steps mentioned in Rule 22 from Serial No. 1 to 10 (mentioned in para 12 above). Any such continued failure will result in liability of every Local Body to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body from 01.04.2020 till compliance. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal. Final compensation may be assessed and recovered by the State PCBs/PCCs in the light of Para 33 above within six months from today. CPCB may prepare a template and issue an appropriate direction to the State PCBs/PCCs for undertaking such an assessment in the light thereof within one month.*
- b. *Legacy waste remediation was to 'commence' from 01.11.2019 in terms of order of this Tribunal dated 17.07.2019 in O.A. No. 519/2019 para 28¹³ even though statutory timeline for 'completing' the said step is till 07.04.2021 (as per serial no. 11 in Rule 22), which direction remains unexecuted at most of the places and delay in clearing legacy waste is causing huge damage to environment in monetary terms as noted in para 33 above, pending assessment and*

¹³ The Chief Secretaries may ensure allocation of funds for processing of legacy waste and its disposal and in their respective next reports, give the progress relating to management of all the legacy waste dumpsites. Remediation work on all other dumpsites may commence from 01.11.2019 and completed preferably within six months and in no case beyond one year. Substantial progress be made within six months. We are conscious that the SWM Rules provide for a maximum period of upto five years for the purpose, however there is no reason why the same should not happen earlier, in view of serious implications on the environment and public health.

recovery of such damage by the concerned State PCB within four months from today, continued failure of every Local Body on the subject of commencing the work of legacy waste sites remediation from 01.04.2020 till compliance will result in liability to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal. Final compensation may be assessed and recovered by the State PCBs/PCCs in the light of Para 33 above within six months from today.

- c. Further, with regard to thematic areas listed above in para 20, steps be ensured by the Chief Secretaries in terms of directions of this Tribunal especially w.r.t. plastic waste, bio-medical waste, construction and demolition waste which are linked with solid waste treatment and disposal. Action may also be ensured by the Chief Secretaries of the States/UTs with respect to remaining thematic areas viz. hazardous waste, e-waste, polluted industrial clusters, reuse of treated water, performance of CETPs/ETPs, groundwater extraction, groundwater recharge, restoration of water bodies, noise pollution and illegal sand mining.
- d. The compensation regime already laid down for failure of the Local Bodies and/or Department of Irrigation and Public Health/In-charge Department to take action for treatment of sewage in terms of observations in Para 36 above will result in liability to pay compensation as already noted above which are reproduced for ready reference:
- i. **Interim measures for phytoremediation/ bioremediation etc. in respect of 100% sewage to reduce the pollution load on recipient water bodies - 31.03.2020. Compensation is payable for failure to do so at the rate of Rs. 5 lakh per month per drain by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f. 01.04.2020.**
 - ii. **Commencement of setting up of STPs - 31.03.2020. Compensation is payable for**

failure to do so at the rate of Rs. 5 lakh per month per STP by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f. 01.04.2020.

iii. Commissioning of STPs - 31.03.2021. Compensation is payable for failure to do so at the rate of Rs. 10 lakh per month per STP by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f. 01.04.2021.

e. Compensation in above terms may be deposited with the CPCB for being spent on restoration of environment which may be ensured by the Chief Secretaries' of the States/UTs.

f. An 'Environment Monitoring Cell' may be set up in the office of Chief Secretaries of all the States/UTs within one month from today, if not already done for coordination and compliance of above directions which will be the responsibility of the Chief Secretaries of the States/UTs."

g. Compliance reports in respect of significant environmental issues may be furnished in terms of order dated 07.01.2020 quarterly with a copy to CPCB."

