

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
IN  
ORIGINAL APPLICATION NO. 417 (PB) OF 2023**

**IN THE MATTER OF:-**

ASHISH SARDANA .....Applicant

VERSUS,

UNION OF INDIA .....Respondent

**NDOH: 05.12.2023**

**INDEX**

<b>S. NO.</b>	<b>PARTICULARS</b>	<b>PAGE NO.</b>
<b>1.</b>	Reply Affidavit on behalf of the RespondentNo.1 Ministry of Environment, Forest & Climate Change.	<b>1-9</b>
<b>2.</b>	<b><u>“Annexure R-1”</u></b> Copy of the Judgment dated 25.03.2022 passed by the Hon'ble Supreme Court Of India.	<b>10-40</b>
<b>3.</b>	<b><u>“Annexure R-2”</u></b>	<b>41-82</b>

	Copy of the Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund	
4.	<b><u>“Annexure R-3”</u></b> Copy of the Office Memorandum dated 28 <sup>th</sup> July, 2022	83
5.	PROOF OF SERVICE	84

**RESPONDENT NO.1**

**THROUGH**



**RUCHI KOHLI**  
**ADVOCATE FOR RESPONDENT.1**  
**AOR CODE:-1627**  
Office: 69, Lawyers Chambers,  
Supreme Court of India,  
New Delhi – 110 001  
Ph:+91-9810208807

DATE – 04.11.2023  
PLACE – NEW DELHI.

A

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
IN  
ORIGINAL APPLICATION NO. 417 OF 2023 (PB)

**IN THE MATTER OF:-**

ASHISH SARDANA .....Applicant

VERSUS,

UNION OF INDIA .....Respondent

**REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO.1, MINISTRY  
OF ENVIRONMENT, AND CLIMATE CHANGE**

PAPER BOOK

[FOR INDEX: PLEASE SEE INSIDE]

ADVOCATE FOR RESPONDENT NO.1 : MS. RUCHI KOHLI

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

IN

ORIGINAL APPLICATION No. 417 OF 2023 (PB)

IN THE MATTER OF: -

Ashish Sardana ..... Applicant

VERSUS

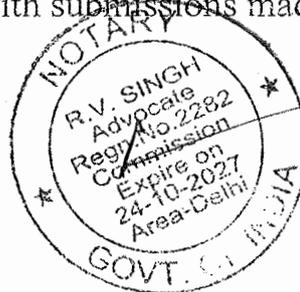
Union of India ..... Respondent

REPLY AFFIDAVIT ON BEHALF OF RESPONDENT NO. 1,  
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

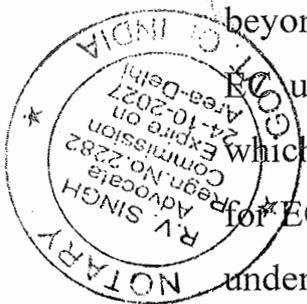
**MOST RESPECTFULLY SHOWETH:**

I, Sundar Ramanathan S/o S. Ramanathan aged about 41 years presently working as Scientist "E" in the Ministry of Environment, Forest & Climate Change, at New Delhi, the deponent herein does hereby solemnly affirm and state on oath as under: -

1. That, I am duly authorized and competent to swear the present reply affidavit on behalf of Ministry of Environment, Forest and Climate Change (herein after referred as MoEF&CC).
2. That, the contents of the application, unless specifically admitted, are denied to the extent that they are inconsistent with submissions made hereinafter.



3. That, the instant reply is being filed by the Answering Respondent in compliance of the order dated 07/07/2023 of the Hon'ble NGT without prejudice to the right to file a fuller and more detailed reply at a later stage, if so necessary.
4. That, the instant matter has been filed by the applicant primarily aggrieved by the manner in which penalty and compensation are levied/recovered under the provisions of the SoP dated 07/07/2021 are utilized.
5. It is humbly submitted that the answering respondent had taken cognizance of violations and had issued a procedure to deal with the same vide OM dated 16/11/2010. Thereafter, the process was established for granting Environmental Clearance for violation cases vide OM dated 12/12/2012 which superseded the OM dated 16/11/2010 and 27/06/2013. However, the Hon'ble NGT, Principal Bench vide its order dated 7th July, 2015 in Original Application No. 37 of 2015 and Original Application No. 213 of 2015 had quashed the OMs dated 12/12/2012 and 27/06/2013 respectively.
6. Subsequently, the answering respondent in view of the observations made by the various courts of law issued S.O. 804(E) dated 14/03/2017 for appraisal of projects for grants of terms of reference (ToR)/ Environment Clearance (EC), which have started the work on site, expanded the production/activities beyond the limit of EC, or changed the product mix without obtaining prior approval under the EIA Notification, 2006. Further, only the projects/activities which were in violation as on date of this notification were eligible to apply for EC under this notification and the Project Proponent could apply for EC under this notification only within six months from the date of this notification.
7. That, the Notification S.O. 804 (E) dated 14/03/2017 was in force for six months from the date of publication i.e. 14/03/2017 to 13/09/2017 and further,

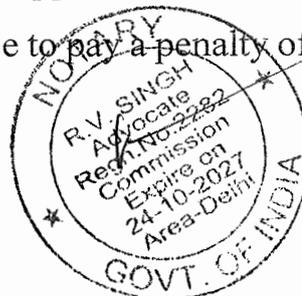


based on court direction from 14/03/2018 to 13/04/2018. The answering respondent however had been receiving violation cases, which the answering respondent deemed necessary to be brought under compliance within the regulatory regime in expedient manner necessary for the purpose of protecting and improving the quality of the environment and for abating environmental pollution.

8. It is humbly submitted that the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24/05/2021 has directed that "*...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MOEF may also consider circulating such SOP to all SEIAAs in the country*".
9. It is humbly submitted that in compliance of the order dated 24/5/2021 of Hon'ble NGT in Appeal No. 34/2020, titled Tanaji B. Gambhire vs. Chief Secretary, Govt. of Maharashtra & Ors., and also keeping in view other relevant orders of different courts, including that of Hon'ble Supreme Court and Hon'ble High Courts, the Ministry of Environment , Forest and Climate Change issued a SoP (Standard Operating Procedure) for identification and handling of violation cases under EIA Notification, 2006 vide OM dated 07/07/2021.

**A. Extent of Penalty and Compensation levied vide OM dated 07/07/2021**

10. It is humbly submitted that para 12 of the SoP lays down the penal provisions for violation cases as under:
  - i. In instances of violation cases and applications for new projects, the project proponent shall also be liable to pay a penalty of 1% of the total

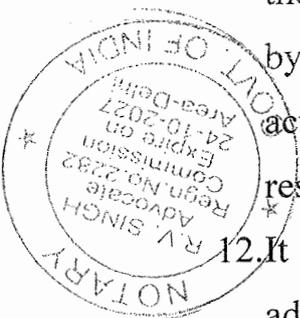


project cost incurred up to the date of filing of application along with EIA/EMP report where the operation has not commenced. Further, the project proponent shall be liable to pay penalty of 1% of the total project cost incurred up to the date of filing of such application along with EIA/EMP report in addition to a penalty of 0.25% of the total turnover during the period of violation where operations have commenced without EC.

- ii. In the instance of violation cases and applications for expansion projects, the project proponent shall be liable to pay 1% of the total project cost, attributable to the expansion incurred up to the date of filing of application along with EIA/EMP report, where operation/production with expanded capacity has not commenced. Furthermore, the project proponent shall be liable to pay 1% of the project cost incurred upto the date of filing of application along with EIA/EMP report in addition to 0.25% of the total turnover involved during the period of violation where operations/production with expanded capacity have commenced.

11. That, apart from the penalty levied on the project proponent upon appraisal of the project, in case the project proponent is not able to furnish details as sought by the expert appraisal committee without reasonable cause, the project or activity shall be directed to be demolished/ closed. Hence, the answering respondent vide this SoP has imposed strict actions for violations.

12. It is humbly submitted that the answering respondent vide this OM while adhering to the principles of polluter pays and proportionality has introduced the concept of penalty levied on the violators for the violation period proportionate to the scale of the project and extent of commercial transactions in addition to the liability for carrying out various remedial measures which

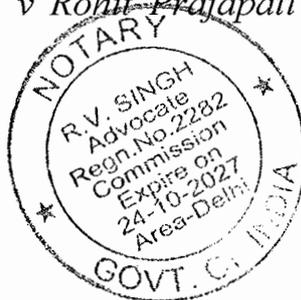


shall be worked out based on the damage assessment for quantifying the environmental damage caused due to unauthorized project activity.

13. That, it is humbly submitted that the Hon'ble Supreme Court vide judgment dated 09/12/2021 in Special Leave Petition (SLP) No. 11226- 11227/2020 titled Electrosteel Steels Ltd. vs. Union of India and judgement dated 25/03/2022 in Civil Appeal No. 4795 Of 2021 titled M/s Pahwa Plastics Pvt. Ltd. And Anr vs Dastak Ngo and Ors has upheld the SoP dated 07/07/2021 issued by the answering respondent herein while observing that an establishment contributing to the economy of the country and providing livelihood ought not to be closed down only on the ground of technical irregularity of not obtaining prior EC irrespective of whether or not the unit actually causes pollution. Hence, the petition is liable to be dismissed on this ground alone. A copy of the said judgment is annexed and marked as **Annexure-R/1**.

14. It is humbly submitted that the Hon'ble NGT (WZ) vide order dated 23/03/2022 in OA No. 64/2019 Mr. Tanaji Balasaheb Gambhire vs. Union of India & Ors has held that,

*"14. Penalty of 1% or additional penalty of 0.25% laid down by the MoEF&CC as a condition for granting ex post facto EC is different from compensation for past violations. Such compensation has to be on the principle of restoration considering nature and extent of violations and paying capacity of the PP. Several variables have to be considered as held inter alia in M.C Mehta & Anr v. Union of India (1987) 1 SCC 395, Sterlite Industries (India) Ltd. v. Union of India (2013) 4 SCC 575, Goel Ganga Developers India Pvt. Ltd. v. UoI (2018) 18 SCC 257, Alembic Pharmaceuticals Ltd. v Rohit Prajapati & Ors. 2020 SCC*

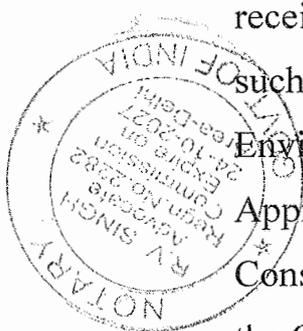


*OnLine SC 347 and Mantri Techzone Pvt. Ltd. V. Forward Foundation and Ors. 2019 SCC online SC 322, Para 43-47. The standard formula adopted by the CPCB based on standard amount of compensation multiplied by period of violation can apply in absence of relevant data of project cost and cost of restoration. In the present case, the amount of compensation assessed appears to be roughly 10% of the project cost, though worked out by a different formula.”*

Hence, the Hon’ble NGT has observed that the standard formula for the assessment of compensation is that adopted by CPCB and is based on standard amount of compensation multiplied by period of violation and can apply in absence of relevant data of project cost and cost of restoration.

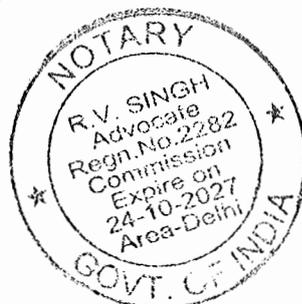
**B. Manner of recovery of Penalty and Compensation as per the OM dated 07/07/2021**

15. It is humbly submitted that vide this SoP, the Central Government, in exercise of its powers under section 5 of Environment (Protection) Act, 1986 has specifically directed that all State Pollution Control Boards/Union Territory Pollution Control Committees shall expeditiously examine the references received from the public and other bodies, relating to violations and identify such cases and thereafter, report such cases to the MoEF&CC (Ministry of Environment, Forest and Climate Change)/State Environment Impact Appraisal Authority (SEIAA) as the case may be and also revoke their Consent to Operate, if granted. Further, they have also been directed to renew the Consent to Operate of projects only after ensuring that valid Environment Clearance is possessed by the Project proponent. Hence, the answering respondent vide this SoP has set up a mechanism for reporting of violations



to the regulatory authorities thereby ensuring that no further damage to environment is done and the project proponents are discouraged from committing violations, failing which strict actions are to be taken by the regulatory authority as provided for under the Environment Protection Act and also realizing the Environment Compensation for past violation.

16. It is humbly submitted that the answering respondent vide SoP dated 07/07/2021 has provided a procedural framework for dealing with various categories of violation cases only in cases where Environmental Clearance is otherwise permissible under the EIA Notification, 2006 and has made it mandatory for action to be initiated under section 15 r/w section 19 of the Environment (Protection) Act, 1986 against all such violations.
17. It is humbly submitted that all such violation cases which are permissible under the EIA notification, 2006 will be subjected to appropriate damage assessment, remedial plan and community augmentation plan by the Central Level Sectoral Expert Appraisal Committee or State/ Union Territory Level Expert Appraisal Committees, as the case may be. Such projects will be considered for the grant of Environmental Clearance only when they are found to be environmentally sustainable, otherwise the Project will either have to be directed to be demolished/closed or to have it reverted back to the extent for which EC has been earlier granted or was not required as the case may be.
18. It is humbly submitted that in order to ensure stringent compliance of the remedial plan and community augmentation plan, the project proponent will have to submit a bank guarantee equivalent to the amount of remedial plan and natural & community resource augmentation plan with the Central/ State Pollution Control Board (depending upon whether the project was appraised at Ministry or by SEIAA) prior to the grant of EC in such cases and such Bank Guarantee can be obtained only after commensurate amount /value is



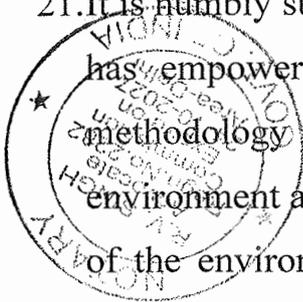
mortgaged with the Bank . Further, the quantification of such liability will be recommended by the Expert Appraisal Committee and finalized by the Regulatory Authority. Submission of Bank Guarantee is part of the process laid down to ensure that remedial and augmentation plan get implemented in the given time frame and once it is accomplished, the Bank Guarantee is returned. It may be noted that the Project Proponent has to in fact, mobilize twice the amount required for remedial and augmentation plan.

19. It is humbly submitted that as per the provisions of the SoP, all ECs granted under the violation category shall be subject to compliance of obligations towards damage assessment, remedial plan and community augmentation plan as finalized by the respective Expert Appraisal Committees in each case. Hence, the answering respondent has put in place adequate monitoring mechanism also to ensure that compliance is done in a time bound manner in the violation cases.

