

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

**ORIGINAL APPLICATION NO. 1035/2024
WITH
ORIGINAL APPLICATION NO. 1346/2024**

IN THE MATTER OF:

SK PANDEYAPPLICANT(s)

VERSUS

STATE OF UTTAR PRADESH & ORS.RESPONDENT(s)

WITH

LAL BACCHAN RAIAPPLICANT(s)

VERSUS

**ENVIRONMENT FOREST AND CLIMATE CHANGE DEPARTMENT,
GOVERNMENT OF UTTAR PRADESH & ORs.**

.....RESPONDENT(s)

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2.	A COPY OF LETTER DATED 11.09.2025 IS ANNEXED HEREWITH AND MARKED AS ANNEXURE-1	
3.	COPIES OF THE SHOW CAUSE NOTICE DATED 01.07.2024 AND THE ORDER IMPOSING ENVIRONMENTAL COMPENSATION DATED 27.08.2024, ARE ANNEXED HEREWITH AND COLLECTIVELY MARKED AS ANNEXURE-2	
4.	COPIES OF THE RECOVERY LETTER DATED 19.02.2025, THE DEMAND LETTER DATED 01.04.2025, AND THE RC FORM-38 ALONG WITH THE LETTER DATED 30.04.2025 ADDRESSED TO PUNJAB NATIONAL BANK ARE ANNEXED HEREWITH AND COLLECTIVELY MARKED AS ANNEXURE-3	
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6.	A COPY OF ORDER DATED 04.08.2025 BY THE HON'BLE SUPREME COURT IS ANNEXED HEREWITH AND MARKED AS ANNEXURE-5	
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THROUGH COUNSEL



BHANWAR PAL SINGH JADON
STANDING COUNSEL FOR THE STATE OF U.P.
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PHONE NO.-6375115224

Date: 01.12.2025

Place: Noida

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DEPARTMENT, GOVERNMENT OF UTTAR PRADESH & ORS.

.....RESPONDENT(s)

REPLY ON BEHALF OF R-1 IN COMPLIANCE OF THE ORDER
DATED 19.09.2025 PASSED BY THE HON'BLE NATIONAL GREEN
TRIBUNAL

I, Maneesh Mittal S/o Late Ram Autar Mittal, aged about 45 years, presently posted as Secretary, Environment Forest and Climate Change Department, Government of UP do hereby solemnly affirm and state as under:



1. That, I the Deponent in the above captioned matter, am fully conversant with the facts of the case and am competent and authorized to swear the present reply.
2. That, I state that the contents of this reply 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.

BACKGROUND OF THE MATTER

3. That, in the present Original Application, the applicant seeks enforcement of the conditions of Environmental Clearances dated 22.11.2012 and 12.09.2018 issued by SEIAA, Uttar Pradesh, in favour of Respondent No. 7, M/s Viraj Construction Pvt. Ltd. (Project Proponent). The applicant has further sought directions for imposition of EC-related measures, prosecution of alleged violators, and provision of facilities such as a sewage treatment plant, rainwater harvesting system, solar street lighting, maintenance of 15% open green area, and other compliance requirements.

4. That, the matter was last listed for hearing on 19.09.2025, wherein the Hon'ble Tribunal passed following directions:

“...Original Application No. 1035/2024

1. Replies on behalf of respondents no. 2, 3, 4 and 5 have been received.



2. A letter has been circulated by Counsel for respondent no.1 seeking two weeks' time to file the reply.
3. Prayer for adjournment has been opposed by the applicant submitting that earlier also opportunity was granted to file the reply.
4. In such circumstances, we grant three weeks' time as final opportunity to respondent no.1 to file the reply....”

REPLY IS AS FOLLOWS

5. That, the deponent, vide letter No. NGT/706/81-7-2025-1898460 dated 11.09.2025, issued directions to the District Magistrate, Lucknow; the Member Secretary, SEIAA; and the Member Secretary, UPPCB to provide details regarding action taken in compliance with the directions of the Hon'ble Tribunal.

A copy of letter dated 11.09.2025 is annexed herewith and marked as **Annexure-1.**

I. ACTION TAKEN BY UPPCB

6. That RO, UPPCB, Lucknow, conducted a site inspection of the project site dated 15.01.2024, during which the effluents discharged from the STP were tested and found to be non-compliant with the prescribed norms; and pursuant thereto, UPPCB issued a show cause notice dated 01.07.2024 to the project proponent, and thereafter, vide order dated 27.08.2024, imposed Environmental Compensation of Rs. 51,00,000/-



upon the project proponent for non-compliance with the prescribed norms relating to the discharge of treated effluents from the STP.

Copies of the show cause notice dated 01.07.2024 and the order imposing Environmental Compensation dated 27.08.2024, are annexed herewith and collectively marked as **Annexure-2**.

7. That for recovery of the imposed Environmental Compensation, UPPCB issued a recovery letter dated 19.02.2025 to the District Magistrate, Lucknow, pursuant to which a demand letter dated 01.04.2025 was served upon the project proponent, M/s Viraj Construction Pvt. Ltd., through the Tehsildar (Sadar), Lucknow. Thereafter, on 30.04.2025, a movable property attachment warrant (RC Form-38) was issued, resulting in the attachment of the project proponent's Account No. 7177009300000031 maintained with Punjab National Bank, 10 Ashok Marg, Hazratganj, Lucknow.

Copies of the recovery letter dated 19.02.2025, the demand letter dated 01.04.2025, and the RC Form-38 along with the letter dated 30.04.2025 addressed to Punjab National Bank are annexed herewith and collectively marked as **Annexure-3**.

8. That, an inspection of the site was again undertaken by the UPPCB on 05.02.2025. Pursuant to the said inspection, a fresh show cause notice dated 11.02.2025 was issued by the UPPCB to the project proponent regarding imposition of additional Environmental Compensation



amounting to Rs. 99,75,000/- for continuing non-compliance with Sewerage Treatment Plant (STP) treated discharge effluent norms.

Copies of the inspection report dated 05.02.2025 and show cause notice dated 11.02.2025 are annexed herewith and collectively marked as *Annexure-4*.

II. STAY ON EC BY THE HON'BLE ALLAHABAD HIGH COURT AND THE HON'BLE SUPREME COURT OF INDIA

9. That, as mentioned in *Affidavit dated 18.09.2025 by DM, Varanasi, paras 10-12 (kindly refer to judicial page no. 333-334)* and in compliance with the order of the Hon'ble Supreme Court of India dated 04.08.2025 in *CIVIL APPEAL NO(S). 757-760 OF 2013*, the recovery proceedings of EC amounting to Rs. 51,00,000/- and proceedings in furtherance of show cause notice dated 11.02.2025 have been stayed/kept in abeyance. The relevant part, para 39(C) of the order dated 04.08.2025 is reproduced herein for perusal:

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

A copy of order dated 04.08.2025 by the Hon'ble Supreme court is annexed herewith and marked as *Annexure-5*.



- 10. Hence, this reply is respectfully submitted for kind perusal of this Hon'ble Tribunal.
- 11. That everything stated above is true and correct to my knowledge, derived from official records, and nothing material has been concealed therefrom.


DEPONENT

VERIFICATION

Verified at Alko ^{NOTARY} on this 18 ^{NOTARY} day of December 2025, that the contents of the above affidavit from paragraphs 1 to 11 ^{NOTARY} are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.


DEPONENT



Sworn and Verified before me

NOOR JAHAN
Advocate & Notary
Civil Court, Lucknow
Registration No. 10943/15

I know & identify the deponent / Executant who has signed / put his T.L. before me


S. J. Iqbal Advocate
Reg No 6043/1999
Adv

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ANNEXURE-1

महत्त्वपूर्ण / मा० एन०जी०टी० प्रकरण

संख्या- एन०जी०टी०-706 /81-7-2025-1898460

प्रेषक,

सुशांत शर्मा,
सचिव,
उ०प्र० शासन।

सेवा में,

- 1- जिलाधिकारी,
लखनऊ।
- 2- सदस्य सचिव,
राज्य स्तरीय पर्यावरण समाघात निर्धारण प्राधिकरण,
उ०प्र०, लखनऊ।
- 3- सदस्य सचिव,
उ०प्र० प्रदूषण नियंत्रण बोर्ड,
लखनऊ।

पर्यावरण, वन एवं जलवायु
परिवर्तन अनुभाग-7

लखनऊ: दिनांक: 11 सितम्बर, 2025

विषय- मा० राष्ट्रीय हरित अधिकरण, नई दिल्ली में योजित Original Application No. 1035/2024 SK Pandey Versus State of U.P. & Ors. WITH Original Application No. 1346/2024 Lal Bachan Rai Versus Environment Forest and Climate Change Department, Government of Uttar Pradesh & Ors. में पारित मा० अधिकरण के आदेश दिनांक 14.05.2025 के अनुपालन के संबंध में।

महोदय,

उपर्युक्त विषयक पर्यावरण, वन एवं जलवायु परिवर्तन अनुभाग-7, उ०प्र० शासन के पत्र संख्या-एन०जी०टी०-153/81-7-2025, दिनांक 12.02.2025 का कृपया संदर्भ ग्रहण करने का कष्ट करें, जिसके माध्यम से प्रश्नगत प्रकरण में मा० अधिकरण द्वारा पारित आदेश दिनांक 11.12.2024 के अनुपालन में समयान्तर्गत *reply/response* दाखिल करते हुए दाखिल किये गये *reply/response* की प्रति सहित कृत कार्यवाही से पर्यावरण, वन एवं जलवायु परिवर्तन विभाग, उ०प्र० शासन को तत्काल अवगत कराने हेतु निर्देशित किया गया है।

2- प्रश्नगत प्रकरण में दिनांक 14.05.2025 को निर्धारित सुनवाई के उपरान्त निम्नानुसार आदेश दिनांक 14.05.2025 पारित किये गये हैं :-

"Original Application No. 1035/2024

1. These two original applications have been tagged together in pursuance to the order of the Tribunal dated 20.02.2025 passed in OA No. 1035/2024.