(emphasis supplied)

Directions:

- 16. All States/UTs through their concerned departments such as Urban/Rural Development, Irrigation & Public Health, Local Bodies, Environment, etc. may ensure formulation and execution of plans for sewage treatment and utilization of treated sewage effluent with respect to each city, town and village, adhering to the timeline as directed by Hon'ble Supreme Court. STPs must meet the prescribed standards, including faecal coliform. CPCB may further continue efforts on compilation of River Basin-wise data. Action plans be firmed up with Budgets/Financial tie up. Such plans be overseen by Chief Secretary and forwarded to CPCB before 30.6.2020. CPCB may**

consolidate all action plans and file a report accordingly. Ministry of Jal Shakti and Ministry of Housing and Urban Affairs may facilitate States/UTs for ensuring that water quality of rivers, lakes, water bodies and ground water is maintained. As observed in para 13 above, 100% treatment of sewage/effluent must be ensured and strict coercive action taken for any violation to enforce rule of law. Any party is free to move the Hon'ble Supreme Court for continued violation of its order after the deadline of 31.3.2018. This order is without prejudice to the said remedy as direction of the Hon'ble Supreme Court cannot be diluted or relaxed by this Tribunal in the course of execution.

17. The CPCB may study and analyse the extent of reduction of industrial and sewage pollution load on the environment, including industrial areas and rivers and other water bodies and submit its detailed report to the Tribunal.
18. During the lockdown period there are reports that the water quality of river has improved, the reasons for the same may be got studied and analysed by the CPCB and report submitted to this Tribunal.¹⁴ If the activities reopen, the compliance to standards must be maintained by ensuring full compliance of law by authorities statutorily responsible for the same.

ORIGINAL APPLICATION NO. 148/2016 (MAHESH CHANDRA SAXENA VS. SOUTH DELHI MUNICIPAL CORPORATION & ORS.)

Consideration of consequential issue of utilization of treated water: Earlier proceedings leading to order dated 11.9.2020:

¹⁴ <https://www.indiatoday.in/india/story/coronavirus-lockdown-india-fresh-air-clean-rivers-1669726-2020-04-22>

19. This matter is connected with and incidental to the setting up of STPs. In the course of operation of STPs, treated water is generated and proper use of such water for secondary purposes can lead to availability of more clean water for drinking purposes. Right to access fresh drinking water is part of right to life. There is huge shortage of drinking water in the country. This Tribunal noted that in absence of proper planning, fresh water was being used for purposes for which treated water could easily be used. Some the statistics noted by the Tribunal and other pertinent observations in the order dated 11.09.2019 are as follows:

- “1. Delhi is an urbanized city state having a population of about 20 millions which is expected to increase to 23 million by the year 2021. Present total water requirement for domestic purposes for population of 20 million @ 60 GPCD works out to 1200 MGD. Present average potable water production by Delhi Jal Board is about 936 MGD and includes about 80-85 MGD of ground water. Thus, there is a gap of 204 MGD. Only 81.3 households have piped water supply. Reuse of water both in domestic and industrial sectors is essential. Around 150 billion liters of sewage water is produced in India annually. 70% of Singapore drinks treated sewage water.¹⁵ There appears to be no satisfactory plan with any of the States/Union Territories (UTs) in the country. This Tribunal monitored the matter with reference to the NCT of Delhi for more than two years and passed several orders.**
- 2. Finally, on 27.11.2018, the Tribunal considered the report of the Delhi Jal Board (DJB) dated 16.11.2018 to the effect that 460 MGD waste water was being treated but reuse of such water was not being ensured.**

(emphasis supplied)

20. The Tribunal further noted:

- “3. As per CPCB’s report 2016¹⁶, it has been estimated that 61,948 million liters per day (mld) sewage is generated from the urban areas of which treatment capacity of 23,277 mld is currently existent in India.**

¹⁵ Second interim report dated 31.07.2019 of Monitoring Committee constituted under O.A. No. 496/2016.

¹⁶http://www.sulabhenviis.nic.in/Database/STST_wastewater_2090.aspx July 16, updated on December 6, 2016

Thereby the deficit in capacity of waste treatment is of 62%. There is no data available with regard to generation of sewage in the rural areas. To remedy this situation orders have been passed by the Hon'ble Supreme Court¹⁷ as well as this Tribunal¹⁸ directing 100% treatment of the sewage and industrial effluents by installing requisite ETPs/CETPs/STPs. Proper utilization of treated water has implications not only to save potable water but also to prevent illegal extraction of groundwater and conservation of water bodies. Timelines have been laid down for ensuring treatment of sewage and effluents for preventing pollution of river Ganga¹⁹ as well as other polluted river stretches which will result in more treated water being available.