20. It is humbly submitted that with the implementation of the SoP, the answering respondent has not only been able to bring such projects and activities in compliance with the environmental laws at the earliest point of time but also with the imposition of penalty, the SoP would act as a deterrent for future violations.

**C. Manner of utilization of Penalty and Compensation as per OM dated 07/07/2021**

21. It is humbly submitted that the Hon'ble NGT, through its various judgments, has empowered the Central Pollution Control Board to lay down the methodology to assess and recover compensation for damage to the environment and utilize such amount in terms of an action plan for protection of the environment. Subsequently, the CPCB has published the report on



Methodology for Assessing Environmental compensation and Action Plan to Utilize the Fund. Hence, the CPCB vide its report provided action plans for utilization of the funds. A copy of the report has been annexed as **ANNEXURE R/2**.

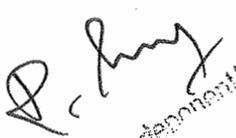
22. It is humbly submitted that answering respondent vide OM dated 28/07/2022 has directed all the concerned authorities that the penalties levied as per the provisions of the SoP shall be remitted by the project proponent into the fund which is maintained by the concerned SPCBs/PCCs and Environmental Clearance shall be issued on submission of proof regarding the same. A copy of the same has been annexed as **ANNEXURE R/3**.

23. It is humbly submitted that in view of the above mentioned facts as adequate checks and balances are already in place for dealing stringently with the violation cases, the respondent humbly prays that the Hon'ble Court may be pleased to dismiss the petition *in limine*.



**DEPONENT**

(सुन्दर रामानाथन)  
(SUNDAR RAMANATHAN)  
वैज्ञानिक 'ई'/Scientist 'E'  
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय  
Min. Environment, Forest and Climate Change  
भारत सरकार, नई दिल्ली  
Govt. of India, New Delhi



Identified the deponent/accutant

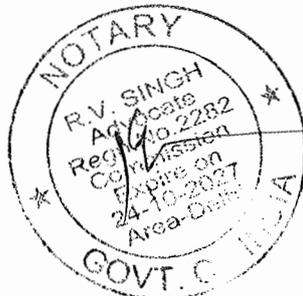
**VERIFICATION**

Verified at \_\_\_\_\_ on \_\_\_\_\_ this day of September, 2023 that the contents of the above affidavit are correct to my knowledge and belief based on official records and nothing material has been concealed there from.



**DEPONENT**

(सुन्दर रामानाथन)  
(SUNDAR RAMANATHAN)  
वैज्ञानिक 'ई'/Scientist 'E'  
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय  
Min. Environment, Forest and Climate Change  
भारत सरकार, नई दिल्ली  
Govt. of India, New Delhi



Solemnly affirmed before me read over & explained to the deponent.

Notary Public, Delhi

12 SEP 2023

**REPORTABLE****IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 4795 OF 2021**

M/S PAHWA PLASTICS PVT. LTD. AND ANR.

..... Appellants

Versus

DASTAK NGO AND ORS.

..... Respondents

**J U D G M E N T****INDIRA BANERJEE, J.**

This appeal under Section 22 of the National Green Tribunal Act, 2010, is against an order dated 3<sup>rd</sup> June 2021 passed by the Principal Bench of the National Green Tribunal (NGT) in O.A No.287/2020 at New Delhi, *inter alia*, holding that establishments such as the manufacturing units of the Appellants, which did not have prior Environmental Clearance (EC) could not be allowed to operate.

2. The question of law involved in this appeal is, whether an establishment employing about 8000 workers, which has been set up pursuant to Consent to Establish (CTE) and Consent to Operate (CTO) from the concerned statutory authority and has applied for *ex post facto* EC can be closed down pending issuance of EC, even though it

may not cause pollution and/or may be found to comply with the required pollution norms.

3. With increasing industrialization and the establishment of factories which emitted smoke and other pollutants, there was worldwide concern for protection of environment. In June 1972, the United Nations Conference on the Human Environment was held in Stockholm, where decisions were taken to take appropriate steps for preservation of the natural resources of the earth, which, among other things, included preservation of the quality of air and water by controlling pollution.

4. In 1974, Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974, with a view to prevent and control water pollution and to maintain and restore wholesomeness of water.

5. In furtherance of the decisions taken at Stockholm, Parliament enacted the Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred to as "the Air Pollution Act", to provide for prevention, control and abatement of air pollution.

6. The Air Pollution Act provides for the constitution of a Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCB) to deal with the problem of air pollution. Section 16 of the Air Pollution Act enables the Central Pollution Control Board to take steps to improve the quality of air and to prevent, control or abate air pollution in the country. Section 17 of the Air Pollution Act enables the State Pollution Control Boards to plan comprehensive programmes for

the prevention, control or abatement of air pollution, *inter alia*, by laying down standards for emission of air pollutants.

7. Section 18 of the Air Pollution Act enables the Central Government to give directions by which the CPCB is to be bound. Similarly, every SPCB is to be bound by directions in writing as might be given by the CPCB or the State Government.

8. Where a notification is issued under the Air Pollution Act, placing an area within the control area of air pollution, permission is necessary to set up and operate any factory or plant thereat. No person operating any factory or plant in any air pollution control area is to discharge or cause or permit to be discharged the emission of any air pollutants, in excess of the standards laid down by the SPCB under Clause (g) of sub-Section (1) of Section 17.

9. The Environment (Protection) Act, 1986, hereinafter referred to as "the EP Act" was also enacted pursuant to the decisions taken at the United Nations Conference on the Human Environment, held in Stockholm in June, 1972. As per the Statement of Objects and Reasons for enactment of the EP Act, the said Act has been prompted by concern over the environment, that has grown all over the world since the 60s.

10. Sub-section (1) of Section 3 of the EP Act empowers the Central Government to take all such measures as it might deem necessary or expedient for the purpose of protecting and improving the quality of

the environment and preventing, controlling and reducing environmental pollution.

11. Sub-section (2) of Section 3 of the EP Act enables the Central Government to take, *inter alia*, the following measures:

*“(i) co-ordination of actions by the State Governments, officers and other authorities—*

*(a) under this Act, or the rules made thereunder; or*

*(b) under any other law for the time being in force which is relatable to the objects of this Act;*

*(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;*

*(iii) laying down standards for the quality of environment in its various aspects;*

*(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:*

*Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;*

*(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;*

*(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;*

*(vii) laying down procedures and safeguards for the handling of hazardous substances;*

*(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;*

*(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;*

*(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or*

*persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;*

*(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;*

*(xii) collection and dissemination of information in respect of matters relating to environmental pollution;*

*(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;*

*(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act."*

12. Sub-section (3) of Section 3 of the EP Act provides as follows:

"3. Power of Central Government to take measures to protect and improve environment.—

*...  
(3) The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under Section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures."*

13. Subject to the provisions of the EP Act, the Central Government has power under sub-Section (1) of Section 3, to take all such measures, as it deems necessary or expedient, for the purpose of

protecting and improving the quality of environment and preventing, controlling or reducing environmental pollution.

14. Section 5 of the EP Act provides that notwithstanding anything contained in any other law, but subject to the provisions of the EP Act, the Central Government may, in exercise of its powers and performance of its functions under the EP Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

15. In exercise of powers conferred by Sections 6 and 25 of the EP Act, the Central Government has made the Environment (Protection) Rules, 1986, hereinafter referred to as "the EP Rules".

16. The Central Government issued an Environmental Impact Assessment Notification dated 27<sup>th</sup> January 1994 in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 5 of the EP Rules, directing that on and from the date of publication of the said notification in the Official Gazette, expansion or modernization of any activity or a new project listed in Schedule I to the said notification shall not be undertaken in any part of India, unless it has been accorded EC by the Central Government in accordance with the procedures specified in the said notification.

17. In exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act read with clause (d) of sub-rule (3) of Rule 5 of the EP Rules and in supersession of notification

number S.O. 60 (E) dated 27<sup>th</sup> January 1994, except in respect of things done or omitted to be done before such supersession, the Central Government issued a notification dated 14<sup>th</sup> September 2006, being Notification S.O. 1533 (E) requiring prior environmental clearance from the Central Government or as the case may be, by the State-Level Environment Assessment Authority, duly constituted by the Central Government under sub-section (3) of Section 3 of the EP Act.

18. In terms of the said notification dated 14<sup>th</sup> September 2006, the process of environmental clearance for new projects was to comprise of a maximum of four stages, all of which might not apply to particular cases. The stages were (1) Screening, (2) Scoping, (3) Public Consultation and (4) Appraisal.

19. In the meanwhile, by a notification being S.O. 327 (E) dated 10<sup>th</sup> April 2001, published in the Gazette of India on 12<sup>th</sup> April 2001, the Central Government has delegated the powers vested in it under the EP Act, to the Chairpersons of the respective State Pollution Control Boards/Committees to issue directions to any industry or any local or other authority to prevent violation of the Rules.

20. The Appellants carry on business, *inter alia*, of manufacture and sale of basic organic chemicals, namely, Formaldehyde. The Appellant No.1, M/s Pahwa Plastics Private Limited has two manufacturing units, one at village Kharawar in Rohtak, hereinafter referred to as the "Rohtak Unit" and the other at village Jathlana, Jagadhri in Yamuna Nagar in Haryana, hereinafter referred to as the "Yamuna Nagar Unit".

The Appellant No.2 has a manufacturing unit at village Ghespur in Yamuna Nagar, Haryana which is hereinafter referred to as the "Yamuna Nagar Unit". The manufacturing units established, run and operated by the respective Appellants fall in the category of Micro, Small and Medium Enterprise (MSME) as defined under the Micro, Small and Medium Enterprises Development Act, 2006, hereinafter referred to as "the MSME Act".

21. On or about 31<sup>st</sup> March 2014, the Appellant No.1, M/s Pahwa Plastics Ltd. applied for Consent to Establish (CTE) its Yamuna Nagar unit for manufacture of Formaldehyde.

22. By a communication No. HSPCB/Consent/:2846616YAMCTE 3087415 dated 2<sup>nd</sup> June 2016, the Haryana State Pollution Control Board (HSPCB) granted Consent to Establish (CTE) to the Appellant No.1 M/s Pahwa Plastics Private Limited in respect of its Yamuna Nagar Unit. The CTE was to remain valid for 60 months from the date of its issue, to be extended for another year at the discretion of the Board or till the time the unit started its trial production, whichever was earlier.

23. Some of the terms and conditions on which CTE was granted are set out hereinbelow:-

*"3. The officer/official of the Board shall have the right to access and inspection of the industry in connection with the various processes and the treatment facilities being provided simultaneously with the construction of building/machinery. The effluent should conform the effluent standards as applicable.*

*4. That necessary arrangement shall be made by the industry for the control of Air Pollution before commissioning the plant. The*

*emitted pollutants will meet the emission and other standards as laid/will be prescribed by the Board from time to time.*

*5. The applicant will obtain consent under section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 and under section 21/22 of the Air (Prevention & Control of Pollution) Act, 1981 as amended to-date-even before starting trial production.*

*6. The above Consent to Establish is further subject to the conditions that the unit complies with all the laws/rules/decisions and competent directions of the Board/Government and its functionaries in all respect before commissioning of the operation and during its actual working strictly.*

\*\*\*

*8. The Electricity Department will give only temporary connection and permanent connection to the unit will be given after verifying the consent granted by the Board, both under Water Act and Air Act.*

\*\*\*

*12. That there is no discharge directly or indirectly from the unit or the process into any interstate river or Yamuna River or River Ghaggar.*

*13. That the industry or the unit concerned is not sited within any prohibited distances according to the Environmental Laws and Rules, Notification, Orders and Policies of Central Pollution Control Board and Haryana State Pollution Control Board.*

\*\*\*

*17. In case of change of name from previous Consent to Establish granted, fresh Consent to Establish fee shall be levied.*

*18. Industry should adopt water conservation measures to ensure minimum consumption of water in their Process. Ground water based proposals of new industries should get clearance from Central Ground Water Authority for scientific development of previous resources.*

*19. That the unit will take all other clearances from concerned agencies, whenever required.*

*20. That the unit will not change its process without the prior permission of the Board.*

*21. That the Consent to Establish so granted will be invalid, if the unit falls in Aravali Area or non conforming area.*

*22. That the unit will comply with the Hazardous Waste Management Rules and will also make the non-leachate pit for storage of Hazardous waste and will undertake not to dispose off the same except for pit in their own premises or with the authorized disposal authority.*

*23. That the unit will submit an undertaking that it will comply with all the specific and general conditions as imposed in the above*

*Consent to Establish within 30 days failing which Consent to Establish will be revoked."*

24. By another communication No.HSPCB/Consent/: 2846618YAMCTO3098246 dated 26<sup>th</sup> March 2018, HSPCB granted consent to the Appellant No.1 to operate its Yamuna Nagar Unit from 8<sup>th</sup> February 2018 to 31<sup>st</sup> March 2022.

25. By an order No.HSPCB/YMN/2242, dated 31<sup>st</sup> March 2010, the Appellant No.2, M/s Apcolite Polymer Private Limited was granted CTE to establish its Yamuna Nagar Unit for manufacture of Formaldehyde with the manufacturing capacity of 80 tonnes per day.

26. By another communication Nos. HSPCB/Consent/: HSPCB/YMN/DLC/2011/4027 & HSPCB/YMN/DLC/2011/4029 dated 16<sup>th</sup> January 2012, HSPCB granted the Appellant No.2, M/s Apcolite Polymers Private Limited, Consent to Operate (CTO) its Yamuna Nagar Unit. The CTO has been extended from 1<sup>st</sup> April 2016 till 31<sup>st</sup> March 2026, by a letter dated 13<sup>th</sup> March 2016. The CTO is valid till March 2026.

