IN THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 756 OF 2023

IN THE MATTER OF: -

SACHIN TYAGI & ORS. …Applicant(s)

-Versus-

RITESH SHARMA & ORS. …Respondent(s)

INDEX

	360 of 2015, NGT Bar Association v. Virender Singh (State of Gujarat)	
11.	**ANNEXURE R/10:** A Copy of the Directions dated 11.06.2021 issued by the CPCB to Environment Secretaries of the State Government directing to evolve an appropriate mechanism for assessment and recovery of compensation	466-472
12.	**ANNEXURE R/11:** A Copy of Enforcement & Monitoring Guidelines for Sand Mining dated January 2020.	473-555
13.	Proof of Service	556

Date: 19.03.2026
Place: New Delhi

DRAWN & FILED BY:

Shubham Upadhyay, Surya Gupta, Satvika Krishnan & Anukriti Bajpai
Advocates for the Respondent No. 5
29, LGF, Presidential Estate,
Nizamuddin East, New Delhi 110013
Email: eldflegal@gmail.com; +91-8851323704

SETTLED BY:
Sanjay Upadhyay
Senior Advocate

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 756 OF 2023

IN THE MATTER OF:

SACHIN TYAGI & ORS. …Applicant(s)

-Versus-

RITESH SHARMA & ORS. …Respondent(s)

RESPONSE ON BEHLAF OF RESPONDENT NO. 5 M/s ROYAL CONSTRUCTION COMPANY IN COMPLIANCE WITH ORDER DATED 29.01.2026

MOST RESPECTFULLY SHEWETH: -

1. That the present Original Application has been registered on the basis of a Letter Petition submitted by residents of Village Hathwala, Dist. Panipat, Haryana as recorded in the Order dated 04.01.2024 (as no such letter Petition has been filed, supplied or uploaded on the website of NGT) alleging that illegal mining activities were being carried out by one contractor, Mr. Ritesh Sharma and his colleague Kuldeep S/o Om Prakash and resident of Bilaspur, District Panipat, Haryana, from the bed of River Yamuna and kept such illegal mined sand in front of Gaon Gahi Kewal at Hathwala Road causing damage to the agriculture crops. Accordingly, a Joint Committee of Haryana Pollution Control Board, the Chief Secretary, Department of Irrigation and district Magistrate, Panipat was constituted.
2. Thereafter, the Order dated 04.03.2024 records that the said Joint Committee has filed a Status Report wherein the Committee members

now include Secretary, Regional Transport Authority, Panipat, Regional Officer, HSPCB, executive Engineer, Irrigation, W/S Panipat, DSP Enforcement, Panipat and Mining Officer, Panipat after an inspection of the site on 02.02.2024.

3. That the said Order dated 04.03.2024 also records that this Committee comprising of Officers from Haryana had travelled to the State of Uttar Pradesh without any notice or request to the Officers of the State of Uttar Pradesh and independently found that mining was being done by the answering Respondent and the area where such mining is being done falls in the jurisdiction of Uttar Pradesh and not in Haryana. Interestingly, a Report was also obtained from Naib Tehsil, Samalkha (which is also in Haryana) to ascertain the area of jurisdiction, and it was confirmed in the said Report that the area was not in the jurisdiction of the Officers concerned. The Status Report also records some undated Order of the High Court of Punjab and Haryana about trespassing in the riverbed, etc.

4. That this Hon'ble Tribunal, having regard to the Report, instead of reconstituting the Joint Committee, with the competent officers of the State of Uttar Pradesh to ascertain the facts afresh, impleaded the officers of the Uttar Pradesh Pollution Control board, Mining Department, District Magistrate, Baghpat and the answering Respondent. The said Order was passed in the absence of the Applicant or any of the proper parties of the jurisdictional state.

5. That on 14.05.2024, it is recorded in the Order that the Report of the District Magistrate, Baghpat dated 21.03.2024 has been filed which disputes the allegations made in the Original Application and submitted that the mining lease of the Respondent No. 5 was inspected on

13.03.2024 and during the inspection, the Respondent No. 5 was found to be carrying out its mining activities within its sanctioned leases area, and in compliance with the conditions stipulated in the Environment Clearance dated 07.10.2023. Further, the flow of the river Yamuna had neither been obstructed nor diverted due to mining activities. Same is the position in the Report filed by the UPPCB on 30.04.2024 which submitted that the Respondent No. 5 had been carrying out its mining operations as per the Environment Clearance, Consent to Establish/Consent to Operate and mining lease. That on 08.06.2024, the Applicant also filed its objections The answering Respondent No. 5 also filed its Response on 24.08.2024.

6. That on 29.08.2024, this Hon'ble Tribunal again records that the complaint of illegal sand mining is alleged to have been held in Bilaspur, District Panipat, Haryana. In the said Order, it is also recorded that the UPPCB, after referring to photographs pointed out that the instream mining is going on in Panipat in the State of Haryana and not in the State of Uttar Pradesh. The conflicting Report by the official Respondent of the Uttar Pradesh and the Joint Committee comprising of Official Respondents of Haryana necessitated the impleadment of additional Respondents namely – Member Secretary, HSPCB, Secretary, Environment Department, State of Haryana and Director, National Remote Sensing Agency wherein the Director, NRSA was directed to submit a report of the river bed and the river stream of Yamuna passing through districts of Panipat and Baghpat.

7. That subsequently on 10.12.2024, this Hon'ble Tribunal records the original lis to be at village Hathwal, District Panipat, Haryana and proceeds to record the finding of the Joint Committee comprising of

Haryana Officials and the District Magistrate Panipat separate Report stating that leaseholder is carrying out the mining within the lease area without violating the norms. The UPPCB also submitted the copy of the EC granted to the Respondent No. 5 (answering Respondent). The Respondent No. 9 NRSA notes that the Yamuna River course changes across the pre-monsoon, monsoon and post-monsoon period and most of the photograph locations lies in the State of Haryana and close to the State of Uttar Pradesh, except Point No. 8 which is in Uttar Pradesh. That, accordingly, this Hon'ble Tribunal constituted a fresh Joint Committee on 10.12.2024 , comprising of representatives of MoEF&CC, Member Secretary, CPCB, RO, MoEF&CC Chandigarh and Lucknow to inspect the geo-coordinates disclosed in the photographs of the Applicant and to further ascertain whether any illegal sand mining had been done by the Respondent No. 5.

8. That meanwhile, a show cause notice was issued to the answering Respondent on 18.03.2025 in another case of Yashveer Singh vs State of Uttar Pradesh OA 579/2024 whereby an environmental compensation was calculated to the amount of Rs. 17,55,890/- for Village Chhaprauli Khadar and an amount of Rs. 6,81,710/- for Village Kotana Khadar in accordance with OA 360/2016 NGT Bar Association vs Virender Singh and the methodology dated 29.01.2020 by CPCB. That another show cause notice was issued on 02.05.2025 imposing another Rs. 7,61,265/- as Environmental Compensation for excess illegal mining of 578 cu. Mts. on 18.06.2024, in the present case of Sachin Tyagi Vs Ritesh Sharma & Ors.

9. In the meanwhile the Joint Committee, in its Report dated 01.04.2025, observed that no mining activities were going on at the locations

disclosed in the Applicant's photographs. The Joint Committee however observed, albeit erroneously, that Respondent No. 5 *may have* illegally mined material from outside its designated lease area on 18.06.2024. Further on the basis of details provided by the Mining Officer, an amount of 1930.25 Cu. Mts was alleged to be illegally mined by Respondent No. 5, outside the designated lease area. It is submitted that neither the answering Respondent was called nor any proof submitted to justify such quantum or allegation. It is further submitted that although one opportunity was granted to file Objections and despite oral requests, the opportunity for filing Objections was closed by this Hon'ble Tribunal on 07.08.2025.

10. That on 07.08.2025, this Hon'ble Tribunal also directed the Respondent No. 3, UPPCB to impose Environmental Compensation upon Respondent No. 5 to the extent of illegal mining reflected in the Joint Committee Report dated 01.04.2025, while also granting an opportunity to the answering Respondent to respond to the calculations of the Environmental Compensation.

11. That the answering Respondent preferred to file a Writ Petition No. 9939/2025 (M/s Royal Construction Co. Thru. vs State of U.P. Thru Pr Secy. Dept. of Geology and Mining) in the Hon'ble High Court of Allahabad challenging the earlier Show Cause Notices dated 18.03.2025 issued in the Yashveer Singhs case and 02.05.2025 in the present case, which was the consequence of the proceedings before this Hon'ble Tribunal has brought out by the SCNs themselves. The Hon'ble High Court, vide Orders dated 10.10.2025 and 16.10.2025, had granted liberty to the Respondent No. 5 to file a reply to the Show Cause Notices and directed the authority to grant an opportunity of hearing.

12. That on 30.10.2025, Respondent No. 5 filed its Reply to the UPPCB Reply Affidavit dated 18.09.2025 submitting the incongruencies of the findings of the Joint Committee Report and the Reports of the Competent Authority of both the States of Haryana and Uttar Pradesh. The said Reply also informed this Hon'ble Tribunal about the Writ Petition preferred before the Hon'ble High Court of Allahabad impugning the SCNs dated 18.03.2025 and 02.05.2025 in the two cases as mentioned above. That in the said Reply, the answering Respondent also informed this Hon'ble Tribunal about yet another case titled Ajayveer Singh vs State of Uttar Pradesh in OA No. 1190/2024 wherein the Environmental Clearance itself was held to be illegal vide Judgment dated 06.08.2025. The said Judgment was challenged before the Hon'ble Supreme Court on 24.09.2025 which includes the direction to compute environmental compensation for alleged illegal mining. The Hon'ble Supreme Court was pleased to issue Notice and stay the Order till the next date of hearing on 07.11.2025.

    A copy of the Order dated 07.11.2025 is appended as **ANNEXURE R/1**.

13. Further the Affidavit also brought out the inadmissibility of open-source digital maps and Google Earth images as noted in the case of In Re: Construction of Park at NOIDA near OKHLA Bird Sanctuary [(2011) 1 SCC 744], IA No. 2609/2610 of 2009 in W.P. 202 of 1995 and the fact that there is clear noting that there is only a possibility and apprehension of involvement of the answering Respondent in the alleged illegal mining. That in this regard, the case of M/s Radhika Constructions vs State of Uttar Pradesh [2023 SCC OnLine All 119] was relied upon wherein it was observed that: -

> *"It is in the aforesaid facts and circumstances that this Court is of the view that the allegations against the petitioner for illegal mining could not be clearly established, and merely stating that a large quantity of the minerals have been extracted by them would not ipso facto prove that the petitioner had been involved in illegal mining. It is the duty of the State to obtain and produce credible evidence in support of the allegations to bring home the charges. The arguments in this regard have force, specially relying on the judgment of this Court in the case of Ranveer Singh Vs. State of U.P. and others, 2017 (1) ADJ 240"*

Further reliance was also placed on the Judgment of Hon'ble Supreme Court in the Ranveer Singh v. State of U.P. [2017 (1) ADJ 240] where the Hon'ble Court held that: -

> *"33. Once the liability was to be fastened on the shoulder of the petitioner, then it was the obligation of the State to prove by way of credible evidence available that it was the petitioner, who has indulged in illegal mining and in the said direction, apart from issuing show-cause notice, all the evidence that was sought to be relied upon, i.e., the incumbents who have carried out the search and survey and the incumbents who have come forward to depose against the petitioner their names ought to have been disclosed and they ought to have been*

produced to support the case of the State that petitioner, in fact, has indulged in illegal mining. Not only this, as a part of process, the petitioner was entitled to have reasonable opportunity of defending himself by questioning the veracity of evidence 419 produced against him and by adducing his own evidence, if any. Decision maker is bound to act fairly, as under the scheme of things provided for the determination made by him will entail civil consequences, as qua the person charged with illegal mining, on charges being proved, financial liability would be shouldered and in contra situation, the State would be at loss".

True copies of judgements for In Re: Construction of Park at NOIDA near OKHLA Bird Sanctuary, M/s Radhika Constructions vs State of Uttar Pradesh, Ranveer Singh v. State of U.P is annexed and marked herewith as **ANNEXURE R/2 (Colly).**

14. That the present Response is being filed pursuant to the liberty granted by this Hon'ble Tribunal, vide Order dated 29.01.2026, whereby the Respondent No. 5 was granted time to file response/objections to the calculation of Environmental Compensation as laid out by the UPPCB.

15. That apart from the fact that the issue of illegal mining, the cancellation of EC and the imposition of illegal mining is already before the Hon'ble Supreme Court in the case of Ajayveer where all such issues may be resolved by all parties concerned and that is a ground alone to adjourn this case sine die, arguendo, the following submissions are being made

in with regard to the erroneous manner in which compensation has been levied.

16. That it is submitted that as per the Show Cause Notices dated 18.03.2025 and 02.05.2025, the Environmental Compensation has been calculated based on the methodology given in the 'Recommendations on Scale of Compensation to Deal With the Cases of Illegal Sand Mining' dated 29.01.2020 (hereinafter "**CPCB Recommendations, 2020**") which was formulated by the CPCB in pursuance of the directions issued by this Hon'ble Tribunal in Original Application No. 360 of 2015 National Green Tribunal Bar Association vs Virendra Singh (State of Gujarat) vide Order dated 05.04.2019. A true copy of the CPCB Recommendations dated 29.01.2020 is annexed and marked herewith as **ANNEXURE R/3**. A true copy of the Order dated 05.04.2019 is annexed and marked herewith as **ANNEXURE R/4.**

17. That the CPCB Recommendations dated 29.01.2020 specifies two approaches to compute the ecological damages, wherein Approach 1 involves the charging of compensation considering exceedance factor (EF), Risk Factor (RF), Deterrence Factor (DF) among others and this is an objective approach of charging the environmental compensation and till such time, data and information for a comprehensive NPV was worked out in a site specific manner to account for ecological damages, a simplified NPV based on market value of sand was proposed and given in Approach 2, which was only a temporary approach till the compilation of data. The Approach 2 was approved by this Hon'ble Tribunal, vide Order dated 26.02.2021 in OA No. 360 of 2015, and State Governments were directed to adopt the same.

18. That it is humbly submitted that UPPCB has erred in calculating the Environmental Compensation on the basis of the aforesaid CPCB Recommendations, 2020 which are merely administrative/ executive guidelines and lack any statutory force. In the absence of a statutory backing, these Recommendations cannot form the basis of computing Environmental Compensation. In this regard the case of Suez India Pvt Ltd., Through its Authorized Signatory, Rajesh Chandra Mathpal v. UPPCB through its Chairman & Others [2025 SCC OnLine All 4545] wherein the Allahabad High court held vide Judgment dated 17.07.2025, held that:-

> *"82. In view of the foregoing discussion we hold that the State Pollution Control Board has no power to impose environmental compensation upon any person or industry and it can merely file an application before the NGT under section 15 read with section 18 of the NGT Act, 2010, for issuance of a direction to the person concerned for payment of compensation".*

A true copy of judgement dated 17.07.2025 is annexed and marked herewith as **ANNEXURE R/5.**

19. That thereafter the Judgment of the Hon'ble Supreme Court in Delhi Pollution Control Committee vs Lodhi Property Co. Ltd. Civil Appeal No. 757-760 Of 2013 was delivered. That in the said DPCC vs Lodhi Property Judgment [2025 INSC 923], the Hon'ble Supreme Court upheld the power of the Pollution Control Boards to impose environmental damages and directed that such powers must be exercised in accordance with the procedure laid down by the subordinate legislation in the form

or Rules and Regulations to be notified. The Hon'ble Court further observed that such subordinate legislation must, *inter alia,* prescribe the methods by which environmental damage is determined, and quantum of damages are assessed. The relevant portion from the Judgment is reproduced below for ready reference: -

> *"35. To ensure that the Boards impose restitutionary and the compensatory environmental damages in a fair transparent, non-arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of rules and regulations must be notified.* ***This shall include methods by which environmental damage is determined, and the consequent quantum of damages are assessed. They may also incorporate certain basic principles of natural justice for fairness in action..." (Emphasis supplied)***
>
> A Copy of the Judgment of Hon'ble Supreme Court in Delhi Pollution Control Committee vs Lodhi Property Co. Ltd. is annexed and marked herewith as **ANNEXURE R/6**.

20. That a bare perusal of the aforesaid direction clearly demonstrates that the method of determining environmental damage and assessing the quantum of damages must be prescribed through a statutory framework i.e., through duly notified Rules or Regulations. In the absence of such statutory backing, the determination of Environmental Compensation cannot be based merely on administrative or executive Recommendations.

21. That a parallel can also be drawn between the CPCB Guidelines dated 29.01.2020 and the General Framework for Imposing Environmental Damage Compensation, issued by the Central Pollution Control Board in December 2022, pursuant to the Order dated 24.04.2019 passed by this Hon'ble Tribunal in O.A. No. 606/2018. The said framework lays down a general methodology intended to guide the process of assessment of environmental damage and estimation of Environmental Damage Compensation. A Copy of General Framework for Imposing Environmental Damage Compensation, issued by the Central Pollution Control Board in December 2022 along with Order of Hon'ble Tribunal in O.A. No. 606/2018 dated 24.04.2019 is annexed and marked herewith as **ANNEXURE R/7 (Colly).**

22. That the aforesaid framework came up for consideration before the Hon'ble Supreme Court in DPCC vs Lodhi Property Co. Ltd., wherein the Hon'ble Court observed that environmental damages are presently being levied on the basis of the said 2022 Guidelines issued pursuant to the directions of this Hon'ble Tribunal. However, the Hon'ble Supreme Court further directed that such guidelines must be thoroughly reviewed and notified in the form of Rules and Regulations, so as to provide a statutory framework governing the method for determination and assessment of Environmental Damage Compensation.

23. That similarly, the Hon'ble High Court of Rajasthan, in M/s Tata Bricks Co. vs Rajasthan State Pollution Control Board, S.B. Civil Writ Petition No. 645/2025, while examining the legality of imposition of Environmental Compensation by Rajasthan State Pollution Control Board based on 2022 Guidelines was of the considered view that said Guidelines do not possess statutory backing. Significantly, the Court also

observed that presently there is no legislation providing method of calculating Environmental Compensation. A true copy of M/s Tata Bricks Co. vs Rajasthan State Pollution Control Board judgment is annexed and marked herewith as **ANNEXURE R/8**.

24. That the aforesaid principle is squarely applicable in case of the CPCB Recommendations 2020 as well. Much like the 2022 Guidelines, the CPCB Recommendations 2020 do not derive any force from any statutory enactment and in the absence of any statutory legislation laying down the methodology for assessing the quantum of Environmental Compensation as per the DPCC vs Lodhi Judgment, the computation of the Environmental Compensation, as contained in the Show Cause Notices dated 18.03.2025 and 02.05.2025, is unsustainable in law.

25. That at this juncture, it is also worth noting that the CPCB Recommendations 2020 itself notes that the methodology/ approach prescribed therein is *Interim in nature* and there is a need for detailed site-specific assessments of the river system. During the Minutes of Meeting dated 11.09.2020 of Committee of Experts constituted in OA No. 360 of 2015, it was noted on behalf of Director, MoEF&CC that – "scale of compensation suggested by committee was an *interim arrangement* to act as a *guiding factor* for the purpose till the detailed studies are conducted." A True copy of Minutes of Meeting dated 11.09.2020 is annexed and marked herewith as **ANNEXURE R/9**.

26. That the CPCB Recommendation lays down two approaches viz. Direct compensation based on the market value of extraction, adjusted for ecological damages and the Simplified Net Present Value (NPV) approach. Paragraph 4 of the Recommendations notes that – attribution of illegal mining of a specific impact at the landscape level require

careful evaluation. Till such information becomes available, two alternative approaches for compensation are proposed. Furthermore, the approach no. 2 (simplified NPV approach), which was approved by this Hon'ble Tribunal, vide Order dated 26.02.2021 in OA No. 360 of 2015, includes - Risk Factor (RF) as one of the criteria for computing Environmental Compensation. RF reflects the severity of the ecological damages at the field site in question. The 2020 Recommendations lays down certain criteria viz. Morphology, Hydrology, Ecology, and River Structure, and notes that these criteria can be *considered* by the states for judging the risk factor applicable at various sites. Accordingly, states may develop a subjective scale for severity if impact for purposes of implementing the interim compensation scale based on the criteria noted above. Furthermore, the Directions under Section 5 of the Environment (Protection) Act, 1986 dated 11.06.2021 have also been issued by the CPCB to Environment Secretaries of the State Government directing to evolve an appropriate mechanism for assessment and recovery of compensation in all the Districts of the State. A true copy of the Directions dated 11.06.2021 is annexed and marked herewith as **ANNEXURE R/10**.

27. That therefore, it is humbly submitted that the CPCB Recommendations, 2020 do not have a statutory force. They were merely issued as an interim arrangement to provide guidance to the State Governments, till such additional studies have been undertaken by the State Governments. It is unclear whether such additional studies have been completed and whether a subjective scale for severity of impact for the purposes of interim compensation scale, as required under the said Recommendations, have been laid down by the State of Uttar Pradesh.

28. That is further noted that prior to imposing Environmental Compensation upon Respondent No. 5, no prior assessment or determination of the actual environmental damage, if any, that may have resulted from the alleged illegal mining activities of Respondent No. 5 was done by the UPPCB.

29. That in DPCC vs Lodhi Property Judgment, the Hon'ble Supreme Court held that the State Board cannot impose environmental damages in case of every contravention or offences under the Water Act and Air Act and it is only when the Board has made a determination that some form of environmental damage or harm has been caused by the erring entity, or the same is so imminent that the Board must initiate action (*refer Paragraph 30 of the Judgment*).

30. That the Enforcement & Monitoring Guidelines for Sand Mining dated January, 2020 (hereinafter "2020 Guidelines") also provides that: -

> *"The environmental damages incurred or resulting due to illegal mining shall be assessed by a Committee constituted by District Administration having expertise from relevant fields, and also having independent representation of locals and State Pollution Control Board...*

True copy of Enforcement & Monitoring Guidelines for Sand Mining dated January 2020 is annexed and marked herewith as **ANNEXURE R/11.**

31. That therefore it is evident that prior to imposing Environmental Compensation, environmental damages resulting from mining activities have to be assessed and in the absence of such assessment, the State

Boards cannot impose environmental damages in a routine manner in case of every alleged contravention. In the present case, no such assessment or determination of environmental damages by the mining activities of Respondent No. 5 have been done by the UPPCB. Rather, EC has been imposed by merely relying on the Joint Committee Report dated 20.01.2025 filed in Yashveer Singh vs State of Uttar Pradesh & Ors. and Report dated 01.04.2025 filed in present matter without carrying any independent assessment of the ecological damages by UPPCB on its own or through a Committee constituted by the District Administration as per the 2020 Guidelines.

32. That the Inspection Reports dated 20.01.2025 and 01.04.2025 are mainly based on the information received from the Mining Department and do not provide any assessment or determination of the environmental damages as envisaged by the 2020 Guidelines and DPCC vs Lodhi Judgment. Significantly, the Inspection Report dated 20.01.2025 itself notes that the mining operations of the Respondent No. 5 were being undertaken lawfully, barring some minor deviations, while the Inspection Report dated 01.04.2025 merely notes that involvement of M/s Royal Construction Co. in illegal mining *cannot be ruled out* and no attempt has been made by UPPCB to verify the findings of the Report. Thus, in the absence of any independent assessment of its own, UPPCB erred by computing Environmental Compensation solely on the basis of Inspection Reports, especially since such no such assessment/ determination is reflected in the Show Cause Notices dated 18.03.2025 and 02.05.2025.

33. That assuming arguendo that the CPCB Recommendations 2020 could be relied upon for calculating Environmental Compensation, it is

submitted that the Simplified NPV Approach (Approach 2) which has been applied in the case of Respondent No. 5, is based on the following formulae: -

- Total Benefits (B) = Market Value of illegal extraction: D
- Total Ecological Costs (C) = Market Value adjusted for Risk Factor: D * RF

Thus, Risk Factor (or RF), which captures the extent of ecological damages, is an important criterion for the Simplified NPV Approach.

34. That at the cost of reiteration, it may be noted that the CPCB Recommendations, 2020 itself notes that proper basin level studies have to be carried out to determine RF as there could be "substantial variation in the ecological conditions and resultant damages across the site where mining takes place". However, as noted above, it is unclear whether such studies have been untaken and the Responses filed by the UPPCB are also silent on this aspect.

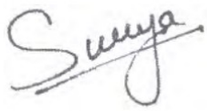
35. That the CPCB has recommended a four-point severity scale i.e., - Mild, Moderate, Significant and Severe for calculating interim Environmental Compensation as given in the Recommendations. Based on this scale UPPCB has arbitrarily taken the Risk Factor as 'Severe' for calculating the Environmental Compensation in case of Respondent No. 5 without providing any reason for the same. As noted above, no independent assessment was undertaken by the UPPCB despite the clear mandate in law. The Joint Inspection Reports also do not contain any such assessment. In view of the same, such a mechanical classification of Respondent No. 5 under 'Severe' category suffers from non-application of mind and is untenable in law.

36. The answering Respondent humbly submits that the findings of the joint committee qua the answering Respondent are not conclusive in nature and the methodology and subordinate legislation is still not in place in accordance with the Lodi Properties case and more over the related case of Ajayveer with regard to the same mining leases and their alleged illegality is sub-judice where a stay is operating, this Hon'ble Tribunal may dispose these Applications accordingly. No prejudice would be cause to anyone as they alternatives remedies available by joining in the ongoing proceedings before the Hon'ble Supreme Court.

Date: 19.03.2026

Place: New Delhi

DRAWN & FILED BY:



Shubham Upadhyay, Surya Gupta, Satvika Krishnan & Anukriti Bajpai
Advocates for the Respondent No. 5
29, LGF, Presidential Estate,
Nizamuddin East, New Delhi 110013
Email: eldflegal@gmail.com; +91-8851323704

SETTLED BY:
Sanjay Upadhyay
Senior Advocate

INDIA NON JUDICIAL

IN-UP31385844819844Y

Government of Uttar Pradesh

e-Stamp

Certificate No.	:	IN-UP31385844819844Y
Certificate Issued Date	:	26-Feb-2026 11:49 AM
Account Reference	:	NEWIMPACC (SV)/ up14839104/ BULANDSHAHR SADAR/ UP-BLS
Unique Doc. Reference	:	SUBIN-UPUP1483910458325265119617Y
Purchased by	:	DAYACHAND BARGOTI SO LATE SHRI HARSWARUP
Description of Document	:	Article 4 Affidavit
Property Description	:	Not Applicable
Consideration Price (Rs.)	:	
First Party	:	DAYACHAND BARGOTI SO LATE SHRI HARSWARUP
Second Party	:	Not Applicable
Stamp Duty Paid By	:	DAYACHAND BARGOTI SO LATE SHRI HARSWARUP
Stamp Duty Amount(Rs.)	:	10 (Ten only)

NOTARY JAI BHAGWAN SINGH Advocate Bulandshahr NOTARIAL (U.P.) NOTARIAL Regd. No. 13308 GOVT. OF INDIA

Please write or type below this line

NOTARY JAI BHAGWAN SINGH Advocate Bulandshahr (U.P.) Regd. No. 13308 GOVT. OF INDIA

Dayachand

BEFORE THE HON'BLE NATIONAL GREEN BENCH

PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 756 OF 2023

IN THE MATTER OF:

Sachin Tyagi ...Applicant

-Versus-

Ritesh Sharma & Ors. ...Respondents

AFFIDAVIT

I, Dayachand Bargoti, son of Late Shri Harswarup, aged about 52 years, R/o House No. 5, New Break Point Restaurant, Near Bhoor Chauraha, Yamunapuram, Bulandshahr, Uttar Pradesh-20300 1, present at New Delhi, am the sole proprietor of Royal Construction Company and the authorized signatory do hereby solemnly affirms and declares as under:

1. That I am fully conversant of the facts and circumstances of the matter and am competent to swear this affidavit.
2. The contents of the accompanying Objections are true and current to the best of my knowledge and have been drafted by the counsel on my instructions and nothing material has been concealed therefrom.
3. That the Annexures in the accompanying Objections are true and correct to the best of my knowledge.

Dayachand

DEPONENT

VERIFICATION:

Verified at ..... on this ..... day of....., 2026 that the contents of the above affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.

ATTESTED

Dayachand

ITEM NO.8 COURT NO.1 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 12932/2025

ROYAL CONSTRUCTION COMPANY **Appellant(s)**

VERSUS

STATE OF UTTAR PRADESH & ORS. **Respondent(s)**

FOR ADMISSION
IA No. 267716/2025 - EXEMPTION FROM FILING O.T.
IA No. 267713/2025 - STAY APPLICATION

Date : 07-11-2025 This matter was called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE K. VINOD CHANDRAN

For Appellant(s) :
Mr. Sanjay Upadhyay, Sr. Adv.
Mr. Shubham Upadhyay, AOR
Mr. Surya Gupta, Adv.
Ms. Anukriti Bajpai, Adv.

For Respondent(s) :

UPON hearing the counsel, the Court made the following
O R D E R

1. Issue notice, returnable in four weeks.

2. Dasti service, in addition, is permitted.

3. In addition to the usual mode, liberty is granted to the petitioner(s) to serve notice through the Central Agency/Standing Counsel for the respondent(s).

4. Till the next date of hearing, there shall be stay of impugned order passed by the National Green Tribunal.

(NARENDRA PRASAD)
DEPUTY REGISTRAR

(ANJU KAPOOR)
ASSISTANT REGISTRAR

(2011) 1 Supreme Court Cases 744

(BEFORE S.H. KAPADIA, C.J. AND AFTAB ALAM AND K.S.P. RADHAKRISHNAN, JJ.)

IN RE: CONSTRUCTION OF PARK AT NOIDA NEAR OKHLA BIRD SANCTUARY

ANAND ARYA AND ANOTHER . . Applicants;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

T.N. GODAVARMAN THIRUMULPAD . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

IAs Nos. 2609-10 of 2009 in WP (C) No. 202 of 1995† with IAs Nos. 2896, 2900 of 2010 in IAs Nos. 2609-10 of 2009 and IA No. 2928 of 2010 in IAs Nos. 2609-10 of 2009 in WP (C) No. 202 of 1995, decided on December 3, 2010

A. **Environment Protection and Pollution Control — Forests — What are — Determination of forest land — Approach and considerations — Man-made forest and Afforestation — What are — Plantations for purpose of creating an urban park distinguished from afforestation — State Government project at NOIDA for building large-scale memorial with extensive stone-work diverting such urban park land and felling all trees thereon — Legality of — Held, any definition of "forest" howsoever wide relates to a context and cannot be applied absolutely, universally and totally independent of context — Though man-made forest with passage of time may acquire forest-like character and become forest, this rule has no universal application — Planting of trees in agricultural/non-forest land being for purpose of creating urban park and not for purpose of afforestation — Such trees being allowed to stand and grow for about 12-14 years when they were cut down to make the area clear for alleged project on forest land — Said plantation, held, cannot be classified as forest land, nor deemed forest nor forest-like area — Hence impugned project not illegal — Forest (Conservation) Act, 1980 — S. 2 — Term "forest" under — Determination of ambit of**

B. **Environment Protection and Pollution Control — Forests — Identification — Acceptable evidence/proof — Satellite image showing forest cover, held, may not reveal complete picture — Revenue records corroborated by land acquisition proceedings revealed that land was not forest — Such revenue records were reliable because, they were much prior to project alleged to have diverted forest land — Forest (Conservation) Act, 1980 — S. 2 — Evidence Act, 1872 — S. 4 — Evidentiary value of satellite**

† Under Article 32 of the Constitution of India

image for determining forest areas, held, may not be conclusive — Therefore, such evidence read with other evidence and ground realities

C. **Environment Protection and Pollution Control — Forest (Conservation) Act, 1980 — S. 2 — Prior approval under, for using land for non-forest purpose — When not required — Project site not being classifiable as forests, prior approval of Central Government, held, was not required**

The centre of the controversy in the present IAs involved a very large project of the Uttar Pradesh Government at NOIDA. The two applicants were residents of NOIDA and had challenged the project on the grounds (1) that the project area was a forest area and violated Section 2, FC Act, (2) that no environmental clearance of EIA Authorities was obtained even if the project fell within the EIA Notification, 2006 under Section 3(3), EP Act and (3) that the project devastated the delicate and sensitive ecological balance of the Okhla Bird Sanctuary to which the site of the project lay adjacent.

Disposing of the IAs, the Supreme Court

Held :

The project site is not forest land and the construction of the project without the prior permission from the Central Government does not in any way contravene Section 2, FC Act. The restriction imposed by Section 2(*ii*) is in respect of forest land. (Para 37)

A satellite image may not always reveal the complete story. In support that there used to be a forest at the project site, the applicants rely upon the report of the CCF based on site inspection and the Google image and most heavily on the FSI Report based on satellite imagery and analysed by GSI application. (Para 24)

In the revenue records, none of the khasras (plots) falling in the project area was ever shown as jungle or forest. According to the settlement year 1359 Fasli (1952 AD) all the khasras are recorded as *agricultural land*, banjar (uncultivable) or parti (uncultivated). The records of the land acquisition proceedings in 1980 to 1983 and 1991 also complement the revenue record of 1952 in which the lands were shown as *agricultural and not as jungle or forest*. There is no reason not to give due credence to these records since they pertain to a time when the impugned project was not even in anyone's imagination and its proponents were nowhere on the scene. (Paras 24 and 25)

Samatha v. *State of A.P.*, (1997) 8 SCC 191; *M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118; *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267, *referred to*

The records pertaining to satellite images have not given information about the different species of trees, their age and the girth of their trunks, etc. The satellite images only reveal that in October 2006 there was thin to moderately dense tree cover over about half of the project site. But this fact is all but admitted. The State Government admits to felling of over 6000 trees in 2008. As per government information on a large tract of land (33.45 ha in area) that was forever agricultural in character, trees were planted with the object of creating an urban park (and not for afforestation!). The trees, thus, planted were allowed to stand and grow for about 12-14 years when they were cut down to make the area clear for the project. (Paras 27 and 26)

But trees planted in the project area cannot be branded as "forest". It is inconceivable that trees planted with the intent to set up an urban park would

turn into forest within a span of 10 to 12 years and the land that was forever agricultural, would be converted into forest land. One may feel strongly about cutting trees in such large numbers and question the wisdom behind replacing a patch of trees by large stone columns and statues but that would not change the trees into a forest or the land over which those trees were standing into forest land. (Paras 28 and 27)

In the order dated 12-12-1996 in *T.N. Godavarman Thirumulpad case*, (1997) 2 SCC 267 the Court gave a very wide definition of "forest". But any definition howsoever wide relates to a context. There can hardly be a legal definition, in terms absolute, and totally independent of the context. The context may or may not find any articulation in the judgment or the order but it is always there and it is discernible by a careful analysis of the facts and circumstances in which the definition was rendered. (Paras 29 to 31)

If the contention of the applicants is accepted and the criterion fixed by the State Level Expert Committee that in the plains a stretch of land with an area of 2 ha or above, with the minimum density of 50 trees per hectare would be a deemed forest is applied mechanically and with no regard to the other factors a greater part of Lutyens Delhi would perhaps qualify as forest. This was obviously not the intent of the order dated 12-12-1996. (Para 36)

The CEC on a consideration of all the materials made available to it, including the report of the FSI (on which the applicants heavily rely), came to hold and find that the project site was not a forest or a deemed forest or a forest-like area in terms of the order of the Supreme Court dated 12-12-1996. (Paras 9 to 16)

No doubt a man-made forest may equally be a forest as a naturally grown one and a non-forest land may also, with the passage of time, change its character and become forest land. But this also cannot be a rule of universal application and must be examined in the overall facts of the case. Otherwise it would lead to highly anomalous conclusions. Almost all the relied on orders and judgments defining "forest" and "forest land" for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries. In the case in hand the context is completely different. Hence, the decisions relied upon can be applied only to an extent and not in absolute terms. (Para 35)

T.N. Godavarman Thirumulpad v. *Union of India*, (1997) 2 SCC 267; *T.N. Godavarman Thirumulpad (98)* v. *Union of India*, (2006) 5 SCC 28; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 6 SCC 747, *referred to*

Samatha v. *State of A.P.*, (1997) 8 SCC 191; *M.C. Mehta* v. *Union of India*, (2004) 12 SCC 118, *partly distinguished*

Ambica Quarry Works v. *State of Gujarat*, (1987) 1 SCC 213; *Rural Litigation and Entitlement Kendra* v. *State of U.P.*, 1989 Supp (1) SCC 504; *Supreme Court Monitoring Committee* v. *Mussoorie Dehradun Development Authority*, (1997) 11 SCC 605; *State of Bihar* v. *Banshi Ram Modi*, (1985) 3 SCC 643, *cited*

D. **Environment Protection and Pollution Control — Forests — Diversion of forest land — State Government project at NOIDA for building large-scale memorial with extensive stone-work — Classification of — EIA clearance, whether required as per scheme of EIA Notification S.O. 1533(E) dt. 14-9-2006 issued under S. 3(3), EP Act — (1) Applying common parlance**

test to consider dominant purpose of alleged project, and (2) considering scheme of said notification, held, project concerned does not fall under B1 category requiring EIA report/clearance — Project cannot be classified as "township and area development project" under Item 8(b) because its total area and building area are 33.43 ha and 1,05,544.49 sq m respectively whereas the threshold limit for EIA eligibility is 50 ha and 1,50,000 sq m respectively as per Columns 5 and 4 of Schedule to said notification, respectively — Project cannot be classified as "building and construction project" under Item 8(a) either as notification treats projects under Item 8(b) separately and differently from those under Item 8(a) and considering dominant character of project it could have fallen under Item 8(b) if it would not have been within prescribed threshold limits — Environment (Protection) Act, 1986 — S. 3(3) — Notification S.O. 1533(E) dt. 14-9-2006 Items 8(a) and (b) of Schedule — Applicability (Paras 43 to 46, 60 and 66)

T.N. Godavarman Thirumulpad v. *Union of India*, (2010) 13 SCC 740, *referred to*

E. **Environment Protection and Pollution Control — Forests — Diversion of forest land — EIA clearance, whether required as per scheme of EIA Notification S.O. 1533(E) dt. 14-9-2006 issued under S. 3(3), EP Act — Different categories and their requirements, stated (Paras 50 and 51)**

F. **Evidence Act, 1872 — Ss. 3, 5, 7 and 9 — Irrelevance of derivative issues — Since it is held that project concerned does not come within ambit of notification concerned, the other three arguments based on activity area, application of general condition and application of the Office Memorandum dt. 2-12-2009, held, become irrelevant and need not be gone into (Paras 67 and 57)**

G. **Constitution of India — Arts. 21, 48-A and 51-A(g) — Town planning project — Viability and continuance of, considering it being adjacent to bird sanctuary — Expert body not holding project to be calamitous or ruinous enough to be entirely scrapped in order to save bird sanctuary — Therefore, said project allowed to continue with conditions recommended by expert bodies and further condition of being overseen by expert committee as directed — Further clarified that this is not to be treated as a precedent when Court is hearing matter on "buffer zones" — Environment Protection and Pollution Control — Wildlife — Wildlife sanctuary — Buffer zones — Applicable principles and law (Paras 74 and 79 to 82)**

Goa Foundation v. *Union of India*, WP (C) No. 460 of 2004 order dated 4-12-2006; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 740; *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122; *M.C. Mehta* v. *Union of India*, (1987) 4 SCC 463; *M.C. Mehta* v. *Union of India*, (1988) 1 SCC 471 : 1988 SCC (Cri) 141; *Chhetriya Pardushan Mukti Sangharsh Samiti* v. *State of U.P.*, (1990) 4 SCC 449; *Subhash Kumar* v. *State of Bihar*, (1991) 1 SCC 598; *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577; *B.L. Wadehra (Dr.)* v. *Union of India*, (1996) 2 SCC 594; *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647; *A.P. Pollution Control Board* v. *Prof. M.V. Nayudu*, (1999) 2 SCC 718; *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2002) 10 SCC 606; *Ramji Patel* v. *Nagrik Upbhokta Marg Darshak Manch*, (2000) 3 SCC 29; *State of M.P.* v. *Kedia Leather & Liquor Ltd.*, (2003) 7 SCC 389 : 2003 SCC (Cri) 1642, *referred to*

H. **Environment Protection and Pollution Control — Environment (Protection) Act, 1986 — S. 3(3) — Notification for EIA clearance under — Clarity of notification, stressed — EIA Notification S.O. 1533(E) dt. 14-9-2006 not being clear enough — Government directed to urgently look into said issue (Para 83)**

SS-D/47084/C

Advocates who appeared in this case :

H.P. Raval, Additional Solicitor General, S.K. Dwivedi, Additional Advocate General, Harish N. Salve, U.U. Lalit, Jayant Bhushan, K.K. Venugopal, Raju Ramachandran and S.C. Mishra, Senior Advocates (Siddhartha Chowdhury, A.D.N. Rao, P.K. Manohar, Mihir Chatterjee, Harish Beeran, Manish Kr. Bishnoi, Gautam Talukdar, R.K. Gupta, Rajiv Kr. Dubey, Ankur Talwar and Kamlendra Mishra, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2010) 13 SCC 740, *T.N. Godavarman Thirumulpad* v. *Union of India* 776*c-d*
2. (2010) 6 SCC 747, *T.N. Godavarman Thirumulpad* v. *Union of India* 765*b-c*, 777*c-d*
3. (2006) 5 SCC 28, *T.N. Godavarman Thirumulpad (98)* v. *Union of India* 758*b-c*
4. WP (C) No. 460 of 2004 order dated 4-12-2006, *Goa Foundation* v. *Union of India* 771*d-e*, 775*d*
5. (2004) 12 SCC 118, *M.C. Mehta* v. *Union of India* 758*e*, 762*c*
6. (2003) 7 SCC 389 : 2003 SCC (Cri) 1642, *State of M.P.* v. *Kedia Leather & Liquor Ltd.* 777*a*
7. (2002) 10 SCC 606, *T.N. Godavarman Thirumulpad* v. *Union of India* 777*a*
8. (2000) 10 SCC 664, *Narmada Bachao Andolan* v. *Union of India* 777*a*
9. (2000) 3 SCC 29, *Ramji Patel* v. *Nagrik Upbhokta Marg Darshak Manch* 777*a*
10. (1999) 2 SCC 718, *A.P. Pollution Control Board* v. *Prof. M.V. Nayudu* 777*a*
11. (1997) 11 SCC 605, *Supreme Court Monitoring Committee* v. *Mussoorie Dehradun Development Authority* 760*e-f*
12. (1997) 8 SCC 191, *Samatha* v. *State of A.P.* 758*e*, 761*g-h*
13. (1997) 2 SCC 267, *T.N. Godavarman Thirumulpad* v. *Union of India* 749*b-c*, 753*f-g*, 754*a-b*, 755*e-f*, 756*a-b*, 758*d-e*, 760*a*, 761*b-c*, 761*g*, 762*f-g*, 762*h*
14. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum* v. *Union of India* 777*a*
15. (1996) 2 SCC 594, *B.L. Wadehra (Dr.)* v. *Union of India* 777*a*
16. (1995) 2 SCC 577, *Virender Gaur* v. *State of Haryana* 777*a*
17. (1991) 1 SCC 598, *Subhash Kumar* v. *State of Bihar* 777*a*
18. (1990) 4 SCC 449, *Chhetriya Pardushan Mukti Sangharsh Samiti* v. *State of U.P.* 777*a*
19. 1989 Supp (1) SCC 504, *Rural Litigation and Entitlement Kendra* v. *State of U.P.* 760*e*
20. (1988) 1 SCC 471 : 1988 SCC (Cri) 141, *M.C. Mehta* v. *Union of India* 777*a*
21. (1987) 4 SCC 463, *M.C. Mehta* v. *Union of India* 777*a*
22. (1987) 1 SCC 213, *Ambica Quarry Works* v. *State of Gujarat* 760*e*
23. (1986) 2 SCC 176 : 1986 SCC (Cri) 122, *M.C. Mehta* v. *Union of India* 777*a*
24. (1985) 3 SCC 643, *State of Bihar* v. *Banshi Ram Modi* 760*f*, 761*d-e*, 761*e*, 761*f-g*

The Judgment of the Court was delivered by

AFTAB ALAM, J.— At the centre of the controversy is a very large project of the Uttar Pradesh Government at NOIDA. Objecting to the project are the two applicants who are residents of Sector 15-A, NOIDA, U.P. They claim to be public-spirited people, committed to the cause of environment. According to them, the project, undertaken at the instance of the Uttar Pradesh Government is a "huge unauthorised construction".

2. The applicants state that a very large number of trees were cut down for clearing the ground for the project. The trees that were felled down for the project formed a "forest" as the term was construed by this Court in its order dated 12-12-1996 in *T.N. Godavarman Thirumulpad* v. *Union of India*[1] and the action of the Uttar Pradesh Government in cutting down a veritable forest without the prior permission of the Central Government *and* this Court, was in gross violation of Section 2(*ii*) of the Forest (Conservation) Act, 1980 (hereafter "the FC Act"). The project involved massive constructions that were made without any prior environmental clearance from the Central Government based on environment impact assessment. The constructions were, therefore, in complete breach of the provisions of the Environment (Protection) Act, 1986 (hereafter "the EP Act") and the notification issued under the Act. More importantly, the project was causing great harm, and was bound to further devastate the delicate and sensitive ecological balance of the Okhla Bird Sanctuary to which the site of the project lay adjacent. The project was, thus, in complete disregard of this Court's directions concerning "buffer zones".

3. The State of Uttar Pradesh, of course denies, equally strongly, all the allegations made by the applicants. According to the State, it was setting up a park that would develop and beautify the area in a unique way. The park was conceived as a fine blend of hard and soft landscaping with memorial structures and commemoration pieces. The construction of the park did not violate any law or the order of the Court. There was no infringement of the provisions of the FC Act or the EP Act or the notification made under it. Further, the setting up of the park caused no harm to the bird sanctuary. The applicants' objections to the construction of the park were fanciful and imaginary and actuated by oblique motives.

The Project

4. Before proceeding to examine the arguments of the two sides in greater detail it would be useful to take a look at the project and to put at one place the basic facts concerning it that are admitted or at any rate undeniable.

(*i*) The project is sited at Sector 95, NOIDA. According to the applicants, at the site of the project previously there used to be five parks on the Yamuna front, namely, Mansarovar, Nandan Kanan, Children's Park, Smriti Van and Navagraha, opposite Sectors 14-A, 15-A and 16-A, NOIDA.

1 (1997) 2 SCC 267

(*ii*) The project site, on its western side, lies in very close proximity to the Okhla Bird Sanctuary. The bird sanctuary was formed as a large water body with the adjoining land mass of the embankment as a result of the construction of the Okhla Barrage. It falls partly in Delhi and partly (400 ha in area) in the district of Gautam Buddha Nagar, U.P. The administrative control of the area of the sanctuary is under the Uttar Pradesh Irrigation Department and its management is with the Uttar Pradesh Forest Department. The sanctuary is home to about 302 species of birds. According to the Bombay Natural History Society, out of the bird species found here, 2 are critically endangered, 11 are vulnerable and 7 are nearly threatened. About 50 species are migratory in nature and come here mainly during the winter months. The annual population/visit is estimated as under:

2006-2007	24,166
2007-2008	17,111
2008-2009	21,272

This haven for birds was declared a bird sanctuary (the Okhla Bird Sanctuary) vide Notification dated 8-5-1990 issued by the State of Uttar Pradesh under Section 18 of the Wildlife (Protection) Act, 1972. The project, subject of the present controversy, is sited in very close proximity to the Okhla Bird Sanctuary on its eastern side. The applicants refer to it as adjoining the left afflux bund of the Okhla Bird Sanctuary but to be accurate it lies about 35-50 m away from the outer limit of the sanctuary. According to the applicants, the boundary of the project site is as under:

North	Delhi-U.P. DND Toll Road
South	Not clearly stated
East	Dadri Road
West	Okhla Bird Sanctuary, left afflux bund

(*iii*) The project is spread over an area of 33.43 ha, equal to 334334.00 sq m of land surrounded by a boundary wall made of stone, 2 m in height and 0.3 m in thickness. The estimated cost of the project is ₹685 crores.

(*iv*) At the site of the project there used to be a tree cover, thin to high-moderate in density and for clearing the ground for the project six thousand one hundred and eighty-six (6186) trees were cut down and one hundred and seventy-nine (179) were "shifted". These trees were of subabul, bottle brush, bottle palm, morepankhi, *Ficus benjamina*, *Cassia siamea*, eucalyptus, fishtail palm, rubber plant, silver oak, etc.

(*v*) The project, though insisted upon by the Uttar Pradesh Government as nothing but a "recreational park", involves the construction of dedicatory columns, commemorative plaza, national memorial, plinth with sculptures, larger than life-size statues on tall

pedestals, large stone tablets with tributary engravings, pedestrian pathways, service block, boundary wall, hard landscape, soft landscape, etc. As initially planned the break-up of the area under different uses was as under:

1.	Total area within boundary wall	3,34,334.00 sq m	
2.	Total built-up covered area for activities (*a*) Memorial building and toilet blocks (*b*) Utilities and facilities	3499.50 sq m 3500.00 sq m	1.05% 1.05%
3.	Area under hard landscape (including platforms, plinth, sculptures and surrounding paved areas, paths)	1,29,140.80 sq m	38.62%
4.	Total area under soft landscape (*a*) Area under grass and plantation (*b*) Area under planters built within paved areas	1,57,161.79 sq m 6181.91 sq m	47.01% 1.85%
5.	Total area for vehicular movement with grass pavers (maintenance, fire path, etc.)	34,850.00 sq m	10.42%

(*vi*) According to the State Government, the work on the project commenced in January 2008. The applicants filed IA No. 1179 before the Central Empowered Committee (hereafter "CEC") constituted by this Court on 5-3-2009. They filed IAs Nos. 2609-10 of 2010 (presently in hand) before this Court on 22-4-2009. According to the State Government, by that time 50% of the construction work of the project was complete. The report from CEC was received in this Court on 4-9-2009 and on 9-10-2009, this Court by an interim order restrained the State Government from carrying on any further constructions till further orders. By that time, according to the Government, 70-75% of the construction work of the project was completed.

(*vii*) In the course of hearing of the matter, on a suggestion made by the Court, the State Government modified the layout plan increasing the soft/green area from 47% to 65.28% of the total area of the project. The revised layout plan is as under:

Sl. No.	*Description*	*Existing (in sq m + %)*	*Modified (in sq m + %)*
1.	Green area	1,57,161.79 (47%)	2,18,246.51 (65.28%)
2.	Hard landscape	1,29,140.80 (38.6%)	98,544.99 (29.48%)
	(*a*) Boundary wall	2700.79 (0.81%)	2700.79 (0.81%)
	(*b*) Platforms, plinths, sculpture and surrounding paved areas	1,26,440.00 (37.79%)	95,844.99 (29.48%)
3.	Area for vehicular movement	34,850.00 (10.42%)	0.00 (Nil)
4.	Area under ornamental water feature (may be considered part of the eco friendly area)	0.00 (Nil)	6302.00 (1.88%)
5.	Area under parking with grass pavers (may be considered part of the eco friendly area)	0.00 (Nil)	4241.00 (1.27%)
6.	Utilities and facilities	3500.00 (1.05%)	3500.00 (1.05%)
7.	Memorial building and toilets	3499.50 (1.05%)	3499.50 (1.05%)
8.	Total area	3,34,334.00 (100%)	3,34,334.00 (100%)

Under the amended plan, around 7300 trees, more than 4 years of age and measuring 8-12 ft in height, belonging to the native species such as neem, peepal, pilkhan, maulsari, imli, shisham, mango, litchi and belpatra will be planted in the project area.

5. According to the State Government, the revised plan that includes planting of trees in such large numbers would not only restore the tree cover that was in existence at the site earlier but would make the whole area far better, more beautiful and environment friendly. The applicants, however, would have none of it. On their behalf it is contended that the whole project is bad and illegal from every conceivable point of view; its construction was started and sought to be completed at a breakneck speed in flagrant violation of the laws. According to the applicants, therefore, all the structures at the project site, complete, semi-complete or under construction must be pulled down and the project site be restored to its original state.

The project and Section 2 of the FC Act

6. Mr Jayant Bhushan, learned Senior Counsel appearing for the applicants submitted that over six thousand trees were admittedly cut down for clearing the area for the construction of the project and it was, thus, clearly a case of forest land being put to use for non-forest purpose in complete violation of Section 2(*ii*) of the FC Act.

7. Section 2 of the FC Act, insofar as relevant for the present, provides as follows:

> "2. *Restriction on the de-reservation of forests or use of forest land for non-forest purpose*.—Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—
>
> (*i*) * * *
>
> (*ii*) that any forest land or any portion thereof may be used for any non-forest purpose;
>
> (*iii*)-(*iv*) * * *
>
> *Explanation*.—For the purposes of this section 'non-forest purpose' means the breaking up or clearing of any forest land or portion thereof for—
>
> (*a*) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;
>
> (*b*) any purpose other than re-afforestation,
>
> but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of checkposts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes."

The restriction imposed by Section 2(*ii*) is in respect of forest land. It, therefore, needs to be ascertained whether the project area can be said to be forest land where there was a forest that was cut to make the site clear for the project.

8. In support of the contention that the trees that were cleared for the construction of the project comprised a forest, the applicants rely heavily on the order passed by this Court on 12-12-1996 in *T.N. Godavarman Thirumulpad*[1], being the first in a series of landmark orders passed by this Court in an effort to save the fast diminishing forest cover of the country against the greedy and wanton plundering of its natural resources. In that order the Court gave a number of directions. One such direction, at Serial No. 5 to each of the State Governments, is as under: (SCC p. 271, para 5)

> "5. (5) Each State Government should constitute within one month an Expert Committee to:
>
> (*i*) identify areas which are 'forests', irrespective of whether they are so notified, recognised or classified under any law, and irrespective of the ownership of the land of such forest;

1 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

(*ii*) identify areas which were earlier forests but stand degraded, denuded or cleared; and

(*iii*) identify areas covered by plantation trees belonging to the Government and those belonging to private persons."

9. In pursuance of the direction of the Court in *T.N. Godavarman Thirumulpad*[1], the Uttar Pradesh Government constituted the State Level Expert Committee for identifying forests and forest-like areas. The Committee in its report dated 12-12-2007 framed certain parameters for identification of forest-like areas according to which, in the plains, any stretch of land over 2 ha in area with the minimum density of 50 trees per hectare would be considered as "forest". On 11-1-2008 (as taken note of in the order of that date) it was reported to this Court that the guidelines were issued for identification of forest-like areas and steps would be taken to identify "forest-like areas" in all the districts in the State of Uttar Pradesh within four months and such areas would be handed over to the Forest Department, excepting the private areas, if any.

10. As the process of search and identification of forest-like areas in the districts of Uttar Pradesh proceeded, the District Level Committee headed by the District Collector, Gautam Buddha Nagar, by its letter dated 26-2-2008 addressed to the Conservator of Forests and Regional Director intimated that there was no forest-like area in the district and consequently the project site was not identified as a forest or forest-like area by the State Level Expert Committee constituted in pursuance of this Court's order dated 12-12-2006. It was in this background that the project started, according to the State Government, in January 2008. When the work on the project became noticeable from the outside the applicants filed their complaint before the CEC on 5-3-2009.

11. As the controversy erupted with regards to "large-scale construction near the Okhla Bird Sanctuary by the State Government" the Ministry of Environment and Forests (hereafter "MoEF") asked the Chief Conservator of Forests (CCF), Central Region, Lucknow, to make a site inspection of the project and to give his report. The CCF in his report dated 10-7-2009 did not accept the stand of the State Government that there was no forest on the project site. He stated that 6000 trees were "sacrificed" in an area of 32.5 ha and that showed that the area had sufficiently dense forest cover and would qualify as "forest" according to the dictionary meaning of the word and as directed by the Supreme Court. He, however, suggested that before taking a final view on the matter a report may be called for from the Forest Survey of India (hereafter "FSI") in order to verify the vegetation cover over the area before the construction work started there.

12. In the light of the report by the CCF, the MoEF noted that the number of cut trees, in ratio to the project area, was apparently more than three times in excess of the criterion fixed by the State Level Expert Committee for identification of forest like areas (i.e. minimum of 50 trees per hectare). As

1 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

suggested by the CCF, therefore, the MoEF called for a report from the FSI based on satellite imagery and properly analysed by GSI application from the year 2001 onwards (vide Letter dated 17-7-2009 from the Deputy Conservator of Forests (C) to the Director, Forest Survey of India). The FSI gave its report on 7-8-2009 which we shall examine presently. In light of the report of the CCF and the report from the FSI, MoEF in its first response to the applicants' complaint before the CEC (under covering letter that is undated, received at the CEC on 12-8-2009) stated that at the project site "there was a good patch of forests and which *could* be treated as deemed forest". It further said that the report of the FSI showed that the forest cover existed there up to 2006 and the felling of trees might have taken place after that only.

13. In the meeting convened by the CEC on the applicants' complaint on 12-8-2009, the Chief Conservator of Forests (CCF), MoEF, Lucknow stated that the plantation done in the project area was naturalised and having regard to the number of trees that existed in the area, the project area should be seen as "deemed forest" and, therefore, it attracted the provisions of the FC Act, and any non-forest use of the land required prior approval of the Central Government. In view of the stand taken by the CCF, the CEC by its letter of 13-8-2009 requested the MoEF to give its response on the issue.

14. Here it may be noted that till that stage the stand of the MoEF, based on the reports of the CCF and the FSI, though tentative, seemed to be definitely inclined towards holding that the trees that were felled for clearing the site comprised a forest/deemed forest and the construction at the project site was hit by the provisions of the FC Act. But now in a perceptible shift in its stand the MoEF informed the CEC by its Letter of 22-8-2009/24-8-2009 that in its view, the project site did not attract the provisions of the FC Act. It referred to the order of this Court dated 12-12-1996[1] and pointed out that the project site did not appear in the list of deemed forest land identified by the State Level Expert Committee in pursuance of the order of the Court. It concluded by saying as follows:

> "In view of the above, it is informed that the area under discussion is neither recorded as forest nor deemed forest and is actually an urban tree park. Therefore, construction work in this area does not attract the provisions of the Forest (Conservation) Act, 1980."

15. The Letter dated 22-8-2009/24-8-2009 from the MoEF was followed by another Letter of 2-9-2009. This was purportedly to put the observation in the previous letter that "... [C]onstruction work in this area does not attract the provisions of the Forest (Conservation) Act, 1980" in context. This letter referred to the satellite images provided by the FSI and the reports submitted by the CCF but in the end, "given the sensitivity of the matter and the high degree of public interest" left it to the CEC to draw appropriate conclusions from the materials furnished to it.

1 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

16. The CEC on a consideration of all the materials made available to it, including the report of the FSI (on which the applicants heavily rely), came to hold and find that the project site was not a forest or a deemed forest or a forest-like area in terms of the order of this Court dated 12-12-1996[1]. In its report to this Court dated 4-9-2009 it observed in this regard as follows:

> "28. … In the present case, even though as per the report of the Forest Survey of India, the area was having good forest/tree cover and the project area had more than 6000 trees, it does not fall in the category of 'forest' for the purpose of Section 2 of the Forest (Conservation) Act and therefore does not require any approval under the Forest (Conservation) Act. *The project area does not have naturally grown trees but planted trees. The area has neither been notified as 'forest' nor recorded as 'forest' in the government record. In the exercise carried out by the State of Uttar Pradesh, after detailed guidelines for identification of deemed forest were laid down, the project area was not identified to be deemed forest*. The CEC does not agree with the Regional Chief Conservator of Forests, MoEF, Lucknow that the plantation done in the area has naturalised because of natural regeneration and therefore now falls in the category of deemed forest. Most of the trees are of species such as subabul, bottle brush, bottle palm, morepankhi, *Ficus benjamina*, *Cassia siamea*, eucalyptus, fishtail palm, rubber plant, silver oak, etc. *which are not of natural regeneration. As such hardly any tree of natural regeneration exists*.
>
> 29. As per the definition of 'forest' as held by the Hon'ble Supreme Court in its order dated 12-12-1996, the project area therefore cannot be treated as 'forest' for the purpose of the Forest (Conservation) Act."
>
> (emphasis added)

17. Mr Jayant Bhushan strongly assailed the finding of the CEC as erroneous. The learned counsel stated that the CEC took the view that the project area could not be described as "forest" and did not attract the provisions of the FC Act mainly because the trees in the project area that were cut down for making space for the constructions were planted trees and not naturally grown trees. He contended that the reason given by the CEC was quite untenable being contrary to the judgments of this Court where it is held that forest may be natural or man-made. He further submitted that the view that in order to qualify as forest the trees must be "naturally grown" is fraught with grave consequences inasmuch as a very large portion of the forests in India are planted forests and not original, natural forests. Further, any afforested area would also cease to be recognised as a forest if the view taken by the CEC were to be upheld.

18. The other reasons given by the CEC for holding that the project area was not a forest was that it was neither notified as "forest" nor recorded as "forest" in the government record and even in the exercise carried out by the State of Uttar Pradesh, after detailed guidelines for identification of deemed forest were laid down, the project area was not identified to be deemed forest.

1 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

Mr Bhushan contended that these reasons were as misconceived as the previous one. The area was not notified or recorded as forest meant nothing since this Court had passed a series of orders with the object to bring such areas within the protection of the FC Act that were not notified or recorded as forest. In the same way the failure of the State Level Expert Committee to identify the project area as forest even though it fully satisfied the criterion set by the Committee itself for the purpose will not alter the true nature and character of the area as forest land.

19. Mr K.K. Venugopal, learned Senior Counsel appearing for the State of U.P. strongly supported the view taken by the CEC. The learned counsel submitted that the omission to identify the trees at the project site as forest or deemed forest was not due to any mistake or by chance. He pointed out that in the parameters set out by the State Level Expert Committee for identification of forests or forest-like areas it was clarified that "trees mean naturally grown perennial trees" and it was further stipulated that "the plantation done on public land or private land will not be identified as forest-like area". Mr Venugopal submitted that the guidelines made by the Expert Committee were reported to this Court and accepted by it on 12-12-2007. The project site clearly did not come within the parameters fixed by the Expert Committee and it was rightly not identified as a forest-like area. The parameters fixed by the Expert Committee for identification of forests or forest-like area were never challenged by anyone and now it was too late in the day to question those parameters, more so after those were accepted by this Court. Mr Venugopal contended that the non-inclusion of the project site as a forest or forest-like area by the State Level Expert Committee should be conclusive of the fact that the area was not forest land and the trees standing there were no forest.

20. Mr Bhushan contended that a tract of land bearing a thick cluster of trees that would qualify as forest land and forest as defined by the orders of this Court would not cease to be so simply because the parameters adopted by the Expert Committee were deficient and inconsistent with this Court's orders. In support of the submission that there was actually a forest in that area that was cut down for the project he relied upon the report of the FSI dated 7-8-2009 in which the forest cover status at the project site based on IRS 1D/P6 LI88 III data is shown as follows:

Forest Cover Status in the Area of Interest (AOI) of NOIDA *from 2001 to 2007*

Area in ha

Assessment (State of Forest Report)	*Date of satellite data (sic)*	*Very dense forest*	*Moderately dense forest*	*Open forest*	*Total forest cover*	*Non-forest*	*Total area*
8th (2001)	October 2000	0	3.74	10.42	14.16	32.27	46.43
9th (2003)	November 2002	0	6.05	10.71	18.76	29.67	46.43

10th (2005)	November 2004	0	7.54	14.23	21.77	24.66	46.43
11th (2007)	October 2006	0	9.04	12.73	21.77	24.66	46.43

21. In the report it was also stated that the latest forest cover assessment by the FSI was based on satellite data of 2006 and it did not have any data of the later period. It further stated that the felling of trees might have taken place after October 2006. Mr Bhushan invited our attention to the order of this Court in *T.N. Godavarman Thirumulpad (98)* v. *Union of India*[2] (SCC paras 16, 18, 33, 37, 38) to show that this Court had accepted the reliability of the FSI Report based on satellite imagery.

22. Mr Bhushan also relied upon the report of the CCF, MoEF, Lucknow, a reference to which has already been made above. He also relied upon the first response of the MoEF, where it was stated that at the project site there was a "good patch of forests and which could be treated as a deemed forest" and further that the report of the FSI showed that the forest cover existed there up to 2006 and the felling of trees might have taken place after that only. Mr Bhushan lastly relied upon the Google image which has a dark patch in approximately 1/3rd of the area interpreted by him as a dense cover of trees.

23. In support of the submissions the learned counsel relied greatly on the order passed by this Court on 12-12-1996 in *T.N. Godavarman Thirumulpad*[1]. He also relied upon the decisions of this Court in *Samatha* v. *State of A.P.*[3] (SCC paras 119, 120, 121, 123) and *M.C. Mehta* v. *Union of India*[4] (SCC paras 55, 56, 57).

24. The point raised by Mr Bhushan may be valid in certain cases but in the facts of the case his submissions are quite out of context. In support of the applicants' case that there used to be a forest at the project site he relies upon the report of the CCF based on site inspection and the Google image and most heavily on the FSI Report based on satellite imagery and analysed by GSI application. A satellite image may not always reveal the complete story. Let us for a moment come down from the satellite to the earth and see what picture emerges from the government records and how things appear on the ground. In the revenue records, none of the khasras (plots) falling in the project area was ever shown as jungle or forest. According to the settlement year 1359 Fasli (1952 AD) all the khasras are recorded as *agricultural land*, banjar (uncultivable) or parti (uncultivated).

25. NOIDA was set up in 1976 and the lands of the project area were acquired under the Land Acquisition Act mostly between the years 1980 to

2 (2006) 5 SCC 28
1 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267
3 (1997) 8 SCC 191
4 (2004) 12 SCC 118

1983 (two or three plots were notified under Sections 4/6 of the Act in 1979 and one or two plots as late as in the year 1991). But the possession of a very large part of the lands under acquisition (that now form the project site) was taken over in the year 1983. From the details of the acquisition proceedings furnished in a tabular form (Annexure 9 to the counter-affidavit on behalf of Respondents 2 and 3) it would appear that though on most of the plots there were properties of one kind or the other, *there was not a single tree on any of the plots under acquisition*. The records of the land acquisition proceedings, thus, complement the revenue record of 1952 in which the lands were shown as *agricultural and not as jungle or forest*. There is no reason not to give due credence to these records since they pertain to a time when the impugned project was not even in anyone's imagination and its proponents were nowhere on the scene.

26. Further, in the second response of the MoEF, dated 22-8-2009/24-8-2009 there is a reference to the information furnished by the Deputy Horticulture Officer, NOIDA according to which plantations were taken up along with seed sowing of subabul during the years 1994-1995 to 2007-2008. A total of 9480 saplings were planted (including 314 saplings planted before 1994-1995). NOIDA had treated this area as an "urban park". It is, thus, to be seen that on a large tract of land (33.45 ha in area) that was forever agricultural in character, trees were planted with the object of creating an urban park (and not for afforestation!). The trees, thus, planted were allowed to stand and grow for about 12-14 years when they were cut down to make the area clear for the project.

27. The satellite images tell us how things stand at the time the images were taken. We are not aware whether or not the satellite images can ascertain the different species of trees, their age and the girth of their trunks, etc. But what is on record does not give us all that information. What the satellite images tell us is that in October 2006 there was thin to moderately dense tree cover over about half of the project site. But this fact is all but admitted; the State Government admits felling of over 6000 trees in 2008. How and when the trees came up there we have just seen with reference to the revenue and land acquisition proceedings records. Now, we find it inconceivable that trees planted with the intent to set up an urban park would turn into forest within a span of 10 to 12 years and the land that was forever agricultural, would be converted into forest land. One may feel strongly about cutting trees in such large numbers and question the wisdom behind replacing a patch of trees by large stone columns and statues but that would not change the trees into a forest or the land over which those trees were standing into forest land.

28. The decisions relied upon by Mr Bhushan are also of no help in this case and on the basis of those decisions the trees planted in the project area cannot be branded as "forest".