4. **Having regard to the necessity to ensure utilization of treated waste water to reduce pressure on the ground water resources throughout the country, the Tribunal directed all the States/UTs in India to prepare and furnish their action plans within three months to the Central Pollution Control Board (CPCB) so that CPCB could review the same and issue further directions.**

5. Report dated 01.05.2019 furnished by the CPCB was considered by this Tribunal on 10.05.2019 and it was noted that some of the States did not furnish their action plans and the action plans furnished by some of the States needed improvements. The Tribunal directed that the States/UTs which had not yet furnished their action plans may do it by 30.06.2019 and such action plans may have monitoring mechanism for coordination with the local bodies which will be the responsibility of the Chief Secretaries of the States/UTs.

6. The Tribunal observed:

"7. It is well known that absence of plan for reuse of treated water affects recharge of ground water and also results in fresh water being used for purposes for which treated water can alternatively be used. Proper plans for reuse of waste water can add to availability of potable water which is many times denied this basic need or has to travel long distances to fetch clean water. This being a substantial question of environment, direction is issued to the States/UTs which have not yet submitted their action plans to do so latest by 30.06.2019, failing which the Tribunal may have to consider coercive measures, including compensation for loss to the environment. The plans may include a monitoring mechanism in the States for coordination with the local bodies. This will be the

¹⁷ Paryavaran Suraksha Samiti Vs. Union of India, (2017) 5 SCC 326

¹⁸ Paryavaran Suraksha Samiti Vs. Union of India, O.A No. 593/2017 order dated 28.08.2019

¹⁹ O.A No. 200/2014

responsibility of the Chief Secretaries of all the States/UTs.

8 The issue is also connected with the rejuvenation of 351 river stretches. The States/UTs may include this subject in the deliberations with the Central Monitoring Committee constituted in terms of orders dated 08.04.2019 in O.A. No. 673/2018, News item published in The Hindu authored by Shri Jacob Koshy titled More river stretches are now critically polluted CPCB and order dated 24.04.2019 in O.A.606/2018, Compliance of Municipal Solid Waste Management Rules, 2016. **The Chief Secretaries may also include this subject in their reports to this Tribunal in pursuance of orders passed in O.A. No. 606/2018 on 16.01.2019 and further orders in their presence.**

9. The CPCB may place on its website guidelines for preparing an appropriate plan within two weeks from today and also furnish its final report after analysis of gaps in the plans by 31.07.2019 by e-mail at ngt.filing@gmail.com.”

7. In respect of Delhi, this Tribunal noted the stand of the DJB that Municipal Corporations and the **DDA may lift the treated water by tankers till the pipelines are laid for which time bound plans have been prepared and included in the action plan submitted to the CPCB. On this aspect, it was directed:**

“10. ...
...
We understand that about 103 MGD of treated water is not being effectively used by DJB out of the total 459 MGD. This is a colossal waste of our precious natural resources and cannot be permitted. This in our view needs to be expeditiously sorted out by Chief Secretary Delhi, Municipal Corporations and DDA by way of intersectoral coordination. We also direct that laying of pipelines be expedited in a time bound manner and revised plan to this regard be submitted which is duly vetted and ratified by CPCB.”

8. As per the Monitoring Committee on Yamuna, a flat recovery rate towards collection and treatment of sewage can be an option towards viable sewage management.

“A strong direction is needed to be given in order to make everyone pay a flat rate for sewage collection and treatment whether using below or upto 20 KL, as those using more than 20 KL in any case are paying for sewage treatment. The DJB charges Rs. 11.93 per KL for the sewage it treats on behalf of NDMC

and the Cantonment Board. A specialized institution like the National Institute of Financial Policy & Planning or the C&AG may be directed to examine the costs involved and revenue generated as it is leading to mindless pollution of the environment and depletion of ground water”.