27. By a communication No. HSPCB/Consent/: 2846616YAMCT OHWM2630357 dated 13<sup>th</sup> March 2016, HSPCB granted consent for emission of AIR to Appellant No.2, M/s Apcolite Polymers Private Limited in respect of its Yamuna Nagar Unit on, *inter alia*, the terms and conditions specified in the said letter, some of which are extracted hereinbelow:-

*"10. The air pollution control equipment of such specification which shall keep the emissions within the emission standard as approved by the State Board from time to time shall be installed and operated in the premises where the industry is carrying on/proposed to carry on its business.*

*11. The existing air pollution control equipment if required shall be alerted or replaced in accordance with the direction on the Board.*

*12. All solid wastes arising in the factory premises shall be properly graded and disposed of by:-*

*(i) In case of Land fill material, care should be taken to ensure that the material does not give rise to leachate which may percolate in ground water of carried away with storm run off.*

*(ii) Composting in case of bio degradable materials.*

*(iii) If the method of incineration is used for the disposal of solid waste the consent application should be processed separately and it should be taken up which consent is granted.*

*13. The industry shall submit an undertaking to the effect that the above conditions shall be complied with by them.*

*14. The applicant shall submit its undertaking to the effect that the above conditions shall be complied with by them.*

*15. The applicant shall make an application for grant of fresh consent at least 90 days before the date of expiry of this consent.*

*\*\*\**

*18. There should not be any fugitive emission from the premises.*

*19. The liquid effluent arising out of the operation of the air pollution control equipment shall also be treated in a manner and to the standards stipulated in the consent granted under Water (Prevention & Control of Pollution) Act, 1974 by this Board.*

*\*\*\**

*21. If the industry fails to adhere to any of the condition of this consent order the consent so granted shall automatically lapse.*

*\*\*\**

*33. The industry shall submit Environment Audit report once in a year.*

*\*\*\**

*38. In case of by passing the emissions, the consent shall be deemed revoked."*

28. It is the case of the Appellants that at the time when CTE was granted to the Appellants, it was thought that EC was not required for units which manufactured Formaldehyde. Even HSPCB itself was not sure of whether EC was required for such units.

29. Mr. Gupta argued that the Appellants were *bona fide* under the impression that the Appellants were not required to obtain prior EC for setting up this establishment to manufacture Formaldehyde. On the basis of CTE granted by HSPCB, the Appellants set up their units taking huge loans from banks for which repayments have to be paid in installments.

30. In exercise of power under Section 3(1) and Section 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules, the Central Government issued a notification being S.O. 804(E) dated 14<sup>th</sup> March 2017 which provides for grant of *ex post facto* EC for project proponents who had commenced, continued or completed a project without obtaining EC under the EP Act/ EP Rules or the Environmental Impact Notification issued thereunder. Paragraphs 3, 4 and 5 of the said notification, read as hereunder:

*“(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.*

*(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under*

*prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.*

*(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para(4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment."*

31. The Notification of 2017 is a valid statutory notification issued by the Central Government in exercise of power under Sections 3(1) and 3(2)(v) of the EP Act read with Rule 5(3)(d) of the EP Rules in the same manner as the EIA Notification dated 27<sup>th</sup> January 1994 and the Notification dated 14<sup>th</sup> September 2006.

32. Section 21 of the General Clauses Act, 1897 provides that where any Central Act or Regulations confer a power to issue notifications, orders, rules or bye-laws, that power includes the power, exercisable in

like manner, and subject to like sanction and conditions, if any, to add to, amend, vary or rescind any notification, order, rule or bye-law so issued. The authority, which had the power to issue Notifications dated 27<sup>th</sup> January 1994 and 14<sup>th</sup> September 2006 undoubtedly had, and still has the power to rescind or modify or amend those notifications in like manner. As held by this Court in ***Shree Sidhballi Steels Ltd. & Others v. State of Uttar Pradesh & Others***<sup>1</sup>, power under Section 21 to amend, vary or rescind notifications, orders, rules or bye-laws can be exercised from time to time having regard to the exigency.

33. Puducherry Environment Protection Association filed a Writ Petition being W.P. No.11189 of 2017 in the High Court of Madras assailing the said notification dated 14<sup>th</sup> March 2017. By a judgment and order dated 13<sup>th</sup> October 2017, a Division Bench of the High Court refused to interfere with the said notification, holding that the impugned notification did not compromise with the need to preserve environmental purity.

34. The Ministry of Environment, Forest and Climate Change (MoEF &CC) issued a draft notification dated 23<sup>rd</sup> March 2020 which was duly published in the Gazette of India Extraordinary Part II. The Notification was proposed to be issued in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act for dealing with cases of violation of the notification with regard to EC.

---

<sup>1</sup> (2011) 3 SCC 193

It was proposed that cases of violation would be appraised by the Appraisal Committee with a view to assess whether the project had been constructed or operated at a site which was permissible under prevailing laws and could be run sustainably on compliance of environmental norms with adequate environmental safeguards. Closure was to be recommended if the findings of the Appraisal Committee were in the negative. If the Appraisal Committee found that such unit had been running sustainably upon compliance of environmental norms with adequate environment safeguards, the unit would be prescribed appropriate Terms of Reference (TOR) after which the procedure for grant of EC would follow.

35. On 10<sup>th</sup> November 2020, the Department of Environment and Climate Change of the Government of Haryana issued an order which is extracted hereinbelow for convenience:

*"Whereas the process of manufacturing of Formaldehyde is covered under the provisions of 5(f) of Schedule of Environment Impact Assessment Notification (EIA), 2006 of Government of India, and requires the prior Environmental Clearance (EC) from the competent authority State Environment Impact Assessment Authority (SEIAA)/Ministry of Environment, Forest and Climate Change, Government of India, before establishment and operation of such units, besides other mandatory clearance, as applicable;*

*Whereas, it has come to the notice of Government that around 15 such units have been permitted to establish/operate in the State of Haryana, without obtaining the necessary Prior Environmental Clearances, but with the Consent of the Haryana State Pollution Control Bureau (HSPCB), which misinterpreted the category of such units and on realising the requirement of EC in these cases, has revoked its consents issued earlier to these units recently;*

*Whereas, some of these units approached the Government explaining their hardship due to such sudden revocation of their consents and have sought time for obtaining the necessary EC from the competent authority as the process is likely to take a minimum of 6 months to one year period, and to allow them to operate with*

*all pollution control measures, following the pollution control norms applicable, and,*

*Whereas, the Government has carefully considered their request and the competent authority has decided that these units shall be allowed to continue their operations for a period of six months, without prejudice to any legal action taken against the violations committed by them, by the competent authorities, with the conditions that they will immediately apply for Environmental Clearance from the competent authority and provide the proof of such application within 60 days from the issuance of this communication to Environment and Climate Change Department and to Haryana State Pollution Control Board.*

*Therefore, it is ordered accordingly."*

36. Referring to the Counter Affidavit filed by HSPCB before the NGT, Mr. Gupta pointed out that, since HSPCB itself was under the misconception that prior EC was not necessary for units such as the Yamunanagar units of the Appellants Nos. 1 and 2 respectively. HSPCB took a policy decision to allow the units which did not have prior EC to operate for six months, on condition that they would apply for EC within sixty days.

37. The Appellants duly applied for EC in respect of their manufacturing units. After scrutinizing their applications and after finding the units suitable for grant of EC in terms of the prevailing guidelines, the Expert Appraisal Committee constituted by the MoEF&CC conducted a public hearing to finalize the cases of the Appellants for issuance of Terms of Reference (TOR).

38. By an Office Memorandum, being F.No. 22-21/2020-1A III, dated 7<sup>th</sup> July 2021, the MoEF&CC issued Standard Operating Procedure (SOP) for identification and handling of violation cases under EIA Notification 2006.

39. The said Office Memorandum, *inter alia*, reads:

*“The Ministry had issued a notification number S.O.804(E), dated the 14<sup>th</sup> March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.*

*2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.*

*3. Hon’ble NGT in Original Application No.287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. & Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar vs. Central Ground Water Authority & Ors., vide order dated 03.06.2021 held that “(...) for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process”.*

*4. Further, the Hon’ble National Green Tribunal in O.A. No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and Ors., vide order dated 24.05.2021 has directed that “.... a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country”.*

*5. Therefore, in compliance to the directions of the Hon’ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of ‘violation’ cases which have been pending for want of an approved structural/procedural framework based on ‘Polluter Pays Principle’ and ‘Principle of Proportionality’. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.*

*6. In the light of the above directions of the Hon’ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations/decisions of the Hon’ble Courts wherein principles of proportionality and polluters pay have been outlined.”*

40. The SOP formulated by the said Office Memorandum dated 7<sup>th</sup> July 2021 refers to and gives effect to various judicial pronouncements

including the judgment of this Court in ***Alembic Pharmaceuticals Ltd. v. Rohit Prajapati & Others***<sup>2</sup>.

41. In terms of the SOP, the proposal for grant of EC in cases of violation are to be considered on merits, with prospective effect, applying principles of proportionality and the principle that the polluter pays and is liable for costs of remedial measures.

42. By an order dated 9<sup>th</sup> July 2021, the MoEF&CC confirmed the minutes of an earlier meeting of the Expert Appraisal Committee and recommended issuance of terms of reference to the Appellant No.1, M/s Pahwa Plastics Private Limited for expansion of its Formaldehyde Manufacturing unit from 60 TPD to 150 TPD.

43. In the meanwhile, on or about 26<sup>th</sup> November 2020, the Respondent No.1, a Non-Governmental Organisation (NGO) hereinafter referred to as "Dastak" filed an application being O.A. No./287/2020 before the NGT praying that the order dated 10<sup>th</sup> November 2020 passed by the State of Haryana be quashed and units which were operating without EC be closed. The NGT disposed of the said application of Dastak by the impugned order dated 3<sup>rd</sup> June 2021.

44. A Public Interest Litigation being W.P. (MD) No. 11757 of 2021 (***Fatima v. Union of India***) was filed before the Madurai Bench of the Madras High Court challenging the said Memorandum dated 7<sup>th</sup> July 2021. By an interim order dated 15<sup>th</sup> July 2021 a Division Bench of the

---

<sup>2</sup> 2020 SCC Online SC 347

Madras High Court admitted the Writ Petition and stayed the said memorandum.

45. The Madurai Bench of the Madras High Court observed and held:-

*“This writ petition has been filed as a public interest litigation challenging the validity of the office memorandum dated 07.07.2021, issued by the respondent.*

*2. We have heard Mr.A.Yogeshwaran, learned counsel appearing for the writ petitioner and Mr.L.Victoria Gowri, learned Assistant Solicitor General of India, accepts notice for the respondent.*

*3. The impugned office memorandum is challenged as being wholly without jurisdiction, contrary to the Environment Impact Assessment Notification, 2006, ultra vires the powers of the respondent under the Environment (Protection) Act, 1986 and violative of the various principles enunciated by the Hon'ble Supreme Court, while interpreting Article 21 and Article 48-A of the Constitution of India.*

*4. Further, it is submitted that the impugned notification is in gross violation of the undertaking given before the Hon'ble Full Bench of this Court in W.P.No.11189 of 2017, wherein, the Court took note of the submissions made on behalf of the Government of India, that the notification impugned therein is only a one-time measure. Further, it is submitted that the respondent failed to see that concept of ex-post facto approval is alien to environment jurisprudence and it is anathema to the Environment Impact Assessment Notification, 2006.*

*5. Further, it is submitted that the impugned notification is in gross violation of the judgment of the Hon'ble Supreme Court in the case of **Alembic Pharmaceuticals Ltd. vs Rohit Prajapati**, 2020 SCC Online SC 347 and the orders passed by the National Green Tribunal, Principal Bench, New Delhi, in the case of **S.P.Muthuraman vs. Union of India & Another**, 2015 SCC Online NGT 169.*

*6. Identical grounds were considered by us in a challenge to an office memorandum dated 19.02.2021, which provided a procedure for granting post facto clearance under Coastal Regulation Zone (CRZ) Notification 2011, on the ground that despite no such provisions in the notification and being contrary to the earlier judgments and undertaking. The said writ petition in W.P(MD).No.8866 of 2021 was admitted and by order dated 30.04.2021, the said office memorandum dated 19.02.2021 has been stayed.*

*7. The core issue in this writ petition is whether the Government of India could have issued the office memorandum and brought about the Standard Operating Procedure for dealing with violators, who failed to comply with the mandatory*

condition of obtaining prior environment clearance under the Environment Impact Assessment Notification 2006, read with the provisions of Environment (Protection) Act, 1986. This issue was considered by the Hon'ble Supreme Court in **Alembic Pharmaceuticals Ltd** (cited supra), and it was held that such office memorandum in the nature of circular is without jurisdiction. The operative portion of the judgment reads as follows:

"...What is sought to be achieved by the administrative circular dated 14 May 2002 is contrary to the statutory notification dated 27 January 1994. The circular dated 14 May 2002 does not stipulate how the detrimental effects on the environment would be taken care of if the project proponent is granted an ex post facto EC. The EIA notification of 1994 mandates a prior environmental clearance. The circular substantially amends or alters the application of the EIA notification of 1994. The mandate of not commencing a new project or expanding or modernising an existing one unless an environmental clearance has been obtained stands diluted and is rendered ineffective by the issuance of the administrative circular dated 14 May 2002. This discussion leads us to the conclusion that the administrative circular is not a measure protected by Section 3. Hence there was no jurisdictional bar on the NGT to enquire into its legitimacy or vires. Moreover, the administrative circular is contrary to the EIA Notification 1994 which has a statutory character. The circular is unsustainable in law."

8. Despite the above decision, once again the Government of India, Ministry of Environment, Forest and Climate Change have chosen to adopt the route of issuing the office memorandum and virtually setting at naught the provisions of the Environment Impact Assessment Notification and the Environment (Protection) Act.

9. Before the Hon'ble First Bench, a public interest litigation was filed by the Puducherry Environment Protection Association, challenging the notification dated 14.03.2017, on identical grounds and the Hon'ble First Bench by judgment dated 13.10.2017, recorded the submissions of the learned Assistant Solicitor General of India that the said notification was a one-time measure and accordingly, disposed of the writ petition.

10. Once again, the Ministry of Environment, Forest and Climate Change have issued the impugned office memorandum. Thus, from what we have noted above, we are of the clear view that the petitioner has made out a prima facie case for entertaining the writ petition. Accordingly, the writ petition is **admitted** and there shall be an order of interim stay."

46. It is true that in the case of ***Puducherry Environment Protection Association v. Union of India***<sup>3</sup>, the Division Bench of Madras High Court took note of and recorded the submission made on behalf of the Union of India that the relaxation was a one time relaxation. In view of such submission, this Court held that a one time relaxation was permissible.

47. It is, however, well settled that words and phrases and/or sentences in a judgment cannot be read in the manner of a statute, and that too out of context. The observation of the Division Bench that a one time relaxation was permissible, is not to be construed as a finding that relaxation cannot be made more than once. If power to amend or modify or relax a notification and/or order exists, the notification and/or order may be amended and/or modified as many times, as may be necessary. A statement made by counsel in Court would not prevent the authority concerned from making amendments and/or modifications provided such amendments and/or modifications were as per the procedure prescribed by law.

48. The Division Bench of Madras High Court fell in error in staying the said office memorandum, by relying on observations made by this Court in ***Alembic Pharmaceuticals Ltd.*** (supra), in the context of a circular which was contrary to the statutory Environment Impact Notification of 1994. The attention of the High Court was perhaps not drawn to the fact that the notification of 7<sup>th</sup> July 2021 was in pursuance of the statutory notification of 2017 which was valid. The judgment of

---

3 2017 SCC OnLine Mad 7056

this Court in ***Alembic Pharmaceuticals Ltd.*** (*supra*), was clearly distinguishable and could have no application to the office memorandum dated 7<sup>th</sup> July 2021 which was issued pursuant to the notification dated 14<sup>th</sup> March 2017.