29. In the order dated 12-12-1996 in *T.N. Godavarman Thirumulpad*[1] this Court held and observed as under: (SCC pp. 269-70, paras 3-4)

> "*3.* It has emerged at the hearing, that there is a misconception in certain quarters about the true scope of the Forest (Conservation) Act, 1980 (for short 'the Act') and the meaning of the word 'forest' used therein. There is also a resulting misconception about the need of prior approval of the Central Government, as required by Section 2 of the Act, in respect of certain activities in the forest area which are more often of a commercial nature. It is necessary to clarify that position.
>
> *4.* The Forest (Conservation) Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(*i*) of the Forest (Conservation) Act. The term 'forest land', occurring in Section 2, will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest (Conservation) Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works* v. *State of Gujarat*[5], *Rural Litigation and Entitlement Kendra* v. *State of U.P.*[6] and recently in the order dated 29-11-1996 (*Supreme Court Monitoring Committee* v. *Mussoorie Dehradun Development Authority*[7]). The earlier decision of this Court in *State of Bihar* v. *Banshi Ram Modi*[8] has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so

1 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267
5 (1987) 1 SCC 213
6 1989 Supp (1) SCC 504
7 (1997) 11 SCC 605
8 (1985) 3 SCC 643

far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

In the above order the Court mainly said three things: one, the provisions of the FC Act must apply to all forests irrespective of the nature of ownership or classification of the forest; two, the word "forest" must be understood according to its dictionary meaning and three, the term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership.

30. The order dated 12-12-1996[1] indeed gives a very wide definition of "forest". But any definition howsoever wide relates to a context. There can hardly be a legal definition, in terms absolute, and totally independent of the context. The context may or may not find any articulation in the judgment or the order but it is always there and it is discernible by a careful analysis of the facts and circumstances in which the definition was rendered. In the order the Court said: (SCC p. 270, para 4)

> "*4.* … The term 'forest land' occurring in Section 2, will not only include 'forest' as understood in the dictionary sense, *but also any area recorded as forest in the government record irrespective of the ownership*." (emphasis added) Now what is meant by that is made clear by referring to the earlier decision of the Court in *State of Bihar* v. *Banshi Ram Modi*[8].

31. In the earlier decision in *Banshi Ram Modi*[8] the Court had said: (SCC p. 647, para 10)

> "*10.* … Reading them together, these two parts of the section mean that after the commencement of the Act no fresh breaking up of the forest land or no fresh clearing of the forest on any such land can be permitted by any State Government or any authority without the prior approval of the Central Government. But if such permission has been accorded before the coming into force of the Act and the forest land is broken up or cleared then obviously the section cannot apply."

32. The observation in *Banshi Ram Modi*[8] (which again was made in the peculiar context of that case!) was sought to be interpreted by some to mean that once the land was broken in course of mining operations it ceased to be forest land. It was in order to quell the mischief and the subversion of Section 2 of the FC Act that the Court in the order dated 12-12-1996[1] made the observation quoted above in italics.

33. In *Samatha*[3], this Court was dealing with cases of grant of mining leases to non-tribals in reserved forests and forests that were notified as scheduled area under the Andhra Pradesh Scheduled Areas Land Transfer

1 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267
8 (1985) 3 SCC 643
3 *Samatha* v. *State of A.P.*, (1997) 8 SCC 191

Regulation, 1959. It was contended on behalf of the leaseholders that the Regulation and the Mining Act do not prohibit grant of mining leases of government land in the scheduled area to non-tribals. The Forest (Conservation) Act or the Andhra Pradesh Forest Act, 1967, does not apply to renewal of leases. The observations in regard to what constitutes a forest made in SCC paras 119, 120, 121 and 123, relied upon by Mr Bhushan, were made when it was sought to be argued by the leaseholders that unless the lands are declared either as reserved forests or forests under the Andhra Pradesh Forest Act, 1967, the FC Act had no application. Hence, there was no prohibition to grant mining lease or to renew it by the State Government. The context in which the Court expanded the definition of forest is, thus, manifest and evident.

34. In *M.C. Mehta* v. *Union of India*[4], in the paragraphs relied upon by Mr Bhushan, this Court was considering the question of permitting mining in Aravalli hills where large-scale afforestation was done by spending crores of rupees of foreign funding in an effort to repair the deep ravages caused to the Aravalli hill range over the years by mostly illegal mining. The context is once again evident.

35. Almost all the orders and judgments of this Court defining "forest" and "forest land" for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries. In the case in hand the context is completely different. Hence, the decisions relied upon by Mr Bhushan can be applied only to an extent and not in absolute terms. To an extent Mr Bhushan is right in contending that a man-made forest may equally be a forest as a naturally grown one. He is also right in contending that non-forest land may also, with the passage of time, change its character and become forest land. But this also cannot be a rule of universal application and must be examined in the overall facts of the case otherwise it would lead to highly anomalous conclusions.

36. Like in this case, Mr Bhushan argued that the two conditions in the guidelines adopted by the State Level Expert Committee i.e. (*i*) "trees mean naturally grown perennial trees", and (*ii*) "the plantation done on public land or private land will not be identified as forest like area" were not consistent with the wide definition of forest given in the 12-12-1996[1] order of the Court and the project area should qualify as forest on the basis of the main parameter fixed by the Committee. If the argument of Mr Bhushan is accepted and the criterion fixed by the State Level Expert Committee that in the plains a stretch of land with an area of 2 ha or above, with the minimum density of 50 trees per hectare would be a deemed forest is applied mechanically and with no regard to the other factors a greater part of Lutyens Delhi would perhaps qualify as forest. This was obviously not the intent of the order dated 12-12-1996[1].

4. (2004) 12 SCC 118

1 *T.N. Godavarman Thirumulpad* v. *Union of India*, (1997) 2 SCC 267

37. In the light of the discussion made above, it must be held that the project site is not forest land and the construction of the project without the prior permission from the Central Government does not in any way contravene Section 2 of the FC Act.

The project and the EIA Notification, 2006

38. Mr Jayant Bhushan next contended that the construction of the project was started by the U.P. Government (and was sought to be completed in great haste!) without obtaining the prior environmental clearance from the Central Government or the State Level Environment Impact Assessment Authority in complete violation of the Notification issued by the Central Government on 14-9-2006 under Section 3(3) of the EP Act.

39. Before proceeding to examine the issue in detail it would be useful to see the views taken by the different authorities, agencies and the MoEF on the question whether the law required prior environmental clearance for the project. It appears that once the controversy was raised, the project proponents, by letter dated 24-4-2009 approached the State Level Environment Impact Assessment Authority, Uttar Pradesh constituted under the EIA Notification, 2006, seeking environmental clearance for the project. In reply SEIAA by its letter dated 7-5-2009 stated that having regard to the nature and the area of the project it was not covered by the schedule of Notification No. S.O. 1533(E) dated 14-9-2006 issued by the Government of India.

40. Before the CEC, the MoEF in its first response dated 22-8-2009/ 24-8-2009 took the stand that the project would not require any prior environmental clearance under the EIA Notification, 2006. It further stated that in the EIA Notification, 2006 all building/construction projects/area development projects and townships, were categorised as Category B projects and *the "general condition" prescribed in the notification was not applicable to construction projects*. It went on to say that the project did not require any prior environmental clearance under the EIA Notification, 2006 even though "being within the prescribed distance from a wildlife sanctuary/national park or inter-State boundary". It needs to be stated here that the first response of the MoEF before the CEC was evidently based on the inputs received from the U.P. Government about the nature of the project and the extent of constructions involved in it.

41. In the second response before the CEC dated 2-9-2009 the MoEF did not appear so sure of its earlier stand. It stated that after its earlier Letter of 22-8-2009, 24-8-2009, the MoEF had received further information about the project from various sources and the fresh findings raised far-reaching issues of public concern that extended beyond the parameters set by the EIA Notification of 2006. It further stated that the certificate issued by SEIAA of U.P. stated that the total built-up covered area was only 9542 sq m and the report of the CCF was not clear as to the extent of the covered area vis-à-vis concrete landscaping, pillar(s), platform(s), lawn(s), tree planting, etc. To put

it simply, the MoEF was not fully in possession of the basic facts relating to the project and its likely impact on the environment. It left the decision in the hands of the CEC.

42. The CEC in its report to this Court dated 4-9-2009 held and found that the project was covered by the EIA Notification, 2006 and it required prior environmental clearance in terms of the notification. In its report, the CEC observed as follows:

> "30. The CEC does not agree with the stand taken by the State Government as well as the MoEF that the project does not require environmental clearance in terms of the MoEF Notification dated 14-9-2006. The MoEF, as well as the State of Uttar Pradesh have taken this view primarily on the ground that the built-up area of the project is less than 20,000 sq m and therefore the project does not require environmental clearance. The built-up area has been calculated by the State of Uttar Pradesh on the basis of its building bye-laws. The CEC is of the view that for the purpose of environmental clearance, the building bye-laws of the State Government have no relevance at all. As per the details provided by the State Government itself, out of 33.43 ha of the project area, 3499.50 sq m is being used for memorial building and toilet blocks, 3500 sq m is being used for utilities and facilities, 1,29,140.80 sq m area is being used for hard landscape including for platforms, plinth, sculptures and surrounded paved area, path, etc. Another 34,850 sq m area is to be used for vehicular movement. The above comes to more than 50% of the project area which in CEC's view qualify to be included in the activity area. The project cost is about ₹685 crores. As per the MoEF Notification dated 14-9-2006, for building/construction project, in the case of facilities open to the sky, the activity area is to be included in the built-up area. In the present case, after including the activity area the total built-up area, for the purpose of environmental clearance, far exceeds the threshold limit of 20,000 sq m of built-up area provided in the notification. The MoEF, on its own admission, has merely relied on the details of the built-up area as provided by the State Government without independently verifying it and has not included the area falling in the category of activity area. In any case, even if there was any doubt in the MoEF regarding the applicability of the environmental clearance in the present case, in view of precautionary principle it should have erred on the side of the caution and should have insisted for the environmental clearance."

43. When the matter finally came up before the Court the MoEF was once again asked to take a clear stand on the issue whether the project was covered by the EIA Notification, 2006. The MoEF filed a brief affidavit on 21-10-2009 in which it acknowledged that the CEC in its report dated 4-9-2006 had stated that the State of U.P. should be directed to seek environmental clearance for the project from the MoEF in terms of the notification. The MoEF, however, reiterated its stand in very definite and unequivocal terms that the project in question did not fall within the ambit of

the EIA Notification, 2006 and no environmental clearance was required for such kind of projects. The stand of the MoEF was based on the premise that the area of the project (33.43 ha) was less than 50 ha and its built-up area (9542 sq m) was less than 20,000 sq m. Having thus made its stand clear, the MoEF went on to say that in case the Court desired the project to be appraised from the environmental angle it would do so and submit its recommendations. It, however, put in a caveat that such appraisals were made before the commencement of the construction activity at the site and in the present case the project was already in the advanced stage of construction.

44. On 22-4-2010[9], this Court passed an order in which after extracting the relevant passage from the affidavit it directed the MoEF to make a study of the environmental impact of the project. The MoEF was further directed to suggest measures for undoing the environmental degradation, if any, caused by the project and the amelioration measures to safeguard the environment, with particular reference to the adjacent bird sanctuary.

45. As directed by the Court, the MoEF asked the project proponents to submit the details concerning the project in the format prescribed under the EIA notification. It also asked the project proponents to have the environmental impact assessment of the project done by some expert agencies. As required by the MoEF, NOIDA submitted the requisite details concerning the project and the reports on the environmental impact assessment of the project based on studies made by three different agencies (we shall have the occasion to consider those reports in the latter part of the judgment). Thereafter, the Expert Appraisal Committee (EAC) constituted by the Central Government for the purpose of the EIA notification examined the project in its 88th meeting held on 28-6-2010, 29-6-2010 and gave its report which is brought on record along with an affidavit filed by the State Government on 22-7-2010. In this report the EAC made as many as 15 recommendations to check any environmental degradation or any harm to the Okhla Bird Sanctuary by the project.

46. The MoEF filed yet another affidavit before the Court on 19-8-2010 in which it tried to explain the distinction between Clauses 8(*a*) and 8(*b*) in the schedule to the EIA Notification, 2006 without changing its stand that the project in question did not come within the ambit of the notification.

47. In course of the oral hearing as well, Mr Raval, learned ASG, firmly maintained that the project did not come under the notification and no prior environmental clearance was required for it under the notification.

48. Mr Harish Salve, learned amicus curiae and Mr Jayant Bhushan, counsel appearing for the applicants, both staunchly contended that the stand of the MoEF was patently wrong and incorrect. The project clearly fell within the ambit of the EIA Notification, 2006. The CEC had taken the correct view on the issue. And to start the construction of the project and take it into an advanced stage of construction without obtaining prior

9 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 6 SCC 747

environmental clearance from the Central Government was in blatant violation of the provisions of the notification. Mr Salve also criticised the Central Government for taking a shifting and inconsistent stand on the issue.

49. Now is the time to take a closer look at the provisions of EIA Notification No. S.O. 1533(E) dated 14-9-2006 issued by the Central Government under Section 3(3) of the EP Act and to consider the submissions advanced by the two sides on that basis. Section 3(3) of the EP Act provides as follows:

> "3. *Power of Central Government to take measures to protect and improve environment.*—(1)-(2) * * *
>
> (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."

50. In exercise of the powers conferred by the above provision the Central Government in the Ministry of Environment and Forests issued Notification No. S.O. 1533(E) on 14-9-2006, which insofar as relevant for the present is reproduced below:

> "MINISTRY OF ENVIRONMENT AND FORESTS
>
> Notification
>
> New Delhi, the 14th September, 2006
>
> *S.O. 1533(E).*—Whereas * * *
>
> And whereas * * *
>
> And whereas * * *
>
> 2. *Requirements of prior environmental clearance (EC).*—The following projects or activities shall require *prior environmental clearance* from the regulatory authority concerned, which shall hereinafter be referred to as the Central Government in the Ministry of Environment and Forests for matters falling under Category A in the schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category B in the said schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:
>
> (*i*) All new projects or activities listed in the schedule to this notification;

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

(*iii*) Any change in product mix in an existing manufacturing unit included in schedule beyond the specified range.

3. * * *

4. *Categorisation of projects and activities.*—

(*i*) All projects and activities are broadly categorised into two categories — Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man-made resources;

(*ii*) All projects or activities included as Category A in the schedule, including expansion and modernisation of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

(*iii*) All projects or activities included as Category B in the schedule, including expansion and modernisation of existing projects or activities as specified in sub-para (*ii*) of Para 2, or change in product mix as specified in sub-para (*iii*) of Para 2, but excluding those which fulfil the general conditions (GC) stipulated in the schedule, *will* require prior environmental clearance from the State/Union Territory Environment Impact Assessment Authority (SEIAA). SEIAA shall base its decision on the recommendations of a State or Union Territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category B project shall be treated as a Category A project;

5.-6. * * *

7. *Stages in the prior environmental clearance (EC) process for new projects.*—

(*i*) * * *

I. Stage (1) Screening: In case of Category B projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the State level Expert Appraisal Committee (SEAC) concerned for determining whether or not the project or activity requires further environmental studies for preparation of an environmental impact assessment (EIA)

for its appraisal prior to the grant of environmental clearance depending upon the nature and location specificity of the project. The projects requiring an environmental impact assessment report shall be termed Category B1 and remaining projects shall be termed Category B2 and will not require an environment impact assessment report. For categorisation of projects into B1 or B2 except Item 8(*b*), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.

8.-12. * * *

SCHEDULE

(See Paras 2 and 7)

List of Projects or Activities Requiring Prior Environmental Clearance

Project or Activity		*Category with threshold limit*		*Conditions if any*
		A	*B*	
8		*Building/Construction projects/Area development projects and Townships*		
(*1*)	(*2*)	(*3*)	(*4*)	(*5*)
8(*a*)	Building and construction projects		≥ 20,000 sq m and < 1,50,000 sq m of built-up area*	* (built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(*b*)	Townships and area development projects.		Covering an area ≥ 50 ha and or built-up area ≥ 1,50,000 sq m**	** All projects under Item 8(*b*) shall be appraised as Category B1

Note:

General condition (GC):

Any project or activity specified in Category B will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (*i*) Protected areas notified under the Wildlife (Protection) Act, 1972; (*ii*) Critically polluted areas as notified by the Central Pollution Control Board from time to time; (*iii*) Notified eco-sensitive areas; (*iv*) inter-State boundaries and international boundaries.

Specific condition (SC):

* * *

(I) Basic information

* * *

(II) Activity

1. Construction, operation or decommissioning of the project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.)

Sl. No.	*Information/checklist confirmation*	*Yes/No*	*Details thereof (with approximate quantities/ rates, wherever possible) with source of information data*
1.1	Permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan)		
1.2	Clearance of existing land, vegetation and buildings		
1.3	Creation of new land uses		
1.4	Pre-construction investigation e.g. bore houses, soil testing		
1.5	Construction works		
1.6	* * *		
| | | 1.31	* * *"		

51. In substance the EIA notification provides that all projects and activities enumerated in its schedule would require prior environmental clearance before any construction work or preparation of land for the project is started on the project or activity. The projects and activities depending upon various factors such as the potential hazard to environment, location, the extent of area involved, etc, are categorised in Categories A or B. For projects or activities falling in Category A, the competent authority to grant prior environmental clearance is the MoEF and for projects or activities falling in Category B, the State Environment Impact Assessment Authority (SEIAA). The constitution of SEIAA is provided for in Clause 3 of the notification with which we are not concerned in this case. In certain cases a project or activity, though categorised in Category B may be treated as Category A by application of the general condition [on account of its location being within a distance of 10 km from a protected area notified under the

Wildlife (Protection) Act, etc.]. In other words, if a project or activity attracts the general condition, the competent authority to grant prior environmental clearance in that case would be the Central Government, even though, the project or activity may figure in the schedule in Category B.

52. Further, projects or activities categorised as Category B may or may not require an environmental impact assessment before the grant of environmental clearance depending on the nature and location specificity of the project. The projects requiring an EIA report shall be termed as Category B1 and the remaining shall be termed as B2 and will not require an EIA report. For categorisation of projects into B1 and B2, the MoEF would issue appropriate guidelines from time to time. The schedule to the notification has a table that is divided into five columns. The first column contains the serial numbers, and the second the description of the project or activities; the third column lists those projects or activities that fall in Category A and the fourth, those falling in Category B; the fifth column against each item indicates whether any general or specific condition applies to the project or activity described in that item. In some cases where the project or the activity is shown in Column 4 as Category B, the application of the general condition is expressly indicated in Column 5 of the table.

53. For the project under consideration, the relevant entries in the schedule are Items 8(*a*) and 8(*b*). Both Items 8(*a*) and 8(*b*) are listed in Column 4 i.e. in Category B. In Column 5, against any of the two items, there is no mention of application of the general condition but it is expressly said that all projects in Item 8(*b*) would be appraised as Category B1, that is to say, for a project under Item 8(*b*) the prior environmental clearance must be preceded by an environmental impact assessment.

54. Item 8(*a*) deals with building and construction projects and the threshold mark that would bring the project within the ambit of the notification is equal to or more than 20,000 sq m and less than 1,50,000 sq m of "built-up area". It is further clarified that the aforementioned figures relate to built-up area for covered construction; in case of facilities open to the sky, the built-up area would be the activity area. Item 8(*b*) deals with townships and area development projects and the threshold mark for the project to come within the ambit of the notification is an area equal to or more than 50 ha or built-up area of more than 1,50,000 sq m.

55. Mr Jayant Bhushan, supported by the amicus curiae forcibly argued that the project under consideration would clearly fall under Item 8(*a*) of the schedule. He submitted that though the area of covered construction in the project was only 6999.50 sq m, the project by its very nature provided facilities open to the sky and in that case, the whole of the activity area would constitute the built-up area. He then referred to the definition of activity [that includes (*i*) permanent or temporary change in land use, land cover or topography including increase in intensity of land use (with respect to local land use plan), (*ii*) clearance of existing land, vegetation and buildings, (*iii*) creation of new land uses, and (iv) pre-construction investigations e.g. bore houses, soil testing]. He contended that in view of the definition of

activity, virtually the entire area of 33.43 ha from where over 6000 trees were removed for clearing the project site would come within the "activity area" and would, thus, form the built-up area under Item 8(*a*) of the schedule.

56. Further, since the project was located adjacent to the Okhla Bird Sanctuary, it would, without doubt, attract the general condition which provided that any project or activity specified in Category B will be treated as Category A, if located within 10 km from the boundary of protected areas notified under the Wildlife (Protection) Act, 1972. Mr Bhushan insisted that the general condition would apply to the project by virtue of its very close proximity to the Okhla Bird Sanctuary, regardless of the fact that in Column 5 of the table there is no mention of application of the general condition against Item 8(*a*). The application of the general condition would take the project out of Category B and put it in Category A for which the competent authority to grant prior environmental clearance is the MoEF.

57. Mr Bhushan then referred to the Office Memo dated 2-12-2009 issued by the MoEF which in the course of hearing was, in all fairness, produced by Mr Raval, learned ASG, appearing for the MoEF. The office memorandum inter alia provides that "… while granting environmental clearance to projects involving forest land, wildlife habitat (core one of elephant/tiger reserve, etc.) and/or located within 10 km of the national park/ wildlife sanctuary (at present the distance of 10 km has been taken in conformity with the order dated 4-12-2006 in *Goa Foundation* v. *Union of India*[10]), a specific condition shall be stipulated that the environmental clearance *is subject to their obtaining prior clearance from forestry and wildlife angle including clearance from the Standing Committee of the National Board for Wildlife* as applicable.....". Mr Bhushan submitted that the project under consideration thus does not only require a prior environmental clearance but also a clearance from the forestry and wildlife angle including clearance from the Standing Committee of the National Board for Wildlife as precondition for the grant of environmental clearance by the MoEF.

58. Mr Bhushan's arguments proceed in four steps. He first puts the project in Item 8(*a*) of the schedule as a building and construction project. Then, in the second step, in order to cross the threshold marker he refers to the definition of "activity" to contend that since the project provides facilities open to sky its entire area of 33.43 ha would constitute the built-up area. In the third step, he brings in the general condition [even though in regard to Item 8(*a*) its application is not mentioned in Column 5 of the table] that would make the Central Government as the competent authority for granting prior environmental clearance for the project. And lastly, in the fourth step he refers to the Office Memorandum dated 2-12-2009 to contend that a clearance from the Standing Committee of the National Board for Wildlife was a precondition for the grant of the prior environmental clearance by the MoEF.

10 WP (C) No. 460 of 2004 order dated 4-12-2006

59. Long and elaborate submissions were made from both sides in regard to the application of the general condition to this project. Mr Venugopal, Senior Counsel appearing for the State of U.P. and Mr Raju Ramachandran, Senior Counsel appearing for NOIDA submitted that the general condition would have no application to projects under Items 8(*a*) or 8(*b*) for the simple reason that in regard to those items there was no mention of the general condition in Column 5 of the table. Mr Venugopal submitted, and not entirely without substance that if the general condition were to apply to Items 8(*a*) and 8(*b*) without being mentioned in Column 5 of the table then it would not make any sense to expressly mention it in Column 5 in respect of some other projects and activities classified in Category B in the schedule.

60. Mr Raval, learned ASG, produced before the Court, the draft Notification No. S.O. 1324E, published in the Gazette of India Extraordinary of 15-9-2005. In the draft notification there were two general conditions, GC1 and GC2 and in regard to "(*a*) Construction of all projects (residential and non-residential), and (*b*) New Townships and Settlement Colonies", the application of GC2 was expressly indicated in Column 5 of the table. Later on, in a meeting held on 6-7-2006, chaired by none else than the Prime Minister, it was decided to leave all construction and township projects, housing and area development projects in the hands of the State Government. It was further decided that for all projects involving more than 1,50,000 sq m of built-up area and/or covering more than 50 ha, the EIA requirements should correspond to Category A, even though the clearance would be granted by the State Government. Mr Raval submitted that in light of the decision taken in that meeting, in the final Notification issued on 14-9-2006, the application of general condition was removed in respect of Items 8(*a*) and 8(*b*) in the schedule. In view of the changes made in the two items in the final notification, Mr Raval also contended that the general condition has no application to Items 8(*a*) and 8(*b*), regardless of the project's proximity to any sanctuary or reserved area.

61. But before considering the latter three limbs of Mr Bhushan's arguments it is necessary to examine whether the project in question can be legitimately categorised as a building and construction project falling under Item 8(*a*) of the schedule which is the first premise of his arguments. In the schedule to the notification "building and construction projects" and "townships and area development projects" are enumerated separately, the former in Item 8(*a*) and the latter in Item 8(*b*). This would normally suggest that the notification treats those two kinds of projects separately and differently. It would, therefore, be reasonable to say that an "area development project" though involving a good deal of construction would yet not be a "building and construction project".

62. When it was pointed out to Mr Bhushan that the project in question may be put more appropriately in Category 8(*b*) as an "area development project" rather than a "building and construction project" under Category 8(*a*), in reply he took a line that nullifies any distinction between the two. Mr Bhushan submitted that so far as construction projects are concerned there is

no qualitative difference between Items 8(*a*) and 8(*b*) and the difference between the two items was only quantitative. Projects were categorised under Items 8(*a*) or 8(*b*) as "building and construction projects" or "townships and area development projects" not on the basis of their nature and character but depending upon the extent of construction. The learned counsel pointed out that the upper limit under Item 8(*a*) (1,50,000 sq m of built-up area) was the threshold mark under Item 8(*b*) and contended that this was a clear indication that projects with built-up area up to 1,50,000 sq m would be defined as "building and construction projects" and projects with built-up area in excess of 1,50,000 sq m would be categorised as "townships and area development projects".

63. In support of the contention, Mr Bhushan gave the example of a "building and construction project", consisting of a number of multi-storied buildings, the aggregate of the built-up area of which exceeds 1,50,000 sq m. Mr Bhushan submitted that since the total built-up area of the project crosses the upper limit of Item 8(*a*) the project would not fall within that item. But at the same time since the project is a "building and construction project" and not a "township and area development project", it would not come under Item 8(*b*) and this would be indeed a highly anomalous position where a project with a smaller built-up area would fall within the ambit of the notification, whereas a project with a larger built-up area would escape the rigours of the notification.

64. The amicus, also arguing in the same vein, submitted that as far as building and construction projects are concerned there was no qualitative difference in Items 8(*a*) and 8(*b*) of the schedule to the notification. A combined reading of the two clauses of Item 8 of the schedule would show the continuity in the two provisions; 1,50,000 sq m of built-up area that was the upper limit in Item 8(*a*) was the threshold marker in Item 8(*b*). This clearly meant that building and construction projects with built-up area/activity area between 20,000 sq m to 1,50,000 sq m would fall in Category 8(*a*) and projects with built-up area of 1,50,000 sq m or more would fall in Category 8(*b*). The amicus further submitted that though it was not expressly stated, the expression "built-up area" in Item 8(*b*) must get the same meaning as in Item 8(*a*), that is to say, if the construction had facilities open to sky the whole of the "activity area" must be deemed to constitute the "built-up area".

65. It is extremely difficult to accept the contention that the categorisation under Items 8(*a*) and 8(*b*) has no bearing on the nature and character of the project and is based purely on the built-up area. A building and construction project is nothing but addition of structures over the land. A township project is the development of a new area for residential, commercial or industrial use. A township project is different *both quantitatively and qualitatively* from a mere building and construction project. Further, an area development project may be connected with the township development project and may be its first stage when grounds are cleared, roads and

pathways are laid out and provisions are made for drainage, sewage, electricity and telephone lines and the whole range of other civic infrastructure. Or an area development project may be completely independent of any township development project as in case of creating an artificial lake, or an urban forest or setting up a zoological or botanical park or a recreational, amusement or a theme park.

66. The illustration given by Mr Bhushan may be correct to an extent. Constructions with built-up area in excess of 1,50,000 would be huge by any standard and in that case the project by virtue of sheer magnitude would qualify as township development project. To that limited extent there may be a quantitative correlation between Items 8(*a*) and 8(*b*). But it must be realised that the converse of the illustration given by Mr Bhushan may not be true. For example, a project which is by its nature and character an "area development project" would not become a "building and construction project" simply because it falls short of the threshold mark under Item 8(*b*) but comes within the area specified in Item 8(*a*). The essential difference between Items 8(*a*) and 8(*b*) lies not only in the different magnitudes but in the difference in the nature and character of the projects enumerated thereunder.

67. In light of the above discussion it is difficult to see the project in question as a "building and construction project". Applying the test of "dominant purpose or dominant nature" of the project or the "common parlance" test i.e. how a common person using it and enjoying its facilities would view it, the project can only be categorised under Item 8(*b*) of the schedule as a township and area development project". But under that category it does not come up to the threshold marker inasmuch as the total area of the project (33.43 ha) is less than 50 ha and its built-up area even if the hard landscaped area and the covered areas are put together comes to 1,05,544.49 sq m i.e. much below the threshold marker of 1,50,000 sq m. The inescapable conclusion, therefore, is that the project does not fall within the ambit of the EIA Notification S.O. 1533(E) dated 14-9-2006. This is not to say that this is the ideal or a very happy outcome but that is how the notification is framed and taking any other view would be doing gross violence to the scheme of the notification.

68. Since it is held that the project does not come within the ambit of the notification, the other three arguments based on the activity area, the application of general condition and the application of the Office Memorandum dated 2-12-2009 become irrelevant and need not be gone into in this case.

The project and the Okhla Bird Sanctuary

69. Mr Bhushan next raised the issue of the project being located virtually adjoining the Okhla Bird Sanctuary. The very close proximity of the project site to the bird sanctuary actually raises issues of serious concern and poses a dilemma. On the one hand the project proponents cannot be said to have broken any law or violated a definite order or direction of the court but

on the other hand the project may possibly cause serious and irreparable harm to the bird sanctuary.

70. Before the CEC the State Government took the plea that the project area was situated well outside the boundaries of the bird sanctuary and the construction of the project had caused no adverse impact on the sanctuary. It was further stated that NOIDA which was the project proponent was equally conscious about its responsibility in regard to the preservation and conservation of the habitat of the sanctuary. A management plan for the sanctuary was being prepared by the Wildlife Institute of Dehradun for which NOIDA had released ₹17,35,350.00 in favour of the Institute and NOIDA was also planning to set up a corpus for the scientific and effective implementation of the management plan.

71. On this issue the MoEF in its responses before the CEC put the blame squarely on the State Government. It stated that despite its letter of 27-5-2005 followed by a number of reminders the Government of Uttar Pradesh did not submit its proposal for declaration of "eco-sensitive zone" around the sanctuaries and national parks. It further stated that the State Government failed to take any steps in this regard even after the order of this Court passed on 4-12-2006[10] in Writ Petition (Civil) No. 460 of 2004 by which the MoEF was directed to give all the States final opportunity to send their proposals for declaration of "eco-sensitive zones" to the MoEF within four weeks. The MoEF made the accusation that in the case of the present project the State Government of Uttar Pradesh was trying to take advantage of its own omission. In its second response dated 22-8-2009, 24-8-2009, however, the MoEF, though still blaming the U.P. Government for its failure to notify the "eco-sensitive zones" conceded that "till eco-sensitive zone is declared the construction work did not seem to violate any law/Act". But it went on to say that having regard to its location the project was better suited to be made part of extension of the bird sanctuary.

72. The State Government of Uttar Pradesh took the stand that no proposals were sent from its side because the MoEF failed to issue the necessary guidelines for the purpose. On behalf of the State of U.P., reference was made to a meeting called by the Director General of Forests and Special Secretary, MoEF on 13-5-2010. In that meeting it was decided that the Director General of Forests, MoEF would constitute a committee of officers to finalise the guidelines for declaration of eco-sensitive zones. A reference was also made to a subsequent meeting held on 4-7-2010 at Lucknow in which the attention of the Government of India was drawn to the decision taken in the earlier meeting. Yet, no guidelines were issued by the Government of India so far.

73. The CEC in its report to the Court dated 4-9-2009 put the blame on the State Government of U.P. for its omission to identify the eco-sensitive

10 *Goa Foundation* v. *Union of India*, WP (C) No. 460 of 2004 order dated 4-12-2006

zones but like the MoEF seemed to accept that in the absence of a decision/notification there was no legal bar against the construction of the project on the ground that it was sited adjacent to the bird sanctuary. In its report to the Court, the CEC observed as follows:

> 32. The issue regarding identification/notification of eco-sensitive zones around the national park and sanctuaries is presently pending for consideration before this Hon'ble Court. The National Board of Wildlife (NBWL) had earlier decided that area within 10 km around national parks/sanctuaries should be the eco-sensitive zone. Later on, it was decided by NBWL that eco-sensitive zone should be specific to each national park/sanctuary. The CEC had recommended that 500 m around national park/sanctuary should be declared as eco-sensitive zone. The recommendation of the CEC has not so far been accepted by the Hon'ble Supreme Court after the learned amicus curiae took a view that 500 m may not be adequate. Pursuant to this Hon'ble Supreme Court's order dated 4-8-2006[11] in the TWP matter, mining is presently prohibited up to a distance of one kilometre from the boundary of national parks/sanctuaries. For other projects, no restriction has so far been imposed. The MoEF has time and again requested the States/UTs to identify the eco-sensitive zones around the national parks/sanctuaries. However, the State of Uttar Pradesh has so far not prepared any proposal in this regard. *The CEC is of the view that in the absence of a decision/notification, presently there is no legal restriction against the implementation of the project on the ground that the project is adjacent to the Okhla Bird Sanctuary.*
>
> 33. However, it has to be borne in mind that the project area is hardly at a distance of 50 m from the Okhla Bird Sanctuary and that in all probability the project site would have fallen in the eco-sensitive zone, had a timely decision in this regard been taken by the State Government/MoEF. (emphasis added)

74. The report of the CEC succinctly sums up the situation. Though everyone, excepting the project proponents, view the construction of the project practically adjoining the bird sanctuary as a potential hazard to the sensitive and fragile ecological balance of the sanctuary there is no law to stop it. This unhappy and anomalous situation has arisen simply because despite directions by this Court the authorities in the Central and the State Governments have so far not been able to evolve a principle to notify the buffer zones around sanctuaries and national parks to protect the sensitive and delicate ecological balance required for the sanctuaries. But the absence of a statute will not preclude this Court from examining the project's effects on the environment with particular reference to the Okhla Bird Sanctuary. For, in the jurisprudence developed by this Court environment is not merely a statutory issue. Environment is one of the facets of the right to life

11 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 13 SCC 740

guaranteed under Article 21 of the Constitution[12]. Environment is, therefore, a matter directly under the Constitution and if the Court perceives any project or activity as harmful or injurious to the environment it would feel obliged to step in. The question of the likelihood of the project causing any adverse effects on the Okhla Bird Sanctuary must, therefore, be examined from this angle.

75. We may note here that Mr Venugopal presented before us some photographs trying to show the situation on the western boundary of the Okhla Bird Sanctuary at its Delhi end. In the photographs there is a road, about forty to sixty feet wide (the Kalindikunj-Irrigation Colony-Batla Road) running right next to the wire mesh fencing of the sanctuary. Next to the road is a long row of cheek by jowl concrete structures/houses that seem to lean against one another. The road has the bustling traffic of Delhi where all kinds of vehicles (and cattle!) appear jostling for space. The situation on the western boundary of the sanctuary is indeed deplorable but that is no reason to strangulate the sanctuary from the NOIDA side as well.

76. Earlier in the judgment, it is noted that on 22-4-2010[9], the Court had asked the MoEF to make a study of the environmental impact of the project and to suggest measures for undoing the environmental degradation, if any, caused by the project and the amelioration measures to safeguard the adjacent bird sanctuary. In pursuance of the Court's directions the MoEF had asked the project proponents to have the environmental impact assessment of the project done by some expert agencies. NOIDA, the project proponent got three studies made of the impact assessment of the project. One is a joint study prepared by the Salim Ali Centre for Ornithology and Natural History (SACON), Deccan Regional Station, Hyderabad and the All-India Network Project on Agricultural Ornithology, Aacharya N.G. Ranga Agricultural University, Hyderabad (Annexure II of the paper book Vol. IV); the other by the Wildlife Institute of India (WII) (Annexure III of the paper book Vol. IV); and the third by a group of three individuals that was vetted by the Indian Institute of Technology, New Delhi (Annexure IV of the paper book Vol. IV).

77. SACON, in its report practically gave a clean chit to the project and made the following observations in connection with the felling of trees and the impact of the project construction on the Okhla Bird Sanctuary:

12 *M.C. Mehta* v. *Union of India*, (1986) 2 SCC 176 : 1986 SCC (Cri) 122 : AIR 1987 SC 965; *M.C. Mehta* v. *Union of India*, (1987) 4 SCC 463; *M.C. Mehta* v. *Union of India*, (1988) 1 SCC 471 : 1988 SCC (Cri) 141 : AIR 1988 SC 1115; *Chhetriya Pardushan Mukti Sangharsh Samiti* v. *State of U.P.*, (1990) 4 SCC 449 : AIR 1990 SC 2060; *Subhash Kumar* v. *State of Bihar*, (1991) 1 SCC 598 : AIR 1991 SC 420; *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577; *B.L. Wadehra (Dr.)* v. *Union of India*, (1996) 2 SCC 594; *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647 : AIR 1996 SC 2715; *A.P. Pollution Control Board* v. *Prof. M.V. Nayudu*, (1999) 2 SCC 718; *Narmada Bachao Andolan* v. *Union of India*, (2000) 10 SCC 664; *T.N. Godavarman Thirumulpad* v. *Union of India*, (2002) 10 SCC 606; *Ramji Patel* v. *Nagrik Upbhokta Marg Darshak Manch*, (2000) 3 SCC 29 and *State of M.P.* v. *Kedia Leather & Liquor Ltd.*, (2003) 7 SCC 389 : 2003 SCC (Cri) 1642

9 *T.N. Godavarman Thirumulpad* v. *Union of India*, (2010) 6 SCC 747

- The Okhla Bird Sanctuary is primarily an urban wetland and supports primarily water birds, majority of them migrating and using in the winter season. These are confined to the water bodies and peripheral marshy vegetation and were not nesting or roosting on the trees of the adjacent parks. The extent of terrestrial habitat in the sanctuary is very small or insignificant.
- The entire development works including removal of trees and construction had taken place outside the boundary of the sanctuary and the construction and felling of trees in the project site has not altered or interfered with the wetland ecosystem of the OBS and the area was undisturbed.
- The birds in the wetland of Okhla Bird Sanctuary are estimated during the month of January by the Wildlife Wing of the U.P. Forest Department during winter, which is the period for the migratory birds. The estimation of birds are as under:

  2007-2008 : 17,111
  2008-2009 : 21,272
  2009-2010 : 22,004

- The clearing of the project site for construction and landscaping was started in the month of January 2008 and continued till 9-10-2009. The bird estimates during migratory season clearly show that there has been no reduction in the number of birds in the sanctuary despite developmental activities in the park. This clearly shows that the construction and felling of trees in the project site has no impact on OBS.
- It appears that the existence of high tension line along the boundary wall of the project site before the start of the project might have been a barrier for movement of the birds from OBS as high electromagnetic influence would restrict the movement of birds. Hence, the construction and the felling of trees in the project site has minimal influence on the OBS.

In view of the above, we are of the opinion that felling of trees and construction have no perceptible impact on the OBS habitat."

SACON suggested certain proactive environmental measures (see paper book Vol. IV, p. 110) that would form part of this judgment.

78. The other report by the Wildlife Institute of India (WII) is not so sanguine about the project's impact on the bird sanctuary. In the WII Report under the heading "Assessment of the Impact" it was observed as under:

"… From this, it is concluded that the erstwhile woodland would have been used by 51-101 species of terrestrial birds and was an extended habitat for the wildlife of the Okhla Bird Sanctuary, primarily terrestrial birds. Some of these birds may be using the erstwhile woodland for breeding as well.…

> … The erstwhile woodland was acting as a buffer against these disturbances. The project area which was in continuation with the vegetation along the left afflux bund was providing a green belt approximately 2 km long and 218 m wide on an average. Before the felling of trees this patch might have acted as a protective green belt of approximately 190 m width with a tree density of 203.5 trees/ha (density of trees felled) which is now reduced to approximately 28 m (between the western wall of the project and OBS boundary of left afflux dam). From this it is concluded that the sanctuary lost its buffer of around 33.43 ha that will have significant impact on the OBS and its tranquillity….
>
> … Such carbon sequestration value of the erstwhile woodland was lost, though NOIDA has already taken up ameliorative steps in the form of afforestation in and around the project site….
>
> … With the loss of buffer and increased artificial light at the project site, it is likely that the migratory bird population may get affected in long run. Bird friendly diffused light with blue tinge may reduce the negative impacts, though much research on this aspect is required."

WII also suggested certain mitigation measures (see paper book Vol. IV, p. 134) that would form part of this judgment.

79. IIT, New Delhi in its review of the report prepared by the group of three people does not record any serious negative finding in regard to the effects that the project may have on the sanctuary. Finally, the Expert Appraisal Committee (EAC) constituted by the Government of India, MoEF in its 88th meeting held on 28-6-2010, 29-6-2010, reviewed the project in question in the light of the aforementioned reports and made a number of recommendations (paper book Vol. III, p. 32) that would form part of this judgment.

80. It is significant to note that none of the expert bodies has taken the view that the project is so calamitous or ruinous for the bird sanctuary that it needs to be altogether scrapped in order to save the sanctuary. The expert bodies have given recommendations which allow the completion of the project subject to certain conditions. On behalf of the State of U.P. it is unequivocally stated that all the conditions laid in the reports of the expert bodies are acceptable to the State Government/NOIDA in their entirety. In the light of the two study reports and the report submitted by the EAC, we see no justification for directing the demolition of the constructions made in the project, as prayed for on behalf of the applicants. We would rather allow the project to be completed, subject, of course to the conditions suggested by the three expert bodies and further subject to the directions contained hereinbelow.

81. It may be noted that the report of WII has focused on the felling of trees resulting in the disappearance of the woodland that acted as a protective buffer for the bird sanctuary and its first recommendation is to compensate the loss of vegetation. It has secondly focused on the increased artificial light

at the project site, which is likely to affect the migratory bird population in the long run. Apart from this, we feel that the extent of stone and concrete constructions in the name of "hard landscaping" is highly out of proportion. In the modified layout plan, the project proponents have reduced the area under hard surface to 35.54% of the total project area. In our opinion, even that is unacceptable from the environmental point of view. The area under hard surface, whether covered, uncovered (including pathways and boundary wall, etc.) or of any kind whatsoever must not exceed 25% of the total project area; of the rest, 25% should be used for soft/green landscaping and the remaining, preferably 50% must have a thick cover of trees of the native variety, a list of which is given by the State of U.P. [Annexure 4(*b*), paper book Vol. IV]. The plantation of trees should be especially dense towards the Okhla Bird Sanctuary on the western side of the project area. Any construction work should commence only on completion of the planting of the trees.

82. In order to ensure full compliance with the recommendations of the expert bodies (which form part of the judgment) and the directions of this Court, the construction of the project needs to be overseen by an expert committee. One member of the committee, preferably an ornithologist will be nominated by the MoEF, the other member will be nominated by the CEC in consultation with the amicus and the Chairman-cum-CEO of NOIDA will be the member-secretary of the committee. The committee should be constituted within two weeks from today.

83. It is made clear that the above directions are given in the peculiar facts of this case and nothing said in the judgment shall form precedent when the court is hearing the matter of the "buffer zones".

84. Before putting down the records of the case a few observations may not be out of place. The EIA Notification dated 14-9-2006 urgently calls for a close second look by the authorities concerned. The projects/activities under Items 8(*a*) and 8(*b*) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness. The question of application of the general condition to the projects/activities listed in the schedule also needs to be put beyond any debate or dispute. We would also like to point out that the environmental impact studies in this case were not conducted either by the MoEF or any organisation under it or even by any agencies appointed by it. All the three studies that were finally placed before the Expert Appraisal Committee and which this Court has also taken into consideration, were made at the behest of the project proponents and by agencies of their choice. This Court would have been more comfortable if the environment impact studies were made by the MoEF or by any organisation under it or at least by agencies appointed and recommended by it.

85. The IAs stand disposed of with the above observations and directions.

Appendix I (by SACON)

86. "7. *Suggested proactive environmental measures*

Although there appears to be no perceptible impact, as a precautionary approach, we suggest following measures for the overall improvement of the OBS:

1. The periodical removal of water hyacinth should be ensured for better quality of water.

2. Artificial nest boxes should be placed along the western boundary of the sanctuary and adjoining parts to enhance breeding potential of birds.

3. Periodical monitoring of water quality parameters should be undertaken to enhance wetland dependent species and their population.

4. Regular monitoring of population of avifauna should be undertaken. On the terrestrial habitat also monitoring of small mammals may be carried out.

5. Extensive planting of native species suitable for urban habitat should be done more than 10 times in and around the project area. This will in turn help in sustainability of key bird species. It is noteworthy to mention that NOIDA Authority has already planted 1,70,000 saplings.

6. For the scientific management of the OBS, the prescriptions of the management plan under preparation by the Wildlife Institute of India, Dehradun should be followed with necessary financial support.

7. Inside the sanctuary, battery operated vehicles should be used for visitors.

8. For the effective protection and management of the OBS, the sanctuary should be suitably fenced.

9. In view of its unique location and interspersion of ecological settings of various landscape elements, it is suggested that the proposed park may have an ecological interpretation centre."

Appendix II (by WII)

87. "5. *Suggested mitigation measures*

To mitigate the loss of tree cover and the change in landscape structure due to the construction of the park and subsequent anticipated increase in disturbance due to the increased human activities adjacent to the OBS, following mitigation measures have been suggested:

(1) Revegetation of the project site to compensate the loss of vegetation.—Ameliorative measures have already been taken up by NOIDA by planting both native and exotic species within the project area and on the eastern flank of left afflux bund of Yamuna river/OBS at close spacing. However, emphasis should be given to propagate only the native species.

(2) *Reduction of adverse impact on the OBS.*—It is suggested that buffer at the north and north-eastern side of the sanctuary to reduce direct disturbance to the OBS may be created. The area north of the wire bund of the OBS is a promising site for water birds which prefer shallow water or grass growth particularly geese and waders. It is suggested that the waterlogged Yamuna floodplain north to the OBS and up to the DND flyover having an area of 130 ha (Fig.1) may be included with the OBS or protection to it as the buffer under the provision of WPA, 1972 be provided.

The strip of woodland with an area of 24 ha immediately to the north of the project area (Fig.1) needs to be protected as buffer of the OBS also and its land use needs to be maintained unaltered. Being in close proximity of the OBS it will have an ameliorative effect on the sanctuary. It would also provide additional habitat to the terrestrial bird species of the OBS.

Efforts should also be made to keep the intensity of artificial light and noise at the project site to a bare minimum during night, especially after sunset in migratory season of birds (October-March). Bird friendly diffused light with blue tinge during night, may reduce the negative impacts if any on OBS, though much research on this aspect is required.

It is suggested that at the periphery of the OBS, fence wherever not existing be created and the breach in the existing fence be mended on priority.

(3) *Eliciting support from the Government of Delhi for the conservation of OBS.*—As the OBS is a inter-State protected area having open access from all sides it is imperative that the Government of Delhi may also be persuaded to take active part in its management.

(4) *Ensuring financial commitment for the improved conservation management of the park.*—As per the order of the Honourable Supreme Court granted for other development project adjacent to protected area (e.g. IA No. 856 of 2006), 5% of the total cost of the project be deposited with the Forest Department, Government of U.P. to improve the ecosystem structure and functions, water bird habitat, public amenities and interpretation centre and improved management of the OBS."

Appendix III (by EAC)

88. "During discussions following points emerged:

(*i*) NOIDA Authority, while making presentation, informed that the project involves the renovation, preservation and beautification of park on a total plot area of 33.43 ha. The total built-up area of the covered construction is 6999 sq m. Before the development of site there were 6803 trees of different species out of which 6241 trees were cut and 562

trees were shifted to other parks. Further, they informed that the following components of the project have already been completed:

(*a*)	Boundary wall and gate	90%
(*b*)	Construction of monument building	60%
(*c*)	Landscaping and plantation	80%
(*d*)	Pavements	75%

a The other infrastructural works proposed by the NOIDA Authority for *b* environmental safeguards/measures and for effective EMP are use of treated waste water, solid waste management, energy saving, tree plantation and parking, etc. The other works which are important in the context of Okhla Bird Sanctuary are control of noise, glare and efficient traffic management.

c (*ii*) Possibility should be explored to increase the greenery and plant broad-leaf native trees along the pathways inside and outside the park. This will help in the reduction of surface runoff.

d (*iii*) The water quality and water balance are key elements and require detailed management and monitoring. No fresh water/groundwater should be used for gardening/horticulture purposes. The requirement of water should be met from self-recycling treated sewage without placing of strain on the supply system for the nearby residential and commercial areas.

(*iv*) Treated waste water from Sector 54 sewerage treatment plant is proposed for horticulture purposes. It must also be utilised as much as possible for such purposes as toilet flushing and pavement/floor washing. The aforesaid purposes will need tertiary treatment of sewage.

e (*v*) No more than 20% of rain water shall be discharged out of the project site into the existing drain. The rain water harvesting system should be designed based on the soil characteristics and highest level of groundwater table.

f (*vi*) The species of trees inside the park and in buffer zone both on Okhla Bird Sanctuary side and road side should be of indigenous types that do not disturb the water balance of the area. The grass and artificial plantations which are not native should be avoided.

g (*vii*) Adequate noise barriers in the form of thick plantation of appropriate species of trees and bushes laid in a tiered form to create a green screen on either side of the bund road should be provided. A no horn zone should be declared and maintained around the Okhla Bird Sanctuary. The development of green belt and tree plantation shall be carried out in consultation with the Indian Council of Forest Research and Education, Dehradun.

h (*viii*) Solar energy should be utilised for illumination of common areas, lighting of gardens and paved footpaths, etc.

2023 SCC OnLine All 119

In the High Court of Allahabad

(BEFORE ALOK MATHUR, J.)

Radhika Constructions, through its Proprietor Mr. Rakesh Tiwari ... Petitioner;

Versus

State of U.P., thru. Secy Deptt. of Geology and Mines Lko. and Anther ... Respondents.

Writ - C No. - 2478 of 2022

Decided on March 1, 2023

Advocates who appeared in this case :

Counsel for Petitioner : - Mr. Shishir Chandra

Counsel for Respondent : - C.S.C., Mr. Tushar Verma

The Order of the Court was delivered by

ALOK MATHUR, J.:— Heard Mr. Shishir Chandra, learned counsel for the petitioner as well as Sri Rakesh Bajpai, learned Standing counsel, Sri Tushar Verma, Special Counsel and Sri Ramesh Kumar Singh, Additional Advocate General for the respondents.

2. By means of the present writ petition the petitioner has challenged the order dated 16.3.2022 passed by the State Government thereby rejecting the revision preferred by the petitioner against the cancellation of mining lease vide orer dated 26.4.2021 passed by District Magistrate, Banda.

FACTS OF THE CASE : -

3. The facts in brief necessary for adjudication of the present case are that the petitioner in response to an e-tender/e-auction for mining participated in the auction and his bid was adjudged to be the highest and lease deed was executed in favor of the petitioner on 6.6.2020 for the period from 6.6.2020 to 5.6.2025. After execution of the mining lease the petitioner started mining operations but suddenly the One Time Password (O.T.P.) was stopped by the District Magistrate, Banda on 19.3.2021. Subsequently, it is stated that an inspection was conducted by a team of officers of the Directorate, Mining and Geology, Uttar Pradesh between 13.3.2021 and 18.3.2021 and some allegations with regard to the irregularities pertaining to illegal mining were found correct and on the basis of the aforesaid inspection report a show cause notice was served on the petitioner on 22.3.2021. According to the said show cause notice issued by the District Magistrate, Banda it was mentioned that an inspection was conducted by a team where it has

been found that the petitioner is involved in illegal mining and he has extracted minor minerals from the area not allotted to him and extracted mineral to a depth which was not permissible as per the lease deed. Accordingly, a notice was given as to why the lease be not cancelled. In the said show cause notice, penalty for the same offence has also been fixed as Rs. 50,000/- and recovery of royalty for an amount of Rs. 7,81,61,400/- has also been proposed in the said notice.

4. The petitioner in pursuance of the aforesaid show cause notice submitted reply on 30.3.2021 where they have denied the allegations leveled in the show cause notice and have stated that apart from the show cause notice no material was provided to the petitioner as directed by the court in the case of *Ranveer Singh* v. *State of U.P.*, 2017 (1) ADJ 240 passed in writ C No. 51986 of 2016 and further submitted that there was no credible evidence in support of the allegations and, hence, requested for setting aside the show cause notice.

5. After considering the reply of the petitioner the District Magistrate by means of its order dated 26th April, 2021 has cancelled the mining lease of the petitioner. While rejecting the reply of the petitioner the District Magistrate has recorded that the petitioner has extracted minor minerals from an area not allotted to him and extracted 12,970 cubic meters of sand/maurang in excess and 73,876 cubic meters illegally which fact has been reported by the Enforcement Team in its report dated 19.3.2021. He has further noticed that the petitioner was asked to deposit the amount of royalty of an amount of Rs. 7,81,61,400/- but even the said amount has not been deposited by the petitioner and accordingly he was of the view that the said outstanding amount needs to be recovered from the petitioner along with penalty as provided under Rule 41 (H) (1) and 59 (2) of Uttar Pradesh Minor Minerals (Concessions) Rules, 1963. He has further considered the fact that the Director, Mining and Geology, Uttar Pradesh had constituted enforcement team for physical inspection which conducted the spot inspection on 14.3.2021 which submitted report on 19.3.2021 where it was found that the petitioner had conducted mining operations of an area 3.358 hect. and extracted 73,876 cubic meters of sand beyong the area allotted to him apart from other illegal mining alleged in the said order and even the bank of the river has been extracted to a depth which is beyond the prescribed limit. In this regard a first information report was also lodged against the petitioner.

6. The District Magistrate has relied upon the inspection report and has stated that the petitioner could not produce any evidence or prove his case contrary to the findings recorded by the inspection team and, hence, rejected the reply of the petitioner and proceeded to pass order for recovery of an amount of Rs. 7,81,61,400/- and also cancelled the

lease deed issued in favour of the petitioner and further placed him in black list for a period of two years.

7. The petitioner being aggrieved by the order of the District Magistrate dated 26th April, 2021 had preferred a revision before the State Government which has also been decided and rejected by means of the impugned order dated 16.3.2022. The revisional authority while rejecting the revision of the petitioner and passing the impugned order has noticed the fact that an inspection was carried out on which the mining lease was granted to the petitioner and certain allegations have come forth on the basis of which the show cause notice was given to the petitioner to which reply was submitted by him on 30.3.3021. The reply of the petitioner was not found satisfactory and merely on account of the fact that the allegations against the petitioner stood concluded by the inspection team no infirmity was found in the order of District Magistrate and accordingly the revision was rejected.

8. The petitioner in the present petition has assailed the cancellation of the lease deed as well as revisional order dated 16.3.2022 and the recovery as well.

GROUNDS OF CHALLENGE : -

9. Learned counsel for the petitioner has firstly submitted that no proper opportunity of hearing was given to the petitioner before passing the order of cancellation and recovery against the petitioner. In support of his submissions he has submitted that, in fact, no inspection was actually carried out and a perusal of the show cause notice dated 22.3.2021 would indicate that no material including the copy of inspection report was supplied to the petitioner along with the show cause notice and in absence of the relevant documents and material constituting the basis of the allegations against the petitioner the entire proceedings was conducted in violation of the principles of natural justice and accordingly the same are illegal, arbitrary and deserve to be set aside.

10. Learned Standing counsel Sri Rakesh Bajpai, on the other hand, supporting the impugned orders submitted that a perusal of the show cause notice indicates that entire contents of the inspection report have been reproduced in the show cause notice. He does not dispute the fact that copy of the inspection report dated 19.3.2021 was never supplied to the petitioner.

11. Learned counsel for the petitioner has further submitted that the inspection report and all other relevant documents have been annexed by the State Government along with the counter affidavit. It is further submitted that the inspection report was submitted on 19.3.2021 to the Director, Mining and Geology, Government of Uttar Pradesh who by means of letter dated 20.3.2021 addressed to the District Magistrate,

Banda forwarded a copy of the inspection report for proceedings against the petitioner. Along with the said report he had categorically given directions to the District Magistrate to pass orders as mentioned therein. The name of the petitioner finds mention at serial No. 15 of the said letter where the District Magistrate was directed to register F.I.R. against the petitioner, cancel his mining lease and place his name in the black list and with regard to the allegations of illegal mining recovery be made from him. For the sake of convenience the directions of the Director are reproduced as under:—

> *"स्वीकृत क्षेत्र से बाहर एवं सटे खण्ड के क्षेत्र में अवैध खनन तथा अन्य अनियमितता पाये जाने पर पट्टेधारक के विरूद्ध FIR दर्ज कराते हुए नियमानुसार पट्टा निरस्तीकरण एवं पट्टेधारक का नाम काली सूची में डाला जाय तथा अवैध खनन के विरूद्ध पट्टाधारक से नियमानुसार राजस्व क्षति की धनराशि वसूल किये जाने की कार्यवाही की जाय।"*

12. It has also been submitted by the petitioner that entire proceedings have been held without any application of mind by the District Magistrate and from a perusal of the directions issued by the Director, Mining and Geology, the District Magistrate, who is the subordinate to the Secretary (Mining and Geology) was duty bound to comply and, in fact, complied with the directions and consequently it is a clear case of bias and non application of mind by the District Magistrate.

13. Learned counsel for the petitioner has further assailed the impugned orders on the ground that the inspection was conducted by Team A with regard to 19 persons who were the lease holders of the lease licenses issued in their favour and in pursuance of inspection report dated 19.3.2021 action was taken against all the 19 persons and in all the cases the directions/dictates of the Director, Mining and Geology, as contained in his letter dated 20.3.2021 were duly followed and complied by the District Magistrate and the leases of all the persons included in the said list was cancelled. It is further stated that against all the cancellation orders the respective persons had filed revisions before the State Government which were again decided by the Director (Mining and Geology), the same officer who had authored the letter dated 20.3.2021 in his capacity as Secretary (Mining and Geology) of Government of Uttar Pradesh and rejected all the revisions except the revision of the revisionist at serial No. 16, namely of VAR Enterprises Pvt. Ltd. A copy of the order passed in Revision No. 128 (R)/SM/2021 filed by VAR Enterprises Pvt. Ltd has been annexed along with writ petition wherein on he basis of the same report the revision of VAR Enterprises Pvt. Ltd. has been allowed holding that the inspection report had clear infirmity and could not be relied upon and there is no material to indicate that the delinquent lease holder had, in fact, was involved or has indulged in any illegal mining and in the aforesaid circumstances, the Secretary, Government of Uttar Pradesh (Mining and

Geology) in exercise of the power of the revisional authority on the basis of the same material allowed the said revision vide order dated 24.2.2022.

14. Learned counsel for the petitioner claims parity of the order dated 24.2.2022 and submits that the revisional authority has discriminated against the petitioner in as much as while considering the revision in the case of of VAR Enterprises Pvt. Ltd. on the basis of the same facts and for the same reason the revision of the petitioner has been dismissed.

15. Sri Rakesh Bajpai, *per contra*, has submitted that due opportunity of hearing was given to the petitioner before passing the impugned orders. He submits that as per the provisions contained under Rule 60 and 67 of Uttar Pradesh Minor Mineral (Concession) Rules, 1963 reasonable opportunity of hearing has to be given to the petitioner before passing any cancellation or blacklisting order. He submits that the inspection was conducted by the authority prescribed under the said Rules and according to the said inspection it can safely be stated that as per the inspection report the petitioner was found to have indulged in illegal mining and, hence, was subjected to show cause notice and it is only after receiving the reply to the said show cause notice that action has been taken in accordance with the provisions contained in the said Act for cancellation of the lease deed and for imposition of the penalty. He submits that due opportunity of hearing was given to the petitioner and consequently it cannot be said that the proceedings are dehors the law and thus supported the entire proceedings as well as the impugned orders. He has further vehemently submitted that not providing copy of the inspection report dated 19.3.2021 has not prejudiced the case of the petitioner nor prejudice has been caused to the petitioner by not supplying the inquiry report and, as such, it cannot be said that there is any violation of the principles of natural justice.

DISCUSSION : -

16. I have heard learned counsel for the respective parties and perused the record.

17. The State Government after receiving certain complaints with regard to illegal mining by various persons in District Banda proceeded to constitute three enforcement teams for inspecting various areas for which the lease was granted for the purpose of mining. The order dated 12.3.2021 passed by Director, Mining & Geology, which is on record, indicates that the said team consisted of three officers from the same department along with Surveyor. It is further submitted that the said teams conducted inspection and submitted their inspection reports on 19.3.2021 to the Director. In the said report only finding is limited to the extent of area which has been mined and the quantity of mineral

extracted with regard to each of the leases has been indicated. It is further noticed that there is no mention in the said report as to when the said inspection was carried out or as to whether the lease holders were ever informed about the said inspection or the manner in which the inspection was carried out are some of the factors which did not find mention in the said inspection reports. The inspection report with regard to each of the license holders in an extremely cryptic manner has only recorded that the license holders are involved in illegal mining and the quantities have been mentioned which have been illegally extracted by all the lease holders.

18. Learned Standing counsel, on the other hand, has stated that the said inspection was carried out and entries made in the diary of the surveyor which have also included in the counter affidavit. It is noticed that only the surveyor has signed on the reprot. It is surprising that even if this fact is accepted that certain irregularities with regard to the petitioenr was found on 17.3.2021 why the remaining members of inspection team did not sign on the said survey report is one aspect whose answer has neither been given by the respondents in the counter affidavit nor has been satisfactorily responded by the Standing counsel and, therefore, the inspection itself becomes doubtful. It is on the basis of the said inspection report which was submitted to the Secretary, Mining and Geology that the entire proceedings have been conducted against the petitioner and also against all other lease holders. It is further noticed that as per lease deed dated 6th June, 2020 the petitioner was allotted following areas:—

बिन्दु	अक्षान्तर	देशान्तर
A	25°43.419 N	80° 33.858 E
B	25°43.350 N	80° 33.977 E
C	25° 43.074 N	80° 33.810 E
D	25°43.157 N	80° 33.701 E

19. Further, the said mining area was described with reference to the other plots on the North, South, East and West of the leased area which has been described therein. It is noticed that the inspection report only records that the petitioner has made excavation and extracted minor minerals from the areas outside the mining area. It is nowhere mentioned when and where the inspection was carried out, who were present during the inspection and most importantly whether the inspection was carried out at the location allotted to the petitioner is also doubtful as the plot is identifiable by G.P.S. Coordinates and there is no mention that G.P.S. Coordinates were used for identification of the plot. These are the essential facts which go to the root of the matter. If the allegations against the petitioner is that they have illegally mined beyond the leased area then it was the duty of the inquiry team to have identified/pointed out the same but there is no

attempt to establish the case that illegal mining had, in fact, been done on area beyond the leased area. All these facts should have been given in detail as the report recorded a finding that the said extraction have been conducted in the area beyond the leased area then it should have been described by giving their coordinates in the inspection report which was not done.

20. It is in the aforesaid facts and circumstances that this Court is of the view that the allegations against the petitioner for illegal mining could not be clearly established and merely stating that large quantity of the minerals have been extracted by them would not *ipso facto* prove that the petitioner had been involved in illegal mining. It is the duty of the State to obtain and produce credible evidence in support of th eallegations to bring home the charges. The arguments in this regard have force, specially, relying on the judgment of this Court in the case of *Ranveer Singh* v. *State of U.P.*, 2017 (1) ADJ 240 where this Court has held as under:—

> *"33. Once the liability was to be fastened on the shoulder of the petitioner, then it was the obligation of the State to prove by way of credible evidence available that it was the petitioner, who has indulged in illegal mining and in the said direction, apart from issuing show-cause notice, all the evidence that was sought to be relied upon, i.e., the incumbents who have carried out the search and survey and the incumbents who have come forward to depose against the petitioner their names ought to have been disclosed and they ought to have been produced to support the case of the State that petitioner, in fact, has indulged in illegal mining. Not only this, as a part of process, the petitioner was entitled to have reasonable opportunity of defending himself by questioning the veracity of evidence produced against him and by adducing his own evidence, if any. Decision maker is bound to act fairly, as under the scheme of things provided for the determination made by him will entail civil consequences, as qua the person charged with illegal mining, on charges being proved, financial liability would be shouldered and in contra situation, the State would be at loss."*

21. It is further noticed that no further evidence was adduced during the proceedings apart from the inspection report which could indicate that the petitioner or the other persons were involved in illegal mining. No evidence in this regard has either been placed on record before this Court or during the course of inquiry conducted by the respondents culminating into cancellation of the lease licenses.

NON-SUPPLY OF DOCUMENT : -

22. With regard to non-supply of the inspection report in the present case, it is not disputed that show cause notice contained only allegations with regard to illegal mining as recorded by the inspection

team. Copy of the inspection report was never supplied to the petitioner. Though there are several judgments including the judgments cited by the Standing counsel in the case of *Gorkha Security Services* v. *Government (NCT of Delhi)*, (2014) 9 SCC 105 where it has been held that in case inquiry report is not supplied to the delinquent then the proceedings would not *ipso facto* be illegal and arbitrary and in violation of principles of natural justice but delinquent will have to show that prejudice was caused to him by not supplying a copy of the inquiry report.

23. It is noticed that in the present case the proceedings have been conducted against the petitioner only on the basis of inspection report. Undisputedly, no other material was adduced during the said inquiry nor any evidence or statement was recorded during the inquiry. No documents were ever taken on record during the said inquiry and the culpability of the petitioner with regard to illegal mining and other allegations has been decided only on the basis of inspection report. Needless to say that the inspection report, in the present circumstances of the case, constitutes an essential material/document which ought to have been supplied to the petitioner as even in the impugned orders the petitioner has been held guilty of illegal mining relying upon the inspection report dated 19th March, 2021. Once it is noticed that action is taken solely on the basis of inspection report then non supply of the said report to the person against whom proceedings are to be carried out necessarily constitutes miscarriage of justice in as much as he has a right to receive all the material which constitutes the charge/allegations against him so as to adequately respond to the charges and defend himself effectively, while in the present case the only material/document on the basis of which the petitioner has been proceeded against has not been provided to him and, hence, it can be safely concluded that the inquiry proceedings against the petitioner in this regard are in clear violation of the principles of natural justice and the defence of the petitioner has been severely prejudiced. Even though the sum and substance of the allegations did find mention in the show cause notice but inspection report apart from establishing the allegations against the petitioner also does not explain about other aspects as to how and where (location) the inspection was conducted, as to in what manner the inspection was undertaken by the committee and as to whether the persons allegedly involved in the illegal mining were ever put to notice before conducting the said inspection, are certain factors which are very material facts for the persons, who have been proceeded against have a right to defend their actions and they have right to know all material facts and only thereafter ssail the said report. In absence of inspection report their defence was seriously prejudiced and as vested right has been snatched away which

undoubtedly has civil consequences. It is not clear from perusal of the records as to what were the coordinates, where the inspection was conducted and merely recording that inquiry was conducted on the plots on which the lease has been executed are some of the factors which are necessarily to be proved by the prosecution before saddling the delinquent lease holders with penal consequences like cancellation of their leases and recovery of penalty. In the lease the area allottted for mining has been described with G.P.S. coordinates and, therefore, it was incumbent to provide the G.P.S. coordinates of the area on which inspectdion was carried out and also the coordinates of area beyond the leased area on which the petitioner has been alleged to hvae illegally mined. In absence of any cogent material or document the charge of illegal mining has sought to be proved. This Court is of the considered view that there was no sufficient cogent material linking the petitioner with the charge of illegal mining and as per the judgment of *Ranveer Singh* v. *State of U.P.* (supra), the onus on the State has not been discharged and consequently the proceedings against the petitioner only on the basis of inspectdion report is arbitrary.