(emphasis supplied)

21. The Tribunal considered the report of the CPCB furnished in pursuance of earlier order as follows:

“9. Accordingly, further report has been furnished by the CPCB on 31.07.2019 to the effect that guidelines have been prepared for utilization of treated sewage from the STPs and uploaded on the website of CPCB on 24.04.2019. 23 States/UTs have furnished their action plans but 13 States/UTs have yet to submit. The action plans of 23 States/UTs needed further improvements. ‘Major observations and shortcomings’ are mentioned as follows:

- “1. Action plan received from State of Andhra Pradesh, Madhya Pradesh and NCT of Delhi has mentioned schemes for utilization of treated sewage in different sectors like horticulture, Metro washing, Power Plants, Construction activity, rejuvenation of water bodies (Pond/lakes), industrial sectors. Action plan also include firmed timelines for implementation of various schemes.
2. Action plan of Delhi covers all aspects as per suggested action plan. However, wastewater demand from bulk users like DDA, PWD, CPWD, DMCs, DMRC are comparative on lower side and same need to be enhanced. Chief Secretary may take up said matter with bulk users to increase the utilization of treated sewage. Option of restricted uses of bore wells by said stakeholders may explore to compel more demand of treated sewage.
3. Public Health Engineering Department, Manipur mentioned that they do not have any specific policy of utilization of treated wastewater from STPs.
4. Union Territory of Lakshadweep has mentioned that no STPs was installed in their territory and no action plan was provided.
5. Department of Urban Development and Municipal Affairs vide letter dated 29.04.2019 requested for extension of 02 months (June, 2019) for submission of action plan. However, no action plan has been received till date.
6. State of Gujrat has only submitted action plan related to Surat city which indicate use of treated sewage for industrial purpose.

7. Only three states have adequate capacity for sewage treatment - Himachal Pradesh and Chandigarh.
8. Utilization of treatment in industrial sector has been indicated by few states (Andhra Pradesh-Steel, Thermal Power Plant and Oil Refinery), Chhattisgarh & Odisha (Thermal Power Plant). Surat and Daman have indicated reuse of treated waste water in industrial clusters.
9. In most of the remaining states/UTs, Utilization of treated sewage has been indicated in activities like Horticulture and Irrigation. Other potential users of treated sewage like Industrial Clusters, Metro Rail, Indian Railways, Infrastructure Projects, Agriculture and Bus Depots have not been explored
10. Projection of future Sewage Generation and Treatment Capacity has not been done and same has not been taken into consideration in the utilization plan.
11. Timelines for implementation of proposed schemes have not been indicated."

Some of the salient features of the guidelines which highlight suggestive actions for formulation of action plan for usage of treated waste water from sewage treatment plants are as follows:

- “1. Estimate Present and Projected Sewage Generation and Treatment Capacity.
2. Identify bulk users of Water: Industrial Clusters, Metro Rail, Indian Railways, Infrastructure Projects, Agriculture, Bus Depots and PWD.
3. Quantify their potential Water Demand.
4. Development of Dead Water Aquatic Sources (Lake, Pond etc).
5. Time line for establishing such infrastructure (Treatment, Conveyance and Utilization of Treated Sewage).
6. To promote use of treated waste water for various usage.
7. To promote supply of treated sewage to industrial clusters
8. Industrial clusters can set up treatment facility to meet their raw water requirement instead of drawing groundwater.
9. Maximizing re-use of treated waste- water will minimize groundwater abstraction.”

The States/UTs must submit their Action Plans to CPCB in terms of timelines and measurable indicators with regard to utilization of treated sewage water and institutional set up in the States/UTs validating the use of treated water in terms of its safety to human health and environment.

10. This Tribunal has held that standards of Faecal coliform need to be adhered to by the STPs so that treated sewage water can be safely utilized²⁰.
11. In view above, we direct that the States/UTs which have not yet furnished their action plans may do so on or before 30.11.2019, failing which defaulting States/UTs will be liable to pay compensation @ of Rs. 1 Lakh per month till action plans are filed. The States/UTs which have furnished the action plans may remove the deficiencies noticed above by 30.11.2019, failing which they will be liable to pay compensation @ of Rs. 1 Lakh per month. The compensation may be deposited with the CPCB which may be used for restoration of the environment.
12. The CPCB may furnish a consolidated report on or before 31.01.2020 by e-mail at judicial-ngt@gov.in. Information about the quantum of sewage generated and treated may also be furnished. The Chief Secretaries of the concerned States/UTs may monitor compliance of the order.”