49. The Appellants have already applied for EC. The Expert Appraisal Committee of the MoEF&CC has, after scrutinizing the application of the Appellants and finding them eligible for grant of EC, recommended their cases for grant of Terms of Reference (ToR). ToR was granted to the Appellants and a public hearing had also been conducted. Only last procedural step of issuance of EC is left.

50. It is claimed that the units of the Appellants are totally non-polluting units having "Zero Trade discharge". They have been in operation for many years. In the reply affidavit filed by the State before the NGT, it was mentioned that the units were operating in good faith with valid CTOs granted by the HSPCB. It was stated that the units were not causing pollution hazards. The only thing against the units was the procedural lapse of not obtaining EC.

51. By a communication No. F. No. IA-J-110011/185/2020-IA-II(I) dated 20<sup>th</sup> July 2021 issued to the Appellant No.1, the MoEF&CC rejected the proposal for terms of reference on the purported ground that the activity of the Appellant No.1 was covered under category "A" of item 5(f) "Synthetic Organic Chemicals" of the Schedule to the EIA Notification, 2006. A similar communication was issued in respect of M/s Apcolite Polymers Pvt. Ltd. Significantly, by an order dated 9<sup>th</sup> July 2021, the MoEF&CC had confirmed the minutes of an earlier meeting of the Expert

Appraisal Committee and recommended issuance of ToR to the Appellant No.1, as observed above. The proposal for Terms of Reference has obviously been rejected at the final stage after the public hearing, by reason of the impugned order dated 3<sup>rd</sup> June 2021 passed by the NGT on the application of Dastak, which is under appeal.

52. This appeal was listed for admission on 30<sup>th</sup> September 2021, along with an application for interim relief being I.A. No.110064 of 2021 praying for orders permitting the Appellants to operate their units during the pendency of the appeal. The appeal was heard at length at the admission stage and reserved for judgment along with the interim application by an order dated 30<sup>th</sup> September 2021.

53. After receiving the communication dated 20<sup>th</sup> July 2021 rejecting the proposal for Terms of Reference, the Appellants requested HSPCB to forward to the Appellants the proceedings of public hearing in respect of the manufacturing units of the Appellants. By a communication No. HSPCB/YR/2021/2830 dated 15<sup>th</sup> February 2022, HSPCB forwarded proceedings of the public hearing in respect of the Yamuna Nagar unit of the Appellant No.1. By another Communication No. HSPCB/YR/29021/2829 dated 15<sup>th</sup> February 2022 the HSPCB forwarded to the Appellant No.2 the proceedings of the public hearing held on 3<sup>rd</sup> February 2022 in connection with the Yamuna Nagar Unit of the Appellant No.2.

54. The manufacturing units of the Appellants appoint about 8,000 employees and have a huge annual turnover. An establishment contributing to the economy of the country and providing livelihood ought

not to be closed down only on the ground of the technical irregularity of not obtaining prior Environmental Clearance irrespective of whether or not the unit actually causes pollution.

55. In *Electrosteel Steels Limited v. Union of India*<sup>4</sup>, this Court held:-

***“82. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down for the technical irregularity of shifting its site without prior environmental clearance, without opportunity to the establishment to regularize its operation by obtaining the requisite clearances and permissions, even though the establishment may not otherwise be violating pollution laws, or the pollution, if any, can conveniently and effectively be checked. The answer has to be in the negative.***

***83. The Central Government is well within the scope of its powers under Section 3 of the 1986 Act to issue directions to control and/or prevent pollution including directions for prior Environmental Clearance before a project is commenced. Such prior Environmental Clearance is necessarily granted upon examining the impact of the project on the environment. Ex-Post facto Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time ex post facto clearances and/or approvals and/or removal of technical irregularities in terms of Notifications under the 1986 Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of a running steel plant.***

***84. The 1986 Act does not prohibit ex post facto Environmental Clearance. Some relaxations and even grant of ex post facto EC in accordance with law, in strict compliance with Rules, Regulations Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in over view not impermissible. The Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.***

\*\*\*

***88. The Notification being SO 804(E) dated 14th March, 2017 was not an issue in Alembic Pharmaceuticals (supra). This Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27th January, 1994, which was statutory. Ex post facto***

<sup>4</sup> 2021 SCC online SC 1247

*environmental clearance should not however be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of ex post facto approval outweigh the consequences of regularization of operation of an industry by grant of ex post facto approval and the industry or establishment concerned otherwise conforms to the requisite pollution norms, ex post facto approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. **Ex post facto approval should not be withheld only as a penal measure.** The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.*

\*\*\*

**96. The appeals are allowed. The impugned order is set aside. The Respondent No. 1 shall take a decision on the application of the Appellant for revised EC in accordance with law, within three months from date. Pending such decision, the operation of the steel plant shall not be interfered with on the ground of want of EC, FC, CTE or CTO."**

56. As held by this Court in ***Electrosteel Steels Limited*** (supra) *ex post facto* Environmental Clearance should not ordinarily be granted, and certainly not for the asking. At the same time *ex post facto* clearances and/or approvals and/or removal of technical irregularities in terms of a Notification under the EP Act cannot be declined with pedantic rigidity, oblivious of the consequences of stopping the operation of mines, running factories and plants.

57. The 1986 Act does not prohibit *ex post facto* Environmental Clearance. Grant of *ex post facto* EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with, or can be made to comply with environment norms, is in our view not impermissible. The Court cannot be oblivious to the economy or

the need to protect the livelihood of hundreds of employees and others employed in the project and others dependent on the project, if such projects comply with environmental norms.

58. As held by a three Judge Bench of this Court in **Lafarge Umiam Mining Private Limited v. Union of India**<sup>5</sup>:-

*"119. The time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play."*

59. In **Alembic Pharmaceuticals Ltd.**(supra), this Court observed:-

*"27. The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-*

<sup>5</sup> (2011) 7 SCC 338

*making process have been completed. Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development."*

60. Even though this Court deprecated *ex post facto* clearances, in ***Alembic Pharmaceuticals Ltd.*** (*supra*), this Court did not direct closure of the units concerned but explored measures to control the damage caused by the industrial units. This Court held:-

*"However, since the expansion has been undertaken and the industry has been functioning, we do not deem it appropriate to order closure of the entire plant as directed by the High Court."*

61. The Notification being SO. 804(E) dated 14<sup>th</sup> March 2017 was not in issue in ***Alembic Pharmaceuticals Ltd.*** (*supra*). In ***Alembic Pharmaceuticals Ltd.*** (*supra*) this Court was examining the propriety and/or legality of a 2002 circular which was inconsistent with the EIA Notification dated 27<sup>th</sup> January 1994, which was statutory. The EIA Notification dated 27<sup>th</sup> January 1994 has, as stated above, been superseded by the Notification dated 14<sup>th</sup> September 2006.

62. There can be no doubt that the need to comply with the requirement to obtain EC is non-negotiable. A unit can be set up or allowed to expand subject to compliance of the requisite

environmental norms. EC is granted on condition of the suitability of the site to set up the unit, from the environmental angle, and also existence of necessary infrastructural facilities and equipment for compliance of environmental norms. To protect future generations and to ensure sustainable development, it is imperative that pollution laws be strictly enforced. Under no circumstances can industries, which pollute, be allowed to operate unchecked and degrade the environment.

63. *Ex post facto* environmental clearance should not be granted routinely, but in exceptional circumstances taking into account all relevant environmental factors. Where the adverse consequences of denial of *ex post facto* approval outweigh the consequences of regularization of operations by grant of *ex post facto* approval, and the establishment concerned otherwise conforms to the requisite pollution norms, *ex post facto* approval should be given in accordance with law, in strict conformity with the applicable Rules, Regulations and/or Notifications. The deviant industry may be penalised by an imposition of heavy penalty on the principle of 'polluter pays' and the cost of restoration of environment may be recovered from it.

64. The question in this case is, whether a unit contributing to the economy of the country and providing livelihood to hundreds of people, which has been set up pursuant to requisite approvals from the concerned statutory authorities, and has applied for *ex post facto* EC, should be closed down for the technical irregularity of want of prior

environmental clearance, pending the issuance of EC, even though it may not cause pollution and/or may be found to comply with the required norms. The answer to the aforesaid question has to be in the negative, more so when the HSPCB was itself under the misconception that no environment clearance was required for the units in question. HSPCB has in its counter affidavit before the NGT clearly stated that a decision was taken to regularize units such as the Apcolite Yamuna Nagar and Pahwa Yamuna Nagar Units, since requisite approvals had been granted to those units, by the concerned authorities on the misconception that no EC was required.

65. It is reiterated that the 1986 Act does not prohibit *ex post facto* EC. Some relaxations and even grant of *ex post facto* EC in accordance with law, in strict compliance with Rules, Regulations, Notifications and/or applicable orders, in appropriate cases, where the projects are in compliance with environment norms, is not impermissible. As observed by this Court in ***Electrosteel Steels Limited*** (supra), this Court cannot be oblivious to the economy or the need to protect the livelihood of hundreds of employees and others employed in the units and dependent on the units in their survival.

66. *Ex post facto* EC should not ordinarily be granted, and certainly not for the asking. At the same time *ex post facto* clearances and/or approvals cannot be declined with pedantic rigidity, regardless of the consequences of stopping the operations. This Court is of the view

that the NGT erred in law in directing that the units cannot be allowed to function till compliance of the statutory mandate.

67. Accordingly, the appeal is allowed. The impugned order is set aside in so far as the same is applicable to the units of the Appellants established and operated pursuant to CTE and CTO from the HSPCB in respect of which applications for *ex post facto* EC have been filed. The Respondent shall take a decision on the applications of the Appellants for EC in accordance with law within one month from date. Pending decision, the operation of the Pahwa Yamuna Nagar Unit and the Apcolite Yamuna Nagar Unit, in respect of which consents have been granted and even public hearing held in connection with grant of EC, shall not be interfered with.

68. The Appellants will be allowed to operate the units. Electricity, if disconnected, shall be restored subject to payment of charges, if any. If the application for EC is rejected on the ground of any contravention on the part of the Appellants, it will be open to the Respondents to disconnect the supply of electricity.

69. The Union of India had proceeded with the application for EC and even public hearing had been held. Counsel appearing on behalf of the Union of India contended that the Appellant had not submitted its final application for EC, after public hearing. It is not clear what more was required of the Appellants. Be that as it may, the Union of India shall, within three working days from the date of receipt of a copy of this judgment and order, inform the Appellants in writing of whether

anything further is required to be done by the Appellants, and if so what is required to be done. The Appellants shall, within a week thereafter do the needful. The final decision on the application of the Appellants for EC shall be taken within three weeks thereafter.

70. The application being I.A. No.110064/2021 and other pending applications, if any, in this appeal are disposed of accordingly.

.....J.  
**[INDIRA BANERJEE]**

.....J.  
**[J.K. MAHESHWARI]**

**NEW DELHI  
MARCH 25, 2022**

**Report of the CPCB In-house Committee on  
Methodology for Assessing Environmental  
Compensation and Action Plan to Utilize the Fund**



**CENTRAL POLLUTION CONTROL BOARD  
"Parivesh Bhawan", East Arjun Nagar,  
Delhi-110032**

## Table of Contents

<b>Chapter-I: Environment Compensation to be levied on Industrial Units .....</b>	<b>3</b>
1.1 Background.....	3
1.2 Constitution of the Committee .....	3
1.3 Methodology for Assessing Environmental Compensation .....	3
1.4 Action Plan for Utilization of Environmental Compensation Fund .....	6
1.5 Recommendations.....	7
<b>Chapter-II: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR. ....</b>	<b>9</b>
2.1 Background.....	9
2.2 Action Plan for Utilization of Environmental Compensation Fund .....	9
<b>Chapter-III: Environmental Compensation to be levied in case of failure of preventing the pollutants being discharged in water bodies and failure to implement waste management rules .....</b>	<b>10</b>
3.1 Background.....	10
3.2 Ideology of Environmental Compensation Formula .....	10
3.3 Environment Compensation for Discharge of Untreated/Partially Treated Sewage by Concerned Individual/Authority:.....	12
3.4 Environment Compensation to be Levied on Concerned Individual/Authority for Improper Solid Waste Management: .....	14
3.3 Action Plan for Utilization of Environmental Compensation Fund .....	15
3.4 Recommendations.....	15
<b>Chapter-IV: Environmental Compensation in Case of Illegal Extraction of Ground Water .....</b>	<b>17</b>
4.1 Background.....	17
4.2 Constitution of the Committee .....	17
4.3 Methodology for Assessing Environmental Compensation .....	17
4.4 Ideology of Environmental Compensation w.r.to illegal extraction of ground water .....	17
4.5 Formula for Environmental Compensation for illegal extraction of ground water .....	18
4.6 Environmental Compensation Rate (ECR <sub>GW</sub> ) for illegal use of Ground Water .....	18
4.7 Relaxation.....	21
4.8 Recommendations.....	21
<b>Annexure-I.....</b>	<b>22</b>
<b>Annexure-II.....</b>	<b>28</b>
<b>Annexure-III.....</b>	<b>31</b>
<b>Annexure-IV.....</b>	<b>34</b>
<b>Annexure-V.....</b>	<b>36</b>
<b>Annexure-VI.....</b>	<b>40</b>
<b>References.....</b>	<b>41</b>

## **Abstract**

Environmental compensation is a policy instrument for the protection of the environment which works on the Polluter Pay Principal. Environmental compensation has already been implemented in various countries, although limited in scope. Experiences from these implementations are mixed and tend to stress the importance of certain principles in order to achieve the overall objective of protection of the environment.

The Hon'ble National Green Tribunal through its various judgments has empowered the Central Pollution Control Board to lay down the methodology to assess and recover compensation for damage to the environment and utilize such amount in terms of an action plan for protection of the environment.

An attempt has been made by the CPCB in-house Committee to develop a methodology for assessing environmental compensation to be levied on concerned industry, authority, individual etc. for the protection of environment. Expert institutions/ NGOs like The Energy and Resources Institute, Centre for Science and Environment-India, Institute of Economic Growth etc. were also consulted to finalize the report. Overall objective is to develop self-sense of responsibility towards the environment and to make defaulters realize their mistake by imposing compensation, which will be utilized for the protection/restoration of the environment.

Although, this is the first attempt in India towards development of methodology for assessing environmental compensation, however, efforts have been made to simplifying the process so that regulatory institutions can easily adopt the methodology for implementation.