2. In the OA No. 1035/2024, a letter has been circulated by Counsel for Respondent No. 5 seeking adjournment to enable him to file the reply on behalf of the said respondent.

3. The report of the joint Committee dated 09.12.2024 has been filed.

4. It will be open to all the concerned parties to file objection to the report of the joint Committee.

Original Application No. 1346/2024

5. Learned Counsel for Respondents No. 1, 3, 6 and 7 seek four weeks' time to file the reply. It will be open to other respondents also to file their reply within the same period, if not already filed.

6. The replies on behalf of the District Magistrate, Lucknow, Ministry of Environment, Forest and Climate Change and Uttar Pradesh Pollution Control Board have been received.

7. Learned Counsel for the Applicant submits that no rejoinder is required to be filed in the OA.

8. The parties are directed to complete the pleadings within six weeks.

9. List on 19.09.2025."

3- अतः इस संबंध में मा० अधिकरण द्वारा पारित आदेश दिनांक 14.05.2025 की छायाप्रति संलग्न कर प्रेषित करते हुए मुझे यह कहने का निदेश हुआ है कि प्रश्नगत प्रकरण में मा० अधिकरण द्वारा पारित आदेश दिनांक 14.05.2025 के अनुपालन में आवश्यक कार्यवाही सुनिश्चित करते हुए कृत कार्यवाही से पर्यावरण, वन एवं जलवायु परिवर्तन विभाग, उ०प्र० शासन (Email-envsection7@gmail.com) को तत्काल अवगत कराने का कष्ट करें।

संलग्नक-यथोक्त।

Digitally signed by
SUSHANT SHARMA भवदीय,
Date: 11-09-2025
14:57:10 (सुशांत शर्मा)
सचिव।

संख्या एवं दिनांक तदैव

प्रतिलिपि-सदस्य सचिव, उ०प्र० प्रदूषण नियंत्रण बोर्ड, लखनऊ को इस निर्देश के साथ प्रेषित कि प्रश्नगत प्रकरण में प्रतिवादी संख्या-1 (प्रमुख सचिव, पर्यावरण, वन एवं जलवायु परिवर्तन विभाग, उ०प्र० शासन) की ओर से मा० अधिकरण में दाखिल किये जाने वाले reply/response का आलेख्य तैयार कर शासन को दिनांक 12.09.2025 तक प्रत्येक दशा में उपलब्ध कराने का कष्ट करें।

Digitally signed by ^{भाऊ} से,
SHAIENDRA KUMAR
Date: 11-09-2025 शैलेन्द्र कुमार)
17:48:12 उप सचिव।



उत्तर प्रदेश प्रदूषण नियंत्रण बोर्ड
UTTAR PRADESH POLLUTION CONTROL BOARD



पत्रांक संख्या-

सेवा में,

मैसर्स विराज कान्स्ट्रक्शन प्रा०लि०,
सनब्रीज-1, बी.बी.डी. ग्रीन, ग्राम-शाहपुर सराय शेख एवं सेमरा,
लखनऊ।

यह कि मैसर्स विराज कान्स्ट्रक्शन प्रा०लि०, सनब्रीज-1, बी.बी.डी. ग्रीन, ग्राम-शाहपुर सराय शेख एवं सेमरा, लखनऊ में आवासीय परियोजना विकसित है तथा जल (प्रदूषण निवारण तथा नियंत्रण) अधिनियम, 1974 की धारा-47 के अन्तर्गत एक कम्पनी है, जिसे आगे उद्योग कहा जायेगा।

यह कि मा० एन.जी.टी., नई दिल्ली में योजित ओ०ए० नं०-34/2024 एल०बी० राय बनाम स्टेट ऑफ यू०पी० व अन्य में पारित आदेश दिनांक 24.04.2024 के अनुपालन में आवासीय परियोजना मैसर्स विराज कान्स्ट्रक्शन प्रा०लि०, सनब्रीज-1, बी.बी.डी. ग्रीन, ग्राम-शाहपुर सराय शेख एवं सेमरा, लखनऊ का निरीक्षण क्षेत्रीय कार्यालय, उ०प्र० प्रदूषण नियंत्रण बोर्ड, लखनऊ के प्राधिकृत अधिकारियों द्वारा दिनांक 15.05.2024 को किया गया। निरीक्षण आख्यानसार निरीक्षण के समय परियोजना का उपभोग होता हुआ पाया गया। आवासीय परियोजना से जनित घरेलू उत्प्रवाह के शोधन हेतु 250 के.एल.डी. क्षमता का उत्प्रवाह शुद्धिकरण संयंत्र (एस.टी.पी.) स्थापित है। निरीक्षण के समय एस.टी.पी. संचालित नहीं पाया गया। इकाई परिसर से जनित उत्प्रवाह का जल नमूना एकत्रित कर विश्लेषण हेतु राज्य बोर्ड की केन्द्रीय प्रयोगशाला में जमा कराया गया। प्राप्त विश्लेषण आख्यानसार जल नमूनें में प्रचालकों की मात्रा में टी.एस.एस.-106 मिग्रा०/ली० एवं बी.ओ.डी.-64 मिग्रा०/ली० पाई गयी, जोकि निर्धारित मानकों से अधिक है।

यह कि इकाई को बोर्ड के पत्र दिनांक 25.04.2023 के माध्यम से दिनांक 31.12.2023 तक सहमति (जल एवं वायु) निर्गत थी, जिसकी वैधता अवधि समाप्त हो चुकी है। वर्तमान में उक्त परियोजना को सहमति (जल एवं वायु) निर्गत नहीं है और न ही इकाई द्वारा सहमति प्राप्त किये जाने हेतु ऑनलाईन आवेदन किया गया है। इकाई द्वारा पूर्व में दिनांक 30.12.2023 को आनलाईन के माध्यम से सहमति (जल एवं वायु) हेतु आवेदन किया गया, जिसके अनुक्रम में इकाई का निरीक्षण दिनांक 15.01.2024 को किया गया। निरीक्षण के समय एस.टी.पी. के आउटलेट से जनित उत्प्रवाह का जल नमूनें एकत्रित कर विश्लेषण हेतु राज्य बोर्ड की केन्द्रीय प्रयोगशाला में जमा कराया गया। प्राप्त विश्लेषण आख्यानसार जल नमूनें में प्रचालकों की मात्रा में टी.एस.एस.-108 मिग्रा०/ली०, बी.ओ.डी.-42 मिग्रा०/ली० एवं सी.ओ.डी.-264 मिग्रा०/ली० पाई गयी, जोकि निर्धारित मानकों से अधिक होने के कारण इकाई का आवेदित सहमति (जल एवं वायु) आवेदन अस्वीकृत कर दिया गया। इकाई द्वारा बिना राज्य बोर्ड से सहमति प्राप्त किये ही संचालन किया जा रहा है, जोकि जल एवं वायु अधिनियमों के अन्तर्गत वर्णित प्राविधानों का उल्लंघन है।

उक्त के दृष्टिगत क्षेत्रीय कार्यालय, उ०प्र० प्रदूषण नियंत्रण बोर्ड, लखनऊ के पत्रांक-377/सहमति-3247/24 दिनांक 12.06.2024 द्वारा इकाई से जनित प्रदूषित उत्प्रवाह के प्रचालक मानकों के अनुरूप न पाये जाने के कारण केन्द्रीय प्रदूषण नियंत्रण बोर्ड के पत्र दिनांक 08.02.2019 द्वारा पर्यावरणीय क्षतिपूर्ति का ऑकलन किये जाने हेतु जारी की गई मार्गदर्शिका के अनुरूप दिनांक 01.01.2024 से दिनांक 15.05.2024 तक (कुल 136 दिन) हेतु रुपये 37,500/- प्रतिदिन की दर से पर्यावरणीय क्षतिपूर्ति अधिरोपित किये जाने हेतु जल (प्रदूषण निवारण तथा नियंत्रण) अधिनियम, 1974 की धारा-33ए के अन्तर्गत कारण बताओ नोटिस जारी किये जाने की संस्तुति की गयी है। पर्यावरणीय क्षतिपूर्ति का ऑकलन विवरण निम्नवत् है:-

Environmental Compensation (EC) = $PI \times N \times R \times S \times LF$
 PI- Pollution Index of Industrial sector =80 (for red category industry)
 N-Number of days of violation took place= Per day
 R-A factor in Rupees for EC =250/-
 S-Factor for scale of operation=1.5 (for Large scale)
 LF-Location factor=1.25 (for Lucknow)
 Total Environmental Compensation= $80 \times 1 \times 250 \times 1.5 \times 1.25 = Rs. 37,500/day$

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(2)

अतः उपरोक्त वर्णित परिस्थितियों के दृष्टिगत जन स्वास्थ्य के हित में जन साधारण को स्वच्छ वातावरण प्रदान करने हेतु सक्षम अधिकारी के अनुमोदनोपरान्त जल (प्रदूषण निवारण तथा नियंत्रण) अधिनियम, 1974 (यथासंशोधित) की धारा-33ए के अन्तर्गत इकाई मैसर्स विराज कान्स्ट्रक्शन प्रा0लि0, सनब्रीज-1, बी.बी.डी. ग्रीन, ग्राम-शाहपुर सराय शेख एवं सेमरा, लखनऊ के विरुद्ध निम्नानुसार कारण बताओ नोटिस जारी किया जाता है-

1. यह कि क्यों न इकाई मैसर्स विराज कान्स्ट्रक्शन प्रा0लि0, सनब्रीज-1, बी.बी.डी. ग्रीन, ग्राम-शाहपुर सराय शेख एवं सेमरा, लखनऊ को मिलने वाली बिजली, पानी तथा अन्य सुविधाओं को तुरन्त से बन्द कर दिया जाए।
2. यह कि क्यों न इकाई मैसर्स विराज कान्स्ट्रक्शन प्रा0लि0, सनब्रीज-1, बी.बी.डी. ग्रीन, ग्राम-शाहपुर सराय शेख एवं सेमरा, लखनऊ के विरुद्ध केन्द्रीय प्रदूषण नियंत्रण बोर्ड के पत्र दिनांक 08.02.2019 द्वारा पर्यावरणीय क्षतिपूर्ति का ऑकलन किये जाने हेतु जारी मार्गदर्शिका के अनुरूप दिनांक 01.01.2024 से दिनांक 15.05.2024 तक (कुल 136 दिन) हेतु रुपये 37,500/- प्रतिदिन की दर से पर्यावरणीय क्षतिपूर्ति अधिरोपित कर दी जाये।