(emphasis supplied)

Report of the CPCB dated 15.5.2020:

22. Accordingly, status report dated 15.05.2020 has been filed by the CPCB giving the gap analysis as follows:

“3.0 GAP ANALYSIS

As per Hon'ble NGT Directions dated 10.5.2019, suggestive measures for action plan for use of treated sewage was uploaded on CPCB's website. The same was also sent to all States/UTs vide letter dated 16.07.2019. CPCB had directed all States / UTs to cover the following action points in the Action Plan to be prepared for use of treated sewage:

- i. Estimation of quantity of present and projected sewage generation,
- ii. Estimation of Present and planned treatment capacity
- iii. Identification of Bulk users (Irrigation, horticulture, Industries, PWD and Railways etc) and to quantify the usage
- iv. Estimation of quantity of treated sewage to be used by the bulk users
- v. Specification time lines to meet the target.

Accordingly, action plan submitted by 31 States / UTs were assessed based on its adequacy in addressing the above-mentioned points. The overview of the assessment is given in Table-1. Following are the major observations based on the assessment:

²⁰ Order dated 21.12.2018 and 30.04.2019 in O.A. No. 1069/2018, Nitin Shankar Deshpande vs. UOI & Ors.

- i. **06 States/ UTs (Andhra Pradesh, Delhi, Puducherry, Haryana, Tamil Nadu, Madhya Pradesh) have addressed all the five action points as listed above in their action plan.**
- ii. **10 States/UTs have partially addressed the above- listed action points in their action plan. 09 States / UTs (Gujrat, Chhattisgarh, Jharkhand, Goa, Daman & Diu, Dadar Nagar Havelli, Jammu and Kashmir, Maharashtra and Rajasthan) have identified bulk users However, quantity of treated sewage to be used by these bulk-users as well as timelines for meeting these targets have not been specified. Chandigarh has not estimated the presented / projected qty of Sewage generation and not specified timelines for meeting the target.**
- iii. **08 States / UTs (Assam, Bihar, Himachal Pradesh, Mizoram, Nagaland, Meghalaya, Orissa and West Bengal) have submitted very limited information in the action plan.**
- iv. **Action plan received from 03 States (Kerala (Trivandrum), Karnataka (Bangalore), Telangana (Hyderabad) are city specific. Action plan for treated sewage reuse in the state not provided.**
- v. **Apart from above, it has been informed 4 States / UTs that due to local terrain and technical issues and action plan could not be conceptualized., 02 UTs (Lakshadweep, Andaman and Nicobar Islands) do not have STPs and having only septic management. Fecal Sludge Treatment Plant has been planned in these UTs. 02 States (Sikkim, Tripura) have high water table and therefore plan to discharge treated water to rivers.**
- vi. **5 States/ UTs (Arunachal Pradesh, Manipur, Uttar Pradesh, Uttarakhand, Punjab) have not submitted any information.**

CPCB's observations on the action plan submitted by the individual states/UTs have been enumerated in Table 1. Additional observations on the action plan submitted by the States / UTs are as follows:

- i. **Only 14 States/UTs (Andhra Pradesh, Daman & Diu, Delhi, Gujarat, Haryana, Himachal Pradesh, J&K, Madhya Pradesh, Maharashtra, Nagaland, Rajasthan, Tripura, Puducherry, A&N) have estimated present quantity of Sewage generated in their States/UTs.**

- ii. **Only 3 States/UTs (Haryana, Himachal Pradesh, Jammu & Kashmir) have adequate capacity of Sewage treatment w.r.t to present quantity of sewage generated.**
- iii. **Major bulk users identified include- Irrigation, horticulture,, Rejuvenation of water bodies, Construction, Recreation, Railways, Vehicles and Coach washing, firefighting, recreation and industry.**
- iv. **13 States/UTs (Andhra Pradesh, Maharashtra, Chhattisgarh, Goa, Delhi, Rajasthan, Tamil Nadu, Puducherry, Odisha, Madhya Pradesh, Gujarat, Haryana, Jharkhand) plan to use treated sewage in industries which include Steel Plant, Thermal Power Plant, Refineries and Railways.**
- v. **Percentage of reuse of treated sewage planned maximum in Haryana (80 %) followed by Puducherry (55 %), Delhi (50 %), Chandigarh (35 %), Tamil Nadu (25%), Madhya Pradesh (20 %), Andhra Pradesh (5 %).**
- vi. **NCT of Delhi has set target to increase their re usage from 12.5 % to 60 %. In future, utilization of 341 MGD treated sewage are proposed for drinking purpose (197 MGD), Irrigation (112 MGD) and 10 MGD in rejuvenation of water bodies.**
- vii. **Time-line specified by States/UTs for implementation of Action Plan varies between 2020 -2030."**

