

**BEFORE THE NATIONAL GREEN TRIBUNAL, EASTERN ZONE,**  
**KOLKATA**  
**APPEAL NO. 11 OF 2023/EZ**  
**IN THE MATTER OF**  
**M/S MAJHAULIA SUGAR INDUSTRIES PRIVATE LIMITED**  
**....APPELLANT(S)**  
**VERSUS**  
**STATE OF BIHAR & ORS.** **.... RESPONDENTS**

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Sl. No. 2427 Date 24/5/22

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KOLKATA

APPEAL NO. 11 OF 2023/EZ

IN THE MATTER OF

M/S MAJHAULIA SUGAR INDUSTRIES PRIVATE LIMITED  
....APPELLANT(S)

VERSUS

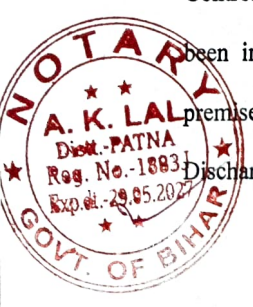
STATE OF BIHAR & ORS. .... RESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF BIHAR STATE POLLUTION CONTROL BOARD/RESPONDENT NO. 1 & 2.**

I, S. Chandrasekhar, aged about 44 years, Son of Mr. S. Subramani, residing at B-202, Amarkunj Apartment, Vivekanand Marg-Patna-800013, do hereby solemnly affirm and state as follows:-

1. That I am posted as Member Secretary, Bihar State Pollution Control Board, Patna and as such I am well aware of the facts and circumstances of the present matter. I am competent and duly authorized to swear the present affidavit.
2. That the instant appeal has been filed against the order dated 7.12.2022, contained in Memo No. 3607, issued under the signature of Chairman, Bihar State Pollution Control Board, by which 'Environmental Compensation' of Rs. 58,80,000/- have been imposed upon the appellants for discharging trade effluents outside the premises of the units when the appellants ought to have maintained 'Zero Liquid Discharge'.

S. Chandrasekhar  
Advocate  
who is identified by Advocate  
solemnly affirmed and declared contents of this affidavit apart from this nothing else as stamp/Court fees etc. U/s 3 & Sub rule 4 of 8 rule of N. Act. 1986 before me

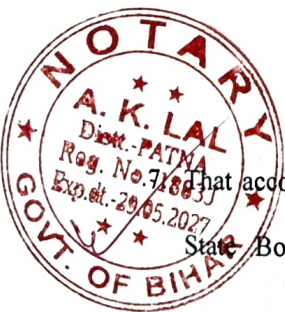


3. That the instant matter was last heard on 03.03.2023 when the Hon'ble Tribunal was pleased to direct the respondents to file their counter-affidavit.
4. That it is humbly submitted that the unit of the appellants was inspected by the officials of the State Board on 30.05.2022 in presence of Sri Sarvesh Dubey, Manager, sugar unit. In course of inspection it was found that the unit was closed, however the plant and machinery were being washed and the remaining effluent were being mixed with domestic sewage and were being discharge through municipal nala. Samples of effluent were collected from meeting points and were sent for analysis to State Board's Laboratory and were found to be beyond the prescribed standards.

A copy of the inspection report dated 30.05.2022 is annexed and marked as Annexure-1.

5. That the appellant units were also found to have violated other consent conditions as the appellants have not made provisions for separation of effluent drain and storm water drain.
6. That the answering respondent has vide its notification no. 31, dated 09.12.2019 has adopted the formula for levy of Environmental Compensation as laid down in O.A. No. 593 of 2017 on units which are not-complying. As the appellants were also violating the Consent conditions therefore the levy of Environmental Compensation is justified and valid.

A copy of the notification no. 31 dated 09.12.2019 is annexed and marked as Annexure-2.



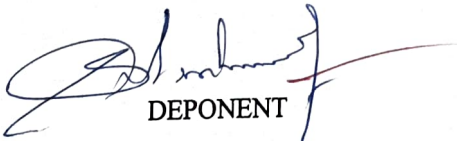
That accordingly the case of the appellant were put before the committee of the State Board for assessment of Environmental Compensation and the said

committee after deliberation has opined to impose environmental compensation of Rs. 58,80,000/- on the appellants.