उपरोक्त के संबंध में अपना स्पष्टीकरण पत्र प्राप्ति के 15 दिन के अन्दर बोर्ड मुख्यालय, उ0प्र0 प्रदूषण नियंत्रण बोर्ड, लखनऊ को प्रेषित करें, अन्यथा निर्धारित अवधि में संतोषजनक उत्तर प्राप्त न होने की दशा में प्रश्नगत परियोजना के विरुद्ध उपरोक्त वर्णित निर्देशों की पुष्टि कर दी जायेगी।

संलग्नक-यथोपरि।

सक्षम अधिकारी द्वारा अनुमोदनोपरान्त पत्र निर्गमन हेतु अधिकृत


मुख्य पर्यावरण अधिकारी, वृत्त-5

प्रतिलिपि:- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित-

1. जिलाधिकारी, लखनऊ।
2. मुख्य पर्यावरण अधिकारी (डब्लू.एम.डी.), उ0प्र0 प्रदूषण नियंत्रण बोर्ड, लखनऊ।
3. क्षेत्रीय अधिकारी, उ0प्र0 प्रदूषण नियंत्रण बोर्ड, लखनऊ को इस निर्देश के साथ प्रेषित कि इकाई को जारी कारण बताओ नोटिस की प्रति अपने स्तर से भी उद्योग को प्राप्त कराकर 15 दिन के अन्दर स्पष्ट संस्तुति सहित निरीक्षण आख्या बोर्ड मुख्यालय में प्रेषित करना सुनिश्चित करें।


मुख्य पर्यावरण अधिकारी, वृत्त-5

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उत्तर प्रदेश प्रदूषण नियंत्रण बोर्ड
UTTAR PRADESH POLLUTION CONTROL BOARD



Ref. No. H/16242, C 5 /सहमति - 450/24

Dated 27/08/24
पंजीकृत

736/8
13.09.24

सेवा में,
मैसर्स विराज कान्स्ट्रक्शन प्रा०लि०,
सनन्रीज-1, बी०बी०डी० ग्रीन, ग्राम-शाहपुर सराय शोख एवं सेमरा,
लखनऊ।

विषय: इकाई मैसर्स विराज कान्स्ट्रक्शन प्रा०लि०, सनन्रीज-1, बी०बी०डी० ग्रीन, ग्राम-शाहपुर सराय शोख एवं सेमरा, लखनऊ को जारी कारण बताओ नोटिस दिनांक 01.07.2024 की पुष्टि किये जाने के सम्बन्ध में।

महोदय,

कृपया उपरोक्त विषयक बोर्ड मुख्यालय के पत्रांक-एच 13321/सी 5/186/ओ०ए० नं०-34/2024 दिनांक 01.07.2024 का संदर्भ ग्रहण करने कष्ट करें, जिसके माध्यम से इकाई में स्थापित सी.ई.टी. के आउटलेट के नमूने मानको के अनुरूप न पाये जाने एवं राज्य बोर्ड से बिना सहमति प्राप्त किये ही संचालन किये जाने के कारण इकाई के विरुद्ध जल (प्रदूषण निवारण तथा नियंत्रण) अधिनियम, 1974 की धारा-33ए के अन्तर्गत कारण बताओ नोटिस जारी किया गया था। इकाई को जारी कारण बताओ नोटिस के संबंध में अपना प्रतिउत्तर दिनांक 19.07.2024 प्रेषित किया गया है।

उक्त के परिप्रेक्ष्य में क्षेत्रीय अधिकारी, उ०प्र० प्रदूषण नियंत्रण बोर्ड, लखनऊ के पत्र संख्या-745/सहमति-3247/24 दिनांक 14.08.2024 द्वारा अद्यतन आख्या प्रेषित की गयी है। आख्यानुसार उक्त इकाई का निरीक्षण क्षेत्रीय कार्यालय, लखनऊ के प्राधिकृत अधिकारियों द्वारा दिनांक 02.08.2024 को किया गया। आख्यानुसार निरीक्षण के समय पाया गया कि परियोजना में मानकों के अनुरूप ग्रीन वेल्ड एवं सोलर लाइट की व्यवस्था नहीं पायी गयी। परियोजना के बेसमेण्ट में 250 के.एल.डी. का एस.टी.पी. स्थापित पाया गया। जबकि इकाई को निर्गत पर्यावरणीय स्वीकृति दिनांक 22.11.2012 के बिन्दु संख्या-04 में उल्लिखित है कि परियोजना द्वारा 5.0 एम.एल.डी. क्षमता का एस.टी.पी. स्थापित किया जायेगा तथा सामान्य शर्त संख्या-55 में उल्लिखित है कि एस.टी.पी की स्थापना आबादी से दूर की जायेगी ताकि आस-पास के क्षेत्र में बदबू की समस्या न रहे। उक्त का अनुपालन इकाई परियोजना द्वारा नहीं किया गया।

निरीक्षण के समय उक्त इकाई परियोजना द्वारा उत्प्रवाह का निस्तारण परियोजना के अन्दर गुजर रहे टेश नाला में ह्यूम पाइप के माध्यम से किया जाता है, जबकि परियोजना को निर्गत पर्यावरणीय स्वीकृति दिनांक 12.09.2018 की विशिष्ट संख्या-06 में उल्लिखित है कि उत्प्रवाह को एस.टी.पी. के माध्यम से अधिकतम मात्रा में गार्डनिंग, फ्लशिंग में लाया जायेगा तथा शोधित जल के पुनः प्रयोग हेतु इरिगेशन इस्प्रिंकलर एवं डिप इरिगेशन सिस्टम पद्धति का प्रयोग किया जायेगा। निरीक्षण के दौरान उपरोक्त प्रक्रिया प्रयोग में नहीं लायी जा रही थी, जोकि जल (प्रदूषण निवारण तथा नियंत्रण) अधिनियम, 1974 में वर्णित प्राविधानों का उल्लंघन है। इकाई को राज्य बोर्ड के ऑनलाइन संदर्भ संख्या-177917/UPPCB/Lucknow/(UPPCBRO)/CTO/both/LUCKNOW/2023 दिनांक 25.04.2023 के माध्यम से दिनांक 31.12.2023 तक सहमति (जल एवं वायु) निर्गत है, जिसकी वैधता अवधि समाप्त हो चुकी है। निरीक्षण के समय इकाई को निर्गत सहमति (जल एवं वायु) में निहित शर्तों का अनुपालन होता हुआ नहीं पाया गया। वर्तमान में परियोजना को सहमति (जल एवं वायु) निर्गत नहीं है एवं न ही सहमति (जल एवं वायु) प्राप्त किये जाने हेतु आवेदन पत्र विचाराधीन है। इकाई का संचालन बिना राज्य बोर्ड की सहमति जल/वायु प्राप्त किये ही किया जा रहा है, जोकि जल/वायु अधिनियमों के अन्तर्गत वर्णित प्राविधानों का उल्लंघन है।

इकाई के पत्र दिनांक 19.07.2024 द्वारा बोर्ड के पत्र दिनांक 01.07.2024 द्वारा जारी कारण बताओ नोटिस को निस्तारित करते हुए इकाई के विरुद्ध दण्डात्मक कार्यवाही न किये जाने हेतु अनुरोध किया गया है। उक्त पत्र दिनांक 19.07.2024 द्वारा सूचित किया गया कि दिनांक 15.05.2024 को बोर्ड अधिकारियों द्वारा इकाई में स्थापित एस.टी.पी. से एकत्र नमूने में प्रचालक मानको से अधिक पाये जाने के कारण उक्त एस.टी.पी. की मरम्मत का कार्य किया जाना था। इकाई द्वारा बोर्ड से पूर्व प्राप्त सहमति की वैधता (दिनांक 31.12.2023) समाप्त हो जाने के उपरान्त दिनांक 30.12.2023 को ऑनलाइन सहमति हेतु आवेदन किया गया था।

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उक्त प्रत्यावेदन दिनांक 19.07.2024 द्वारा प्रेषित तथ्यों के संबंध में बोर्ड द्वारा पूर्व में दिनांक 15.05.2024, 15.01.2024 को एस.टी.पी. के आउटलेट से एकत्र नमूनें में प्रचालक मानकों से अधिक पाये गये। अग्रेतर अद्यतन में दिनांक 02.08.2024 को एकत्र नमूनों में प्रचालक फीकल कोलीफार्म के सापेक्ष मानकों के अनुरूप नहीं पाये गये। इकाई द्वारा ऑनलाइन सहमति आवेदन दिनांक 30.12.2023 को बोर्ड के पत्र दिनांक 17.02.2024 द्वारा अस्वीकृत किया गया, जिसमें वर्णित है कि दिनांक 15.01.2024 को इकाई के एस.टी.पी. से एकत्र नमूनें में प्रचालक मानकों के अनुरूप नहीं पाये गये।

इकाई द्वारा प्रेषित प्रत्यावेदन दिनांक 19.07.2024 में वर्णित है कि इकाई द्वारा दिनांक 22.01.2024 एवं 27.05.2024 को मैसर्स ग्लोबल इन्वायोमेन्टल कन्सलटेन्सी एण्ड रिसर्च सेण्टर तथा मैसर्स एडवान्स इन्वायोमेन्टल टेस्टिंग प्रा0लि0 से एस.टी.पी. के नमूनें विश्लेषित कराये गये। उक्त के संबंध में इकाई द्वारा बोर्ड को पूर्व सूचना प्रेषित नहीं की गयी एवं न ही बोर्ड के अधिकारियों की उपस्थिति में उक्त नमूनें एकत्र किये गये। उपरोक्त तथ्यों को दृष्टिगत रखते हुए इकाई द्वारा प्रेषित प्रत्यावेदन दिनांक 19.07.2024 द्वारा प्रेषित विवरण/तथ्यों पर विचार किया जाना सम्भव नहीं है।

