

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**APPEAL NO. OF 24 OF 2025**

**IN THE MATTER OF:**

Bal Bharti Public School

....Appellant

VERSUS

Commission for Air Quality Management  
in National Capital Region &  
Adjoining Areas of India & Anr.

... Respondents

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New Delhi  
Dated: 2.07.2025

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**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO.1,  
COMMISSION FOR AIR QUALITY MANAGEMENT IN NATIONAL  
CAPITAL REGION AND ADJOINING AREAS**

1. I, Ram Kumar Agrawal aged about 56 Years, s/o Late Shri Prabhat Kishore Agrawal, working as Director in Commission for Air Quality Management in National Capital Region and Adjoining Areas do hereby solemnly affirm and declare as under:
2. I say that I am Director in the Commission and am well conversant with the facts and circumstances of the present case, hence competent to swear this affidavit.
3. That the appellant *vide* its appeal has challenged the direction dated 27.02.2025 issued by Uttar Pradesh Pollution Control Board (hereinafter referred to as "UPPCB"), in which the UPPCB has imposed an Environmental Compensation Charges (hereinafter referred to as "ECC") of Rs. 34,20,000/- on the appellant. The appellant has further alleged that the direction dated 27.02.2025 passed by the UPPCB is in pursuance to the letter no. 18015/01/2022-MERD/3277-97 dated 06.02.2024, issued by the



*Ram Kumar Agrawal*

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राष्ट्रीय राजधानी क्षेत्र और निकटवर्ती क्षेत्रों में वायु गुणवत्ता प्रबंधन आयोग  
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Commission for Air Quality Management in National Capital Region and Adjoining Areas (hereinafter referred to as "Commission").

4. It is submitted at the very outset that the present appeal filed by the appellant is devoid of merits and is not maintainable against the replying respondent because in the present matter inspection dated 23.10.2024 was done by the respondent No.2, Show Cause Notice dated 6.12.2024 was issued by respondent No.2 and final order dated 27.2.2025 was passed by the respondent No.2. The respondent No.1 never conducted any inspection of the premises of the appellant, nor passed any show cause notice or closure order against the appellant.
5. It is further submitted that since in the present appeal only order dated 27.2.2025 passed by respondent No.2 was challenged by the appellant, the present appeal is also not maintainable under section 18 of the CAQM Act, 2021.
6. That however, the appellant has alleged in the present appeal that the Commission does not have power to levy Environmental Compensation (hereinafter referred to as "EC") and the same is beyond the scope of the Commission as the CAQM Act only provides for levying of EC against the farmers.
7. That the appellant without challenging directions dated 6.2.2024, alleged in the present appeal that the letter no.18015/01/2022-MERD/3277-97 dated 06.02.2024 issued by the Commission to the SPCBs, PCCs and other agencies defining a standard schedule for EC charges in which closure directions have been issued by the Commission, is beyond jurisdiction of the Commission.



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8. That since the appellant raised allegations against powers of the replying respondent to issue directions dated 6.2.2024, it is necessary to respond the present appeal on merits.
9. That the appellant has further alleged that the surprise inspection was conducted and order of imposition of EC was passed without giving opportunity of hearing to the appellant and the same is arbitrary and exorbitant.
10. The appellant further alleged that the school is not an industry under section 2-A of the Air (Prevention and Control of Pollution) Act, 1981 and construction was going on only in 867 square meter area therefore the order imposing EC on the appellant is without any authority of law.
11. Briefly stating facts of this case are that on 14.10.2024 GRAP Stage-I and on 21.10.2024 GRAP Stage- II was implemented by Commission. While GRAP Stage-II was in force, on 23.10.2024 UPPCB conducted an inspection at the appellant's premise.
12. In furtherance to the inspection, UPPCB issued a show-cause notice on 06.12.2024 under section-31A of Air (Prevention and Control of Pollution) Act, 1981, for the violations done by the appellant. In reply to the show-cause notice dated 06.12.2024, the appellant submitted its response on 12.12.2024.
13. That on 27.02.2025, UPPCB issued a letter regarding confirmation of show-cause notice dated 06.12.2024 issued under section-31A of the Air



  
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(Prevention and Control of Pollution) Act, 1981 and levied EC of Rs.34,20,000/- on the appellant.