A copy of the minutes of meeting for assessment of Environmental Compensation is annexed and marked as Annexure-3.


8. That I have read the contents of the affidavit and have understood the same.

I identify the Deponent's signature/L.T.I who has signed in my presence.

  
DEPONENT  
(S. CHANDRASEKAR)

#### VERIFICATION

Verified at Patna on 24<sup>th</sup> day of March, 2023, that the averments made in the present affidavit are true and correct to the best of my knowledge and information derived from records of the matter.

  
DEPONENT  
(S. CHANDRASEKAR)



1. निरीक्षण की तिथि: 30.05.2022
2. स्थल: मे0 मंझौलिया शुगर इंडस्ट्रीज प्र0 लि0, मंझौलिया, पश्चिम चम्पारण-845454
3. विषय: चिनी मिल इकाई में जल एवं वायु प्रदूषण नियंत्रण प्रबंधन के संबंध में।
4. सम्पर्क पदाधिकारी: श्री सर्वेश दुबे, प्रबंधक, शुगर इकाई
5. स्थल निरीक्षण पदाधिकारी:
  - (क) श्री सैन कुमार, क्षेत्रीय पदाधिकारी, मुजफ्फरपुर
  - (ख) श्री अंजनी कुमार सिन्हा, सहायक पर्यावरण अभियंता, पटना
  - (ग) श्री राजीव कुमार, व0वै0प0, पटना।
6. निरीक्षण विवरणी:- निरीक्षण के समय चिनी मिल इकाई एवं डिस्टीलरी इकाई बंद पाया गया। चिनी मिल इकाई का स्थापित वहिस्राव उपचार संयंत्र (ई0टी0पी0) बंद पाया गया।  
चिनी मिल इकाई में घरेलु वहिस्राव के एकत्रिकरण हेतु नाले का निर्माण नहीं किया गया है। इकाई में इनके उपचार हेतु एस0टी0पी0 की स्थापना नहीं की गयी है। वर्षा के जल को भु-तल में पूणः संग्रहन हेतु रेन वाटर हार्वेस्टिंग पीट की स्थापना इकाई द्वारा नहीं किया गया है।  
निरीक्षण के दौरान पाया गया कि घरेलु वहिस्राव एवं इकाई में उपकरणों/संयंत्रों की साफ-सफाई से जनित वहिस्राव का निस्सारण मुख्य प्रवेश द्वार के पास नगरीय नाले में निस्सारित पाया गया। यह नगरीय नाला मुख्य सड़क के बगल से गुजड़ते हुए कोहरा नदी में अंततः निस्सारित होती है। इकाई से जनित घरेलु-सह-औद्योगिक वहिस्राव का निस्सारण इकाई परिसर के बाहर उक्त नाले में बिना समूचित उपचार किये ही निस्सारण करने से नदी का जल प्रदूषित हो सकती है। नगरीय नाला में इकाई से निस्सारित वहिस्राव के स्थल पर नमूना संग्रहन किया गया। यह निर्धारित मानक से काफी अधिक (pH - 5.95, BOD - 125 mg/L एवं COD - 480 mg/L) पाया गया है।
7. अनुशंसा:-
  - (क) इकाई के संयंत्रों/उपकरणों की साफ-सफाई से जनित वहिस्राव का उपचार ई0टी0पी0 के माध्यम से किया जाना अनिवार्य है। जिसके लिये इकाई को मिल के बंद होने के एक माह तक संचालन का निदेश दिया गया है।  
इकाई द्वारा एक माह के बाद अपने ई0टी0पी0 का संचालन बंद कर दिया था। परन्तु इकाई द्वारा उपकरणों/संयंत्रों के रख-रखाव एवं साफ-सफाई का काम किया जा रहा था। उनसे जनित प्रदूषित वहिस्राव (pH - 5.95, BOD - 125 mg/L एवं COD - 480 mg/L) जो निर्धारित मानक से काफी अधिक है, को घरेलु वहिस्राव के साथ मिश्रित कर इकाई परिसर के बाहर बिना उपचार किये निस्सारण करने, वर्षा के जल को भु-तल में पूणः संग्रहन हेतु रेन वाटर हार्वेस्टिंग पीट की स्थापना इकाई द्वारा नहीं करने, एस0टी0पी0 की स्थापना नहीं करने एवं राज्य पर्वद द्वारा चिनी मिल इकाई के प्रदूषण नियंत्रण की समूचित व्यवस्था सहित संचालन हेतु मांगे गए Performance Bank Guarantee को समर्पित नहीं करने के विरुद्ध इकाई से पर्यावरणीय क्षतिपूर्ति राशि की मांग किया जा सकता है।