## Chapter-I: Environment Compensation to be levied on Industrial Units

---

### 1.1 Background

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. directed Central Pollution Control Board (CPCB) that:

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

### 1.2 Constitution of the Committee

In this context, Chairman, CPCB constituted a Committee under the Chairmanship of Shri A. Sudhakar, I/c WQM-I with Shri A. K. Vidyarthi, I/c WQM-II, Shri P. K. Gupta, I/c IPC-VI, Shri Nazimuddin I/c IPC-II and Dr. S. K. Paliwal, Scientist 'D' as members. The Committee was asked to deliberate on this issue and come up with a draft formulation before 15.9.2018.

### 1.3 Methodology for Assessing Environmental Compensation

The Committee discussed the issue on 4.9.2018, 13.9.2018, 17.9.2018 and 09.10.2018. A meeting was also held with Senior Officers of CPCB Head Office and Regional Directorates through video conferencing on 28.09.2018 to discuss the draft report and to seek comments/feedbacks. The comments/feedbacks received and deliberations of the Committee on the same are given in **Annexure-II**.

As per the Hon'ble NGT suggestion, CPCB has invited comments of 3 expert institution, namely, Centre for Science and Environment (CSE), Institute of Economic Growth (IEG) and The Energy Research Institute (TERI). A meeting to incorporate the comments of the expert institutions and to finalize the report, was held on 27/03/2019. The CPCB in-house committee on Environmental Compensation has deliberated on the comments and finalized the report accordingly. The Committee's deliberations are attached as **Annexure-III**.

It was deliberated for developing a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies and this is the first attempt made. The committee discussed that environmental compensation should be based on "Polluter Pay Principle". The Committee decided to list the instances for taking cognizance of cases fit for violation and levy environmental compensation.

**Cases considered for levying Environmental Compensation (EC):**

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

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

$$PI = f(\text{Water Pollution Score, Air Pollution Score \& HW Generation Score})$$

*Pollution Index* is a number from 0 to 100 and increasing value of PI denotes the increasing degree of pollution *hazard from the industrial sector*.

CPCB has issued directions to all SPCBs/PCCs on 07.03.2016 to adopt the methodology and follow guidelines prepared by CPCB for categorization of industrial sectors into Red, Orange, Green and White.

The concept of Pollution Index, which was deliberated widely with all stakeholders and agreed, shall be used for calculating Environmental Compensation. This may help in implementation of such provision throughout the country, a successful initiative in vital field of industrial pollution control.

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

The Environmental Compensation shall be based on the following formula:

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

Where,

EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

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

Note:

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

**Table No. 1.1: Location Factor Values**

S. No.	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

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

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

LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. However, for critically Polluted Areas, LF may be explored in future.

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

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange and Green category of industries varies from 3,750 to 60,000 ₹/day.

**Table No. 1.2: A sample calculation for Environmental Compensation**

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	10,000-60,000	6,250-37,500	5,000-22,500

**1.3.2** In other instances i.e. *d, e and f*, the environmental compensation may contain two parts – one requires providing immediate relief and other long-term measures such as remediation. In all these cases, detailed investigations are required from expert institutions/organizations based on which environmental compensation will be decided. CPCB shall list the expert institutions for this purpose.

In such cases, comprehensive plan for remediation of environmental pollution may be prepared and executed under the supervision of a committee with representatives of SPCB, CPCB and expert institutions/organizations.

#### **1.4 Action Plan for Utilization of Environmental Compensation Fund**

The Committee discussed about the utilization of funds, which will be received by imposing Environmental Compensation. The following Action Plan is proposed to utilize the fund for protection of the environment.

**1.4.1. When Environmental Compensation is calculated through the Pollution Index:**

The amount received by imposing the Environmental Compensation to the industries / organization non-complying with the environmental standards / violating any CPCB's directions shall be deposited in a separate bank account. The amount accumulated will be utilized for Protection of Environment. The following schemes were identified, which may be considered for utilization of Environmental Compensation Fund:

- a. Industrial Inspections for compliance verification
- b. Installation of Continuous water quality monitoring stations / Continuous ambient air quality monitoring stations for strengthening of existing monitoring network
- c. Preparation of Comprehensive Industry Documents on Industrial Sectors / clean technology
- d. Investigations of environmental damages, preparation of DPRs
- e. Remediation of contaminated sites
- f. Infrastructure augmentation of Urban Local Bodies (ULBs) /capacity building of SPCBs/PCCs

The above proposed list may include other schemes also, depending upon the requirement.

Considering the availability of accumulated funds, CPCB will finalize the scheme, keeping in mind the priority, to utilize the funds of Environmental Compensation.

**1.4.2. When Environmental Compensation is assessed based on actual damage to the environment by Expert Organization/ Agency:**

The amount of Environmental Compensation under this case will be remediation costs, measures requiring immediate and short-term actions, compensation towards loss of ecology, etc., and will be utilized exclusively for the purpose at specific site, based on the detailed investigations by the Expert Organizations/ agencies.

**1.5 Recommendations**

The Committee made following recommendations:

- 1.5.1 To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, b and c, Environmental Compensation may be calculated based on the formula "EC = PI x N x R x S x LF", wherein, PI may be taken as 80, 50 and 30 for red, orange and green category of industries, respectively, and R may be taken as 250. S and LF may be taken as prescribed in the preceding paragraphs.

- 1.5.2 In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.
- 1.5.3 The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.
- 1.5.4 EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules.

\*\*\*\*\*

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

### 2.1 Background

The CPCB In-house Committee also discussed that the EC shall also be levied on all violations of Graded Response Action Plan (GRAP) in NCR. The implementing agencies for each activity have been identified and the EC will be levied on these agencies. These violations attract graded amounts of EC depending on the state of ambient air quality, which is given in table below:

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

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

### 2.2 Action Plan for Utilization of Environmental Compensation Fund

EC levied on all violations of Graded Response Action Plan (GRAP) in Delhi NCR will be deposited in the same fund and will be utilized in the same manner as mentioned in para 1.4.1 of Chapter-I of this report.

\*\*\*\*\*

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

---

### **3.1 Background**

The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed State Governments (including the concerned Union Territories) to set-up Sewage Treatment Plants (STPs), which are already under implementation, within the time lines already postulated. Further, the STPs, which are yet to set-up, to be completed within a period of three years, from today, i.e. by 22.02.2020.

The Hon'ble NGT in its order dated 06.12.2018 (**Annexure-III**) in the matter of Court of its own motion v/s State of Karnataka (Original Application No. 125/2017 and M.A. No. 1337/2018) has given following directions:

*“Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.”*

### **3.2 Ideology of Environmental Compensation Formula**

In compliance of the directions of the Hon'ble Tribunal, the Committee deliberated on the issue of environmental compensation to be recovered from individuals/authorities in case of failure of preventing the pollutants being discharged in water bodies and failure to implement solid and other waste management rules. The Committee has suggested that environmental compensation in these cases should be comprised of two components i.e.

1. Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage management system; and
2. Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because of insufficient capacity of waste/sewage management/treatment facility.

Cost saved/benefits achieved by not having proper waste/sewage management system includes the interest on capital cost of the waste/sewage management facility and daily operation and maintenance (O&M) cost associated with the facility.

The Committee suggested that annual interest rate as 10% on loan amount, borrowed by concerned individual/authority for setting-up waste/sewage management facility, may be assumed as Capital Cost Factor for calculation of environment compensation. Further, as whole O&M cost is saved by concerned individual/authority for not managing required waste/sewage management system, 100% of the O&M cost saved may be considered as O&M cost factor.

Therefore, generalized formula for Environmental Compensation may be described as:

$$EC = \text{Capital Cost Factor} \times \text{Marginal Average Capital Cost for Establishment of Waste or Sewage Management or Treatment Facility} \times (\text{Waste or Sewage Management or Treatment Capacity Gap}) + \text{O\&M Cost Factor} \times \text{Marginal Average O\&M Cost} \times (\text{Waste or Sewage Management or Treatment Capacity Gap}) \times \text{No. of Days for which facility was not available} + \text{Environmental Externality}$$

Cost to the environment due to untreated/partially treated waste/sewage discharge by concerned individual/authority may be assumed as recommended by the committee, which is mentioned below:

**Table No. 3.1: Environmental externality for untreated/partially treated sewage discharge**

Sewage Treatment Capacity Gap (MLD)	Marginal Cost of Environmental Externality (Rs. per MLD/day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
Up to 200	75	Min. 0.05, Max. 0.10
201-500	85	Min. 0.25, Max. 0.35
501 and above	90	Min. 0.60, Max. 0.80

**Table No. 3.2: Environmental externality for improper municipal solid waste management**

Municipal Solid Waste Management Capacity Gap (TPD)	Marginal Cost of Environmental Externality (Rs. per ton per day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
Up to 200	15	Min. 0.01, Max. 0.05
201-500	30	Min. 0.10, Max. 0.15
501-1000	35	Min. 0.25, Max. 0.35
1001-2000	40	Min. 0.50, Max. 0.60
Above 2000		Max. 0.80

The Committee further decided to fix a cap for minimum and maximum cost for capital and O&M component for Environmental Compensation, which are given in below tables:

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

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

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

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

The application of formula for calculation of EC may be further understood with the example of two typical cases.

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

BIS IS-1172:1993 suggests that for communities with population above 100,000, minimum of 150 to 200 lpcd of water demand is to be supplied. Further, 85% of return rate (CPHEEO Manual on Sewerage and Sewage Treatment Systems, 2013), may be considered for calculation of total sewage generation in a city. CPCB Report on "Performance evaluation of sewage treatment plants under NRC, 2013", describes that the capital cost for 1 MLD STP ranges from 0.63 Cr. to 3 Cr. and O&M cost is around Rs. 30,000 per month. After detail deliberations, the Committee suggested to assume capital cost for STPs as Rs. 1.75 Cr/MLD (marginal average cost). Further, expected cost for conveyance system is assumed as Rs. 5.55 Cr./MLD (marginal average cost) and annual O&M cost as 10% of the combined capital cost. Population of the city may be taken as per the latest Census of India. Based on these assumptions, Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

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

*Alternatively;*

***EC (Lacs Rs.) = [17.5(Total Sewage Generation – Installed Treatment Capacity) + 55.5(Total Sewage Generation-Operational Capacity)] + 0.2(Sewage Generation-Operational Capacity) x N + Marginal Cost of Environmental Externality x (Total Sewage Generation-Operational Capacity) x N***

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

*Quantity of Sewage is in MLD*

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

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Sewage Generation (MLD) (as per the latest data available with CPCB)	4195	381	486	37
Installed Treatment Capacity (MLD) (as per the latest data available with CPCB)	2500	220	404	45.5
Operational Capacity (MLD) (as per the latest data available with CPCB)	1900	140	300	24.5
Treatment Capacity Gap (MLD)	2295	241	186	12.5
Calculated EC (capital cost component for STPs) in Lacs Rs.	29662.50	2817.50	1435.00	0.00
Calculated EC (capital cost component for Conveyance System) in Lacs. Rs.	127372.50	13375.50	10323.00	693.75
Calculated EC (Total capital cost component) in Lacs Rs.	157035.00	16193.00	11758.00	693.75
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 2000 Max. 20000	Min. 1000 Max. 10000	Min. 100 Max. 1000	Min. 100 Max. 1000
<b>Final EC (Total Capital Cost Component) in Lacs Rs.</b>	<b>20000.00</b>	<b>10000.00</b>	<b>1000.00</b>	<b>693.75</b>
Calculated EC (O&M Component in Lacs Rs./day)	459.00	48.20	37.20	2.50
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5	Min. 0.5 Max. 5
<b>Final EC (O&amp;M Component) in Lacs. Rs./Day</b>	<b>20.00</b>	<b>10.00</b>	<b>5.00</b>	<b>2.50</b>
Calculated Environmental Externality (Lacs Rs .Per Day)	2.0655	0.2049	0.1395	0.0094
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)	Min. 0.60 Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.05 Max. 0.10	Min. 0.05 Max. 0.10
<b>Final Environmental Externality (Lacs Rs. Per day)</b>	<b>0.80</b>	<b>0.25</b>	<b>0.10</b>	<b>0.05</b>

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

It is known that estimated MSW generation is approximately 1.5 lakh MT/Day in India (MoHUA Report-2016). As per the principles of SWM Rules, 2016 and PWM Rules 2016, as amended in 2018, the total cost of Municipal Solid Waste management in a city/town includes cost for door to door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of MSW and disposal through facility like composting, biomethanation, recycling, co-processing in cement kilns etc.

In view of above, it is estimated that the total cost of processing and treatment of MSW for a city having population size of 1 lakh and generating approximately 50 tons/day of MSW is Rs.15.5 Crores, including capital cost (one time) and O & M cost for one year. The expenditure for subsequent years would be only Rs. 3.5 crores/annum.

CPCB sponsored a survey to ascertain the status of municipal solid waste disposal in 59 cities/towns of India. The survey was conducted by the Environment Protection Training Research Institute (EPTRI), Hyderabad. As per the survey, it is estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes. Based on these assumptions, Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

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

Where;

Waste Quantity in tons per day (TPD)

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

Simplifying;

**EC (Lacs Rs.) = 2.4(Waste Generation - Waste Disposed as per the Rules) +0.02 (Waste Generation - Waste Disposed as per the Rules) x N + Marginal Cost of Environmental Externality x (Waste Generation - Waste Disposed as per the Rules) x N**

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

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Waste Generation (kg. per person per day)	0.6	0.5	0.4	0.4
Waste Generation (TPD)	9809.90	880.14	350.79	200.31
Waste Disposal as per Rules (TPD) ( <i>assumed as 25% of waste generation for sample calculation</i> )	2452.47	220.04	87.70	50.08
Waste Management Capacity Gap (TPD)	7357.42	660.11	263.09	150.23
Calculated EC (capital cost component) in Lacs. Rs.	17657.82	1584.26	631.42	360.56
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000	Min. 100 Max. 1000
<b>Final EC (capital cost component) in Lacs. Rs.</b>	<b>10000.00</b>	<b>1584.26</b>	<b>631.42</b>	<b>360.56</b>
Calculated EC (O&M Component) in Lacs. Rs./Day	147.15	13.20	5.26	3.00
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./Day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0	Min. 0.1 Max. 1.0
<b>Final EC (O&amp;M Component) in Lacs. Rs./Day</b>	<b>10.00</b>	<b>5.00</b>	<b>1.00</b>	<b>1.00</b>
Calculated Environmental Externality (Lacs Rs. Per Day)	2.58	0.18	0.03	0.02
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)	Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.01 Max. 0.05	Min. 0.01 Max. 0.05
<b>Final Environmental Externality (Lacs Rs. per day)</b>	<b>0.80</b>	<b>0.25</b>	<b>0.03</b>	<b>0.02</b>

### 3.3 Action Plan for Utilization of Environmental Compensation Fund

EC levied in case of failure of preventing the pollutants being discharged in water bodies and failure to implement waste management rules will be deposited in the same fund and will be utilized in the same manner as mentioned in para 1.4.1 of Chapter-I of this report.