14. It is humbly submitted that Commission issued the letter no. 18015/01/2022-MERD/3277-97 dated 06.02.2024 to define a standard schedule for EC in closure directions issued by the Commission for gross violation of extant rules, direction, orders, guidelines, etc. This letter also defines the standard formula for imposition of EC.
15. That the appellant has alleged that the Answering Respondent has no power to levy EC and the same is beyond the scope of the Commission as the CAQM Act only provides for levying of EC against the farmers.
16. In this context it is humbly submitted that EC is an instrument for the protection of the environment by attempting to restore the damage caused to the environment by the polluters which works on the basis of Polluter Pays Principle, well established by the various judicial pronouncements.
17. It is stipulated in the Section 12 of the CAQM Act that the Answering Respondent has power to take all such measures, issue directions and entertain complaints that it deems fit for the purpose of protecting and improving the quality of the air in the National Capital Region (hereinafter referred to as "NCR") and Adjoining Areas and to take all such measures as may become necessary for protecting and improving the quality of air in the NCR and adjoining areas.

18. The Answering Respondent under Section 12(2)(xi) is empowered to issue directions to any person, officer, or any authority in writing and such officer, and such person, officer or any authority shall be bound to follow and

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comply with directions of Commission, including directions to close, prohibit and regulate any industry and stop or regulate the supply of electricity or water or any other services.

19. That the 'Polluter Pays' principle holds the polluter liable for the pollution and also to the damage caused to the environment. The polluter is liable for each harm caused to the environment including health and hazards to the life of human. The responsibility of the polluter for compensation is two-fold. One, the polluter must bear the cost of health hazards caused to the public and second, pay for the restoration of damage caused to the environment.
20. It is humbly submitted that, in the context of levying Environment Compensation charges on polluters, various judgments of the Hon'ble Supreme Court and Hon'ble National Green Tribunals may be of relevance for deciding the issue. The Hon'ble Supreme Court vide its order dated 28.08.1996 in Writ Petition (Civil) No. 914 of 1991 titled as Vellore Citizens Welfare Forum v. Union of India, held that the precautionary principle and the polluter pays principle have been accepted as part of the law of the land. The Hon'ble Court *inter-alia* held as under:

*"...The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:*



*"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—  
The State shall regard the raising of the level of nutrition*

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*and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.*

*48-A. Protection and improvement of environment and safeguarding of forests and wildlife.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.*

*51-A. (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.”*

*Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of*



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*streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.*

*In view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country...”*

21. That the Hon’ble Supreme Court *vide* its order dated 06.10.2009 in Civil Appeal No. 6776 of 2009 titled as Tirupur Dyeing Factory Owners Assn. v. Noyyal River Ayacutdars Protection Assn, *inter-alia* held as under:

*In Vellore Citizens' Welfare Forum v. Union of India this Court considered various constitutional provisions including Articles 47, 48-A, 51-A(g) and came to the conclusion that it is the duty of the State to protect and preserve the ecology, as Article 21 of the Constitution guarantees protection of life and personal liberty and every person has a right to pollution-free atmosphere. Therefore, the “precautionary*



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*principle” and the “polluter pays” principle have been accepted as a part of the law of the land being the part of environmental law of the country.*

22. That the Hon’ble Supreme Court vide its order dated 05.01.2005 in Writ Petition (Civil) No. 657 of 1995 in Research Foundation for Science v. Union of India *inter-alia* held as under:

*In Vellore Citizens' Welfare Forum v. Union of India the precautionary principle and polluter-pays principle were held to be part of the environmental law of the country. It was held that the polluter-pays principle means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of sustainable development.*

23. That the Hon’ble Supreme Court vide its order dated 13.02.1996 in Writ Petition (Civil) No. 967 of 1989 titled Indian Council for Enviro-Legal Action v. Union of India, *inter-alia* held as under:



*The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the “Polluter Pays” principle.*

  
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*“The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of Government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The ‘Polluter Pays’ principle was promoted by the Organisation for Economic Cooperation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on Government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialised society. Since then there has been considerable discussion of the nature of the Polluter Pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactorily agreed.*

*Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme [(1987) OJ C 328/1] makes it clear that ‘the cost of preventing and eliminating nuisances must in principle be borne by the polluter’, and the Polluter Pays principle has*



  
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*now been incorporated into the European Community Treaty as part of the new articles on the environment which were introduced by the Single European Act of 1986. Article 130-R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the community, and that action is to be based on three principles: the need for preventive action; the need for environmental damage to be rectified at source; and that the polluter should pay."*

*Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment (Protection) Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, RPCB or such other agency or authority, as they think fit.*



24. It is humbly submitted that as per Sections 3 and 5 of the Environment (Protection) Act, 1986 the Central Government has power to take measures to protect and improve environment and power to give direction in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions. The Central Government as

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per Sections 5 of the Environment (Protection) Act, 1986 can issue direction for closure, prohibition or regulation of any industry, operation or stoppage or regulation of the supply of electricity or water or any other service. Further Section 12 of the CAQM Act is similar to the Sections 3 and 5 of the Environment (Protection) Act, 1986. As per Section 12 of the CAQM Act, the Commission shall have the power to take all such measures, issue directions and entertain complaints, as it deems necessary or expedient, for the purpose of protecting and improving the quality of the air in the National Capital Region and adjoining areas and shall also have the duty to take all such measures as may become necessary for protecting and improving the quality of air in the National Capital Region and adjoining areas. As per Section 12 of the CAQM Act, the Commission may issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions. The Commission has power to direct closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of the supply of electricity or water or any other service.

25. That the Hon'ble Supreme Court vide its order dated 27.01.1999 in Civil Appeal No. 368 of 1999 titled as A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.), *inter-alia* held as under:

*The precautionary principle and the new burden of proof—  
the Vellore case*

*The "uncertainty" of scientific proof and its changing  
frontiers from time to time has led to great changes in  
environmental concepts during the period between the  
Stockholm Conference of 1972 and the Rio Conference of  
1992. In Vellore Citizens' Welfare Forum v. Union of India a*



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three-Judge Bench of this Court referred to these changes, to the “precautionary principle” and the new concept of “burden of proof” in environmental matters. Kuldip Singh, J. after referring to the principles evolved in various international conferences and to the concept of “sustainable development”, stated that the precautionary principle, the polluter-pays principle and the special concept of onus of proof have now emerged and govern the law in our country too, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes, such as the Water Act, 1974 and other statutes, including the Environment (Protection) Act, 1986, these concepts are already implied. The learned Judge declared that these principles have now become part of our law. The relevant observations in the Vellore case in this behalf read as follows:

“14. In view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the precautionary principle and the polluter-pays principle are part of the environmental law of the country.”

The Court observed that even otherwise, the above said principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law. In fact, on the facts of the case before this Court, it was directed that the authority to be appointed under Section 3(3) of the

Environment (Protection) Act, 1986



*Ram Kumar Agrawal*

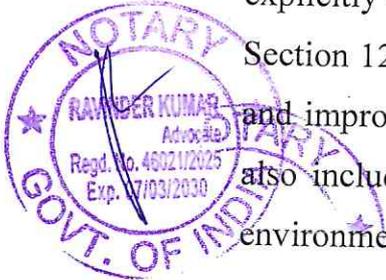
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*“shall implement the ‘precautionary principle’ and the ‘polluter-pays principle’”.*