अतः क्षेत्रीय अधिकारी लखनऊ के पत्र संख्या-745/राहगति-3247/24 दिनांक 14.08.2024 के दृष्टिगत सक्षम अधिकारी के अनुमोदनोपरान्त इकाई मैसर्स विराज कान्स्ट्रक्शन प्रा0लि0, सनब्रीज-1, बी0बी0डी0 ग्रीन, ग्राम-शाहपुर सराय शेख एवं सेमरा, लखनऊ के विरुद्ध जल (प्रदूषण निवारण तथा नियंत्रण) अधिनियम, 1974 की धारा-33ए के अन्तर्गत जारी कारण बताओ नोटिस दिनांक 01.07.2024 की पुष्टि करते हुए दिनांक 01.01.2024 से दिनांक 15.05.2024 तक कुल 136 दिवस हेतु रूपये 37,500/- प्रतिदिन की दर से कुल रू0 51,00,000/- (रू0 इक्यावन लाख मात्र) की पर्यावरणीय क्षतिपूर्ति अधिरोपित किया जाता है।

अग्रेतर उद्योग के विरुद्ध अधिरोपित पर्यावरणीय क्षतिपूर्ति रू0 51,00,000/- (रू0 इक्यावन लाख मात्र) का भुगतान जिसका payment gateway (URL: <https://erp.eshiksa.net/DirectFeesv3/UPPCB>) के माध्यम से Dedicated Account में जमा करना सुनिश्चित करें। Payment gateway के Homepage के dropdown में निम्नवत् विशिष्ट सूचना चयन करें।

- | | |
|--|-----------------|
| 1. Nature of Pollution/प्रदूषण की प्रकृति- | Water Pollution |
| 2. Regional Officers/क्षेत्रीय कार्यालय- | Lucknow |
| 3. EC imposed in compliance/अनुपालन में ईसी लगाया गया- | UPPCB |

उपरोक्त निर्देशों के अनुपालन में विलम्बतम् 15 कार्यदिवस के अन्दर अधिरोपित पर्यावरणीय क्षतिपूर्ति जमा करना सुनिश्चित करें तथा उक्त का साक्ष्य क्षेत्रीय कार्यालय, लखनऊ एवं बोर्ड मुख्यालय, लखनऊ को भी प्रेषित करें।

सक्षम अधिकारी द्वारा अनुमोदनोपरान्त पत्र निर्गमन हेतु अधिकृत

(विवेक राय)

मुख्य पर्यावरण अधिकारी,
वृत्त-5

प्रतिलिपि: निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

1. जिलाधिकारी, लखनऊ।
2. पुलिस आयुक्त, लखनऊ।
3. अधिशासी अभियन्ता, विद्युत वितरण खण्ड, लखनऊ।
4. क्षेत्रीय अधिकारी, उ0प्र0 प्रदूषण नियंत्रण बोर्ड, लखनऊ को इस निर्देश के साथ प्रेषित कि उपरोक्त शर्तों का अनुपालन कराते हुए पत्र की पावती के साथ अनुपालन आख्या बोर्ड मुख्यालय में प्रेषित करना सुनिश्चित करें।

मुख्य पर्यावरण अधिकारी,
वृत्त-5



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उत्तर प्रदेश प्रदूषण नियंत्रण बोर्ड
UTTAR PRADESH POLLUTION CONTROL BOARD



संदर्भ संख्या- G 44965/सी-5/सहभाता-450/25

दिनांक 19-2-2025

To,
The Collector,
District-Lucknow

सं० 43 दिनांक 27-3-25 (द्वितीय वर्ष) 24-25
तहसीलदार 24-5-25 को वसूली प्रमाण-पत्र नूराजब
वकास की गैरि वसूली करने हेतु तथा वसूली धरान्त
आख्या सहित मूल रूप में वापस करने हेतु प्रेषित

519

Subject: Regarding collecting/recovery of Environmental Compensation imposed on M/s Viraj Constructions Pvt. Ltd., BBD Green City, Vill-Shahpur, Sarai Sheikh and Semra, Lucknow.

कृत कलेक्टर
लखनऊ

Please refer the Hon'ble National Green Tribunal, New Delhi order dated 24.04.2024, in the matter of O.A. no. 34/2024 L.B. Rai V/s State of U.P. & Others. The relevant excerpt of the aforesaid order is as follows-

".....2. Having regard to the environmental issue raised in the letter petition, we are of the opinion that the Member Secretary, UPPCB is required to consider the grievance of the applicant expeditiously. Member Secretary, UPPCB will get the spot inspection done, ascertain the correct factual position and extent of violation by the Project Proponent and take appropriate action in accordance with law....."

In compliance of the above Hon'ble NGT order dated 24.04.2024 the Officials of UP Pollution Control Board, Lucknow has inspected the said unit on dated 15.05.2024. During inspection dated 15.05.2024 the installed STP of 250 KLD STP was not operational. The sample of untreated sewage discharged from the premises was collected by the inspection team and as per the analysis report the parameters were found to be above the prescribed standards norms. Regional Officer has recommended to impose the Environmental Compensation against the unit.

Considering above recommendation, Uttar Pradesh Pollution Control Board vide letter dated 01.07.2024 has issued show cause notice to the unit for imposition of Environmental Compensation at the rate of Rs. 37,500/-. Subsequently Uttar Pradesh Pollution Control Board vide letter dated 27.08.2024 has imposed the Environmental Compensation of Rs. 51,00,000/- (Rupees Fifty One Lakh only) against unit M/s Viraj Constructions Pvt. Ltd., BBD Green City, Vill-Shahpur, Sarai Sheikh and Semra, Lucknow for a defaulting period of 01.01.2024 to 15.05.2024 for violation of non-compliance of STP treated effluent discharge norms. The copy of the Letter dated 01.07.2024 and 27.08.2024 is being attached herewith for your reference. As per the office record, the amount of the environmental compensation has not been deposited by the said unit.

The sum of Rs. 51,00,000/- (Rupees Fifty One Lakh only) is payable in account of Environment Compensation from M/s Viraj Constructions Pvt. Ltd., BBD Green City, Vill-Shahpur, Sarai Sheikh and Semra, Lucknow.

The Name and Address of the Authorized Person of the concerned unit is as follows:

1. Shri R.K. Agarwal s/o Shri Babu Banarasi Das (Director, M/s Viraj Constructions Pvt. Ltd.), House No. 55, Babu Banarasi Bhawan, Thana- Purana Qila, Lucknow.
2. Shri Anunj Pachouri s/o Shri Vishnu Dutt Pachouri (D.G.M., M/s Viraj Constructions Pvt. Ltd.), Vill-Shahpur, Sarai Sheikh and Semra, Lucknow.

...2

OCCRB

T.C/12V, Vibhuti Khand Gomti Nagar, Lucknow - 226010

Phone: 2720831, 2720828, 2720691 & 2720681 - Fax: 0522 - 2720764

Email: info@uppcb.in - Web Site: www.uppcb.com

वसूली कर शीघ्र कृत
कार्यवाही से अवगत कराये।

498/ADM/R

24-02-25

तहसीलदार सदर
लखनऊ

अपर जिला प्रमुख (राजस्व)
लखनऊ

46
28/2/25

ADM (PR)

जिलाधिकारी
लखनऊ

(2)

You are hereby requested to recover the same and deposit it into payment gateway (URL: <https://erp.eshiksa.net/DirectFeesv3/UPPCB>).

Payment gateway के Homepage के dropdown में निम्नवत् विशिष्ट सूचना का चयन करें-

- | | | |
|---|---|-----------------|
| 1. Nature of Pollution / प्रदूषण की प्रकृति | - | Water Pollution |
| 2. Regional offices / क्षेत्रीय कार्यालय | - | Lucknow |
| 3. EC imposed in compliance / अनुपालन में ईसी लगाया गया - | | UPPCB |

Enclosure-As above.

Yours Sincerely,

SK
(Sanjeev Kumar Singh)
Member Secretary

Copy to:- Regional Officer, Uttar Pradesh Pollution Control Board, Lucknow for information and necessary action.

/
Member Secretary

आर0सी0 प्रपत्र-38

[देखें नियम-147(2)]

अधपन्ना चल सम्पत्ति की कुर्की का अधिपत्र

- बही सं0 : ०१/ क्रम सं0 : ००१/
- सेवा में, **श्री. राजेश कुमार शर्मा (सिंह)**
- क्रम सं0 : ००१/
1. अधिपत्र सं0 **आर.सी. प्रपत्र - 38**
2. अधिपत्र निष्पादन के लिए अधिकृत अधिकारी का नाम व पदनाम **श्री. वि.राज. शर्मा प्र. 108**
3. व्यतिक्रमी का नाम व पता **श्री. वि.राज. शर्मा प्र. 108**
4. बकाया धनराशि **510000/-**
5. बकाया की प्रकृति **दे. वि. रा. प्र. 38**
6. जारी करने की तिथि **24/11/2024**
7. वाद की संख्या **04-34/2024**

आर0सी0 प्रपत्र-38

[देखें नियम-147(2)]

अधपन्ना चल सम्पत्ति की कुर्की का अधिपत्र

- बही सं0 : ०१/ क्रम सं0 : ००१/
- सेवा में, **श्री. राजेश कुमार शर्मा (सिंह)**
- (इस अधिपत्र को निष्पादित करने के लिए अधिकृत व्यक्ति का नाम व पदनाम **श्री. वि.राज. शर्मा प्र. 108**)
- जबकि श्री **श्री. वि.राज. शर्मा प्र. 108** मू-राजस्व का बकाया/मू-राजस्व के बकाये की वसूली के लिए वसूले जाने योग्य राशि रु0 **510000/-** के व्यतिक्रमी है।
- इसलिए एतद्वारा आपको यह निर्देश किया जाता है कि आप उक्त व्यतिक्रमी की चल सम्पत्ति कुर्क लें तथा उसे अपने अधिकार में उस समय तक रखें जब तक वह आपको उक्त धनराशि के साथ इस कुर्की के परिव्यय के रूप में रु0 **(15)000/-** न चुका दें।
- आपको यह भी निर्देश दिया जाता है कि आप दिनांक **24/11/2024** या उसके पूर्व यह अधिपत्र कुर्की के द्वारा प्रणाली की रिपोर्ट के साथ वापस कर दें।