BIAS : -

24. Apart from violation of the principles of natural justice, it is further noticed that the proceedings itself became doubtful the moment the Director, Geology & Mining directed the District Magistrate to proceed against the lease holders in a particular manner and to cancel the license and place them in black list. It would have been appropriate for the Director, Mining and Geology to have merely forwarded the inspection report and directed the competent authority i.e. the District Magistrate to proceed in accordance with law after giving reasonable opportunity of hearing to the lease holders but by specifically directing the District Magistrate to proceed to cancel the lease of the petitioner and other similarly situated persons and put them under the black list, clearly reveals that the respondents had premeditated and preordained the result of the inquiry proceedings which the District Magistrate obediently complied with and, hence, the cancellation order has been passed without application of any mind and at the dictates of the higher authority and a perusal of the same clearly indicates that the grounds/defence taken by the petitioner in the reply have not even been considered either by the appellate or revisional authority rendering the impugned orders illegal and arbitrary.

25. While assailing the impugned order dated 16.03.2022 passed in revision by the Secretary, Government of U.P. it is submitted that the same has been decided by Dr. Roshan Jacob, who was also holding the charge of Director, Geology & Mining at the time when she had issued later dated 20.03.2021 whereby clear directions were issued to the District Magistrate to proceed against and to blacklist him. To consider

the argument regarding bias, it would be fruitful to consider the rendition of the Supreme Court in this regard.

26. In the case of *Mustafa* v. *Union of India*, (2022) 1 SCC 294 the Apex Court has held as under:—

> *36. More appropriate for our case would be an earlier decision in* G. Sarana *v.* University of Lucknow [G. Sarana *v.* University of Lucknow, *(1976) 3 SCC 585 : 1976 SCC (L&S) 474], wherein a similar question had come up for consideration before a three-Judge Bench of this Court as the petitioner, after having appeared before the selection committee and on his failure to get appointed, had challenged the selection result pleading bias against him by three out of five members of the selection committee. He also challenged constitution of the committee. Rejecting the challenge, this Court had held : (SCC p. 591, para 15)*
>
> > *"15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in* Manak Lal case [Manak Lal *v.* Prem Chand Singhvi, *AIR 1957 SC 425] where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting : (AIR p. 432, para 9)*
> >
> > *'9. … It seems clear that the appellant wanted to take a chance to secure a favourable report from the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.'"*
>
> *37. The aforesaid judgment in* G. Sarana [G. Sarana *v.* University of Lucknow, *(1976) 3 SCC 585 : 1976 SCC (L&S) 474] was referred in* Madras Institute of Development Studies *v.* K. Sivasubramaniyan [Madras Institute of Development Studies *v.* K. Sivasubramaniyan, *(2016) 1 SCC 454 : (2016) 1 SCC (L&S) 164], in which selection to the post of Assistant Professor was challenged on the ground that shortlisting of candidates was contrary to the Faculty Recruitment Rules. The challenge was declined on the ground of estoppel as the respondent, without raising any objection to the alleged variations in*

the contents of the advertisement and the Rules, had submitted his application and participated in the selection process by appearing before the committee of experts.

38. Equally appropriate would be a reference to the decision of this Court in P.D. Dinakaran (1) *v.* Judges Inquiry Committee [P.D. Dinakaran (1) *v.* Judges Inquiry Committee, *(2011) 8 SCC 380], in which the allegation was that one of the members of the committee constituted by the Chairman of the Council of States (Rajya Sabha) under Section 3(2) of the Judges (Inquiry) Act, 1968 was biased. This judgment extensively recites and assimilates from both domestic and foreign judgments on the question of bias and prejudice and quotes the following observations in* G. Sarana [G. Sarana *v.* University of Lucknow, *(1976) 3 SCC 585 : 1976 SCC (L&S) 474] case:* (G. Sarana case [G. Sarana *v.* University of Lucknow, *(1976) 3 SCC 585 : 1976 SCC (L&S) 474], SCC p. 590, para 11)*

"11. … the real question is not whether a member of an administrative board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to probe the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration."

39. Thereafter, reference is made to *Ashok Kumar Yadav* v. *State of Haryana* [*Ashok Kumar Yadav* v. *State of Haryana*, (1985) 4 SCC 417 : 1986 SCC (L&S) 88], which refers to the Constitution Bench judgment in *A.K. Kraipak* v. *Union of India* [*A.K. Kraipak* v. *Union of India*, (1969) 2 SCC 262]. *Ashok Kumar Yadav* [*Ashok Kumar Yadav* v. *State of Haryana*, (1985) 4 SCC 417 : 1986 SCC (L&S) 88] was a case of selection by UPSC and following extract from this judgment is of some significance : (*Ashok Kumar Yadav case* [*Ashok Kumar Yadav* v. *State of Haryana*, (1985) 4 SCC 417 : 1986 SCC (L&S) 88], SCC pp. 442-43, para 18)

> *"18. We must straightaway point out that* A.K. Kraipak [A.K. Kraipak *v.* Union of India, *(1969) 2 SCC 262] is a landmark in the development of administrative law and it has contributed in a large measure to the strengthening of the rule of law in this country. We would not like to whittle down in the slightest measure the vital principle laid down in this decision which has nourished the roots of the rule of law and injected justice and fair play into legality. There can be no doubt that if a Selection Committee is constituted for the purpose of selecting candidates on merits and one of the members of the Selection Committee is*

closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask the authorities to nominate another person in his place on the Selection Committee, because otherwise all the selections made would be vitiated on account of reasonable likelihood of bias affecting the process of selection. But the situation here is a little different because the selection of candidates to the Haryana Civil Service (Executive) and Allied Services is being made not by any Selection Committee constituted for that purpose but it is being done by the Haryana Public Service Commission which is a Commission set up under Article 316 of the Constitution. It is a Commission which consists of a Chairman and a specified number of members and is a constitutional authority. We do not think that the principle which requires that a member of a Selection Committee whose close relative is appearing for selection should decline to become a member of the Selection Committee or withdraw from it leaving it to the appointing authority to nominate another person in his place, need be applied in case of a constitutional authority like the Public Service Commission, whether Central or State. If a member of a Public Service Commission were to withdraw altogether from the selection process on the ground that a close relative of his is appearing for selection, no other person save a member can be substituted in his place. And it may sometimes happen that no other member is available to take the place of such member and the functioning of the Public Service Commission may be affected. When two or more members of a Public Service Commission are holding a viva voce examination, they are functioning not as individuals but as the Public Service Commission. Of course, we must make it clear that when a close relative of a member of a Public Service Commission is appearing for interview, such member must withdraw from participation in the interview of that candidate and must not take part in any discussion in regard to the merits of that candidate and even the marks or credits given to that candidate should not be disclosed to him."

40. "Real likelihood test" applied in Ranjit Thakur *v.* Union of India [Ranjit Thakur *v.* Union of India, *(1987) 4 SCC 611 : 1988 SCC (L&S) 1], is elucidated in the following words : (SCC pp. 617-18, paras 15-17)*

"15. ... The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether Respondent 4 was

likely to be disposed to decide the matter only in a particular way.

16. It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least the minimal requirements of natural justice; is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non judice"….

17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, "Am I biased?"; but to look at the mind of the party before him."

27. In light of the settled law and the pronouncements of the Supreme Court on bias, examining the facts of the present case, this Court is of the view that Dr. Roshan Jacob, who was also the Director, Geology and Mining had directed the District Magistrate to proceed against the petitioner and to cancel his mining lease, which order was duly complied, and subsequently she herself as the revisional authority against the order of cancellation of the mining lease proceeded to hear and reject the revision, which order would certainly be hit by the vice of bias. It is the particular officer who initiated proceedings against the petitioner and other similarly situated persons, who can be said to have already made up her mind with regard to the penalty to be imposed upon the petitioner which is evident from her letter dated 20.03.2021 and further proceeded to decide the revision and, therefore, she was a Judge of her own cause deciding a matter which was initiated by her and also the revision challenging the order of District Magistrate which was passed on her dictates. The ground of bias squarely applies to the facts of the present case and the order dated 16.03.2022 rejecting the revision is clearly illegal, arbitrary and is hit with vice of bias.

28. This Court has also examined the revisional order passed in the case of *VAR Enterprises Private Limited* in Revision No. 128 (R)/SM/2021. It is noticed that the revisionist therein was also confronted with the same inspection report where he was also held guilty of illegal mining in an area beyond the leased area allotted to him. The revisional authority has allowed the revision only on the ground that there is no material to indicate that the lease holder was, in fact, involved in or has indulged in illegal mining. It is clear that the same revisional authority in one case has sought to distinguish the inspection report and declined to fasten any liability upon VAR Enterprises Private Limited while on the basis of the same material have held the petitioner to be guilty of illegal mining. This clearly shows the discriminatory nature in which the impugned order of punishment has been passed and, as such, the action of the administrative

authority cannot be sustained.

VIOLATIONS OF RULE 58 OF THE RULES OF 1963 : -

29. The impugned order has also been assailed on the ground that the same is in violation of Rule 58 of the Rules of 1963. By means of the impugned order the District Magistrate has passed final orders in pursuance of the show cause notice dated 25.2.2021, 20.3.2021 and 12.4.2021. It is stated that the said notice was only with regard to recovery of the outstanding amount of royalty, for non payment of 2 per cent TCS amounting to Rs. 1,52,400/- and also 10 per cent of the District Mining Fund (D.M.F.) amounting to Rs. 7,62,000/-.

30. In this regard Rule 58 of the Rules of 1963 provides that in consequence of non - payment of royalty or other dues the same can be recovered by the respondents only after service of notice to the lessee, to pay within thirty days of the receipt of the notice and if not paid within thirty days then on expiry of fifteen days of the notice the lease can be cancelled. In this regard it has been submitted that thirty days from the date of notice would expire only on 11.05.2021 and fifteen days beyond the said date would expire on 26.05.2021 and even according to the statutory provisions cancellation of the lease of the petitioner could not have been ordered prior to expiry of the said period i.e. 26.05.2021 while in the present case the order of cancellation has been passed on 26.4.2021 before the expiry of statutory period, as such, it is clearly noticed that Rule 58 of the Rules of 1963 has been flagrantly violated by the respondents in cancellation of their lease in pursuance of the show cause notice dated 12.4.2021. Therefore, on this ground also the cancellation order is illegal, arbitrary and violative of Rule 58 of the Rules of 1963.

31. In view of the aforesaid facts and circumstances, this Court is of the considered view that the impugned order dated 16.3.2022 passed by the State Government in Revision No. 104 (R)/SM/2021 as well as order 26.4.2021 passed by opposite party No. 3 i.e. District Magistrate, Banda are illegal and arbitrary, hence, set aside.

32. Considering the seriousness of the allegations and the amount of recovery the respondents are given liberty to proceed against the petitioner in accordance with law, if they so choose.

33. In view of the above, the writ petition stands allowed.

———

AFR

Court No. - 21

Case :- WRIT - C No. - 51986 of 2016

Petitioner :- Ranveer Singh
Respondent :- State Of U.P. And 7 Others
Counsel for Petitioner :- Manish Goyal
Counsel for Respondent :- C.S.C.

Hon'ble V.K. Shukla,J.

Hon'ble Mahesh Chandra Tripathi,J.

(Oral : V.K. Shukla, J.)

Present Writ Petition in question is directed against the order passed by District Magistrate, Saharanpur dated 06.10.2016 in exercise of authority conferred under Section 21(1) and Section 21(5) of *Mines and Minerals (Development and Regulation) Act, 1957* (hereinafter referred to as the 'MMDR Act') annexed as Annexure no.1 to the Writ Petition wherein recovery initiated against the petitioner has been held to be justifiable and apart from the same, the petitioner has also further challenged the validity of the notice dated 31.08.2012, notice dated 09.12.2014, notice dated 09.07.2015 and notice dated 08.09.2015 issued by respondent nos.6 and 7 respectively.

Petitioner Ranveer Singh claims that he is resident of village Aslampur Bartha, Tehsil Behat, District Saharanpur and is a social worker and currently he is holding the office of Pradhan of Village Aslampur Bartha Rasulpur @ Rasuli and of Bartha Kursi. Petitioner has proceeded to make a mention that he has been heading movement against illegal mining and it was due to his effort that illegal mining has been exposed in the district of Saharanpur wherein Mohd. Iqbal s/o Abdul Wahid is a principal player.

Petitioner, it appears had made a point that action be taken against Mohd. Iqbal for financial irregularities and it appears that

armed with requisite material petitioner approached the Apex Court by filing petition under Article 32 of the Constitution of India, which came to be registered as Writ Petition No.818/2015 before the Hon'ble Apex Court with following reliefs:-

> *"(a) Issue a writ in the nature of mandamus directing the investigation by Special Investigation Team or any other central investigative agency into the financial affairs of Mr. Mohd. Iqbal s/o Abdul Waheed, R/o vill. Mirzapur Pol, Tehsil Behat, District Saharanpur, Uttar Pradesh.*
>
> *(b) Direct the respondents to attach the benami properties details of which is annexed as Annexure-P/9 and the same is purchased by Mohd. Iqbal through his various companies/partnership firms/relatives/employees etc.; and*
>
> *(c) pass such further order of orders, as this Hon'ble Court may deem fit and proper in the circumstances of this case."*

In the said proceedings in question, the Hon'ble Apex Court proceeded to pass following order on 14.12.2015:

> **"Issue notice.**
>
> **Mr. Maninder Singh, learned Additional Solicitor General accepts notice on behalf of respondent No.1, 3 to 7 and 10 to 14.**
>
> **Liberty is given to serve Mr. Gaurav Bhatia, learned Additional Advocate General for the State of U.P. in respect of respondent No.2.**
>
> **Notice to respondent No.8 and 9, namely, Chief Secretary, State of Haryana and Chief Secretary, State of Uttarakhand is for the present dispensed with.**
>
> **Mr. Anupam Mishra, learned counsel accepts notice on behalf of respondent No.15.**
>
> **Learned counsel for the respondents to file counter affidavit within four weeks. Rejoinder affidavit, if any, be filed within two weeks thereafter.The petitioner shall also file additional affidavit stating the following:-**
>
> **(1) The number of writ petitions earlier filed by the petitioner against respondent No.15. Copies of the said writ petitions and orders passed by the High Court on the same, shall also be filed.**
>
> **(2) The number of criminal cases registered against the petitioner and the details thereof as also their present status.**
>
> **(3) The number of cases of illegal mining registered against the petitioner or orders passed by the competent authorities imposing penalties for such illegal mining.**
>
> **Mr. Maninder Singh, learned Additional Solicitor General shall also take instructions from the respondents for whom he appears as to the modalities which the respondents propose to adopt in regard to**

verification and if necessary investigation into the allegations made in the writ petitions and for initiating proceedings wherever the same are necessary. We make it clear that if the authority competent to inquire into the matter finds it to be a fit case to initiate any inquiry or investigation they shall be free to do so. The present proceedings shall not be seen as an impediment for them to initiate legal action wherever such action is deemed necessary.

List in the month of February, 2016."

The matter has been taken up once again before Hon'ble the Apex Court on 25.04.2016 whereon following order has been passed:

"UPON hearing the counsel the Court made the following

O R D E R

Mr. Maninder Singh, learned ASG has today filed a status report each on behalf of CBDT, Enforcement Directorate and SFIO. From a reading of the said reports, it appears that the authorities have taken cognizance of the allegations made by the writ-petitioner and initiated appropriate investigation into the same. Mr. Maninder Singh submits that given three months' further time, the three agencies mentioned above would submit a further report as to the progress made in connection with the on-going investigation. Time prayed for is granted. The agencies to file a status report in regard to the progress made within three months from today.

Mr. P.Chidambaram, learned senior counsel appearing on behalf of respondent No. 15 points out that apart from certain criminal cases, there are certain outstanding demands for an amount of Rs. 4,26,62,680/- approximately against him. Mr. H.P.Raval, learned senior counsel for the petitioner submits that apart from a demand of Rs. 12,05,300/- mentioned at Serial 4, he has not received any other demand letter mentioned in the said affidavit. Learned counsel for the State of U.P. and the District Magistrate concerned undertakes to serve copies of the three demands letter referred to above upon Mr. D.Mahesh Babu, learned counsel for the petitioner. Service of the said demand letters on the learned counsel shall be taken as service upon the writ- petitioner who shall then have three weeks' time to reply to the said demand letter before the District Judge/competent authority concerned. We hope and trust that the competent authority would take up the matter as regards the recovery of the amount due from the petitioner and take the proceedings to their logical conclusion. Copies of the demand letters shall also be furnished to Mr. Maninder Singh who shall forward the same to the concerned authorities for any investigation at their end, if so advised.

List on 08.08.2016.

Civil Appeal Nos. 2667 of 2016 Civil Appeal D 9109 of 2016, 7484 of 2016, 7821 of 2016:

De-linked. To be listed before an appropriate Bench of which Hon'ble Mr. Justice Uday Umesh Lalit is not a member after obtaining orders from Hon'ble the Chief Justice of India. Interim Orders dated 14.03.2016 and 18.03.2016 shall continue until further orders from this Court."

The matter, thereafter, has been taken up on 08.08.2016

whereon following order has been passed:

> **"UPON hearing the counsel the Court made the following**
>
> **O R D E R**
>
> **Mr. P.N.Mishra, learned senior counsel appearing for the District Magistrate who happens to be the competent authority in relation to the demand notices issued to the petitioner submits that according to his instructions, the petitioner has not so far responded to the notices served upon him pursuant to our Order dated 25.04.2016.**
>
> **Mr. H.P.Raval, learned senior counsel appearing for the petitioner however disputes this position and submits that the petitioner has already responded to the notices and that the proceedings before the competent authority are in progress. In the circumstances, all that we need direct at this stage is that the competent authority shall expedite the finalisation of the proceedings and pass appropriate orders expeditiously but not later than two months from today. Copies of the final orders passed by the competent authority shall be placed before the Court by the date of hearing.**
>
> **Mr. Maninder Singh learned ASG has drawn our attention to the second status report filed on behalf of respondents No. 4 and 12 to point out that the investigation into the allegations and the complaints made by the petitioner has been taken up in the right earnest and several steps accomplished. He points out that keeping in view the magnitude of the work involved, the investigation agency may require three months' further time to report further developments and progress in connection with the same. We see no reason to decline that prayer. We direct that the investigation initiated by respondents No. 4 and 12 referred to in the affidavit filed on their behalf shall be carried out and a status report based on the progress made be filed on or before the next date of hearing.**
>
> **Mr. Raval, at this stage submits that although the petitioner had filed several complaints to the Director, CBI for investigation into several allegations made against respondent No. 15 and persons connected with him, the CBI has not taken any action in the matter. He submits that now that the reports submitted by respondents No. 4 and 12 suggest that several companies some of which prima facie fake and shell companies are indulging in extensive business possibly of money laundering have been noticed in the course of investigations, the CBI could look into the complaints more seriously and take whatever action was legally permissible and warranted.**
>
> **Mr. Maninder Singh submits that CBI will have no difficulty in looking into the complaints filed by the petitioner in the light of the reports submitted by the Enforcement Directorate and the CBDT. In that view, we expect the CBI to examine the matter at an appropriate level for such action as may be considered necessary in accordance with law. A status report on the action taken by all agencies shall be filed before the next date of hearing.**
>
> **Post after three months. We make it clear that we have expressed no opinion on the merits of any contentions open to the parties both on facts and in law. The status reports filed by Mr. R Balasubramanian on behalf of Enforcement Directorate and CBDT are taken on record."**

From the order dated 08.08.2016 passed by Hon'ble the Apex Court, this much is clear that Hon'ble the Apex Court has taken note

of the fact that petitioner has already responded to the notices and the proceedings before the Competent Authority are in progress. Hon'ble the Apex Court has proceeded to make a mention that in such a situation all that is needed is that the competent authority shall expedite the finalisation of the proceedings and pass appropriate orders expeditiously but not later than two months from today and copies of the final orders passed by the competent authority shall be placed before the Court by the date of hearing.

This is an accepted position that the proceedings in question has been finalized by means of order dated 06.10.2016 passed by District Magistrate, Saharanpur for recovering a sum of Rs.4,26,62,680/- from the petitioner and the said order in question is now being assailed before us.

On 05.11.2016, we have proceeded to pass order for making a request before Hon'ble Apex Court to pursue the matter before this Court or alternatively the matter be pursued before the Apex Court. Relevant extract of the said order reads as follows:

> **“We have been informed that the next date fixed before Hon'ble the Apex Court is 15.11.2016 and in our considered opinion, once the next date fixed in the matter is 15.11.2016 and the matter is engaging the attention of Hon'ble the Apex Court and copies of the final order passed by the Competent Authority has been directed to be placed before the Court concerned, in view of this, it would be much more appropriate if liberty is sought from the Apex Court to pursue the matter before this Court or alternatively the matter be agitated before Hon'ble the Apex Court itself by calling for the record of writ petition itself.”**

On 02.12.2016 when the matter was taken up, a supplementary affidavit in question has been filed indicating therein that before the Apex Court, IA No. 7 of 2016 had been filed with following request:

> **"a) Restrain the State of Uttar Pradesh from taking any steps for recovery of amounts from the Petitioner pursuant to order of DM, Saharanpur dt. 06.10.2016.**
>
> **b) Stay the order dt. 06.02.2016 passed by DM, Saharanpur in Misc. Application No. 661/2016 and consequential proceedings.**

c) Direct the District Magistrate, Saharanpur to produce original files relating to issuance and service of demand notices dt. 31.08.2012, 09.12.2014, 09.07.2015 and 08.09.2015; and

d) pass such other and further order as this Hon'ble Court may deem fit and proper.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY."

In I.A. No.7 of 2016 following order has been passed:

"Upon hearing the counsel the Court made the following order

O R D E R

Learned counsel for the petitioner seeks leave withdraw I.A. No. 7 of 2016 (Application for direction).

I.A. No. 7 of 2016 is dismissed as withdrawn with liberty to seek appropriate redress in appropriate proceedings."

Further as I.A. No. 7 of 2016 has been permitted to be dismissed as withdrawn with liberty to seek appropriate redress in appropriate proceedings and the present writ petition in question has already been filed before this Court assailing the decision making process itself, as such after hearing the parties, we proceeded to pass an order asking the learned Standing Counsel to produce relevant records on the basis of which assessment in question has been done and such a conclusion has been drawn and further that the matter will be taken up on 15th December, 2016 in computer list.

Today the entire records leading to the impugned order in question has been produced before us and thereafter with the consent of parties, present matter in question is being heard and finally decided.

Shri Manish Goyal, counsel for the petitioner submitted that in the present case decision making process is *per-se* bad, inasmuch as, point of view as has been indicated by the petitioner in his reply filed has not at all been taken note of and in most arbitrary and whimsical fashion, financial liability has been shouldered upon the

petitioner. Further submission has also been made that financial liability has been shouldered on mere *ipse dixit*, inasmuch as, at no point of time any proper inquiry has been conducted in the matter i.e. by providing the entire material that has forced the Authority to form opinion that petitioner has indulged in the activity of illegal mining and consequently liable for imposition of such heavy liability upon the petitioner. It has been contended that at no point of time, the incumbents, who have proceeded to file affidavits and deposed against the petitioners, qua them any opportunity has been provided to cross-examine them and to lead has defence, in view of this, it is being contended that once fair procedure has not been adhered to, the action taken cannot be approved of and accordingly requisite relief be accorded.

Shri Atul Kumar Singh, learned Standing Counsel, on the other hand, has contended that in the present case, illegal mining has been there and material has been available on record connecting the petitioner with the activity of illegal mining and in view of this, rightful exercise has been undertaken and rightful liability has been imposed and accordingly, no interference be made.

Arguments to the similar effect has been advanced by the counsel representing opposite party no.4.

After respective arguments have been advanced, we proceed to examine the relevant provisions of Mines and Minerals (Development and Regulation) Act, 1957 and the Rule framed thereunder.

The Mines and Minerals (Development and Regulation) Act, 1957 is an Act to provide for regulation of mines and development of minerals under the control of Union. Section 2 declares the expediency of Union to control the regulation of mines and development of minerals Section 3(a) defines minerals which

includes all minerals except mineral oils. Section 3(e) defines minor minerals. Section 4 refers to the prospecting or mining operations to be undertaken only under a licence or lease. Section 4 is for termination of prospecting licences or mining leases, sub-section (1) is for premature termination other than minor minerals while sub-section (2) is for minor minerals. Section 5 imposes restrictions on the grant of such licences or leases. Section 6 specifies the maximum area for which a licence and lease may be granted, while Section 7 gives period for the grant and renewal of such prospective licences. Section 8 deals with the periods for mining leases. Sub-sections (1) and (2) of Section 9 refer to the payment of royalty at the rate specified in the Second Schedule whether granted before coming into force of this Act or subsequently. Sub-section (3), empowers the Central Government to amend the Second Schedule so as to enhance or reduce the rate of royalty payable. Section 9A obliges lessee to pay the dead rent. Section 10 to 12 deal with the procedure for obtaining prospective licence, or mining leases in respect of the land in which minerals vest in the Government. Section 13 empowers the Central Government to make rules in respect of minerals. Section 14 specifically excludes Section 5 to 13 from application of quarrying leases, mining leases or other minerals concessions in respect of minor minerals. Section 15 empowers the State to make rules in respect of minor minerals. Section 16 entrusts power to modify mining leases granted before 25th October, 1949. Section 17 gives special power to the Central Government to undertake prospecting or mining operations in certain lands. Section 18 refers to the mineral development. Licences and mining leases under the Act to be void under Section 19 if made in contravention of the Act, while Section 20 makes the Act and Rules to apply to all renewals. Section 21 imposes penalties. Section 22 refers to the cognizance of offences. Section 23-C empowers the State to make rules for preventing illegal mining, transportation and storage of

minerals. Section 26 entrusts both Central and the State to delegate its power under the Act on officer or authority of the Central or State. Sub-section (1) of Section 28 puts an obligation on the Central Government to place its rules and notifications before the Parliament which is subject to its modifications, if any. Similarly, the State is obliged to place its Rules and notifications before each houses of State Legislature under sub-Section (3). Section 29 makes existing rules to continue so long they are not in consistent with the Act and Rules. Section 30 empowers the Central Government to revise any order made by the State or any other authority. The First Schedule refers to the specified minerals, viz., Hydro carbons/energy minerals Atomic minerals and Metallic and non-metallic minerals with reference to , Section 4(3) 5(1), 7(2) and 8(2) while the Second Schedule refer to the rate of royalty in all States and Union Territories except the States of Assam and West Bengal while the Third Schedule refers to the rate of Dead Rent. Thus, the aforesaid Act expressly lays down the rates of royalty of the minerals through Schedule II read with Section 9. It is significant that Section 14 excludes Section 5 to 13 specifically for minor minerals which includes Section 9. Section 15, entrusts power on the State to lay down Rules in respect of the minor minerals.

In the State of U.P., the State Government in exercise of its authority conferred under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 has framed Rules knows as U.P. Minor Mineral (Concession) Rules, 1963. Relevant Rules are being dealt with and also quoted below:

> ***"Rule 2 defines "Mine Operations" as any operations undertaken for the purposes of winning any minor mineral. "Minor Mineral" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purpose and any other mineral which the Central Government has declared from time to time or may declare in the Official Gazettee, to be minor mineral under Clause (e) of MMDR Act, 1957. "State" and "State Government" means the State of Uttar Pradesh. Rule 3 clearly proceeds to mandate that but for mining lease and but for mining permit, no person shall undertake any mining operations in any area within***

the State of any minor mineral. Chapter II deals with grant of Mining Lease. Chapter III deals with payment of Royalty and Deadrent.

21. Royalty (1) The holder of a mining lease granted on or after the commencement of these rules shall pay' royalty in respect of any mineral removed by him from the lease area at the rates for the time being specified in the First Schedule to these Rules,

1(1-a) Notwithstanding anything to the contrary contained in rule 3 royalty should be payable by concerned brick kiln owner or user of ordinary clay on ordinary earth at the rate specified in First Schedule to these rules.

(2) The State Government may, by notification in the Gazette, amend the First Schedule so as to include therein or exclude there from or enhance or reduce the rate of royalty in respect of any mineral with effect from such date as may be specified in the notification.

Provided that the State Government shall not enhance the rate of royalty in respect of any mineral for more than once during any period of three years and shall not fix the royalty at the rate of more than 20 percent of the pit's mouth value,

(3) Where the royalty is to be charged on the pit's mouth value of the mineral the State Government may assess such value at the time of the grant of the lease and the rate of royalty will be mentioned in the lease deed. It shall be open to the State Government to reassess not more than once in a year the pit's mouth value if it considers that an enhancement in necessary.

22. Dead Rent

The holder of a mining lease shall, during the terms of the lease, pay advance, in instalments for every year of the lease, such amount as dead rent at the rates mentioned in the second schedule to these rules, as may be specified in the lease deed by the State Government, and if the terms of lease permit the working of more\than one mineral in the same area, the said dead rent shall be paid separately for each such minerals.

Provided that the lessee shall in respect of each mineral, pay the dead rent or the royalty, whichever is higher in amount and not the both.

(3) On the declaration of the area or areas under sub-rule (1) the provisions of chapters II, III and VI of these rules shall not apply to the area or areas in respect of which the declaration has been issued. Such area or areas may be leased out according to the procedure described in this Chapter.

(4) The District Officer shall get the area or areas declared under sub-rule (1), evaluated for quality and quantity of mineral for fixing minimum bid or offer by the Director, Geology and Mining, Uttar Pradesh or by an officer authorised by him before the date fixed for auction or tender or auction-cum-tender, as the case may be.

Chapter VI deals with conditions of Mining Lease. Chapter VI deals with grant of Mining Permit. Chapter VII deals with contraventions, offences and penalties.

57. Penalty for unauthorised mining:

Whoever contravenes the provisions of rule 3 shall on conviction be punishable with imprisonment of either description for a term, which may extend up to six months or with fine which may extend to one thousand rupees, or with both.

58. Consequences of non-payment of royalty rent or other dues:

(1) The State Government or any officer authorised by it in this behalf may determine the mining lease after serving a notice on the lessee to pay within thirty days of the receipt of the notice any amount due or dead rent under the lease including the royalty due to the State Government if it was not paid within fifteen days next after the date fixed for such payment. This right shall be in addition to and without prejudice to the right of the State Government to realise such dues from the lessee as arrears of land revenue.

(2) Without prejudice to the provisions of these rules, simple interest at the rate of 24 percent per annum may be charged on any rent, royalty, demarcation fee and any other dues under these rules, due to the State Government after the expiry of the period of notice under sub-rule (1).

59. Consequences of contravention of certain conditions: Any lessee holding a mining lease who commits a breach of any of the conditions provided in rules 44 and 47 (relating to inspection of workings and weighing machines) shall on conviction be punishable with imprisonment of either description for a term which may extend up to six months or with fine which extend to one thousand rupees, or with both.

60. Premature Application:- Applications for grant of a [reconnaissance permit, prospecting licence and mining lease] in respect of areas whose availability for grant is required to be notified under rule 59 shall, if-

(a) no notification has been issued, under that rule; or

(b) where any such notification has been issued, the period specified in the notification has not expired, shall be deemed to be premature and shall not be entertained.]

Chapter VIII Deals with Miscellaneous provisions.

66. Power of assessment entry and inspection

(1) F or the purpose of assessment of royalty and for ascertaining the position of the working, actual or prospective, of any mine or abandoned mine or for any purposes connected with these rules, the District Officer or the officer of the Directorate of Geology and Mining, Uttar Pradesh, not below the rank of Mines inspectors appointed for such purposes by the Director or any other Off.1cer authorised in his behalf by the State Government by general or special order may-

(a) enter and inspect any mine

(b) survey and take measurement in any such mine.

(c) weigh, measure or take measurement of the stock of mineral laying at any mine.

(d) examine any document, book, register or record in the possession or power of any person having the control of, or connected with any mine and place marks or identifications thereon and take extracts from or make copies of such documents, book, register or records:

(e) summon or order the production of any such document, book, register or record as is referred to in clause (d)

(f) summon or examine any person having the control of, or connected with anymine; and

(g) call for such information or return as may be considered necessary

(2) Every person authorised by the State Government under sub-rule (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code and every person to whom an order or summons is issued by virtue of power conferred by clause (e) or clause (f) of the said sub-rule shall be legally bound to comply with such order or summons, as case may be.

70. Restrictions on transport of the minerals:

(1) The holder of a mining lease or permit or a person authorised by him in this behalf may issue a pass in Form MM-11 to every person carrying, a consignment of minor mineral by a vehicle, animal or any other mode of transport. The State Government may, through the District Officer, make arrangements for the supply of printed MM-11 Form books on payment basis.

(2) No person shall carry, within the State a minor mineral by a vehicle, animal or any other mode of transport excepting railway, without carrying a pass in Form MM-II issued under sub-rule (I).

(3) Every person carrying any minor mineral shall, on demand by any officer authorised under rule 66 or such officer as may be authorised by the State Government in this behalf, show the said pass to such officer and allow him to verify the correctness of the particulars of the pass with reference to the quantity of the minor mineral.

(4) The State Government may establish a check post for any area included in any mining lease or permit, and when a check post is so established public notice shall be given of this fact by publication in the Gazette and in such other manner as may be considered suitable by the State Government.

(5) No person shall transport a minor mineral for which these rules apply from such area without first presenting the mineral at the check post established for that area for verification of the weight or measurement of the mineral.

(6) Any person found to have contravened any provision of this rule shall, on conviction, be punishable with imprisonment of either description for a term, which may extend to six months or with fine which may extend to one thousand rupees or with both."

Apart from the same, Rules have also been framed for curbing illegal mining known as *"Uttar Pradesh Mineral (Prevention of Illegal Mining Transportation & Storage) Rules, 2002"*. The said Rules in question have been framed in exercise of authority conferred under Section 23(C) of Mines and Minerals (Development and Regulation) Act, 1957 and the said Rules in question are very very strict and specific as Rule 3 clearly provides to make a mention that no person shall transport, carry or cause to be transported, carried any mineral by any means from its raising place to any other place without a valid transit pass issued by the holder of mining lease or mining

permit or prospecting licence as the case may be. Rules 4 and 5 deals with provision for supply of transit passes and fee, issue of transit passes. Chapter II of the aforementioned Rules deals with transportation of minerals wherein Rules 6 deals with establishment of check-posts for inspection of minerals. Rules 7 deals with transportation of minerals. Rules 6 and 7 of the said Rules are being extracted below:

> ***"6. Establishment of check-posts for inspection of minerals:***
>
> ***(1) If the State Government considers it necessary to establish check post, with a view to check the illegal transportation of the minerals raised, it may notify the setting up of a check post at any place or places within the State.***
>
> ***(2) The establishment of check post at any place shall be notified in the Gazette.***
>
> ***(3) The Officer-in-Charge of the check-post or any Officer authorised by the State Government having sufficient reasons to believe that the carrying mineral (s) is not in accordance with the transit pass, then such office shall take action in accordance with sub-rule (4).***
>
> ***(4) (a) The Officer-in-charge of the check-post or officer authorised by the State Government shall have the powre to seize the mineral alongwith the carrier.***
>
> ***(b) The Officer-in-Charge of the check-post or any Officer authorised by the State Government shall give a receipt of such mineral and carrier seized by him to the person from whose possession or control, it is seized.***
>
> ***(c) The Officer-in-Charge of the check-post or Officer authorised by the State Government may direct the person in-charge of the carrier to carry the mineral to the nearest check-post setup under sub-rule(1) and (2) or nearest police station.***
>
> ***7. Transportation of minerals: (1) All dispatch of minerals by a holder of mining lease, mining permit or prospecting licence by a carrier shall be accompanied with a transit pass, in duplicate. The person in-charge of the carrier shall produce the transit pass at the check post for the purpose, or on demand by any Officer, authorised by the State Government by notification in the official Gazette.***
>
> ***(2) All carriers, carrying the mineral shall stop at the check post and proceed after having been cleared by the respective check-post. The In-charge of the check-post shall make necessary endorsement on the first copy of the transit pass and return immediately to the Operator of such carrier and second copy of such transit pass will be kept in records of the check-post."***

Chapter III deals with storage of minerals and therein Rule 11 deals with restriction on storage and transportation of minerals.

All these provisions quoted above would go to show that there

is a full-fledged machinery that has been kept in place to see and check that there is no illegal mining but in spite of entire machinery being there, allegations are coming forward of illegal mining being there in the State of U.P. and Saharanpur in particular.

In reference of District Saharanpur, there has been large scale complaint of illegal mining and what we find that Apex Court in the case of ***Deepak Kumar and others vs. State of Harana and others 2014 (16) SCC 698*** has proceeded to take note of the fact that there has been large scale illegal mining and ultimately noticing this fact as mentioned in report that there is no effective system in place for checking illegal mining, restrain order was put in. The relevant paras of the said judgement reads as follows:

> **"First, we will deal with the details furnished in the report pertaining to District Saharanpur, U.P. CEC referred to five mining leases for sand, bajri and boulders presently operating in the District Saharanpur. Report says that in Lot Nos. 7, 16, 22 and 23, the area given for mining leases is less than 5 hectares and hence permission was granted by the State of U.P. for mining operations without obtaining any environmental clearance. With regard to Lot Nos.7, 8, 13, 26, 27, 28 & 29 relating to mining lease of an area of 686.693 acres, it was stated that the lease was, though originally sanctioned for a period of three years w.e.f. 6.1.2003, later it was cancelled and the lease operated only up to 9.2.2004.**
>
> **5. However, by virtue of the order passed by the Allahabad High Court in CMWP No. 29797/2009, the lease was allowed to operate for the balance period of one year, ten months and twenty seven days w.e.f. 27.2.2010 and up to 24.1.2012 but without environment clearance on the ground that the lease was originally granted prior to 14.9.2006 the date of the notification of MOEF.**
>
> **6. Prima facie, we are of the view that the stand taken by the State of U.P. is in clear violation of the provisions of EIA Notification dated 14.9.2006 and the notification is seen mis-interpreted and misapplied, especially when the report says that there has been an increase in annual production, compared to earlier years.**
>
> **7. Report says that in addition to the above mentioned mining leases, there are about 30 sanctioned mining leases for the collection of sand, bajri and boulders from river Yamuna bed/canal beds in District of Saharanpur. But they are found to be operational without obtaining environment clearance. Report also says that the Environmental Appraisal Committee (EAC) had recommended grant of environment clearance in favour of the above 30 mining leases but the environment clearance was granted by the MoEF only in respect of two of such leases, Lot No. 25 in Village Abdullapur and Lot No. 9 in village Thapal Ismailpur, on specific condition that the prior clearance from the Standing Committee of the National Board for Wildlife (NBWL) be obtained, since the area fell within the sanctuary. No such permission has been obtained so far. The stand of the State of U.P. before the CEC was that the above 30 mining**

leases stood closed w.e.f. 30.6.2011.

8. CEC, however, noticed, in reality, they are functioning and large scale illegal mining is going on in the River Yamuna bed and in nearby areas. Further, it was also pointed out that large numbers of screening plants and stone crushers are seen fully operational on both sides of the River bed of Yamuna. Ramps/Roads are seen constructed for to and fro movement of the vehicles from/to such screening plants/crushers.

9. CEC has also produced the Quarterly Returns, transit passes issued by the officers and the quantity of mines and minerals transported. Report says that a total of 60,176 transit permits have been issued by the Saharanpur Mining Department for transportation of 2,40,704 cubic meter of illegally mined materials. Some of transit passes made available by CEC shows that seal of the Mining Department is affixed but there is official no signature, no details of vehicle numbers etc. Prima facie, it is seen that the Government machinery has failed in the District of Saharanpur in controlling the mining mafia. Such large-scale illegal mining operations could not have happened without the knowledge and blessings of the concerned officials.

10. Report has highlighted the sorry state of affairs as follows:

> "The entire illegal mining has been legalized and facilitated by the concerned officers of the State of U.P., mainly by providing a disproportionately large number of transit permits to sanctioned leaseholders and which have been misused and by allowing the illegally established screening plants and crushers to continue operating. There is no effective system in place for checking illegal mining. The CEC is also of the view that the illegal mining has continued not because of lack of effective Rules and procedure but in spite of them. This has been mainly possible because of the active connivance of the officers."

11. Learned counsel, Mr. Kamalendra Mishra, who appeared for the State of U.P., submitted that the State has taken strong measures to close down Lot Nos. 7, 8, 13, 26, 27, 28 and 29, covering an area of 686.6 acres and adequate number of police forces are deployed to ensure that illegal mining do not take place in those areas and now mining in those areas is virtually stopped with effect from 22.12.2011.

12. We fail to see, what the officers were doing all these years and they woke up only when CEC came for inspection. Prima facie, we are of the view that such large scale mining operations would not have taken place without the tacit permission and knowledge of some of the officials in-charge, which calls for detailed enquiry.

13. In view of the above mentioned circumstances, we are inclined to pass the following order:

(1) The District Collector, District Superintendent of Police, and the Additional Director (Mining Division) of Sharanpur, would see that no illegal mining be carried on in the District.
(2) They are directed to take immediate steps to close down all illegally operating screening plants/crushers etc. on both sides of the River Yamuna forthwith and the illegally mined sand, bajri and boulders and the vehicles be seized forthwith;
(3) Screening plants/crushers located on either side of the River Yamuna, within the prohibited zone and operating in violation of guidelines issued by the U.P. Pollution Control Board and/or within the prohibited zone, shall be immediately dismantled;

(4) State of U.P. would make available the details of the current

mining leases granted District wise, the duration, area, with or without clearance from the State Pollution Control Board, MoEF and National Board for Wildlife.
(5) Compliance report to that effect be filed before this Court within two weeks.
The Chief Secretary of the State of U.P. shall ensure compliance of this order.

Once illegal mining has been on the radar of the Apex Court and this much is also clear that Apex Court has taken judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. Apex Court has also mentioned that it also weakens river beds, fish breeding and destroys the natural habitat of many organisms and if these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions and the same will not only change the river hydrology but also will deplete the ground water levels.

Apex Court in the case of ***State (NCT of Delhi) vs. Sanjay 2014 (9) SCC 772*** apart from the fact noted above has proceeded to make a mention that where the sand and sand and gravel from the river beds are removed without consent, which is the property of the State, the same is a distinct offence under the IPC, hence police is also competent to deal with the situation when sands, gravels and other minerals are removed/transported in clandestine manner with dishonest intent from the possession of the State. Relevant extract of the judgement reads as follows:

"In the case of State of U.P. vs. Babu Ram Upadhya, AIR 1961 SC 751, while interpreting a particular statute as mandatory or directory this Court observed :-

"When a statute uses the word 'shall', 'prima facie', it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature the court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact

that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

66. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed.

67. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the ground water levels.

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

69. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is laible to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

70. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft.

71. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can

register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190 (1)(d) of the Code of Criminal Procedure.

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

The facts noted above would go to show that it is the responsibility of the State officials to see and ensure that natural resources of the State is protected by the State officials and with such intent a full-fledged machinery has been set up, comprising large scale incumbents working in the mining department, and apart from the same police apparatus is also there to assist alongwith officials of other department also, who are drawing salary from the State exchequer and it appears that for obvious reasons, there is an active collusion in between the mining mafias and the officials of the Administration resulting in large scale illegal mining and thus causing apparent loss to the State exchequer.

In the present case, the allegations that have come forward is that petitioner has indulged in illegal mining and accordingly, royalty and other dues are liable to be charged from him. Section 21(5) of the MMDR Act, 1957 clearly makes its intentions clear by empowering the State Government to recover rent, royalty or tax from the person who has raised the mineral from any land without any lawful authority and also empowers the State Government to recover the price thereof where such mineral has already been disposed of, inasmuch as, the same would not be available for seizure and confiscation.

19

Apex Court in the case of ***Karnataka Rare Earth & another vs. Senior Geologist, Dept. of Mines and Geology and another AIR 2004 SC 2915*** has clearly proceeded to make a mention that the said provision empowers the State Government to recover rent, royalty or tax and its underlying principle is that a person acting without any lawful authority must not find himself placed in a position more advantageous than a person raising minerals with lawful authority. The proceedings undertaken under Section 21(5) of MMDR Act, 1957 in-fact are recovery of price of the mineral intending to compensate the State for the loss of the mineral owned by it and caused by a person who was held not entitled in law to raise the same. Relevant extract of the judgement reads as follows:-

> **"In our opinion, the demand by the State of Karnataka of the price of the mineral cannot be said to be levy of penalty or a penal action. The marginal note of the Section __ 'Penalties', creates a wrong impression. A reading of Section 21 shows that it deals with a variety of situations. Sub-Sections (1), (2), (4), (4A) and (6) are in the realm of criminal law. Sub-Section (3) empowers the State Government or any authority authorized in this behalf to summarily evict a trespasser. Sub-Section (5) empowers the State Government to recover rent, royalty or tax from the person who has raised the mineral from any land without any lawful authority and also empowers the State Government to recover the price thereof where such mineral has already been disposed of inasmuch as the same would not be available for seizure and confiscation. The provision as to recovery of price is in the nature of recovering the compensation and not penalty so also the power of the State Government to recover rent, royalty or tax in respect of any mineral raised without any lawful authority can also not be called a penal action. The underlying principle of sub-Section (5) is that a person acting without any lawful authority must not find himself placed in a position more advantageous than a person raising minerals with lawful authority.**
>
> **In the facts of this case, in spite of the judgment of the High Court, if the appellants would not have persuaded this Court to pass the interim orders, they would not have been entitled to operate the mining leases and to raise and remove and dispose of the minerals extracted. But for the interim orders passed by this Court, there is no difference between the appellants and any person raising, without any lawful authority, any mineral from any land, attracting applicability of sub-Section (5) of Section 21. As the appellants have lost from the Court they cannot be allowed to retain the benefit earned by them under the interim orders of the Court. The High Court has rightly held the appellants liable to be placed in the same position in which they would have been if this Court would not have protected them by issuing interim orders. All that the State Government is demanding from the appellants is the price of the minor minerals. Rent, royalty or tax has already been recovered by the State Government and, therefore, there is no demand under that**

Head. No penal proceedings, much less any criminal proceedings, have been initiated against the appellants. It is absolutely incorrect to contend that the appellants are being asked to pay any penalty or are being subjected to any penal action. It is not the case of the appellants that they are being asked to pay a price more than what they have realised from the exports or that the price appointed by the respondent State is in any manner arbitrary or unreasonable.

The Court while dismissing the appeals filed by the appellants in the year 1996, which dismissal vacated the interim orders, could have also relieved the appellants of the consequences logically and necessarily flowing from the dismissal of the appeals by taking into consideration the equity of relieving against hardship or could also have done so in exercise of its jurisdiction conferred by Article 142 of the Constitution. So was done in *Samatha Vs. State of A.P. & Ors, (1997) 8 SCC 191, 277 para 131*. This Court having directed the State Government to ensure further mining operations by industrialists concerned in the scheduled area, restrained the lessees of mining leases not to break fresh mines, but in the meanwhile allowed them to remove the minerals already extracted and stocked in the reserved forest area within four months' time from the date of judgment."

Once there has been complaint of illegal mining, then certainly the said amount in question has to be recovered from the person, who was not entitled in law to raise such minerals but has proceeded to indulge in raising of such mineral without any authority of law, but the larger issue that is engaging our attention is as to what should be the procedure that is to be adhered at the point of time when such a liability is fastened on a incumbent, qua whom allegations have come forward that he has caused loss to the State by raising of minerals though he was not entitled in law to raise the same.

Rate of royalty/dead rent is fixed under the provisions of MMDR Act and the Rules framed thereunder, the extent of illegal mining can be computed by making comprehensive survey and then assessing the quantity of mineral illegally raised, followed by quantification of the amount liable to be recovered and then proceeding to recover the same from the person responsible for such illegal mining. Before recovering the liability to be discharged is liable to be fastened on incumbent, who has purportedly caused loss to the State exchequer by raising the mineral. Qua the same a full-fledged mechanism is not at all there, in view of this, we posed

specific query to the State as to in what way and manner, an incumbent, against whom financial liability is to be shouldered in lieu of illegal mining, is to be dealt with. Learned Standing Counsel has submitted that apart from the provisions quoted in the preceeding part of the judgement, there is no fixed criteria provided for and accordingly, action is taken by the State/Competent Authority by adhering to provide reasonable opportunity of hearing before forming formal conclusion.

Law on the subject is clear that the exercise of power by public authority is always coupled with duty to fulfill the conditions of such exercise and the said responsibility in question has to be properly discharged and in the said direction, once there is procedure in place then action contemplated has to be done in a certain way or not at all, but once there is no specific procedure provided for as to in what way and manner for illegal mining, liability is to be fastened, then obviously in absence of Rules, fair procedure has to be followed.

Here, in the present case, State is coming up with the case that petitioner has himself indulged in illegal mining whereas the petitioner, in his turn, is declining of being engaged in any illegal mining and contrarily, he claims himself to be a crusader against illegal activities and thus a victim. This is also an accepted position that on his complaint Apex Court has already taken cognizance in the matter against the incumbent, against whom he has made a complaint, but the fact of the matter is when fingers have been pointed at others, then counter finger has been pointed in the direction of petitioner also that he has tainted background and the fact of the matter is that he himself is Mining mafia. Apex Court in its order dated 25.04.2016, gives liberty to petitioner to respond to the notices before the Competent Authority, and the Competent Authority has been asked to bring the proceedings to its logical

conclusion. In the present case as such, the petitioner is also burdened to get clean chit in the said direction once the Authorities on the spot even before the matter has been before Apex Court has initiated proceedings as against him.

The Act/Rules in question do not contemplate or provide for a procedure to be adhered by the decision maker in the matter of fixing financial liability against incumbent engaged in illegal mining.

Apex Court in the case of ***Managing Director ECIL, Hyderabad and others vs. B. Karunakar and others 1993(4) SCC 727*** has held that in the absence of Rules, fair procedure is to be followed. Same is as follows:

> **"Hence the incidental questions raised above may be answered as follows:**
>
> **(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject."**

Apex Court once again in the case of ***Style (Dress Land) vs. Union Territory Chandigarh and another 1999 (7) SCC 89*** has held as follows:-

> **"In the absence of the rules, the action of the respondents regarding imposition of terms and conditions of the lease including the enhancement of rent is required to be fair and reasonable and not actuated by considerations which could be termed as arbitrary or discriminatory. The government cannot act like a private individual in imposing the conditions solely with the object of extracting profits from their lessees. Governmental actions are required to be based on standards which are not arbitrary or unauthorised."**

Apex Court in the case of ***Bar Council of India vs. Union of India 2012 (8) SCC 243*** has taken the view that once a dispute in question is to be decided, then on the quality of determination of dispute compromise cannot be made as it has to be objective, decide the dispute with fairness and follow the principal of natural justice and sense of justice and equity should continue to guide

while conducting the proceedings while deciding the matter on merit. The alternative institutional mechanism in Chapter VI-A with regard to the disputes concerning public utility service is intended to provide an affordable, speedy and efficient mechanism to secure justice. By not making applicable the Code of Civil Procedure and the statutory provisions of the Indian Evidence Act, there is no compromise on the quality of determination of dispute since the Permanent Lok Adalat has to be objective, decide the dispute with fairness and follow the principles of natural justice. Sense of justice and equity continue to guide the Permanent Lok Adalat while conducting conciliation proceedings or when the conciliation proceedings fail, in deciding a dispute on merit.

Thus law on the subject is clear that in case no procedure has been provided for as to in what way and manner the authority is to be exercised, then at the said point of time, the exercise of power by public authority has to be properly discharged i.e. it has to be decided with fairness and after following the principle of natural justice and the sense of justice and equity should continue to guide the Authorities concerned while conducting such proceedings in deciding the dispute on merit as the said decision in question would have large scale financial repercussions on the incumbent against whom proceedings in question have been initiated.

Once such is the factual that there is no prescribed procedure provided for, then we proceed to examine the record in question that has been produced before us and that has been examined by us with the able assistance of learned Standing Counsel as well as the parties appearing before us and what we find from the record in question is that in the present case, pursuant to the order passed by the Apex Court, a detailed and elaborate reply has been submitted by the petitioner and at the point of time when the said reply in question has been considered, the District Magistrate concerned has

proceeded to take note of notice dated 31.08.2012, notice dated 09.12.2014, notice dated 09.07.2015 and notice dated 08.09.2015. What we find from the record in question is that petitioner has proceeded to file a detailed and elaborate reply on 19.08.2016 clearly disowning therein of his involvement in illegal mining and has also proceeded to make a clear cut mention that it was impossible to believe that such large scale illegal mining has been carried out by the petitioner and not even a single mineral has been seized by the Authorities concerned. We have checked the original record produced before us and Annexure 12 to the Writ petition i.e. the reply submitted by the petitioner wherein qua each and every notice so issued detailed and elaborate reply, as already mentioned, has been furnished. Record in question reflects that notice dated 31.08.2012 issued by respondent no.6 disclose that petitioner was alleged to have mined illegally 108940 metric tonne of mineral. The said demand notice was based on spot inspection allegedly report dated 25.082012 and in the said notice in question, the incumbent from whom information was supplied was not mentioned. It was also not mentioned as to whether petitioner was on the spot when inspection was done and even the details of the event when illegal mining and transportation was done was also not mentioned.

Paragraph 46 of the reply submitted by petitioner dealt with notice dated 30.08.2012. The said reply is as follows:-

"46. नोटिस सं0 1071 दिनांक 30.08.2012 के सम्बन्ध में उत्तर निम्न प्रकार है।

उक्त कथित नोटिस डा0 सतीश कुमार प्रा0सं0 (रसा)/खान अधिकारी सहारनपुर की ओर से दिनांक 31.08.2012 पत्रांक सं0 1071 द्वारा 108940 घनमीटर अवैध खनन प्रार्थी द्वारा करना कथित किया गया है। जो खान एवं खनिज विकास अधिनियम 1957 की धारा 21(1) व 21(5) के अर्न्तगत जारी करना कथित है। जिसमें रायल्टी व खनिज मूल्य 3,59,50,200 व 25000/– जुर्माना कुल 3,59,75,200/– कथित करते हुए 10 दिन में स्पष्टीकरण चाहा गया कथित है जवाब न देने के स्थिति में धनराशि को भू राजस्व की क्षति वसूल करने अथवा परिवाद दायर करने की कार्यवाही के लिए कथित है।

उक्त नोटिस में डा0 सतीश कुमार को खान अधिकारी सहारनपुर दर्शाया गया डा0 सतीश कुमार खान अधिकारी नही है वह केवल प्रा0सं0 (रसा0) है और उक्त व्यक्ति को खान खनिज अधिनियम 1957 के अर्न्तगत में अवैध खनन की जॉच या नोटिस जारी करने का कोई अधिकार प्राप्त नही

है। प्रा0सं0 (रसा0) सर्विस रूल के अर्न्तगत अलग केडर है। प्रा0सं0 (रसायन) बिल्कुल अलग पोस्ट है व ओर अलग नियमों के अर्न्तगत शर्ते होती है। उसकी योग्यता अलग है और नियमों में खान अधिकारी की योग्यता अलग है और किसी भी प्रकार नियमों में प्रा0सा0 (रसा0) खान अधिकारी नही बन सकता है और न उसका कोई कार्य कर सकता है। उनका अलग कार्य है और वह राजपत्रित अधिकारी नही है। नोटिस पर खान अधिकारी गलत और धोखाधड़ी की नियत से लिखा गया है। यह एक बड़ी धोखाधड़ी है।

डा0 सुशील कुमार प्रा0स0 (रसा0) द्वारा अपने हस्ताक्षर के आगे तिथि का उल्लेख किया जाता है लेकिन उक्त नोटिस पर जो हस्ताक्षर बनाये गये है उन पर तिथि का उल्लेख नही है क्योंकि दिनांक लिखने में हैण्डराईटिंग स्पष्ट हो जाती। उक्त नोटिस पर कहीं पर उल्लेख नही है कि डाक द्वारा भेजा जा रहा है। और न ही इसकी प्रति किसी उच्च अधिकारी को भेजी गई है और न ही कार्य अनुमति ली गई है और न ही तामिल करने के लिए तहसील भेजी गई है नोटिस से स्पष्ट है कि फर्जी बनाया गया है बैक डेट डाली गई है। उक्त तथाकथित नोटिस पर तत्कालीन कथित खान अधिकारी के हस्ताक्षर फर्जी किये गये है जिनकी फॉरेन्सिक जॉच करायी जा सकती है जो व्यक्ति है उसको खान अधिकारी दिखाया गया है।

नोटिस दिनांक 31.08.2012 को निरीक्षण करना दिखाया गया जबकि प्रार्थी का गॉव यमुना किनारे पर है और असलमपुर बरथा गॉव भी यमुना किनारे पर है अगस्त में यमुना में फल्ड बना रहता है ऐसे में जॉचकर्ता द्वारा जॉच करना बिल्कुल अविश्वसनीय है तथाकथित नोटिस में यह कहना कि 108940 घनमीटर का अवैध खनन होना पाया जाना बिल्कुल अविश्वसनीय है क्योंकि 108940 घनमीटर खनन लगभग 12000 ट्रक मे लोड हो सकते है। इस प्रकार लगभग 12 हजार ट्रक अवैध खनन कर ले जाना अपने आप में झूठा साबित करता है और पूरे जिले में एक भी ट्रक का न पकड़ा जाना अपने आपमें संदिग्ध है यह इतना बड़ा खनन कहॉ से कर गया है।

1. यह कि प्रार्थी को उक्त नोटिस पहले कभी भी प्राप्त नही कराया गया है। प्रार्थी को जारी कथित नोटिस खान खनिज अधिनियम 1957 की धारा 21(5) के अन्तर्गत प्रा0स0 (रसा0) खान अधिकारी द्वारा जारी किया गया है। उक्त धारा 21(5) के अर्न्तगत उत्तर प्रदेश में कोई अधिकारी धारा 26 के अर्न्तगत आज तक अधिकृत नही है नोटिस बिना अधिकारी के है जो शून्य है।

2. यह कि तथाकथित नोटिस फर्जी है यह दिनांक 12.12.2015 के बाद खनिज विभाग और खनन माफिया की मिलिभगत से फर्जी हस्ताक्षर कर बनाकर रिकॉर्ड पर लाया गया है 12.12.2015 जो कि संलग्नक नं0 27 है निदेशक के आदेश पर भेजे गये जॉच दल द्वारा प्रस्तुत संयुक्त जॉच आख्या की जॉच रिपोर्ट में इसका विवरण व नोटिस की प्रति मौजूद नही है क्योंकि यह रिकॉर्ड पर नही था यदि मौजूद होता तो वह उस रिपोर्ट के साथ संलग्न होता।

3. यह कि श्रीमान मुख्य सचिव द्वारा माननीय उच्च न्यायालय में जनहित रिट याचिका सं0 5507/2015 मे शपथ पत्र प्रस्तुत किया गया लेकिन मेरे विरूद्ध कोई अवैध खनन का आरोप नही लगाया गया और न ही ऐसा कोई नोटिस माननीय न्यायालय में प्रस्तुत किया गया।

4. यह कि गुरप्रीत सिंह बग्गा ने एक ओ0ए0 नं0 184/2013 एक सूट माननीय राष्ट्रीय हरित न्यायाधिकरण के समक्ष प्रस्तुत किया था इस सूट में सहारनपुर के जिलाधिकारी तथा खान अधिकारी व अन्य चार व्यक्ति विपक्षीगण है इस मामले में भी सरकार द्वारा सहारनपुर में अवैध खनन करने वालों का विवरण दाखिल किया गया था उस विवरण में भी प्रार्थी का नाम नही था यदि प्रार्थी ने कभी कोई अवैध खनन किसी भी प्रकार किया होता तो उक्त सरकार द्वारा प्रस्तुत सूची/विवरण में प्रार्थी का नाम आवश्य होता।

5. यह कि दिनांक 26.08.2015 को तत्कालीन श्रीमान जिलाधिकारी, सहारनपुर द्वारा श्रीमान प्रमुख सचिव, श्रीमान निदेशक व श्रीमान आयुक्त सहारनपुर को अवैध खनन जॉच रिपोर्ट भेजी गई जिसमें समस्त अवैध खनन के रिकॉर्ड सहित भेजा गया लेकिन कथित नोटिस उक्त रिकॉर्ड के साथ भी संलग्न नही था क्योंकि यह फर्जी है और बाद में बनाया गया है।

6. यह कि सोनू पुत्र श्री जसबीर सिंह ने एक सिविल मिस्सलेनियस रिट याचिका सं0 3927/2016 माननीय उच्च न्यायालय इलाहाबाद में दाखिल की

गई थी उक्त रिट में जिलाधिकारी सहारनपुर, खनन अधिकारी सहारनपुर, कमिशनर सहारनपुर, वरिष्ठ पुलिस अधीक्षक सहारनपुर के अलावा कुल 14 विपक्षीगण थे उक्त रिट में जिलाधिकारी सहारनपुर श्री पवन कुमार द्वारा दिनांक 11.03.2016 को एक शपथ पत्र प्रस्तुत किया था इस शपथ पत्र के साथ जिलाधिकारी सहारनपुर ने एक सूची दाखिल की थी जिसमें दिनांक 01.04.2012 से फरवरी 2016 तक की अवैध खनन करने वालों की दाखिल की थी तथा उनके विरूद्ध जो कार्यवाही की थी उक्त सूची में वर्णित था तथा जिन जिन लोगों को अवैध खनन का नोटिस प्रेषित किया गया था वह भी इस सूची में वर्णित है जो कि रिमॉर्क्स वाले कॉलम में है। इस पूर्ण सूची में प्रार्थी का नाम कहीं भी किसी भी प्रकार का नही है। यदि प्रार्थी ने कोई अवैध खनन इस अवधि में किया होता तो प्रार्थी का नाम इस सूची में लाजमी होता। यदि कोई नोटिस अवैध खनन का भी कार्यालय द्वारा प्रार्थी के विरूद्ध जारी किया होता तो उसका विवरण भी उस सूची में निश्चित होता। जबकि इस सूची में प्रार्थी का नाम नही है न ही जिन लोगों को नोटिस दिया गया है उस कॉलम में भी प्रार्थी का नाम नही है। यदि प्रार्थी को यह तथाकथित 4 नोटिस जिनकी

1— नोटिस संख्या 1071 दिनांकित 31.08.2012
2— नोटिस संख्या 505/3, दिनांकित 09.12.2014
3— नोटिस संख्या 1202 दिनांकित 09.07.2015

7. नोटिस संख्या 1269 दिनांकित 08.09.2015 दिये ये होते तो इनका विवरण श्रीमान् जिलाधिकारी श्री पवन कुमार द्वारा प्रस्तुत अपने हलफनामें में निश्चित होता। उक्त शपथ पत्र इस प्रार्थना पत्र के साथ संलग्नक 37 है।

8. यह कि प्रार्थी द्वारा स्वयं माननीय सर्वोच्च न्यायालय के आदेश दिनांक 14.12.2015 के अनुपालन हेतु श्रीमान जिलाधिकारी से प्रार्थी के विरूद्ध जातिगत अवैध खनन के नोटिस कि प्रति रजिस्टर्ड डाक से मांगी गई तथा आर0टी0आई0 के द्वारा भी मांगी गई उक्त प्रार्थना पत्र तथा आर0टी0आई0 द्वारा मांगी गई सूचना प्रार्थना पत्र के साथ बतौर संलग्नक नं0 32 है। परन्तु खान अधिकारी श्री राज कुमार संगम द्वारा प्रार्थी को न तो तथाकथित नोटिस की प्रति दी गई न ही प्रार्थी द्वारा चाही गई आर0टी0आई0 सूचना जो कि प्रार्थना पत्र के साथ पूर्व में दाखिल संलग्नक नं0 32 है। की प्रति उपलब्ध कराते हुए दिनांक 01.01.2016 को रजिस्टर्ड डाक द्वारा आर0टी0आई0 में कथित नोटिसों की सूचना मांगी गई लेकिन उपलब्ध नही करायी गई।

9. यह कि श्रीमान जिलाधिकारी महोदय द्वारा स्वयं माननीय सर्वोच्च न्यायालय में अपना शपथ पत्र प्रस्तुत किया गया लेकिन उसके साथ भी कोई कथित नोटिस की प्रति संलग्न नही की गई। माननीय सर्वोच्च न्यायालय के आदेश दिनांक 25.04.2016 के आदेश के बावजूद भी प्रार्थी को या प्रार्थी के अधिवक्ता को कथित नोटिस प्राप्त नही कराया गया।

10. यह कि उपरोक्त तथ्यों से स्पष्ट है कि यह नोटिस रिकॉर्ड पर मौजूद नही था केवल फर्जी फिगर दिखाई गई और अब इसको फर्जी तैयार किया गया जिसको असली की तरह इस्तेमाल किया जा रहा है जो अपराधिक मामला बनता है इसमें खनिज विभाग के लोग व खनन माफिया के लोगों ने मिलकर षडयन्त्र किया है खनिज विभाग ने इसके विषय में उच्च अधिकारियों को गुमराह किया है।

11. यह कि मौके पर कोई सर्व कभी भी प्रार्थी की मौजूदगी में नही किया गया प्रार्थी द्वारा कभी कोई वैद्य या अवैध खनन नही किया गया है। कथित नोटिस में कोई विवरण खसरा नं0 खनन का स्थान नही दिखाया गया है कोई प्रमाण अवैध खनन का नही है और न ही कोई गवाह दर्शाया गया है और न ही उसमें अवैध खनन किस खनिज का दिखाया कोई नाम नही है आंकलन किस प्रकार किस आधार पर किया गया कोई विवरण नही है।

12. यह कि प्रार्थी के द्वारा एक जनहित याचिका सं0 5507/2015 माननीय उच्च न्यायालय, लखनऊ में दायर की गई जिसमें माननीय उच्च न्यायालय ने जिला सहारनपुर में खनन को पूर्णतयः प्रतिबन्धित कर दिया था जिससे खनन माफियाओं का खनन कार्य प्रभावित हुआ। उसके बाद खनन माफिया के काले धन की जॉच हेतु प्रार्थी ने माननीय सर्वोच्च न्यायालय में जनहित याचिका 818/2015 प्रस्तुत की जिसमें माननीय सर्वोच्च न्यायालय ने खनन माफिया के काले धन के विरूद्ध जॉच के आदेश पारित किये इस आदेश से परेशान होकर खनन माफिया ने खजिन विभाग सहारनपुर से साज

कर बैक डेट में यह फर्जी नोटिस 1071 दिनांकित 31.08.2012 तैयार किया इस फर्जी नोटिस के आधार पर प्रार्थी के विरूद्ध कोई कार्यवाही नही की जा सकती। यह नोटिस निरस्त होने योग्य है।

13. यह कि उक्त तथाकथित नोटिस बैक डेट में फर्जी तौर पर तैयार किया गया है यदि जिस कम्पयूटर से यह तैयार किया गया है उसकी हार्ड डिस्क की जांच की जाए तो उससे यह पता चल जाएगा कि यह नोटिस किस दिनांका को बनाया गया है तथा जिस कम्पयूटर के द्वारा यह नोटिस बनाया गया है उसकी फॉरेन्सिक जॉच की जानी आवश्यक है तथा उक्त तथाकथित नोटिस में इस्तेमाल हुए रिकॉर्ड से कागजों से मिलान, उस दिन के टाईप और कागजात से मिलान, उस दिन जिस प्रिन्टर से इसको छापा गया है उसके छपे दूसरे कागजों से मिलान किया जा सकता है व कम्पयूटर की हार्ड डिस्की की जॉच करायी जा सकती है कि यह नोटिस सरकारी कम्पयूटर पर कब टाईप किया गया है और किसने किया है। नोटिस नं0 जिस हैड राईटिंग में लिखा गया है उस दिन के दूसरे कागजों पर मिलान किया जा सकता है।

14. यह कि जिस रजिस्टर में यह नोटिस दर्ज किया गया है उसमें भी हेराफेरी की गई है तथा रिकॉर्ड के साथ छेड़खानी की गई है।

15. यह कि यह नोटिस अधिनियम 1957 की धाराओं के अन्तर्गत दिया गया है। धारा 23बी व 21 (5), 21(4) के अन्तर्गत खान अधिकारी अधिकृत नही है। 4 वर्ष पहला नोटिस कथित किया जा रहा है लेकिन आज तक कोई कार्यवाही न दर्शाना अपने आप में फर्जी कार्यवही है।"