### 3.4 Recommendations

1. The Committee recommended that to begin with, Environmental Compensation to be recovered from individuals/authorities in case of failure of preventing the pollutants being discharged in water bodies and failure to implement solid waste management rules may be calculated with the methodology described in the report.
2. If mixing of Bio-medical Waste or Hazardous Waste is found in Municipal Solid Waste than capital cost component of EC may be increased by a multiplication factor of 1.5.

3. In order to include deterrent effect for continuous violations, component of O&M and Environmental Externality in EC formula may be increased on exponential basis by 2, 4, and 8 times after every six-months, beyond the time prescribed by authority for ensuring complete treatment of sewage/waste of the city/town.

\*\*\*\*\*

## Chapter-IV: Environmental Compensation in Case of Illegal Extraction of Ground Water

---

### 4.1 Background

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of Shailesh Singh v/s Central Ground Water Board & Ors. (Original Application No. 327/2018) vide order dated 03/01/2019 (Annexure-V) directed Central Pollution Control Board (CPCB) that:

*“CPCB may constitute a mechanism to deal with individual cases of violation of norms, as existed prior to Notification of 12/12/2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law.”*

### 4.2 Constitution of the Committee

In compliance to Hon'ble NGT dated 03/01/2019, CPCB constituted a committee under the Chairmanship of Shri A. Sudhakar, DH, WQM-I Division with Shri P. K. Gupta, DH, IPC-VI, Shri Vishal Gandhi, Sc. D, UPC-I Division and Smt. Suniti Parashar, Scientist B, WQM-I Division as members. The committee was asked to deliberate on this issue and come up with draft formulation of mechanism to determine the Environmental Compensation for illegal extraction of ground water.

### 4.3 Methodology for Assessing Environmental Compensation

The committee discussed the issue on 07/02/2019, 07/03/2019 and 20/3/2019. The committee deliberated on the issue of Environmental Compensation to be recovered from individuals/industries such as domestic, packaging drinking water units, mining & infrastructure projects and industrial units in case of illegal extraction of ground water. The Guidelines/Criteria for evaluation of proposals/requests for Ground Water Abstraction, 2015 were also discussed and based on this further formulation to levy Environmental Compensation has been evolved.

### 4.4 Ideology of Environmental Compensation w.r.to illegal extraction of ground water

Ground water is becoming an increasingly scarce resource because of its unabated and indiscriminate over-exploitation. Growth in ground water exploitation, however, has led to a steep fall in water table in several parts of the country. Use of ground water is becoming unsustainable day by day. The falling water table is a matter of special concern since it tends to reduce the accessibility of the resource to small and marginal farmers due to increase in costs of extractions.

Specific conditions applicable in Notified/Non-Notified areas for various users, as mentioned in Guidelines/Criteria for evaluation of proposals/requests for Ground Water Abstraction, 2015 are given below:

#### For Notified Areas:

1. Permission to abstract ground water through any energized means will not be accorded for any purpose other than drinking water.

2. Central Ground Water Authority (CGWA) so far has notified 162 areas, in the country for the purpose of regulation of ground water development.
3. Regulation of Ground Water development in Notified areas is through District Administrative Heads assisted by Advisory Committees under the provisions of Section 4 of the Environment (Protection) Act, 1986.
4. In Notified areas, ground water use in individual houses, infrastructure complexes like group housing societies, hospitals, schools etc. and drinking water requirements of workers in industries can be allowed.
5. NOC for ground water withdrawal will be considered only if Water Supplying Department is not providing adequate water in the area/premises. Proof for this is to be produced from the concerned authority by the applicant.
6. For individual houses, the maximum diameter of the tube-well should be restricted to 4 inch only and the capacity of the pump should not exceed 1HP. For infrastructure projects, maximum diameter of the ground water abstraction structures should be restricted to 150 mm (6 inches) only and capacity of the pump should not exceed 5 HP.
7. Any violation of the above conditions will attract legal action under Section 15 of the Environment (Protection) Act, 1986.

#### **For Non-Notified Areas:**

NOC for ground water withdrawal will be considered for industries/infrastructure/packaging as per safe, semi critical, critical and over-exploited criteria.

#### **4.5 Formula for Environmental Compensation for illegal extraction of ground water**

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

$EC_{GW}$	=	Water Consumption per Day x No. of Days x Environmental Compensation Rate for illegal extraction of ground water ( $ECR_{GW}$ )
-----------	---	---

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

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

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

In case of illegal extraction of ground water, quantity of discharge as per the meter reading or as calculated with assumptions of yield and time may be used for calculation of  $EC_{GW}$ .

#### **4.6 Environmental Compensation Rate ( $ECR_{GW}$ ) for illegal use of Ground Water**

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

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

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

#### 4.6.1 $EC_{GW}$ for Drinking and Domestic use:

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

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

#### 4.6.2 $EC_{GW}$ for Packaged drinking water units:

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

#### 4.6.3 $EC_{GW}$ for Mining, Infrastructure and Dewatering Projects

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

#### 4.6.4 ECR<sub>GW</sub> for Industrial Units:

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

For better understanding of implementation of ECR<sub>GW</sub> policy, some example calculations are given below:

##### Example No. 1 (For drinking and domestic Use):

It is observed that a household in safe zone is extracting ground water illegally from past 2 year and 3 months with the help of 1 HP pump, dia 4 inches and head as 25 meter. It is assumed that the house-owner runs the pump for 0.5 hr/day. What Environmental Compensation (EC<sub>GW</sub>) will be charged to the owner?

**Solution:** Pump Yield (Please refer Annexure-VI) = 3 m<sup>3</sup>/hr  
 Daily Consumption = 3 x 0.5 = 1.5 m<sup>3</sup>  
 ECR<sub>GW</sub> = 4 Rs./m<sup>3</sup> (Please refer para 4.6.1)  
 EC to be levied = 4 x 1.5 = 6 Rs./day  
 Total time period = 820 days

Then, EC<sub>GW</sub> = 6 x 820

Calculated EC<sub>GW</sub> = 4,920 Rs.

**EC<sub>GW</sub> to be levied = 10,000 Rs. (minimum prescribed ECR<sub>GW</sub>, please refer para 4.6.1)**

##### Example 2 (For Industrial Units):

It is observed that an industry in critical zone is extracting ground water illegally from past 1 year with the help of 5 HP pump, dia 6 inches and head as 50 meter. It is assumed that the industry runs the pump for 3 hrs/day. What Environmental Compensation (EC<sub>GW</sub>) will be charged to the owner?

**Solution:** Pump Yield (Please refer Annexure-VI) = 12 m<sup>3</sup>/hr  
 Daily Consumption = 12 x 3 = 36 m<sup>3</sup>/day  
 ECR<sub>GW</sub> = 60 Rs./m<sup>3</sup> (Please refer para 4.6.4)  
 EC to be levied = 60 x 36 = 2,160 Rs./day  
 Total time period = 365 days

Then, EC<sub>GW</sub> = 2,160 x 365

**EC<sub>GW</sub> = 7,88,400 Rs.**

#### 4.7 Relaxation

Central Ground Water Authority (CGWA) reserves to right to relax or interpret these mechanisms in case of any exigency or situation of National strategic importance, as per Guidelines/Criteria for evaluation of proposals/requests for Ground Water Abstraction, 2015.

#### 4.8 Recommendations

The committee has given following recommendations:

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

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

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

\*\*\*\*\*

BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

Original Application No. 593/2017  
(W.P. (Civil) No. 375/2012)

In the matter of:

Paryavaran Suraksha Samiti & Anr.  
Vs.  
Union of India & Ors.

**CORAM :** HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

**Present:** **Applicant:** Mr. Rohit Prajapati, Applicant in person  
**Amicus Curiae:** Mr. Jai A. Deshpande, Adv.  
**Respondent Nos.** Mr. Nishe Rajan Shonker, Adv. for State of Kerala  
Mr. Tarunvir Singh Khehar, Ms. Guneet Khehar  
Mr. Sandeep Mishra Adv. for GNCTD  
Mr. Anil Shrivastava Mr. Rituraj Bawa and  
Ms. Sujaya Bardhan, Adv. for State of Arunachal Pradesh  
Mr. Jogy Scaria, Ms. Beena Victor, Adv. for Kerala State Pollution Control Board  
Mr. Avijit Roy, Adv. for Assam Pollution Control Board  
Mr. Leishangthem Roshmani Kh, Ms. Maibam Babina, Adv. for State of Manipur  
Mr. Nikhil Nayyar, Mr. Dhananjay Bajaj, Adv. for APFCB and TSPCB  
Mr. Mukeesh Verma, Adv.  
Mr. Tarunvir Singh Khehar, Adv., Mr. Sandeep Mishra and Ms. Guneet Khehar, Adv.  
Mr. Dinesh Jindal, LO for DPCC  
Ms. Aruna Mathur, Mr. Avneesh Arputham, Ms. Simraj Jeet and Ms. Anuradha Arputham, Adv. for State of Sikkim  
Mr. Raja Chatterjee, Mr. Piyush Sachdev, Ms. Abhinandini Yadav, Adv. and Adv. for State of WB  
Mr. Edward Belho, AAG, Mr. K. Luikang Michael and Ms. Holsaithiam, Adv. for State of Nagaland  
Ms. Enatoli Sema, Adv. for State of Nagaland and Pollution Control Board  
Mr. M. Paikaray and Mr. A.K. Panda, Adv. for SPCB, Odisha  
Mr. Dhruv Pal, Adv. for State of Gujarat  
Mr. V.K. Shukla, Adv. for State of MP  
Mr. Jayesh Gaurav, Adv. for R-47  
Mr. Tayanjam Momo Singh, Adv. for Meghalaya Pollution Control Board  
Mr. Shikha Chandra and Mr. Ritesh Kumar Sharma, Adv.  
Mr. Gautam Singh and Mr. Shoeb Alam, Adv. for State of Bihar  
Ms. Aprajita Mukherjee, Adv.  
Ms. G. Indira, Adv. for UT of Andaman & Nicobar  
Mr. Balendu Shekhar, Mr. Sriyash Prakash and Mr. Rajkumar Maurya, Adv. for Ministry of Environment, Forest and Climate Change  
Ms. Puja Kalra, Adv. for SDMC & HDMC  
Mr. Anil Grover, AAG, Mr. Rahul Khurana and Mr. Mahal Vij, Adv. for State of Haryana and HSPCB

Ms. Yogmaya Agnihotri, Adv. and Ms. Prity, Adv. for CECEB  
 Ms. Sakshi Popli, Adv. for Ministry of Environment, Forest and Climate Change  
 Mr. Shuvodeep Roy, Adv. and Mr. Rituraj Biswas, Adv. for State of Tripura & Tripura Pollution Control Board  
 Mr. Shashank Bajpai and Mr. Shakun S. Shukla, Adv. for State of Odisha  
 Ms. Asha Nayar Basu and Ms. Aradhita Ghosh Mandal, Adv.  
 Ms. Priyanka Sinha, Adv. for State of Jharkhand  
 Mr. Rajul Shrivastav, Adv. for MPPCB  
 Mr. Pradeep Misra and Mr. Daleep Dhyani Adv. for UPPCB  
 Mr. R. Rakesh Sharma and Mr. V. Mowli, Adv. for State of TN & TNPCB  
 Mr. Shubham Bhalla, Adv.  
 Mr. Shiv Mangal Sharma, AAG, Mr. Saurabh Rajpal, Mr. Adhiraj Singh, Ms. Shikha Sandhu and Mr. Vikrmjeet singh, Adv. for State of Rajasthan and Pollution Control Board  
 Mr. G. M. Kawoosa, Adv. for State of J & K  
 Mr. Divya Prakash Pande, Adv. For HPSPCB  
 Mr. Manish Kumar, Adv.

Date and Remarks	Orders of the Tribunal
Item No. 12 August 03, 2018 A	<p>1. This matter was taken by this Tribunal in furtherance to the orders of the Hon'ble Supreme Court dated 22.02.2017 <i>Paryavaran Suraksha Samiti Vs. Union of India</i> (2017) 5 SCC 326, establishment and functioning of ETPs/CETP/STPs.</p> <p>2. Vide order dated 25.05.2017, Notice was issued to Central Pollution Control Board and all the States Pollution Control Boards/Committees and the Ministry of Environment, Forest and Climate Change. They were directed to file status-cum-compliance report in terms of the orders of the Hon'ble Supreme Court. Accordingly, various status reports have been filed. An affidavit has been filed by the Ministry of Environment, Forest and Climate Change dated 04<sup>th</sup> July, 2017 stating as follows:</p> <p style="padding-left: 40px;">*4. That the answering Respondent is engaged in policy formulation, prescribing standards and its implementation through the Central Pollution Control Board (CPCB), State Pollution Control Boards (SPCBs) and Pollution Control Committees (PCCs) for UTs. This Ministry has written to all SPCBs and PCCs as well as to CPCB to ensure compliance of the judgment of the Hon'ble Supreme Court and to submit detailed compliance report.</p>

	<p><b>Item No.</b> <b>12</b></p> <p><b>August 03,</b> <b>2018</b> <b>A</b></p>	<p>5. That the CPCB has also followed up with all SPCBs and PCCs through letters and review meetings to ensure compliance of the aforementioned judgment and that the matter was also discussed in the 62<sup>nd</sup> Conference of the Chairmen and Member Secretaries of SPCBs and PCCs held on 27.06.2017. That 26 SPCBs/PCCs have submitted the compliance report, which has been summarized at <b>Annexure-I</b>.</p> <p>6. That the CPCB has also carried out inspections of 17 categories of industries to verify compliance with its directions issued on online effluent/emission monitoring system and to cross-verify online results with manual sampling. During February-June, 2017, 64 industries were inspected and directions under section 5 of the Environment (Protection) Act, 1986 have been issued to 24 non-complying industries; 18 industries were complying; 8 were found closed and inspection reports of 14 industries are under process.</p> <p>7. That the CPCB and NMCG through 11 technical institutions, inspected 751 industries located in the River Ganga main stem during March-April, 2017 to verify the status of installation and connectivity of industries discharging effluents as well as their compliance with the standards. Closure directions have been issued to 154 industries; show cause notices issue to 36 industries; 149 industries were found complying and direction issued to 91 self-closed Grossly Polluting Industries (GPI) to remain closed; 93 GPI units were found closed as per directions; 38 GPI units found operational in violation of closure directions and inspection reports of 190 industries are under process".</p> <p>3. We have heard learned Amicus Curiae Sh. Jai A. Dehadrai and the learned counsel for Ministry of Environment, Forest and Climate Change, Central Pollution Control Board, various State Pollution Control Boards and the Pollution Control Committees.</p> <p>4. Learned Amicus Curiae has drawn our attention to orders dated 04.07.2017, 18.09.2017 and 11.10.2017 of the Tribunal directing the State Pollution Control Boards to file a statement as to how many Industrial Units discharging trade effluents or causing emissions exist in the State, how many are having their own STPs, ETPs and/or connected to Common Effluent Treatment Plant</p>
--	--	---