Q.A. हस्ताक्षर
वासिल बाकी-नवीस

Q.A. हस्ताक्षर
तहसीलदार

Q.A. कलेक्टर/सहायक कलेक्टर

आपको यह भी निर्देश दिया जाता है कि आप दिनांक **24/11/2024** या उसके पूर्व यह अधिपत्र कुर्की को सुरक्षित अभिरक्षा हेतु दे दी गयी है।

कुर्क चल सम्पत्ति की सूची
उपर्युक्त सम्पत्ति को सुरक्षित अभिरक्षा हेतु प्राप्त किया।
निष्पादन करने वाले अधिकारी के हस्ताक्षर
दिनांक

सुपुर्दवार के हस्ताक्षर
दिनांक

पी0एस0पी0-ए0पी0 036 राजस्व परिषद-18-10-2021-(779)-41,250 प्रतियां (कम्प्यूटर/टी0/ऑफसेट)।

437

आर० सी० प्रपत्र-40
(देखें नियम-153)

उपजिलाधिकारी : ... 2162 ... लखनऊ

वाद सं० :

दिनांक : ... 29.1.2025

सेवा में,

शाखा प्रबंधक,
प्रो.रा.ब. नेशनल बैंक
10, अशोक... शाखा
मार्ग... लखनऊ

जैसा कि श्री ... निवासी ...
जो कि एक व्यतिक्रमी है, से राशि रु० ...
बकाया है और जैसा कि उक्त व्यतिक्रमी ने आपकी शाखा में एक खाता सं० ... खोल रखा है और एक
लॉकर सं० ... किराये पर ले रखा है।

इसलिए, अब आप और उक्त व्यतिक्रमी को उक्त खाता या लॉकर को संचालित करने से तथा अगले आदेशों तक उक्त खाता और लॉकर से कोई राशि या वस्तु के निष्कासन या निष्कासन को स्वीकृत करने से निषिद्ध या अवरुद्ध किया जाता है।

स्वनिर्देश-
(उपजिलाधिकारी)

प्रतिलिपि- श्री ... निवासी ... (व्यतिक्रमी) को प्रेषित।
...

स्वनिर्देश-
(उपजिलाधिकारी)

Recd
2/5/25
...

01:13 PM
30/04/2025

पी०एस०यू०पी०-ए०पी० 038 राजस्व परिषद-18-10-2021-(781)-1,78,300 प्रतियां (कम्प्यूटर/टी०/ऑफसेट)।

क्षेत्रीय कार्यालय,
उ०प्र० प्रदूषण नियंत्रण बोर्ड
लखनऊ

मै० विराज कान्स्ट्रक्शन प्रा०लि० सनब्रीज-1, बी०बी०डी० ग्रीन सिटी, ग्राम-शाहपुर सराय शेख सेमरा लखनऊ
की निरीक्षण आख्या:-

उपरोक्त वर्णित इकाई का निरीक्षण अधोहस्ताक्षरकर्ताओं द्वारा निरीक्षण दिनांक 05/02/2025 को किया गया। निरीक्षण के समय इकाई प्रतिनिधि श्री मनोज कुमार तिवारी (इन्जीनियर) उपस्थित थे। निरीक्षण आख्या निम्नवत् है:-

1. इकाई एक आवासीय परियोजना है। इकाई सनब्रीज 1 में टाउनशिप टी1 से टी12 तक कुल 12 टावर है, जिसमें कुल 776 रेजीडेन्सियल फ्लैट है। निरीक्षण के समय इकाई प्रतिनिधि द्वारा अवगत कराया गया कि वर्तमान में परियोजना में मात्र 50 प्रतिशत परिवार निवास कर रहे हैं।
2. आवासीय योजना से जनित घरेलू उत्प्रवाह के शोधन हेतु 250 के०एल०डी० क्षमता का एस०टी०पी० स्थापित है जिसकी प्रमुख ईकाइयां-इक्वालाइजेशन टैंक, फ्लैश मिक्चर, बफर टैंक, एनोर्बिक डाइजेस्टर, प्राइमरी क्लेरीफायर, एरियेशन टैंक, सेकेण्डरी क्लेरीफायर, स्लज ड्राइंग बेड्स है। निरीक्षण के दौरान एस०टी०पी० संचालित पायी गयी, परन्तु इकाई से जनित उत्प्रवाह 02 ह्यूम पाइप के माध्यम से टेरा नाले में निस्तारित किया जाता है। निरीक्षण के समय इकाई में स्थापित एस०टी०पी० के आउटलेट, टेरा नाले में मिलने वाले 02 ह्यूम पाइप एवं टेरा नाले के अपस्ट्रीम एवं डाउनस्ट्रीम से उत्प्रवाह का जल नमूना एकत्रित कर विश्लेषण हेतु राज्य बोर्ड की केन्द्रीय प्रयोगशाला में जमा कराया गया प्राप्त विश्लेषण आख्या संलग्न है।
3. इकाई में 750 के०वी०ए० क्षमता के 03 नग डी०जी० सेट एवं 365 के०वी०ए० क्षमता का 01 नग डी०जी० सेट कैनोपीयुक्त स्थापित है। उक्त डी०जी० सेटों से संलग्न चिमनियों की ऊंचाई मानको के अनुरूप स्थापित नहीं पायी गयी।
4. इकाई को स्टेट इन्चार्जमेंट इम्पैक्ट असिस्मेंट अथारिटी, उ०प्र० के पत्रांक सं०-2368/एस०ई०ए०सी०/1059/2011/ए०ए०(एस) दिनांक 22/11/2012 द्वारा पर्यावरणीय स्वीकृति प्राप्त है, जिसमें प्लॉट एरिया-12,86,899.68 वर्गमी० एवं बिल्टप एरिया-13,37,884.43 वर्ग मी० अंकित है। अग्रेतर इकाई को स्टेट इन्चार्जमेंट इम्पैक्ट असिस्मेंट अथारिटी, उ०प्र० के पत्रांक संख्या-357/पर्या/एस०ई०ए०सी०/1059/2018 दिनांक 12/09/2018 के माध्यम से संशोधित पर्यावरणीय स्वीकृति प्राप्त है, जिसमें प्लॉट एरिया-12,86,899.68 वर्गमी० एवं बिल्टअप एरिया- 24,06,979.94 वर्ग मी० अंकित है।
5. इकाई को बोर्ड मुख्यालय के पत्र संख्या-एफ 99099/सी-5/एन०ओ०सी०-595/12 दिनांक 08/02/2012 के माध्यम से कुल निर्माण 317.91 एकड़ क्षेत्रफल हेतु अनापत्ति प्रमाण पत्र निर्गत है। इकाई को राज्य बोर्ड के आनलाइन संदर्भ संख्या-177917/UPPCB/LUCKNOW/(UPPCBRO)/CTO/both/LUCKNOW/2023 DATED-25/04/23 के माध्यम से दिनांक 31/12/23 तक सहमति जल/वायु निर्गत है, जिसकी वैधता अवधि समाप्त हो चुकी है।
6. इकाई द्वारा दिनांक 30/12/23 को आनलाइन सहमति जल/वायु हेतु आवेदन किया गया, जिसके अनुक्रम में इकाई का निरीक्षण दिनांक 15/01/24 को किया गया। इकाई में स्थापित एस०टी०पी० के आउटलेट से जनित शुद्धिकृत उत्प्रवाह में विभिन्न प्रचालकों की मात्रा निर्धारित मानको से अधिक होने के कारण इकाई का आवेदित सहमति जल/वायु आवेदन अस्वीकृत कर दिया गया था।
7. इकाई द्वारा अवगत कराया गया कि आवेदन संख्या-28671665 दिनांक 17/10/2024 द्वारा सहमति जल/वायु आवेदन किया गया है, परन्तु आनलाइन पोर्टल पर जांच किये जाने पर पाया गया कि उक्त सहमति आवेदन पत्र शुल्क सहित जमा न किये जाने के कारण बोर्ड के आनलाइन ओ०सी०एम०एम०एस० पोर्टल पर प्राप्त नहीं हुआ, जिससे आवेदन पत्र बोर्ड में लम्बित नहीं है।
8. वर्तमान में परियोजना को सहमति जल/वायु निर्गत नहीं है और न ही सहमति जल/वायु प्राप्त किये जाने हेतु आवेदन पत्र इस कार्यालय में विचाराधीन है।
9. अवगत कराना है कि उक्त प्रकरण ओ०ए० संख्या-1035/2024 एस०के० पाण्डेय बनाम स्टेट आफ यू०पी० एवं ओ०ए० संख्या-1346/2024 लालबच्चन राय बनाम पर्यावरण, वन एवं जलवायु परिवर्तन विभाग, उ०प्र० व अन्य मा० राष्ट्रीय हरित अधिकरण नई दिल्ली में योजित है, जिसमें राज्य बोर्ड की ओर से रिस्पान्स दाखिल किया जाना है। उक्त प्रकरणों में सुनवाई दिनांक 20/02/2025 को नियत है।

11/11/25
र.न.