(emphasis supplied)

Analysis of report dated 15.5.2020:

23. The above shows serious deficiencies on the part of several States/UTs in performing their constitutional obligation of properly and rationally managing the treated water so as to make more potable water available for drinking purposes. Some States have shown apathy and indifference in giving appropriate response.

Further Directions:

24. **Accordingly, we direct that States which have not addressed all the action points may do so promptly latest before 30.06.2020,**

reducing the time lines in the action plans. The timelines must coincide with the timelines for setting up of STPs since both the issues are interconnected. All the States may take steps accordingly. The CPCB may compile further information on the subject. The compliance for action plans will be the responsibility of the Secretaries of Urban Development/other concerned, including Irrigation & Public Health, Local Bodies, Rural Development Departments of all the States/UTs and to be overseen by the Chief Secretaries. The Ministry of Jal Shakti and Ministry of Housing and Urban Affairs, Government of India may also monitor and coordinate the situation appropriately in the interest of water qualities of rivers, lakes, water bodies and protection of groundwater.

25. Needless to say that since the issue of sources of funding has already been dealt with in the orders of the Hon'ble Supreme Court, the States may not put up any excuse on this pretext in violation of the judgment of the Hon'ble Supreme Court.

26. Summary of directions:

- i. All States/UTs through their concerned departments such as Urban/Rural Development, Irrigation & Public Health, Local Bodies, Environment, etc. may ensure formulation and execution of plans for sewage treatment and utilization of treated sewage effluent with respect to each city, town and village, adhering to the timeline as directed by Hon'ble Supreme Court. STPs must meet the prescribed standards, including faecal coliform.

CPCB may further continue efforts on compilation of River Basin-wise data. Action plans be firmed up with Budgets/Financial tie up. Such plans be overseen by Chief Secretary and forwarded to CPCB before 30.6.2020. CPCB

may consolidate all action plans and file a report accordingly.

Ministry of Jal Shakti and Ministry of Housing and Urban Affairs may facilitate States/UTs for ensuring that water quality of rivers, lakes, water bodies and ground water is maintained.

As observed in para 13 above, 100% treatment of sewage/effluent must be ensured and strict coercive action taken for any violation to enforce rule of law. Any party is free to move the Hon'ble Supreme Court for continued violation of its order after the deadline of 31.3.2018. This order is without prejudice to the said remedy as direction of the Hon'ble Supreme Court cannot be diluted or relaxed by this Tribunal in the course of execution. PCBs/PCCs are free to realise compensation for violations but from 1.7.2020, such compensation must be realised as per direction of this Tribunal failing which the erring State PCBs/PCCs will be accountable.

- ii. The CPCB may study and analyse the extent of reduction of industrial and sewage pollution load on the environment, including industrial areas and rivers and other water bodies and submit its detailed report to the Tribunal.
- iii. During the lockdown period there are reports that the water quality of river has improved, the reasons for the same may be got studied and analysed by the CPCB and report submitted to this Tribunal. If the activities reopen, the compliance to standards must be maintained by ensuring full compliance of law by authorities statutorily responsible for the same.
- iv. Accordingly, we direct that States which have not addressed all the action points with regard to the utilisation of sewage treated water may do so promptly latest before 30.06.2020, reducing the time lines in the action plans. The timelines must coincide with the

timelines for setting up of STPs since both the issues are interconnected. The CPCB may compile further information on the subject accordingly.

v. Needless to say that since the issue of sources of funding has already been dealt with in the orders of the Hon'ble Supreme Court, the States may not put up any excuse on this pretext in violation of the judgment of the Hon'ble Supreme Court.

27. The CPCB may furnish its report by 15.09.2020 giving the status of furnishing of action plans and their execution as on 31.08.2020 by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image/PDF.