Paragraph 47 of the reply dealt with notice dated 09.12.2014 as follows:-

"47. कथित नोटिस सं0 505/3 दिनांक 09.12.2014 रू0 526680/ के सम्बन्ध में निम्न प्रकार है –

यह कि उक्त तथाकथित नोटिस में अधोहस्ताक्षरी द्वारा भण्डारण दर्शाया गया है। उक्त कथित नोटिस कभी भी प्रार्थी को प्राप्त नही कराया गया है प्रार्थी द्वारा रिट याचिका सं0 5507/2015 माननीय उच्च न्यायालय लखनऊ में दायर की गई थी जिसमें दिनांक 25.06.2015 को माननीय उच्च लखनऊ ने जिला सहारपुर में समस्त खनन पर रोक लगायी गई तो खनन पटटे धारक द्वारा यह नोटिस माननीय उच्च नयायालय लखनऊ के समक्ष दिनांक 13.07.2015 को दिखाया गया जहां पर राज्य सरकार व श्रीमान् जिलाधिकारी सहारनपुर भी पक्ष थे। उस वक्त भी प्रार्थी के अधिवक्ता द्वारा तभी स्पष्ट किया गया कि प्रार्थी को कभी उक्त नोटिस प्राप्त नहीं हुआ न ही प्रार्थी का महालक्ष्मी स्टोन केशर से कोई सम्बन्ध किसी प्रकार का नहीं है। यह जानकारी में आने के बाद भी राज्य सरकार द्वारा प्रार्थी कोई नोटिस प्राप्त नहीं कराया गया और न ही श्रीमान् मुख्य सचिव द्वारा दिनांक 07.07.2015 को किसी अवैध खनन का उल्लेख अपने शपथ पत्र में किया गया था। मुख्य सचिव द्वारा प्रस्तुत शपथ पत्र इस प्रार्थना पत्र के साथ संलग्नक नं0 13 है ।

यह नोटिस खनन माफियाओं ने खनिज विभाग के कर्मचारी व अधिकारियों से मिलकर षडयंत्र कर बैक डेट में बनाया गया ताकि न्यायालय में मुझे अवैध खनन करने वाला कथित कर याचिका खरिज करायी जा सके।

प्रार्थी द्वारा दिनांक 01.01.2016 में पंजीकृत डाक से आरटीआई में अपने विरूद्ध की गई समस्त कार्यवाही की सूचना मांगी गई लेकिन प्रार्थी को जानबूझ कर कोई सूचना उपलब्ध नहीं कराय गई। क्योंकि यह सब दस्तावेज फर्जी बनाये गये थे जिसके प्रमाण प्रार्थी के पास दस्तावेजिक है।

1. यह कि प्रार्थी को जारी कथित नोटिस खान खनिज अधिनियम 1957 धारा 21 (5) के अन्तर्गत खान अधिकारी द्वारा जारी किया गया है। उक्त धारा 21 (5) के अन्तर्गत उत्तर प्रदेश में कोई अधिकारी धारा 26 के अन्तर्गत आज तथा अधिकृत नहीं है नोटिस बिना अधिकार के है जो शून्य है।

2. यह कि गुरप्रीत सिंह बग्गा ने एक ओ0ए0 नं0 184/2013 एक सूट माननीय राष्ट्रीय हरित न्यायाधिकरण के समक्ष प्रस्तुत किया था इस सूट में

सहारनपुर के जिलाधिकारी तथा खान अधिकारी व अन्य चार व्यक्ति विपक्षीगण है इस मामले में भी सरकार द्वारा सहारनपुर में अवैध खनन करने वालों का विवरण दाखिल किया गया था उस विवरण में भी प्रार्थी का नाम नहीं था यदि प्रार्थी ने कभी कोई अवैध खनन किसी भी प्रकार किया होता तो उक्त सरकार द्वारा प्रस्तुत सूचि/विवरण में प्रार्थी का नाम अवश्य होता।

3. यह कि सोनू कुमार पुत्र श्री जसबीर सिंह ने एक सिविल मिस्लेनियस रिट याचिका सं0 3927/2016 माननीय उच्च न्यायालय इलाहाबाद में दाखिल की गई थी उक्त रिट में जिलाधिकारी सहारनपुर, खनन अधिकारी सहारनपुर, कमिशनर सहारनपुर, वरिष्ठ पुलिस अधिक्षक सहारनपुर के अलावा कुल 14 विपक्षीगण थे उक्त रिट में जिलाधिकारी सहारनपुर श्री पवन कुमार द्वारा दिनांक 11.03.2016 को एक शपथ पत्र प्रस्तुत किया था इस शपथ पत्र के साथ जिलाधिकारी सहारनपुर ने एक सूची दाखिल की थी जिसमें दिनांक 01.04.2012 से फरवरी 2016 तक की अवैध खनन करने वालों की दाखिल की थी तथा उनके विरूद्ध जो कार्यवाही की थी उक्त सूची में वर्णित था तथा जिन जिन लोगों को अवैध खनन का नोटिस प्रेषित किया गया था वह भी इस सूची में वर्णित है जो कि निमॉर्कस् वाले कॉलम में है। इस पूर्ण सूची में प्रार्थी का नाम कहीं भी किसी भी प्रकार का नहीं है। यदि प्रार्थी ने कोई अवैध खनन इस अवधि में किया होता तो प्रार्थी का नाम इस सूची में लाजमी होता। यदि कोई नोटिस अवैध खनन का भी कार्यालय द्वारा प्रार्थी के बिरूद्ध जारी किया होता तो उसका विवरण भी उसी सूची में निश्चित होता। जबकि इस सूची में प्रार्थी का नाम नहीं है न ही जिन लोगों को नोटिस दिया गया है उस कॉलम में भी प्रार्थी का नाम नहीं है। यदि प्रार्थी को यह तथाकथित 4 नोटिस जिनकी

1. नोटिस संख्या 1071 दिनांकित 31.08.2012
2. नोटिस संख्या 505/03, दिनांकित 09.12.2014
3. नोटिस संख्या 1202 दिनांकित 09.07.2015
4. नोटिस संख्या 1269 दिनांकित 08.09.2015 दिये गये होते तो इनका विवरण जिलाधिकारी पवन कुमार द्वारा प्रस्तुत अपने हल्फनामें में निश्चित होता। <u>उक्त शपथ पत्र इस प्रार्थना पत्र के साथ संलग्नक 37 है</u> ।

4. यह कि उक्त तथाकथित फर्जी नोटिस जो प्रार्थी को देना बताया गया है सरासर झूठा है खान अधिकारी द्वारा कभी भी कोई सर्वे नहीं किया गया है क्योंकि सर्वे करने के भी नियम व कानून है जब भी किसी अवैध खनन की बाबत कोई अधिकारी कहीं सर्वे करता है तो सर्वे के स्थान पर जिस व्यक्ति के विरूद्ध कार्यवाही होनी है उस व्यक्ति का उस स्थान पर होना अनिवार्य है यदि इसकी अवहेलना होती है तो यह कार्यवाही फर्जी होती है।

5. यह कि उक्त तथाकथित नोटिस में यह कही वर्णित नही किया गया है कि किस खसरा नं0 पर अवैख खनन होना पाया गया है तथा किस स्थान पर अवैध खनन होना पाया गया है इस चीज का कोई उल्लेख तथा कथित नोटिस में नहीं है तथा इस नोटिस में यह भी नहीं है किस खनिज का भण्डारण किया गया है इस आधार पर भी उक्त तथाकथित नोटिस खण्डित होने योग्य है।

6. यह कि प्रार्थी के द्वारा जनहित याचिका दायर की गई जिससे खनन माफियाओं का खनन कार्य प्रभावित हुआ। उसके बाद खनन माफिया के काले धन की जॉच माननीय सर्वोच्च न्यायालय ने जॉच के आदेश देने गये जिससे परेशान होकर खनिज विभाग व खनन माफिया ने मिलकर षडयंत्र कर यह फर्जी नोटिस तैयार किया गया है जिसके आधार पर प्रार्थी के उपर कोई अवैध खनन का आरोप नही किया जा सकता और कोई मॉग नही की जा सकती है।

7. यह कि उक्त तथाकथित नोटिस में पता चलता है कि उक्त नोटिस पर तत्कालीन खान अधिकारी के हस्ताक्षर फर्जी किये गये है। जिनकी फॉरेन्सिक जॉच करायी जा सकती है।

8. यह कि उक्त तथाकथित नोटिस बैक डेट में फर्जी तौर पर तैयार किया गया है यदि जिस कम्पयूटर से यह तैयार किया गया है उसकी हार्ड डिस्क की जॉच की जाए तो उससे यह पता चल जाएगा कि यह नोटिस किस दिनांक को बनाया गया है तथा जिस कम्पयूटर के द्वारा यह नोटिस बनाया गया है उसकी फॉरेन्सिक जॉच की जानी आवश्यक है तथा उक्त तथाकथित

नोटिस में इस्तेमाल हुए रिकॉर्ड से कागजों से मिलान, उस दिन के टाईप और कागजात से मिलान, उस दिन जिस प्रिन्टर से इसको छापा गया है उसके छपे दूसरे कागजों से मिलान किया जा सकता है व कम्पयूटर की हार्ड डिस्क की जॉच करायी जा सकती है कि यह नोटिस सरकारी कम्पयूटर पर कब टाईप किया गया है और किसने किया है। नोटिस नं0 जिस हैड राईटिंग में लिखा गया है उस दिन के दूसरे कागजों पर मिलान किया जा सकता है।

9. यह कि उक्त तथाकथित नोटिसों के अलावा नो जोटिस उस दिन अन्य व्यक्तियों को दिये गये उनकी हैंट राईटिंग इन नोटिसों से भिन्न है।

10. यह कि जिस रजिस्टर में यह नोटिस दर्ज किया गया है उसमें भी हेराफेरी की गई है तथा रिकॉर्ड के साथ छेड़खानी की गई है।

11. यह कि उक्त नोटिस को जारी करने से पूर्व किसी उच्च अधिकारी से अनुमति नही ली गई है।

12. यह कि खान अधिकारी के हस्ताक्षर के नीचे दिनांक अंकित नही है जबकि खान अधिकारी जब भी हस्ताक्षर करते है वह अपने हस्ताक्षर के नीचे तिथि जरूर अंकित करते है परन्तु इन तथाकथित नोटिसों मे खान अधिकारी के हस्ताक्षर के नीचे तिथि अंकित नही है तथा प्रथम दृष्टिया देखने से यह प्रतीत होता है कि खान अधिकारी के हस्तक्षर भिन्न भिन्न है।

13. यह कि नोटिस में किसी को प्रतिलिपि नही भेजी गई है। यह नोटिस सोची समझी मिलिभगत कर षडयंत्र के अन्तर्गत बनाकर विवरण सर्वोच्च न्यायालय के समक्ष प्रस्तुत किया गया है।

14. यह कि प्रार्थी को यह नोटिस बिना किसी जानकारी किये प्रेषित किया गया है क्योंकि नोटिस पर जो महालक्ष्मी स्टोन क्रेशर का उल्लेख किया गया है वह प्रार्थी का नही है प्रार्थी का उक्त महालक्ष्मी स्टोन क्रेशर से कोई वास्ता किसी प्रकार का नही है।

15. यह कि कथित नोटिस में 1596 घनमीटर अवैध खनन कर उपखनिज भण्डारण दिखाया गया है कि कौन सा खनिज था उल्लेख नही है किस की मौजूदगी में निरिक्षण किया गया कोई विवरण नहीं है वास्तव में कोई निरिक्षण नही किया गया है। प्रार्थी ने जब महालक्ष्मी स्टोन क्रेशन के बारे में मालूमात की तब पता चला कि उक्त महालक्ष्मी स्टोन क्रेशर किसी सुरेश कुमार त्यागी का है। प्रार्थी का इससे कोई मतलब वास्ता किसी प्रकार का नही है।

16. यह कि कथित नोटिस पर 505/3 नम्बर डाला गया है जबकि बटे (/) में नम्बर डालने का कोई प्रावधान या व्यवहार नही है लेकिन रिकॉर्ड के अवलोकन से जानकारी हो रही है कि जिन लोगों के बैक डेट में नोटिस बनाये जाते है तो किसी नोटिस का बटा बनाया जाता है और उस पर बटे बढ़ाये जाते रहते है जबकि इससे पूर्व कभी भी बटों में किसी को नोटिस नही दिया गया है। सिर्फ यदि किसी को बैक डेट में नोटिस दिया दर्शाना होता है तब यह लोग किसी भी संख्या के साथ बटे डाल कर उक्त नोटिस की एन्ट्री कर देते है। इससे साफ प्रतीत होता है कि मात्र प्रार्थी पर नजायज दबाव डालने की नियत से खनन माफिया के साथ साज कर प्रार्थी के विरूद्ध उक्त फर्जी नोटिस प्रेषित किया गया।

17. यह कि यदि खनन विभाग सहारपुर के रिकॉर्डों का निरीक्षण किया जाए उस रिकॉर्ड से पता चल जाएगा कि खनन विभाग ने रिकॉर्ड के साथ छेड़ छाड़ की है कि निर्दोष व्यक्तियों के विरूध जिन्होने ने भी खनन माफियाओं के विरूध आवाज उठायी उन लोगों को खनन विभाग द्वारा उक्त फर्जी नोटिस प्रेषित किये गये ताकि वह खनन माफिया के विरूध किसी भी तरह से आवाज उठाएं और न ही किसी सक्षम न्यायालय में कार्यवाही न कर सके। इसी तरह नोटिस संख्या 505/1 दिनांकित 09.12.2014, 505/2 दिनांकित 09.12.2014, 505/3 दिनांकित 09.12.2014 व 505/4 दिनांकित 09.12.2014 यह सब नोटिस खनन अधिकारी द्वारा उन सब लोगों को भेजे गये जिन्होने खनन माफिया तथा जिला सहारनपुर में हो रहे अवैध खनन के विरूध आवाज उठायी या न्यायालयों में इनके विरूध केस दाखिल किये इन लोगों की आवाज दबाने के लिए तथा ये लोग अपने मुकदमों में (जो इन्होने खनन माफिया तथा खनन विभाग के विरूध कर रखे है) पैरोकारी न करें या मुकदमें वापिस ले लें।

30

उपरोक्त चारों नोटिस बैक डेट में 505 में बटा बनाकर बनाये गये है।

505/2 रामकिशन द्वारा माननीय सर्वोच्च न्यायालय में जनहित रिट याचिका दायर की गई थी और जन्तर मन्तर पर प्रदर्शन करने के लिए आन्दोलन किया गया उसके नाम से 30.12.2014 को खनन माफिया ने अपने पास अवैधानिक जुर्माना जमा कराया ताकि यह कहा जा सके कि इसने अपना जुर्म स्वीकार किया।

505/1 गुरू दयाल यह राम किशन की साथी था इसलिए इसके नाम भी अवैध खनन का नोटिस रिकॉड पर बनाया गया।

505/3 जब प्रार्थी ने माननीय उच्च न्यायालय लखनऊ मे रिट याचिका सं0 5507/2015 डाली तो प्रार्थी के विरूध जौलाई 2015 में बैक डेट में नोटिस बनाया गया।

505/4 जब विश्वास कुमार सेव इन्डिया ग्रुप के सुभाष कुमार चौधरी का सगा भाई है तो उसके नाम फर्जी नोटिस तैयार किया गया उक्त तथ्यों से स्पष्ट है कि किस प्रकार फर्जी नोटिस तैयार कर खनिज विभाग व खनन माफिया ने षडयन्त्र कर रिकॉर्ड पर लगाये है। उक्त नोटिस अलग अलग समय पर बने है एक ही तिथि मे दिखाये है। उनके ऊपर दो नोटिसों पर कारण बताओं नोटिस लिखा है'' दो पर नही लिखा है जबकि यह नोटिस भी विश्वास कुमार को आज तक प्राप्त नही हुआ है।

दो नोटिस 505/1 व 505/2 एक जैसे लगते है 505/3 अलग फोन्ट साईज है नम्बर अलग राईटिंग में है उसका कागज भी 505/4 भी अलग है। एक ही दिन एक ही नम्बर पर सब कुछ अलग अलग है ऐसा जॉच मे स्पष्ट हो जाएगा यह सब फर्जी और बैक डेट का बनाये गये है। कोई प्रमाण ऐसा नही है कि मेरे द्वारा कोई अवैध खनन किया गया है बिना प्रमाण प्रार्थी के विरूध कोई मांग नही की जा सकती है। उपरोक्त चारों नोटिसों की फोटो स्टेट प्रति संलग्नक नं047 है। नोटिस अधिनियम 1957 की धारा 21(5) के अर्न्तगत दिया गया अधिनियम 1957 में नोटिस जारी करने व जॉच करने के लिए खान अधिकारी अधिकृत नही है नोटिस शून्य है बिना अधिकार के जारी किया गया है।"

Paragraph 48 of the reply dealt with notice dated 09.07.2015 as follows:-

"48. <u>कथित नोटिस दिनांक 09.07.2015 पत्रांक सं0 1202/खनिज/2015–16 का जवाब निम्न प्रकार है</u> –

यह कि खान अधिकारी श्री राजकुमार संगम द्वारा दिनांकित 09.07.2015 को जिस नोटिस का उल्लेख किया गया है इस तिथि को राज कुमार संगम द्वारा कोई नोटिस किसी भी प्रकार का नही दिया गया है जिस पंत्राक संख्या 1202/खनिज/2015–16 को जिलाधिकारी कार्यालय खनन अनुभाग नोटिस होना कह रहा है वह नोटिस न होकर प्रार्थी के विरूध खान अधिकारी राजकुमार संगम ने थाना अध्यक्ष थाना चिलकाना में प्रार्थी के विरूध एक तहरीर है जिसमें प्रार्थी के विरूध 4/21 खान एंव खनिज अधिनियम व 379/411 आईपीसी की धारा में मुकदमा पंजीकरण करने हेतु है।

यह कि इसी तहरीर दिनांकित 09.07.2015 के तहत प्रार्थी के विरूध थाना चिलकाना में एक मुकदमा अपराध संख्या 160/2015 सरकार बनाम रणवीर सिंह अन्डर सैक्शन 4/21 माईन्स एण्ड मिनिरल्स एक्ट व 379 आईपीसी पंजीकृत हुआ इस मुकदमें में विवेचक द्वारा यह पाते हुए फाईनल रिपोर्ट लगा दी गई कि रणवीर सिंह द्वारा अवैध खनन के विरूध माननीय उच्च न्यायालय में एक रिट संख्या 5507/2015 दायर की गई थी जिसमें माननीय उच्च न्यायालय ने अपने आदेश दिनांकित 25.06.2015 को खनन पर रोक लगा दी थी जिससे खनन माफिया नाराज हो गये थे और खनन माफिया ने अपने मुन्शी मैनपाल से एक फर्जी शिकायत जिलाधिकारी सहारनपुर को की उसके बाद यह मुकदमा पंजीकृत कराया विवेचित द्वारा जो इस मुकदमा अपराध संख्या 160/2015 में फाइनल रिपोर्ट लगायी उस फाईनल रिपोर्ट की प्रति संलग्नक नं017 है।"

Paragraph 53 of the reply dealt with notice dated 08.09.2015 as follows:-

> "53. यह कि खान अधिकारी राजकुमार संगम द्वारा प्रेषित नोटिस सं01269 दिनांक 08.09.2015 में प्रार्थी का यह कथन है
>
> यह कि यह नोटिस दिनांक 23.10.2015 को प्राप्त कराया गया है उसके सम्बन्ध में प्रार्थी व सुभाष चौधरी द्वारा दिनांक 04.11.2015 को ही जवाब प्रस्तुत कर दिय गया था। इस नोटिस के सम्बन्ध में स्पष्ट किया जा रहा है कि उक्त नोटिस प्रार्थी को झूठा आधारहीन भेजा गया था जो माफिया व सरकारी मशीनरी की मिलिभगत से दिया गया था उसी दिन नोटिस दिया गया उसी दिन खान लिपिक द्वारा एफ0आई0आर0 थाना बेहट में दर्ज कराना वह भी बिना अधिकृत अधिकारी के अपने आप में साबित करता है कि यह सब कार्यवाही प्रार्थी को झूठा फंसाने के लिए की गई है।"

Here, the petitioner has been denying his indulgence in the activity of illegal mining and what we find from the decision making process and from the record is that rule of fair play has been breached with impunity, inasmuch as, after liberty has been accorded by the Apex Court, the petitioner has proceeded to file a detailed and exhaustive reply wherein each and every facet of the matter was sought to be denied/disputed and most conveniently, it is sought to be mentioned by the District Magistrate that the reply submitted by the petitioner was not satisfactory and in the earlier part of the order while dealing with respective notices, it has been mentioned that petitioner has not proceeded to place sufficient material to rebut the allegation. Decision maker in the present case has ignored the weight of reply available on record as extracted above and has dealt with the same in perfunctory manner with closed mind, whereas while exercising quasi-judicial authority was required to be free from bias i.e. there should be absence of conscious or unconscious prejudice to either of the parties. Here the tenor of proceedings are speaking for itself that District Magistrate while dealing with the matter was proceeding with pre-conceived notion that petitioner in-fact has indulged in illegal mining, whereas the said opinion could have been formed, only after enquiry was held.

Once the liability was to be fastened on the shoulder of

petitioner, then it was the obligation of the State to prove by way of credible evidence available that it was the petitioner, who has indulged in illegal mining and in the said direction, apart from issuing show cause notice, all the evidence that was sought to be relied upon i.e. the incumbents who have carried out the search and survey and the incumbents who have come forward to depose against petitioner, their names ought to have been disclosed and they ought to have been produced to support the case of State that petitioner in-fact has indulged in illegal mining. Not only this as a part of process, petitioner was entitled to have reasonable opportunity of defending himself by questioning the veracity of evidence produced against him and by adducing his own defence evidence, if any. Decision maker is bound to act fairly, as under the scheme of things provided for, the determination made by him will entail civil consequences, as qua the person charged with illegal mining on charges being proved financial liability would be shouldered and in contra situation, the State would be at loss.

Apex Court in the case of ***Goa Foundation vs. Union of India 2014 (6) SCC 590*** while dealing with the report of Shah Commission, constituted for inquiring illegal mining, in reference of report so submitted held that prosecution of mining lessees cannot be directed on the basis of finding in report of Shah Commission, as before submitting said report, incumbents have not been provided with the opportunity of being heard and to produce evidence in their defence and not allowed the right to cross-examine. In the said case, Central Government/State Government gave undertaking that no action would be undertaken on the basis of said finding without undertaking exercise of giving opportunity of hearing.

Since in the present case the State/Competent Authority would conduct on enquiry into the allegation of illegal mining it would possess the character of quasi judicial proceeding. Recording

of finding as to illegal mining being carried out by a particular incumbent for the purposes of fixing financial responsibility would certainly entail full-fledged enquiry, comprising allegation/evidence in support of charges coming forward followed by his case in defence and then findings arrived at based on evidence adduced. Recovery would follow if the finding returned is adverse to incumbent charged with allegation of illegal mining. Having regard to the character and complexion of proceedings in conjunction with the structure of power conferred by the Act/Rules, the inevitable conclusion is that proceedings in hand necessarily will have to be quasi-judicial proceedings wherein full play is required to be given to the rule of natural justice by the State/Competent Authority.

Apex Court in the case of ***Oryx Fisheries Ltd. vs. U.O.I, 2010 (13) SCC 427***, has held that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind. The principle that justice must not only be done but it must eminently appear to be done as well is applicable to quasi-judicial proceeding if such proceeding has to inspire confidence in the mind of those who are subject to. Non suiting the defence on the pretext of being not satisfactory has been disapproved, similarly absence of reasons has not been approved of.

Apex Court in the case of ***Hienz Indian (P) Ltd. vs. State of U.P. 2012 (5) SCC 443*** has held that power of judicial review is not so much concerned with the decision itself as much with the decision making process. In all such cases judicial examination is confined to finding out whether findings of fact have reasonable basis on evidence and whether such findings are consistent with law of land.

In view of this, as far as we are concerned, we are not at all approving the decision making process that has been so undertaken by the State, the same having been passed in most arbitrary fashion

with closed mind, without providing reasonable opportunity of hearing to petitioner and for absence of reason, accordingly, the order dated 06.10.2016 passed by District Magistrate, Saharanpur is hereby quashed and set aside. As we have intervened on the issue of decision making process, we proceed to pass an order asking the State/Competent Authority to issue a concrete show cause notice to the petitioner appending therein the entire material to be relied upon and the list of witnesses in support of the same and thereafter after adducing evidence and after providing opportunity of hearing to the petitioner to lead his defence, reasoned decision be taken based on evidence adduced preferably within next three months from the date of receipt of certified copy of this order.

With this, present Writ Petition is ***allowed***.

Order Date :-16.12.2016
A. Pandey

ANNEXURE-R-3

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 360/2015

IN THE MATTER OF:-

NATIONAL GREEN TRIBUNAL BAR ASSOCIATION **APPLICANT(S)**

VERSUS

VIRENDRA SINGH (STATE OF GUJARAT) **RESPONDENT(S)**

INDEX

NAZIMUDDIN
SCIENTIST 'E'
CENTRAL POLLUTION CONTROL BOARD
PARIVESH BHAWAN, EAST ARJUN NAGAR,
DELHI- 110032

PLACE: - DELHI
DATED: - 30.01.2020

Recommendations on Scale of Compensation to deal with the cases of illegal sand mining

Submitted to

Hon'ble National Green Tribunal,

Principal Bench, New Delhi

(Submitted by the Committee constituted in the matter of Hon'ble NGT OA No. 360 of 2015 order dated-05.04.2019)

29th January 2020

INDEX

1. Introduction

The mining operation has its consequence on the environment. The sand mining operation has traditionally been carried out manually in river both in-stream and in flood plain, coastal and paleo channels, but with advent of time the method of mining has changed to semi-mechanised and mechanised. The use of machinery in riverbed mining may impact the river environment to great extent depending on the scale of operation.

It is estimated that more than 35 million people are employed in sand business, and economic valuation is well over $126 billion per annum (Ref: NGT order dated 05.04.2019 in O.A. 360/2015). The illegal sand mining has been rampant in different states of the country and the protection of environment from the impacts of unregulated sand mining has been a challenge to regulatory bodies.

The Hon'ble NGT (Principal Bench), New Delhi by order dated-05.04.2019 in O.A. No. 360/2015 (13 clubbed cases) related to illegal sand mining from riverbeds in different states, constituted a Committee comprising of representatives of Ministry of Environment, Forest and Climate Change, Government of India (MoEF&CC), Central Pollution Control Board (CPCB), Indian Institute of Forest Management – Bhopal (IIFM), Institute of Economic Growth - New Delhi (IEG) and Madras School of Economics (MSE) *"to prepare a scale of compensation, after including the components mentioned in the order, which can then be adopted in whole of country. The nodal agency for compliance and coordination is CPCB. The committee may also take professional service of an expert / institution in the matter if it so desires."*

In view of Hon'ble NGT (PB) order dated 05.04.2019 in O.A. No. 360/2015 (13 clubbed cases), this report has been prepared to suggest a scale of compensation to deal with cases of illegal sand mining in whole of country.

2. Constitution of Committee

In compliance of the above order, the Nodal Agency (CPCB) issued office order dated 22.05.2019 regarding constitution of the committee of the members based on the nominations received from the concerned organisations as follows:

1. Dr Purnamita Dasgupta, Professor, IEG, Delhi
2. Dr K.S. Kavi kumar, Professor, MSE, Chennai
3. Dr. Yogesh Dubey, Associate Professor, IIFM, Bhopal
4. Shri Sundeep, Director, MoEF&CC, Delhi
5. Shri A. Sudhakar, Additional Director, CPCB, Delhi

Meetings of the committee were convened on 31.05.2019, 20.06.2019, 24.07.2019, 16.09.2019 and 11.12.2019 to arrive at a scale of compensation based on inputs of subject experts and available resource to deal with the matter of illegal mining. The minutes of the meetings are annexed at **Annexure I**. Inputs received from experts are annexed at **Annexure II to IV.**

3. Impacts due to Illegal Sand Mining

3.1 Framework for a Compensation Scale

A framework for assessing the value of ecological damage due to illegal sand mining is developed taking into consideration the following dimensions:

- Extent of Illegal Mining: It must be recognised that in any given geographic area the ecological impacts will be felt from all mining that takes place in the relevant region (or that within which the water body concerned is located). Hence, ideally, a landscape has to be considered for estimating the ecological damages in their entirety. However, this may practically pose several data and information challenges. Sometimes the ecological processes are also uncertain. Therefore, the objective in the current context would be to establish a practical approach of estimating the extent of 'illegal' mining, assuming that the legally permitted mining takes into account the sustainable ecological limits within which such mining should be restricted. For present purposes, to fix individual liability, this may be done by making an assessment of the total extraction through sand mining being carried out and netting out the amount for which environmental clearance has been given.
- Restoration of ecology: It is acknowledged at the outset that in practise, full restoration of nature in its pristine form is next to impossible. However, the reality of ongoing economic activities causing ecological damages implies that the adoption of the polluter pays principle can be a way ahead for raising the resources for undertaking restoration activity to the maximum extent possible. At the same time, some of the foregone ecosystem services (and hence values associated with these) will improve gradually over the years as the riverine ecosystem gets restored.
- Ecological damages associated with mining -Ideally, each river or water body which is affected by such mining should have an independent assessment of the extent of ecological damages which would be specific to its context.

- Interim approach - In the absence of such information, or in the interim till such studies are carried out, two alternative ways of operationalizing a compensation scale to cover the ecological costs associated with illegal sand mining are developed. One approach uses a deterrence factor as a proxy for capturing non-linearities associated with ecological damages, the other uses a simplified Net Present Value approach. A comparison of the two is provided with an illustration.
- Rationale for scale of compensation: In both approaches, the damage assessment is based on the material cost of the illegal sand, interacting it with the ecological risks associated with it. The underlying assumption is that the feasible limits within which sand mining can be allowed without de-stabilising the ecological conditions have been taken into account while setting the legally permitted quantity for extraction. Mining beyond this is illegal and causes trade-offs between this particular provisioning service of the river (sand flow) and its supporting and regulating (and other provisioning) services which thereby get affected, constituting ecological damages. The compensation would comprise of the material cost of the illegally mined sand and foregone ecological values, while keeping in mind the objective of restoration.
- Finally, it is noted that the concerned authority shall take appropriate action under the provision of applicable Acts/ Rules, whenever any illegal or non-complying mining activities is observed. The proposed environmental compensation suggested in this recommendation will be in addition to the requirement of any such action.

3.2 Determination of Net Present Value (NPV)

Computation of the NPV requires both scientific and socio-economic data and application of state-of-the-art methodology. The most appropriate valuation will be context specific for both scientific and socio-economic considerations. Some of the physical and environmental factors include the following: (morphological changes, changes in settlement and habitation patterns, river bank slope, tidal activity, etc.). Hence, the actual compensation will vary across riverine systems. Therefore, each state and river and related development authority should make efforts to estimate the NPV applicable over the next 5 years.

Various definitions of NPV have been used in the context of the environment (United Nations, 2000, Chopra et al 2006, US EPA 2014, etc.). As per the Chopra Committee in the context of forests, the NPV refers to "the discounted sum of rupee values of eco-system goods and services that would flow from a forest over a period of time net of costs incurred." It is thus not meant to capture the value of the forest wealth as such, but only the flow of goods and services from it. In the context of the diversion of forest land to non forestry use, NPV is interpreted by the committee as the loss of value of the forest resources to the stakeholders as at the time of the diversion for non-forest use. It excludes any values that may accrue or get created by the user agency who uses it for non-forest purposes (See, Page 9 of Chopra, Kadekodi, & Eswaran, 2006). The range of services considered in such a case can include timber, carbon storage value, fuel wood and fodder, non-timber forest products, watershed services, and so on. Actual estimates of such NPV have also been worked out for specific forest circles and levied by state departments*

The benefits from avoiding the ecological damages to riverine ecosystems could range from recreation activities, aesthetics, wildlife viewing, fishing, boating, swimming, supporting and regulating services such as climate moderation, flood moderation, groundwater recharge, sediment trapping, soil retention, nutrient cycling, biodiversity, genetic library, water filtration, soil fertilization, species preservation, and many other non-use and intangible values. However, it is difficult to conceptualize current or future benefits to the ecology from mining activity since

the pristine condition of the river basin (or affected ecosystem) would be considered to be the most desirable condition from the assessment's point of view. However, estimating the true value of all these benefit components which may be harmed by mining activity is not possible at this stage due to a variety of reasons, such as lack of data or information on such aspects, the non-market functions and complexities of the science involved. In particular, these values are extremely contextual in nature and therefore, we assume that the current condition has been reflected accurately in the legally permitted level of mining. Using this as a basic premise, a compensation formula is proposed as described in Section 4, to capture the NPV.

In the context of the assessment of ecological damages arising from sand mining, the NPV is thus considered to be the present value of the current and future stream of net costs of such activity. The rationale lies in recognizing that there may be negative externalities or ecological damages that result from excessive mining which manifests itself in a loss of the ecosystem services of rivers, and creates a loss of well being for both current and future generations. The extent of damage and the scope for restoration will vary from site to site, and will depend on a variety of biophysical and man-made characteristics.

Till such time as site specific assessments of the river systems are carried out, a compensation scale maybe proposed as suggested in Section 4 below.

*References:

Verma, M., Negandhi, D., Wahal, A., Kumar, R., Kinhal, G., & Kumar, A. (2014). Revision of rates of NPV applicable for different class/category of forests. Bhopal: Indian Institute of Forest Management. Retrieved from http://iifm.ac.in/wp-content/uploads/2016/06/IIFM_NPV_07NOV.pdf

Chopra, K., Kadekodi, G., &Eswaran, V. (2006). Report of the Expert Committee on Net Present Value .submitted to the Honourable Supreme Court of India.Retrieved from http://www.fedmin.com/fedmin/npvk.pdf

Chopra, K., &Dasgupta, P. (2008). Assessing the economic and ecosystem services contribution of

forests: issues in modelling, and an illustration. The International Forestry Review, 10(2), 376-386. Retrieved from https://www.jstor.org/stable/43740351

CEC (Central Empowered Committee). (2007). Supplementary report in IA No.826 in IA No.566 regarding calculation of Net Present Value(NPV) payable on use of forest land of different types for non-forest purposes. Retrieved from https://www.prsindia.org/sites/default/files/bill_files/bill185_20080723185_Central_Empowered_Committee_Guidelines.pdf

4. Recommendations on Scale of Compensation

As discussed earlier, the full economic value for compensation should be as per the Net Present Value. As legal and illegal mining proceeds usually either in conjunction or in sequential manner, the ecological impacts of mining will take place irrespective of whether it is legal or illegal. The attribution to illegal mining, of a specific impact at the landscape level, will require careful evaluation. Till such information becomes available, two alternative approaches for compensation are proposed keeping in mind the various dimensions of the TOR for this committee.

4.1 Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages

A scale for calculation of the compensation to be charged has been worked out as provided in the Table No. 01. The compensation to be charged is based on three distinct criteria:

Exceedance Factor (EF): This criteria captures the extent of illegal mining that has taken place. It is introduced in order to bring in a notion of balance that the amount of penalty that is charged to any party is in proportion to the extent of illegal extraction of material at the first stage.

Risk Factor (RF): This criteria reflects the severity of the ecological damages at the field site in question. It is an attempt to capture the fact that there is likely to be substantial variation in the ecological conditions and resultant damages across sites where illegal mining takes place. It is reasonable therefore to introduce a risk factor that accounts for the extent of severity of damages using a four-point scale of mild, moderate, significant and severe risk. Till the time that detailed basin level studies are carried out, this risk factor can be judged on the basis of the state department's assessment of the ecological fragility of the river basin concerned based on a priori knowledge of the circumstances.

Deterrence Factor (DF): This criteria is an attempt to capture the fact that ecological damages tend to display non-linearities and can increase in unexpected ways. Thus, the greater the extent of extraction (as reflected in the relative magnitude of the illegally extracted amount), the greater is the likelihood that this may have cumulative impact over time, which may not be observable at the time of assessment (as reflected in the RF). Given that the scale should also have a deterrence effect, this criteria is introduced to proxy for these non-linear aspects till such time that more site specific data becomes available to carry out a comprehensive NPV.

Table No. 01: Approach 1				
Permitted Quantity (in MT or m^3)	**Total Extraction (in MT or m^3)**	**Excess Extraction (in MT or m^3)**	**Exceedance in Extraction:**	**Compensation Charge (in Rs.)**
X	Y	Z = Y-X	Z/X	D * (1+RF + DF) Where D = Z x Market Value-of-the-material-per-MT-or-m^3
				DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71
				RF = 0.25, 0.50. 0.75, 1.00 (as per table 2)

Note:

a) The inspecting team will consider the error in measurement of quantity of material (maximum 10% for up to 5 Ha. sites but should be less for large sites) and accordingly decide/recommend whether any particular case is fit for imposing compensation for damages or not.

b) Market Value of the material per (MT or m^3) will be based on applicable market price of the mined material.

c) **Risk Factor (RF)** to take value as per the Risk Level of the illegal mining case, as below:

Table No. 02				
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1

d) **Risk Level** to take value as per the severity of the impacts of illegal mining case, as below:

Table No. 03				
Severity of Impact	Mild	Moderate	Significant	Severe
Risk Level	1	2	3	4

e) **Severity of impact** of illegal mining case to be categorised as Mild or Moderate or Significant or Severe for various components of the river and highest value to be used:

Table No. 04				
S. No.	River Component	Impacts	Impacts (Sub -category)	Severity of impact/ Risk Factor
1.	Morphology	Instability of Channel geometry	Bed degradation	
			Channel adjustment	
			Bank Erosion	
2.	Hydrology	Ground Water level	Change of ground water table in adjacent areas	
		Change in river flow	Variation in flow energy	
3.	Ecology	Loss of local Ecological community	Disturbance to flora	
			Disturbance to fauna	
4.	River Structures	Instability to Hydraulic Structure	Damage to Hydraulic Structure and its surrounding	
5.	Any Other			

Deriving the Risk Factor (RF): Some criteria can be considered by states for judging the risk factor applicable at various sites. Accordingly, States may develop a subjective scale for severity of impact (Risk Factor–RF) for purposes of implementing the interim compensation scale based on any 3 of the 4 heads listed in TableNo.04 through expert consultation over the period of next 3 months. Till such criterion/guidelines is prepared by states the inspections team may decide RF based on its own assessment.

4.2 Approach 2: Computing a Simplified NPV for ecological damages

Till such time as data and information for a comprehensive NPV is worked out in a site specific manner to account for all (or atleast the major) ecological damages, a simplified NPV, proxied on the market value of the illegally extracted amount maybe computed. In this case the NPV approach would imply that **the total benefits from the activity of sand mining (as represented by the market value of the extracted amount) be deducted from the total ecological costs** imposed by the activity. In the absence of data on benefits and costs separately, we recommend a modification of the formula as shown below.

Total Benefits (B) = Market Value of illegal extraction : D (refer Table 1)

Total Ecological Costs (C) = Market Value adjusted for risk factor: D * RF (refer Table 1).

For present purposes, it is assumed that the Benefits would accrue only in the first year (in which the extraction of the illegally mined material takes place), while the ecological costs would continue to be felt over a period of time. NPV is to be calculated for a period of 5 years on the net value, **$\sum$(C-B)**, at a discount rate ranging from **8%-5%**, varying in inverse with the risk factor. Thus, where the highest risk factor (say 1) is applicable, the discount rate applicable would be the lowest (say 5% in this case).

Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years. The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. However, till data on site-specific assessments becomes available, this approach maybe adopted in the interim. In situations where the risk categorisation

charged. However, till data on site-specific assessments becomes available, this approach maybe adopted in the interim. In situations where the risk categorisation is unavailable or pending calculation, the following Discount Rates may be considered:

Severity	Mild	Moderate	Significant	Severe
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount Rate	8%	7%	6%	5%

Basis of recommending 5 % Discount Rate

It is to be noted that the choice of a discount rate varies widely across countries and further, by the type of project or purpose. The rate used in developing countries in general is usually found to be higher, with social discount rates varying from 8 to 15% (Jhuang et al 2007, Murty et al 2018). The Government of India has issued guidelines for parameters (discount rates) and processes for project appraisal periodically. The national parameters for project appraisal in operation since 1994, for instance stipulated that projects had to yield a minimum of 12% financial and economic internal rate of return for the purpose of investment approval. Recently these were re-examined in a study, and in keeping with the growth of income in the economy an estimate of 8 per cent for the rate of discount for investment project appraisal in India was suggested (Murty et al 2018). In India, The Kanchan Chopra committee report on NPV recommends a 5% discount rate. The specific sentence from this report is that - "Considering the fact that forest resources provide long term goods and services and ecosystem benefits and, interest rates in India are going down, the Committee recommends a 5% social discount rate for forest resources." Several other studies in India and abroad for projects with implications for forests, water utilities, health and sanitation, and other such social, environmental or public sector projects, have used similar rates of discount ranging from 5 to 8% (Puroshothaman et al 2000, Dasgupta et al 2019, Chopra and Dasgupta 2008, Simpson 2008). Further, it is recommended that rates of interest should ideally decline and be lower, where there are uncertainties about the future, and/or in case of climate mitigation and environmental management projects where the benefits are likely to accrue over a longer time period (Weitzman 2001, Gollier 2012). For India, the suggested rate was between 8%-5% for such environment related projects. Thus, the suggested rate of discount in this report draws upon these studies. Lower "discount rate" means that compensation amount will be more.

References:

1. Chopra K, Kadekodi G, Eswaran V (2006) Report of the Expert Committee on Net Present Value submitted to the Honourable Supreme Court of India. Retrieved from http://www.fedmin.com/fedmin/npvk.pdf

2. Purushothaman S, Viswanath S, Kunhikannan C (2000) Economic valuation of extractive conservation in a tropical deciduous forest in Madhya Pradesh, India. Tropical ecology 41(1): 61-72.Retrieved from http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.538.7962&rep=rep1&type=pdf

3. Zhuang J, Liang Z, Lin T, De Guzman F (2007) Theory and Practice in the Choice of Social Discount Rate for Cost-Benefit Analysis: A Survey. ERD Working paper series No. 94. Asian Development Bank. Retrieved from https://www.adb.org/sites/default/files/publication/28360/wp094.pdf

4. Simpson AR (2008) Selecting a discount rate for evaluating water distribution projects—The sustainability controversy. 10th Annual Symposium on Water Distribution Systems Analysis, American Society of Civil Engineers, Kruger National Park, South Africa, 17-20. https://doi.org/10.1061/41024(340)11

5. Murty, M.N., Panda, M., and Joe, W. (2018). Reassessment of National Parameters for Project Appraisal in India. Study Report, Study for the NITI Aayog, Institute of Economic Growth, Delhi.

6. Weitzman, M. L. 1998. Why the far-distant future should be discounted at its lowest possible rate. Journal of Environmental Economics and Management 36: 201–8.

7. Weitzman, M. L. 2001. Gamma discounting. American Economic Review 91: 260–71.

8. Markandya, A. and M.N. Murty (2000), Cleaning Up Ganges: The Cost Benefit Analysis, Oxford University Press, New Delhi.

9. Gollier, Christian. 2012. Pricing the planet's future: The economics of discounting in an uncertain world. Princeton, NJ: Princeton University Press.

10.Purnamita Dasgupta, et al (2019) Cost effective adaptation to flood: sanitation interventions in the Gandak river basin, India, Climate and Development, DOI: 10.1080/17565529.2019.1682490. Published online 09November 2019. (Open access)https://www.tandfonline.com/doi/full/10.1080/17565529.2019.1682490

Annexure – A

Examples

For ease of understanding the calculation of compensation, possible scenario of illegal mining are given below.

Example 01: Violation with respect to Area

A case of non-compliance in terms of excess area was reported. The inspection team carried out an assessment of mining site and observed severity of impacts on river components as *Severe*, then the computation of Compensation Charge will be as follow:

Compensation Charged (Scenario I – no explicit accounting of NPV)

Violation reported as follow:

Total Permitted Quantity in Environmental Clearance (X)	=30000 m^3
Total Area of mined out mineral	=15000 m^2
Total Permitted Area in Environmental Clearance	=10000 m^2
Excess Mined out area	=5000 m^2
Total Depth permitted as in Environmental Clearance	=3 m
Excess extraction (Z)	=5000 x 3 = 15000 m^3
Exceedance Factor (Z/X)	=15000/30000=0.5

Methodology:

Market Value of Illegally Mined Material (D) (assuming Market Value of the material as Rs. 400/- per m^3)	D = 15000 x 400 = 6000000/-	
Risk Factor (RF)	Severity Risk Level Risk Factor (RF)	*Severe* 4 1
Deterrence Factor (DF)	DF = 0.6 (for Z/X in 0.41 to 0.70 range)	
Compensation	=D x (1+RF+DF)	
Total (in Rs.)	=6000000/- x (1+1+0.6) =Rs.1,56,00,000/-	

Compensation Charge (Scenario II – explicit accounting of NPV)

Market Value of Illegally Mined Material (D) 5000*400 = 6000000/-

Annual Value of Foregone Ecological Values D*RF = 6000000/-

- **Present Value of Foregone Ecological Values (@ 5% discount rate and over 5 years)**

$$PV = \sum_{t=1}^{5} \frac{(D*RF)}{(1+r)^t}$$

$$= \sum \frac{(6000000)}{(1+0.05)^1} + \frac{(6000000)}{(1+0.05)^2} + \frac{(6000000)}{(1+0.05)^3} + \frac{(6000000)}{(1+0.05)^4} + \frac{(6000000)}{(1+0.05)^5}$$

= Rs. 2,59,76,860/-

- Net Present Value (after netting out market value of illegally mined material) – i.e., Total Compensation to be levied

= NPV = PV - D

= Rs. 1,99,76,860/-

Compensation Charge in above case:

Approach 1 (no explicit accounting of NPV)	**Approach 2 (explicit accounting of NPV)**
D*(1+RF+DF)	**@ 5% discount rate and over 5 years**
Rs. 1,56,00,000/-	Rs. 1,99,76,860/-

Example 02: Violation with respect to Depth

A case of non-compliance in terms of excess depth was reported. The inspection team carried out an assessment of mining site and observed severity of impacts on river components as *Severe*, then the computation of Compensation Charge will be as follow:

Compensation Charge (Scenario I – no explicit accounting of NPV)

Violation reported as follow:

Total Permitted Quantity in Environmental Clearance (X)	=30000 m^3
Total Permitted Area in Environmental Clearance	=10000 m^2
Total Depth of mined out material	=4 m
Total Permitted Depth in Environmental Clearance	=3 m
Total Violation in Depth	=1 m
Excess Extraction (Z)	=10000x 1 =10000 m^3
Exceedance Factor (Z/X)	=10000/30000=0.33

Methodology:

Market Value of Illegally Mined Material (D) (assuming Market Value of the material as Rs. 400/- per m^3)	D = 10000 x 400 = 4000000/-
Risk Factor (RF)	Severity *Severe* Risk Level 4 Risk Factor (RF) 1
Deterrence Factor (DF)	DF = 0.3 (for Z/X in 0.11 to 0.40 range)
Compensation	=D x (1+RF+DF)
Total (in Rs.)	=4000000/- x (1+1+0.3) =Rs 92,00,000/-

Compensation Charge (Scenario II – explicit accounting of NPV)

Market Value of Illegally Mined Material (D) 10000*400 = 4000000/-

Annual Value of Foregone Ecological Values D*RF = 4000000/-

- **Present Value of Foregone Ecological Values (@ 5% discount rate and over 5 years)**

$$PV = \sum_{t=1}^{5} \frac{(D*RF)}{(1+r)^t}$$

$$= \sum \frac{(4000000)}{(1+0.05)^1} + \frac{(4000000)}{(1+0.05)^2} + \frac{(4000000)}{(1+0.05)^3} + \frac{(4000000)}{(1+0.05)^4} + \frac{(4000000)}{(1+0.05)^5}$$

= Rs. 1,73,17,907/-

- Net Present Value (after netting out market value of illegally mined material) – i.e., Total Compensation to be levied

= NPV = PV - D

= Rs. 1,33,17,907/-

Compensation Charge in above case:

Approach 1 (no explicit accounting of NPV)	**Approach 2 (explicit accounting of NPV)**
D*(1+RF+DF)	**@ 5% discount rate and over 5 years**
Rs. 92,00,000/-	Rs. 1,33,17,907/-

Example 03: Violation with respect to Depth and Area

A case of non-compliance in terms of excess depth and area was reported. The inspection team carried out an assessment of mining site and observed severity of impacts on river components as *Severe*, then the computation of Compensation Charge will be as follow:

Compensation Charge (Scenario I – no explicit accounting of NPV)

Violation reported as follow:

Total Permitted Quantity in Environmental Clearance (X)	=30000 m^3
Total Permitted Area in Environmental Clearance	=10000 m^2
Total Permitted Depth in Environmental Clearance	=3 m
Total Area of mined out material	=12000 m^2
Total Depth of mined out material	=4 m
Total Volume of mined out material	=12000 m^2 x 4 m =48000 m^3

(The example can be applied to a case of totally illegal mining without EC also where illegal mining of 18000 m^3has been done)

Excess Extraction (Z)	=18000 m^3
Exceedance Factor (Z/X)	=18000/30000=0.6

Methodology:

Market Value of Illegally Mined Material (D) (assuming Market Value of the material as Rs. 400/- per m^3)	D = 18000 x 400 = 7200000/-
Risk Factor (RF)	Severity *Severe* Risk Level 4 Risk Factor (RF) 1
Deterrence Factor (DF)	DF = 0.6 (for Z/X in 0.41 to 0.70 range)
Compensation	=D x (1+RF+DF)
Total (in Rs.)	=7200000/- x (1+1+0.6) =Rs 1,87,20,000/-

Compensation Charge (Scenario II – explicit accounting of NPV)

Market Value of Illegally Mined Material (D) 18000*400 = 7200000/-

Annual Value of Foregone Ecological Values D*RF = 7200000/-

- **Present Value of Foregone Ecological Values (@ 5% discount rate and over 5 years)**

$$PV = \sum_{t=1}^{5} \frac{(D*RF)}{(1+r)^t}$$

$$= \sum \frac{(7200000)}{(1+0.05)^1} + \frac{(7200000)}{(1+0.05)^2} + \frac{(7200000)}{(1+0.05)^3} + \frac{(7200000)}{(1+0.05)^4} + \frac{(7200000)}{(1+0.05)^5}$$

= Rs. 3,11,72,232/-

- Net Present Value (after netting out market value of illegally mined material) – i.e., Total Compensation to be levied

= NPV = PV - D

= Rs. 2,39,72,232/-

Compensation Charge in above case:

Approach 1 (no explicit accounting of NPV)	**Approach 2 (explicit accounting of NPV)**
D*(1+RF+DF)	**@ 5% discount rate and over 5 years**
Rs. 1,87,20,000/-	Rs. 2,39,72,232/-

Example 04: Violation with respect to Quantity / Production

A case of non-compliance in terms of excess quantity/production was reported. The inspection team carried out an assessment of mining site and observed severity of impacts on river components as *Severe*, then the computation of Compensation Charge will be as follow:

Compensation Charge (Scenario I – no explicit accounting of NPV)

Violation reported as follow:

Total Volume of mined out material	=35000 m^3
Total Permitted Quantity in Environmental Clearance (X)	=30000 m^3
Excess Extraction (Z)	=5000 m^3
Exceedance Factor (Z/X)	=5000/30000 = 0.16

Methodology:

Market Value of Illegally Mined Material(D) (assuming Market Value of the material as Rs. 400/- per m^3)	D = 5000 x 400 = 20,00,000/-
Risk Factor (RF)	Severity *Severe* Risk Level 4 Risk Factor (RF) 1
Deterrence Factor (DF)	DF = 0.3 (for Z/X in 0.11 to 0.40 range)
Compensation	=D x (1+RF+DF)
Total (in Rs.)	=2000000/- x (1+1+0.3) =Rs. 46,00,000/-

Compensation Charge (Scenario II – explicit accounting of NPV)

Market Value of Illegally Mined Material (D) 5000*400 = 2000000/-

Annual Value of Foregone Ecological Values D*RF = 2000000/-

- **Present Value of Foregone Ecological Values (@ 5% discount rate and over 5 years)**

$$PV = \sum_{t=1}^{5} \frac{(D*RF)}{(1+r)^t}$$

$$= \sum \frac{(2000000)}{(1+0.05)^1} + \frac{(2000000)}{(1+0.05)^2} + \frac{(2000000)}{(1+0.05)^3} + \frac{(2000000)}{(1+0.05)^4} + \frac{(2000000)}{(1+0.05)^5}$$

= Rs. 86,58,953/-

- Net Present Value (after netting out market value of illegally mined material) – i.e., Total Compensation to be levied

= NPV = PV - D

= Rs. 66,58,953/-

Compensation Charge in above case:

Approach 1 (no explicit accounting of NPV)	**Approach 2 (explicit accounting of NPV)**
D*(1+RF+DF)	**@ 5% discount rate and over 5 years**
Rs. 46,00,000/-	Rs. 66,58,953/-

Annexure I

Deliberations in the Meetings of the Committee

First meeting of the committee

The first meeting of the member of the committee constituted by the Hon'ble NGT in O.A. No. 360/2015 order dated 05.04.2019 was convened on 31.05.2019 at CPCB, Delhi. The committee meeting was attended by the following members:

1. Shri Sundeep, Director, MoEF&CC, Delhi
2. Shri A. Sudhakar, Additional Director, CPCB, Delhi
3. Dr. Yogesh Dubey, Associate Professor, IIFM, Bhopal
4. Dr Purnamita Dasgupta, Professor, IEG, Delhi

The member, Dr. K.S. Kavi Kumar, Professor, MSE, Chennai was not able to attend the meeting due to unavoidable circumstances.

The members of the committee expressed the opinion that assessment of the damage and net present value of eco-system services forgone forever and the cost of mitigation and restoration are the most important elements to arrive at a scale of Environmental Compensation and it is necessary to hear views of experts on these subjects in a workshop.

Second Meeting of the Committee

As desired by the committee in the first meeting, the following institutes / experts were requested for participation in a one-day workshop and to provide their views/opinion:

Expert Institutes:

- Forest Research Institute, Dehradun
- Indian Institute of Soil and Water Conservation, Dehradun
- National Institute of Hydrology, Roorkee
- Indian Institute of Technology Delhi
- Indian Institute of Technology, Roorkee
- Wildlife Institute of India, Dehradun
- Zoological Survey of India, Kolkata

Individual Experts:

- Dr. C.R. Babu, Professor Emeritus, University of Delhi
- Dr. Jagdish Krishnaswamy, Senior Fellow, Suri Sehgal Centre for Biodiversity and Conservation, Bangalore

The second meeting cum workshop was convened on 20.06.2019 at CPCB, Delhi to hear the views of the subject experts. The meeting cum workshop was attended by following member of committee and subject experts:

Committee Members:

1. Shri Sundeep , Director, MoEF&CC, Delhi
2. Shri A. Sudhakar, Additional Director, CPCB, Delhi
3. Dr Purnamita Dasgupta, Professor, IEG, Delhi

Dr. K.S. Kavi Kumar, Professor, MSE, Chennai and Dr. Yogesh Dubey, Associate Professor, IIFM, Bhopal were unable to attend the meeting cum one-day workshop due to other works.

Subject Experts

Dr. C. R. Babu, Professor Emeritus, University of Delhi
Dr. Zulfiqar Ahmad, Professor, IIT Roorkee
Dr. C. Raghunathan, Scientist E, Zoological Survey of India, Kolkata
Dr. Sumant Kumar, Scientist C, National Institute of Hydrology, Roorkee

Views of Subject Experts:

Professor Zulfiqar Ahmad, IIT Roorkee expressed his view on assessment of physical damage caused in the river due to mining and shared the case studies on morphological changes in the river and its likely impacts. The study comprised of identification of critical reach of river, measures suggested to protect the critical reach, and the cost required for restoration of the physical damages occurred. Other aspects for assessment included the change in the stability of slope and structure in the river stretch. He expressed that assessment of physical damages needs to be done through comprehensive case specific study. He highlighted that mining activities done even at long distance from a civil structure may result in ultimate lowering of the bed by head cutting in upstream due to movement of nick point as well as cutting/degradation in downstream from the mining site. (*Power Point Presentation enclosed*)

Dr C.R. Babu, Professor Emeritus, University of Delhi provide a detailed note on the matter describing types of sand mining and adverse impacts of sand mining which was circulated to committee members and other experts (**copy enclosed**). He said that mining activity lead to channel incision, erosion of riverbed and vertical instability, results in shallowing and widening of channel and multiple channel of river from one channel. The shallowing of channel causes increase in temperature, affecting local fish population, fish diversity and vegetation in riparian zone. The deepening of riverbed due to depletion of material impacts on existing dug well / tube well and underground water, changes the water quality and reduces the

sediment deposits which serves as substratum for vegetation and habitats for riparian and terrestrial species. He agreed to attend any future committee meeting as a special invitee and provide his expert views.

Dr. Sumant Kumar, Scientist C, NIH, Roorkee expressed his views that severity of change in course of river flow depends on bank stability and energy of river and needs to be taken into consideration. He also expressed that the mining activity in the river may increase silt content, which may affect the cost of purification of the river water in downstream treatment plants, and damages assessment should include this aspect. He agreed to provide a note on the matter.

Dr C. Raghunathan, Scientist E, ZSI, Kolkata also expressed that silt / suspended solids content increases in river due to mining activity and result in increase in turbidity in the river, which affects the penetration of sunlight and impact primary production activity which influences the entire food chain. The assessment of damages must be done in consideration of the impacts caused to river flora and fauna. The silt formation in the river affects the fish population directly also as it gets deposited in the scales of fishes and reduce their production. He agreed to provide a note on the matter.

Third Meeting of the committee

The third meeting of the members of the committee constituted in compliance of NGT order dated-05.04.2019 in OA No. 360/2015 was convened on 24.07.2019 at CPCB, Delhi. The committee meeting was attended by Shri Sundeep, Director, MoEF&CC, Delhi (Member) and Dr. C.R. Babu, Professor Emeritus, University of Delhi (Special Invitee)

Dr. Purnamita Dasgupta, Professor, IEG, Delhi (Member) and Dr. K.S. Kavi Kumar, Professor, MSE, Chennai (Member) had confirmed participation but could not participate due to some unavoidable circumstances at the last moment. Shri A. Sudhakar, Additional Director, CPCB, Delhi (Member) could not participate as he was abroad and Dr. Yogesh Dubey, Associate Professor, IIFM, Bhopal could not participate due to important works in his institute.

It was expressed by Committee member and special invitee that considering the nature of work at least 06 month time may be required to prepare the report. The framework of the report may be prepared in one month and an interim report may be prepared in three months. CPCB may submit a progress report of committee meetings convened and request NGT for extension of time on behalf of committee.

Fourth Meeting of the committee

Based on the progress report and time extension request filed by CPCB on behalf of the committee constituted, NGT by its order dated-26.07.2019 in OA No. 360/2015 granted 03month time for submission of report to committee. CPCB convened fourth meeting of committee members on 16.09.2019 at CPCB HO Delhi. The committee meeting was attended by the following members:

1. Shri Sundeep, Director, MoEF&CC, Delhi
2. Shri A. Sudhakar, Additional Director, CPCB, Delhi
3. Dr. Purnamita Dasgupta, Professor, IEG, Delhi
4. Dr. K.S. Kavi Kumar, Professor, MSE, Chennai

(The member, Dr. Yogesh Dubey, IIFM, Bhopal was not able to attend the meeting.)

Discussion were held on the draft report prepared by CPCB based on inputs and suggestions of committee members, the scale/formula to compute the environmental compensation. It was agreed by committee members to categorise severity of impacts of illegal mining and extent of violations based on field inspections and accordingly, Risk factor and Deterrence factor to be considered for computation of environmental compensation whereby the risk factor to be categorised into four level and Deterrence factor for higher extent of violations, based on quantifiable exceedance evaluated.

The meeting concluded with committee members agreeing on basic formula/scale of compensation and further agreed to provide correction in the draft report.

Fifth Meeting of the committee

In consideration of time bound finalization of report, the fifth meeting of the members of the committee constituted in compliance of NGT order dated-05.04.2019 in OA No. 360/2015 was convened on 11.12.2019 at MoEF&CC, Delhi. The committee meeting was attended by Shri Sundeep, Director, MoEF&CC, Delhi (Member), Dr. Purnamita Dasgupta, Professor, IEG, Delhi (Member) and representatives of CPCB Delhi. Discussion were held on final draft of the report and inclusion of inputs provided by the committee members in the final draft. The committee members agreed to time bound finalization of the report and given concurrence to CPCB and submission of report to Hon'ble NGT on finalization.

Annexure II

1. Write up provided by Prof. C.R. Babu, Professor Emeritus, University of Delhi

Adverse Impacts of sand mining and creation of guide bunds and marginal bunds on Rivers and their Tributaries

(Source: Impacts of sand mining on Ecosystem structures, process Biodiversity in Rivers by Lois Koehnkem)

Sand Mining

Three types of sand mining are common in river systems. In stream mining (mining in channel), river-bed mining (mining near the channel) and mining from flood plains. All three types of mining are rampant across the country, as sand is an important natural resource and used widely in the construction activity.

Sand mining encompass excavation of aggregates consisting of sand, gravel, pebbles or cobbles; but in this note sand mining refers to mining of sand which include fine grained sediments which are rich in nutrients and sediment of intermediate size consisting of fine to coarse sand and very coarse sediment consisting of very coarse sand only. Very coarse sediment, as a rule, contains very coarse sand besides larger material such as pebbles, cobbles and boulders which are usually absent in river channels that develop within the sediment deposits of alluvial river system. All three kinds of sediments in have specific roles in the riparian ecology. For example, the fine grained sediments transported in suspension form and are deposit in deep channels and flood plains where low energy environment prevails. The fine grained sediment is rich in nutrients and affects water quality and control light penetration in the channel. The intermediate size grained sediment is transported in suspension during high flows or as bed load during low energy, and it is stored in the bed, banks, flood plains and bars (sand bars) of river system.

The continuous deposition of sand is essential for the maintenance of delta and shore line stability which form the first line protection against storm surge and other extreme events. The very coarse sediment is transported during very high flows and moves as bed load – rolling or bouncing along the bed of the river. The transport and deposition of sediment (sand) in the river system generate a mosaic in stream /in channel habitats that form the basis of ecological functioning of rivers/streams. In other words, sediments (sand) movements and deposition are integral part of the river system and are critical in sustaining its ecological functions.

All the three types of sand mining is common all along Yamuna, particularly in both upstream and downstream of Delhi. In plains sand mining includes fine grained

sediment, intermediate sized sediment and very coarse sediment; but in the hilly areas not only mining of aggregates but also pebble mining is common.

Adverse impact of sand mining

The extraction of sand (sand mining) from the river system has several adverse impacts on the riparian ecosystems. Some of the major adverse impacts are mentioned below.

Sand mining results in removal of sediments, and stones, and alteration in the transport of sediment, both of which bring physical and ecological changes in river channels. Since the river channels itself develops within the sediment deposits of alluvial river system, sand mining leads to erosion of channel banks, bars and flood plains. Sediment transportation also affects bedrock controlled reaches where localised sediment deposits serve as substratum for vegetation and habitats for riparian and terrestrial species.

The sediment load and river morphology are controlled/ maintained by balance between sediment bed, sediment grain-size, water flow and slope of the river. Sand mining alters all the four variables, For example, reduction in sediment load and reduction in medium sized sediment and local increase in slope of the river due to sand mining cause bed erosion that can propagate both upstream and downstream. Sand mining brings in changes in all the four variables and these changes resulted in three kinds of impacts: (i) Physical, ecological and social impacts.

A. Physical Impacts:

Changes in the channel morphology, alteration in the flow regime, and changes in the composition and movement of sediments impact on quality of water and ground water. A total of 107 different physical impacts were recorded in the scientific literature.

(I) Both channel widening and narrowing across the river is due to sand mining has been reported. The channel incision is the major physical impact of sand mining in the rivers. The channel incision takes place from the lowering of the bed of river due to erosion of riverbed which results from the creation of a nick point by mining in the river bed. The impacts of incision are listed below:

(a) The turbulence, as water flows over the nick point, causes erosion of the river bed with the nick point retreating in an upstream direction and this upstream movement of the nick increases the slope of the river resulting in increase in water velocity during high flow events leading to increased erosion in downstream.

(b) The deeper and steeper river bed will cause an increase in river energy and erosion which result in continual of incision leading to narrower channel.

(c) Channel incision also results in vertical instability in the channel that make it narrower, but lateral instability in the form of stream bank erosion result in widening of channel which in turn results in shallowing the bed. Both shallowing and widening of channel increase stream temperature extremes; Shallowing of river beds also results in flash floods; and channel instability also increases transport of sediments to downstream.

(d) Rivers narrowed through incision are disconnected with flood plains, the maintenance of which requires episodic inundation. These flood plains serve as wide range of ecological services due to exchange of water, sediment and organisms during inundation resulting in enhanced instream and flood plain productivity, while allowing recharging ground water; the flood plains allow the river to spread out during periods of high water and slows down and absorb high flows, and thereby reduce flood intensity and magnitude, and hence limit their impacts on downstream avian habitats and infrastructure. Sediment deposited provides influx of nutrients which enhances the productivity. Sand mining impacts all these services due to incision that leads to narrowing of channel.

(e) The incision can one channel of rivers from multiple channels as these channels ones, are separated by mobile islands. Yamuna river is the best example where multichannel river has become single channel river not only due to sand mining but also to filling up and encroachments of flood plains.

(f) By deepening of the base of river, the incision leads to decrease in ground water level, as the banks and surrounding permeable areas drain to the new lowered level.

(g) Mining from sand bars (bar skinning) can lead to bar erosion, and local channel and downstream widening. Additional channel widening occurs if mining causes river bank instability and collapse. This leads to decrease in local water velocity due to increased capacity of the channel, local increase in sediment load and increased downstream erosion due to reduction in sediment transport.

(II) Mining from flood plains (dry mining) alters the course of river. A series of pits near river course soon form a new channel by inundation and linking of pits. These inundated pits soon become lakes and contribute to increase in bank erosion. Flood plain mining also alters ground water levels. Ground water recharging is drastically reduced and the channel flow will be altered.

(III) Sand mining also creates sediment laden plumes in downstream and deposit in undesirable locations and coats substrates and make them unsuitable habitats. These plumes also reduce the depth to which light penetration occurs effecting growth of algae and aquatic vegetation.

(IV) On a large scale, reduction in the volume of sediment in the river results in decrease or absence of (sediment deposition) in deltas and coastal zone. This in turn results in erosion and subsidence of deltas and the degradation of deltas enhances the vulnerability to flooding leading to adverse impacts on human communities.

(V) In-stream sand mining changes water quality. For example, increase in turbidity at the site due to re-suspension of sediment and sedimentation from stock piling and dumping of excess mining material and pollution due to oil spills from machinery are common adverse impacts of mining at the site

(VI) Channel widening due to sand mining contributes to increase in temperature which in turn reduces dissolved oxygen and increase in toxicity due to heavy metals, pesticides and natural toxicants.

(VII) There will be increase in suspended solids at the mining site and downstream due to increase in riverbed and bank erosion from mining. This will increase the cost of water treatment in the downstream. This has been happening in Yamuna where upstream sand mining is contributing to high suspended solids in waters. Water quality changes due to mining may also result in the alteration in the distribution and availability of habitats which in turn affect aquatic flora and fauna.

B. Ecological Impacts

(I) Sand mining destroys spawning grounds of local fish populations leading to reduction in fish catch, replaces lentic species by lotic species and displaces native habitat specific species by generalists and invasive species, reduction in abundance of many game fishing species, extinction of local fish populations due to channel alteration by flood plains mining. Mining also decreases fish diversity.