10. इकाई को राज्य बोर्ड के पत्रांक संख्या-एच 16242/सी-6/सहमति-450/2024 दिनांक 27/08/2024 के माध्यम से दिनांक 01/07/2024 से दिनांक 15/05/2024 तक कुल 136 दिवस हेतु रूपये 37,500/- प्रतिदिन की दर से कुल रू0 51,00,000/- (रू0 इक्यावन लाख मात्र) की पर्यावरणीय क्षतिपूर्ति अधिरोपित किया गया है, जो वर्तमान तक जमा नहीं किया गया है।
11. इकाई के विरुद्ध बोर्ड द्वारा जल (प्रदूषण निवारण एवं नियंत्रण) अधिनियम 1974 की धारा-43 एवं 44 के अन्तर्गत माननीय विशेष न्यायिक मजिस्ट्रेट (प्रदूषण), लखनऊ में केस न0-6842/2024 दिनांक 30/11/2024 को परिवाद दाखिल किया गया है।
12. इकाई का संचालन बिना राज्य बोर्ड की सहमति जल/वायु प्राप्त किये ही किया जा रहा है, जोकि जल/वायु अधिनियमों के अन्तर्गत वर्णित प्राविधानों का उल्लंघन है।

चूंकि इकाई राज्य बोर्ड से बिना सहमति जल/वायु प्राप्त किये संचालित है तथा इकाई में स्थापित एस0टी0पी0 से शोधित उत्प्रावह के प्रचालक राज्य बोर्ड द्वारा निर्धारित मानकों के अनुरूप नहीं है। अतः परियोजना के विरुद्ध केन्द्रीय प्रदूषण नियंत्रण बोर्ड के पत्र संख्या-B31011/BMW/2019/WMD-1/16314 dated 08/02/2019 द्वारा पर्यावरण क्षतिपूर्ति का आंकलन किये जाने हेतु मार्ग दर्शिका के अनुरूप पर्यावरणीय क्षतिपूर्ति अधिरोपित किया जाना उचित होगा। उक्त के अनुक्रम में अग्रेतर दिनांक 16/05/2024 से दिनांक 05/02/2025 तक (कुल दिन-266) की पर्यावरणीय क्षतिपूर्ति का आंकलन निम्नवत् है:-

Penalty=PIxNxRxSxLF

PI Pollution index in the categorized Red =80

N is number of days which =266 Day

R is a factor in rupees considering =250

S for the categorization of industry which is=1.5 (for Large)

LF is categorization of Population which is=1.25 (for Lucknow)

Penalty=80x250x1.5x1.25x266=9975000/-

उपरोक्तानुसार इकाई में स्थापित जल प्रदूषण नियंत्रण व्यवस्था का संचालन मानकों के अनुरूप न किये जाने तथा परियोजना का संचालन बिना राज्य बोर्ड से सहमति जल/वायु प्राप्त किये जाने के दृष्टिगत इकाई मै0 विराज कान्स्ट्रक्शन प्रा0लि0, सनब्रीज-1, बी0बी0डी0 ग्रीन सिटी, ग्राम-शाहपुर सराय शेख एवं सेमरा, लखनऊ के विरुद्ध परियोजना के विरुद्ध दिनांक 16/05/2024 से दिनांक 05/02/2025 तक (कुल दिन-266) रू0 37500/- प्रतिदिन की दर से कुल रू0 99,75,000/- (रू0 निम्नानवे लाख पचहत्तर हजार मात्र) की पर्यावरणीय क्षतिपूर्ति अधिरोपित किये जाने सम्बन्धी कारण बताओ नोटिस निर्गत किये जाने हेतु संस्तुति सहित निरीक्षण आख्या आपके अवलोकनार्थ एवं अग्रिम आवश्यक कार्यवाही हेतु प्रस्तुत है।

11/02/25

(के0के0 चौधरी)
वैज्ञानिक सहायक

11/2/25

(विनोद कुमार)
सहा0पर्या0अभि0

क्षेत्रीय अधिकारी / मुख्य पर्यावरण अधिकारी (वृत्त-5) महोदय,

11/2/25

CENTRAL LABORATORY, UPPCB, LUCKNOW

Name of the Industry / Factory : M/s Viraj Constructions Pvt Ltd, BBD Green City Vill- Shahpur, Lucknow
 Date of Sample Collection: 05/02/2025

S. N.	S. Code	LIMS ID	Sampling Point	pH	BOD (mg/l)	COD (mg/l)	O&G (mg/l)	TSS (mg/l)	T.C. (MPN/100ml)	F.C. (MPN/100ml)
1	WW/327	30369057	Outlet of STP	7.45	32.0	95.2	-	54.0	70000	68000
2	WW/328	30369071	Outlet of STP	-	-	-	16.2	-	-	-
3	WW/329	30369086	Humpline 1	7.26	44.0	134.8	-	68.0	1700000	1100000
4	WW/330	30369100	Humpline 2	7.22	58.0	166.0	-	76.0	1400000	940000

SA
S.A. 11/2/25

ASO
ASO. 11/2/25

4
11/2/25
Ue Central Lab



उत्तर प्रदेश प्रदूषण नियंत्रण बोर्ड
UTTAR PRADESH POLLUTION CONTROL BOARD



11

पत्रांक संख्या- H.24.075

/सी-5/गएनए-45.0/25

दिनांक...11/02/2025
पंजीकृत

सेवा में,

मैसर्स विराज कान्स्ट्रक्शन प्रा०लि०,

सनब्रीज-1, बी.बी.डी. ग्रीन, ग्राम-शाहपुर सराय शेख एवं सेमरा,
लखनऊ।

यह कि मैसर्स विराज कान्स्ट्रक्शन प्रा०लि०, सनब्रीज-1, बी.बी.डी. ग्रीन, ग्राम-शाहपुर सराय शेख एवं सेमरा, लखनऊ में आवासीय परियोजना विकसित है तथा जल (प्रदूषण निवारण तथा नियंत्रण) अधिनियम, 1974 की धारा-47 के अन्तर्गत एक कम्पनी है, जिसे आगे उद्योग कहा जायेगा।

यह कि आवासीय परियोजना मैसर्स विराज कान्स्ट्रक्शन प्रा०लि०, सनब्रीज-1, बी.बी.डी. ग्रीन, ग्राम-शाहपुर सराय शेख एवं सेमरा, लखनऊ का निरीक्षण क्षेत्रीय कार्यालय, उ०प्र० प्रदूषण नियंत्रण बोर्ड, लखनऊ के प्राधिकृत अधिकारियों द्वारा दिनांक 05.02.2025 को किया गया। निरीक्षण आख्यानुसार निरीक्षण के दौरान एस०टी०पी० संचालित पाया गया, परन्तु इकाई से जनित उत्प्रवाह 02 हयूम पाइप के माध्यम से टेरा नाले में निस्तारित किया जाता है। निरीक्षण के समय इकाई में स्थापित एस०टी०पी० के आउटलेट, टेरा नाले में मिलने वाले 02 हयूम पाइप एवं टेरा नाले के अपस्ट्रीम एवं डाउनस्ट्रीम से उत्प्रवाह का जल नमूना एकत्रित कर विश्लेषण हेतु राज्य बोर्ड की केन्द्रीय प्रयोगशाला में जमा कराया गया, प्राप्त विश्लेषण आख्यानुसार प्रचालक मानकों के अनुरूप नहीं पाये गये। विश्लेषण आख्या की प्रति संलग्न है।

यह कि इकाई को बोर्ड के पत्र दिनांक 25.04.2023 के माध्यम से दिनांक 31.12.2023 तक सहमति (जल एवं वायु) निर्गत थी, जिसकी वैधता अवधि समाप्त हो चुकी है। वर्तमान में उक्त परियोजना को सहमति (जल एवं वायु) निर्गत नहीं है और न ही इकाई द्वारा सहमति प्राप्त किये जाने हेतु ऑनलाईन आवेदन किया गया है। इकाई द्वारा पूर्व में दिनांक 30.12.2023 को आनलाईन के माध्यम से सहमति (जल एवं वायु) हेतु आवेदन किया गया, जिसके अनुक्रम में इकाई का निरीक्षण दिनांक 15.01.2024 को किया गया। निरीक्षण के समय एस.टी.पी. के आउटलेट से जनित उत्प्रवाह का जल नमूने एकत्रित कर विश्लेषण हेतु राज्य बोर्ड की केन्द्रीय प्रयोगशाला में जमा कराया गया। प्राप्त विश्लेषण आख्यानुसार जल नमूने में प्रचालकों की मात्रा निर्धारित मानकों से अधिक होने के कारण इकाई का आवेदित सहमति (जल एवं वायु) आवेदन अस्वीकृत कर दिया गया। इकाई द्वारा बिना राज्य बोर्ड से सहमति प्राप्त किये ही संचालन किया जा रहा है, जोकि जल एवं वायु अधिनियमों के अन्तर्गत वर्णित प्राविधानों का उल्लंघन है।

उक्त के दृष्टिगत क्षेत्रीय कार्यालय, उ०प्र० प्रदूषण नियंत्रण बोर्ड, लखनऊ के पत्रांक-1743/सहमति-3247/25 दिनांक 11.02.2025 द्वारा इकाई से जनित प्रदूषित उत्प्रवाह के प्रचालक मानकों के अनुरूप न पाये जाने के कारण केन्द्रीय प्रदूषण नियंत्रण बोर्ड के पत्र दिनांक 08.02.2019 द्वारा पर्यावरणीय क्षतिपूर्ति का ऑकलन किये जाने हेतु जारी की गई मार्गदर्शिका के अनुरूप PI-80, N-1, R-250, S-1.5, LF-1.25 लेते हुए रुपये 37,500/day की दर से दिनांक 16.05.2024 से दिनांक 05.02.2025 तक (कुल 266 दिन) हेतु कुल रुपये 99,75,000/- (रु० निन्यानवे लाख पचहत्तर हजार मात्र) की पर्यावरणीय क्षतिपूर्ति अधिरोपित किये जाने हेतु कारण बताओ नोटिस जारी किये जाने की संस्तुति की गयी है।

अतः उपरोक्त वर्णित परिस्थितियों के दृष्टिगत जन स्वास्थ्य के हित में जन साधारण को स्वच्छ वातावरण प्रदान करने हेतु सक्षम अधिकारी के अनुमोदनोपरान्त इकाई मैसर्स विराज कान्स्ट्रक्शन प्रा०लि०, सनब्रीज-1, बी.बी.डी.