<p><b>Item No. 12</b></p> <p><b>August 03, 2018</b></p> <p><b>A</b></p>	<p>(CETP), whether any such CETP or ETP or STP is properly functioning and treating the effluents as per prescribed limits or not.</p> <p>5. Learned Amicus Curiae submitted that contamination of water due to industrial effluents can lead to various diseases and adverse consequences on the aquatic organism due to decreased level of oxygen. The use of technology can help reduction of adverse consequences. However, the best solution is to prevent pollution by soil conservation and proper disposal of toxics and chemicals which may include chemical recycling.</p> <p>6. Having monitored the matter for the last more than one year on several dates, we are of the view that the matter requires continuous monitoring by statutory authorities as per directions which we proceed to issue today.</p> <p>(i) We direct the Central Pollution Control Board (CPCB) to forthwith prepare an action plan after looking into all the status reports. The action plans must have mechanism to ensure compliance or all the directions in the order of the Hon'ble Supreme Court. To enable this to be done, a Nodal officer must be identified to deal with the issue of CETPs/ETPs/STPs.</p> <p>(ii) A representative of the Ministry of Environment, Forest and Climate Change may be associated with the Nodal Officer of the CETP for monitoring. The Monitoring by the said two officers- the representative of the MoEF and the Nodal Officer of the CPCB must be held atleast once in a month and on the basis of such meeting and the feedback taken further follow up action must be taken and</p>
---	---

	<p><b>Item No.</b> <b>12</b></p> <p><b>August 03,</b> <b>2018</b> <b>A</b></p>	<p>appropriate directions issued. This process may be a continuous process.</p> <p>(iii) It must be ensured that STPs, CETPs and ETPs are functional and meet the requisite standards.</p> <p>(iv) There is already a direction in the above judgment under which 50% of the funds for the purpose are to be provided by the Central Government, 25% by the States and remaining 25% to be arranged by way of loans which is to be re-paid by the user industries. Local bodies and the States have duties as clearly stipulated in the judgment. There has to be online monitoring system by each State to display emission levels in public domain in terms of paragraph 17 of the order of the Hon'ble Supreme Court.</p> <p>(v) A report of the steps taken may be placed on the website of the Central Pollution Control Board atleast once in three months. Deficiencies if any may also be so displayed.</p> <p>(vi) The Central Pollution Control Board may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs. Central Pollution Control Board may also assess and recover compensation for damage to the environment and the said fund be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the Central Pollution Control Board within three months from today.</p> <p>(vii) A compliance report in terms of the above order may be furnished to this Tribunal within four months from today by e-mail at <a href="mailto:filing.ngt@gmail.com">filing.ngt@gmail.com</a>.</p>
--	--	---

	<p><b>Item No. 12</b></p> <p><b>August 03, 2018</b></p> <p><b>A</b></p>	<p>(7) Proceedings are disposed of.</p> <p>However, the report received from the Central Pollution Control Board may be placed for consideration before this Tribunal on 04.09.2018.</p> <p>We place on record our appreciation for the services rendered by the learned Amicus Curiae.</p> <p>....., CP (Adarsh Kumar Goel)</p> <p>....., JM (Dr. Jawad Rahim)</p> <p>....., JM (S.P. Wangdi)</p> <p>....., EM (Dr. Nagin Nanda)</p> <p>03.08.2018</p>
--	---	---

## Annexure-II

Annexure-II  
Comments Received from Various RDs on Draft Report for Environmental Compensation

S. No.	Item	RD Kolkata	RD Vadadara	RD Bengaluru	RD Lucknow	Committee Deliberations
1	Case- a, b & c	By-passing of effluent/emission should be given special consideration. EC levied on ROG categories of industries should be on the basis of inspection by CPCB, complaint verification and routine inspection.	Instead of "Compensation", "Penalty" word should be used. In case common facilities like CETPs, factor may be introduced based on member industries. Clarify the applicability of penalty in addition to closure directions for pro-longed and gross non-compliance.			The Committee discussed that the points highlighted by RD Kolkata are already the part of cases fit for violation and levy environmental compensation. However, as mentioned by RD Vadadara, word "penalty" may be used for case a, b and c. For CETPs, a factor may be considered in future based on the capacity of the plant.
2	Case- d, e & f	Higher rates for irreparable damages crop, soil, health etc. Leakages/spillage should have different compensation value.	It should be mentioned that instances d, e & f shall be dealt for environmental compensation in line with the polluter pays principle, besides of environmental penalty for cases a, b and c.	Similar to Guidelines on Liabilities for Environmental Damages due to Handling & Disposal of Hazardous Waste and Penalty, Guidelines may be prepared.		Suggestions made by RD Kolkata and Vadadara has already been taken care. Concept of environmental compensation is based on the philosophy of "polluter pay" and for grievance injury to environment, compensation will be charged as per the assessment of remediation cost, on case to case basis.
3	Pollution Index (PI)			Instead of average PI, Actual PI may be used.		Committee suggested that to make the implementation of EC simple and easy, use of average PI may be considered for calculation of EC.
4	R-factor	Should be based on pollution load. For ex. Amount of BOD/NOx etc. discharged.		May be classified based on the contribution of pollution load based on quantity of effluent, concentration, emissions	May be as per the category of industry, for ex. Red-500, Orange-300, Green-100.	As PI is based on the pollution load, suggestion of RDs are already taken care in the formula.
5	L-factor			May be redefined based on the features, activities involved and habitation.		L-factor may be covered in future as already indicated in the report.

S. No.	Item	RD Kolkata	RD Vadodara	RD Bengaluru	RD Lucknow	Committee Deliberations
6	Defining period of violations for which EC will be levied		Duration of violations needs more clarity.	For industry having OCEMS, no. of days may be counted based on the recorded data.  Industry without OCEMS- based on break down of ETP/APCD, disturbance of power supply or any failure of auxiliary machineries w.r.t. control system.	May be clearly defined as the period between the day of violation observed and the day of compliance verified by CPCB/SPCB/PCC.	The committee agreed that period of violation for which EC may be levied will be the period between the day of violation observed and the day of compliance verified by CPCB/SPCB/PCC.
7	Repeated Violations		Some number of days may be specified after which the penalty amount may get a factor of 1.5 or 2.		Multiplying factor for repeated violations may be included. For ex. 1 <sup>st</sup> Repetition- 25% 2 <sup>nd</sup> Repetition- 50% 3 <sup>rd</sup> Repetition- 100%	For habitual offenders, higher amount of penalty/compensation may be charged in future.
8	Utilization of fund	An environmental damage assessment cell may be created. Expertise in the field may be achieved by involving scientist/engineers and providing them training in country/abroad.	Amount should not be utilized for a) Industrial Inspections for compliance verification, b) Installation of Continuous water quality monitoring stations / Continuous ambient air quality monitoring stations for strengthening of existing monitoring network, c) Preparation of Comprehensive Industry Documents on Industrial Sectors / clean technology f) Funding to financially weaker municipalities for installation of STPs  The amount should be utilized solely for damage assessment, remediation of affected sites, orphan contaminated sites and creating awareness. The purpose should not get inclined towards revenue generation.			RD Vadodara suggested that amount should be utilized only for remediation purpose. However, committee discussed that the proposal for utilization of fund is prepared considering the other aspects (i.e. direct and indirect) for protection of environment, which include research, monitoring etc.  Suggestion of RD Kolkata may be considered in future.

9	Others	Higher EC for non-installation of pollution control measures. Expected sources should have different scoring methodology based on their weightage.	Thus, the functional fabric of CPCB shall remain intact.					The committee discussed that CPCB is already taking appropriate action including closure direction against the industries found operating without pollution control measures.
---	--------	--	--	--	--	--	--	---

## Annexure-III

**Comments Received from Various Expert Institutions on the Report on Environmental Compensation**

As per the Hon'ble NGT suggestion, CPCB has invited comments of 3 expert institution, namely, Centre for Science and Environment (CSE), Institute of Economic Growth (IEG) and The Energy Research Institute (TERI). The CPCB in-house committee on Environmental Compensation has deliberated on the comments and finalized the report accordingly. The Committee's deliberations are summarized in table below:

S. No.	Item	Comments from TERI	Comments of CSE	Comments of IEG	Committee's Deliberations
1	Cases d, e and f	Distinction between categories "a, b, c" and "d, e, f" is not clear. Case specific investigations should be minimized. Proposed cases deals separately with intentional and accidental cases but sometimes they are not easy to establish.	-	Why cases 'e' and 'f' are left for later remediation and study?	There may be a varied damage to the environment as considered in cases 'e' and 'f'. Such damage assessment requires detailed case specific study and remediation measures. Therefore, whenever such case comes into the notice, Environmental Compensation may be levied based on the detailed investigation made by Expert Institutions/Organizations.
2	R-factor	-	R-factor should be Rs. 1,000/day.	Why R-factor is kept as 250, although the value ranges between 100 to 500?	In the Environmental Compensation policy, average value of the R-factor as 250 is recommended, keeping in view both its practicability as well as to make it significantly deterrent, which may be further revised in future.
3	L-factor	-	L-factor should be based on the population density of surroundings, instead of population of the nearby city/town.  For critically polluted areas/ ecologically fragile areas LF should be considered as 2.	For nearby city, having population less than 1 million, the LF is 1. This implies that we care only for populated regions only.  Industries located in ecologically fragile area should be closed down.	Population density for surrounding of industrial units will be complex because it will vary depending on area used in calculation of population density as industrial units are generally away from population.  More weightage is given to the higher population exposure to the risk. In case the industry is located in the city of population less than one million than the LF Factor will be 1.  Depending on the local environmental conditions, the restrictions on expansion and modernization of industries in critically polluted areas are imposed as per the prevailing policy of the Government of India. Similarly, industries in ecologically fragile areas are permitted after careful examination, as per prevailing policy of MoEFCC/SPCB.  The Committee agreed that for notified ecologically fragile areas, LF may be considered as 2. However, LF for critically polluted areas may be explored in future.

S. No.	Item	Comments of CSE	Comments of IEG	Committee's Deliberations
4	S-factor	Classification of industries should be based on profit/turnover basis.	S-factor should be based on the turn-over of the industrial unit.	Presently industrial units are classified into small, medium and large category (MSME Act, 2006) based on the data of assets/infrastructure available with them. The data for profit/turnover of industrial units are not available with SPCBs/PCCs and S-factor based on profit/turnover will complicate the procedure for calculation of EC. This may be considered in future when SPCBs/PCCs will have such type of data.
5	Level of non-compliance	Pollution Index does not measure the level of pollution. Further, averaging PI eliminates the variation in the nature/ impact of pollution that PI tries to capture. Further, the Red Category itself is too wide and some sort of sub-classification should be undertaken  The rate of the penalty should increase with the period of violation. The penalty should increase exponentially in case of repeated violations. The objective should be that units should choose to shut down operations when violations cannot be brought under control in the specified time.	For different level of non-compliance such as gross, moderate and low, a factor for intensity of violation, IV-factor should be incorporated in the formula.	Pollution Index (PI) itself covers the potential of environmental pollution as its calculation considers variation in pollution load.  The industrial sectors have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. As PI is not available for all the industrial sectors, calculating PI for rest of the sectors will delay the processing. Therefore, for calculating the Environmental Compensation average PI as 80, 50 and 30 may be used for Red, Orange and Green category of industries, respectively.  To keep the formula simple for better implementation, the IV factor may not be considered as there are different environmental parameters such as environmental standards and for each standard calculation of level of violation and its weightage will be a tedious task, which may bring difficulty in implementation of EC concept.  The Committee has agreed that in order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2, 4 and 8 times on each similar violation. Further, if the violator continues its operations beyond 3 months then EC may be increased by 2, 4 and 8 times for 2 <sup>nd</sup> , 3 <sup>rd</sup> and 4 <sup>th</sup> quarter, respectively.  Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.  EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts.  Scheme of infrastructure augmentation of Urban Local Bodies (ULBs) /capacity building of SPCBs/PCCs is already covered in the report  Further, schemes such as incentives to regulators where no violations are observed and incentives to public for reporting violations may be considered separately.
6	Utilization of fund	Funds may be utilized for building monitoring and enforcement capacity of SPCBs and strengthening the pollution compliance especially in the MSME sector.	Incentives to regulators where no violations are observed and incentives to public for reporting violations may be provided.	

S. No.	Item	Comments of CSE	Comments of IEG	Committee's Deliberations
7	GRAP	-	Size of the construction sites more than 20,000 sqm. area are considered for EC. Although, small sites cumulatively impact significantly.  Illegal dumping of municipal solid waste regardless of the place should be penalized.	As per the EIA Notification, 2006, building construction projects more than 20,000 sqm. area are required to have environmental clearance, therefore, the same cut-off is maintained here.  Issue of illegal dumping of municipal solid waste is being covered in separate report of EC.
8	Others: (a)	Severity of violations should be measured in terms of hours of violation because for some pollutants even a few hours of violation can have serious environmental and health consequences. This would require continuous monitoring of stacks, which is not the case presently for most units. Therefore, continuous monitoring should be implemented urgently, to begin with for all red and orange categories.	-	Currently, online continuous effluent/emission monitoring system (OCEMS) is installed in only in 17 categories of highly polluting industries and some other industrial sectors. Further, in current practice the compliance of industries is only verified by physical monitoring and compensation may be imposed based on the manual testing. The idea of measurement of violation on hourly basis may be considered in future, when OCEMS is widely installed and included in policy.
	(b)	CEIP should be categorized under Red Category of Industries. Some sub-classification should be undertaken under red categories of industries.	-	CEIPs are already categorized under Red Category of Industries
	(c)	Based on the spirit behind the proposed charge, it should therefore be called an "environmental penalty" rather than "environmental compensation".	-	The power of imposing "Penalty" lies in the jurisdiction of the Hon'ble Courts and NGT only. The CPCB is empowered to levy environmental compensation by the Hon'ble NGT in its order dated 03.08.2018. (OA No.593/2017). Therefore, term "Environmental Penalty" is avoidable.