(II) Sand mining has negative impacts on invertebrates, which play significant role in self-purification system of rivers. For example, enhanced turbidity will impact the macroinvertebrates. Low water levels due to incision have adverse impacts in mussels.

(III) Sand mining has also negative impacts on vegetation in riparian zones.

C. Social Impacts

Sand mining has adverse social impacts, besides physical and ecological impacts.

(I) Groundwater depletion, loss of land, depletion of fisheries, reduction in ground water quality and damage to infrastructure such as bridges, all of which have indirect impacts on the communities.

(II) Incision due to instream mining is a threat to support structures such as bridges and weirs. Upstream sand mining led to the replacement of bridges involving loss of several million dollars in California. In fact service lines like under cables and gas pipe lines have been exposed, and with decrease in river levels, the irrigational channel and pump sets rendered useless. All these impacts results in loss of several millions of rupees.

(III) An increase in distribution of flood waters with reduced sediment load and channel incision due to sand mining and land subsidence associated with the extraction of ground water contribute to reduction in the base level of the river which in turn also resulting in lowering of the surrounding water table leading to threatening water availability for local people and agriculture.

(IV) Sand mining also impacts land use and loss of land. Sand extraction leads to deep pools in flood plains leading to reduction in land availability for agriculture.

(V) Sand mining increased intrusion of salt water, which led to decrease in drinking water quality and salinization of agricultural lands. Vectors that carry infectious pathogens may become abundant in stagnant water filled pits due to sand mining.

Conclusions

To sum up, indiscriminate and rampant sand mining in rivers lead to reduction in water availability, change in the water quality, loss of self-purification system through loss of biodiversity, permanent changes in physical features of river morphology, hydraulics that lead to ecological disasters during extreme events, degradation of deltas and intrusion of salt water. We need to regulate and even prevent sand mining to save our river systems.

- ----------End of Write up ----------

2. Note Received from Dr. Sumant Kumar, Scientist C, NIH, Roorkee

Impact of Sand Mining on River Hydrology including SW and GW interaction

Rivers played a major role in development of human civilization. Many rivers of the world are being drastically altered beyond their self-resilience capacity due to accelerated developmental activities. Sand mining is one of the human intervention, which threatens the riverine ecosystem. The degree of sand mining impact (on-site and off-site) depends on geologic and geomorphic features. Continued and indiscriminate mining may cause changes in the physical characteristic of river in addition to disturbances to flora and fauna of riverine ecosystem. Keeping in view of the above facts, my views as discussed in the meeting also are listed below:

- Primary and secondary data (quantity of sand, lowering of river bed, shifting of river bank etc.) may be generated or collected.
- Impact on hydraulic structures such as dams, weirs and other important structures such as Intake well for drinking water supply should be studied.
- Assessment of saturated water present in mined sand should be quantified.
- Depth of mining may be regulated region-wise based on geological, geo-morphological, groundwater level and physical characteristics of river.
- Assessment of groundwater flow to/from river will depends to aquifer and river characteristic and hence it varies site to site.
- Water quality (suspended particles, turbidity, oil and grease etc.) of SW and GW in sand mined area may be assessed.
- Control measures such as bank stabilization should be evaluated.
- Remote sensing data may be used for morphological and other analysis of rivers.
- An integrated environmental assessment, management and monitoring program should be part of sand extraction processes.

3. Initial note on estimating ecological damage from illegal sand mining

(Prof. K. S. Kavikumar)

A draft framework for assessing the value of ecological damage due to illegal sand mining:

- First, in any given geographic area the extent of 'illegal' mining needs to be established. This can be done by making rapid assessment of extent of sand mining being carried out and netting out the area for which environmental clearance has been given (even in the mines that received environmental clearance, there could be violations and the same should be included in the 'illegal' mining area)

- For simplicity three main components can be considered for ecological damage assessment – material cost component, eco-restoration cost component, and NPV of foregone ecosystem services.
- The following time line could serve as basis for assessing these costs:

T1: Time when 'illegal' sand mining is recognized (ignoring the unauthorized sand mining being carried out prior to T1)
T2: Completion of restoration work; between the period T1 and T2 ecological restoration work is undertaken in and around the riverbed as suggested by the subject experts.
T3: The restoration work 'yields' ecosystem services (i.e., restoration of ecosystem services following the restoration work undertaken). In other words, beyond T3 the ecosystem provides all the services that it used to provide before the unauthorized sand mining has affected such services.
While it would be easy to establish T1 and T2, it is not easy to arrive at T3 in an objective manner and needs to be fixed based on inputs from the subject experts.

- Material Costs: The material costs could include the auction value of the seized mined material and any fines imposed on the 'illegal' mining activities. This cost will be in T1 year prices estimated at time T1.
In practice, the market values of the mined material can be taken for the cost estimation.

- Eco-restoration costs: This consists of the costs of suggested restoration activities in and around the mining area. It is expected that the restoration work would stretch over the period T1 and T2. The eco-restoration costs would be the present value (at T1) of the expected restoration expenses over the years T1 to T2.
  Standard restoration activities could be identified (including say, construction of retaining wall, plantation along river bank etc.) and cost estimations can be made based on normative values.

- Present Value of Foregone Ecosystem Services: This component is perhaps the most difficult one as it requires assessment of value of ecosystem services that would have been obtained in the absence of 'illegal' mining. One may have to source such information from the literature and after required value addition, use the per hectare value in a manner similar to what has been done in case of forest land. Once annual per hectare value is identified, the foregone value per year can be estimated by multiplying it with the extent of 'illegal' mining area. The present value calculation can then be carried out over the period T1 and T3.

- For the purpose of present value calculations (in case of the cost components involving eco-restoration and foregone ecosystem services), choice must be made for the relevant discount rate.

Annexure - III

Inputs about existing legal provisions regarding illegal mining

(MoEF&CC & CPCB)

Compensation as per Statutory Provisions

Hon'ble Supreme Court in its Judgement dated-02.08.2017 in Writ Petition (Civil) No. 114 of 2014 in the matter of Common Cause Vs. Union of India with Writ Petition (Civil) No. 194 of 2014, mentioned the provisions regarding mining activity under Mines and Minerals (Development and Regulation) Act, 1957 (or the MMDR Act), the Mineral Concession Rules, 1960 (or the MCR) and the Mineral Conservation and Development Rules, 1988 (or the MCDR).

Para 125-129 of the said Judgement defined the expression **Illegal Mining** as mining operations undertaken by any person in any area without holding a mining lease and any other mining operation conducted in violations of terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the Environment (Protection)Act, 1986, the Forest (Conservation) Act, 1980, the Water (Prevention and Control of Pollution) Act,1974 and the Air (Prevention and Control of Pollution) Act, 1981 and Wildlife Protection Act, 1972.

Para 150 of the said Judgement is related to applicability of Section 21(5) of MMDR Act when any person raises, without any lawful authority, any mineral from any land and, authority of the State Government to recover the price thereof as compensation. Accordingly, the extraction of mineral from permitted mining lease area over and above what is permissible under the mining plan or the environmental clearance is to be taken as extraction without lawful authority and attracts the provisions of Section 21(1) and Section 21(5) of MMDR Act.

In view of provisions under Section 21(1) and Section 21(5) of MMDR Act, the computation of cost of material illegal extracted will be as per applicable methodology and rules in MMDR Act.

Therefore, compensation can be classified in following two categories

I. Compensation for Illegal Mining shall be subjected to provision of section 21(1) and section 21(5) of MMDR Act, 1957, as amended from time to time, and cost associated for restoration of damages incurred due to such mining to any physical structures, flood plains and cost assessed for the services lost for the period to restore the damages.

II. Compensation for Non-Complying Mining shall be subjected to the recovery of revenue loss due to excess production over and above permitted capacity or area or depth under any applicable statutory provisions and cost associated for restoration of any damages incurred due to such mining to any physical structures, flood plains and cost assessed for the services lost for the period to restore the damages.

Illegal and Non-complying Mining

1. Illegal Mining means extraction of minerals or associated mining activities carried out, without any lawful authority, from land or river bed or both, or from prohibited area. Lawful authority includes mining permission from competent authority including permission or clearance under applicable statutory laws/rules (i.e. MMDR Act, Water (P&CP) Act, Air(P&CP) Act, E(P)Act, FC Act, WLPA etc.

2. **Non-complying** mining means extraction of minerals or associated mining activities carried out, with due permission of lawful authority, from land or river bed or both, or from prohibited or regulated area, but in contravention of stipulated conditions for undertaking such activities.

Sustainable Sand Mining Management Guidelines 2016

To deal with issues of legal sand mining, Ministry of Environment, Forest and Climate Change, Government of India have issued Sustainable Sand Mining Management Guidelines 2016. These guidelines were prepared after consultation with States and other stakeholders with an objective to ensure sustainable sand mining and environment friendly management practices in order to restore and maintain ecology of river and other sand sources. Emphasis has been given on use of information technology and services for scientific monitoring and transportation of mined out material.

Relief and Compensation under NGT Act 2010

The National Green Tribunal Act 2010 provides for filing of Application by a victim of pollution for grant of relief or compensation and other environmental damage before the Tribunal, or for restitution of the property damaged, or for restitution of the environment of the area, and empowers the Tribunal to pass order - to provide such relief or compensation, or for restitution of the property damaged, or for restitution of environment of the area.

Annexure - IV

Inputs/suggestions for detailed assessment of damages

(MoEF&CC)

There is no comprehensive or guiding rationale available for assessing environmental damage or for evaluation in quantifiable terms. Considering the diversified geographical, morphological, temporal and spatial variation in flow-regime of riverine system across Indian sub-continent, it is difficult to work out any one reasonable rationale for calculating NPV. It is essential to create such database by undertaking detail studies by experts on major riverine system across its stretch with significant variation.

A committee may be deputed consisting of domain experts viz. river morphology, biodiversity, agriculture, pollution control, irrigation / public works department, mining and local administration along with the Mine lease holders to assess the damage and quantifying the requisite variables for assessing the NPV values.

A baseline data assessment of the indicative attributes of the ecology which are having significant impacts and can be considered as an indicator, shall be collected as part of Environmental Impact Assessment study and submitted to the regulatory authority while seeking grant of environmental clearances. This will create database for assessing the damages as well as the loss in services. Such information will also facilitate the Regulatory authority to assess and impose appropriate conditions highlighting the risk associated to damages incurred due to non-compliance of the imposed conditions. This will extend the monitoring agencies to directly impose the environmental compensation in case the non-compliance is observed.

For area, where baseline data is not available including "illegal" mining, it is proposed that the values of the nearest legal mines or its baseline data shall be considered for defining the unavailable data and all calculation shall be based on the scientific primary data of the nearest assessed values.

Damages may be assessed as and when specific information on the ecological variables becomes available to the state. Each specific river basin will have its own set of most relevant variables and methodology to be considered for calculation of the NPV for ecological damages.

Table No. 05: Indicative Damages	
S.No.	**Damage type**
1	Ingress in Flood Plain (non-mining zone)
2	Flood Plain damage
3	Diversion of River flow or change in river morphology
4	Damages to agriculture land
5	Damages to public property (Roads/Bridges/embankment/ghats/etc.) or water intake point
6	Ingress in habitat of species of significant importance or damage to river vegetation

Pre-requisite for damage assessment

To evaluate the damage assessment caused due to mining in river, it is desirable to have pre-requisite information. A checklist needs to be prepared on important points in light of the comments provided by subject experts which are provided as annexures to this report for availability and facilitation of information to person involved for damage assessment in case of illegal mining in river. The checklist for requisite information should be prepared at every district level in respective state where riverbed mining is permitted. The checklist have to be prepared within one year of time period for existing mines and to be considered mandatory before auction of new mining leases.

In addition to checklist, the following information is necessary:

- District Survey Report and Audit Report
- Provision of Public Liability Insurance in Mine Lease Agreement
- Scheduled Market Rate of sand / gravel
- Flora and Fauna Inventory (Yearly basis)
- Inventory on River structures and their locations

Report of the damage assessment team shall be, but not limited to, the format suggested. Additional information which is observed as relevant by the domain expert members of the assessment team shall be appropriately reported and acted upon in due consideration of the basic objective of deriving a scientific rational for assessment of ecological of infrastructural damage arising due to the mining activity. Standard operating practice correct assessment of damage by the expert committee constituted by concerned authority, for the purpose is delivered below, which cane be modified based of site specific condition, and any deviation shall be recorded in the report.

Standard Operating Procedure

This Standard Operating Procedure (SOP) is applicable for damage assessment due to illegal mining and have to be undertaken in addition to related provisions in MMDR Act.

Step 1:	The assessment team should collect the information and documents prescribed in Pre-Requisite section.
Step 2:	The assessment team should verify the applicability / validity of statutes under EPA-1986, Air and Water Act, MMDR 1957, State Mines and Mineral Rules, etc.
Step 3:	Field visit should be conducted for identification of mining lease area (in hectare) and boundary pillar constructed to indicate the same.
Step 4:	With the help of GPS instrument, the team should assess the area where any extraction or mining have been carried out on day of visit and calculate the mined out area in hectare.
Step 5:	If available, the team may avail the use of latest satellite images for calculating the total mined out area.
Step 6:	The team should verify the Ground / Surface Level (in meter above MSL) of atleast 04 highest points in or around the area where mining has been done. The Ground / surface level will then be computed based on averaging of 04 highest points verified by the team.
Step 7:	With the help of Depth Measurement kit or any depth measuring instruments, the depth should be measured for atleast 04 points in mined out area. For computing the depth, averaging of value obtained at 04 points should be done.
Step 8:	Verification of compliance conditions of Environmental Clearance and Consent to operate, mining methodology under Mining Plan
Step 9:	Identification of vulnerable impacts observed on the field and non-compliance of conditions of Environmental Clearance and Consent to Operate.
Step 10:	Field Survey for identification, monitoring and verification of ecological species based on the information available and documents mentioned in Pre-requisite section.
Step 11:	Preparation of inventory of machinery used / observed on the field as per format in Checklist.
Step 12:	Preparation of inventory of hydraulic structures observed on the field as per format in Checklist.
Step 13:	Water sampling for assessment of water quality including physical and biological parameters.
Step 14:	Computation of amount of cost of damage in term of mined out mineral as per format.
Step 15:	Identification of restoration plan and computation of cost of restoration plan.

Damage Assessment Report Format			
Mining Lease	Individual / Cluster		
Total Mine Lease Area			
Area permitted for Mining (excluding safety bench marks)			
Permitted depth	------- meter		
Mining Area Description -	Riverbed / Floodplain / Combine Area		
Applicable Mining Method	Mechanised / Semi-mechanised / Manual		
Quantity available for mining			
Mineral available for mining			
Bulk Density of Mineral			
Replenishment Rate (Yearly basis)			
Ground Level	Point 01 -	Point 02 -	
	Point 03 -	Point 04 -	
	Average = ---------- meter above MSL		
Ground water Level	Point 01 -	Point 02 -	
	Point 03 -	Point 04 -	
	Average = ---------- meter above MSL		
Riverbed Depth	Point 01 -	Point 02 -	
	Point 03 -	Point 04 -	
	Average = ---------- meter above MSL		
River channel Width	-------meter		
River water Temperature (Avg.)	------- ° C		
River Flow Velocity	Jan. -	Feb. -	Mar. -
	Apr. -	May. -	Jun. -
	Jul. -	Aug. -	Sept. -
	Oct. -	Nov. -	Dec. -
Machinery Observed	Machinery	Capacity	Total Number
	JCB		
	Tractor-Trolley		
	Truck		
	Dumper		
	Any Other		
Hydraulic Structures	Type	Distance from mined out area	Total Number
	Remarks		

ANNEXURE-V

Item Nos.01 to 04, 06 to 15 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 360/2015
WITH
Original Application No. 366/2015
(M.A.No. 02/2019)
WITH
Original Application No. 368/2015
(M.A.No. 16/2019)
WITH
Original Application No. 173/2018
(Earlier O.A. No. 89/2017 (EZ)
(I.A. No. 76/2019)
WITH
Original Application No. 874/2018
WITH
Original Application No. 44/2016
WITH
Original Application No. 517/2015
WITH
Original Application No. 550/2015
WITH
Original Application No. 530/2016
WITH
Original Application No. 272/2016
WITH
Original Application No. 481/2016
WITH
Original Application No. 540/2015
WITH
Original Application No. 90/2016
WITH
Execution Application No. 40/2017
IN
O.A. No. 517/2015

National Green Tribunal Bar Association	Applicant(s)
Versus	
Virender Singh (State of Gujarat)	Respondent(s)
WITH	
National Green Tribunal Bar Association	Applicant(s)
Versus	
Dr.SarvabhoumBagali (State of Karnataka)	Respondent(s)
WITH	
National Green Tribunal Bar Association	Applicant(s)

Versus

Dr.Sarvabhoum Bagali (State of Maharashtra) Respondent(s)

WITH

Sudarsan Das Applicant(s)

Versus

State of West Bengal &Ors.
(State of West Bengal and Odisha) Respondent(s)

WITH

News item published in "The Tribune " Authored by Arun Sharma Titled "Mounds of sand on Sutlej banks, mining mafia digs in"

WITH

Mushtakeem Applicant(s)

Versus

MoEF& CC &Ors. Respondent(s)

WITH

Sandeep Kumar Applicant(s)

Versus

Ministry of Environment, Forests and
Climate Change &Ors. Respondent(s)

WITH

Virender Kumar Applicant(s)

Versus

Ministry of Environment, Forests and
Climate Change &Ors. Respondent(s)

WITH

Sandeep Kumar Applicant(s)

Versus

Ministry of Environment, Forests and
Climate Change &Ors. Respondent(s)

WITH

M/s Ganga Yamuna Mining Co. Applicant(s)

Versus

State of Haryana&Ors. Respondent(s)

WITH

Joginder Singh Applicant(s)

Versus

Ministry of Environment, Forests &Ors. Respondent(s)

WITH

Ved Pal Singh Applicant(s)

Versus

Ministry of Environment, Forests &Ors. Respondent(s)

WITH

Chander Mohan Uppal — Applicant(s)

Versus

State of U.P. &Ors. — Respondent(s)

WITH

Sandeep Kumar — Applicant(s)

Versus

Ministry of Environment, Forests and Climate Change &Ors. — Respondent(s)

Date of hearing: 05.04.2019

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

For Applicant(s): Mr. Raj Panjwani, Sr. Advocate, Mr. Aagney Sai, Advocate
Mr. Sravan Kumar, Advocate
Mr. Rahul Choudhary, Ms. Meera Gopal, Mr. Sharan Balakrishna, Advocates.

For Respondent (s): Ms. Puja Singh, Advocate for the State of Gujarat
Mr. Devraj Ashok, Advocate for State of Karnataka
Mr. Soumyajit Pani, Advocate for State of Odisha
Mr. Raja Chatterjee, Advocate for State of West Bengal
Mr. Ankit Verma, Advocate for State of U.P
Mr. Divya Prakash Pande, Advocate
Mr. Shlok Chandra, Mr. Ritesh Kumar Sharma, Advocates
Mr. Sany Antony, Advocate
Mr. Ankur Mittal, Mr. Abhay Gupta, Advocate
Mr. Rahul Khurana, Advocate, Mrs. Madhri Gupta, Mr. Sanjay Sabbarwa, Mining Officer

ORDER

1. The common question for consideration in this group of matters is the steps required to be taken for environment protection from unregulated sand mining in the States of Gujarat, Karnataka, Maharashtra, West Bengal, Odisha, Punjab, Haryana and Uttar Pradesh. The issue is common even with regard to States who are not party to these proceedings.

Background

2. The Hon'ble Supreme Court, vide judgment in *Deepak Kumar Vs State of Haryana &Ors. (2012) 4 SCC 629*, directed that leases of minor minerals, including their renewal, even for an area of less than 5 hectares (ha) be granted only after environmental clearance from the Ministry of Environment and Forest and Climate Change (MoEF & CC). This direction was held to be necessary in view of degradation of environment on account of illegal and unrestricted upstream, in-stream and flood plain sand mining activities. Under the existing guidelines, no environmental clearance was required for minor leases of less than 5 hectare area. The result was that there was no regulation of such mining which resulted in environmental degradation. Even bigger cluster was split up in less than 5 ha units to avoid law.

3. The Hon'ble Supreme Court observed that absence of regulation of such mining was not justified as it was threat to bio-diversity, could destroy riverine vegetation, cause erosion, pollute water sources, badly affecting riparian ecology, damaging ecosystem of rivers, safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spell disaster for the conservation bird species, increase saline water in the rivers.

4. The Hon'ble Supreme Court observed that such mining has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream

roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upset the ability of natural marine processes to replenish the sand.

5. The Hon'ble Supreme Court noted that core group was constituted by the MoEF&CC to examine the impact of minor minerals on riverbeds and ground waters. A draft report was prepared recommending mandatory preparation of mining plan on the pattern of mining plans for major minerals. Further recommendations are reclamation and rehabilitation of abandoned mines, proportion of hydro geo-logical balance for minerals below ground water table limiting depth of mining to 3 meter and identification on locations where mining should be permitted was required. There is need for identifying safety zones in the proximity of intendments. Thus, strict regulatory parameters were required for regulating mining of minor minerals. It was noted that in-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the stream bed causes deepening of rivers which may result in destruction of aquatic and riparian habitats. It has impact on stream's physical habitat characteristics.

6. The grievance before the Tribunal is that the river bed mining was taking place at several locations in violation of judgment of the Hon'ble Supreme Court either without any valid lease or under leases

given without following the strict regulatory regime in terms of judgment of the Hon'ble Supreme Court or in violation of lease conditions.

Proceedings before NGT

7. This Tribunal passed several orders in the present matter since 05.08.2013[1] to check illegal sand mining from the riverbeds without environmental clearance or in violation of terms of environmental clearance. The State of Uttar Pradesh was directed to frame a policy to check illegal sand mining. MoEF&CC was also directed to prepare comprehensive guideline on the subject. The Tribunal considered regulatory regime applicable in some of the States in the light of the judgment of the Hon'ble Supreme Court in *Deepak Kumar* (supra), including in the States of Uttar Pradesh, Haryana, Madhya Pradesh, Maharashtra, Karnataka, Gujarat, West Bengal and Odisha. The MoEF&CC issued Sustainable Sand Mining Guidelines 2016, vide notification dated 15.01.2016. Thereafter, further directions were issued by the Tribunal in the light of report of the High-powered Committee[2].

8. Despite this, the menace of illegal sand mining in India continues unabated. As per reports, the sand business in India employs over 35 million people and is valued at well over $126 billion per annum. In the year 2015-2016, there were over 19,000 cases of illegal minor minerals including sand in the country.[3] In Uttarakhand, a 115 years old bridge collapsed due to overloaded sand trucks. In Maharashtra,

---

[1] In O.A. No 38/2015
[2] Order dated 08.08.2018 in Gurpreet Singh Bagga Vs. Ministry of Environment, Forest and Climate Change, E.A. No. 17/2016
[3] http://www.legalserviceindia.com/legal/article-73-why-is-illegal-sand-mining-harmful-.html

26,628 cases of illegal sand mining were recorded in the year 2017. The State of Maharashtra has the highest number of cases of non-compliance of Sustainable Sand Mining Management Guidelines, 2016. The State of Kerala suffered hugely in 2004 Tsunami and 2018 floods which several report explain were aggravated by illegal sand extraction.[4] The issue of illegal sand mining is also rampant in the states of Goa[5], Bihar[6], Tamil Nadu[7], Uttarakhand[8], Telangana[9], Jammu and Kashmir[10] amidst others.

9. Natural resources are 'public goods' and the Doctrine of Equality must guide the State in determining the actual mechanism for distribution of natural resources. It takes into account the rights and obligations of the State vis-a-vis its people and the demands that the people be granted equitable access to natural resources and they are adequately compensated for the transfer of these resources for public domain and regulation of rights and obligations of the State vis-à-vis private parties seeking to acquire the resources which demands that the procedure adopted and distribution is just and transparent.

10. Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, water and forest have great importance to public as a whole and it is wholly unjustified to make them a subject of private ownership. The public trust doctrine enjoins upon the Governments to protect the resources for enjoyment of general public

[4] https://sandrp.in/2019/03/01/sand-mining-2018-is-it-a-national-menace/
[5] https://timesofindia.indiatimes.com/city/goa/govt-is-ignoring-illegal-sand-mining/articleshow/67908428.cms
[6] https://www.firstpost.com/india/illegal-sand-mining-part-3-bihar-govts-attempted-crackdown-has-sent-prices-soaring-officials-face-axe-as-rivers-in-ruin-6008351.html
[7] https://en.wikipedia.org/wiki/Sand_mining_in_Tamil_Nadu
[8] https://sandrp.in/tag/uttarakhand-sand-mining/
[9] https://sandrp.in/2019/02/26/sand-mining-2018-telangana-and-andhra-pradesh/
[10] https://greaterkashmir.com/article/news.aspx?story_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=1

rather than to permit the use for private ownership of commercial purposes.[11]

11. When the State holds a resource that is freely available for the use of public, it provides for a high degree of judicial scrutiny on any action of the State in dealing with the subject in a prudent manner. It is the duty of the State to provide complete protection to the natural resources as a trustee of the public at large. Moreover, a policy to give free sand must be justified as a welfare measure but even this consideration cannot justify unregulated and unscientific mining unmindful of impact on environment. If in the course of mining, damage is caused, cost of the same must be recovered from such violators. In any case, the authorities cannot avoid their duty under the environmental law to prevent and restore the damage which is an inalienable duty of the State.

Sudarsan Das v. State of West Bengal

Vide order dated 04.09.2018 in *O.A No. 173/2018, Sudarsan Das v. State of West Bengal & Ors*, the Tribunal considered the issue of unchecked mechanised sand mining on the banks of river Subarnarekha by use of suction pumps, earth movers and netting in an area falling under Jaleshwar Tehsil, Balasore District, Odisha on the Odisha – West Bengal Boarder area and neighbouring district of West Medinapur in the State of West Bengal. The mining was being done by a method whereby ground water is allowed to seep into excavation of 40 to 50 feet beneath the river and collected in sumps and pumped away for disposal. No environmental clearance had been

[11]Natural Resources Allocation in RE: Special Reference No. 1/2012, (2012)10 SCC1, para 77-78,89-92

SO

taken nor consent taken from the Pollution Control Board. This was impacting the ecology of the river including its channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transpiration capacity, turbidity, temperature, etc. Such indiscriminate mining was the cause of the river Subarnarekha changing its course every year and made susceptible to flooding during every monsoon, threatening the safety of the villages situated along the river bank due to the banks being severely eroded in villages Rajnagar, Mankia, Kanrpur, Totapada, Beherasahi and Praharajpur. The authorities confirmed that illegal mining was taking place at large scale without any Environmental Clearance under the Environment (Protection) Act, 1986 or Consent under the Water (Prevention and Control of Pollution) Act, 1974 or the Air (Prevention and Control of Pollution) Act, 1981. Sustainable Sand Mining and Management Guidelines, 2016 were also not being followed. There was adverse impact on the ecology. No Management Plan was prepared for replenishment of preventive steps. Safeguards suggested in the report of High-powered Committee in September, 2016[12] were also not been adopted.

---

[12] The report suggest follows:

"i) Project Proponent must ensure that the security features of Transport Permission viz. (a) Printed on Indian Bank Association (IBA) approved Magnetic Ink Character Recognition Code (MICR) paper; (c) Unique Barcode; (d) Unique Quick Response Code (QR); (e) Fugitive Ink Background; (f) Invisible Ink Mark; (g) Void Pantograph; (h) Watermark.

ii) Project Proponent must ensure that the CCTV camera, Personal Computer (PC), Internet Connection, Power Back up, access control of mine lease site; and arrangement for weight or approximation of weight of mined out mineral on basis of volume of the trailer of vehicle used at mine lease site are available.

iii) Project Proponent must ensure the Scanning of Transport Permit or Receipt and uploading on Server.

iv) The State Mines and Geology Department should print the Transport Permits/Receipt with security features enumerated at Paragraph (i) above and issue them to the mine lease holder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine lease area. Each receipt should be preferably with pre-fixed quantity, so the total quantity gets determined for the receipts issued. When the Transport Permit or Receipt barcode gets scanned and invoice is generated,

the particular barcode gets used and its validity time is recorded on the server. So all the details of transporting of mined out material can be captured on the server and the Transport Permit or Receipt cannot be reused.

v) The staff deployed for the purpose of checking of vehicles carrying mined mineral should be in a position to check the validity of Transport Permit or Receipt by scanning them using website, Android Application and SMS.

vi) In case the Vehicle breakdown, the validity of Transport Permit or Receipt shall be extended by sending SMS by driver in specific format to report breakdown of vehicle. The server will register this information and register the breakdown. The State can also establish a call centre, which can register breakdowns of such vehicles and extend the validity period. The subsequent restart of the vehicle also should be similarly reported to the server/call centre.

vii) The route of vehicle from source to destination should be tracked through the system using check points, Radio-frequency identification (RFID) Tags, and Global Positioning System (GPS) tracking.

viii) The system shall enable the Authorities to develop periodic report on different parameters like daily lifting report, vehicle log/history, lifting against allocation, and total lifting. The system can be used to generate auto mails/SMS. This will enable the District Collector/Magistrate to get all the relevant details and will enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle should be tracked."

Considerations required to be kept in mind for sustainable sand mining are:

a. Parts of the river reach that experience deposition or aggradation shall be identified first. The Lease holder/ Environmental Clearance holder may be allowed to extract the sand and gravel deposit in these locations to manage aggradation problem.

b. The distance between sites for sand and gravel mining shall depend on the replenishment rate of the river. Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.

c. Sand and gravel may be extracted across the entire active channel during the dry season.

d. Abandoned stream channels on terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. Stream should not be diverted to form inactive channel.

e. Layers of sand and gravel which could be removed from the riverbed shall depend on the width of the river and replenishment rate of the river.

f. Sand and gravel shall not be allowed to be extracted where erosion may occur, such as at the concave bank.

g. Segments of braided river system should be used preferably falling within the lateral migration area of the river regime that enhances the feasibility of sediment replenishment.

h. Sand and gravel shall not be extracted within 200 to 500 meter from any crucial hydraulic structure such as pumping station, water intakes, and bridges. The exact distance should be ascertained by the local authorities based on local situation. The cross-section survey should cover a minimum distance of 1.0 km upstream and 1.0 km downstream of the potential reach for extraction. The sediment sampling should include the bed material and bed material load before, during and after extraction period. Develop a sediment rating curve at the upstream end of the potential reach using the surveyed cross- section. Using the historical or gauged flow rating curve, determine the suitable period of high flow that can replenish the extracted volume. Calculate the extraction volume based on the sediment rating curve and high flow period after determining the allowable mining depth.

i. Sand and gravel could be extracted from the downstream of the sand bar at river bends. Retaining the upstream one to two thirds of the bar and riparian vegetation is accepted as a method to promote channel stability.

j. Flood discharge capacity of the river could be maintained in areas where there are significant flood hazard to existing structures or infrastructure. Sand and gravel mining may be allowed to maintain the natural flow capacity based on surveyed cross- section history.

k. Alternatively, off-channel or floodplain extraction is recommended to allow rivers to replenish the quantity taken out during mining.

l. The Piedmont Zone (Bhabhar area) particularly in the Himalayan foothills, where riverbed material is mined, this sandy-gravelly track constitutes excellent conduits and holds the greater potential for ground water recharge. Mining in such areas should be preferred in locations selected away from the channel bank stretches.

m. Mining depth should be restricted to 3 meter and distance from the bank should be 3 meter or 10 percent of the river width whichever less.

n. The borrow area should preferably be located on the river side of the proposed embankment, because they get silted up in course of time. For low embankment less than 6 m in height, borrow area should not be selected within 25 m from the toe/heel of the embankment. In case of higher embankment the distance should not be less than 50 m. In order to obviate development of flow parallel to embankment, cross bars of width eight times the depth of borrow pits spaced 50 to 60 meters centre-to-centre should be left in the borrow pits.

o. Demarcation of mining area with pillars and geo-referencing should be done prior to start of mining."

12. The Management Plan as per the guidelines is to require system of replenishment as well as preventive steps during the sand mining. Replenishment and reclamation of riverine sand are the integral part. Guidelines also deal with the issue of depth of mining and strict regulatory regime. The management of mining clusters should have a separate approach. Management of sand deposited after the floods should be treated as separate for mining. Monitoring system proposed includes safeguards during transport as well as checking of condition of mining.

13. The Tribunal noted that Ministry of Mines and Indian Bureau of Mines (IBM) had developed Mines Surveillance System (MSS), with assistance from Bhaskaracharya Institute for space applications and Geoinformatics (BISAG), Gandhinagar and Ministry of Electronics and Information Technology (MEITY). The Mining Surveillance System (MSS) is a satellite-based monitoring system which aims to establish a regime of responsive mineral administration by curbing instances of illegal mining activity through automatic remote sensing detection technology.

14. In view of above, the Tribunal directed[13] the MoEF&CC to revise its guidelines as in-spite of the guidelines already issued, the monitoring mechanism was not working effectively. The directions of this Tribunal are:

> "*i. Mining Surveillance System discussed in para 23 above be finalized in consultation with ISRO Hyderabad.*

---

13 Vide order dated 04.09.2018 inOriginal Application No. 173 of 2018 (Earlier O.A. No. 89/2017) (EZ) in the matter of Sudarsan Das Vs. State of West Bengal &Ors.

ii *Safeguards suggested in Sustainable Sand Mining Guidelines published by the MoEF&CC in the year 2016.*

iii *Suggestions in the High-Powered Committee Report.*

iv *Requirement of demarcation of boundaries being published in respect of different leases in public domain.*

v. *Need to issue SOP laying down mechanism to evaluate loss to the ecology and to recover the cost of restoration of such damage from the legal or illegal miners. Such evaluation must include cost of mining material as well as cost of ecological restoration and net present value of future eco system services forgone.*

vi. *Need to set up a dedicated institutional mechanism for effective monitoring of sand and gravel mining which may also take care of mining done without any Environmental Clearance as well as mining done in violation of Environmental Clearance conditions.*

vii. *The Mining Department may make a provision for keeping apart atleast 25% of the value of mined material for restoration of the area affected by the mining and also for compensating the inhabitants affected by the mining.*

viii. *One of the conditions of every lease of mine or minerals would be that there will be independent environmental audit atleast once in a year by reputed third party entity and report of such audit be placed in public domain.*

ix *In the course of such environmental audit, a three member committee of the local inhabitants will also be associated. Composition of three members committee may preferably include ex-servicemen, former teacher and former civil servant. The Committee will be nominated by the District Magistrate."*

15. Such steps were to be worked out within two months and circulated to all States. The mechanism is to provide for a report of implementation from the concerned States every quarter. The matter needs to be reviewed after every six months by the MoEF & CC. The direction with regard to setting up of 'dedicated institutional mechanism' for monitoring of conditions of Environmental Clearance as granted under EIA Notification, 2006 in respect of sand and gravel mining as directed in para (vi) is for an All-Encompassing Body to monitor the conditions of Environmental Clearance with respect to all development projects. Report of the steps taken by MOEF&CC was to be furnished to this Tribunal by email at filing.ngt@gmail.com on or before 31.12.2018.

16. The Tribunal also issued directions to the State of West Bengal and Odisha to take steps as follows:

"

i. *The State of West Bengal and Odisha may demarcate the boundaries for regulating grant of sand mining lease within three months from today. No mining lease of minor minerals may be given in the area in question till demarcation is complete. All existing mining operations in those areas shall remain suspended till demarcation work is completed and attains finality. To carry out the demarcation, the Chief Secretaries of the two States may constitute a team of three suitable officers each within two weeks. The said teams may hold their first meeting within one month.*

ii. *The States of West Bengal and Odisha must ensure that mining in all sand mining blocks is undertaken strictly in accordance with the provisions of EIA Notification, 2006, MoEF*

Notification dated 15th January, 2016 and the Sustainable Sand Mining Management Guidelines, 2016. They must also ensure that no sand mining is permitted without due compliance of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as regulations governing clearances by the Central Ground Water Authority. The District Administration must be held accountable for any failure.

iii. *District Magistrates and Superintendents of Police, Balasore district in Odisha and Paschim Medinapur, West Bengal, respectively, shall seize all sump pumps, other machinery, tools, vehicles, etc. used for carrying out illegal sand mining.*

iv. *Apart from instituting appropriate criminal proceedings against those carrying out illegal mining, exemplary penalty shall be imposed against them by the concerned District Magistrates within three months from today to cover the cost of restoration of environment and to compensate the victims.*

v. *The Chief Secretaries of the two States shall also get prepared jointly a detailed restoration plan for river Subarnarekha and its riverbeds for which a Committee of experts shall be constituted from independent institutions, i.e., the CPCB, Indian School of Mines, Dhanbad and the respective State Pollution Control Boards as members. Such constitution may take place within one month.*

vi. *The Expert Committee shall carry out detailed study and submit the restoration plan, as far as may be practicable, within three months after its constitution.*

vii. *The Committee shall also get the assessment done through Indian Council of Forestry Research and Education, Dehradun of the ecological damage on account of illegal mining by incorporating the following components: a) Cost of riverbed material. b) Cost of ecological restoration. c) Net present value of the future ecosystem services foregone.*

viii. *The above steps may be facilitated by the Regional Office of the CPCB as nodal officer, by coordinating with the Chief Secretaries of the two States.*

ix. *The damage suffered by the inhabitants caused by the illegal mining may also be assessed by the above Committee, which shall form a separate component of the Restoration Plan for river Subarnarekha as per direction No. (v) above. Cost of restoration plan shall be recovered as environmental compensation from the illegal miners, to be identified by the District Magistrate. The component of the compensation in respect of damages suffered by the inhabitants may be credited with District Legal Services Authority. The District Legal Services Authority may disburse the same to the victims of illegal mining, after proper identification."*

17. An oversight Committee was formed headed by Justice R.K. Merathia, former Judge of Jharkhand High Court to oversee the execution of above directions which was to function for six months.

Consideration in Today's Proceedings

Sand Minning in the State of West Bengal and Odisha

18. The matter has been listed today to consider the report from the MoEF & CC which was to be furnished by 31.12.2018 in terms of

para 28 in *Sudarshan Das* (supra) and report of the oversight Committee which was to be furnished within three months in respect of steps taken by the State of West Bengal and Odisha in terms of direction of this Tribunal.

19. We may note that vide order dated 16.01.2019 in *O.A. No. 606/2018,* titled *Compliance of Municipal Solid Waste Management Rules, 2016,* the Tribunal flagged the issue of sand mining as one of the issues required to be monitored by the Chief Secretaries of the concerned States and to be reported to the Tribunal on personal appearance of Chief Secretaries before the Tribunal.

20. In pursuance of the said direction, Chief Secretaries of Odisha and West Bengal furnished their respective reports on 26.03.2019 and 02.04.2019. Learned counsels for the State of West Bengal and Odisha have relied upon the said reports during the hearing of present cases. The reports were not found to be satisfactory as per orders of the Tribunal dated 26.03.2019 and 02.04.2019 respectively and further directions were issued.

21. Question for consideration is further directions in the matter. We will consider this aspect after noticing developments in connected cases.

Sand Mining in the State of Gujarat

22. Following the above order in Sudarsan Das (*supra*), the issue of illegal sand mining in the State of Gujarat was dealt with in *O.A. No. 360/2015, National Green Tribunal Bar Association v. Virender Singh (State of Gujarat).* The Tribunal passed several orders from time to time since 28.11.2016 and finally considered the report of the State

of Gujarat vide order dated 13.07.2018 to the effect that persons engaged in illegal mining were identified and proceeded against. The Tribunal directed the State of Gujarat to take further preventive and remedial steps and observed that compounding fee to be recovered should be fixed having regard not only to the cost of mined material but also the cost of restoration of the environment and cost of ecological services lost forever and should be separately accounted for, for restoration of the environment. Again, vide order dated 17.09.2018, the Tribunal considered the policy of the State of Gujarat but found that preventive and remedial steps proposed were not sufficient. Damage caused to the environment was not fully taken into account. It was required to include Net Present Value (NPV) of future ecosystem services foregone forever. It was also observed that the preventive steps should also include demarcation and publication of boundaries in different leases and the same may be placed in the public domain. The Tribunal also referred to other orders on the subject being orders dated 05.09.2018, 10.09.2018 and 13.09.2018 in *Original Application No. 44/2016- Mushtakeem Vs. MoEF & CC & Ors., Original Application No. 304/2015- Jai singh & Anr. Vs. Union of India & Ors.* and *Original Application No. 186/2016 - Satendra Pandey Vs. Ministry of Environment, Forest & Climate Change & Anr.* The application was disposed of but the action taken report was required to be furnished. Accordingly, the matters have been put up today for consideration of the action taken report.

23. We may also note that vide order dated 04.01.2019 in *Original ApplicationNo.110(THC)/2012, Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & and Ors.*, the

issue of compensation and seizure of vehicles in the context of illegal rat hole mining in the State of Meghalaya was considered. On the subject of compensation to be recovered for damage to the environment, it was observed:

> *"31. Paying capacity and the amount which may act as deterrent to prevent further damage is also well recognised. Net Present Value of the ecological services foregone and cost of damage to environment and pristine ecology,the cost of illegal mined material, and the cost of mitigation and restoration are also relevant factors. The Committee may go into these aspects to determine the final figure.*
>
> *32. We are satisfied that having regard to the totality of factual situation emerging from the record, damages required to be recovered are not, prima facie, less than Rs. 100 Crores. Accordingly, by way of an interim measure, we require the State of Meghalaya to deposit Rs. 100 crores within two months with the CPCB in this regard."*

On the subject of vehicles, it was observed:

> *" 36. The Committee may also consider the following:-*
>
> > *Any cranes and trucks found to be involved in illegal mining or transportation which have not yet been seized may also be seized. The seized vehicles or equipments be released by the concerned District Magistrates only after recovering damages to the extent of 50% of the showroom 17 price of the vehicles or equipments. The said amount may also be credited to the restoration fund."*

24. We have perused the report filed by the State of Gujarat vide email dated 17.12.2018 to the effect that environment compensation scale has been enhanced which now can be between 21% to 41% value of the illegally mined material and if such value is found to be less than the cost of the damage to the environment, the matter is to be referred to the State Pollution Control Board. The above

compensation is in addition to the penalties under the Rules. However, the scale of penalty has not been specified.

25. Accordingly, further directions are required which may apply not only to the State of Gujarat but also other States. We may consider this aspect after taking note of developments in other States.

Sand Mining in the State of Karnataka

26. *O.A. No. 366/2015 (M.A. No. 02/2019), National Green Tribunal Bar Association v. Dr. Sarvabhoum Bagali (State of Karnataka) and O.A. No. 368/2015 (M.A. No. 16/2019), National Green Tribunal Bar Association v. Dr. Sarvabhoum Bagali (State of Maharashtra)* relate to the issue of sand mining in the State of Karnataka and Maharashtra. Vide order dated 25.09.2018, the matter was considered in the light of observations in *O.A No. 173/2018 (Earlier O.A. No. 89/2017 (EZ) (I.A. No. 76/2019), Sudarsan Das Vs. State of West Bengal &Ors and Original Application No. 186/2016, Satendra Pandey v. Ministry of Environment, Forest & Climate Change &Anr.* The States of Karnataka and Maharashtra were required to take steps as per the directions in the above matters, to the extent applicable and file an affidavit.

27. Accordingly, an affidavit has been filed on 06.03.2019 by the state of Karnataka stating that there was no sand *mafia* in the State of Karnataka and only there are exceptional instances. It is further submitted:

> *"I submit that all necessary steps are taken by Government of Karnataka and compliance report is submitted in this case, separately. If this Hon'ble Tribunal opines to establish any "Monitoring*

Mechanism", we welcome it. However, any suggestions or directions may kindly be issued to Government of Karnataka to (1) evaluate loss to the ecology (2) to recover cost of restoration from illegal miners (3) to monitor mining (4) to make provision for restoration (5) for compensation to the inhabitants and (6) for audit etc., the Government of Karnataka will obey the directions of this Hon'ble Court."

28. Our attention has been drawn to a news article published in Bangalore Mirror dated 24.12.2018 appearing under the title "Karnataka: Sand mafia under scanner after lorry runs over official"[14] and an article published in Decan Herald dated 17.09.2018 under the title "Karnataka is a leading State that witnesses the devastating effects of sand mining"[15] to the effect that fourteen million metric tonnes of sand unaccounted for the State of Karnataka is as follows:

> *"The state government is receiving approximately Rs 150 crore as royalty from legitimate sand mining blocks every year. As per estimates, the state government is losing around Rs 200 crore per year due to illegal sand mining. Here is a ballpark estimation to find out the consumption of sand in the state. According to cement manufacturing companies' data, around 18 million metric tonnes of cement is sold in the state every year. The cement-sand mix ratio is either 1:4 or 1:6 (four or six bags of sand per cement bag). Even if 1:4 ratio is taken, a whopping 70 million metric tonnes of sand is approximately used in the state every year. The official data from the Department*

[14] https://bangaloremirror.indiatimes.com/bangalore/others/karnataka-sand-mafia-under-scanner-after-lorry-runs-over-official/articleshow/67221261.cms
[15] https://www.deccanherald.com/exclusives/illegal-sand-mining-wrecking.html

of Mines and Geology shows that from the blocks permitted by it, a total quantity of 30 million metric tonnes of sand (from all types of blocks - river sand, patta land, blocks allocated to government departments, and manufactured sand) is produced in the state. As per this, there is a difference of around 40 million metric tonnes of sand in comparison to the cement sold in the state."

29. We may consider further directions after noting facts of other states.

Sand Mining in the State of Maharashtra

30. In the case of Maharashtra, an affidavit has been filed by the State of Maharashtra on 20.2.2019 to the effect that the State Government is in the process of framing Sand Mining Policy for which a Committee has been constituted.

31. Our attention has also been drawn to an article published in The Hindustan Times dated 27.01.2019 under the title "Maharashtra registers most cases of illegal mining between 2013-17"[16] inter alia stating as follows:

"Maharashtra recorded 1,39,706 illegal mining cases between 2013 and 2017, the highest number in the country, revealed data submitted by the Union environment ministry before the Rajya Sabha on January 3.

However, the state had one of the lowest number of prosecutions in such cases. The state filed 712 first information reports (FIR) and one court case, while seizing around 1,39,000 vehicles used in illegal

[16] https://www.hindustantimes.com/india-news/maharashtra-registers-most-cases-of-illegal-mining-between-2013-17/story-2j69aqmsygzCcTBBB8emtN.html

mining operations and collecting Rs 267 crores as fines from offender.

India recorded 4,16,410 cases during the same time, which means Maharashtra accounts for 33.5% of all cases in the country. Uttar Pradesh recorded 36,054 illegal mining cases, Madhya Pradesh 46,193, Karnataka 33,390, and Goa had 3 cases. The information was submitted in response to a query on the environmental impact of illegal mining."

32. In view of above, further directions are required to be considered for the State of Maharashtra.

Sand Mining in the State of Punjab

33. Vide order dated 13.11.2018 in *O.A. No. 874/2018 News item published in "The Tribune " Authored by Arun Sharma Titled "Mounds of sand on Sutlej banks, mining mafia digs in"*, a report was sought on the allegation of large scale illegal mining on the bank of River Satluj in District Ropar in the light of directions vide order dated 04.09.2018 in Sudershan Das (supra) and other orders. Accordingly, a report has been received vide email dated 25.02.2019 confirming that illegal mining had taken place. The observations in the inspection report are as follows:

> *"1. No mining operation was observed during visit of the Committee at the mining sites located in the riverbed.*
> *2. The mining of minor minerals in the riverbed has taken place more than permitted depth of 3 meters, as specified in point no. 4(i) of Form – L appended to the Punjab Minor Mineral Rules, 2013, which is a violation of sustainable mining practice.*

3. *The specified boundaries or demarcation of mine lease area was not demarcated as required for checking illegal mining, substantiates the fact of illegal or unauthorized excavation of minerals.*
4. *From the existing natural level adjoining to the mining site, it we noticed that mining has been carried out in an unscientifically manner as:*
   a) *The mining of minor mineral has been done beyond the permitted depth.*
   b) *No strip of 7.5 m width of the lease boundary as seen left as per provisions of the Metalliferous Mines Regulations, 1961 in compliance to condition imposed in the Mining Plan approved by the State Geologist, Punjab, a serious violation for safety of banks.*
   c) *The contractor has not maintained slope height not exceeding 45 degree from the horizontal width along the boundaries of mining site in compliance to condition no. 12 of the letter vide which mining plan was approved, negligence towards slope stability.*
   d) *The contractor was not providing bench along the boundary of the mining site having height not exceeding 1.5 m and is width should not be less than the height as per condition no. 13 of the letter vide which mining plan was approve.*

1. *From the conditions of the area along the riverbed in revenue estate of village Baihara and Swarha, it seems that the mining has been carried out at the different locations in an unscientific way.*
2. *During the inspection, the impressions of heavy vehicles movement were observed. Also, it was found that road for movement of vehicle were in very bad shape as these roads have not been*

stabilized or metalled with any of construction material and no plantation was observed along the roads.

3. *The development of water sumps as well as erosion of banks due to unscientific mining within the riverbed are threat to river ecological system and make it prone to flooding conditions during full flow. Also, it may cause the course of river to change rapidly and meandering to a great extent.*
4. *No check post was observed during the visit along the routes leading to mining lease area.*
5. *As per stipulation of environmental clearance, the contractor is required to maintain safety and stability of river banks i.e. 3 m or 10% of the width of the river, whichever is more will be left intact as no mining zone. Since no embankment of the riverbed was noticed and there was no demarcation of the mining site, as such, compliance of the above stipulation of the Environmental Clearance could not be verified.*
6. *The contractor has neither done any plantation along with the lease boundary of mining site in compliance to the condition imposed in the approval letter of the Mining plan.*
7. *The stone crusher units nearby the riverbed were observed by the committee. The stone crusher units were observed to be non-operational during visit of the committee, but stock piling of crushed material is indicative of their operation. The heavy machineries like JCB, pokland machines, dumper etc. were observed around the river, which may have been use for illegal mining in the area. Hence, the possession of these types of machines and working of stone crusher units need to be regulated. This issue needs to be monitored by the State."*

34. The Committee further observed.

"The suggestions of the joint committee visit on 20.12.2018 in the report filed in OA no. 767 of 2018 titled as Dinesh Kumar Chadha versus State of Punjab & Others were as follows :

- *The mining activity within the riverbed should not be permitted without the preparation of Comprehensive Mining plan/ District Survey report as required in Sustainable Sand Mining Management Guidelines, 2016 issued by the MoEF by the State of Punjab with replenishment/ scientific study by an institute of national importance and prior recommendations of MoEF & CC.*

- *The State of Punjab may be asked to develop mechanism to stop the illegal extraction and transportation of riverbed material. The mechanism must include the environmental compensation for violators and vehicles used for the purpose to be seized along with prosecution of owners of such vehicles. Including cancellation of registration certificate of such vehicles.*

- *The District Administration may consider establishing the check post barrier at suitable site to check vehicles carrying the riverbed material and to maintain strict vigil over overloading vehicles involved.*

- *The Detailed Survey of river eco system comprising of identification of river stretches affected by unscientific mining should be carried out for preservation and exclusion of stretches from any type of extraction process or mining activity. In addition the auction of identified stretches may not*

be considered without approved annual replenishment report.

- *The restoration plan of river ecosystem in mine lease area should be enforced for minimizing the impacts of unscientific mining and to improve the riparian habitat. The State of Punjab can be asked to execute the restoration plan within time bound manner.*

- *The demarcation of auctioned mine lease area should be done urgently with pillars/fencing along with geo-referencing to protect the river ecosystem and to avoid bed degradation.*

- *The raw material to be imported, processed, dispatched and balance stock shall be regulated strictly as per the policy guidelines for registration and working of stone crushers in the State of Punjab issued by the Department of Industries and Commerce vide notification dated 19.03.2015.*

- *As regards to initiating action against the erring officials, the Heads of the concerned Departments should identify the erring officials who allowed to take place illegal mining and initiate action against these officials, after conducting detailed investigations.*

The same physical conditions have been noticed during the recent visit on 20.2.2019 at the mining sites located in the revenue estate of village Baihara and Swarha, as such, the suggestions may be considered by the court alongwith the followings:

- *The District Survey Report for the mining site in the area in order to identify depositions / aggradations stretches of the riverbed material should be prepared.*
- *Declaration of safety zones around infrastructures like National Highway, Bridge, Railway line etc. must be ensured for protection as per provisions of the Punjab Minor Minerals Rules, 2013.*
- *Replenishment report including time of replenishment for the mining area to be undertaken by the concerned Authorities for permitting mining.*
- *Strict vigilance to be implemented to ensure no illegal mining / transportation in the bed of river.*

As regards to facts noted regarding mining beneath the bridge on Sri Anandpur Sahib-Garshankar road, besides above, it is suggested as under:

(i) *The Deptt. of Mining is required to ensure the compliance of stipulations of para 4 of Form 'L' appended to the Punjab Mining Minerals Rules, 2013 as regards to no mining area within a distance of 500m upstream /downstream of any high level bridge and 250m upstream / downstream of other bridges.*

(ii) *The Mining department jointly with Deptt. of Irrigation is required to rejuvenate the area near and beneath the above mentioned bridge so as to ensure safety of the same and these departments are required to take necessary safeguards for further safety of the said bridge."*

35. In view of above, directions are called for to the State of Punjab to deal with the issue of sand mining.

Sand mining in the State of Uttar Pradesh and Haryana

36. O.A. No. 44/2016, Mushtakeem v. MoEF&CC & Ors., involved illegal mining in Uttar Pradesh and Haryana on riverbeds of Yamuna. The matter was disposed of vide order dated 05.09.2018, following directions dated 04.09.2018 in Sudershan Das (supra). In terms of order dated 05.09.2018, no report has been received from the State of Uttar Pradesh. Thus further directions are necessary. A report has been received from Additional Chief Secretary, Haryana vide email dated 05.04.2019 to the effect that the State of Haryana was following the guidelines and will implement revised Sustainable Sand Mining Guidelines issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC) in terms of the order dated 04.09.2018, in *O.A No. 173/2018 (Earlier O.A. No. 89/2017 (EZ) (I.A. No. 76/2019), Sudarsan Das Vs. State of West Bengal & Ors.*

37. In view of the above, further directions are called for to the State of Uttar Pradesh and Haryana to deal with the issue of sand mining.

Sand Mining in the State of Madhya Pradesh

38. Though no case of the State of Madhya Pradesh is listed today, we have taken note of the problem sand mining in the State in O.A. No. 456/2018 Nityanand Mishra v. State of M.P. & Ors., which is pending before this Tribunal and sought report from Committee vide order dated 31.07.2018. Accordingly, a report is submitted & the same is on record of the said case. Extract from the report is as follows:

"Sand mining is directly affecting basking and nesting

habitats of species in SGS. Mining of sand from the riverbed and river banks will negatively alter the river morphology, will increase sedimentation and turbidity and also disrupt the lateral connectivity within the river. Studies have already shown condition of Son River to be at a critical level with severely compromised river flows. Sand mining will only result in compounding what is an already sub-optimal riverine habitat. Any further degradation of this habitat will potentially make Son River uninhabitable for some of the most threatened fauna in the country. The data from offence registers of SGS as depicted in table 1 does indicate that there has been an increase in the number of cases with respect to the illegal sand mining in the sanctuary area. The information is about cases that were caught and processed by the Forest Department. ***There are many cases that go unnoticed due to inadequate patrolling as everyone informs that one truck generates illegal revenue of Rs. 12,000 and per night 1000 trucks generate illegal revenue of Rs. 1,20,00,000."***

39. In view of above, further directions are necessary for the State of Madhya Pradesh to deal with the issue of sand mining.

Sand Mining in the State of Andhra Pradesh

40. We may also note that in the case of *Anumolu Gandhi V. State of Andhra Pradesh in Original Application No. 935/2018,* illegal sand mining causing damage to Krishna river in Vijayawada, Godavari river and their tributaries in the State of Andhra Pradesh and absence of remedial steps was considered. The Tribunal vide order dated 04.04.2019 directed the Chief Secretary of the State of Andhra Pradesh to forthwith prohibit all unregulated sand mining without following the procedure prescribed under the law in the judgment of the Hon'ble Supreme Court in Deepak Kumar v. State of Haryana. The Tribunal further directed Chief Secretary of the State to evolve a mechanism to assess and recover the cost of sand mining already incurred in the last three years and initiate

steps to recover compensation to meet the cost of restoration of environment. The Tribunal constituted a Committee comprising CPCB, MoEF&CC, National Institute of Mines, Dhanbad, IIT Roorkee and Madras School of Economics to undertake environment damage assessment within three months and furnish a report to this Tribunal by e-mail at ngt.filing@gmail.com.

41. In this light, further directions are called for to the State of Rajasthan and Andhra Pradesh to deal with the issue of sand mining.

Sand Mining in the State of Rajasthan and Himachal Pradesh

42. The problem of illegal sand mining contrary to the directions of the Hon'ble Supreme Court in Deepak Kumar vs. State of Haryana (supra) in the States of Rajasthan, Himachal Pradesh, Karnataka, Madhya Pradesh and Punjab was also considered by this Tribunal in Himmat Singh Shekhawat vs. State of Rajasthan & Ors. (O.A. No. 797/2018) vide order dated 15.03.2019. the Tribunal founds the reports submitted by the States to be unsatisfactory and accordingly directed furnishing of fresh action taken reports. The matter was directed to be listed on 11.07.2019. The said matter may now be listed on 23.07.2019 along with the present batch of matters.

Sand Mining in Bihar

43. This Tribunal vide its order dated 24.08.2018 in Amarshakti v. State of Bihar & Ors. O.A. No. 596/2018 dealt with the issue of illegal sand mining during monsoon in the rivers Son and Ganga at Koelbar and Patna in Bihar. The Tribunal directed the

72

Secretary, mines and minerals, Bihar to constitute a team comprising of officers of Mines and Minerals Department and District Magistrate and S.P. Patna to look into the allegations and report compliance to the Tribunal. Report dated 12.10.2018 was received from the Government of Bihar stated that 122 prosecutions were initiated and 297 persons arrested. 32 boats and 287 trucks were seized in District Saran. Action was also taken in District Bhojpur at Ara and District Vaishali at Hajipur. The Tribunal directed the Secretary, Government of Bihar to monitor the matter from time to time and continue to enforce the law.

Sand Mining in Uttarakhand

44. The issue of illegal sand mining in the State of Uttarakhand was also considered by this Tribunal vide its order dated 27.11.2018 in Anand Gopal Singh Bist v. State of Uttarakhand O.A. No. 751/2018 wherein, this Tribunal directed the District Magistrate Nanital and Principal Chief Conservator of Forest, Dehradun to jointly look into the matter. The Tribunal vide its order dated 14.02.2019 directed that the monitoring may continue and the Collector may ensure that Revenue Department performs its duty in accordance with law.

Sand Mining in other States

45. Illegal sand mining in violation of Sustainable Sand Mining Guidelines, 2016 has also been reported widely in the States of

Jammu and Kashmir[17], Goa[18], Kerala[19], Telangana[20] and Tamil and Nadu[21].

46. General directions may be necessary even for Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu which may also apply to any other States facing the issue of illegal sand mining.

Issues

47. Main issues are:

(a) Revision of Sustainable Sand Mining Guidelines, 2016 by the MoEF&CC in the light of directions of this Tribunal vide order dated 04.09.2018 in Sudarsan Das (supra).

(b) Compliance of Sustainable Sand Mining Guidelines, 2016 as may be revised by MoEF&CC as above.

(c) Effective monitoring mechanism for preventive and remedial measures as directed in orders of this Tribunal, including surveillance system and recovery of compensation.

(d) Directions in individual cases listed today.

(e) Scale of compensation

48. We may now deal with the issues involved and directions required.

---

[17] https://greaterkashmir.com/article/news.aspx?story_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=1

18 https://timesofindia.indiatimes.com/city/goa/govt-is-ignoring-illegal-sand-mining/articleshow/67908428.cms

[19] Order dated 29.03.2019 in News Item Published In "Indian Express" Authored by Vishnu Verma in O.A. No. 76/2019

[20] https://sandrp.in/2019/02/26/sand-mining-2018-telangana-and-andhra-pradesh/

[21] https://en.wikipedia.org/wiki/Sand_mining_in_Tamil_Nadu

Re (i): Revision of Sustainable Sand Mining Guidelines, 2016 by the MoEF&CC in the light of directions of this Tribunal vide order dated 04.09.2018 in Sudarsan Das (supra).

49. As noted in para 12 to 15 above, need for revision of Sustainable Sand Mining Guidelines, 2016 has been discussed by the Tribunal in order dated 04.09.2018. Further discussion is unnecessary. The 2016 Guidelines need revision in the light of report of High Powered Committee in September 2016, failure of Monitoring mechanism followed by State Boards, SEIIAs, DEIAAs and MSS system developed by Ministry of Mines & IBN with the assistance of BISAG and MAITY and other observations quoted in paras 12 to 15 above. Since no report has been received from MoEF&CC as per report dated 04.09.2018, the MoEF&CC may now take necessary steps in the matter in terms of order dated 04.09.2018 in *Sudersan Das* (supra) latest by June 30, 2019 and file compliance report by 15.07.2019.

Re (ii): Compliance of Sustainable Sand Mining Guidelines, 2016 as may be revised by MoEF&CC as above.

50. As noted earlier in paras 17, 23, 27, 31 and 35, States of West Bengal, Odisha, Gujarat, Karnataka, Maharashtra, Punjab, Haryana and Uttar Pradesh are required to follow SSMG, 2016 as may be revised by MoEF&CC and even other States where illegal sand mining is taking place. All such States may take steps in terms of orders dated 04.09.2018 in *Sudarsan Das v. State of West Bengal & ors*, 05.09.2018 in *Mushtakeem v. MoEF&CC & Ors.*, 13.09.2018 in *Satendra Pandey v. MoEF&CC* & Ors. and 16.01.2019 titled Compliance of Municipal Solid Waste

Management Rules, 2016. The Chief Secretaries may monitor and furnish reports as earlier directed on the subject of sand mining.

Re (iii): Effective monitoring mechanism for preventive and remedial measures as directed in orders of this Tribunal, including surveillance system and recovery of compensation.

51. We have found in the discussion above, particularly in paras 8 to 11, 20, 21, 23, 29, 32, 33, 36, 39, 41 and 43 with regard to factual position in various States that monitoring mechanism-preventive and remedial measures is not effective and illegal sand mining is continuing. The same needs to be reviewed in the light of above discussion. The States may review monitoring mechanism in terms of several directions of the Tribunal and guidelines of MoEF&CC. As regards monetory compensation, the same has to be not only equal to cost of mined material and penalty to evade royalty but also to meet cost of restoration and NPV of eco services fore gone forever. Seizure of vehicles or other equipment may be dealt with as per rules and directions in *Threat to life arising out of coal mining in South Garo Hills district* (supra).

Re (iv): Directions in Individual Cases Listed Today. For the discussion and observation hereinabove, case is made out for issuing directions following discussion on the subject.

52. In *Sudarsan Das (supra)* one of the directions was that the Chief Secretaries of West Bengal and Odisha will prepare a restoration plan in consultation with the Central Pollution Control Board (CPCB), Indian School of Mines, Dhanbad and the Respective State Pollution Control Boards (SPCBs). We are informed that Indian School of Mines, Dhanbad declined to comply with the

order. This may call for remedial action against defiance by the said institution. Order of this Tribunal is a decree of the Court and can be executed in the manner provided under Section 51 CPC by ordering civil imprisonment or adopting other norms. Violation of order of this Tribunal is also a criminal offence punishable by imprisonment and fine. The Head of the Department concerned is liable to be proceeded against. Thus, the Director Indian School of Mines, Dhanbad will have to be required to appear in person to explain why action be not taken for violation of order of this Tribunal. The State of West Bengal, Orissa, Punjab and Gujarat need to send further action taken reports by 30.06.2019.

53. The State of Uttar Pradesh has not complied with the order dated 05.09.2018. This must not be done by way of last opportunity till 30.06.2019, failing which coercive measures will be adopted. Responsibility for compliance will be of the Chief Secretary.

54. In O.A. No. 173/2018, in view of the fact that term of the oversight Committee headed by Justice Ramesh Kumar Merathia, former Judge, High Court of Jharkhand was six months which period is over, the said Committee may now conclude its proceedings and furnish its final report with findings and recommendations on or before April 30, 2019. Further directions in the matter may be considered on the next date.

Re (v): Scale of Compensation

55. We have held that the scale of compensation proposed by the State of Gujarat does not fully comply with the 'Polluter Pays' principle which envisages that polluter is required to pay for complete restoration of the environment. This principle has been articulated further by the Hon'ble Supreme Court of India in *T.N. Godavarman Thirumulpad vs Union Of India & Ors, (2006) 1 SCC 1* in the context of forests. In this matter, the Hon'ble Supreme Court appointed a committee of experts and following directions were given:

i. To identify and define parameters (scientific, biometric and social) on the basis of which each of the categories of values of forest land should be estimated.

ii. To formulate a practical methodology applicable to different biogeographical zones of India for estimation of the values in monetary terms in respect of each of the above categories of forest values.

iii. To illustratively apply this methodology to obtain actual numerical values for different forest types for each biogeographical zone in the country.

iv. To determine on the basis of established principles of public finance, who should pay the costs of restoration and /or compensation with respect to each category of values of forests.

v. Which projects deserve to be exempted from payment of NPV.

56. Similar criteria may have to be taken into account for arriving at an approximate scale of compensation. The compensation is to

58. We sum up our directions as follows:

a) MoEF&CC may now take necessary steps in the matter in terms of order dated 04.09.2018 in *Sudersan Das* (supra) latest by June 30, 2019 and file compliance report by 15.07.2019, as already directed.

b) The States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh may take steps in terms of orders dated 04.09.2018 in *Sudarsan Das v. State of West Bengal & ors,* 05.09.2018 in, 13.9.2018 in *Mushtakeem v. MoEF&CC & Ors.* and 16.01.2019 in Compliance of Municipal Solid Waste Management Rules, 2016. The Chief Secretaries may monitor and furnish reports as earlier directed.

(c) The States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh may review monitoring mechanism in terms of directions of the Tribunal and guidelines of MoEF&CC.

(d) The Director Indian School of Mines, Dhanbad may appear in person on 26.07.2019 to explain why action be not taken for violation of order of this Tribunal.

(e) The State of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa,

include not only the full value of the illegally mined material but also cost of restoration of environment as well as cost of ecological services foregone forever. It should be deterrent so as not to render such illegal activity profitable. In *Sudarsan Das Vs. State of West Bengal & Ors.* (Supra), it was held that full value of the material, the cost of restoration and the NPV should form part of the compensation to be recovered. There has also to be action against the polluters and the erring officers. The vehicles or any other equipment used for illegal mining are required to be confiscated and to be released only on payment of atleast 50% of the showroom value as laid down in *Original Application No.110(THC)/2012, Threat to life arising out of coal mining in South Garo Hills District v. State of Meghalaya& Ors.* This scale can then apply for all States, as far as possible.

57. We consider it necessary to constitute a Committee comprising representatives of the MoEF&CC, Central Pollution Control Board (CPCB), Indian Institute of Forest Management, Bhopal, Institute of Economic Growth Delhi and Madras School of Economics to prepare a scale of compensation, after including the above components which can then be adopted in whole of the country. The report may be furnished within three months to the Tribunal by email at ngt.filing@gmail.com. The nodal agency for compliance and coordination will be CPCB. The Committee may also take professional service of an expert/ institution in the matter if it so desires.

Conclusions

Kerala, Telangana and Tamil Nadu and Himachal Pradesh may send further action taken reports by 30.06.2019.

(f) The Committee in terms of para 59 above may furnish its report within three months to the Tribunal by email at ngt.filing@gmail.com

59. A copy of this order be sent to MoEF&CC, Central Pollution Control Board (CPCB), Indian Institute of Forest Management, Bhopal, Institute of Economic Growth, Delhi and Madras School of Economics, Chennai by email.