*The learned Judges also observed that the new concept which places the burden of proof on the developer or industrialist who is proposing to alter the status quo, has also become part of our environmental law.*

26. That the Hon’ble National Green Tribunal, Principal Bench *vide* order dated 11.11.2020, in Appeal No. 49 of 2020 titled Sangat Dyeing House, Ludhiana v. Punjab Pollution Control Board, while dismissing the appeal noted that no ground is made out for interfering with the impugned order. The said impugned order require the appellants to deposit EC, which *inter alia* noted that *“The Hon’ble Supreme Court of India has considered the concept of Polluter Pays Principle of Indian Council for Enviro Legal Action v. Union of India (1996) 3 SCC 212, Vellore Citizens Welfare Forum v. UOI, (1996) 5 SCC 647 and held that Polluter Pays Principle and part of environmental law of the country even without specific statute”*. Further the Hon’ble Tribunal dismissed the Appeal.

27. It is humbly submitted that based on the above mentioned judgments, it is explicitly clear that the Answering Respondent can derive its powers from Section 12 of the CAQM Act and issue direction for purpose of protecting and improving the quality of the air in the NCR and adjoining area which also includes power to impose and collect EC for damage caused to the environment.



*[Handwritten Signature]*

राम कुमार अग्रवाल / Ram Kumar Agrawal  
निदेशक / Director  
राष्ट्रीय राजधानी क्षेत्र और निकटवर्ती क्षेत्रों में वायु गुणवत्ता प्रबंधन आयोग  
Commission for Air Quality Management in NCR & Adjoining Areas  
भारत सरकार / Government of India  
17वीं मंजिल, जवाहर व्यापार भवन (एस.टी.सी. बिल्डिंग), टॉल्स्टॉय मार्ग,  
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28. Therefore in view of the above judgments and as per the section 12 of the CAQM Act, the Answering Respondent for the protection and improving the quality of air in NCR and Adjoining Areas can itself or by directing the concerned authorities impose and collect EC, for any non-compliance or contravention of any provisions of the Act, rules made thereunder or any order or direction issued by Commission, by applying the precautionary principle and the polluter pays principle.
29. That in view of the averments made above, it is amply clear that the allegation made by the appellant that the Answering Respondent has no power to levy EC and the same is beyond the scope of the Commission as the CAQM Act only provides for levying of EC against the farmers, is entirely devoid of merit. It is well established by various judgments of this Hon'ble Tribunal and the Hon'ble Supreme Court that precautionary principle and polluter pays principle are part of environmental law of the country, including CAQM Act, even without specific provision/ statute.
30. That in view of above facts and circumstances, it is most humbly prayed that this Hon'ble Tribunal may kindly be pleased to dismiss the present appeal filed by the appellant.



### VERIFICATION

Verified at New Delhi on this 02 day of July, 2025 that the contents of the above affidavit are true and correct to my knowledge and as per official

  
DEPONENT

राम कुमार अग्रवाल / Ram Kumar Agrawal  
निदेशक / Director  
राष्ट्रीय राजधानी क्षेत्र और निकटवर्ती क्षेत्रों में वायु गुणवत्ता प्रबंधन आयोग  
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records maintained in the routine course of business. No part of the above affidavit is false and nothing material has been concealed there from.

*[Handwritten Signature]*  
**DEPONENT**  
02/07/25

राम कुमार अग्रवाल / Ram Kumar Agrawal  
निदेशक / Director  
राष्ट्रीय राजधानी क्षेत्र और निकटवर्ती क्षेत्रों में वायु गुणवत्ता प्रबंधन आयोग  
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**ATTESTED**  
*[Handwritten Signature]*  
NOTARY PUBLIC  
GOVT. OF INDIA  
02 JUL 2025

**IDENTIFIED BY**  
VISHAL TAI PATEL, LA, CMM