Rajew Kumar  
22/06/22

राजीव कुमार  
स0वै0प0, पटना

अंजनी कुमार सिन्हा  
22/06/22

(अंजनी कुमार सिन्हा)  
स0प0अ0(मु0), पटना

सैन कुमार  
22/06/22

(सैन कुमार)  
क्ष0पदा0, मुजफ्फरपुर





# बिहार राज्य प्रदूषण नियंत्रण पर्वद

परिवेश भवन, एन0एस0बी0-2, पाटलिपुत्र औद्योगिक क्षेत्र, सदाकत आश्रम पटना-800010

दूरभाष संख्या : 2261250 / 2262265 / 2261709

ई-मेल-bspcb@yahoo.com, वेबसाइट-http://bspcb.bih.nic.in

अधिसूचना सं० : 31

दिनांक 09/12/19

## अधिसूचना

पर्वद मंडल की 108वीं बैठक, दिनांक 24.10.2019 के कार्यावली संख्या 10 में लिए गए निर्णयानुसार राज्य अन्तर्गत स्थापित/संचालित औद्योगिक इकाईयों द्वारा जल(प्रदूषण निवारण एवं नियंत्रण) अधिनियम, 1974, वायु (प्रदूषण निवारण एवं नियंत्रण) अधिनियम, 1981 एवं पर्यावरण(संरक्षण) अधिनियम, 1986 के तहत निहित प्रावधानों का पालन नहीं करने वाले (Non- Complying) इकाईयों से वसूलनीय पर्यावरणीय क्षतिपूर्ति राशि की गणना, माननीय एन0 जी0 टी0, प्रधान बँक, नई दिल्ली द्वारा O.A No.- 593/2017 में निर्धारित फॉर्मूला के अनुसार की जायेगी। पर्यावरणीय क्षतिपूर्ति की राशि किसी भी स्थिति में रू० 5000/- प्रतिदिन से कम नहीं, तथा इकाई के पूंजीगत लागत के 50 प्रतिशत की राशि से अधिक नहीं होगी।

यह निर्णय अधिसूचना निर्गत होने की तिथि से प्रभावी होगा।



(आलोक कुमार)

सदस्य-सचिव



## Annexure-3

**Minutes of the meeting of the Committee Constituted vide Board's Notification No. 22, dated-28.09.2022 for the Assessment of Environmental Compensation on "Polluters Pays Principle".**

The meeting of the committee was held on 28.09.2022

The Hon'ble National Green Tribunal (NGT), Principal Bench, New Delhi in its order dated-03.08.2018 in O.A. No. 593/2017 [WP(Civil) No. 375/2012] in the matter of Paryavaran Suraksha Samiti & Anr. Vs Union of India & Ors. has directed that

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

The Hon'ble National Green Tribunal (NGT), Principal Bench, New Delhi in its order dated-22.11.2018 in O.A. No. 353/2016 (M.A. No. 360/2017) with O.A. No. 412/2017 (M.A. No. 1321/2017 & 1322/2017) in the matter of Bhuvnesh Singh Katoch Vs MoEF&CC with Dharmpal Malhotra Vs State of HP & Ors. has clarified that

*"Apart from prosecution, the statutory authorities under the Environment (Protection) Act, 1986, the Air (Prevention & Control of Pollution) Act, 1981 and the Water (Prevention & Control of Pollution) Act, 1974 must, in exercise of their incidental powers, prescribed scale of compensation to be collection from the polluters on the 'Polluter Pays' Principle. Such scale which may be laid down at various levels, having regard to the local conditions or as per direction in the hierarchy of the authorities"*

CPCB has developed criteria and formula for levying Environmental Compensation as hereunder:-

**1. Cases considered for levying Environmental Compensation (EC) by CPCB:**

- a. Discharge 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 System.