List the matter for further consideration on 26.07.2019.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

April 05, 2019
Original Application No. 360/2015
With other connected matters
AS

Annexure - VI

Item Nos. 01 to 15 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 360/2015
With
Original Application No. 366/2015
(M.A. No. 02/2019 & M.A. No. 251/2019)
With
Original Application No. 368/2015
(M.A. No. 16/2019 & M.A. No. 170/2019 M.A. No. 213/2019)
With
Original Application No. 173/2018
(Earlier O.A. No. 89/2017 (EZ)
(I.A. No. 76/2019 & I.A. No. 709/2019)
With
Original Application No. 874/2018
With
Original Application No. 44/2016
With
Original Application No. 517/2015
With
Original Application No. 550/2015
With
Original Application No. 530/2016
With
Original Application No. 272/2016
With
Original Application No. 481/2016
With
Original Application No. 540/2015
With
Original Application No. 90/2016
With
Execution Application No. 40/2017
IN
O.A. No. 517/2015
With
Original Application No. 671/2017

National Green Tribunal Bar Association — Applicant(s)

Versus

Virender Singh (State of Gujarat) — Respondent(s)

WITH

National Green Tribunal Bar Association — Applicant(s)

Versus

82

Dr.Sarvabhoum Bagali
(State of Karnataka) Respondent(s)

WITH

Sudarsan Das Applicant(s)

Versus

State of West Bengal & Ors. Respondent(s)

With

News item published in "The Tribune " Authored by Arun Sharma
Titled "Mounds of sand on Sutlej banks, mining mafia digs in"

With

Mushtakeem Applicant(s)

Versus

MoEF & CC & Ors. Respondent(s)

With

Sandeep Kumar Applicant(s)

Versus

Ministry of Environment, Forests and
Climate Change & Ors. Respondent(s)

With

Virender Kumar Applicant(s)

Versus

Ministry of Environment, Forests and
Climate Change & Ors. Respondent(s)

With

Sandeep Kumar Applicant(s)

Versus

Ministry of Environment, Forests and
Climate Change & Ors. Respondent(s)

With
M/s Ganga Yamuna Mining Co. Applicant(s)

Versus

83

State of Haryana & Ors. Respondent(s)

With

Joginder Singh Applicant(s)

Versus

Ministry of Environment & Forest & Ors. Respondent(s)

With

Ved Pal Singh Applicant(s)

Versus

Ministry of Environment & Forest & Ors. Respondent(s)

With

Chander Mohan Uppal Applicant(s)

Versus

State of U.P. & Ors. Respondent(s)

With

Sandeep Kumar Applicant(s)

Versus

Ministry of Environment, Forest and Climate Change & Ors. Respondent(s)

With

Himmat Singh Shekhawat Applicant(s)

Versus

State of Rajasthan & Ors. Respondent(s)

Date of hearing: 08.01.2020

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

For Applicant(s): Mr. Raj Panjwani, Senior Advocate and Mr. Rahul Choudhary, Advocate
Mr. Aageny Sail, Advocate

84

For Respondent(s): Mr. Vikas Mahajan, Additional Advocate General For State of HP
Mr. Attin Shankar Rastogi, Advocate, Mr. Ravi Prasad, Additional Secretary and Mr. Sundeep Kumar, for MoEF&CC
Ms. Vipra Bhardwaj, Advocate for CPCB
Ms. Rukmani Bobde, Advocate for State of MP
Ms. Madhumita Bhattacharjee, Advocate for State of West Bengal
Mr. Darpan KM, Advocate for State of Karnataka
Mr. Ankit Verma, Advocate for State of UP
Mr. Rahul Khurana, Advocate for State of Haryana
Mr. Rakesh Kumar, Additional Director Mines, Govt. of Rajasthan
Mr. Shlok Chandra, Advocate for MoEF&CC

ORDER

1. Common question for consideration in this group of matters is the steps required to be taken for environment protection from unregulated sand mining in the States of Gujarat, Karnataka, Maharashtra, West Bengal, Odisha, Punjab, Haryana and Uttar Pradesh. The issue is common even with regard to States who are not party to these proceedings.

2. Vide order dated 04.09.2018 in *O.A. No. 173/2018*, the issue of illegal sand mining on the banks of river Swaran Rekha on Orissa – West Bengal Border was considered in the light of material on record and it was found that illegal sand mining was going on without requisite safeguards and in violation of Sustainable Sand Mining and Management Guidelines, 2016. Further, High Powered Committee constituted under the orders of this Tribunal headed by Secretary, MoEF&CC gave a report in September 2016 suggesting further safeguards. The said report was accepted by this Tribunal and it was directed that the said suggestions were required to be incorporated in the Notification dated 15.01.2016 by which Sustainable Sand Mining and Management Guidelines, 2016 were notified.

85 4

Monitoring mechanism was also required to be straightened. Final directions to the MoEF&CC in the said order are quoted below for ready reference:

> *"25. In view of above discussion, we are of the view that since the subject of mining is also required to be regulated for protection of environment and it is to take care of this requirement, MoEF&CC has issued directions from time to time under Section 3 and 5 of the Environment (Protection) Act, 1986. The MoEF&CC needs to revise its directions keeping in mind the following:*
>
> *i. Mining Surveillance System discussed in para 23 above be finalized in consultation with ISRO Hyderabad.*
> *ii. Safeguards suggested in Sustainable Sand Mining Guidelines published by the MoEF&CC in the year 2016.*
> *iii. Suggestions in the High Power Committee Report.*
> *iv. Requirement of demarcation of boundaries being published in respect of different leases in public domain.*
> *v. Need to issue SOP laying down mechanism to evaluate loss to the ecology and to recover the cost of restoration of such damage from the legal or illegal miners. Such evaluation must include cost of mining material as well as cost of ecological restoration and net present value of future eco system services forgone.*
> *vi. Need to set up a dedicated institutional mechanism for effective monitoring of sand and gravel mining which may also take care of mining done without any Environmental Clearance as well as mining done in violation of Environmental Clearance conditions.*
> *vii. The Mining Department may make a provision for keeping apart atleast 25% of the value of mined material for restoration of the area affected by the mining and also for compensating the inhabitants affected by the mining.*
> *viii. One of the conditions of every lease of mine or minerals would be that there will be independent environmental audit atleast once in a year by reputed third party entity and report of such audit be placed in public domain.*
> *ix. In the course of such environmental audit, a three member committee of the local inhabitants will also be associated. Composition of three members committee may preferably include ex-servicemen, former teacher and former civil servant. The Committee will be nominated by the District Magistrate.*
>
> *26. Such steps may be worked out within two months and circulated to all States. The Mechanism may provide for a report of implementation from the concerned States every*

quarter. The matter may be reviewed after every six months by the MoEF&CC.

27. The direction with regard to setting up of dedicated institutional mechanism for monitoring of conditions of Environmental Clearance as granted under EIA Notification, 2006 in respect of sand and gravel mining as directed in para (vi) may be an Over-Encompassing Body to monitor the conditions of Environmental Clearance with respect to all development projects.

28. A copy of this order be sent to MoEF&CC by e-mail. Report of the steps taken by MOEF&CC may be furnished to this Tribunal by email at filing.ngt@gmail.com on or before 31.12.2018."

3. Vide order dated 13.09.2018 in *O.A. No. 186/2016, Satyender Pandey Vs. MoEF*, the Tribunal found that Notifications dated 15.01.2016, 20.01.2016 and 01.07.2016 to the extent procedure of environment impact assessment was diluted in violation of judgment of the Hon'ble Supreme Court in *Deepak Kumar Vs. State of Haryana & Ors.: (2012) 4 SCC 629* and also of this Tribunal in O.A. No. 123/2014 dated 13.01.2015 to be unsustainable. This same were also violative of Sustainable Sand Mining and Management Guidelines, 2016 to the extent of dispensing with the public hearing and the same was required to be revised. The direction of this of this Tribunal is quoted below for ready reference:

"25. The MoEF&CC shall, therefore, take appropriate steps to revise the procedure laid down in the impugned Notification dated 15th January, 2016 in terms of the above directions and observations so that it is conformity with the letter and spirit of the directions passed by the Hon'ble Supreme Court in Deepak Kumar (supra)."

The above directions remains to be implemented and on 16.12.2019 in E.A. No. 55/2018, further direction has been issued to ensure compliance failing which coercive measures may be initiated. Matter is listed on 31.01.2020.

87 6

4. The matter was comprehensively considered again on 05.04.2019 with reference to the following specific issues and directions were issued:-

> *"(a) Revision of Sustainable Sand Mining Guidelines, 2016 by the MoEF&CC in the light of directions of this Tribunal vide order dated 04.09.2018 in Sudarsan Das (supra).*
> *(b) Compliance of Sustainable Sand Mining Guidelines, 2016 as may be revised by MoEF&CC as above.*
> *(c) Effective monitoring mechanism for preventive and remedial measures as directed in orders of this Tribunal, including surveillance system and recovery of compensation.*
> *(d) Directions in individual cases listed today.*
> *(e) Scale of compensation."*

5. The matter was thereafter considered on 26.03.2019. With regard to non-compliance of order dated 04.09.2018 in *O.A. No. 173/2018*, it was observed:-

> *"None appeared for the MoEF&CC during hearing but while dictating the order, learned counsel for MoEF&CC suddenly appeared and only casual explanation furnished is that MoEF&CC has approached the Hon'ble Supreme Court. While seeking of reasonable time for compliance on the ground that the matter was pending in higher Court may stand on different footing, there is no justification for unreasonable delay for more than 9 months on the part of the MoEF&CC. Learned counsel for the applicant submitted that in absence of any stay, order of this Tribunal may be enforced by coercive measures. We find merit in the submission but before doing so, we give an opportunity for compliance of the directions and direct Additional Secretary concerned of MoEF&CC to remain present in person with the compliance report and an explanation as to why action be not taken against the person responsible for the default."*

6. The Additional Secretary, MoEF&CC is present in person and his only explanation is that the work involved is intricate and time consuming. We find absolutely no merit in the explanation. It is difficult to understand as to why a competent

team of officers in the Government cannot complete the exercise directed by the Tribunal to safeguard the interest of environment based mainly on High Powered Committee of the Ministry itself, if there is a will to work. The order of this Tribunal, in substance, merely requires incorporation of further safeguards based on High Powered Committee report and observations of this Tribunal into the Sustainable Sand Mining and Management Guidelines, 2016 The attempt appears to be to avoid carrying out the order of this Tribunal for reasons difficult to fathom. Such attitude does not augur well for effective rule of law.

7. As already noted, order dated 13.09.2018 in *O.A. No. 186/2016, Satyendra Pandey, supra* remains uncomplied by the MoEF&CC even though a period of more than one year has passed causing serious prejudice to the environment in continued violation of directions of the Hon'ble Supreme Court and this Tribunal. This is resulted in uncalled for confusion in the mind of statutory authorities dealing with the subject on the ground resulting in illegal mining and avoidable damage to the environment which needs to be urgently safeguarded. MoEF&CC as a responsible body should have taken necessary steps which are not at all difficult to restore effective impact assessment and safeguards in terms of observations of this Tribunal. This does not involve any long or complicated procedure. We do not see any difficulty in officers of MoEF&CC in understanding the issue or executing the orders of this Tribunal, if there is will to do so. We hope that the said order will now be positively complied before the next date, failing

which this Tribunal will have no other option except for taking coercive action against the erring officers of the MoEF&CC. As already noted sufficient opportunity has already been given in the last more than one year and there has been total failure so far.

8. Every order of this Tribunal, subject to further order of a Constitutional Court, is a binding decree. Rule of law requires its strict compliance. Any violation thereof is a criminal offence under the National Green Tribunal Act, 2010. In the present case, either there is no intention to comply or no competence which is wholly undesirable situation. Only course left with this Tribunal in the circumstances is coercive measures as per law. We do hope that the same will now be positively complied with before the next dated. The Additional Secretary may remain present on the next date.

9. Other issue is the report of CPCB on the subject of fixing the amount of environmental compensation. Though a report has been furnished but it has deficiencies which have been pointed out during the hearing. The same may be rectified positively before the next date. The reports of the States about compliance will be considered on the next date.

List again on 31.01.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

90

Dr. Nagin Nanda, EM

Siddhanta Das, EM

January 08, 2020
O.A. No. 360/2015 and other connected matters
A

91

-TRUE COPY-

Item Nos.01 to 04, 06 to 15 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 360/2015
WITH
Original Application No. 366/2015
(M.A.No. 02/2019)
WITH
Original Application No. 368/2015
(M.A.No. 16/2019)
WITH
Original Application No. 173/2018
(Earlier O.A. No. 89/2017 (EZ)
(I.A. No. 76/2019)
WITH
Original Application No. 874/2018
WITH
Original Application No. 44/2016
WITH
Original Application No. 517/2015
WITH
Original Application No. 550/2015
WITH
Original Application No. 530/2016
WITH
Original Application No. 272/2016
WITH
Original Application No. 481/2016
WITH
Original Application No. 540/2015
WITH
Original Application No. 90/2016
WITH
Execution Application No. 40/2017
IN
O.A. No. 517/2015

National Green Tribunal Bar Association Applicant(s)
Versus
Virender Singh (State of Gujarat) Respondent(s)
WITH
National Green Tribunal Bar Association Applicant(s)
Versus
Dr.SarvabhoumBagali (State of Karnataka) Respondent(s)
WITH
National Green Tribunal Bar Association Applicant(s)

Versus

Dr.Sarvabhoum Bagali (State of Maharashtra) Respondent(s)

WITH

Sudarsan Das Applicant(s)

Versus

State of West Bengal &Ors.
(State of West Bengal and Odisha) Respondent(s)

WITH

News item published in "The Tribune " Authored by Arun Sharma Titled "Mounds of sand on Sutlej banks, mining mafia digs in"

WITH

Mushtakeem Applicant(s)

Versus

MoEF& CC &Ors. Respondent(s)

WITH

Sandeep Kumar Applicant(s)

Versus

Ministry of Environment, Forests and
Climate Change &Ors. Respondent(s)

WITH

Virender Kumar Applicant(s)

Versus

Ministry of Environment, Forests and
Climate Change &Ors. Respondent(s)

WITH

Sandeep Kumar Applicant(s)

Versus

Ministry of Environment, Forests and
Climate Change &Ors. Respondent(s)

WITH

M/s Ganga Yamuna Mining Co. Applicant(s)

Versus

State of Haryana&Ors. Respondent(s)

WITH

Joginder Singh Applicant(s)

Versus

Ministry of Environment, Forests &Ors. Respondent(s)

WITH

Ved Pal Singh Applicant(s)

Versus

Ministry of Environment, Forests &Ors. Respondent(s)

WITH

Chander Mohan Uppal — Applicant(s)

Versus

State of U.P. &Ors. — Respondent(s)

WITH

Sandeep Kumar — Applicant(s)

Versus

Ministry of Environment, Forests and Climate Change &Ors. — Respondent(s)

Date of hearing: 05.04.2019

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

For Applicant(s): Mr. Raj Panjwani, Sr. Advocate, Mr. Aagney Sai, Advocate
Mr. Sravan Kumar, Advocate
Mr. Rahul Choudhary, Ms. Meera Gopal, Mr. Sharan Balakrishna, Advocates.

For Respondent (s): Ms. Puja Singh, Advocate for the State of Gujarat
Mr. Devraj Ashok, Advocate for State of Karnataka
Mr. Soumyajit Pani, Advocate for State of Odisha
Mr. Raja Chatterjee, Advocate for State of West Bengal
Mr. Ankit Verma, Advocate for State of U.P
Mr. Divya Prakash Pande, Advocate
Mr. Shlok Chandra, Mr. Ritesh Kumar Sharma, Advocates
Mr. Sany Antony, Advocate
Mr. Ankur Mittal, Mr. Abhay Gupta, Advocate
Mr. Rahul Khurana, Advocate, Mrs. Madhri Gupta, Mr. Sanjay Sabbarwa, Mining Officer

ORDER

1. The common question for consideration in this group of matters is the steps required to be taken for environment protection from unregulated sand mining in the States of Gujarat, Karnataka, Maharashtra, West Bengal, Odisha, Punjab, Haryana and Uttar Pradesh. The issue is common even with regard to States who are not party to these proceedings.

Background

2. The Hon'ble Supreme Court, vide judgment in *Deepak Kumar Vs State of Haryana &Ors. (2012) 4 SCC 629,* directed that leases of minor minerals, including their renewal, even for an area of less than 5 hectares (ha) be granted only after environmental clearance from the Ministry of Environment and Forest and Climate Change (MoEF & CC). This direction was held to be necessary in view of degradation of environment on account of illegal and unrestricted upstream, in-stream and flood plain sand mining activities. Under the existing guidelines, no environmental clearance was required for minor leases of less than 5 hectare area. The result was that there was no regulation of such mining which resulted in environmental degradation. Even bigger cluster was split up in less than 5 ha units to avoid law.

3. The Hon'ble Supreme Court observed that absence of regulation of such mining was not justified as it was threat to bio-diversity, could destroy riverine vegetation, cause erosion, pollute water sources, badly affecting riparian ecology, damaging ecosystem of rivers, safety of bridges, weakening of riverbeds, destruction of natural habitats of organisms living on the riverbeds, affects fish breeding and migration, spell disaster for the conservation bird species, increase saline water in the rivers.

4. The Hon'ble Supreme Court observed that such mining has direct impact on the physical habitat characteristics of the rivers such as bed elevation, substrate composition and stability, in-stream

roughness elements, depth, velocity, turbidity, sediment transport, stream discharge and temperature. Increase in demand of sand has placed immense pressure in the supply of sand resource and mining activities were going on illegally as well as legally without requisite restrictions. Lack of proper planning and sand management disturbs marine ecosystem and upset the ability of natural marine processes to replenish the sand.

5. The Hon'ble Supreme Court noted that core group was constituted by the MoEF&CC to examine the impact of minor minerals on riverbeds and ground waters. A draft report was prepared recommending mandatory preparation of mining plan on the pattern of mining plans for major minerals. Further recommendations are reclamation and rehabilitation of abandoned mines, proportion of hydro geo-logical balance for minerals below ground water table limiting depth of mining to 3 meter and identification on locations where mining should be permitted was required. There is need for identifying safety zones in the proximity of intendments. Thus, strict regulatory parameters were required for regulating mining of minor minerals. It was noted that in-stream mining lowers the stream bottom of rivers which may lead to bank erosion. Depletion of sand in the stream bed causes deepening of rivers which may result in destruction of aquatic and riparian habitats. It has impact on stream's physical habitat characteristics.

6. The grievance before the Tribunal is that the river bed mining was taking place at several locations in violation of judgment of the Hon'ble Supreme Court either without any valid lease or under leases

given without following the strict regulatory regime in terms of judgment of the Hon'ble Supreme Court or in violation of lease conditions.

Proceedings before NGT

7. This Tribunal passed several orders in the present matter since 05.08.2013[1] to check illegal sand mining from the riverbeds without environmental clearance or in violation of terms of environmental clearance. The State of Uttar Pradesh was directed to frame a policy to check illegal sand mining. MoEF&CC was also directed to prepare comprehensive guideline on the subject. The Tribunal considered regulatory regime applicable in some of the States in the light of the judgment of the Hon'ble Supreme Court in *Deepak Kumar* (supra), including in the States of Uttar Pradesh, Haryana, Madhya Pradesh, Maharashtra, Karnataka, Gujarat, West Bengal and Odisha. The MoEF&CC issued Sustainable Sand Mining Guidelines 2016, vide notification dated 15.01.2016. Thereafter, further directions were issued by the Tribunal in the light of report of the High-powered Committee[2].

8. Despite this, the menace of illegal sand mining in India continues unabated. As per reports, the sand business in India employs over 35 million people and is valued at well over $126 billion per annum. In the year 2015-2016, there were over 19,000 cases of illegal minor minerals including sand in the country.[3] In Uttarakhand, a 115 years old bridge collapsed due to overloaded sand trucks. In Maharashtra,

---

[1] In O.A. No 38/2015
[2] Order dated 08.08.2018 in Gurpreet Singh Bagga Vs. Ministry of Environment, Forest and Climate Change, E.A. No. 17/2016
[3] http://www.legalserviceindia.com/legal/article-73-why-is-illegal-sand-mining-harmful-.html

26,628 cases of illegal sand mining were recorded in the year 2017. The State of Maharashtra has the highest number of cases of non-compliance of Sustainable Sand Mining Management Guidelines, 2016. The State of Kerala suffered hugely in 2004 Tsunami and 2018 floods which several report explain were aggravated by illegal sand extraction.[4] The issue of illegal sand mining is also rampant in the states of Goa[5], Bihar[6], Tamil Nadu[7], Uttarakhand[8], Telangana[9], Jammu and Kashmir[10] amidst others.

9. Natural resources are 'public goods' and the Doctrine of Equality must guide the State in determining the actual mechanism for distribution of natural resources. It takes into account the rights and obligations of the State vis-a-vis its people and the demands that the people be granted equitable access to natural resources and they are adequately compensated for the transfer of these resources for public domain and regulation of rights and obligations of the State vis-à-vis private parties seeking to acquire the resources which demands that the procedure adopted and distribution is just and transparent.

10. Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, water and forest have great importance to public as a whole and it is wholly unjustified to make them a subject of private ownership. The public trust doctrine enjoins upon the Governments to protect the resources for enjoyment of general public

[4] https://sandrp.in/2019/03/01/sand-mining-2018-is-it-a-national-menace/
[5] https://timesofindia.indiatimes.com/city/goa/govt-is-ignoring-illegal-sand-mining/articleshow/67908428.cms
[6] https://www.firstpost.com/india/illegal-sand-mining-part-3-bihar-govts-attempted-crackdown-has-sent-prices-soaring-officials-face-axe-as-rivers-in-ruin-6008351.html
[7] https://en.wikipedia.org/wiki/Sand_mining_in_Tamil_Nadu
[8] https://sandrp.in/tag/uttarakhand-sand-mining/
[9] https://sandrp.in/2019/02/26/sand-mining-2018-telangana-and-andhra-pradesh/
[10] https://greaterkashmir.com/article/news.aspx?story_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=1

rather than to permit the use for private ownership of commercial purposes.[11]

11. When the State holds a resource that is freely available for the use of public, it provides for a high degree of judicial scrutiny on any action of the State in dealing with the subject in a prudent manner. It is the duty of the State to provide complete protection to the natural resources as a trustee of the public at large. Moreover, a policy to give free sand must be justified as a welfare measure but even this consideration cannot justify unregulated and unscientific mining unmindful of impact on environment. If in the course of mining, damage is caused, cost of the same must be recovered from such violators. In any case, the authorities cannot avoid their duty under the environmental law to prevent and restore the damage which is an inalienable duty of the State.

Sudarsan Das v. State of West Bengal

Vide order dated 04.09.2018 in *O.A No. 173/2018, Sudarsan Das v. State of West Bengal & Ors,* the Tribunal considered the issue of unchecked mechanised sand mining on the banks of river Subarnarekha by use of suction pumps, earth movers and netting in an area falling under Jaleshwar Tehsil, Balasore District, Odisha on the Odisha – West Bengal Boarder area and neighbouring district of West Medinapur in the State of West Bengal. The mining was being done by a method whereby ground water is allowed to seep into excavation of 40 to 50 feet beneath the river and collected in sumps and pumped away for disposal. No environmental clearance had been

[11]Natural Resources Allocation in RE: Special Reference No. 1/2012, (2012)10 SCC1, para 77-78,89-92

taken nor consent taken from the Pollution Control Board. This was impacting the ecology of the river including its channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transpiration capacity, turbidity, temperature, etc. Such indiscriminate mining was the cause of the river Subarnarekha changing its course every year and made susceptible to flooding during every monsoon, threatening the safety of the villages situated along the river bank due to the banks being severely eroded in villages Rajnagar, Mankia, Kanrpur, Totapada, Beherasahi and Praharajpur. The authorities confirmed that illegal mining was taking place at large scale without any Environmental Clearance under the Environment (Protection) Act, 1986 or Consent under the Water (Prevention and Control of Pollution) Act, 1974 or the Air (Prevention and Control of Pollution) Act, 1981. Sustainable Sand Mining and Management Guidelines, 2016 were also not being followed. There was adverse impact on the ecology. No Management Plan was prepared for replenishment of preventive steps. Safeguards suggested in the report of High-powered Committee in September, 2016[12] were also not been adopted.

[12] The report suggest follows:

"i) Project Proponent must ensure that the security features of Transport Permission viz. (a) Printed on Indian Bank Association (IBA) approved Magnetic Ink Character Recognition Code (MICR) paper; (c) Unique Barcode; (d) Unique Quick Response Code (QR); (e) Fugitive Ink Background; (f) Invisible Ink Mark; (g) Void Pantograph; (h) Watermark.

ii) Project Proponent must ensure that the CCTV camera, Personal Computer (PC), Internet Connection, Power Back up, access control of mine lease site; and arrangement for weight or approximation of weight of mined out mineral on basis of volume of the trailer of vehicle used at mine lease site are available.

iii) Project Proponent must ensure the Scanning of Transport Permit or Receipt and uploading on Server.

iv) The State Mines and Geology Department should print the Transport Permits/Receipt with security features enumerated at Paragraph (i) above and issue them to the mine lease holder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine lease area. Each receipt should be preferably with pre-fixed quantity, so the total quantity gets determined for the receipts issued. When the Transport Permit or Receipt barcode gets scanned and invoice is generated,

the particular barcode gets used and its validity time is recorded on the server. So all the details of transporting of mined out material can be captured on the server and the Transport Permit or Receipt cannot be reused.

v) The staff deployed for the purpose of checking of vehicles carrying mined mineral should be in a position to check the validity of Transport Permit or Receipt by scanning them using website, Android Application and SMS.

vi) In case the Vehicle breakdown, the validity of Transport Permit or Receipt shall be extended by sending SMS by driver in specific format to report breakdown of vehicle. The server will register this information and register the breakdown. The State can also establish a call centre, which can register breakdowns of such vehicles and extend the validity period. The subsequent restart of the vehicle also should be similarly reported to the server/call centre.

vii) The route of vehicle from source to destination should be tracked through the system using check points, Radio-frequency identification (RFID) Tags, and Global Positioning System (GPS) tracking.

viii) The system shall enable the Authorities to develop periodic report on different parameters like daily lifting report, vehicle log/history, lifting against allocation, and total lifting. The system can be used to generate auto mails/SMS. This will enable the District Collector/Magistrate to get all the relevant details and will enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle should be tracked."

Considerations required to be kept in mind for sustainable sand mining are:

a. Parts of the river reach that experience deposition or aggradation shall be identified first. The Lease holder/ Environmental Clearance holder may be allowed to extract the sand and gravel deposit in these locations to manage aggradation problem.
b. The distance between sites for sand and gravel mining shall depend on the replenishment rate of the river. Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.
c. Sand and gravel may be extracted across the entire active channel during the dry season.
d. Abandoned stream channels on terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. Stream should not be diverted to form inactive channel.
e. Layers of sand and gravel which could be removed from the riverbed shall depend on the width of the river and replenishment rate of the river.
f. Sand and gravel shall not be allowed to be extracted where erosion may occur, such as at the concave bank.
g. Segments of braided river system should be used preferably falling within the lateral migration area of the river regime that enhances the feasibility of sediment replenishment.
h. Sand and gravel shall not be extracted within 200 to 500 meter from any crucial hydraulic structure such as pumping station, water intakes, and bridges. The exact distance should be ascertained by the local authorities based on local situation. The cross-section survey should cover a minimum distance of 1.0 km upstream and 1.0 km downstream of the potential reach for extraction. The sediment sampling should include the bed material and bed material load before, during and after extraction period. Develop a sediment rating curve at the upstream end of the potential reach using the surveyed cross- section. Using the historical or gauged flow rating curve, determine the suitable period of high flow that can replenish the extracted volume. Calculate the extraction volume based on the sediment rating curve and high flow period after determining the allowable mining depth.
i. Sand and gravel could be extracted from the downstream of the sand bar at river bends. Retaining the upstream one to two thirds of the bar and riparian vegetation is accepted as a method to promote channel stability.
j. Flood discharge capacity of the river could be maintained in areas where there are significant flood hazard to existing structures or infrastructure. Sand and gravel mining may be allowed to maintain the natural flow capacity based on surveyed cross- section history.
k. Alternatively, off-channel or floodplain extraction is recommended to allow rivers to replenish the quantity taken out during mining.
l. The Piedmont Zone (Bhabhar area) particularly in the Himalayan foothills, where riverbed material is mined, this sandy-gravelly track constitutes excellent conduits and holds the greater potential for ground water recharge. Mining in such areas should be preferred in locations selected away from the channel bank stretches.
m. Mining depth should be restricted to 3 meter and distance from the bank should be 3 meter or 10 percent of the river width whichever less.
n. The borrow area should preferably be located on the river side of the proposed embankment, because they get silted up in course of time. For low embankment less than 6 m in height, borrow area should not be selected within 25 m from the toe/heel of the embankment. In case of higher embankment the distance should not be less than 50 m. In order to obviate development of flow parallel to embankment, cross bars of width eight times the depth of borrow pits spaced 50 to 60 meters centre-to-centre should be left in the borrow pits.
o. Demarcation of mining area with pillars and geo-referencing should be done prior to start of mining."

12. The Management Plan as per the guidelines is to require system of replenishment as well as preventive steps during the sand mining. Replenishment and reclamation of riverine sand are the integral part. Guidelines also deal with the issue of depth of mining and strict regulatory regime. The management of mining clusters should have a separate approach. Management of sand deposited after the floods should be treated as separate for mining. Monitoring system proposed includes safeguards during transport as well as checking of condition of mining.

13. The Tribunal noted that Ministry of Mines and Indian Bureau of Mines (IBM) had developed Mines Surveillance System (MSS), with assistance from Bhaskaracharya Institute for space applications and Geoinformatics (BISAG), Gandhinagar and Ministry of Electronics and Information Technology (MEITY). The Mining Surveillance System (MSS) is a satellite-based monitoring system which aims to establish a regime of responsive mineral administration by curbing instances of illegal mining activity through automatic remote sensing detection technology.

14. In view of above, the Tribunal directed[13] the MoEF&CC to revise its guidelines as in-spite of the guidelines already issued, the monitoring mechanism was not working effectively. The directions of this Tribunal are:

> **"***i. Mining Surveillance System discussed in para 23 above be finalized in consultation with ISRO Hyderabad.*

[13] Vide order dated 04.09.2018 inOriginal Application No. 173 of 2018 (Earlier O.A. No. 89/2017) (EZ) in the matter of Sudarsan Das Vs. State of West Bengal &Ors.

ii *Safeguards suggested in Sustainable Sand Mining Guidelines published by the MoEF&CC in the year 2016.*

iii *Suggestions in the High-Powered Committee Report.*

iv *Requirement of demarcation of boundaries being published in respect of different leases in public domain.*

v. *Need to issue SOP laying down mechanism to evaluate loss to the ecology and to recover the cost of restoration of such damage from the legal or illegal miners. Such evaluation must include cost of mining material as well as cost of ecological restoration and net present value of future eco system services forgone.*

vi. *Need to set up a dedicated institutional mechanism for effective monitoring of sand and gravel mining which may also take care of mining done without any Environmental Clearance as well as mining done in violation of Environmental Clearance conditions.*

vii. *The Mining Department may make a provision for keeping apart atleast 25% of the value of mined material for restoration of the area affected by the mining and also for compensating the inhabitants affected by the mining.*

viii. *One of the conditions of every lease of mine or minerals would be that there will be independent environmental audit atleast once in a year by reputed third party entity and report of such audit be placed in public domain.*

ix *In the course of such environmental audit, a three member committee of the local inhabitants will also be associated. Composition of three members committee may preferably include ex-servicemen, former teacher and former civil servant. The Committee will be nominated by the District Magistrate.*”

15. Such steps were to be worked out within two months and circulated to all States. The mechanism is to provide for a report of implementation from the concerned States every quarter. The matter needs to be reviewed after every six months by the MoEF & CC. The direction with regard to setting up of 'dedicated institutional mechanism' for monitoring of conditions of Environmental Clearance as granted under EIA Notification, 2006 in respect of sand and gravel mining as directed in para (vi) is for an All-Encompassing Body to monitor the conditions of Environmental Clearance with respect to all development projects. Report of the steps taken by MOEF&CC was to be furnished to this Tribunal by email at filing.ngt@gmail.com on or before 31.12.2018.

16. The Tribunal also issued directions to the State of West Bengal and Odisha to take steps as follows:

"

i. The State of West Bengal and Odisha may demarcate the boundaries for regulating grant of sand mining lease within three months from today. No mining lease of minor minerals may be given in the area in question till demarcation is complete. All existing mining operations in those areas shall remain suspended till demarcation work is completed and attains finality. To carry out the demarcation, the Chief Secretaries of the two States may constitute a team of three suitable officers each within two weeks. The said teams may hold their first meeting within one month.

ii. The States of West Bengal and Odisha must ensure that mining in all sand mining blocks is undertaken strictly in accordance with the provisions of EIA Notification, 2006, MoEF

Notification dated 15th January, 2016 and the Sustainable Sand Mining Management Guidelines, 2016. They must also ensure that no sand mining is permitted without due compliance of Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 as well as regulations governing clearances by the Central Ground Water Authority. The District Administration must be held accountable for any failure.

iii. *District Magistrates and Superintendents of Police, Balasore district in Odisha and Paschim Medinapur, West Bengal, respectively, shall seize all sump pumps, other machinery, tools, vehicles, etc. used for carrying out illegal sand mining.*

iv. *Apart from instituting appropriate criminal proceedings against those carrying out illegal mining, exemplary penalty shall be imposed against them by the concerned District Magistrates within three months from today to cover the cost of restoration of environment and to compensate the victims.*

v. *The Chief Secretaries of the two States shall also get prepared jointly a detailed restoration plan for river Subarnarekha and its riverbeds for which a Committee of experts shall be constituted from independent institutions, i.e., the CPCB, Indian School of Mines, Dhanbad and the respective State Pollution Control Boards as members. Such constitution may take place within one month.*

vi. *The Expert Committee shall carry out detailed study and submit the restoration plan, as far as may be practicable, within three months after its constitution.*

vii. The Committee shall also get the assessment done through Indian Council of Forestry Research and Education, Dehradun of the ecological damage on account of illegal mining by incorporating the following components: a) Cost of riverbed material. b) Cost of ecological restoration. c) Net present value of the future ecosystem services foregone.

viii. The above steps may be facilitated by the Regional Office of the CPCB as nodal officer, by coordinating with the Chief Secretaries of the two States.

ix. The damage suffered by the inhabitants caused by the illegal mining may also be assessed by the above Committee, which shall form a separate component of the Restoration Plan for river Subarnarekha as per direction No. (v) above. Cost of restoration plan shall be recovered as environmental compensation from the illegal miners, to be identified by the District Magistrate. The component of the compensation in respect of damages suffered by the inhabitants may be credited with District Legal Services Authority. The District Legal Services Authority may disburse the same to the victims of illegal mining, after proper identification."

17. An oversight Committee was formed headed by Justice R.K. Merathia, former Judge of Jharkhand High Court to oversee the execution of above directions which was to function for six months.

Consideration in Today's Proceedings

Sand Minning in the State of West Bengal and Odisha

18. The matter has been listed today to consider the report from the MoEF & CC which was to be furnished by 31.12.2018 in terms of

para 28 in *Sudarshan Das* (supra) and report of the oversight Committee which was to be furnished within three months in respect of steps taken by the State of West Bengal and Odisha in terms of direction of this Tribunal.

19. We may note that vide order dated 16.01.2019 in *O.A. No. 606/2018,* titled *Compliance of Municipal Solid Waste Management Rules, 2016,* the Tribunal flagged the issue of sand mining as one of the issues required to be monitored by the Chief Secretaries of the concerned States and to be reported to the Tribunal on personal appearance of Chief Secretaries before the Tribunal.

20. In pursuance of the said direction, Chief Secretaries of Odisha and West Bengal furnished their respective reports on 26.03.2019 and 02.04.2019. Learned counsels for the State of West Bengal and Odisha have relied upon the said reports during the hearing of present cases. The reports were not found to be satisfactory as per orders of the Tribunal dated 26.03.2019 and 02.04.2019 respectively and further directions were issued.

21. Question for consideration is further directions in the matter. We will consider this aspect after noticing developments in connected cases.

Sand Mining in the State of Gujarat

22. Following the above order in Sudarsan Das (*supra*), the issue of illegal sand mining in the State of Gujarat was dealt with in *O.A. No. 360/2015, National Green Tribunal Bar Association v. Virender Singh (State of Gujarat).* The Tribunal passed several orders from time to time since 28.11.2016 and finally considered the report of the State

of Gujarat vide order dated 13.07.2018 to the effect that persons engaged in illegal mining were identified and proceeded against. The Tribunal directed the State of Gujarat to take further preventive and remedial steps and observed that compounding fee to be recovered should be fixed having regard not only to the cost of mined material but also the cost of restoration of the environment and cost of ecological services lost forever and should be separately accounted for, for restoration of the environment. Again, vide order dated 17.09.2018, the Tribunal considered the policy of the State of Gujarat but found that preventive and remedial steps proposed were not sufficient. Damage caused to the environment was not fully taken into account. It was required to include Net Present Value (NPV) of future ecosystem services foregone forever. It was also observed that the preventive steps should also include demarcation and publication of boundaries in different leases and the same may be placed in the public domain. The Tribunal also referred to other orders on the subject being orders dated 05.09.2018, 10.09.2018 and 13.09.2018 in *Original Application No. 44/2016- Mushtakeem Vs. MoEF & CC & Ors., Original Application No. 304/2015- Jai singh & Anr. Vs. Union of India & Ors.* and *Original Application No. 186/2016 - Satendra Pandey Vs. Ministry of Environment, Forest & Climate Change & Anr.* The application was disposed of but the action taken report was required to be furnished. Accordingly, the matters have been put up today for consideration of the action taken report.

23. We may also note that vide order dated 04.01.2019 in *Original ApplicationNo.110(T_{HC})/2012, Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & and Ors.,* the

issue of compensation and seizure of vehicles in the context of illegal rat hole mining in the State of Meghalaya was considered. On the subject of compensation to be recovered for damage to the environment, it was observed:

> *"31. Paying capacity and the amount which may act as deterrent to prevent further damage is also well recognised. Net Present Value of the ecological services foregone and cost of damage to environment and pristine ecology,the cost of illegal mined material, and the cost of mitigation and restoration are also relevant factors. The Committee may go into these aspects to determine the final figure.*
>
> *32. We are satisfied that having regard to the totality of factual situation emerging from the record, damages required to be recovered are not, prima facie, less than Rs. 100 Crores. Accordingly, by way of an interim measure, we require the State of Meghalaya to deposit Rs. 100 crores within two months with the CPCB in this regard."*

On the subject of vehicles, it was observed:

> *" 36. The Committee may also consider the following:-*
>
> > *Any cranes and trucks found to be involved in illegal mining or transportation which have not yet been seized may also be seized. The seized vehicles or equipments be released by the concerned District Magistrates only after recovering damages to the extent of 50% of the showroom 17 price of the vehicles or equipments. The said amount may also be credited to the restoration fund."*

24. We have perused the report filed by the State of Gujarat vide email dated 17.12.2018 to the effect that environment compensation scale has been enhanced which now can be between 21% to 41% value of the illegally mined material and if such value is found to be less than the cost of the damage to the environment, the matter is to be referred to the State Pollution Control Board. The above

compensation is in addition to the penalties under the Rules. However, the scale of penalty has not been specified.

25. Accordingly, further directions are required which may apply not only to the State of Gujarat but also other States. We may consider this aspect after taking note of developments in other States.

Sand Mining in the State of Karnataka

26. *O.A. No. 366/2015 (M.A. No. 02/2019), National Green Tribunal Bar Association v. Dr. Sarvabhoum Bagali (State of Karnataka) and O.A. No. 368/2015 (M.A. No. 16/2019), National Green Tribunal Bar Association v. Dr. Sarvabhoum Bagali (State of Maharashtra)* relate to the issue of sand mining in the State of Karnataka and Maharashtra. Vide order dated 25.09.2018, the matter was considered in the light of observations in *O.A No. 173/2018 (Earlier O.A. No. 89/2017 (EZ) (I.A. No. 76/2019), Sudarsan Das Vs. State of West Bengal &Ors and Original Application No. 186/2016, Satendra Pandey v. Ministry of Environment, Forest & Climate Change &Anr.* The States of Karnataka and Maharashtra were required to take steps as per the directions in the above matters, to the extent applicable and file an affidavit.

27. Accordingly, an affidavit has been filed on 06.03.2019 by the state of Karnataka stating that there was no sand *mafia* in the State of Karnataka and only there are exceptional instances. It is further submitted:

> *"I submit that all necessary steps are taken by Government of Karnataka and compliance report is submitted in this case, separately. If this Hon'ble Tribunal opines to establish any "Monitoring*

Mechanism", we welcome it. However, any suggestions or directions may kindly be issued to Government of Karnataka to (1) evaluate loss to the ecology (2) to recover cost of restoration from illegal miners (3) to monitor mining (4) to make provision for restoration (5) for compensation to the inhabitants and (6) for audit etc., the Government of Karnataka will obey the directions of this Hon'ble Court."

28. Our attention has been drawn to a news article published in Bangalore Mirror dated 24.12.2018 appearing under the title "Karnataka: Sand mafia under scanner after lorry runs over official"[14] and an article published in Decan Herald dated 17.09.2018 under the title "Karnataka is a leading State that witnesses the devastating effects of sand mining"[15] to the effect that fourteen million metric tonnes of sand unaccounted for the State of Karnataka is as follows:

> "*The state government is receiving approximately Rs 150 crore as royalty from legitimate sand mining blocks every year. As per estimates, the state government is losing around Rs 200 crore per year due to illegal sand mining. Here is a ballpark estimation to find out the consumption of sand in the state. According to cement manufacturing companies' data, around 18 million metric tonnes of cement is sold in the state every year. The cement-sand mix ratio is either 1:4 or 1:6 (four or six bags of sand per cement bag). Even if 1:4 ratio is taken, a whopping 70 million metric tonnes of sand is approximately used in the state every year. The official data from the Department*

[14] https://bangaloremirror.indiatimes.com/bangalore/others/karnataka-sand-mafia-under-scanner-after-lorry-runs-over-official/articleshow/67221261.cms
[15] https://www.deccanherald.com/exclusives/illegal-sand-mining-wrecking.html

of Mines and Geology shows that from the blocks permitted by it, a total quantity of 30 million metric tonnes of sand (from all types of blocks - river sand, patta land, blocks allocated to government departments, and manufactured sand) is produced in the state. As per this, there is a difference of around 40 million metric tonnes of sand in comparison to the cement sold in the state."

29. We may consider further directions after noting facts of other states.

Sand Mining in the State of Maharashtra

30. In the case of Maharashtra, an affidavit has been filed by the State of Maharashtra on 20.2.2019 to the effect that the State Government is in the process of framing Sand Mining Policy for which a Committee has been constituted.

31. Our attention has also been drawn to an article published in The Hindustan Times dated 27.01.2019 under the title "Maharashtra registers most cases of illegal mining between 2013-17"[16] inter alia stating as follows:

"Maharashtra recorded 1,39,706 illegal mining cases between 2013 and 2017, the highest number in the country, revealed data submitted by the Union environment ministry before the Rajya Sabha on January 3.

However, the state had one of the lowest number of prosecutions in such cases. The state filed 712 first information reports (FIR) and one court case, while seizing around 1,39,000 vehicles used in illegal

[16] https://www.hindustantimes.com/india-news/maharashtra-registers-most-cases-of-illegal-mining-between-2013-17/story-2j69aqmsygzCcTBBB8emtN.html

mining operations and collecting Rs 267 crores as fines from offender.

India recorded 4,16,410 cases during the same time, which means Maharashtra accounts for 33.5% of all cases in the country. Uttar Pradesh recorded 36,054 illegal mining cases, Madhya Pradesh 46,193, Karnataka 33,390, and Goa had 3 cases. The information was submitted in response to a query on the environmental impact of illegal mining."

32. In view of above, further directions are required to be considered for the State of Maharashtra.

Sand Mining in the State of Punjab

33. Vide order dated 13.11.2018 in *O.A. No. 874/2018 News item published in "The Tribune " Authored by Arun Sharma Titled "Mounds of sand on Sutlej banks, mining mafia digs in*", a report was sought on the allegation of large scale illegal mining on the bank of River Satluj in District Ropar in the light of directions vide order dated 04.09.2018 in Sudershan Das (supra) and other orders. Accordingly, a report has been received vide email dated 25.02.2019 confirming that illegal mining had taken place. The observations in the inspection report are as follows:

"1. No mining operation was observed during visit of the Committee at the mining sites located in the riverbed.

2. The mining of minor minerals in the riverbed has taken place more than permitted depth of 3 meters, as specified in point no. 4(i) of Form – L appended to the Punjab Minor Mineral Rules, 2013, which is a violation of sustainable mining practice.

3. *The specified boundaries or demarcation of mine lease area was not demarcated as required for checking illegal mining, substantiates the fact of illegal or unauthorized excavation of minerals.*
4. *From the existing natural level adjoining to the mining site, it we noticed that mining has been carried out in an unscientifically manner as:*
    a) *The mining of minor mineral has been done beyond the permitted depth.*
    b) *No strip of 7.5 m width of the lease boundary as seen left as per provisions of the Metalliferous Mines Regulations, 1961 in compliance to condition imposed in the Mining Plan approved by the State Geologist, Punjab, a serious violation for safety of banks.*
    c) *The contractor has not maintained slope height not exceeding 45 degree from the horizontal width along the boundaries of mining site in compliance to condition no. 12 of the letter vide which mining plan was approved, negligence towards slope stability.*
    d) *The contractor was not providing bench along the boundary of the mining site having height not exceeding 1.5 m and is width should not be less than the height as per condition no. 13 of the letter vide which mining plan was approve.*

1. *From the conditions of the area along the riverbed in revenue estate of village Baihara and Swarha, it seems that the mining has been carried out at the different locations in an unscientific way.*
2. *During the inspection, the impressions of heavy vehicles movement were observed. Also, it was found that road for movement of vehicle were in very bad shape as these roads have not been*

stabilized or metalled with any of construction material and no plantation was observed along the roads.

3. *The development of water sumps as well as erosion of banks due to unscientific mining within the riverbed are threat to river ecological system and make it prone to flooding conditions during full flow. Also, it may cause the course of river to change rapidly and meandering to a great extent.*
4. *No check post was observed during the visit along the routes leading to mining lease area.*
5. *As per stipulation of environmental clearance, the contractor is required to maintain safety and stability of river banks i.e. 3 m or 10% of the width of the river, whichever is more will be left intact as no mining zone. Since no embankment of the riverbed was noticed and there was no demarcation of the mining site, as such, compliance of the above stipulation of the Environmental Clearance could not be verified.*
6. *The contractor has neither done any plantation along with the lease boundary of mining site in compliance to the condition imposed in the approval letter of the Mining plan.*
7. *The stone crusher units nearby the riverbed were observed by the committee. The stone crusher units were observed to be non-operational during visit of the committee, but stock piling of crushed material is indicative of their operation. The heavy machineries like JCB, pokland machines, dumper etc. were observed around the river, which may have been use for illegal mining in the area. Hence, the possession of these types of machines and working of stone crusher units need to be regulated. This issue needs to be monitored by the State."*

34. The Committee further observed.

"*The suggestions of the joint committee visit on 20.12.2018 in the report filed in OA no. 767 of 2018 titled as Dinesh Kumar Chadha versus State of Punjab & Others were as follows :*

- *The mining activity within the riverbed should not be permitted without the preparation of Comprehensive Mining plan/District Survey report as required in Sustainable Sand Mining Management Guidelines, 2016 issued by the MoEF by the State of Punjab with replenishment/scientific study by an institute of national importance and prior recommendations of MoEF & CC.*

- *The State of Punjab may be asked to develop mechanism to stop the illegal extraction and transportation of riverbed material. The mechanism must include the environmental compensation for violators and vehicles used for the purpose to be seized along with prosecution of owners of such vehicles. Including cancellation of registration certificate of such vehicles.*

- *The District Administration may consider establishing the check post barrier at suitable site to check vehicles carrying the riverbed material and to maintain strict vigil over overloading vehicles involved.*

- *The Detailed Survey of river eco system comprising of identification of river stretches affected by unscientific mining should be carried out for preservation and exclusion of stretches from any type of extraction process or mining activity. In addition the auction of identified stretches may not*

be considered without approved annual replenishment report.

- *The restoration plan of river ecosystem in mine lease area should be enforced for minimizing the impacts of unscientific mining and to improve the riparian habitat. The State of Punjab can be asked to execute the restoration plan within time bound manner.*

- *The demarcation of auctioned mine lease area should be done urgently with pillars/fencing along with geo-referencing to protect the river ecosystem and to avoid bed degradation.*

- *The raw material to be imported, processed, dispatched and balance stock shall be regulated strictly as per the policy guidelines for registration and working of stone crushers in the State of Punjab issued by the Department of Industries and Commerce vide notification dated 19.03.2015.*

- *As regards to initiating action against the erring officials, the Heads of the concerned Departments should identify the erring officials who allowed to take place illegal mining and initiate action against these officials, after conducting detailed investigations.*

The same physical conditions have been noticed during the recent visit on 20.2.2019 at the mining sites located in the revenue estate of village Baihara and Swarha, as such, the suggestions may be considered by the court alongwith the followings:

- *The District Survey Report for the mining site in the area in order to identify depositions / aggradations stretches of the riverbed material should be prepared.*
- *Declaration of safety zones around infrastructures like National Highway, Bridge, Railway line etc. must be ensured for protection as per provisions of the Punjab Minor Minerals Rules, 2013.*
- *Replenishment report including time of replenishment for the mining area to be undertaken by the concerned Authorities for permitting mining.*
- *Strict vigilance to be implemented to ensure no illegal mining / transportation in the bed of river.*

As regards to facts noted regarding mining beneath the bridge on Sri Anandpur Sahib-Garshankar road, besides above, it is suggested as under:

(i) The Deptt. of Mining is required to ensure the compliance of stipulations of para 4 of Form 'L' appended to the Punjab Mining Minerals Rules, 2013 as regards to no mining area within a distance of 500m upstream /downstream of any high level bridge and 250m upstream / downstream of other bridges.

(ii) The Mining department jointly with Deptt. of Irrigation is required to rejuvenate the area near and beneath the above mentioned bridge so as to ensure safety of the same and these departments are required to take necessary safeguards for further safety of the said bridge."

35. In view of above, directions are called for to the State of Punjab to deal with the issue of sand mining.

Sand mining in the State of Uttar Pradesh and Haryana

36. O.A. No. 44/2016, Mushtakeem v. MoEF&CC & Ors., involved illegal mining in Uttar Pradesh and Haryana on riverbeds of Yamuna. The matter was disposed of vide order dated 05.09.2018, following directions dated 04.09.2018 in Sudershan Das (supra). In terms of order dated 05.09.2018, no report has been received from the State of Uttar Pradesh. Thus further directions are necessary. A report has been received from Additional Chief Secretary, Haryana vide email dated 05.04.2019 to the effect that the State of Haryana was following the guidelines and will implement revised Sustainable Sand Mining Guidelines issued by the Ministry of Environment, Forest and Climate Change (MoEF&CC) in terms of the order dated 04.09.2018, in *O.A No. 173/2018 (Earlier O.A. No. 89/2017 (EZ) (I.A. No. 76/2019), Sudarsan Das Vs. State of West Bengal & Ors.*

37. In view of the above, further directions are called for to the State of Uttar Pradesh and Haryana to deal with the issue of sand mining.

Sand Mining in the State of Madhya Pradesh

38. Though no case of the State of Madhya Pradesh is listed today, we have taken note of the problem sand mining in the State in O.A. No. 456/2018 Nityanand Mishra v. State of M.P. & Ors., which is pending before this Tribunal and sought report from Committee vide order dated 31.07.2018. Accordingly, a report is submitted & the same is on record of the said case. Extract from the report is as follows:

"Sand mining is directly affecting basking and nesting

habitats of species in SGS. Mining of sand from the riverbed and river banks will negatively alter the river morphology, will increase sedimentation and turbidity and also disrupt the lateral connectivity within the river. Studies have already shown condition of Son River to be at a critical level with severely compromised river flows. Sand mining will only result in compounding what is an already sub-optimal riverine habitat. Any further degradation of this habitat will potentially make Son River uninhabitable for some of the most threatened fauna in the country. The data from offence registers of SGS as depicted in table 1 does indicate that there has been an increase in the number of cases with respect to the illegal sand mining in the sanctuary area. The information is about cases that were caught and processed by the Forest Department. ***There are many cases that go unnoticed due to inadequate patrolling as everyone informs that one truck generates illegal revenue of Rs. 12,000 and per night 1000 trucks generate illegal revenue of Rs. 1,20,00,000."***

39. In view of above, further directions are necessary for the State of Madhya Pradesh to deal with the issue of sand mining.

Sand Mining in the State of Andhra Pradesh

40. We may also note that in the case of *Anumolu Gandhi V. State of Andhra Pradesh in Original Application No. 935/2018,* illegal sand mining causing damage to Krishna river in Vijayawada, Godavari river and their tributaries in the State of Andhra Pradesh and absence of remedial steps was considered. The Tribunal vide order dated 04.04.2019 directed the Chief Secretary of the State of Andhra Pradesh to forthwith prohibit all unregulated sand mining without following the procedure prescribed under the law in the judgment of the Hon'ble Supreme Court in Deepak Kumar v. State of Haryana. The Tribunal further directed Chief Secretary of the State to evolve a mechanism to assess and recover the cost of sand mining already incurred in the last three years and initiate

steps to recover compensation to meet the cost of restoration of environment. The Tribunal constituted a Committee comprising CPCB, MoEF&CC, National Institute of Mines, Dhanbad, IIT Roorkee and Madras School of Economics to undertake environment damage assessment within three months and furnish a report to this Tribunal by e-mail at ngt.filing@gmail.com.

41. In this light, further directions are called for to the State of Rajasthan and Andhra Pradesh to deal with the issue of sand mining.

Sand Mining in the State of Rajasthan and Himachal Pradesh

42. The problem of illegal sand mining contrary to the directions of the Hon'ble Supreme Court in Deepak Kumar vs. State of Haryana (supra) in the States of Rajasthan, Himachal Pradesh, Karnataka, Madhya Pradesh and Punjab was also considered by this Tribunal in Himmat Singh Shekhawat vs. State of Rajasthan & Ors. (O.A. No. 797/2018) vide order dated 15.03.2019. the Tribunal founds the reports submitted by the States to be unsatisfactory and accordingly directed furnishing of fresh action taken reports. The matter was directed to be listed on 11.07.2019. The said matter may now be listed on 23.07.2019 along with the present batch of matters.

Sand Mining in Bihar

43. This Tribunal vide its order dated 24.08.2018 in Amarshakti v. State of Bihar & Ors. O.A. No. 596/2018 dealt with the issue of illegal sand mining during monsoon in the rivers Son and Ganga at Koelbar and Patna in Bihar. The Tribunal directed the

Secretary, mines and minerals, Bihar to constitute a team comprising of officers of Mines and Minerals Department and District Magistrate and S.P. Patna to look into the allegations and report compliance to the Tribunal. Report dated 12.10.2018 was received from the Government of Bihar stated that 122 prosecutions were initiated and 297 persons arrested. 32 boats and 287 trucks were seized in District Saran. Action was also taken in District Bhojpur at Ara and District Vaishali at Hajipur. The Tribunal directed the Secretary, Government of Bihar to monitor the matter from time to time and continue to enforce the law.

Sand Mining in Uttarakhand

44. The issue of illegal sand mining in the State of Uttarakhand was also considered by this Tribunal vide its order dated 27.11.2018 in Anand Gopal Singh Bist v. State of Uttarakhand O.A. No. 751/2018 wherein, this Tribunal directed the District Magistrate Nanital and Principal Chief Conservator of Forest, Dehradun to jointly look into the matter. The Tribunal vide its order dated 14.02.2019 directed that the monitoring may continue and the Collector may ensure that Revenue Department performs its duty in accordance with law.

Sand Mining in other States

45. Illegal sand mining in violation of Sustainable Sand Mining Guidelines, 2016 has also been reported widely in the States of

Jammu and Kashmir[17], Goa[18], Kerala[19], Telangana[20] and Tamil and Nadu[21].

46. General directions may be necessary even for Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu which may also apply to any other States facing the issue of illegal sand mining.

Issues

47. Main issues are:

(a) Revision of Sustainable Sand Mining Guidelines, 2016 by the MoEF&CC in the light of directions of this Tribunal vide order dated 04.09.2018 in Sudarsan Das (supra).

(b) Compliance of Sustainable Sand Mining Guidelines, 2016 as may be revised by MoEF&CC as above.

(c) Effective monitoring mechanism for preventive and remedial measures as directed in orders of this Tribunal, including surveillance system and recovery of compensation.

(d) Directions in individual cases listed today.

(e) Scale of compensation

48. We may now deal with the issues involved and directions required.

[17] https://greaterkashmir.com/article/news.aspx?story_id=309365&catid=2&mid=53&AspxAutoDetectCookieSupport=1

18 https://timesofindia.indiatimes.com/city/goa/govt-is-ignoring-illegal-sand-mining/articleshow/67908428.cms

[19] Order dated 29.03.2019 in News Item Published In "Indian Express" Authored by Vishnu Verma in O.A. No. 76/2019

[20] https://sandrp.in/2019/02/26/sand-mining-2018-telangana-and-andhra-pradesh/

[21] https://en.wikipedia.org/wiki/Sand_mining_in_Tamil_Nadu

Re (i): Revision of Sustainable Sand Mining Guidelines, 2016 by the MoEF&CC in the light of directions of this Tribunal vide order dated 04.09.2018 in Sudarsan Das (supra).

49. As noted in para 12 to 15 above, need for revision of Sustainable Sand Mining Guidelines, 2016 has been discussed by the Tribunal in order dated 04.09.2018. Further discussion is unnecessary. The 2016 Guidelines need revision in the light of report of High Powered Committee in September 2016, failure of Monitoring mechanism followed by State Boards, SEIIAs, DEIAAs and MSS system developed by Ministry of Mines & IBN with the assistance of BISAG and MAITY and other observations quoted in paras 12 to 15 above. Since no report has been received from MoEF&CC as per report dated 04.09.2018, the MoEF&CC may now take necessary steps in the matter in terms of order dated 04.09.2018 in *Sudersan Das* (supra) latest by June 30, 2019 and file compliance report by 15.07.2019.

Re (ii): Compliance of Sustainable Sand Mining Guidelines, 2016 as may be revised by MoEF&CC as above.

50. As noted earlier in paras 17, 23, 27, 31 and 35, States of West Bengal, Odisha, Gujarat, Karnataka, Maharashtra, Punjab, Haryana and Uttar Pradesh are required to follow SSMG, 2016 as may be revised by MoEF&CC and even other States where illegal sand mining is taking place. All such States may take steps in terms of orders dated 04.09.2018 in *Sudarsan Das v. State of West Bengal & ors,* 05.09.2018 in *Mushtakeem v. MoEF&CC & Ors.*, 13.09.2018 in *Satendra Pandey v. MoEF&CC* & Ors. and 16.01.2019 titled Compliance of Municipal Solid Waste

Management Rules, 2016. The Chief Secretaries may monitor and furnish reports as earlier directed on the subject of sand mining.

Re (iii): Effective monitoring mechanism for preventive and remedial measures as directed in orders of this Tribunal, including surveillance system and recovery of compensation.

51. We have found in the discussion above, particularly in paras 8 to 11, 20, 21, 23, 29, 32, 33, 36, 39, 41 and 43 with regard to factual position in various States that monitoring mechanism-preventive and remedial measures is not effective and illegal sand mining is continuing. The same needs to be reviewed in the light of above discussion. The States may review monitoring mechanism in terms of several directions of the Tribunal and guidelines of MoEF&CC. As regards monetory compensation, the same has to be not only equal to cost of mined material and penalty to evade royalty but also to meet cost of restoration and NPV of eco services fore gone forever. Seizure of vehicles or other equipment may be dealt with as per rules and directions in *Threat to life arising out of coal mining in South Garo Hills district* (supra).

Re (iv): Directions in Individual Cases Listed Today. For the discussion and observation hereinabove, case is made out for issuing directions following discussion on the subject.

52. In *Sudarsan Das (supra)* one of the directions was that the Chief Secretaries of West Bengal and Odisha will prepare a restoration plan in consultation with the Central Pollution Control Board (CPCB), Indian School of Mines, Dhanbad and the Respective State Pollution Control Boards (SPCBs). We are informed that Indian School of Mines, Dhanbad declined to comply with the

order. This may call for remedial action against defiance by the said institution. Order of this Tribunal is a decree of the Court and can be executed in the manner provided under Section 51 CPC by ordering civil imprisonment or adopting other norms. Violation of order of this Tribunal is also a criminal offence punishable by imprisonment and fine. The Head of the Department concerned is liable to be proceeded against. Thus, the Director Indian School of Mines, Dhanbad will have to be required to appear in person to explain why action be not taken for violation of order of this Tribunal. The State of West Bengal, Orissa, Punjab and Gujarat need to send further action taken reports by 30.06.2019.

53. The State of Uttar Pradesh has not complied with the order dated 05.09.2018. This must not be done by way of last opportunity till 30.06.2019, failing which coercive measures will be adopted. Responsibility for compliance will be of the Chief Secretary.

54. In O.A. No. 173/2018, in view of the fact that term of the oversight Committee headed by Justice Ramesh Kumar Merathia, former Judge, High Court of Jharkhand was six months which period is over, the said Committee may now conclude its proceedings and furnish its final report with findings and recommendations on or before April 30, 2019. Further directions in the matter may be considered on the next date.

Re (v): Scale of Compensation

55. We have held that the scale of compensation proposed by the State of Gujarat does not fully comply with the 'Polluter Pays' principle which envisages that polluter is required to pay for complete restoration of the environment. This principle has been articulated further by the Hon'ble Supreme Court of India in *T.N. Godavarman Thirumulpad vs Union Of India & Ors, (2006) 1 SCC 1* in the context of forests. In this matter, the Hon'ble Supreme Court appointed a committee of experts and following directions were given:

i. To identify and define parameters (scientific, biometric and social) on the basis of which each of the categories of values of forest land should be estimated.

ii. To formulate a practical methodology applicable to different biogeographical zones of India for estimation of the values in monetary terms in respect of each of the above categories of forest values.

iii. To illustratively apply this methodology to obtain actual numerical values for different forest types for each biogeographical zone in the country.

iv. To determine on the basis of established principles of public finance, who should pay the costs of restoration and /or compensation with respect to each category of values of forests.

v. Which projects deserve to be exempted from payment of NPV.

56. Similar criteria may have to be taken into account for arriving at an approximate scale of compensation. The compensation is to

include not only the full value of the illegally mined material but also cost of restoration of environment as well as cost of ecological services foregone forever. It should be deterrent so as not to render such illegal activity profitable. In *Sudarsan Das Vs. State of West Bengal & Ors.* (Supra), it was held that full value of the material, the cost of restoration and the NPV should form part of the compensation to be recovered. There has also to be action against the polluters and the erring officers. The vehicles or any other equipment used for illegal mining are required to be confiscated and to be released only on payment of atleast 50% of the showroom value as laid down in *Original Application No.110(THC)/2012, Threat to life arising out of coal mining in South Garo Hills District v. State of Meghalaya& Ors.* This scale can then apply for all States, as far as possible.

57. We consider it necessary to constitute a Committee comprising representatives of the MoEF&CC, Central Pollution Control Board (CPCB), Indian Institute of Forest Management, Bhopal, Institute of Economic Growth Delhi and Madras School of Economics to prepare a scale of compensation, after including the above components which can then be adopted in whole of the country. The report may be furnished within three months to the Tribunal by email at ngt.filing@gmail.com. The nodal agency for compliance and coordination will be CPCB. The Committee may also take professional service of an expert/ institution in the matter if it so desires.

Conclusions

58. We sum up our directions as follows:

a) MoEF&CC may now take necessary steps in the matter in terms of order dated 04.09.2018 in *Sudersan Das* (supra) latest by June 30, 2019 and file compliance report by 15.07.2019, as already directed.

b) The States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh may take steps in terms of orders dated 04.09.2018 in *Sudarsan Das v. State of West Bengal & ors,* 05.09.2018 in, 13.9.2018 in *Mushtakeem v. MoEF&CC & Ors.* and 16.01.2019 in Compliance of Municipal Solid Waste Management Rules, 2016. The Chief Secretaries may monitor and furnish reports as earlier directed.

(c) The States of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa, Kerala, Telangana and Tamil Nadu and Himachal Pradesh may review monitoring mechanism in terms of directions of the Tribunal and guidelines of MoEF&CC.

(d) The Director Indian School of Mines, Dhanbad may appear in person on 26.07.2019 to explain why action be not taken for violation of order of this Tribunal.

(e) The State of West Bengal, Gujarat, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Haryana, Madhya Pradesh, Andhra Pradesh, Bihar, Uttarakhand, Jammu and Kashmir, Goa,

Kerala, Telangana and Tamil Nadu and Himachal Pradesh may send further action taken reports by 30.06.2019.

(f) The Committee in terms of para 59 above may furnish its report within three months to the Tribunal by email at ngt.filing@gmail.com

59. A copy of this order be sent to MoEF&CC, Central Pollution Control Board (CPCB), Indian Institute of Forest Management, Bhopal, Institute of Economic Growth, Delhi and Madras School of Economics, Chennai by email.

List the matter for further consideration on 26.07.2019.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

April 05, 2019
Original Application No. 360/2015
With other connected matters
AS

-TRUE COPY-

ANNEXURE-R-5

2025 SCC OnLine All 4545

In the High Court of Allahabad[†]

(BEFORE ATTAU RAHMAN MASOODI AND SUBHASH VIDYARTHI, JJ.)

Writ - C No. - 4816 of 2024

Suez India Pvt. Ltd., Through its Authorized Signatory, Rajesh Chandra Mathpal ... Petitioner;

Versus

Uttar Pradesh Pollution Control Board, Through Its Chairman and Others ... Respondents.

With

WRIT - C No. - 151 of 2024

New Star Brick Works (Erstwhile Shiv Om Brick Works) Thru. Prop. Afsar Ali ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment And Climate Change and Others ... Respondents.

With

WRIT - C No. - 7889 of 2021

Medical Pollution Control Comm. Thru. Dr. Vinay Kumar Verma ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy. Forest/Environment and Others ... Respondents.

With

WRIT - C No. - 5335 of 2022

Wave Infratech Pvt. Ltd., Thru Auth. Signatory and Another ... Petitioners;

Versus

State of U.P. Thru Prin. Secy. Environment Deptt. and Others ... Respondents.

With

WRIT - C No. - 5340 of 2022

Al Nafees Frozen Foods Export Pvt. Ltd. Thru Director Mohd. Arham Qureshi ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Prin. Secy. Forests

and Environment and Others ... Respondents.

With

WRIT - C No. - 7746 of 2023

Arsh Brick Works Thru. Partner Mohd. Ayub ... Petitioner;

Versus

State of U.P. Thru. Secy. and Others ... Respondents.

With

WRIT - C No. - 119 of 2024

Rachna Metal Industries Pvt. Ltd. Thru M.D. Sadhna Agarwal ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 152 of 2024

Afaq Brick Field Thru Proprietor Nargish ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 153 of 2024

Khalil Brick Works Thru. Prop. Usman ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 154 of 2024

Riza Brick Works Thru Proprietor Mohd. Haroon ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 179 of 2024

Janta Brick Works (New Name-Munmun Brick Works Kazi Parivar) Thru. Prop. Mohd. Razi ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 181 of 2024

Good Friends Brick Works Thru. Prop. Irfan ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 188 of 2024

Colour Touch Thru Proprietor Prakash Chand Chindalia ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 194 of 2024

Sh Brick Works Thru Proprietor Shabana ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 195 of 2024

Shiv Brick Works Thru Proprietor Kaminder Alias Kamendra Singh ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 264 of 2024

Musarfi Hasnain Bricks Works, Through its Proprietor Rais Ahmad ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy. Forest Environment and Climate Change Deptt and Others ... Respondents.