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ग्रीन, ग्राम-शाहपुर सराय शेख एवं सेमरा, लखनऊ के विरुद्ध निम्नानुसार कारण बताओ नोटिस जारी किया जाता है:-

1. यह कि क्यों न इकाई मैसर्स विराज कान्स्ट्रक्शन प्रा0लि0, सनग्रीज-1, यी.वी.डी. ग्रीन, ग्राम-शाहपुर सराय शेख एवं सेमरा, लखनऊ के विरुद्ध केन्द्रीय प्रदूषण नियंत्रण बोर्ड के पत्र दिनांक 08.02.2019 द्वारा पर्यावरणीय क्षतिपूर्ति का ऑकलन किये जाने हेतु जारी मार्गदर्शिका के अनुरूप दिनांक 18.05.2024 से दिनांक 05.02.2025 तक (कुल 266 दिन) हेतु रुपये 37,500/- प्रतिदिन की दर से कुल रुपये 99,75,000/- (रु0 निन्यानवे लाख पचहत्तर हजार मात्र) की पर्यावरणीय क्षतिपूर्ति अधिरोपित कर दी जाये।

उपरोक्त के संबंध में अपना स्पष्टीकरण पत्र प्राप्ति के 15 दिन के अन्दर बोर्ड मुख्यालय, उ0प्र0 प्रदूषण नियंत्रण बोर्ड, लखनऊ को प्रेषित करें, अन्यथा निर्धारित अवधि में संतोषजनक उत्तर प्राप्त न होने की दशा में प्रश्नगत परियोजना के विरुद्ध उपरोक्त वर्णित निर्देशों की पुष्टि कर दी जायेगी।
संलग्नक-यथोपरि।

सक्षम अधिकारी द्वारा अनुमोदनोपरान्त पत्र निर्गमन हेतु अधिकृत

मुख्य पर्यावरण अधिकारी,
वृत्त-5

प्रतिलिपि:- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित-

1. जिलाधिकारी, लखनऊ।
2. क्षेत्रीय अधिकारी, उ0प्र0 प्रदूषण नियंत्रण बोर्ड, लखनऊ को इस निर्देश के साथ प्रेषित कि इकाई को जारी कारण बताओ नोटिस की प्रति अपने स्तर से भी उद्योग को प्राप्त कराकर 15 दिन के अन्दर स्पष्ट संस्तुति सहित निरीक्षण आख्या बोर्ड मुख्यालय में प्रेषित करना सुनिश्चित करें।

मुख्य पर्यावरण अधिकारी,
वृत्त-5



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

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

DELHI POLLUTION CONTROL COMMITTEE ...APPELLANT(S)

VERSUS

LODHI PROPERTY CO. LTD. ETC. ...RESPONDENT(S)

WITH

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

J U D G M E N T

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1. Introduction.

1. The Delhi Pollution Control Committee (DPCC)¹ is in appeal against the judgment of the Division Bench of the High Court holding that it is not empowered to levy compensatory damages in exercise of powers under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981² on the ground that such an action amounts to imposition of penalty provided for in Chapters VII and VI of the respective Acts, and as such, procedure contemplated thereunder will be the only method for imposing and collecting compensatory damage.

2. Having considered the principles that govern Indian environmental laws, we have held that the environmental regulators, the Pollution Control Boards exercising powers under the Water and Air Acts, can impose and collect restitutionary or compensatory damages in the form of fixed sum of monies or require furnishing of bank guarantees as an *ex-ante* measure to prevent potential environmental damage. These powers are

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

² Hereinafter referred to as the Water Act and Air Act respectively.

incidental and ancillary to the empowerment under Sections 33A and 31A of the Water and Air Acts. At the same time, we have directed that the powers must be exercised as per procedure laid down by subordinate legislation incorporating necessary principles of natural justice, transparency and certainty.

2. Facts.

3. It is the case of the Delhi Pollution Control Committee that pursuant to the directions of the Ministry of Environment, Forest and Climate Change (MoEFCC) to take appropriate action against certain entities operating in violation of the environmental norms, show cause notices were issued for violation of Section 25 of the Water Act and Sections 21 and 22 of the Air Act. These entities were either residential complexes, commercial complexes or shopping malls. The show cause notices were issued on the ground that they proceeded with construction and in fact, were operating without obtaining the mandatory “consent to establish” and “consent to operate” under Section 25 of the Water Act and Section 21 of the Air Act. The show cause notices were challenged by way of 38 writ petitions before the Delhi High Court. The challenge culminated in the judgement of a single judge dated 30.09.2010 in

the case of *Splendor Landbase Ltd. v. DPCC*³. The learned single judge considered the question as to whether a State Board can levy environmental damages in the form of fixed sums of money or require an entity to furnish a bank guarantee as a condition for grant of consent under Section 33A of Water Act and/or Section 31A of Air Act. Similar writ petitions were considered and decided by another single judge bench in *Bharti Realty Ltd. v. DPCC* and *Anush Finlease and Construction v. DPCC* on 20.07.2011 and 15.09.2011 and were disposed of in terms of the decision in *Splendor Landbase Ltd. v. DPCC*. The reasoning adopted in the judgement and orders passed by the Single Judges are as follows.

3. Single Judge's Judgement and Orders.

4. In *Splendor Landbase Ltd. v. DPCC*⁴, the ld. single judge by his judgement dated 30.09.2010 dealt with two major issues – firstly, whether proprietors of properties over 20,000 square meters are required to obtain *consent to establish* and *consent to operate* under Water Act and Air Act independently, despite obtaining EIA Clearance from the Ministry; and secondly, whether Boards can levy penalties, fines, environmental damages in form

³ 2012 (195) DLT 177.

⁴ Hereinafter referred to as *Splendor*.

of fixed sums of monies or call for bank guaranties as a condition to grant consent under Water and Air Acts? While the first question was answered in the affirmative, the second was answered in the negative.

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

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

amounts collected. However, no interest was granted to the respondents as they chose to comply with the demand instead of challenging the same at the relevant point in time.

4. Impugned Order of the Division Bench.

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

“37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that, the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the

Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent jurisdiction and no more.

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

42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions

of furnishing bank guarantee. The decision of the learned Single Judge is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as 1997 [5] SCC 535 Mafatlal Industries Ltd. & Ors. Vs UOI & Ors., under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied without any jurisdiction. In the instant case the penalty levied is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned decisions where penalty levied has been directed to be refunded are upheld.”

5. Submissions.

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

7. We have requested Mr. Ninad Laud, learned counsel to assist us in the matter. He has gracefully accepted and has eminently assisted the Court. He has submitted that as per broad scheme of the Acts and also the statement of objects and reasons, State Boards are empowered to act on their own while enforcing Sections 25 and 26 and also while issuing directions under Sections 33A and 31A. However, when faced with non-compliances, recourse to

judicial process is contemplated under Sections 49 and 43 of Water and Air Acts respectively. Further, neither Rule 34 of Water (Prevention & Control of Pollution) Rules 1975 nor Rule 20A of Air (Prevention & Control of Pollution) Rules 1983, while providing a mechanism to administer Section 33A and Section 31A, contemplate monetary penalties. Countering the submission of Mr. Pradeep Misra on the principle of *Polluter Pays* to encourage reading the power to impose and collect environmental damages under Sections 33A and 31A of the respective Acts, he would submit such an approach is impermissible as the said power is specifically and separately provided under Chapters VII and VI therein. Relying on the decision of this Court in *MC Mehta v. Kamal Nath*⁵, he would submit, after considering the scheme of penal provisions under Water Act, Air Act and Environment (Protection) Act 1986, the Supreme Court held that penalties under the Acts befall a person only after finding of guilt upon trial by a court of law. Referring to the legitimacy of State Board's action demanding bank guarantees to secure compliance with conditions, he would submit that no penalty, other than that contemplated in the

⁵ (2000) 6 SCC 213, para 13-17.

statute or statutory scheme can be imposed.⁶ We have also heard Mr. Pinaki Misra, Senior Advocate and other learned counsel and they have strongly supported the decision of the Division Bench.

7.1 Counsel for M/s Laxmi Buildtech Pvt Ltd⁷ has submitted that they have neither violated nor acted in breach of any provision of environmental laws and therefore they cannot be subjected to any penalty or criminal prosecution. Counsel for other respondents further submitted that they have deemed consent as well as EIA clearance from the Ministry. They have also submitted that imposition and collection of damages by the State Boards is outside the powers vested in them under the Water and Air Acts.

7.2 Counsel for M/s Bharti Realty Ltd has submitted that it is a settled principle of law that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and no other.⁸ This principle, according to the learned counsel, squarely applies to the present case as Chapter VII and Chapter VI of the Water and Air Acts have a prescribed procedure to be followed before imposing penalties. It is further argued that the

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

⁷ Civil Appeal No. 2001 of 2013.

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

role of any State Board is in the nature of a complainant and not that of an adjudicatory authority. In this vein, it is submitted that any other interpretation would render the chapter on 'Penalties and Procedures' nugatory and otiose. It is also submitted that the power to give directions under Sections 33A and 31A of the Water and Air Acts is "subject to provisions of this Act". Written submissions also refer to the recent amendments to the Water and Air Acts, empowering an Adjudicating Officer, not below the rank of Joint Secretary of Government of India or Secretary to State Government, for imposing penalties for contravention of provisions of the Acts.

6. Issue.

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

7. Existing Legal Regime for Pollution Control in India.

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

“Section 17. Functions of State Board – (1) Subject to the provisions of this Act, the functions of a State Board shall be—

- (a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;
- (b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;
- (c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;
- (d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
- (e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;
- (f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;
- (g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;
- (h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;

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

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

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

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

(i) for the prevention, control or abatement of discharges of waste into streams or wells;

(ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or adopt such remedial measures as are necessary to prevent, control or abate water pollution;

(m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;

(n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;

(o) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.

(2) The Board may establish or recognize a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.”

10. Section 17 of the Air Act⁹, substantially similar to its equivalent under the Water Act, also indicates the crucial

⁹ Section 17 of Air Act states –

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

(a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;

(b) to advise the State Government on any matter concerning the prevention, control or abatement relating to air pollution;

responsibilities of the State Boards in discharge of their mandate. Chapter V of the Water Act and Chapter IV of the Air Act include provisions that prescribe the regulatory powers of the State Boards. These powers include the power to issue, modify or withdraw consent¹⁰, power to obtain information¹¹, power of entry and inspection¹² and power to take samples¹³.