**Annexure-IV**

Item Nos. 01 &amp; 02

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**Original Application No. 125/2017  
(M.A. No. 1337/2018)

With

Original Application No. 217/2017  
(M.A. Nos. 761/2017, 1073/2017,  
1098/2017 & 1471/2017)

Court on its own Motion		Applicant(s)
State of Karnataka	Versus	Respondent(s)
With		
D. Kupendra Reddy		Applicant(s)
State of Karnataka	Versus	Respondent(s)

Date of hearing: 06.12.2018

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Original Application No. 125/2017  
(M.A. No. 1337/2018)

For Applicant(s): Mr. Sejan Poovayya, Sr. Advocate and Mr. Saransh Jain,  
Advocate for impleaded applicant - Namma Bengaluru  
Foundation  
Mr. Vikram Hegde, Advocate for impleaded applicant

For Respondents (s): Mr. Devraj Ashok, Advocate  
Mr. Rajkumar, Advocate and Ms. Sonia, LA  
Ms. Nidhi Mehrotra, Advocate

Original Application No. 217/2017  
(M.A. Nos. 761/2017, 1073/2017,  
1098/2017 & 1471/2017)

For Applicant(s): Ms. Guneet Khehar, Mr. Tarunvir Singh Khehar, Mr.  
P. Ramaprakash and Mr. Sandeep Mishra, Advocates  
For Respondents (s): Dr. Abhishek Atrey, Advocate  
Mr. Rajkumar, Advocate and Ms. Sonia, LA

**ORDER**

1. The issue for consideration in the two matters, one initiated by the Tribunal on its own motion and the other filed by an individual relates to contamination of water bodies at Bengaluru - Bellandur lake, Agara lake and Varthur lake *inter-alia*, on account of discharge of untreated sewage and other effluents from

their performance should be recorded and considered favourably or otherwise for their career progression.

- xv. Similar exercise as (xiv) may be undertaken to identify officers responsible for failure in the past. Such exercise may be completed within three months from today.
- xvi. Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.
- xvii. MoEF&CC may specify limit for phosphorus in soaps and detergents to prevent damage to the environment and public health.
27. The above amount in the present case has been determined having regard to the estimated cost of setting up of STPs, based on the data available, which has been assessed with the assistance of the learned Counsel for the parties.
28. We have nominated Justice Santosh Hegde on information being provided during the hearing that he is agreeable to undertake the above job.
29. Justice Hegde will be entitled to a token honorarium of Rs. 2.5 Lakh per month from the date he assumes the charge. Justice Hegde will be entitled to assistance of persons of his choice for which remuneration will be paid by the SPCB, Karnataka as may be determined by Justice Hegde.

Annexure-V

Item Nos. 1 to 11

Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

Original Application No. 176/2015  
(M.A. No. 1332/2015)  
&  
Original Application No. 59/2012  
(M.A. No. 34/2016 & M.A. No. 190/2016)  
&  
Original Application No. 108/2013  
(M.A. No. 489/2015)  
&  
Original Application No. 179/2013  
(M.A. No. 866/2014 & M.A. NO. 644/2015)  
&  
Appeal No. 67/2015  
(M.A. No. 652/2015)  
And

Original Application No. 484/2015  
(M.A. No. 155/2017, M.A. No. 567/2017  
& M.A. No. 927/2017)  
And  
Original Application No. 327/2018  
(M. A. No. 1282/2018)  
And  
Original Application No. 115/2017  
(M.A. No. 442/2017)  
And  
Original Application No. 411 of 2018  
And  
Original Application No. 613/2017  
And  
Original Application No. 614/2017

Shailesh Singh		Respondent(s)
	Versus	
Hotel Holiday Regency, Moradabad & Ors.		Applicant(s)
With		
Legal Aid, National Green Tribunal Bar Association		Applicant(s)
	Versus	
NCT of Delhi & Ors.		Respondent(s)
With		
Raj Hans Bansal		Applicant(s)
	Versus	
Ministry of Water Resources & Ors.		Respondent(s)
With		
Apex Chambers of Commerce and Industries of N.C.T. of Delhi & Ors.		Applicant(s)
	Versus	
Govt. of NCT Delhi & Ors.		Respondent(s)
With		
Vikrant Tongad		Applicant(s)

1

Versus

Union of India & Ors.	Respondent(s)
With Shailesh Singh	Applicant(s)
Versus	
Hotel The Oberoi Amarvilas & Ors.	Respondent(s)
With Shailesh Singh	Applicant(s)
Versus	
Panchsheel Buildtech Pvt. Ltd. & Ors.	Respondent(s)
With Shailesh Singh	Applicant(s)
Versus	
Central Ground Water Board & Ors.	Respondent(s)
With M/s A-One Mineral Water Industry	Applicant(s)
Versus	
Central Ground Water Authority & Ors.	Respondent(s)
With Mohd. Javed Asghar	Applicant(s)
Versus	
M/s Upper Ganges Sugar and Industries Ltd. (Distillery Unit) & Ors.	Respondent(s)
With Mohd. Javed Asghar	Applicant(s)
Versus	
State of U.P. & Ors.	Respondent(s)

Hearing concluded on: 18.12.2018

Order uploaded on: 03.01.2019

**CORAM:** HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
 HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER  
 HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER  
 HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s): Mr. Raj Pajwani, Senior Advocate and Mr. Rahul Choudhary, Advocate (In O.A. Nos. 59/2012 & 108/2013)  
 Ms. Preeti Singh, Mr. S. Porwal, Mr. Shivam Jaiswal, Advocates (In O.A. Nos. 176/2015, 484/2015, 327/2018 & 115/2017)  
 Mr. Amrendra Kumar Dubey, Advocate (O.A. No. 411/2018)

For Respondent (s): Ms. Sakshi Popli, Advocate for DJB (O.A. No. 59/2012)  
 Mr. Sumeet Pushkarna, Mr. Devanshu, Advocates with Mr. Sudhir Chauhan, E.E., Delhi Jal Board (O.A. No. 108/2013)  
 Mr. Ajay Jain, Advocate for GNCTD  
 Mr. Ardhendumauli Kumar Prasad, Mr. Shashank Saxena, Ms. Diksha Gera, Mr. Amritesh Raj, Advocates for CGWA  
 Mr. Pradeep Mishra, Mr. Daleep Dhyani, Advocates for UPPCB  
 Ms. Sakshi Popli, Advocate for NDMC  
 Mr. Amit Tiwari, Mr. Rohit Pratap Singh, Advocates for State of UP

appropriate mechanism can be introduced consistent with the needs of environment.

29. The MoEF&CC is directed to constitute an Expert Committee by including representatives from IIT Delhi, IIT Roorkee, IIM Ahmedabad, CPCB, NITI Ayog and any other concerned agency or department to examine the issue of appropriate policy for conservation of ground water with a robust institutional mechanism for surveillance and monitoring with a view to enhance access to ground water for drinking purposes in OCS areas by way of appropriate replenishment practices which can be properly accounted and measured for as well as to sustain the floodplains of rivers in terms of e-flows and other water bodies. The MoEF & CC and MoWR may finalize the issue of subject remain *inter-se* with regard to ground water reserve and its quality.

30. The Committee may be constituted in two weeks and report of the Committee may be furnished to the MoEF &CC and this Tribunal in two months by e-mail at [ngt.filing@gmail.com](mailto:ngt.filing@gmail.com).

31. The Committee may also indicate the projection of its impact study in light of projected data for the next 50 years (in phased manner with action plan for each decade). Thereafter, fresh guidelines be issued by the concerned Ministry and the report furnished to the Tribunal on or before 30.04.2019.

32. The CPCB may constitute a mechanism to deal with individual cases of violations of norms, as existed prior to Notification of 12.12.2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per

law. All the matters relating to illegal extraction of ground water by individuals are disposed of with these directions.

33. The Expert Committee report, the new policy and challenge to orders of authorities, if any, will be considered on the next date.

The matter be put up for above consideration in the first week of May, 2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

January 03, 2019  
Original Application No. 176/2015  
(M.A. No. 1332/2015) and other connected matters  
AK

**Annexure-VI****CRITERIA TO CALCULATE WATER CONSUMPTION****Table 1: Discharge of 4" Dia and 1 HP Pump**

Sl. No.	Depth (Meter)	Discharge	
		LPM	m <sup>3</sup> /hr
1	25	50	3
2	43	40	2.4
3	59	30	1.8
4	69	20	1.2
5	77	10	0.6

**Table 2: Discharge of 4" Dia and 2 HP Pump**

Sl. No.	Depth (Meter)	Discharge	
		LPM	m <sup>3</sup> /hr
1	60	50	3
2	98	40	2.4
3	124	30	1.8
4	141	20	1.2
5	165	10	0.6

**Table 3: Discharge of 6" Dia and 3 HP Pump**

Sl. No.	Depth (Meter)	Discharge	
		LPM	m <sup>3</sup> /hr
1	17	200	12
2	29	175	10.5
3	41	150	9
4	50	130	7.8
5	62	100	6

**Table 4: Discharge of 6" Dia and 5 HP Pump**

Sl. No.	Depth (Meter)	Discharge	
		LPM	m <sup>3</sup> /hr
1	26	225	13.5
2	50	200	12
3	70	175	10.5
4	86	150	9
5	92	140	8.4

## References

1. Bureau of Indian Standards. 1993. IS1172:1993 (Reaffirmed 2002). *Code of Basic Requirements for Water Supply, Drainage and Sanitation (Fourth Revision)*. New Delhi: BIS.
2. Census of India. 2011. Census of India's website. [Online]. [Accessed 15 February 2019]. Available from: [http://censusindia.gov.in/2011-prov-results/paper2/data\\_files/India2/1.%20Data%20Highlight.pdf](http://censusindia.gov.in/2011-prov-results/paper2/data_files/India2/1.%20Data%20Highlight.pdf).
3. Central Pollution Control Board. 2013. *Performance Evaluation of Sewage Treatment Plants under NRCD*. Delhi: CPCB.
4. Central Pollution Control Board. 2016. *Graded Response Action Plan for Delhi & NCR*. Delhi: CPCB.
5. Central Pollution Control Board. 2016. *Final Document on Revised Classification of Industrial Sectors Under Red, Orange, Green and White Categories*. Delhi: CPCB.
6. CGWA. 2015. *Guidelines/Criteria for evaluation of proposals/requests for ground water abstraction*. New Delhi-Central Ground Water Authority, Ministry of Water Resources, River Development & Ganga Rejuvenation, Government of India.
7. CGWB. 2017. *Categorisation of Assessment Units* [Online]. [Accessed 20 February 2019]. Available from: <http://cgwa-noc.gov.in/LandingPage/NotifiedAreas/CategorizationOfAssessmentUnits.pdf#ZOOM=150>.
8. CGWB. 2017. *Dynamic Ground Water Resources of India*. Faridabad-Central Ground Water Board, Ministry of Water Resources, River Development & Ganga Rejuvenation, Government of India.
9. CPHEEO. 2013. *Manual on Sewerage and Sewage Treatment Systems – 2013*, New Delhi: Ministry of Urban Development, Government of India.
10. CPHEEO. 2016. *Manual on Municipal Solid Waste Management – 2016*. New Delhi: Ministry of Urban Development, Government of India.
11. Ministry of Micro, Small and Medium Enterprises. 2006. *The Micro, Small and Medium Enterprises Development Act, 2006. 2nd October, 2006, vide notification No. S.O. 1154(E) dated 18th July, 2006, see Gazette of India, Extraordinary Part II sec.3(ii)*, Government of India.
12. *Plastic Waste Management Rules, 2016*. (G.S.R. 320 (E) [18-03-2016]). New Delhi: Ministry of Environment Forest and Climate Change, Government of India.
13. *Solid Waste Management Rules, 2016*. (S.O. 1357(E) [08-04-2016]). New Delhi: Ministry of Environment Forest and Climate Change, Government of India.
14. WILO. 2017. *Building Service Residential Selection Booklet*. Pune- WILO Mather and Platt Pumps Pvt. Ltd.

F. No. IA3-22/30/2022-IA.III [E 182415]  
Government of India  
Ministry of Environment, Forest and Climate Change  
(IA Division)

Indira Paryavaran Bhawan  
Jor Bagh Road, Aliganj,  
New Delhi - 110003  
Dated: 28<sup>th</sup> July, 2022

**OFFICE MEMORANDUM**

**Subject: Direction with regard to imposing penalty on violation cases as per the provisions of the Standard Operating Procedure (SoP) dated 7<sup>th</sup> July 2021- regarding.**

The Ministry has issued a Standard Operating Procedure (SoP) vide Office Memorandum dated 7<sup>th</sup> July 2021 for identification and handling of violation cases under EIA Notification 2006. In this regard, the Ministry is in receipt of request for clarification on the head of account into which penalties levied as per the SoP, are to be remitted by the project proponent.

2. The matter has been examined in the Ministry, and it is hereby directed that the penalties levied as per the provisions of the above mentioned SoP shall be remitted by the project proponent into the fund which is maintained by the concerned State/UT Pollution Control Boards/Committees till further orders. EC shall be issued on submission of proof regarding the same.
3. This is issued with the approval of the Competent Authority.

  
(Sundar Ramanathan)  
28/7/22  
Scientist 'E'

To

1. Chairman, Central Pollution Control Board (CPCB).
2. Chairman of all the Expert Appraisal Committees
3. Chairperson/Member Secretaries of all the SEIAAs/SEACs
4. Chairpersons/Member Secretaries of all SPCBs/UTPCCs
5. All the Officers of I.A. Division

**Copy for information to:**

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS (EF&CC)
3. PPS to Secretary (EF&CC)
4. PPS to DGF&SS (EF&CC)
5. PPS to AS(TK)/Sr.PPS to JS (SKB)
6. Website, MoEF&CC/Guard file.



PROOF OF SARVICE

Ruchi Kohli &lt;kohli.law@gmail.com&gt;

---

**ASHISH SARDANA VS UNION OF INDIA O.A. 417 OF 2023**

1 message

**Ruchi Kohli** <kohli.law@gmail.com>

Sat, Nov 4, 2023 at 3:15 PM

To: Aashish Sardana &lt;AASHISH.SARDANA@gmail.com&gt;

Dear Sir

Please find attached herewith the Soft Copy of the Reply Affidavit in the Matter of ASHISH SARDANA VS UNION OF INDIA O.A. 417 OF 2023

This is for your kind information, record and necessary action.

Please treat this as effective service of the same.

In case of any clarification, feel free to contact

regards

--

**RUCHI KOHLI**  
**Advocate-on-Record**  
**Supreme Court of India**  
**+91- 9810208807**

**DISCLAIMER:**

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, re-transmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from your computer.

---

 **REPLY.pdf**  
4200K