With

WRIT - C No. - 265 of 2024

Durga Brick Works, Through Its Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy. Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 266 of 2024

Azhari Brick Works Thru Proprietor Tahir Husain ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 269 of 2024

K.K. Brick Works, Through Its Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 270 of 2024

Monu Ent Ydyog (Old Name Shiv Ent Udyog), Through Its Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 273 of 2024

Shiv Om Brick Works, Through Its Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 288 of 2024

Kisan Brick Works Thru. Prop. Sharifuddin ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 289 of 2024

Dilshad Brickworks Moradabad Thru Proprietor Irshad ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 290 of 2024

Arsh Ent. Udhyog, Through Its Partners and Others ... Petitioners;

Versus

State of U.P. Thru Addl. Chief Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 291 of 2024

Gaus-E-Azam Brick Works (New Name-Gaus-EPak Brick Field) Thru. Prop. Idrish ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 292 of 2024

Ala Hazrat Eintt Udyog (Old Name Latifi Bricks)

Thru Proprietor Mohd. Uvaish ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 293 of 2024

Shiv Brick Works (Old Name Shubham Brick Works and Bhagat Ji Brick Works) Thru. Auth. Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 294 of 2024

Chaudhary Brick Works Udyog, Through Its Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 295 of 2024

Kanakpur Brick Industries Thru Proprietor Kaminder Alias Kamendra Singh ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 296 of 2024

Guru Arjun Brick Works, Through Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 297 of 2024

Keshav Ent Udyog, Through Its Authorized

Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 300 of 2024

Kisan Ent Udhyog, Through Its Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 305 of 2024

Vikas Brick Works (Present Name An Brick Works) Thru Auhtorized Signatory ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests And Climate Change and Others ... Respondents.

With

WRIT - C No. - 306 of 2024

New Shama Brick Works, Thru. Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 351 of 2024

Jai Brick Works (New Name Sujmana Ent Udyog) Thru Auth. Signatory ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 354 of 2024

Subodh Ent Udyog Amroha Thru Auth. Signatory ...

Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 355 of 2024

Bharat Brick Works ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 357 of 2024

Chaudhary Ent Udyog, Thru. Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 360 of 2024

Zam Zam Brick Works (Old Name Taj Ent Udyog and New Name Shabab Brick Field) Thru Prop. Shabab ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 361 of 2024

Hidayah Brick Field (Old Name Khurshed Brick Field) ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 368 of 2024

Guru Nanak Brick Works Daulatapur Bhud Amroha Thru Auth. Signatory ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 371 of 2024

National Brick Works Thru Auth. Signatory ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 372 of 2024

Chaudhary Ent Udyog (New Name Balaji Ent Udyog) Thru Auth. Signatory ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 375 of 2024

Royal Brick Field (New Name Star Brick Field) Thru Prop. Afsar Ali ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 420 of 2024

Chaudhary Brick Works Thru. Prop. Deepak Kumar ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 425 of 2024

A.S.B. Brick Works Thru Partner Britpal Singh ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 427 of 2024

AH Brick Works (New Name-Lavi Bricks Works, P. Name-Habibi Brick Works) Thru Qayyum Hussian ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 430 of 2024

New India Brick Field (Old Name National Brick Works/Faizan Brick Works) Thru Prop. Mohd. Rayyan ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 431 of 2024

Avon Ent Udyog, Through Its Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 432 of 2024

Khan Brick Industries, Through its Proprietor, Wasim Ahmad Khan ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 467 of 2024

Mumtaz Brick Works Thru Proprietor Jaane Alam ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 468 of 2024

Jai Shri Sai Brick Works Thru Auth. Signatory ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 474 of 2024

Janta Brick Works Thru Proprietor Mohd. Sahroz Domghar ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 559 of 2024

Farmer Brick Industries, Thru. Its Partner Sri Syed Arif Iqbal ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 561 of 2024

V.P.S. Brick Works (New Name Radha Krishna Brick Field) Thru Proprietor Vijay Pal Singh ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 562 of 2024

Khwaja Brick Works Thru Proprietor Yasin Alias Asin ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 565 of 2024

Khawaja Brick Works (Malik Brick Works) Thru Proprietor Muntayaj ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 569 of 2024

M.A. Brick Works Thru Proprietor Mahendra Singh ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment And Climate Change and Others ... Respondents.

With

WRIT - C No. - 603 of 2024

Manya Eint Udyog (New Name Bharat Intt. Udyog) Thru Proprietor Brajpal Singh ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 605 of 2024

Mailk Entt Udyog, Thru. Its Proprietor Riyasat ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 607 of 2024

Azazi Brick Works, Sambhal, Thru. Its Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 610 of 2024

Indian Green Brick Works, Sambhal, Thru. Its Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 612 of 2024

Khan Brick Works (New Name Khan Int Udyog) Thru Prop. Mohd. Rafiq ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 614 of 2024

Shiv Hari Brick Works, (New Name Mahadev Intt Udyog), Thru. Its Proprietor Kushal Gautam ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 619 of 2024

Sabara Brick Works (New Name Faizan Brick Works) Thru Proprietor Mohd. Faizan ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 621 of 2024

Prem Int Udyog (New Name Supreme Brick Field) Thru Proprietor Yogendra Pal Singh ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 623 of 2024

Noor Brick Field Thru Proprietor Yaar Mohammad Khan ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 626 of 2024

Rafi Turki Star Brick Field (Bharat Brick Works), Thru. Its Proprietor Mohd Rafi ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 648 of 2024

Khuawaza Brick Works (Old Name M/S Famous Brick Works) Thru Proprietor Zabir Ali ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 703 of 2024

Shan Brick Field (New Name India Brick Ind.) Thru Prop. Afaq Ahmad Siddique ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 706 of 2024

New Kohinoor Brick Field Thru Proprietor Zulfiqar Ahmad ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 719 of 2024

Ali Ent Udhyog, Amroha Thru. Its Partners and Others ... Petitioners;

Versus

State of U.P. Thru. Prin. Secy. Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 736 of 2024

Habibi Brick Field Thru Proprietor Mujammil ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 746 of 2024

Shri Krishna Brick Works Thru Proprietor Vipin Kumar ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 751 of 2024

Jai Ambe Brick Works Thru Auth. Signatory Irfan ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 753 of 2024

Quality Brick Works Thru Auth. Signatory Afsar Ali ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 755 of 2024

Mlk Brick Works Thru Auth. Signatory Mahboob ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 760 of 2024

New Ahmad Ent Bhatta Through Proprietor Haseeb Ahmad ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 765 of 2024

Janab Chaudhary Brick Works, Proprietor Bhoore Khan ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 767 of 2024

Mohammad Ent. Udyog, Through Proprietor Rahil Husain ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 771 of 2024

Hazi Mushtaq Brick Works Through Partner Shri Rahat Jaan ... Petitioner;

Versus

State of U.P. Through Principal Secretary, Forest,

Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 799 of 2024

Aaka Brick Centre (New Name Tehsin Brick Centre) Thru Proprietor Jishan Ahmad ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 800 of 2024

Kubra Brick Field Thru Prorietor Abdul Kalam ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 801 of 2024

Prince Brick Work (Old Name Ksn Brick Works) Thru Sole Proprietor Veerpal Singh ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 806 of 2024

New Fauji Brick Works Thru Authorized Signatory ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 837 of 2024

Ahmad Shah Brick Works (New Name Akbar Husain Brick Works) Thru Proprietor Imran Husain ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests,

Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 866 of 2024

Hafeez Ent Udhyog Thru Authorized Signatory Sayeed Khan ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment, Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 868 of 2024

Yadavji Entt Udyog (New Name Fauji Ent Udyog) Thru Proprietor Abad Khan ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 990 of 2024

Kalawati Brick Works, Through its Proprietor, Kalavati ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 991 of 2024

Vishal Brick Works (Old Name-Sri Ganga Brick Works), Through Proprietor, Gajraj Singh ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 992 of 2024

Kazi Brick Works (Om Brick Works) Thru Proprietor Shajahan ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 993 of 2024

GGR Brick Works, Through its Proprietor Ramvir Singh Chhabra ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 994 of 2024

Bankey Bihari Brick Works, Through its Proprietor Ravindra Kumar Yadav ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 997 of 2024

M.H. Brick Works. Through its Proprietor Habeeb ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 998 of 2024

Siddhart Brick Works (Old Name Mahaveer Brick Works) Thru Proprietor Mayank Jain ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 999 of 2024

Ganesh Brick Works Thru Proprietor Nem Chand ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1000 of 2024

Habeeb Brick Field (Old Name Roshan Brick Works) Thru Proprietor Mohd. Akil ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1001 of 2024

G and C Brick Works (Old Name-Hind Brick Works) Thru. Prop. Girish Chandra ... Petitioner;

Versus

State of U.P Thru. Prin. Secy., Environment, Forest And Climate Change and Others ... Respondents.

With

WRIT - C No. - 1054 of 2024

Kisan Brick Works (New Name-Asadullah Brick Works), Through its Proprietor Irfan ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1056 of 2024

Khwaja Garib Nawaj Ent Udyog (Old Name-Sabri Ent Udyog), Through its Partner Zakir Hussain ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1058 of 2024

Seven Sky Brick Works (New Name-Seven Star Brick Works), Through its Proprietor Wajid Ali ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1059 of 2024

Sabri Brick Works, Through its Proprietor Akram ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1083 of 2024

New Gold Brick Field Thru Proprietor Pradeep Kumar ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1084 of 2024

Maa Vaishno Brick Field Thru Proprietor Ram Prakash ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1088 of 2024

Aman Ent Udyog (New Name New Raj Brick Works) Through its Proprietor Mohammad Haroon ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1092 of 2024

Omesh Brick Works, Through its Proprietor Rajpal Singh ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1106 of 2024

N.G. Brick Field (Old Name Gold Brick Field) Thru

Proprietor Pradeep Kumar ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1126 of 2024

Shiv Narain Brick Field, Through its Proprietor, Manoj Kumar ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1129 of 2024

Jagdambe Brick Works Thru Partner Sudhish Kumar ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1131 of 2024

Ahmad Brick Field, Sitapur Thru Authorized Signatory Javed Ahmad ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1154 of 2024

Shri Krishna Ent Udyog Thru Proprietor Prince Kumar ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1156 of 2024

Ahmad Ullah Brick Works Thru Proprietor Haider Ali Khan ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1158 of 2024

I.S. Beg Brick Field Thru Partner Izhar Beg ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1198 of 2024

Bharat Brick Field (New Name Jiya Intt. Udyog) Thru Partner Ahmad Hasan ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1205 of 2024

Hmk Brick Works (Old Name Haji Mateen) Thru Proprietor Matin Khan ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1208 of 2024

Royal Brick Works and Ruby Brick Works (New Name Aka Brick Works) Thru Proprietor Aleem Ahmad ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1230 of 2024

Gurudeen Brick Field Thru Proprietor Ram Verma ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1250 of 2024

Chaman Brick Field Sitapur Thru Its Partner (S) Mohd. Ibrahim and Others ... Petitioners;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1275 of 2024

New Bharat Brick Works, Through Proprietor Noushad Ali ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1279 of 2024

Mohasin Brick Works (Present Name New Fine Brick Works), Through Partnet Razabul ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1281 of 2024

Jishan Ent Udyog, Through Partner Mohd. Ali ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1286 of 2024

Shankar Brick Works (New Name Narayan Brick Works) Thru Proprietor Devdutt ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1297 of 2024

Saklani Ent Udyog (Old Name Mehrab Ent Udyog), Through Partner Mushahid ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1298 of 2024

Jugnu Ent Udyog Amroha Thru Proprietor Buniyad Ali ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1324 of 2024

Hindustan Ent Udyog Thru Partner Nanhe Khan ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1325 of 2024

New Fauji Brick Works Thru Proprietor Aftab Khan ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1402 of 2024

Shyam Ent Udyog (New Present Name Sangam Ent Udyog) Thru. Partner Tausif ... Petitioner;

Versus

State of U.P Thru. Prin. Secy. Forest, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1403 of 2024

Tiranga Brick Works (Old Name Kisan Brick Works), Through Proprietor Intyaz ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1408 of 2024

Ansari Brick Field, Through its Proprietor Mustaq Ahmad ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1431 of 2024

Hm Brick Field Thru. Partners Mohammad Waseem Khan and Alim Khan ... Petitioner;

Versus

State of U.P Thru. Prin. Secy., Forest, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1624 of 2024

Mustak Brick Industries, Thru. Its Partners, Jafruddin, Mustakeem, Bhure Ali and Chottey Ali ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1653 of 2024

Amd Brick Works (New Name Rana Brick Works) Thru Prop. Janne Alam Malpura Urf Malpur, Sambhal ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests Environment And Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1777 of 2024

Qadri Brick Field Thru Its Partner Akabri Khan ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Deptt. of Forests, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1790 of 2024

Huda Brick Works, Thru. its Partner(s), Shuav Ullah Khan and Others ... Petitioners;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1791 of 2024

Sri Balaji Brick, Thru. Proprietor, Rohit Kumar ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1981 of 2024

Star Brick Field Sitapur Thru Proprietor Abdul Rehman ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment And Climate Change and Others ... Respondents.

With

WRIT - C No. - 1988 of 2024

Chapna Brick Works Thru Prop. Seema Agarwal ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests, Environment And Climate Change and Others ... Respondents.

With

WRIT - C No. - 2244 of 2024

Ans Brick Works, Thru. its Partners Babu, Injar Ali, Mohd Yameen, Mohd. Azam and Naeem Ali ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 3176 of 2024

Bharat Brick Field Thru. Partners Abdul Haq and Mohd. Israil ... Petitioner;

Versus

State of U.P Prin. Secy., Forest, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 4991 of 2024

Ashish Kumar Singh ... Petitioner;

Versus

State of U.P. Thru. Spl. Secy., Deptt. Geology And Mining, and Others ... Respondents.

With

WRIT - C No. - 5047 of 2024

Shri Krishna Art and Dyeing, Thru. Proprietor Kiran Pal Singh ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 5048 of 2024

Diamond Brickfield Through Proprietor Mohd. Jubair ... Petitioner;

Versus

State of U.P. Thru. Addl. Chief Secy., Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 5459 of 2024

Ujala Bricks (Now J.P. Ent Bhatta) Thru Vijendra Singh and Others ... Petitioners;

Versus

State of U.P. Thru Addl. Chief Secy. Deptt. of Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 5685 of 2024

Famous Bricks Thru Its Partner Abdul Khalik ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Deptt. of Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 6221 of 2024

Om Baba Brick Works, Thru. Its Proprietor Yashdeep ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy., Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 6641 of 2024

J.S. International (Pet Food Division) Thru. Partner Mohd. Javed Soleja ... Petitioner;

Versus

State of U.P Thru. Prin. Secy., Forest, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 7208 of 2024

New Bharat Ent Bhatta, Thru. Proprietors Mohd. Jubair, Zeeshan, Vahid and Atik Ahmad ... Petitioner;

Versus

State of U.P. Thru. Secy. Zoology and Mining Dept. and Another ... Respondents.

With

WRIT - C No. - 7543 of 2024

Pind Balluchi (Unit of Excellence Hospitality) Thru. Partner Smarity Sindhu and Monu Mishra ... Petitioner;

Versus

State of U.P., Thru. Prin. Secy., Forest, Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 7616 of 2024

Gupta Brick Works Thru Proprietor Rakesh Kumar ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment Forest And Climate Change and Others ...

Respondents.

With

WRIT - C No. - 7619 of 2024

Mlk Brick Works Gumsani Sambhal Thru Partner Lal Bahadur ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 7832 of 2024

Laxmi Brick Field Thru Proprietor Madan Pal ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forest Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 7916 of 2024

Abhay Singh ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Ministry of Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 8064 of 2024

Madina Frozen Foods Pvt. Ltd., Through Its Director Mohammad Yamin Khan ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy. Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 8110 of 2024

J.B. Daruka Paper Mill Thru Authorized Signatory Shiv Kumar Pandey ... Petitioner;

Versus

State of U.P. Thru Addl. Chief/Prin. Secy. Deptt. of Environment Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 8204 of 2024

Sidra Washing, Through Proprietor Mohd. Wasim ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy. Forest Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 8461 of 2024

Mohd. Danish ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Environment Deptt. and Others ... Respondents.

With

WRIT - C No. - 8496 of 2024

Gul Vadan ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Ministry of Environment Forest and Climate Change and Others ... Respondents.

With

WRIT - C No. - 8509 of 2024

Shakeel Ahmad ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Environment Deptt. and Others ... Respondents.

With

WRIT - C No. - 8510 of 2024

Niraj Upadhyay ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Ministry of Environment Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 8513 of 2024

Ganga Sagar Singh ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environemtn Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 8775 of 2024

Tandoori Chaska (Old Name Shreshtha Gandhi Food Forest) Thru Partner Anil Sharma ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forest Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 8791 of 2024

Jubliant Food Works Ltd. Thru Auth. Person Nrip Vibhaw ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forest, Environment and Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 11237 of 2024

R.K. Ent Udyog Through Its Authorised Representative Kumar Pal Singh ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forests Environment and Climate Change and Others ... Respondents.

With

WRIT - C No. - 490 of 2025

Bohre Ram Dayal, Ent Udhyog, Proprietor Ashok Kumar Bhardwaj ... Petitioner;

Versus

State of U.P. Thru. Prin. Secy. Forest Environment Climate Change Deptt. and Others ... Respondents.

With

WRIT - C No. - 1179 of 2025

Santosh Ent Bhatta Sultanpur Thru Its Proprietor Raj Keshar Singh ... Petitioner;

Versus

U.P. Pollution Control Board Lucknow Thru Chairman and Others ... Respondents.

With

WRIT - C No. - 1420 of 2025

Alig Tannery Unnao Thru Its Authorized

Representative Hameedur Rehman Ansari ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy. Environemtn Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1512 of 2025

Gaursons Promoters Pvt. Ltd. Thru Authorized Signatory Divyanshu Srivastava ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Environment Deptt. and Others ... Respondents.

With

WRIT - C No. - 1610 of 2025

Bhagwati Colour Implex Ghaziabad Thru Proprietor Mukesh Pahuja ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Environment Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1611 of 2025

Pawan Dyeing Ghaziabad Thru Proprietor Pawan Agarwal ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Environment Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1626 of 2025

Lakshya Enterprises (Old Name Shikha Enterprises) Ghaziabad Thru Prop. Subhash Chand Yadav ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Environment Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1627 of 2025

Jai Maa Garments Ghaziabad Thru Proprietor Suresh Chandra ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Environment Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1632 of 2025

Vanshika Dyeing Ghaziabad Thru Proprietor Desh Raj Gupta ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Environment Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1633 of 2025

S. Star Enterprises Ghaziabad Thru Prop. Rajmala ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Environment Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1714 of 2025

Nisha Prints Ghaziabad Thru Proprietor Ram Prakash ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Environment Forests and Climate Change and Others ... Respondents.

With

WRIT - C No. - 1715 of 2025

Swastik Washing Works Ghaziabad Thru Proprietor Shikha Jain ... Petitioner;

Versus

State of U.P and Others ... Respondents.

With

WRIT - C No. - 2074 of 2025

Ravi Shankar Shukla ... Petitioner;

Versus

State of U.P. Thru Secy. Deptt. of Geology and Mining and Others ... Respondents.

With

WRIT - C No. - 2107 of 2025

Triveni Engineers and Industries Ltd. (Alco Chemical Unit) Noida Thru its Authorised Signatory ... Petitioner;

Versus

State of U.P. Thru Addl. Chief Secy./Prin. Secy. Deptt. of Environment Forests and Climate and Others ... Respondents.

And

WRIT - C No. - 2116 of 2025

Balaji Ent Udyog Aligarh Thru Proprietor Sachendra Kumar ... Petitioner;

Versus

State of U.P. Thru Prin. Secy. Forest, Environment and Climate Change and Others ... Respondents.

Writ - C No. - 4816 of 2024, WRIT - C No. - 151 of 2024, WRIT - C No. - 7889 of 2021, WRIT - C No. - 5335 of 2022, WRIT - C No. - 5340 of 2022, WRIT - C No. - 7746 of 2023, WRIT - C No. - 119 of 2024, WRIT - C No. - 152 of 2024, WRIT - C No. - 153 of 2024, WRIT - C No. - 154 of 2024, WRIT - C No. - 179 of 2024, WRIT - C No. - 181 of 2024, WRIT - C No. - 188 of 2024, WRIT - C No. - 194 of 2024, WRIT - C No. - 195 of 2024, WRIT - C No. - 264 of 2024, WRIT - C No. - 265 of 2024, WRIT - C No. - 266 of 2024, WRIT - C No. - 269 of 2024, WRIT - C No. - 270 of 2024, WRIT - C No. - 273 of 2024, WRIT - C No. - 288 of 2024, WRIT - C No. - 289 of 2024, WRIT - C No. - 290 of 2024, WRIT - C No. - 291 of 2024, WRIT - C No. - 292 of 2024, WRIT - C No. - 293 of 2024, WRIT - C No. - 294 of 2024, WRIT - C No. - 295 of 2024, WRIT - C No. - 296 of 2024, WRIT - C No. - 297 of 2024, WRIT - C No. - 300 of 2024, WRIT - C No. - 305 of 2024, WRIT - C No. - 306 of 2024, WRIT - C No. - 351 of 2024, WRIT - C No. - 354 of 2024, WRIT - C No. - 355 of 2024, WRIT - C No. - 357 of 2024, WRIT - C No. - 360 of 2024, WRIT - C No. - 361 of 2024, WRIT - C No. - 368 of 2024, WRIT - C No. - 371 of 2024, WRIT - C No. - 372 of 2024, WRIT - C No. - 375 of 2024, WRIT - C No. - 420 of 2024, WRIT - C No. - 425 of 2024, WRIT - C No. - 427 of 2024, WRIT - C No. - 430 of 2024, WRIT - C No. - 431 of 2024, WRIT - C No. - 432 of 2024, WRIT - C No. - 467 of 2024, WRIT - C No. - 468 of 2024, WRIT - C No. - 474 of 2024, WRIT - C No. - 559 of 2024, WRIT - C No. - 561 of 2024, WRIT - C No. - 562 of 2024, WRIT - C No. - 565 of 2024, WRIT - C No. - 569 of 2024, WRIT - C No. - 603 of 2024, WRIT - C No. - 605 of 2024, WRIT - C No. - 607 of 2024, WRIT - C No. - 610 of 2024, WRIT - C No. - 612 of 2024, WRIT - C No. - 614 of 2024, WRIT - C No. - 619 of 2024, WRIT - C No. - 621 of 2024, WRIT - C No. - 623 of 2024, WRIT - C No. - 626 of 2024, WRIT - C No. - 648 of 2024, WRIT - C No. - 703 of 2024, WRIT - C No. - 706 of 2024, WRIT - C No. - 719 of 2024, WRIT - C No. - 736 of 2024, WRIT - C No. - 746 of 2024, WRIT - C

No. - 751 of 2024, WRIT - C No. - 753 of 2024, WRIT - C No. - 755 of 2024, WRIT - C No. - 760 of 2024, WRIT - C No. - 765 of 2024, WRIT - C No. - 767 of 2024, WRIT - C No. - 771 of 2024, WRIT - C No. - 799 of 2024, WRIT - C No. - 800 of 2024, WRIT - C No. - 801 of 2024, WRIT - C No. - 806 of 2024, WRIT - C No. - 837 of 2024, WRIT - C No. - 866 of 2024, WRIT - C No. - 868 of 2024, WRIT - C No. - 990 of 2024, WRIT - C No. - 991 of 2024, WRIT - C No. - 992 of 2024, WRIT - C No. - 993 of 2024, WRIT - C No. - 994 of 2024, WRIT - C No. - 997 of 2024, WRIT - C No. - 998 of 2024, WRIT - C No. - 999 of 2024, WRIT - C No. - 1000 of 2024, WRIT - C No. - 1001 of 2024, WRIT - C No. - 1054 of 2024, WRIT - C No. - 1056 of 2024, WRIT - C No. - 1058 of 2024, WRIT - C No. - 1059 of 2024, WRIT - C No. - 1083 of 2024, WRIT - C No. - 1084 of 2024, WRIT - C No. - 1088 of 2024, WRIT - C No. - 1092 of 2024, WRIT - C No. - 1106 of 2024, WRIT - C No. - 1126 of 2024, WRIT - C No. - 1129 of 2024, WRIT - C No. - 1131 of 2024, WRIT - C No. - 1154 of 2024, WRIT - C No. - 1156 of 2024, WRIT - C No. - 1158 of 2024, WRIT - C No. - 1198 of 2024, WRIT - C No. - 1205 of 2024, WRIT - C No. - 1208 of 2024, WRIT - C No. - 1230 of 2024, WRIT - C No. - 1250 of 2024, WRIT - C No. - 1275 of 2024, WRIT - C No. - 1279 of 2024, WRIT - C No. - 1281 of 2024, WRIT - C No. - 1286 of 2024, WRIT - C No. - 1297 of 2024, WRIT - C No. - 1298 of 2024, WRIT - C No. - 1324 of 2024, WRIT - C No. - 1325 of 2024, WRIT - C No. - 1402 of 2024, WRIT - C No. - 1403 of 2024, WRIT - C No. - 1408 of 2024, WRIT - C No. - 1431 of 2024, WRIT - C No. - 1624 of 2024, WRIT - C No. - 1653 of 2024, WRIT - C No. - 1777 of 2024, WRIT - C No. - 1790 of 2024, WRIT - C No. - 1791 of 2024, WRIT - C No. - 1981 of 2024, WRIT - C No. - 1988 of 2024, WRIT - C No. - 2244 of 2024, WRIT - C No. - 3176 of 2024, WRIT - C No. - 4991 of 2024, WRIT - C No. - 5047 of 2024, WRIT - C No. - 5048 of 2024, WRIT - C No. - 5459 of 2024, WRIT - C No. - 5685 of 2024, WRIT - C No. - 6221 of 2024, WRIT - C No. - 6641 of 2024, WRIT - C No. - 7208 of 2024, WRIT - C No. - 7543 of 2024, WRIT - C No. - 7616 of 2024, WRIT - C No. - 7619 of 2024, WRIT - C No. - 7832 of 2024, WRIT - C No. - 7916 of 2024, WRIT - C No. - 8064 of 2024, WRIT - C No. - 8110 of 2024, WRIT - C No. - 8204 of 2024, WRIT - C No. - 8461 of 2024, WRIT - C No. - 8496 of 2024, WRIT - C No. - 8509 of 2024, WRIT - C No. - 8510 of 2024, WRIT - C No. - 8513 of 2024, WRIT - C No. - 8775 of 2024, WRIT - C No. - 8791 of 2024, WRIT - C No. - 11237 of 2024, WRIT - C No. - 490 of 2025, WRIT - C No. - 1179 of 2025, WRIT - C No. - 1420 of 2025, WRIT - C No. - 1512 of 2025, WRIT - C No. - 1610 of 2025, WRIT - C No. - 1611 of 2025, WRIT - C No. - 1626 of 2025, WRIT - C No. - 1627 of 2025, WRIT - C No. - 1632 of 2025, WRIT -

C No. - 1633 of 2025, WRIT - C No. - 1714 of 2025, WRIT - C No. - 1715 of 2025, WRIT - C No. - 2074 of 2025, WRIT - C No. - 2107 of 2025 and WRIT - C No. - 2116 of 2025

Decided on July 17, 2025, [Judgment Reserved on: 11.03.2025]

Advocates who appeared in this case :

Counsel for Petitioner:- Aprajita Bansal, Anilesh Tewari, Gursimran Kaur

Counsel for Respondent:- Asit Srivastava, Ashok Kumar Verma, C.S.C., Namit Sharma, Rishabh Kapoor

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., A.S.G, Ashok Kumar Verma

Counsel for Petitioner:- Sarvesh Kumar, Shivang Tiwari

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mohd. Aslam Khan, Sunny Singh

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd.

Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan, Mohd. Khalid Amin Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan, Mohd. Khalid Amin Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Saryu Prasad Tiwari

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mohd. Aslam Khan, Ratnesh Dwivedi

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mohd. Aslam Khan, Ratnesh Dwivedi

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Harsh Vardhan Kediya, Aditi Tripathi, Sheeran Mohiuddin Alavi

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra Shekher Pandey

Counsel for Petitioner:- Harsh Vardhan Kediya, Sheeran Mohiuddin Alavi, Shubham Tripathi

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra Shekher Pandey

Counsel for Petitioner:- Jalaj Kumar Gupta, Ankur Yadav, Mohd.

Aslam Khan, Ratnesh Dwivedi

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Harsh Vardhan Kediya, Aditi Tripathi, Sheeran Mohiuddin Alavi

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra Shekher Pandey

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Arvind Kumar Shukla

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan, Ratnesh Dwivedi

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mohd. Aslam Khan, Ratnesh Dwivedi

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Samita Chitranshi

Counsel for Respondent:- C.S.C., Asit Srivastava, Devesh Chandra Pathak

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan, Mohd. Khalid Amin Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Ankur Yadav, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava, Devesh Chandra Pathak

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan, Sunny Singh

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan, Mohd. Khalid Amin Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Harsh Vardhan Kediya, Aditi Tripathi, Sheeran Mohiuddin Alavi

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra Shekher Pandey

Counsel for Petitioner:- Kripa Shankar Yadav, Moni Yadav

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Kripa Shankar Yadav, Preeti Yadav

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Ram Ji Trivedi, Pawan Kumar Upadhyay, Shraddha Tripathi

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Prashant Shukla

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Jayvind Singh Yadav, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Prashant Shukla

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Kripa Shankar Yadav, Moni Yadav

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Kripa Shankar Yadav, Preeti Yadav

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Jayvind Singh Yadav, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Ankur Yadav, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Jayvind Singh Yadav, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Tushar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Tushar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Tushar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Tushar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Tushar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Tushar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Tushar Verma

Counsel for Petitioner:- Smita Chitranshi

Counsel for Respondent:- C.S.C., Asit Srivastava, Tushar Verma

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava, Tushar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Tushar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Tushar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Vaibhav Mishra

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Vaibhav Mishra

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Vaibhav Mishra

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Vaibhav Mishra

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Vaibhav Mishra

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Rishabh Chauhan

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Rishabh Chauhan

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Rishabh Chauhan

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Rishabh Chauhan

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Vivek Kumar Rai

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Abhishek Tiwari, Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan, Ratnesh Dwivedi

Counsel for Respondent:- C.S.C., Abhishek Tiwari, Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Abhishek Tiwari, Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd.

Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan, Sunny Singh

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Jalaj Kumar Gupta, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Pushpila Bisht, Ruchir

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Saryu Prasad Tiwari, Ashutosh Tiwari

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Piyush Pathak, Ashutosh Tiwari

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra Shekhar Pandey

Counsel for Petitioner:- Vikas Vikram Singh, Sumedha Sen, Syed Mehfuzur Rehman

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra Shekher Pandey

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Jalaj Kumar Gupta, Devesh Chandra Pathak, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Saryu Prasad Tiwari

Counsel for Respondent:- C.S.C.

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Smita Chitranshi

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Smita Chitranshi

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan, Sunny Singh

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Himanshu Kamboj, Amit Dwivedi

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey, Ranjana Srivastava, Shivam Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Himanshu Kamboj, Amit Dwivedi

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Asit Srivastava

Counsel for Petitioner:- Himanshu Kamboj, Amit Dwivedi

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Vinod Kumar Mishra, Amit Dwivedi

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Asit Srivastava, Chandra Shekher Pandey

Counsel for Petitioner:- Prashant Shukla, Priya Pandey

Counsel for Respondent:- C.S.C., Asit Srivastava

Counsel for Petitioner:- Jalaj Kumar Gupta, Mehdi Khan, Mohd. Aslam Khan

Counsel for Respondent:- C.S.C., Chandra Shekher Pandey

Counsel for Petitioner:- Ajay Pratap Singh

Counsel for Respondent:- Ashok Kumar Verma, C.S.C.

Counsel for Petitioner:- Pooja Singh, Abhishek Yadav, Surya Prakash Tiwari

Counsel for Respondent:- C.S.C., Asit Srivastava, Vaibhav Mishra

Counsel for Petitioner:- Salil Kumar Srivastava, Rahul Srivastava

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Kazim Ibrahim

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra Shekhar Pandey, Chandra Shekher Pandey

Counsel for Petitioner:- Kazim Ibrahim

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra Shekhar Pandey

Counsel for Petitioner:- Kazim Ibrahim

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra Shekhar Pandey

Counsel for Petitioner:- Kazim Ibrahim

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra Shekhar Pandey, Chandra Shekher Pandey

Counsel for Petitioner:- Kazim Ibrahim

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra Shekhar Pandey, Chandra Shekher Pandey

Counsel for Petitioner:- Kazim Ibrahim

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra Shekhar Pandey, Chandra Shekher Pandey

Counsel for Petitioner:- Kazim Ibrahim

Counsel for Respondent:- C.S.C., Ashok Kumar Verma, Chandra

Shekhar Pandey

Counsel for Petitioner:- Kazim Ibrahim

Counsel for Respondent:- Vaibhav Mishra, Ashok Kumar Verma, Chandra Shekhar Pandey

Counsel for Petitioner:- Pushpila Bisht, Sukhmani Singh

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Gaurav Mehrotra, Harsh Vardhan Mehrotra, Maria Fatima

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

Counsel for Petitioner:- Prashant Shukla, Priya Pandey, Shashank Kumar

Counsel for Respondent:- C.S.C., Ashok Kumar Verma

The Order of the Court was delivered by

SUBHASH VIDYARTHI, J.:— Heard Sri Jaideep Narain Mathur, Senior Advocate, assisted by Ms. Aprajita Bansal, Sri. Anilesh Tewari, Ms. Gursimran Kaur, Advocates, Sri Jalaj Kumar Gupta, Sri Mehdi Khan, Sri Mohd. Aslam Khan, Sri Rahul Srivastava, Sri Salil Kumar Srivastava, Sri Sarvesh Kumar, Sri Shivang Tiwari, Sri Mohd. Khalid Amin Khan, Sri Saryu Prasad Tiwari, Sri Ratnesh Dwivedi, Sri Sheeran Mohiuddin Alavi, Ms. Aditi Tripathi, Sri Harsh Vardhan Kediya, Sri Ankur Yadav, Sri Arvind Kumar Shukla, Ms. Smita Chitranshi, Sri Sunny Singh, Sri Kripa Shankar Yadav, Ms. Moni Yadav, Ms. Preeti Yadav, Sri Pawan Kumar Upadhyay, Sri Ram Ji Trivedi, Ms. Shraddha Tripathi, Sri Prashant Shukla, Sri Ashutosh Tiwari, Sri Saryu Prasad Tiwari, Sri Piyush Pathak, Ms. Sumedha Sen, Sri Syed Mehfuzur Rehman, Sri Vikas Vikram Singh, Sri Devesh Chandra Pathak, Sri Amit Dwivedi, Sri Himanshu Kamboj, Sri Vinod Kumar Mishra, Sri Prashant Shukla, Ms. Priya Pandey, Sri Ajay Pratap Singh, Sri Abhishek Yadav, Dr. Pooja Singh, Sri Surya Prakash Tiwari, Sri Kazim Ibrahim, Ms. Pushipla Bisht, Ms. Sukhmani Singh, Sri Gaurav Mehrotra, Sri Harsh Vardhan Mehtroa, Ms. Maria Fatima and Sri Shashank Kumar, learned counsel appearing for the petitioners in their respective writ petitions, and Sri Ashok Kumar Verma assisted by Sri Tushar Verma, Sri Asit Srivastava & Sri Vaibhav Mishra, learned counsel for U.P. Pollution Control Board, Sri Rishabh Kapoor, learned counsel for the U.P. Jal Nigam, Sri Namit Sharma, learned counsel for Lucknow Municipal Corporation and Sri Akash Sinha, learned Standing Counsel for the State and Sri Asit Srivastava, Sri Chandra Shekhar Pandey, Sri Devesh Chandra Pathak, Sri Rishabh Chauhan, Ms. Ranjana Srivastava, Sri Shivam Srivastava, learned counsel appearing for the contesting respondents.

2. All the aforesaid writ petitions have been filed challenging various orders passed by the U.P. Pollution Control Board imposing environmental compensation on the petitioners' industries. Validity of

the orders imposing environmental compensation has been challenged in all the writ petitions on a common ground that the U.P. Pollution Control Board does not have the authority to impose environmental compensation and to recover the same from an industry, under any statutory provision.

3. As a common question is involved in all the aforesaid writ petitions, all the Writ Petitions are being decided by this common judgment.

4. Sri J.N. Mathur, learned Senior Advocate who led submissions on behalf of the petitioners, has submitted that a bare perusal of the provisions contained in the NGT Act and the NGT Rules, 2011 makes it manifest that the legislature has conferred the jurisdiction to adjudicate the claims regarding payment of compensation for causing environmental damage upon the National Green Tribunal, which has been constituted as an expert body. The NGT Act is a complete Code in itself which has been enacted for adjudication of claims relating to compensation for any damage caused to the environment. He has submitted that the functions of the Board are enumerated in Section 17 of the Water (Prevention and Control of Pollution) Act, 1974 (which will hereinafter be referred to as 'the Water Act') and the same do not include performance of any adjudicatory function. The U.P. Pollution Control Board does not have jurisdiction to impose compensation and recover the same; rather, the Board has to file an application to the Tribunal as provided in Section 18 of the NGT Act.

5. Shri Gaurav Mehrotra, Advocate assisted by Ms. Maria Fatima, learned Counsel appearing in Writ-C No. 2107 of 2025 has submitted that the jurisdiction can be conferred by Statute alone and it cannot be conferred by any Court or Tribunal, not even by the Hon'ble Supreme Court. He has relied upon the judgments in the case of *Benarsi Silk Palace* v. *Commr. of Income Tax*, (1964) 52 ITR 220 (All) and *Chiranjilal Shrilal Goenka* v. *Jasjit Singh*, (1993) 2 SCC 507. He has also relied upon the judgments in the cases of *Jagmittar Sain Bhagat* v. *Health Services, Haryana*, (2013) 10 SCC 136.

6. *Per Contra*, Sri A.K. Verma, the learned Counsel for the U.P. Pollution Control Board has submitted that Section 33-A of the Water Act, 1974 and Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 (which will hereinafter be referred to as 'the Air Act') empower the Pollution Control Board to issue any direction to any person. It is in exercise of the aforesaid statutory powers that the U.P. Pollution Control Board has the authority to issue a direction to any person for payment of environmental compensation and to recover the same. He has further submitted that any person aggrieved by such a direction can file an appeal against the direction(s) issued by the U.P. Pollution Control Board before the National Green Tribunal as is

provided under Section 33-B of the Water Act and under Section 31-B of the Air Act. He has submitted that Section 16 of the NGT Act also provides that any person aggrieved by and directions issued by a Board under Section 33-A of the Water Act.

7. Relying upon the aforesaid provisions of the NGT Act, Sri Verma has submitted that when Section 31-B of the Air Act confers appellate jurisdiction upon the National Green Tribunal in respect of directions issued under Section 31-A of the Air Act; Section 33-B of the Water Act and Section 16 of the NGT Act confer appellate jurisdiction upon the National Green Tribunal in respect of directions issued under Section 33 -A of the Water Act, the National Green Tribunal would not have the original jurisdiction to adjudicate upon the subject matter regarding which it has appellate jurisdiction.

8. Shri Verma has submitted that the Water Act is a social legislation and it should be given a purposive interpretation. The Board's power under Section 33-A of the Water Act are very wide and unfettered. The Board has the power to award compensation in exercise of the powers conferred by Section 33-A of the Water Act and Section 31-A of the Air Act. The orders passed under Section 33-A of the Water Act or Section 31-A of the Air Act are appealable under Section 16 of the NGT Act.

9. The learned Counsel for the State Pollution Control Board has submitted that Section 17 of the Water Act enumerates the functions of the State Board and sub-Section (1)(l)(ii) of Section 17 provides that the functions of a State Board include requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution. Sub-Section (1)(o) of Section 17 provides that the functions of the State Board will include to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.

10. Shri Verma has also submitted that Section 18(2) of the NGT Act provides that an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal without prejudice to the provisions contained in Section 16 of the NGT Act. Therefore, the provision regarding filing of an application by the Pollution Control Board contained in Section 18(2)(f) of the NGT Act is without prejudice to the appellate powers of the Tribunal contained in Section 16 of the NGT Act and the appellate power under Section 16 will have a precedence over the provisions contained in Section 18(2). He has also submitted that Section 19 of the NGT Act lays down the procedure and powers of the Tribunal. A cumulative reading of the aforesaid provisions makes it clear that the Pollution Control Board has power to issue directions including the direction for payment of compensation.

11. Sri Verma has submitted that 'water pollution' is included in the term 'water' occurring in item - 17 of List - II contained in Schedule 7 appended to the Constitution of India, and therefore, it is a State subject. He has also submitted that the entries occurring in Schedule - 7 should be given the widest interpretation. Sri Verma has drawn our attention to the directive principles of State policy contained in Part IV of the Constitution of India. Article 48-A provides that the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. Part IV-A of the Constitution of India enlists fundamental duties and Article 51-A(g) provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

12. The learned Counsel for the Board has submitted that the State Authorities have to strike a balance between sustainable development and protection of environment. The State has to ensure that a polluter pays compensation for any damage caused by him to the environment.

13. He has further submitted that Chapter VI of the Air Act contains provisions regarding penalties and procedure and it provides that the adjudicating officer may impose penalty. The power to impose penalty under the Air Act vests in the Adjudicating Officer. He has also submitted that in case the industry operates without consent of the Board, it may be prosecuted. However, in case of other violations, penalty can be imposed by the Adjudicating Officer without prosecution.

14. Shri Chandra Shekhar Pandey, the learned Counsel appearing for the Central Pollution Board has relied upon the decision in the case of *Paryavaran Suraksha Samiti* v. *Union of India*, (2017) 5 SCC 326, in which the Hon'ble Supreme Court has granted liberty to private individual(s) and organizations, to address complaints to the Pollution Control Board if any industry is in default. On the receipt of any such complaint, the Pollution Control Board concerned shall be obliged to verify the same and take such action against the defaulting industry, as may be permissible in law. Such action would be in addition to the discontinuation of industrial activity forthwith. The Pollution Control Boards were also directed to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters. It is in furtherance of the aforesaid directions that Original Application No. 593/2017, *Paryavaran Suraksha Samiti* v. *Union of India*, was registered before the National Green Tribunal, Principal Bench, New Delhi which is still continuing and directions are issued in the said case from time to time. By means of directions issued by the NGT in the aforesaid case, the Board has been empowered to impose and recover compensation from the defaulting industrial units.

15. In *Rylands* v. *Fletcher*: (1861-73) All ER Rep 1, it was laid down that if a person brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused.

16. In the year 1986, the Environment (Protection) Act, 1986, (which will hereinafter be referred to as 'the Act of 1986') was enacted on 23.05.1986 to provide for the protection and improvement of environment and for matters connected therewith. Section 3 of the Act of 1986 provides for the powers of the Central Government to take measures to protect and improve environment.

17. In the case of *M.C. Mehta* v. *Union of India*, (1987) 1 SCC 395 (decided on 20.12.1986), a Constitution Bench consisting of five Hon'ble Judges of the Supreme Court dealt with the question as to what is the measure of liability of an enterprise which is engaged in a hazardous or inherently dangerous industry, if by reason of an accident occurring in such industry, persons die or get injured. The Hon'ble Supreme Court referred to the rule that was evolved in *Rylands* v. *Fletcher* (Supra) and held that:—

> *"31. …We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because it has not been so done in England. … We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate visa-vis the tortuous principle of strict liability under the rule in* Rylands *v.* Fletcher *(supra)."*

18. The Public Liability Insurance Act, 1991 was enacted by the Parliament to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accidents occurring while handling any hazardous substance and for matters connected therewith or incidental thereto.

19. In the year 1995, the National Environment Tribunal Act, 1995, was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and

the environment and for matters connected therewith or incidental thereto.

20. In spite of the aforesaid enactments, the National Environment Tribunal was not constituted. Taking cognizance of this situation, in *Vellore Citizens' Welfare Forum* v. *Union of India*, (1996) 5 SCC 647, the Hon'ble Supreme Court issued the following directions:—

> *"1. The Central Government shall constitute an authority under Section 3(3) of the Environment (Protection) Act, 1986 and shall confer on the said authority all the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The authority shall be headed by a retired judge of the High Court and it may have other members — preferably with expertise in the field of pollution control and environment protection — to be appointed by the Central Government. The Central Government shall confer on the said authority the powers to issue directions under Section 5 of the Environment Act and for taking measures with respect to the matters referred to in clauses (v), (vi), (vii), (viii), (ix), (x) and (xii) of sub-Section (2) of Section 3. The Central Government shall constitute the authority before September 30, 1996.*
>
> *2. The authority so constituted by the Central Government shall implement the "Precautionary Principle" and the "Polluter Pay Principle". The authority shall, with the help of expert opinion and after giving opportunity to the polluters concerned assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment. The authority shall lay down just and fair procedure for completing the exercise.*
>
> *3. The authority shall compute the compensation under two heads namely, for reversing the ecology and for payment to individuals. A statement showing the total amount to be recovered, the names of the polluters from whom the amount is to be recovered, the amount to be recovered from each polluter, the persons to whom the compensation is to be paid and the amount payable to each of them shall be forwarded to the Collector/District Magistrate of the area concerned. The Collector/District Magistrate shall recover the amount from the polluters, if necessary, as arrears of land revenue. He shall disburse the compensation awarded by the authority to the affected persons/families.*
>
> *4. The authority shall direct the closure of the industry owned/managed by a polluter in case he evades or refuse to pay*

the compensation awarded against him. This shall be in addition to the recovery from him as arrears of land revenue.

5. An industry may have set up the necessary pollution control device at present but it shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the residents of the area."

21. In the year 1997, the National Environment Appellate Authority Act, 1997 was enacted to provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto.

22. The Water Act was been enacted in the year 1974 with the following object:—

"An Act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith."

23. Section 3 of the Water Act provides for constitution of the Central Pollution Control Board, whereas Section 4 of the Act, 1974 provides for constitution of the State Pollution Control Boards.

24. Chapter IV of the Water Act contains provisions regarding powers and functions of the Board. Section 16 of the Water Act provides for functions of the Central Board, whereas Section 17 provides for the functions of the State Boards. The relevant provisions of Section 17 of the Water Act are being reproduced here-in-below:—

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

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

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

(c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;

(d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

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

(f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;

(g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;

(h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;

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

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

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

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

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

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

(m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both

and to lay down, modify or annul effluent standards for the sewage and trade effluents;

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

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

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

25. Section 18(1)(b) of the Water Act provides that in performance of its functions under the Act, every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it.

26. Section 32 of the Water Act empowers the Board to take emergency measures in the case of pollution of streams or wells or on land and this provision is being quoted below:—

"*32. Emergency measures in case of pollution of stream or well.—(1) Where it appears to the State Board that any poisonous, noxious or polluting matter is present in any stream or well or on land by reason of the discharge of such matter in such stream or well or on such land or has entered into that stream or well due to any accident or other unforeseen act or event, and if the Board is of opinion that it is necessary or expedient to take immediate action, it may for reasons to be recorded in writing, carry out such operations as it may consider necessary for all or any of the following purposes, that is to say,—*

(a) removing that matter from the stream or well or on land and disposing it of in such manner as the Board considers appropriate;

(b) remedying or mitigating any pollution caused by its presence in the stream or well;

(c) issuing orders immediately restraining or prohibiting the person concerned from discharging any poisonous, noxious or polluting matter into the stream or well or on land, or from making insanitary use of the stream or well.

(2) The power conferred by sub-section (1) does not include the power to construct any works other than works of a temporary character which are removed on or before the completion of the operations."

27. Section 33 of the Water Act provides as follows:—

"*33. Power of Board to make application to courts for restraining apprehended pollution of water in streams or wells.—(1) Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by reason of the disposal or likely disposal of any matter in such stream or well or in any sewer or on any land, or otherwise, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class, for restraining the person who is likely to cause such pollution from so causing.*

(2) On receipt of an application under sub-section (1) the court may make such order as it deems fit. …"

28. There is no provision in the Water Act which confers any power of judicial or quasi-judicial nature on the State Board.

29. The National Green Tribunal Act, 2010 (which will hereinafter be referred to as 'the NGT Act') was enacted on 02.06.2010 with the following object:—

"An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto."

30. Thus NGT has been established with the object of effective and expeditious disposal of cases relating to compensation relating to environment. The composition of NGT is provided in Section 4 (1) of the NGT Act which is as follows:—

"4. Composition of Tribunal - (1) The Tribunal shall consist of,-

(a) a full-time Chairperson;

(b) not less than ten but subject to not maximum of twenty full-time Judicial Members as the Central Government may, from time to time, notify;

(c) not less than ten but subject to maximum twenty full-time Expert Members, as the Central Government may, from time to time, notify."

31. The qualifications of Chairperson, Judicial Member and Expert Member are provided in Section 5 of the NGT Act, which is as follows:—

"5. Qualifications for appointment of Chairperson, Judicial Member and Expert Member.—(1) A person shall not be qualified for appointment as the Chairperson or Judicial Member of the Tribunal unless he is, or has been, a Judge of the Supreme Court of India or Chief Justice of a High Court:

Provided that a person who is or has been a Judge of the High

Court shall also be qualified to be appointed as a Judicial Member.

(2) A person shall not be qualified for appointment as an Expert Member, unless he,—

(a) *has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or*

(b) *has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution.*

(3) The Chairperson, Judicial Member and Expert Member of the Tribunal shall not hold any other office during their tenure as such.

(4) The Chairperson and other Judicial and Expert Members shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Tribunal under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).”

32. The aforesaid provision makes it manifest that NGT has been constituted as a body of experts.

33. Chapter III of the NGT Act deals with jurisdiction, powers and proceedings of the Tribunal. Section 14 of the NGT Act provides that the Tribunal shall have jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

34. The phrase “Substantial question relating to environment” is defined in Section 2(m) of the NGT Act as follows:—

“(m) “substantial question relating to environment” shall include an instance where,—

(i) there is a direct violation of a specific statutory environmental

obligation by a person by which,—

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution;"

35. Section 15 of the NGT Act provides for relief, compensation and restitution and the relevant parts of this Section read as follows:—

15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

* * *

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

* * *

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

* * *

36. Schedule - I referred to in Sections 14 and 15 of the Act lists the following Acts:—

"1. The Water (Prevention and Control of Pollution) Act, 1974;

2. The Water (Prevention and Control of Pollution) Cess Act, 1977;

3. The Forest (Conservation) Act, 1980;

4. The Air (Prevention and Control of Pollution) Act, 1981;

5. The Environment (Protection) Act, 1986;

6. The Public Liability Insurance Act, 1991;

7. The Biological Diversity Act, 2002"

37. Schedule II referred to in Section 15 of the NGT Act as follows:—

"Heads under which compensation or relief for damage may be claimed

(a) Death;

(b) Permanent, temporary, total or partial disability or other injury or sickness;

(c) Loss of wages due to total or partial disability or permanent or temporary disability;

(d) Medical expenses incurred for treatment of injuries or sickness;

(e) Damages to private property;

(f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;

(g) Expenses incurred by the Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;

(h) Loss to the Government or local authority arising out of, or connected with, the activity causing any damage;

(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;

(l) Loss and destruction of any property other than private property;

(m) Loss of business or employment or both;

(n) Any other claim arising out of, or connected with, any activity of handling of hazardous substance."

38. Section 20 of the NGT Act provides that "*The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle*."

39. A bare perusal of the aforesaid provisions of the NGT Act makes it manifest that the NGT has been constituted as an expert body and it has been conferred with the jurisdiction over all civil cases where a substantial question relating to environment is involved. Payment of compensation for causing damage to environment is a civil dispute and it involves a substantial question relating to environment. Therefore, the NGT has been conferred with the jurisdiction to decide the cases relating to award of compensation, including the compensation under

the Water Act and the Air Act.

40. Section 18 of the NGT Act provides as follows:—

"*18. Application or appeal to Tribunal.—(1) Each application under Sections 14 and 15 or an appeal under Section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.*

(2) Without prejudice to the provisions contained in Section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by—

(a) the person, who has sustained the injury; or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organisation; or

(f) the Central Government or a State Government or a Union Territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:

Provided that…

(3)…"

41. Rule 8 of the National Green Tribunal (Practices and Procedure) Rules, 2011 (which will hereinafter be referred to as 'the NGT Rules, 2011') contains a specific provision for submission of an application for compensation and it provides as follows:—

"8. Procedure for filing application or appeal.- (1) An application or appeal to the Tribunal under section 18 shall be presented in Form I by the applicant or appellant, as the case may be, in person or by an agent or by a duly authorised legal practitioner, to the Registrar or any other officer authorised in writing by the Registrar to receive the same or be sent by registered post with acknowledgment duly addressed to the Registrar of the Tribunal at and sent to concerned place of sitting:

Provided that where the application is for relief and compensation, it shall be made in Form II.

* * *

42. Rule 35 of the NGT Rules, 2011 provides as follows:—

"35. Manner and the purposes for which amount of compensation or relief or restitution credited to Environment Relief Fund shall be utilised.—(1) The amount by way of compensation or relief to the victim or restitution of property and the environment, ordered by the Tribunal to be paid shall be remitted to the authority, specified under sub-section (3) of Section 7-A of the Public Liability Insurance Act, 1991 (6 of 1991), within a period of thirty days from the date of order or award or as otherwise ordered by the Tribunal.

(2) In the case of failure to remit the amount by the concerned person, under sub-rule (1), within the time so specified, the District Collector of the concerned district shall file a complaint, before the court having jurisdiction, under clause (a) of subsection (1) of Section 30 of the Act.

(3) The amount referred to in sub-rule (1), shall be credited to the Environment Relief Fund under Section 24 of the Act for utilisation under any heads specified in Schedule II to the Act.

(4) A separate account shall be created and maintained by the authority referred to in sub-rule (1) for the purpose of receiving and disbursement of the amount pursuant to the order or award of the Tribunal."

43. Rule 36 of the NGT Rules, 2011 provides for procedure for disbursement of relief or compensation or restitution of property damaged and this Rule provides as follows:—

"36. Procedure for disbursement of relief or compensation or restitution of property damaged.—(1) A copy of the award or order or decision of the Tribunal passed under clause (a) or clause (b) of sub-section (1) of Section 15 of the Act shall be transmitted to the authority referred to in sub-rule (1) of Rule 35 and the District Collector having local jurisdiction for disbursement.

(2) The authority referred to in sub-rule (1) of Rule 35 shall transfer the amount so deposited in the Environment Relief Fund to the concerned District Collector within a period of thirty days form the date of deposit.

(3) The District Collector shall arrange to disburse the amount of compensation or relief and restitution of property damaged within a period of thirty days of the receipt of the amount under sub-rule (2), to the affected persons or victims of pollution or other environmental damages arising under the enactments specified in Schedule I, under the heads specified in Schedule II, to the Act."

44. Thus the NGT Act and the NGT Rules, 2011 contain elaborate provisions for filing of applications for imposition of compensation and adjudication thereof by the NGT, as per which, the Board can file an application before the NGT for claiming compensation from an industry if it is of the view that the industry is liable to pay compensation and the NGT will adjudicate whether the industry is liable to pay compensation, and if yes, what would be the quantum of compensation. The Board cannot itself pass an order imposing the liability for payment of compensation upon an industry.

45. The learned Counsel for the Board has submitted that the Board derives the power to impose and recover compensation from the provisions contained in Section 33-A of the Water Act, 1974 and Section 31-A of the Air Act. Both the Sections were inserted way of by amendment with effect from 01.04.1988 and both the Sections are identically worded, which read as follows:—

> "*Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.*
>
> *Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—*
>
> *(a) the closure, prohibition or regulation of any industry, operation or process; or*
>
> *(b) the stoppage or regulation of supply of electricity, water or any other service.*

46. The directions referred to in Section 33-A of the Water Act and Section 31-A of the Air Act refer to directions of administrative nature so as to prevent water pollution or air pollution. The nature of directions that can be passed in exercise of the powers conferred Section 33-A of the Water Act and Section 31-A of the Air Act is explained by the Explanations appended to the Sections, as per which the directions would include the directions for closure, prohibition or regulation of any industry, operation or process; or the stoppage or regulation of supply of electricity, water or any other service. The directions contemplated in both the aforesaid Sections are preventive or restrictive in nature. Although the Explanations appended to the Sections state that the directions would 'include' the nature of directions mentioned in the Explanations and the examples are not exhaustive, yet the explanation clarifies that the other directions that may be issued under Section 33-A of the Water Act or Section 31-A of the Air Act would be similar in

nature to those administrative directions which are mentioned in the Explanations appended to the Sections.

47. The power to issue administrative directions for prevention of water pollution or air pollution would not include the power to impose environmental compensation and recover the same. Had this power been already there in the Water Act and the Air Act, the Legislature would have had no occasion to enact the NGT Act conferring specific provision for conferring jurisdiction upon the NGT to impose environmental compensation on erring industries.

48. The learned Counsel for the State Pollution Control Board has placed reliance upon a judgment passed by the NGT in *State Pollution Control Board* v. *Swastik Ispat Pvt. Ltd.*, 2014 SCC OnLine NGT 13, wherein the NGT held that:—

> *"32. Keeping in view the legislative scheme and the object of the Air Act, it is evident that the Board is not incapacitated to issue a direction which may not be prohibitory or of closure in substance and application, but may be regulatory with an object to ensure that anti-pollution devices and anti-pollution measures are adopted to prevent and control pollution. For this purpose, the Board may require an industry to furnish a bank guarantee which would serve dual purposes. On the one hand, it would provide incentive to an industry to install anti-pollution devices so as to ensure non-encashment of the bank guarantee, while on the other, in the event of default, resulting in pollution, the Board would be able to spend that money for remedial purposes to control environmental degradation or damage that has taken place as a result of such default. Both these purposes would squarely fall within the framework of law and the powers and functions of the Board. The purpose of requiring a Unit to furnish a bank guarantee is not penal per se. It is compensatory i.e. an amount which would be required to be spent upon rehabilitation and restoration of the environment due to the damage caused to it by default on the part of the Unit. … The intention of the Legislature to ensure implementation of these facets is further elucidated by the language of Section 31A of the Air Act where the Board can issue directions as afore-mentioned in exercise of its powers and performance of its functions under the Act. Thus, there has to be a direct nexus between the directions contemplated under Section 31A of the Air Act and the powers and functions of the Board as contemplated under Sections 16, 17 and other relevant provisions of the Air Act. Once these Sections are read co-jointly, then it becomes clear that a direction which would ensure compliance of the conditions of the consent order and further the cause of prevention and control of pollution would be a direction permissible under law."*

The NGT held that "Resolution of the Board for imposing a condition upon the industrial plants/units to furnish a bank guarantee as an interregnum for compliance and/or in the nature of compensation cannot be held to be without the authority of law or jurisdiction, in so far as it is not penal or punitive."

49. Sri Verma has also placed reliance upon a judgment of the NGT in *Thandava Co-operative Sugars Ltd.* v. *Central Pollution Control Board*, 2020 SCC OnLine NGT 1823, wherein the NGT held that:—

"24. In view of Section 3 of the Environment (Protection) Act, 1986, Central Pollution Control Board has a duty to make measures to protect and improve environment and certain aspects have been provided as to how they have to be dealt with. Sub-clause (xiv) of sub-section (2) of Section 3 the Environment (Protection) Act, 1986 gives power to give further direction for the purpose of effective implementation of the provisions of this Act. Sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 authorises the Central Government to constitute an 'appropriate authority' to take measures, as provided under sub-section (2) of Section 3. That was how Central Pollution Control Board has been constituted for the purpose of effective implementation of the Environment (Protection) Act, 1986 to take all measures to abate pollution that is likely to be caused on account of operation of industrial units due to their non-compliance of the directions issued or conditions imposed in the consent granted. Further, the Apex Court, in several cases, have come to the conclusion that unless the violators are directed to pay compensation for causing pollution by applying the 'polluter pays' principle, no purpose will be served and evolved the doctrine of 'polluter pays' to realise environmental compensation from the erring units and directed the regulating authorities to take steps to implement the order and realise environmental compensation and utilise that amount for restoration of damage caused to environment.

* * *

27. So the submission made by learned counsel for appellant that Central Pollution Control Board has no power to impose environmental compensation is without any substance and the same is liable to rejected…."

50. The same passage finds place in paragraphs 45 to 48 of the judgment passed by the NGT in the case of *Nutra Specialities (P) Ltd.* v. *Member Secretary, Central Pollution Control Board*, 2020 SCC OnLine NGT 1572.

51. Regarding the binding effect of a judgment passed by the NGT, it would be appropriate to refer to the judgment of this Court in *Dan Bahadur Yadav* v. *Bank of Baroda*, 2025 SCC OnLine All 600, wherein

this Court has held that "*The Tribunals have to follow the law laid down by the Hon'ble Supreme Court and the High Court within whose superintendence they function, but they do not have the power to lay down law.*"

52. The learned Counsel for the Board could not place any law under which the observations made by the NGT in its judgments interpreting a statutory provision may be binding on a Constitutional Court.

53. Further, none of the aforesaid judgments of NGT cited by the learned Counsel for the Board take into consideration the provisions of Section 15 of the NGT Act, which specifically confers the jurisdiction to adjudicate upon the claims for imposition of environmental compensation upon the NGT.

54. In *Delhi Pollution Control Committee* v. *Splendor Landbase Ltd.*, 2012 SCC OnLine Del 400, a Division Bench of Delhi High Court held that:—

> *"37. …that the power to issue directions under Section 33A of the Water Act and the power to issue directions under Section 31A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act, and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the Court of Competent Jurisdiction and no more."*

55. We find ourselves in complete agreement with the aforesaid view of the Delhi High Court.

56. Section 33-B of the Water Act and under Section 31-B of the Air Act contain provisions for filing appeals before the NGT, which provisions are being reproduced below:—

> "*33-B. Appeal to National Green Tribunal.—Any person aggrieved by,—*
>
> *(a) an order or decision of the appellate authority under Section 28, made on or after the commencement of the National Green Tribunal Act, 2010; or*
>
> *(b) an order passed by the State Government under Section 29, on or after the commencement of the National Green Tribunal*

Act, 2010; or

(c) directions issued under Section 33-A by a Board, on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act.

* * *

31-B. Appeal to National Green Tribunal.—Any person aggrieved by an order or decision of the Appellate Authority under Section 31, made on or after the commencement of the National Green Tribunal Act, 2010, may file an appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010, in accordance with the provisions of that Act."

57. Section 16 of the NGT Act provides for filing of appeals against the directions issued under Section 33-A of the Water Act and the relevant part of Section 16 of the NGT Act is being quoted below:—

"16. Tribunal to have appellate jurisdiction.—Any person aggrieved by,—

* * *

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

* * *

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

* * *

58. Relying upon the aforesaid provisions of the NGT Act, Sri Verma has submitted that when Section 31-B of the Air Act confers appellate jurisdiction upon the NGT in respect of directions issued under Section 31-A of the Air Act; Section 33-B of the Water Act and Section 16 of the NGT Act confer appellate jurisdiction upon the NGT in respect of directions issued under Section 33-A of the Water Act, the NGT would not have the original jurisdiction to adjudicate upon the subject matter regarding which it has appellate jurisdiction. We find no force in this submission, as we have already held that Section 33-B of the Water Act and Section 31-A of the Air Act confer power upon the Board to issue directions of administrative nature and it does not confer any adjudicatory power on the Board, which power vests in the NGT only.

59. Sri Verma has also submitted that Section 18(2) of the NGT Act provides that an application for grant of relief or compensation or settlement of dispute may be made to the NGT without prejudice to the

provisions contained in Section 16 of the Act, 2010. Therefore, the provision regarding filing of an application by the Pollution Control Board contained in Section 18(2)(f) of the NGT Act is without prejudice to the appellate powers of the Tribunal contained in Section 16 of the NGT Act and the appellate power under Section 16 will have a precedence over the provisions contained in Section 18(2). This submission also has no force, as we have already held that Section 33-B of the Water Act and Section 31-A of the Air Act confer power upon the Board to issue directions of administrative nature and it does not confer any adjudicatory power on the Board, which power vests in the NGT only.

60. The learned counsel for the Board has drawn the attention of this Court to the provisions contained in Article 21 of the Constitution of India which provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law." He has submitted that the protection of environment and ecological balance is included in the Fundamental Right to life. There can be no dispute against this proposition, but it would not lead to the proposition that the Board has the power to impose environmental compensation without taking recourse to the process of filing an application under Section 15 read with Section 18 of the NGT Act before the NGT.

61. Sri Verma has submitted that 'water pollution' is included in the term 'water' occurring in item - 17 of List - II contained in Schedule 7 appended to the Constitution of India, and therefore, it is a State subject. We do not find it necessary to go into the question whether the term 'water' occurring in item - 17 of List-II contained in Schedule 7 appended to the Constitution of India would include 'water pollution' or not, as in any case, the entries merely provide that the State would have the authority to enact a law on the subject. In the present case, the State has not enacted any such law as may empower the State Pollution Control to impose and recover environmental compensation from any industry.

62. Sri Verma has drawn our attention to the directive principles of State policy contained in Part IV of the Constitution of India. Article 48-A provides that the State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country. Part IV-A of the Constitution of India enlists fundamental duties and Article 51-A(g) provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. He has submitted that the State Authorities have to strike a balance between sustainable development and protection of environment. The State has to ensure that a polluter pays compensation for any damage caused by him to the environment. However, these submissions do not

justify the exercise of an adjudicatory power by the Pollution Control Board, which power has been conferred upon the NGT by the Statute, i.e. NGT Act and no statute has conferred such a power on the Pollution Control Board.

63. The learned Counsel for the State Pollution Control Board has also submitted that Chapter VI of the Air Act contains provisions regarding penalties and procedure and it provides that the adjudicating officer may impose penalty. The power to impose penalty under the Air Act vests in the Adjudicating Officer. He has also submitted that in case any industry operates without consent of the Board, it may be prosecuted. However, in the case of other violations, penalty can be imposed by the Adjudicating Officer without prosecution.

64. Chapter VI of the Air Act contains Sections 37 to 46. Section 37 (1) of the Air Act provides that "*Whoever contravenes or does not comply with the provisions of Section 22 or directions issued under Section 31-A, shall, in respect of each such contravention, be liable to penalty which shall not be less than ten thousand rupees, but which may extend to fifteen lakh rupees.*"

65. Section 28 of the Air Act provides for penalties for the following specific acts:—

> "*(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board;*
>
> *(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act;*
>
> *(c) damages any works or property belonging to the Board;*
>
> *(d) fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer or other employee for the purposes of this Act;*
>
> *(e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-section (1) of Section 23;*
>
> *(f) fails in giving any information which he is required to give under this Act, makes a statement which is false in any material particular, shall be liable to penalty which shall not be less than ten thousand rupees, but which may extend to fifteen lakh rupees.*"

66. Section 38-A of the Air Act contains provisions for penalty for contravention by Government Departments. Section 39 deals with Penalties for contravention of certain provisions of the Act.

67. Section 39-A of the Act provides as follows:—

"39-A. Adjudicating officer.—(1) The Central Government, for the purposes of determining the penalties under Sections 37, 38, 38 -A and Section 39, shall appoint an officer not below the rank of Joint Secretary to the Government of India or a Secretary to the State Government to be the adjudicating officer, to hold an inquiry and to impose the penalty in the manner, as may be prescribed:

Provided that the Central Government may appoint as many adjudicating officers as may be required.

(2) The adjudicating officer may summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person concerned has contravened the provisions of this Act, he may determine such penalty as he thinks fit under the provisions of Sections 37, 38, 38-A or 39, as the case may be:

Provided that no such penalty shall be imposed without giving the person concerned a reasonable opportunity of being heard.

(3) The amount of penalty imposed under the provisions of Sections 37, 38, 38-A and 39, shall be in addition to the liability to pay relief or compensation under Section 15 read with Section 17 of the National Green Tribunal Act, 2010 (19 of 2010)."