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

11. In 1988, both Acts were amended. Notably, through amendments the State Boards were further empowered to give

(c) to collect and disseminate information relating to air pollution;

(d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise a mass-education programme relating thereto;

(e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;
(f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;

(g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft: Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;

(h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;

(i) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;

(j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

(2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.

¹⁰ Sections 25, 27 of Water Act and Section 21 of Air Act

¹¹ Section 20 of Water Act and Section 25 of Air Act

¹² Section 23 of Water Act and Section 24 of Air Act

¹³ Section 21 of Water Act and Section 26 of Air Act

directions under Section 33A of the Water Act and Section 31A¹⁴ of the Air Act. These two provisions are identically worded. Section 33A of the Water Act is as under;

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

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

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.”

12. The directions contemplated under Sections 33A and 31A of the Water and Air Acts must be in furtherance of the powers and functions of the Boards and they must be in writing. These provisions, declares that the power to issue directions will include the power to direct closure, prohibition or regulation of any

¹⁴ Section 31A of the Air Act states –

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

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

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the stoppage or regulation of supply of electricity, water or any other service.

industry, operation or process. Further, this power extends to directing the stoppage or regulation of supply of electricity, water or any other service. The power to give directions has been worded broadly, and it allows the Boards significant flexibility in deciding the nature of directions. The legislative intention of granting these powers through the 1988 amendment can be inferred from the Statement of Objects and Reasons of the Water Act, which reads as follows –

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

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

....

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

....

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

13. Similar objective is expressed for the amendment introduced in the Air Act.¹⁵

14. An appeal against directions issued under Section 33A of the Water Act by the State Board can be filed before the National Green Tribunal under Section 33B, introduced in 2010¹⁶. Unlike the Water Act there is no specific Appeal provision against directions issued under Section 31A of the Air Act. This asymmetry must be addressed legislatively.

15. Offences and penalties under the two Acts, and the related procedures, are covered in Chapter VII of the Water Act and Chapter VI of the Air Act. These chapters have undergone significant and substantial amendments. Prior to the amendments, the two Acts stipulated penalties in the form of

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

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

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

¹⁶ Act 19 of 2010.

imprisonment, monetary fine or both for offences under the statute. Courts could only take cognizance of an offence if a complaint was filed by a Board or any officer authorized by it, or by any person who had given notice of the alleged offence and of his intention to make a complaint. No court inferior to that of a Metropolitan Magistrate or a Judicial magistrate of the first class can try an offence punishable under the two Acts. Be that as it may, for the present purpose we have to examine and interpret Sections 33A and 31A of the Water and Air Acts.

9. Interpretation of and for Environmental Institutions.

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

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

17. Of all the duties imposed under Article 51A, the obligation to conserve and protect water and air, is perhaps the most significant, amidst our climate change crisis. The Water Act and the Air Act institutionalised all efforts and actions that need to be taken to protect air that we breathe and water that we consume by creating the Pollution Control Boards. These Boards functioning as our environment regulators are expected to act with *institutional foresight* by evolving necessary policy perspectives and action plans. Working with perpetual seal and succession, they are to develop and retain *institutional memory* so that they can act on the basis of the experience, data and information that they would have

gathered and processed. *Institutional expertise* is critical, and these bodies are to employ human resource which have domain expertise and talent. These bodies are intended to maintain *institutional integrity* by taking independent and objective decisions without governmental or industrial control. These values flow naturally if there is *institutional transparency and accountability*. It is in this perspective that we need to interpret Section 33A of the Water Act and 31A of the Air Act.

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

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

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

“24. Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay

damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender....”

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

20. In this context, it is important to turn to one of the key principles of Indian environmental law – the *Polluter Pays* principle. This principle has been a part of Indian jurisprudence since 1996. In *Indian Council for Enviro-Legal Action v. Union of India*¹⁷, this Court held that according to the *Polluter Pays* principle the responsibility for repairing the damage is that of the offending industry. The Court further held that the powers of the Central Government to issue directions under Section 5 read with Section 3 of the Environment Protection Act include the power to impose costs for remedial measures -

“60. ... Section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government (or its delegate, as the case may be) to “take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment...”. Section 5 clothes the Central Government (or its delegate) with the power to issue

¹⁷ (1996) 3 SCC 212

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

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

(emphasis added)

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

“12. ... The “Polluter Pays Principle” as interpreted by this Court means that the absolute liability for harm to the

¹⁸ (1996) 5 SCC 647

environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of “Sustainable Development” and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.”

(emphasis added)

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

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

(emphasis added)

23. The Court further held that the observations of the Court in *Deepak Nitrite Ltd. v. State of Gujarat*²⁰ that “mere violation of the law in not observing the norms would result in degradation of environment would not be correct” were confined to the facts of that

¹⁹ (2005) 13 SCC 186.

²⁰ (2004) 6 SCC 402

case. The Court clarified that the actual degradation of the environment is not a necessary condition for the application of polluter pays principle, as long as the offending activities have the potential of degrading the environment -

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

(emphasis added)

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

“45. It is evident from the above facts and the reasoning that there was actual levy of penalty or damages by the DPCC and

²¹ 2014 SCC OnLine NGT 13.

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

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

(emphasis added)

25. In *Swastik Ispat*, the Green Tribunal correctly interpreted Sections 33A and 31A of the Water and Air Acts. The judgment of the High Court in *Splendor* had not yet been taken up or considered by this Court at that time, the Tribunal had to distinguish the facts of *Splendor* to arrive at its own conclusion. In view of our reasoning and interpretation of Sections 33A and 31A

of the Water and Air Acts, we have no hesitation to hold that the Green Tribunal is correct in its approach.

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

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

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

(emphasis added)

11. Principles.

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

²² (2025) 2 SCC 641

- I. There is a distinction between a direction for payment of restitutionary and compensatory damages as a remedial measure for environmental damage or as an *ex-ante* measure towards potential environmental damage on the one hand; and a punitive action of fine or imprisonment for violations under Chapters VII of the Water Act and VI of the Air Act on the other hand.
- II. If directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute for example under chapters VII and VI of the Water and Air Acts respectively.
- III. Indian environmental law has assimilated²³ the principle of *Polluter Pays* and there is also a statutory incorporation of this principle in our laws.²⁴ The invocation of this principle is triggered in the situations²⁵; i) when an established threshold or prescribed requirement is exceeded or

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

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

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

breached, and it does result in environmental damage, ii) when an established threshold or prescribed requirement is not exceeded or breached, nevertheless the act in question results in environmental damage and also iii) when a potential risk or a likely adverse impact to the environment is anticipated, irrespective of whether or not prescribed thresholds or requirements are exceeded or breached.

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

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

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

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

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

31. At this stage, we must also take note of the recent 2024 amendments²⁶ to the Water and Air Acts. Two major changes relevant for our consideration are that of decriminalisation²⁷ and introduction of the office of "Adjudicatory Officer"²⁸. Even after the

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

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

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

amendments, in our opinion, there is no conflict between the powers of the State Boards to direct payment of environmental damages under Sections 33A and 31A of the Water and Air Acts and the powers of the Adjudicating Officer to impose penalties under Chapter VII of the Water Act and Chapter VI of the Air Act. The decriminalization of offences under these Chapters has not removed the punitive nature of actions that can be taken under them. There remains a clear distinction between the nature of directions that the State Boards can issue under Sections 33A and 31A of the Water and Air Acts for payment of environmental damage and the determination by Adjudicating Officers. The former is compensatory in nature and will be resorted to when remedial measures are being undertaken to restore the degraded environment or pollution caused. The latter is a penalty for an offence under the law and is imposed with the objective of punishing the offender. This penalty collected here will not be specifically directed towards the restoration of the degraded environment (for instance, to decontaminate a pond that has been

and impose penalties under sections 41, 41A, 42, 43, 44, 45A and 48. Appeal against such imposition lies before the National Green Tribunal as per section 45C. The Adjudicating Officer is further empowered to file a complaint for cognizance under section 49. Corresponding additions have been made under the Air Act as well under sections 39A (Adjudicating Officer), 39B (Appeal to NGT) and 43 (Cognizance of offences).

polluted due to discharge of untreated sewage). It will be deposited in the Environmental Protection Fund that is to be set up under Section 16 of the Environment (Protection) Act. According to Section 16(3) of the EP Act, the Fund shall be used for, (a) the promotion of awareness, education and research for the protection of environment; (b) the expenses for achieving the objects and for purposes of the Air (Prevention and Control of Pollution) Act, 1981(14 of 1981) and under this Act; and (c) such other purposes, as may be prescribed.

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

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

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

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

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

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

(emphasis added)

²⁹ (2020) 15 SCC 63

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

36. These Rules must also create enabling framework for citizens to file complaints about environmental damage. Public participation in environmental protection has assumed great

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

importance with climate change threatening to drastically disrupt our way of living. Boards, being the first line of defence against polluting activities, must provide easy accessibility and encourage public participation in their function and decision making.

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

38. In view of the fact that the show cause notices in these cases relate to the year 2006 and those show cause notices were set-aside by the Single as well as by the Division Benches of the High Court, we are of the opinion that no purpose will be served in reviving the said show cause notices at this point of time. In the facts and circumstances of the case while we allow the appeal on the principle of law there shall not be any consequential direction for reviving the show cause notices which have been set-aside concurrently by the Single as well as by the Division Bench of the

High Court. If certain amounts have been collected on the basis of the said show cause notices they shall be returned by DPCC within a period of six weeks from the date of this order, and if amounts are not deposited or collected the appellant, DPCC shall not take any further action.

39. For the reasons stated above:

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

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

(c) it is further directed that the power to impose or collect restitutionary or compensatory damages or the requirement to furnish bank guarantees as an *ex-ante* measure under Sections 33A and 31A of the Water and Air Acts shall be enforced only after

detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation.

.....**J.**
[PAMIDIGHANTAM SRI NARASIMHA]

.....**J.**
[MANOJ MISRA]

NEW DELHI;
AUGUST 04, 2025