A copy of this order be sent to the Chief Secretaries of all States/UTs, Secretaries of MoHUA and Ministry of Jal Shakti, Govt. of India, CPCB and all the State PCBs/PCCs by e-mail.

A copy of this be also sent to the Secretary General, Supreme Court of India with reference to the order of the Hon'ble Supreme Court Supreme Court in (2017) 5 SCC 326, for information and record.

List for further consideration 21.09.2020.

Adarsh Kumar Goel, CP

Sheo Kumar Singh, JM

Dr. Nagin Nanda, EM

May 21, 2020
Original Application No. 593/2017
Original Application No. 148/2016
DV

ANNEXURE-NO. 4
CENTRAL POLLUTION CONTROL BOARD
DELHI

F.No. B-400(S)/IPC-III/2019-20 1162

September 04th, 2019

OFFICE ORDER

POLICY FOR LEVYING ENVIRONMENTAL COMPENSATION (EC) FOR INDUSTRIES

In compliance of Hon'ble NGT order in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, *Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.*) a Committee was constituted by CPCB for developing a formula for imposing penalty and environmental compensation on industrial units.

As per the Committee recommendations, following cases are considered for levying environmental compensation,:

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

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

PI = f (Water Pollution Score, Air Pollution Score & HW Generation Score)
Pollution Index is a number from 0 to 100 and increasing value of PI denotes the increasing degree of pollution hazard from the industrial sector.

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

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

Where,

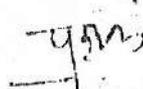
PI (pollution Index), N (number of days of violation), R (Rupees factor),
S (Scale of operation), LF (location factor).

✓ In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.

Conditions/ policy / operational protocol for levying EC shall be as below:

1. Prior to imposition of EC, a Show Cause Notice (SCN) for imposing EC alongwith an opportunity to reply/ hearing be given.
2. Method adopted for calculation of EC may be shared with the concerned industry/ agency if asked during hearing or through reply.
3. Unless there is substantial evidence, date of non-complying days would start w.e.f. date of non-compliance observed during inspection.
4. In Sugar industry, number of days of violation is calculated based on actual number of days operated during crushing season(s) based on Excise Form RT-8C submitted by the unit.
5. EC for non-compliance to CPCB's closure direction regarding installation & connectivity of OCEMS shall apply till establishment of initial uninterrupted data connectivity for all the specified parameters in all the permitted outlets /stacks, as verified by the IT division.
6. EC for the closure direction issued on the ground of non-compliance of prescribed discharge/ emission norms shall apply for the period between date of inspection & monitoring to date of closing of manufacturing operation.
7. Direction for closure or revocation and direction for imposition of EC to be dealt separately.

This issues in supersession of the earlier approach & methodology being followed in calculation of EC amount on the ground of non-compliance of closure direction regarding OCEMS and circular no. B19004/NGRBA/CPCB/2015-16(part file) dated 15.05.2019 regarding calculation of EC amount on the ground of non-compliance of notified norms for sugar mills.


(PRASHANT GARGAVA)
MEMBER SECRETARY

10,

- | | |
|---------------------------|--|
| ✓ All Divisional heads | : For necessary action please |
| 2. All Regional Directors | : For necessary action please |
| 3. Divisional Head II | : For uploading on CPCB's website please |

Copy for information to:

1. PS to CCB
2. PS to MS

3278

PROOF OF SERVICE

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kunal arya <kunalarya16111989@gmail.com>

Service of Addl Affidavit in OA No. 176 of 2022 Aman Chaudhary vs UOI And Ors

1 message

kunal arya <kunalarya16111989@gmail.com>

Mon, May 19, 2025 at 10:10 PM

To: amanchoudhary@outlook.in, secy.moef@nic.in, ccb.cpcb@nic.in, grievance@uppcb.com, csup@nic.in, dgmupexp@gmail.com

Please find attached the copy of Addl Affidavit on behalf of Respondent No.2 in the captioned matter.

Regards,

Office of Pallavi Pratap
Advocate for Respondent No.2
A-90, LGF South Ex II New Delhi
Mob: 9999990078
Email: pallavipratap@hotmail.com



Addl Affidavit Naginder Aman Chaudhary 19 05

2025.pdf