- 216
- d. Accidental discharge lasting for short durations resulting into damage to the environment.
  - e. Intentional discharge to the environment-land, water and air resulting into acute injury or damage to the environment.
  - f. Injection of treated/partially treated/untreated effluent to ground water.
2. **Formula for levying Environmental Compensation for the cases under a, b & c as mentioned above:-**

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

Where, EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days the violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

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

**Note:-**

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



Sl. No.	Population* (million)	Location Factor# (LF)
1.	Less than 1	1.0
2.	1 to <5	1.25
3.	5 to <10	1.5
4.	10 and above	2.0

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

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

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

**M/s Majhulia Sugar Industries Pvt. Ltd., Majhulia, West Champaran-845454.**

As per records made available to the committee:-

1. Discharge Consent Order was issued to the unit vide Board's letter P/T-2-20/05(Part-III)-4119, dated-03.02.2018 (C/185).
2. Emission Consent Order was issued to the unit vide Board's letter P/T-2-20/05(Part-III)-4118, dated-03.02.2018 (C/183). Both orders are valid up to 30.09.2023 and issued for sugar mill.
3. Last treated effluent sampling dated-23.11.2021 from outlet of ETP and analysis report dated-02.12.2021 which were collected and analyzed by M/s Shiva Test House, Patna (A recognized Environmental Laboratory by MoEF&CC, GoI) (C/175).
4. Joint inspection report dated-30.05.2022 (C/200).
5. Analysis report of water sample collected on 30.05.2022 by inspecting team of Board.
6. Letter for submission of performance bank guarantee of Rs. 15 Lakh (Rs. Fifteen Lakh) for the compliances of conditions mentioned in the CTO orders and Environmental Clearance.



In light of the above documents it is obvious that

1. Analysis Report of water sample collected during inspection were found beyond the prescribed limit under the condition as the recipient is surface water (BOD: 125 mg/L; COD: 480 mg/L).
2. Unit has not submitted the performance bank guarantee of Rs. 15 Lakh (Rs. Fifteen lakh) as per the condition no. 8 (v) mentioned in Discharge Consent Order.
3. Discharge of effluent in Kohra River through the municipal drain.

Under such circumstances Environmental Compensation (EC) may be imposed for violations of the consent conditions and amount recovered by EC may be utilized for restoration of environment like river by installing CETP in the vicinity or other purposes related with the environmental issues.

In compliance of the orders of the Hon'ble Tribunal, the Chairman, BSPCB has approved for imposition of environmental compensation against the unit and the matter was referred to the committee for calculation of EC.

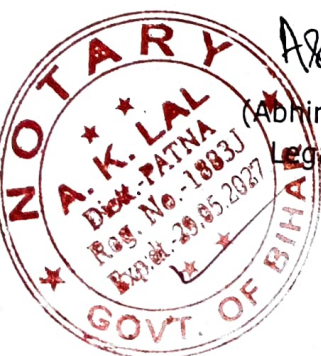
After due deliberation over the matter it was decided that environmental compensation against the unit be calculated as below:-

1. **EC=PI x N x R x S x LF**

- a. PI-Pollution Index of the unit be considered as 80 as the unit falls under Red Category.
- b. Number of days: 15.11.2021 to 30.05.2022 i.e. for 196 days as mentioned on N/2.
- c. R - be considered as 250
- d. S - be considered as 1.5, as the unit comes under Large Category.
- e. LF - be considered as 1.0, as the city has a population of less than 1 million and located at <10 Km. from municipal boundary.

$$\begin{aligned} \text{Thus, EC (in Rs.)} &= \text{PI} \times \text{N} \times \text{R} \times \text{S} \times \text{LF} \\ &= 80 \times 196 \times 250 \times 1.5 \times 1.0 \\ &= 58,80,000/- \\ &= \text{Rs. } 58,80,000/- \end{aligned}$$

As such, imposition of an EC of **Rs. 58,80,000/-** (Rs. Fifty eight lakh and eighty thousand) only be considered against the unit.



*Asingh*  
28/9/22  
(Abhimanyu Singh)  
Legal Assistant

*Anil Kumar*  
28/09/2022  
Board Analyst (I/c)

*Akumar*  
28.09.22  
(Anil Kumar)  
Environmental Engineer