68. Thus it is clear that the Adjudicating Officer has the statutory power to adjudicate the penalty to be imposed in accordance with the statutory provisions. However, the statute does not confer any adjudicatory power on the Pollution Control Board. Therefore, the adjudicatory powers of the Adjudicating Officer are not relevant for deciding whether the Pollution Control Board has any adjudicatory powers.

69. Now we proceed to consider the decision in the case of *Paryavaran Suraksha Samiti* v. *Union of India*, (2017) 5 SCC 326, in which the Hon'ble Supreme Court has granted liberty to private individual(s) and organizations, to address complaints to the Pollution Control Board if any industry is in default. On the receipt of any such complaint, the Pollution Control Board concerned shall be obliged to verify the same and take such action against the defaulting industry, as may be permissible in law. Such action would be in addition to the discontinuation of industrial activity forthwith. The Hon'ble Supreme Court further provided that the concerned Benches of the National Green Tribunal will maintain running and numbered case files, by dividing the jurisdictional area into units to supervise the

complaints of non-implementation of the directions issued by the Hon'ble Supreme Court and the cases will be listed periodically. The Pollution Control Boards were also directed to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters. Liberty was granted to private individuals, and organizations, to approach the Bench concerned of the jurisdictional National Green Tribunal, for appropriate orders, by pointing out deficiencies, in implementation of the above directions issued by the Hon'ble Supreme Court. It is in furtherance of the aforesaid directions that Original Application No. 593/2017, *Paryavaran Suraksha Samiti* v. *Union of India*, was registered before the National Green Tribunal, Principal Bench, New Delhi which is still continuing and directions are issued in the said case from time to time.

70. When the Hon'ble Supreme Court has directed in *Paryavaran Suraksha Samiti* (Supra) that private individual(s) and organizations, can submit complaints to the Pollution Control Board if any industry is in default and on receipt of any such complaint, the Pollution Control Board concerned shall be obliged to verify the same and take such action against the defaulting industry, as may be permissible in law, the Pollution Control Board can only take action as is permissible in law, which is to issue preventive directions contemplated by Section 33-B of the Water Act and Section 31-A of the Air Act and filing an application for compensation before the NGT under Section 15 read with Section 18 of the NGT Act. Passing an order by the Board imposing the liability for payment of compensation from the industry is not permissible in law and in *Paryavaran Suraksha Samiti* (Supra), the Hon'ble Supreme Court has not directed the Board to pass any order which is not permissible in law.

71. On 31.08.2018, the National Green Tribunal has issued the following directions in the aforesaid case:—

> *"(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.*
>
> *(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 appropriate directions issued. This process may be a continuous process.*

(iii) It must be ensured that STPs, CETPs and ETPs are functional and meet the requisite standards.

(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.

(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.

(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.

(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 filing.ngt@gmail.com."

72. Again in the order dated 28.08.2019 passed by the NGT in the case of *Paryavaran Suraksha Samiti* (Supra), the NGT referred to two reports - first report dated 30.05.2019 updated on 19.07.2019 prepared by the Central Pollution Control Board regarding status of setting up of ETPs/CETPs/STPs and methodology for assessing environmental compensation for discharge of pollutants in water bodies and other report dated 14.08.2019 with regard to monitoring of CETPs. Extracts of the report on the scale of environmental compensation were quoted in para 14 of the order passed by the National Green Tribunal which is as follows:—

"1. Report dated 30.05.2019 updated on 19.07.2019

13. According to updated report dated 19.07.2019, out of 62,897 number of industries requiring ETPs, 60,944 industries are operating with functional ETPs and 1949 industries are operating without ETPs. 59,258 industries are complying with environmental standards and 1,524 industries are noncomplying. There are total 192 CETPs, out of which 133 CETPs are complying with environmental standards and 59 CETPs are non-complying. There

are total 13,709 STPs (Municipal and other than municipal), out of which, 13,113 STPs are complying with environmental standards and 637 STPs are non-complying 73 CETPs in construction/proposal stage, whereas, for STPs, 1164 projects (municipal and non-municipal) are under construction/proposal stage.

14. A report has also been prepared on the scale of environmental compensation to be recovered from individual/authorities for causing pollution or failure for preventing causing pollution, apart from illegal extraction of ground water, failure to implement Solid waste Management Rules, damage to environment by mining and steps taken to explore preparation of an annual environmental plan for the country. Extracts from the report which are considered significant for this order are:

"I. Environment Compensation to be levied on Industrial Units

Recommendations

The Committee made following recommendations:

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

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

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

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

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

NCR.

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

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

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

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

Class of the City/Town	*Mega-City*	*Million-plus City*	*Class-I City/Town and others*
Minimum and Maximum values of EC (Total Capital	*Min. 2000 Max. 20000*	*Min. 1000 Max. 10000*	*Min. 100 Max. 1000*

Cost Component) recommended by the Committee (Lacs Rs.)			
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	*Min. 2 Max. 20*	*Min. 1 Max. 10*	*Min. 0.5 Max. 5*

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

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

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

* * *

73. After referring to the aforesaid reports, the National Green Tribunal issued the following directions:—

"(i) The Environmental compensation regime fixed for industrial units, GRAP, solid waste, sewage and ground water in the report dated 30.05.2019 is accepted and the same may be acted upon as an interim measure.

(ii) SPCBs/PCCs may ensure remedial action against noncompliant CETPs or individual industries in terms of not having ETPs/fully compliant ETPs or operating without consent or in violation of consent conditions. This may be overseen by the CPCB. CPCB may continue to compile information on this subject and furnish quarterly reports to this Tribunal which may also be uploaded on its website.

(iii) All the Local Bodies and or the concerned departments of the State Government have to ensure 100% treatment of the generated sewage and in default to pay compensation which is to be recovered by the States/UTs, with effect from 01.04.2020. In default of such collection, the States/UTs are liable to pay such compensation. The CPCB is to collect the same and utilize for restoration of the environment.

(iv) The CPCB needs to collate the available data base with regard to ETPs, CETPs, STPs, MSW facilities, Legacy Waste sites and prepare a river basinwise macro picture in terms of gaps and needed interventions.

(v) The Chief Secretaries of all the States/UTs may furnish their respective compliance reports on this subject also in O.A. No. 606/2018."

74. Shri Verma has submitted that the Pollution Control Board is levying environmental compensation in accordance with the aforesaid directions issued by the National Green Tribunal.

75. We are unable to accept the aforesaid submission of Sri. Verma, as the directions issued by the NGT do not contain any direction to the State Pollution Control Board to recover compensation. Secondly, adjudication of the liability for payment of compensation is a statutory function and the statute has conferred this adjudicatory power on the NGT. When the Statute has not conferred this power upon the State Pollution Control Board, this power cannot be conferred on the State Board by the NGT.

76. In *Benarsi Silk Palace* v. *Commr. of Income Tax*, (1964) 52 ITR 220 (All), this Court has held that:—

"Jurisdiction could be conferred only by statute and not by consent and acquiescence. Since jurisdiction is conferred upon Income Tax Officer to proceed under Section 34 (1) only if he issues

a notice an assessee cannot confer jurisdiction upon him by waiving the requirement of a notice because jurisdiction cannot be conferred by consent or acquiescence."

77. In *Chiranjilal Shrilal Goenka* v. *Jasjit Singh*, (1993) 2 SCC 507, the Hon'ble Supreme Court has observed as under:—

"17. …In A.R. Antulay *v.* R.S. Nayak, *[(1988) 2 SCC 602] when a Constitution Bench directed the High Court Judge to try the offences under the Prevention of Corruption Act with which the petitioner therein was charged and the trial was being proceeded with, he questioned by way of writ petition the jurisdiction of this Court to give such a direction. A Bench of seven judges per majority construed the meaning of the word ''jurisdiction'. Mukharji, J. as he then was, speaking per himself, Oza and Natarajan, JJ. held that the power to create or enlarge jurisdiction is legislative in character. So also the power to confer a right of appeal or to take away a right of appeal. The Parliament alone can do it by law and no court, whether superior or inferior or both combined, can enlarge the jurisdiction of a court and divest a person of his rights of appeal or revision. Ranganath Mishra, J. as he then was, held that jurisdiction comes solely from the law of the land and cannot be exercised otherwise. In this country, jurisdiction can be exercised only when provided for either in the Constitution or in the laws made by the legislature. Jurisdiction is thus the authority or power of the court to deal with a matter and make an order carrying binding force in the facts. Oza, J. supplementing the question held that the jurisdiction to try a case could only be conferred by law enacted by the legislature. The Supreme Court could not confer jurisdiction if it does not exist in law. Ray, J. held that the Court cannot confer a jurisdiction on itself which is not provided in the law. In the dissenting opinion Venkatachaliah, J., as he then was, lay down that the expression jurisdiction or prior determination is a "verbal coat of many colours". In the case of a tribunal, an error of law might become not merely an error in jurisdiction but might partake of the character of an error of jurisdiction. But, otherwise, jurisdiction is a ''legal shelter' and a power to bind despite a possible error in the decision. The existence of jurisdiction does not depend on the correctness of its exercise. The authority to decide embodies a privilege to bind despite error, a privilege which is inherent in and indispensable to every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it be wrong. Thus this Court laid down as an authoritative proposition of law that the jurisdiction could be conferred by statute and this Court cannot confer jurisdiction or an authority on a tribunal. In that*

case this Court held that Constitution Bench has no power to give direction contrary to Criminal Law Amendment Act, 1952. The direction per majority was held to be void."

78. In *Jagmittar Sain Bhagat* v. *Health Services, Haryana*, (2013) 10 SCC 136, it was held that:—

"9. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation. The court cannot derive jurisdiction apart from the statute. In such eventuality the doctrine of waiver also does not apply. (Vide United Commercial Bank Ltd. *v.* Workmen, *[1951 SCC 364]*, Nai Bahu *v.* Lala Ramnarayan, *[(1978) 1 SCC 58]*, Natraj Studios (P) Ltd. *v.* Navrang Studios, *[(1981) 1 SCC 523] and* Kondiba Dagadu Kadam *v.* Savitribai Sopan Gujar, *[(1999) 3 SCC 722].)"*

79. In *Kantha Vibhag Yuva Koli Samaj Parivartan Trust* v. *State of Gujarat*, (2023) 13 SCC 525, the Hon'ble Supreme Court held that:—

"18. Section 14 and Section 15 entrust adjudicatory functions to NGT. NGT is a specialised body comprising of judicial and expert members. Judicial members bring to bear their experience in adjudicating cases. On the other hand, expert members bring into the decision-making process scientific knowledge on issues concerning the environment. In Hanuman Laxman Aroskar *v.* Union of India, *[(2019) 15 SCC 401], a two-Judge Bench of this Court noted that NGT is an expert adjudicatory body on the environment.*

19. The Court held:

"133. The NGT Act provides for the constitution of a tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment. …

134. NGT is an expert adjudicatory body on the environment."

NGT does not have a dearth of "expertise" when it comes to the issues of environment.

20. Section 15 empowers NGT to award compensation to the

victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative Expert Committees. Expert Committees may be appointed to assist NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to NGT and cannot be delegated to the administrative authorities. Adjudicatory functions assigned to the courts and tribunals cannot be hived off to administrative committees. In Sanghar Zuber Ismai *v.* Union of India, *[(2021) 17 SCC 827], a three-Judge Bench of this Court noted that NGT cannot refuse to hear a challenge to an environmental clearance under Section 16(h) of the NGT Act and delegate the process of adjudicating on compliance to an Expert Committee.*

21. The Court held:

"7. ... NGT has not dealt with the substantive grounds of challenge in the exercise of its appellate jurisdiction. Constitution of an Expert Committee does not absolve NGT of its duty to adjudicate. The adjudicatory function of NGT cannot be assigned to committees, even Expert Committees. The decision has to be that of NGT. NGT has been constituted as an expert adjudicatory authority under an Act of Parliament. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the tribunal."

22. NGT has in the present case abdicated its jurisdiction and entrusted judicial functions to an administrative Expert Committee. An Expert Committee may be able to assist NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by NGT. This is not a delegable function...."

80. After the aforesaid pronouncement of law made by the Hon'ble Supreme Court, there is no scope to doubt that the adjudicatory duties for ascertaining the liability for payment of environmental compensation under Section 15 of the NGT Act have to be performed by the NGT alone and the NGT cannot delegate this duty to the State Pollution Control Board.

81. Sri Verma has provided a compilation of containing photocopies of 13 judgments running into 396 pages, but he has not referred to any of those judgments in his submissions and the compilation does not have any brief note or index which mentions the ratio or the relevant portion of the judgment. Therefore, we are not referring to those judgments. No other point was pressed before us.

82. In view of the foregoing discussion, we hold that the State Pollution Control Board has no power to impose environmental

compensation upon any person or Industry and it can merely file an application before the NGT under Section 15 read with Section 18 of the NGT Act for issuance of a direction to the person concerned for payment of compensation.

83. Accordingly, all the Writ Petitions are allowed. All the orders passed by the State Pollution Control Board imposing environmental compensation upon the petitioners, which are under challenge in the Writ Petitions, are quashed. The State Pollution Control Board will be at liberty to file applications before the NGT for award of compensation. Costs made easy.

84. Before parting, it is worthwhile to put on record that Entry 6 and 17 of List II of Seventh Schedule of the Constitution of India give exclusive right to the State Legislature to frame laws with respect to the Water Pollution. However, Article 252 of the Constitution of India provides as under:—

> *"252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State*
>
> *(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.*
>
> *(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State."*

85. It appears that in pursuance of Article 252 (1) of the Constitution of India, the Legislatures of the State of Assam, Bihar, Gujarat, Haryana, Himachal Pradeh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal have passed a resolution that the Parliament may make a law regulating Water Pollution in their States and accordingly, the Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974.

86. There does not appear to be anything on record to indicate that

the House of Legislature of the State of Uttar Pradesh has passed or adopted any resolution in the above perspective.

87. Insofar as National Capital Region (NCR) is concerned, the Parliament has recently promulgated a legislation on The Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 which ousts or dilutes the jurisdiction of National Green Tribunal (NGT) to the extent of areas governed under this Act. Thus, a situation of overlapping with respect to the redressal mechanism has crept in which requires a clarification and guidance.

88. We hope and trust that the laws regulating Pollution Control are streamlined and made effective by rectifying the legislative or executive lapses, if any.

———

† Lucknow Bench

ANNEXURE-R-6

2025 INSC 923

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

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

DELHI POLLUTION CONTROL COMMITTEE ...APPELLANT(S)

VERSUS

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

WITH

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

J U D G M E N T

Contents

1. Introduction.

1. The Delhi Pollution Control Committee (DPCC)[1] is in appeal against the judgment of the Division Bench of the High Court holding that it is not empowered to levy compensatory damages in exercise of powers under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981[2] on the ground that such an action amounts to imposition of penalty provided for in Chapters VII and VI of the respective Acts, and as such, procedure contemplated thereunder will be the only method for imposing and collecting compensatory damage.

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

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

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

2. Facts.

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

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

3. Single Judge's Judgement and Orders.

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

[3] 2012 (195) DLT 177.
[4] Hereinafter referred to as *Splendor.*

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

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

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

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

4. Impugned Order of the Division Bench.

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

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

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

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

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

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

5. Submissions.

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

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

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

[5] (2000) 6 SCC 213, para 13-17.

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

7.1 Counsel for M/s Laxmi Buildtech Pvt Ltd[7] has submitted that they have neither violated nor acted in breach of any provision of environmental laws and therefore they cannot be subjected to any penalty or criminal prosecution. Counsel for other respondents further submitted that they have deemed consent as well as EIA clearance from the Ministry. They have also submitted that imposition and collection of damages by the State Boards is outside the powers vested in them under the Water and Air Acts.

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

[6] *State of MP v. Centre for Environment Protection Research & Development,* (2020) 9 SCC 781.
[7] Civil Appeal No. 2001 of 2013.
[8] *Chandra Kishore Jha v. Mahavir Prasad & Ors*, (1999) 8 SCC 266.

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

6. Issue.

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

7. Existing Legal Regime for Pollution Control in India.

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

> ***"Section 17. Functions of State Board*** *– (1) Subject to the provisions of this Act, the functions of a State Board shall be—*
> *(a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;*
> *(b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;*
> *(c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;*
> *(d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;*
> *(e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;*
> *(f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;*
> *(g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;*
> *(h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;*

(i) to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;
(j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;
(k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;
(l) to make, vary or revoke any order—
(i) for the prevention, control or abatement of discharges of waste into streams or wells;
(ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or adopt such remedial measures as are necessary to prevent, control or abate water pollution;
(m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;
(n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;
(o) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.
(2) The Board may establish or recognize a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents."

10. Section 17 of the Air Act[9], substantially similar to its equivalent under the Water Act, also indicates the crucial

[9] Section 17 of Air Act states –
17. Functions of State Boards.— *(1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974, the functions of a State Board shall be—*
(a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;
(b) to advise the State Government on any matter concerning the prevention, control or abatement relating to air pollution;

responsibilities of the State Boards in discharge of their mandate. Chapter V of the Water Act and Chapter IV of the Air Act include provisions that prescribe the regulatory powers of the State Boards. These powers include the power to issue, modify or withdraw consent[10], power to obtain information[11], power of entry and inspection[12] and power to take samples[13].

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

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

> *(c) to collect and disseminate information relating to air pollution;*
> *(d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise a mass-education programme relating thereto;*
> *(e) to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;*
> *(f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;*
> *(g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft: Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;*
> *(h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;*
> *(i) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;*
> *(j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.*
>
> *(2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.*

[10] Sections 25, 27 of Water Act and Section 21 of Air Act
[11] Section 20 of Water Act and Section 25 of Air Act
[12] Section 23 of Water Act and Section 24 of Air Act
[13] Section 21 of Water Act and Section 26 of Air Act

directions under Section 33A of the Water Act and Section 31A[14] of the Air Act. These two provisions are identically worded. Section 33A of the Water Act is as under;

> ***"Section 33A. Power to give directions.—****Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.*
>
> *Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—*
>
> *(a) the closure, prohibition or regulation of any industry, operation or process; or*
>
> *(b) the stoppage or regulation of supply of electricity, water or any other service."*

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

[14] Section 31A of the Air Act states –
31A. Power to give directions*.—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.*
Explanation.—For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—
(a) the closure, prohibition or regulation of any industry, operation or process; or
(b) the stoppage or regulation of supply of electricity, water or any other service.

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

> *"2. The Water Act is implemented by the Central and State Governments and the Central and State Pollution Control Boards. Over the past few years, the implementing agencies have experienced some more administrative and practical difficulties in effectively implementing the provisions of the Act. The ways and means to remove these difficulties have been thoroughly examined in consultation with the implementing agencies. Taking into account the views expressed, it is proposed to amend certain provisions of the Act in order to remove such difficulties.…*
>
> *3. The Bill, inter alia, seeks to make the following amendments in the Act, namely:—*
>
> *….*
>
> *(iv) in order to effectively prevent water pollution, the penal provisions of the Act are proposed to be made stricter and bring them at par with the punishments prescribed in the Air (Prevention and Control of Pollution) Act, 1981 as amended by Act 47 of 1987;*
>
> *….*
>
> *(vi) it is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending industry, operation or process or stoppage or regulation of supply of services such as water and electricity;"*

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

14. An appeal against directions issued under Section 33A of the Water Act by the State Board can be filed before the National Green Tribunal under Section 33B, introduced in 2010[16]. Unlike the Water Act there is no specific Appeal provision against directions issued under Section 31A of the Air Act. This asymmetry must be addressed legislatively.

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

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

....

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

....

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

[16] Act 19 of 2010.

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

9. Interpretation of and for Environmental Institutions.

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

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

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

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

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

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

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

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

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

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

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

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

[17] (1996) 3 SCC 212

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

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

(emphasis added)

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

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

[18] (1996) 5 SCC 647

> *environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."*
>
> (emphasis added)

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

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

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

[19] (2005) 13 SCC 186.
[20] (2004) 6 SCC 402

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

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

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

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

[21] 2014 SCC OnLine NGT 13.

> *it was in consequence of such imposition of penalty/ damages that the Units were called upon to furnish bank guarantees for granting of consent. In other words, bank guarantee was required to be furnished in furtherance to the imposition of a penalty or damages in that case. It was not an act de hors the imposition of penalty and had the element of punitive action. In the present case, it is not a consequence of a punitive or penal action but is in exercise of the powers vested in the Board in relation to recalling the conditions of consent and ensuring their implementation while also making compensatory provision for remedying the apprehended wrong to the environment. In the cases in hand, the Board has not imposed any penalty upon the units but has granted consent to them on certain conditions, none of which is punitive. They squarely fall within the power of the Board to prevent and control pollution in consonance with the scheme of the Acts concerned. Thus, on facts, the judgments of the High Court in Splendor (supra) do not have any application to the present case. In any case, we are of the considered view that asking for a bank guarantee as an interim measure for due performance of the conditions of the consent order being compensatory in nature, is not punitive.*
>
> *46. We have already noticed above that there is a clear distinction between a penal and a compensatory provision. In such matters, the paramount question that would normally fall for determination before a court or tribunal would be whether the action contemplated is penal or compensatory. This issue shall have to be decided with reference to the facts of the case, the provisions of the law applicable and the intent of the authority concerned. Once it falls in the 'compensatory' field, then it will necessarily be beyond the purview of penalty…."*
>
> (emphasis added)

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

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

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

> *"173. … However, the principle of restoration of damaged ecosystem would require the States to promote the recovery of threatened species. We are of the considered view that the States would be required to take steps for the identification and effective implementation of active restoration measures that are localised to the particular ecosystem that was damaged. The focus has to be on restoration of the ecosystem as close and similar as possible to the specific one that was damaged.*
>
> *175. We find that, bringing the culprits to face the proceedings is a different matter and restoration of the damage already done is a different matter. We are of the considered view that the State cannot run away from its responsibilities to restore the damage done to the forest. The State, apart from preventing such acts in the future, should take immediate steps for restoration of the damage already done; undertake an exercise for determining the valuation of the damage done and recover it from the persons found responsible for causing such a damage."*
>
> (emphasis added)

11. Principles.

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

[22] (2025) 2 SCC 641

I. There is a distinction between a direction for payment of restitutionary and compensatory damages as a remedial measure for environmental damage or as an *ex-ante* measure towards potential environmental damage on the one hand; and a punitive action of fine or imprisonment for violations under Chapters VII of the Water Act and VI of the Air Act on the other hand.

II. If directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute for example under chapters VII and VI of the Water and Air Acts respectively.

III. Indian environmental law has assimilated[23] the principle of *Polluter Pays* and there is also a statutory incorporation of this principle in our laws.[24] The invocation of this principle is triggered in the situations[25]; i) when an established threshold or prescribed requirement is exceeded or

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

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

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

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

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

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

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

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

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

31. At this stage, we must also take note of the recent 2024 amendments[26] to the Water and Air Acts. Two major changes relevant for our consideration are that of decriminalisation[27] and introduction of the office of "Adjudicatory Officer"[28]. Even after the

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

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

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

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

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

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

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

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

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

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

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

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

[29] (2020) 15 SCC 63

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

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

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

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

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

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

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

39. For the reasons stated above:

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

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

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

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

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

.....J.
[MANOJ MISRA]

NEW DELHI;
AUGUST 04, 2025

ANNEXURE-R-7
(COLLY)
WEB PUBLISHED ONLY

General Framework

For Imposing

Environmental Damage Compensation

CENTRAL POLLUTION CONTROL BOARD

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

Parivesh Bhawan, East Arjun Nagar, Delhi 110032, India

December 2022

PREFACE

Environmental Damage Compensation (EDC) is a tool guided by 'Polluter Pays' principle, wherein a cost is paid by the polluter responsible for polluting environment and causing damage to its components. It is applicable in both cases where the release of pollutants is sudden or gradual over a longer period, recoverable for the site where injuries to natural resources have occurred.

While, the EDC is calculated on case to case basis and various CPCB guidelines exists for specific cases & sectors for calculating damage cost, need was felt for a general framework for guiding the damage assessment and cost estimation process.

This document helps in identifying direct and indirect damages caused to environment due to anthropogenic activities and retroactive application of Environment Compensation (EC) charges. It also details a standard procedure for damage assessment including preliminary investigation, analysis of data, identification of EDC liabilities, assessment of direct & indirect liabilities, assessment of eco-system damages, detailed investigation of damaged site, analysis of detailed data, determination of EDC scenario and cost, identify best achievable remediation and restoration methods, action plan imposing over-all EDC and monitoring of implementation of plan by regulatory bodies.

A standard format for preliminary investigation of damaged area is provided along with instructions. Two checklists of direct and indirect liabilities for 19 types of anthropogenic hazards are also provided. Indicative methods of damage quantification and EDC estimation have been compiled and placed at Appendix IV for easy reference.

This document was prepared in pursuant to the directions of Hon'ble National Green Tribunal via order dated April 24, 2019 in O.A. 606/2018. It is authored by Shri B. Vinod Babu, Divisional Head WM II, CPCB and co-authored by Smt. Garima Sharma, AS, CPCB with editing support from Shri Sameer Arora, Consultant (Engineering), CPCB.

Member Secretary

Central Pollution Control Board

****

CONTENTS

PRELIMINARY FRAMEWORK FOR IMPOSING ENVIRONMENTAL DAMAGE COMPENSATION

1.1 Introduction

Environmental damage means the adverse effects induced on environmental properties (or goods) due to anthropic activity, in this context, environmental goods may be natural resources such as air, soil, surface water, groundwater, flora and fauna, ecosystem, biodiversity and the services they provide to ecosystem or to humans. Some of the ecosystem services are purification, productivity, landscape, climate regulation, nutrient cycling, disturbance prevention and natural mitigation, etc.

Environmental Damage Compensation (EDC) is a cost to be paid by the polluter responsible for causing environmental damage by release of harmful substances or pollutants in excess of stipulated standards due to inadequate control equipment or negligence. Release of pollutants may be sudden or slow and gradual manner in excess of standards over a longer period.

Realising the need for the same, Hon'ble NGT vide its order dated April 24, 2019 in O.A. 606/2018, noted that it necessary to recover cost of environmental damages from identified polluters based on polluter pay principle by undertaking assessment of environmental damage. This concept is needful for effective enforcement of environmental laws.

EDC is also based on the precautionary principle that ensures operators to take appropriate action to prevent environmental damage from occurring. Under the "polluter pays" principle the responsible party will be required to restore environmental damage and also responsible for compensating consequent damages caused on receptors.

It is necessary to ensure that EDC maximize the welfare of receptor population, restoration of environment as well as maintain sustainable environment and eco-systems, however at the same time, scientifically estimated EDC is necessary to justify costs imposed on polluter-pay-principle.

Monetary valuation of environmental damages is a complex process involving multidisciplinary juridical, technical and economic analysis is necessary. Following challenges may arise in assessing environmental damages;

- Establish existence of the damage
- Establish cause-effect link between the damage and the unauthorised or negligent activities;
- Quantify or determine extent of damage;
- Identification of suitable methodologies to valuate damages.

1.2 Environmental Damage Compensation

Environmental Damage Compensation (EDC) is a quantifiable and reasonably estimable future expenditure as on date for restoration of environmental damages caused due to anthropogenic release of pollutants in excess of permissible limits or unauthorised activity. Environmental damage compensation is apportioned to one or more factors relating to degradation of air quality, water resources, soil, groundwater, adverse effect on human health, loss of eco-system services, including damages caused to property, natural assets and productive assets. Thus, EDC includes cost of assessments, cost of restoration and compensation for direct and indirect damages caused to human, property, flora, fauna including ecosystem functions.

1.2.1 Direct Damages

Direct damages or general damages occur through direct interaction of polluting activity with an environmental, social, or economic component. For example, discharge of untreated sewage into a river may lead to a decline in water quality in terms of BOD, DO or rise in bacterial contamination.

1.2.2 Indirect Damages

Indirect or consequential impacts on environment often seen away from source and often occur in pathway of impact. Indirect impacts can also be secondary or even third level impacts. For, example, rainwater run-off over a dumpsite may contaminate a receiving water body with heavy metals or other toxins, which in turn lead to a secondary indirect impact on aquatic flora (phytoplankton) in that water body. This may effect fish population in impacted water body, thereafter, reduction in fish yield may affect income of farming is third level socio-economic impacts.

As discussed, Environmental damage compensation would require monetizing cumulative activities preliminary site investigation, detailed site assessment, restoration and also compensation for environmental and ecological losses arising from direct and indirect damages.

1.2.3 Applicability

Environmental compensation need to be imposed retroactively. Principle of strict liability shall be exercised on the polluter while implementing environment damage compensation. Strict liability is imposition of liability on the polluter without finding a fault such as exceedance of standards, negligence or ill intention.

In cases where two or more persons are liable in respect of damage, principle of joint and several liabilities may be imposed. Under joint and several liability, a State may pursue obligation of EDC

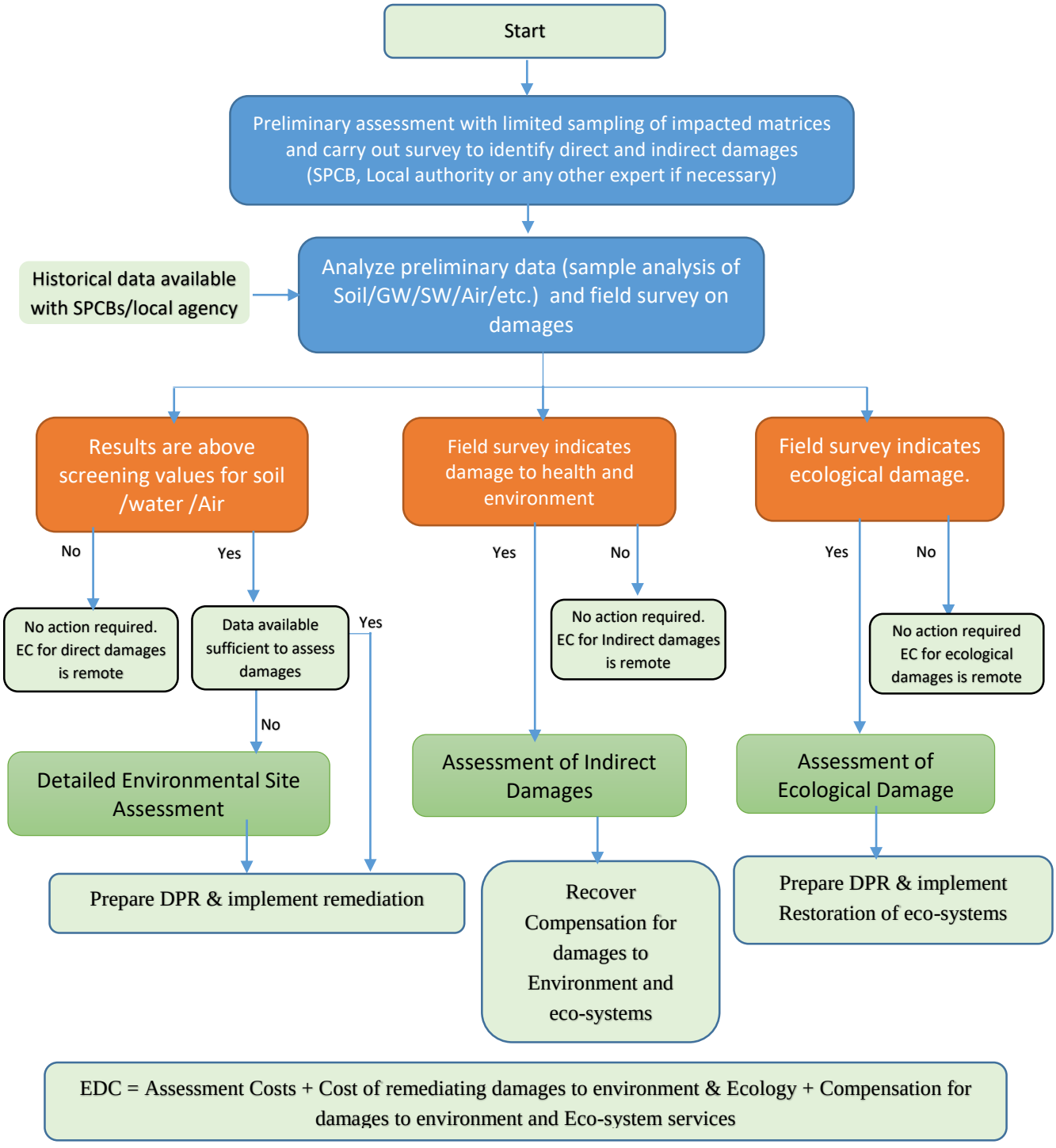
against any one party as if parties were jointly accountable and it becomes responsibility of the defendants to sort out their respective proportions of obligation and payment.

1.3 Scope of EDC & Standard Flow Model for estimating EDC

A standard procedure shall be followed for estimation of damages due to anthropogenic polluting activities. It includes following steps,

i. Preliminary investigation
ii. Analysis of preliminary data
iii. Identification of EDC liabilities
iv. Assessment of direct, indirect liabilities
v. Assessment of eco-system damages
vi. Detailed investigation of damaged site, if required
vii. Analysis of detailed data
viii. Determination of EDC scenario and cost
ix. Identify best achievable remediation and restoration methods
x. Directions/ action plan imposing over-all EDC
xi. Monitoring of implementation of plan by regulatory bodies

The Standard Flow Model for estimating EDC is as presented below,


Start
Preliminary assessment with limited sampling of impacted matrices and carry out survey to identify direct and indirect damages (SPCB, Local authority or any other expert if necessary)
Historical data available with SPCBs/local agency
Analyze preliminary data (sample analysis of Soil/GW/SW/Air/etc.) and field survey on damages
Results are above screening values for soil /water /Air
Field survey indicates damage to health and environment
Field survey indicates ecological damage.
No
Yes
Yes
No
Yes
No
No action required. EC for direct damages is remote
Data available sufficient to assess damages
Yes
No action required. EC for Indirect damages is remote
No action required EC for ecological damages is remote
No
Detailed Environmental Site Assessment
Assessment of Indirect Damages
Assessment of Ecological Damage
Prepare DPR & implement remediation
Recover Compensation for damages to Environment and eco-systems
Prepare DPR & implement Restoration of eco-systems
EDC = Assessment Costs + Cost of remediating damages to environment & Ecology + Compensation for damages to environment and Eco-system services

1.3.1 Preliminary investigation

Following scope of work identified for reconnaissance and preliminary investigation of damaged site;

- To conduct field visits, visual site inspections, review of existing documents, maps and literature and carry out the following activities.
- Current sources of contamination at site and process of release in the influence area.
- Collection of history/background information of the contaminated site
- Basic features of the site i.e. collection of available information on the site like site maps (topographical, geological), hydro-geological information, information from local authorities, information on the type of polluting-sources at site.
- Identification of previous and current land use pattern of the site
- Identification of parameters causing immediate threat to the ecology and environment.
- Discussion with local people and other informed people, district administration, municipal and regulatory authorities, NGOS, etc.
- Selection of the available observation wells (Bore Well) in the watershed covering the site, for monitoring water level and quality monitoring at appropriate locations, & inventory details like total depth of the well, water column; frequency of sampling (pre monsoon/ post monsoon)
- Description of area with respect to existing land use, potential areas of environmental/ecological risk, demographic profile, social economic and environmental conditions of the people in receptor areas, flora and fauna etc.
- Information of prevailing or commonly reported health issues in the area
- Collection of preliminary samples and analysis of soil, sub-soil, surface water, ground water for comprehensive analysis of major ions and heavy metals, organic constituents, pesticides and other relevant parameters related to the contaminated site as per national / international accredited testing procedures.

1.3.2 Analysis of preliminary data

- Based on preliminary survey and sampling, a detailed sampling protocol aimed at assessing the contamination level of the site and to establish the baseline environmental status of the project area shall be prepared. The protocol shall include identification of criteria pollutant (parameters) for analysis, sampling frequency (number of seasons), number of samples, etc. and shall be submitted for approval of concerned authorities.
- Identification of Benchmark /Background samples.
- Outlining the extent of contaminant plume or contaminated area based on field survey and preliminary findings.
- Establishing conceptual site plan/model showing link between source and receptor. It comprises three elements (i) Potential sources of contamination, (ii) Potential receptors that may be harmed and (iii) Potential pathways linking the two

1.3.3 Identification of direct and indirect EDC liabilities

This guidance document provides a broad framework for identifying damages, assessing damages and imposing compensation for environmental damage. Step-wise approach shall be adopted for activities such as preliminary assessment, identification of direct and indirect liabilities, detailed environmental and ecological studies, assessment of damages, calculation of compensation for direct and indirect liabilities.

- Following direct liabilities will be applicable for assessment and restoration;
    - Soil and sediment contamination
    - Groundwater contamination
    - Contamination surface bodies
    - Damages to eco-systems

These ecological impacts may constitute clearing/fragmentation/alteration/destruction of native vegetation, animal habitats, pollution of watercourses and wetlands, sediment, nutrient and pollutant run-off into adjacent vegetation and animal habitats, loss of hollows, nesting and feeding habitats for birds, etc. Some of the activities that may cause ecological damages are as given below;

- Sand mining

- Mining activity
- Industrial discharge of wastewater
- Dumping of hazardous wastes and chemicals
- Deforestation
- Release of air pollutants

- The direct liabilities with respect to Air pollution are,
    - Compensation for release of air pollutants in excess of permitted quantities
    - Compensation for release of toxic gases from process

- Indirect damages are those damages which are not directly accountable to an action and may either be fixed or variable. A few important indirect damages are,
    - Cost of compensating indirect damages
    - Social responsibility for supply of safe drinking water
    - Resettlement/Relocation
    - Loss of life
    - Permanent, temporary, total or partial disability or other injury or sickness
    - Loss of wages due to total or partial disability or permanent or temporary disability
    - Medical expenses incurred for treatment of injuries or sickness
    - Damages to private property
    - Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons
    - Loss to the Government or local authority arising out of, or connected with, the activity causing any damage
    - Local claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems
    - Loss of business or employment or both

- Any other claim arising out of, or connected with environmental and ecological damages due to release of pollutants
- Long term monitoring costs (for options such as monitored natural attenuation)
- Claims on account of harm to milch and draught animals
- Claims on account of harm to aquatic fauna
- Claims for loss due reduced fishing yield in ponds, rivers or sea

Impacts to the environment can be caused through a variety of mechanisms. It is not the intent of this report to capture all possible contamination scenarios that may occur in a multitude of permutations and combinations that may impact the natural resources. However, this report addresses environmental impacts arising from prominent anthropogenic polluting activities which contaminate natural resources and impact receptors. A check-list of environmental damage scenarios and applicable compensation liabilities is placed at Appendix II & III.

1.3.4 Assessment of direct and indirect liabilities

Development of national framework on environmental damage assessment is a complex exercise requiring consultations with multi sectoral experts of environmental economics, remediation, cost estimates, etc. CPCB utilized expertise of Expert Group comprising experts on damage assessment, environmental economics, valuation, etc. A meeting of Expert Group was held on May 16, 2019 at Central Pollution Control Board to guide efforts for exploring development of national framework. It was suggested that a standard procedure for calculating best estimation of damages due to different scenarios of anthropogenic polluting activities need to be developed over time for quantification and estimation of environmental damages.

In case of environmental damages arising due to improper handling of hazardous wastes, guidelines on imposition of environmental liability published by CPCB may be referred. Indicative methods for assessment of environmental damage compensation for air pollution, river pollution, soil and groundwater is placed at Appendix IV. Specific studies would be necessary for assessing EDC depending on nature of damage. Cost for penal or deterrent charges and criminal damages have not addressed in this reference document while estimating EDC.

1.3.5 Assessment of Eco-system liabilities

Quantification of ecological damages is analytical measure of the extent, severity and duration of the damage in terms of alteration, which is an adverse variation with respect to the baseline condition of the natural resources and services; deterioration, which is a partial loss of the ability of the natural resource to provide an ecological or public service; partial destruction, which is the loss of one or more services; and total destruction, which is the loss of all the services. Thus, assessment of eco-system damage is complex and location specific. It is required to be done on case to case basis by collection, compilation and assessment of data on biological environment, ecosystem functions, communities, etc. in the damaged area. In view of time constraint, the same may be done using archive data available with local agencies & concerned institutions.

1.3.6 Detailed investigation of damaged site, if required

Detailed investigation is build up on findings of preliminary investigation, including extent & significance of direct and indirect damages. Detailed assessment should be carried out as per pre-determined sampling protocol approved by concerned authority. Scope of detailed assessment in case of contaminated areas is given below;

- Clearly delineate the boundaries, longitudinal and cross section of the contaminated site through topographic and other engineering surveys and prepare a base map of the site.
- Water, soil, sediment, and air quality assessment - analysis of criteria pollutants
- Collect data on geological, hydrogeological and hydrological features of the contaminated site - if required necessary studies shall be carried out.
- Development of groundwater flow, surface water flow and mass transport models.
- Estimate the quantity of contaminants and their concentrations including secondary pollutants.
- Socio - economic and environmental assessment of the contaminated area.
- Assess the potential environmental/ecological/health impacts on soil, ground water, surface water bodies, population, flora and fauna
- Pathways of contaminant transport, fate of the contaminant and exposure.
- Assessment of toxicity, bioavailability, biodegradability and mobility of contaminants.

- Identification of significant receptors and establishing trigger values.
- Use suitable quantitative or qualitative risk assessment model.

This report does not prescribe detailed methodology for assessing environmental damages. However, an indicative checklist of possible types of damages and parameters indicating indirect impacts on environment is given at Appendix II & III.

1.3.7 Analysis of detailed data

Analysis of data from detailed investigation data will determine the applicable damages for environmental compensation, which should be estimated as per specified methodology, that may be evolved on case to case basis. Some of the indicative methods for assessment of environmental damage compensation for air pollution, river pollution, soil and groundwater are given at Appendix IV.

1.3.8 Determination of EDC scenario and cost

As discussed earlier, environmental damage compensation is cumulative of one or more factors relating to environmental degradation of air quality, water resources, soil, groundwater, adverse effect on human health, loss of eco-system services, including damages caused to property, natural assets and productive assets. Thus, EDC includes cost of assessments, cost of restoration and compensation for direct and indirect damages caused to human, property, flora, fauna including ecosystem functions etc., identified during detailed assessment study.

Environmental Damage Compensation comprises of (i) assessment obligation, (ii) remediation obligation (iii) restoration obligation (iv) compensation to affected third party (v) obligation to compensate damage to natural resources. Thus environmental damage compensation can be calculated as below;

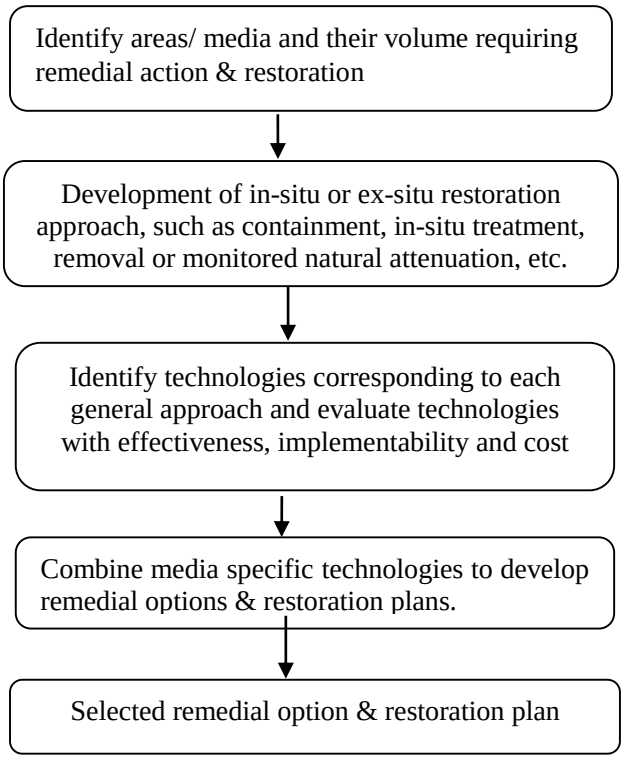
EDC = Assessment Costs + Cost of remediating damages to environment & ecology + Compensation for damages to environment and eco-system services

The concerned regulatory agency (or SPCBs/PCCs) may approve applicable EDC scenario.The key parameters that will ultimately dictate the level and costs of remediation activities are degree of ecological damage, number of impacted receptors, impacted media volumes, volume of indirect damage liabilities,

pollutants (constituents) of concern, number of contaminants, impact matrix, current and intended future land use, migration of contamination, etc.

1.3.9 Identify best achievable remediation and restoration methods & its cost

Having completed the preliminary and detailed site assessment as above, the polluter may be liable to undertake remediation and restoration activity, as applicable. A remediation plan is to be prepared specifying most applicable remedial technology to bring the site-specific contamination levels down to no risk or an accepted risk level (based on environment/ human health scenario) and estimated costs for remediation. Upon review of the same, the concerned agency (or SPCB/PCC) may specify remediation objective and site specific target levels for restoration for specific constituents of concerns along with intermediate target levels vis-à-vis time schedule so as to monitor the progress of remediation. Evaluation and fixation of site specific target levels for restoration of environmental and ecological damages may be specified by concerned SPCB/PCC on their own or by constituting an Expert Committee thereof. A restoration plan of the site may be evaluated by concerned SPCB/PCC or Expert Committee and target levels fixed for intermediate monitoring. An indicative approach for arriving at an appropriate remediation option and restoration plan is presented in the flow sheet below,



Expert Committee may also finalize applicable compensation liabilities due to indirect damages based on detailed investigation studies.

Once the plan with site specific target levels is approved by the agency (or SPCBs/PCCs), responsible party shall undertake site restoration accordingly under supervision of agency or any third party appointed for the same. During such period, few sampling and analysis shall also be carried out by the SPCB/PCC for validation.

1.3.10 Directions/ action plan imposing over-all EDC

Upon receipt of the assessment reports, which shall comprise of damage assessment, remediation objective and restoration plans along with the cost estimation and time schedule, the concerned agency (SPCB/PCC) may firm up the remediation objective and duly approve the plan for implementation by specifying site specific target levels. Directions may be issued to responsible party(ies), as necessary.

1.3.11 Monitoring of implementation of plan by regulatory bodies

The approved restoration plan and recovery of environmental compensation for damages caused to environmental properties shall be executed by the responsible party(ies), which may be monitored by SPCB/PCC as per the time schedules and phase wise remedial targets thereof as declared in the assessment report so as to meet the said remediation objective/standard. During such monitoring, few sampling and analysis thereof shall also be carried out by the SPCB/PCC for validation.

***

APPENDIX I

FORM - I

FORMAT FOR PRELIMINARY INVESTIGATION OF DAMAGED AREA

1.	Date and time of inspection	
2.	Location of damaged area	
3.	Coordinates of damaged area	
4.	Nature of damage	
5.	Possible cause of damage	
6.	Single source contamination or multi source contamination	
7.	Estimated date or duration of activity resulting in damage	
8.	Impacted receptors (tick whichever applicable)	□ Air □ Surface water …… □ Drinking water □ Ground water □ Soil □ Sediment □ Flora □ Fauna

		□ Cattle □ Crops/ Agriculture land/ Orchid □ Infrastructure/property □ Others…….
9.	Pollutants suspected to be discharged	
10.	Pollutants of most concern	
11.	Estimated quantification of damage media (in terms of area, volume, numbers, percentage, as applicable and possible)	
12.	Land use (industrial, commercial, agricultural, residential, combinations thereof, etc.) Specify if needed.	Historic Current Future
13.	Site situation (climatic conditions, hydrology, groundwater flow, surface waters, underground structures, etc. in damaged area)	
14.	Type of geology (sand, clay silt, weathered rocks, fracture rocks, competent rocks)	
15.	Depth to ground water (m) (if applicable)	
16.	Offsite migration of pollutant possible, specify	Yes / No
17.	Location of damaged area with respect to nearby wetland or eco-sensitive areas (if any)	

18.	Location of damaged area with respect to sensitive receptors that could possibly require remedial actions such as, potable water supply, surface water bodies, residential area, sensitive ecosystem, etc.	
19.	Any immediate measure taken to control damage, specify	Yes / No
20.	Any other observation requiring mention,	
21.	Documents to be attached (if available) ▪ Relevant permits, consent, license, etc. (if applicable) ▪ Site layout map ▪ Photographs ▪ Videos	

Signature

Name & designation of team members

Date & Place

INSTRUCTIONS FOR FILLING FORM - I

- This form serves as a preliminary factsheet to gather general information on damaged site
- The inspecting team shall perform dry inspection including observation of damaged site, neighborhood & operations/ activities in the area, interviewing stakeholders/site/receptors representatives, collecting records & reports available, taking photographs or making videos, etc.
- Preliminary inspection can be a rapid walk-through inspection or slightly more elaborated, if required.
- While informing ‘nature of damage’ and ‘possible cause of damage’, an estimate may be made on most possible scenarios that may have occurred resulting in environmental damage to the site. In case, team fails to make an estimate, a list of probable scenarios may be prepared.

- ‘Pollutants suspected to be discharged’, it is required to mention all the pollutants suspected to have been discharged during the incident. However, with respect to information under ‘Pollutants of most concern’, it is to remember that it is the function of nature of pollutant, its impact of human & environment, toxicity and concentration at damaged site. For example, it may include but not limited to a pollutant which is carcinogenic or hazardous or radioactive. It may include toxic pollutants which are pollutants or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.
- ‘Estimated quantification of damage media’, in case air quality is affected, it may be reported in terms of area and population under direct impact and physical observations on air quality.

****

APPENDIX II

CHECKLISTS OF DIRECTLY IMPACTED ENVIRONMENTAL COMPONENTS

The most possible scenarios that may occur due to anthropogenic activities resulting in damage to environment and applicable compensation scenarios are as given in Tables below,

Type of damage	Directly impacted environmental properties (tick the appropriate box)					
	Ambient air	Ground Water	Surface Water	Soil	Sediment	Ecology
Effluent discharge from an industry exceeding limits/ untreated or inadequate pollution control device	√ (VOCs & Acidic fumes)	√	√	√	√	√
Emission from an industry or incinerator; absent or inadequate pollution control device	√			√	√	√
Un-scientific dumping of municipal solid waste	√	√	√	√		√
Untreated sewage in water bodies		√	√		√	√
Improper disposal of C&D Waste	√					
Leakage or failure of sanitary and secured Landfills		√		√		
Unscientific recycling of E-Waste	√	√	√	√	√	

Type of damage	Directly impacted environmental properties (tick the appropriate box)					
	Ambient air	Ground Water	Surface Water	Soil	Sediment	Ecology
Improper disposal of bio-medical waste						√
Biomass burning	√			√		
Vehicular emissions exceeding limit	√					
Diesel generator sets exceeding limit	√					
Road dust & soil dust	√					
Illegal Hazardous waste dumping by industry		√	√	√	√	√
Chemical spills or leakages	√ (Gases, VOCs & fumes)	√	√	√	√	√
CETP – Failing to meet standards (case to case basis)			√		√	√
Fire, explosions, Reactions of hazardous substances/wastes (case to case basis)	√		√	√		√
Marine spills			√	√ Beach	√	√
Mining Activity	√	√	√	√	√	√

APPENDIX III

CHECKLIST – APPLICABLE COMPENSATIONS FOR INDIRECT IMPACTS

Type of Environmental damage	Parameters indicating indirect liabilities for compensation												
	Supply Drinking water	Harm to Flora & fauna, animals	Property damage	Loss of ecological services	Resettlement/ relocation/ Relief	Health	Injury /sickness	Loss of life	Loss of recreation	Reduced yield fishing / agriculture	Loss of earnings	Medical expenses	Other claims indirect losses
Un-acceptable Effluent discharge from an industry	√		√	√		√	√	√	√	√	√	√	√
Un-acceptable Emission from industry or incinerator	√	√	√	√	√	√	√	√	√	√		√	√
Un-scientific dumping of municipal solid waste	√	√	√		√	√	√	√	√	√			Monitoring etc.
Untreated sewage in water bodies	√	√		√		√			√	√			

Type of Environmental damage	Parameters indicating indirect liabilities for compensation												
	Supply Drinking water	Harm to Flora & fauna, animals	Property damage	Loss of ecological services	Resettlement/ relocation/ Relief	Health	Injury /sickness	Loss of life	Loss of recreation	Reduced yield fishing / agriculture	Loss of earnings	Medical expenses	Other claims indirect losses
Improper disposal of C&D Waste		√	√	√		√							Noise
Leakage or failure of sanitary and secured Landfills	√	√		√	√	√	√	√	√	√			Visual nuisance, Odour
Unscientific recycling of E-Waste	√	√		√		√	√	√		√			
Improper disposal of bio-medical waste	√	√		√		√	√	√		√			
Biomass burning		√				√	√						√
Diesel generator sets exceeding limit		√		√		√	√						√
Road dust & soil dust		√	√			√				√			

Type of Environmental damage	Parameters indicating indirect liabilities for compensation												
	Supply Drinking water	Harm to Flora & fauna, animals	Property damage	Loss of ecological services	Resettlement/ relocation/ Relief	Health	Injury /sickness	Loss of life	Loss of recreation	Reduced yield fishing / agriculture	Loss of earnings	Medical expenses	Other claims indirect losses
Illegal Hazardous waste dumping by industry	√	√	√	√	√	√	√	√	√	√	√	√	
Chemical spills or leakages	√	√	√	√	√	√	√	√	√	√	√	√	√
CETP – Failing to meet standards (case to case basis)		√				√	√		√	√	√	√	√
Fire, explosions, Reactions of hazardous substances/wastes (case to case basis)		√	√	√	√	√	√	√	√		√	√	√
Marine spills		√	√	√		√	√		√	√	√		√
Mining Activity	√	√	√		√	√	√	√	√	√	√	√	√
Deforestation	√	√		√	√	√			√	√	√		√

APPENDIX IV

INDICATIVE METHODS OF DAMAGE QUANTIFICATION & EDC ESTIMATION METHODS

1. AMBIENT AIR

1.1 Applicability

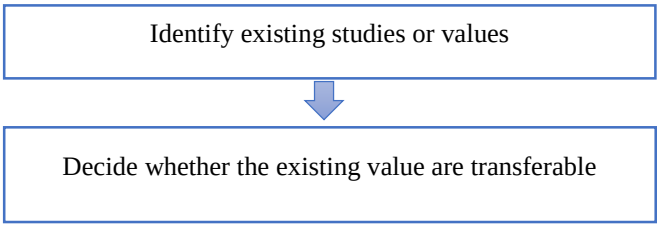
- Discharge of air pollutants from ducted and/or non-ducted emissions above prescribed limits or general standards
- Deposition of toxic particulates on land from localized air polluting source (lead, mercury, cadmium, etc.)
- Formation of complex secondary pollutants due to nucleation, condensation and other chemical reactions of primary pollutants discharged from a polluting activity

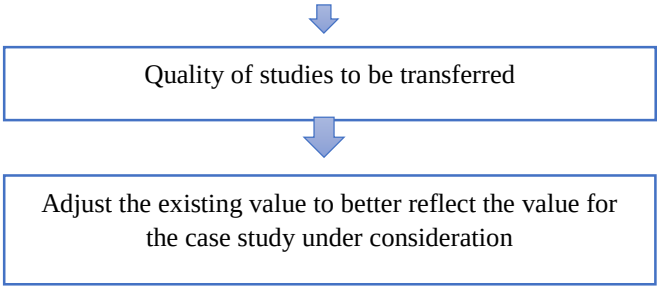
1.2 Quantification

The monitoring & analysis of applicable parameters (as per prescribed norms) upwind, mid site and downwind may be conducted as per established methods of measurement. Dispersion model such as AERMOD, CALPUFF, CALINE, etc. can be used to determine the change in concentration over the specific area. For estimating affected population, ArcGIS can be used or else can be done manually using population details available in public domain for damaged site and downwind area.

1.3 Estimating cost due to mortality & morbidity using direct cost transfer method

This method is based on the method of transferring available information from already completed studies in another location or context. It is economical and less time consuming than other available method for economic assessment. It can be used as a screening process to decide whether original valuation study would be required or not. Steps for valuation through this method are as presented below,





For ease of understanding, a case study by Muller & Mendelssohn, 2007 is used for estimating damage cost due to mortality and morbidity (Chronic bronchitis, Cardiac issues etc) due to air pollution in an area using direct cost transfer method. Assuming that the conditions at the referred site are similar in total or portion to damaged site under study, we utilize cost estimates of referred study to deduce cost per tonne of pollutant emitted reworked to Indian context by considering exchange rates and inflation.

Damage cost on Health (Rs/tonnes) = Damage cost per tonne (USD, 2011) × Exchange rates × inflation

It is elucidated as below,

Damage cost due to mortality and morbidity per tonne of emitted pollutants				
Sl. No	**Pollutant**	**Damage cost per tonne (USD,2011)***	**Damage cost per tonne (INR)****	**Damage cost per tonne (2019)*****
Mortality				
1	NOx	319.82	22,084	36,062.15
2	VOC	143.79	9,929	16,213.6
Morbidity				
1	NOx	5.07	350	571.53
2	VOC	2.24	155	253.11

**Findings of referred study*

***Exchange rate applied*

****Inflation rate applied*

1.4 Estimating cost of life & health through value of statistical life and disability adjusted life year

Value of statistical life (VSL) is the amount people are willing to pay to reduce risk so that on average one less person is expected to die from the risk. Alternatively, it can be thought of as how much people are willing to pay for safety. VSL estimates are based on studies of the wage compensation for occupational hazards or studies that elicit people's willingness to pay for mortality risk reduction directly. On the other hand disability-adjusted life year (DALY) is a measure of overall disease burden, expressed as the number of years lost due to ill-health, disability or early death. Both of these values are powerful indicators for understanding impacts of air pollution on affected population. There are numerous studies done for calculating VSL. With regard to DALY, values are published in WHO publication "Global Burden of Disease'.

The mortality cost is calculated using following equation,

$Tc\ (Mortality) = Pa \times VSL \times (1+i)^n$

Where,

Tc = Total mortality cost

Pa = Affected Population (calculated as below)

VSL = Value of statistical life (Using data from existing literature)

i = inflation rate

n = number of years

The morbidity cost is calculated using following equation,

$Tc\ (Morbidity) = Pa \times DALY \times Ai \times (1+i)^n$

Where,

Tc = Total morbidity cost

Pa = Affected population (calculated as below)

DALY= Disability Adjusted Life Years (Using data from WHO database)

Ai = Annual Income (Using data from latest National / State economic survey reports)

i = inflation rate;

n = number of years

The value for Pa is calculated using equation below,

Pa = AF × Bi × Pe

Where,

Pa= Affected Population

Pe, Exposed Population = (Total population * ambient concentration of pollutant / relative risk)

Bi = Baseline Incidence*

AF, Attribution Factor** = ((Relative Risk- 1) / Relative risk)

*It is expected level of disease that is usually present in a community. Baseline Incidence per 100,000 population is based on threshold limit given in WHO guidelines.

**Attributable risk is the rate (proportion) of a disease or other outcome in exposed individuals that can be attributed to the exposure. Further, relative risk is the ratio of the risk of occurrence of a disease among exposed people to that among the unexposed. WHO guidelines provide value of relative risks for various air pollutants and relevant diseases.

1.5 Estimating cost of impacts on biodiversity, crops & property

Direct cost transfer method is most suitable and less time consuming method for estimating damage cost with respect to crops, flora fauna, orchids, cattle, property, etc. The results from referred study are transferred to the site under assessment and values are adjusted considering exchange rates and inflation. It is presented below for a study on effects on flora due to NOx & VOC conducted by Muller & Mendelssohn, 2007,

Damage cost due to effect on flora due to pollutants				
Sl. No	**Pollutant**	**Damage cost per tonne (USD,2011)**	**Damage cost per tonne (INR)**	**Damage cost per tonne(2019)**
1	NOx	28.67	1980	3,233.25
2	VOC	14.96	1033	1,686.84

2. SURFACE WATER

2.1 Applicability

- Discharge of untreated or partially treated effluent into nearby streams or nalla ultimately discharging into larger surface water bodies
- Runoff from waste dumps entering into surface water bodies
- Variety of exposure pathways to receptor including but not limited to dermal contact with polluted water, ingestion by human, ingestion by livestock & its potential bioaccumulation in foodchain, ingestion by aquatic species
- Pollutants include organic, inorganic constituents, pathogens, nutrients, suspended solids, radioactive pollutants, oil & grease, thermal pollution, etc.
- Damage to human health, water supply suspension, fishery, recreational function, biological diversity, environmental property and indirect damages

2.2 Quantification of discharge of conservative substances into rivers

This method can be applied to calculate concentration of conservative substance such as, total dissolved solids, chlorides and certain metals which remain conserved i.e. there is no losses due to chemical and biological degradation and its concentration remains unchanged until the encroachment of next tributary. If the source of discharge is a point source (that enter from a fixed discharge point such as effluent pipe or tributary stream), downstream concentration of pollutant can be estimated by using mass balance principle at the point of discharge. Assuming that the river is homogeneous with respect to water quality parameter across its depth and height. Also there is no mixing of one parcel with another due to dispersion and velocity gradient. The order of magnitude of the distance from a single point source to the zone of complete mixing is obtained from following equation (Muller & Thomann)

$$Lm = 2.6\, U \frac{B^2}{H} \qquad \text{(For side bank discharge)}$$

$$Lm = 1.3\, U \frac{B^2}{H} \qquad \text{(For midstream discharge)}$$

Where,

L_m = distance from the source to the zone where discharge has been well mixed in ft

U = average stream velocity in fps

B= average stream width in ft

H= average stream depth in ft

By assuming complete mix condition, the principal statement for mass balance at outfall will be

mass rate of substance upstream + mass rate added by outfall = mass rate of substance immediately downstream from outfall,

$$Q_uS_u + Q_eS_e = QS$$

$$S = \frac{QuSu+QeSe}{Q}$$

Where,

Q_u, S_u = Upstream flow and upstream concentration respectively

Q_e, S_e = Outfall flow and concentration respectively

Q, S = Downstream flow and downstream concentration respectively

Assuming upstream concentration of substance as zero (S_u= 0), then downstream concentration can be calculated using equation given below,

$$S = (\frac{Qe}{Q}) \times Se$$

2.3 Quantification of discharge of non-conservative substances in river

Non conservative substances decay with time due to chemical reaction, bacterial degradation, radioactive decay, or settling of particles. Thus, assuming that the decay of substance is according to a first order reaction, i.e. rate of loss of substance is proportional to concentration at any time.

At boundary condition i.e. S= S_0 at x= 0 where So is calculated from equation above and by assuming uniform cross-sectional area, the concentration of non-conservative pollutant can be determined using equation below,

$$S = s_0\, e^{(\frac{-Kx}{U})}$$

Where K is the decay rate, since x/u = t (time to travel a distance x at velocity u)

2.4 Quantification using modelling approach

USEtox model can be used for calculation of characterization factor of toxic pollutant. This model offers more than 1250 substances and reflect more updated knowledge and data on effect factors. This model was specifically designed to determine the fate, exposure and effect of toxic substances with the ability to consider spatial differences with the country specific parameters. The characterization factor in the USEtox model includes a Fate Factor (FF), Exposure Factor (XF) and an Effect Factor (EF).

2.5 Cost estimation to human health damage

Evaluation of economic losses related to human life and health includes sum of two components (i) evaluation of cost of fatality (ii) evaluation of cost of affected persons.

$$\boldsymbol{L_{HH} = V_d N_d + \sum_{k=1}^{3} V_{k,p} N_{k,p}}$$

Where,

L_{HH} = Total cost to human health damage

V_d = Economic loss of one fatality

N_d = Number of fatalities

$V_{k,p}$ = Economic valuation of affected person in the category k

k= 1 slightly affected, k= 2 severely affected, k= 3 very severely affected

$N_{k,p}$ = Number of person affected

Evaluation of cost of one fatality

According to " the year of potential life lost" proposed by U.S. Centres for diseases control and prevention in 1982 , life is valued in proportion to person's potential economic production. Cost of one fatality also includes living cost of dependents. Thus cost of one fatality depend on age of victim, his income, number of dependent on him. The life expectancy of healthy human is assumed to be 80. Cost of one fatal victim is presented in table below,

Cost of one fatal victim ('a'= age of victim, 'ae'= age of dependant elder, 'ay'= age of dependent child)				
		a <60	60 < a < 75	a >= 75
Victim's own loss in age 'a'		Income×20	Income×(80-a)	Income×5
Cost of dependent's living needs	Living expenses of one elder of age 'ae'	60 <ae <75	ae >= 75	
		Income×(80-ae)	Income×5	
	Living expenses of one child of age 'ay'	Income ×(18 - ay)		

Evaluation of cost of affected person

Evaluation of affected people is the function of their age and severity of affect. It is classified into three categories slightly affected, severely affected and very severely affected using coefficient of 0.4, 0.7 and 1 respectively. Duration of sick leaves and medical fees associated with the cure of affected people is also taken into consideration while evaluating economic valuation of affected people.

Evaluating cost of one affected victim			
Detail of loss estimation	Slight	Severe	Very severe
Affected people own loss and living cost of the dependant	Cost in homologous death ×0.4	Cost in homologous death ×0.7	Cost in homologous death ×1
Loss of sick leaves	Average daily wages × dh × 3		
Medical Fees	Average hospitalization expenses		

2.6 Estimating cost of damage to fisheries

Surface water pollution directly affects the fish yield, to recover the same certain time period is required. Assuming that fishing is forbidden before recovery of fish yield, the economic loss of damage to fishery can be evaluated using the following equation,

$$\mathbf{L_f = AI_f \times rt}$$

Where,

L_f = economic loss due to damage to fishery

AI_f = annual gross income from fisheries in polluted water

rt = the recovery time of aquatic product (for estimating same AQUATOX model, by USEPA can be used)

Estimating cost of damage to recreational function

Surface water pollution affects the economic function of recreation activities such as swimming, angling, boating etc. To evaluate the cost of damage to recreation functional, following equations can be used. The data required on number of people swimming, boating, angling in the concerned water body per day can be obtained from local agencies or socio-economic studies conducted in the area.

$L_R = L_{SM} + L_{BT} + L_{AG} + L_{LM}$	L_R : the loss of damage to recreation L_{SM} : the loss of swimming L_{BT} : the loss of boating L_{AG} : the loss of angling L_{LM} : loss of leisure means
$L_{SM} = P_{SM} \times N_{SM} \times d$	P_{SM} : the price of replacement of swimming per person (rs/cap/ day) N_{SM} : the number of people swimming in the water per day (cap/ day) d : duration of the pollution episode (day)
$L_{BT} = P_{BT} \times N_{BT} \times d$	P_{BT} : the price for replacement for boating (rs/cap/ day) N_{BT} : the number of people boating in water per day d : duration of pollution episode (d)
$L_{AG} = P_{AG} \times N_{AG} \times d$	P_{AG} : the price for angling for boating (rs/cap/ day) N_{AG} : the number of people angling in water per day d : duration of pollution episode (d)

2.7 Estimating cost of damage to environmental property loses

Pollution released in water bodies deteriorate the water quality and decrease the value of surface water. Pollutant may also deposit in sediments and percolate in nearby sources of groundwater. Pollution clearance cost analysis is applied to evaluate the cost associated with damage to environmental property due to water pollution using following equations,

$L_{EP} = C_{SW} + C_{GW} + C_{SO}$	L_{EP} = loss of environmental property (rs) C_{SW} = cost of pollutant removal from surface water C_{SO} = cost of pollutant removal from sediment C_{GW}= cost of pollutant removal form ground water
$C_{SW} = P_{SW} \times V_{SM}$	P_{SW} = price of removing pollutant from surface water (rs/m^3) V_{SM} = the volume of polluted surface water (m^3)
$C_{GW} = P_{GW} \times V_{GM}$	P_{GW} = price of removing pollutant from ground water (rs/m^3) V_{GM} = the volume of polluted ground water (m^3)
$C_{SO} = P_{SO} \times A_{SO}$	P_{SO} = price of sediment remediation (rs/m^2) A_{SO} = the area of polluted sediment (m^2)

3. GROUND WATER

3.1 Applicability

- Leaching of contaminants from wastes dumped onto open parcels of land
- Leaching of chemicals from storage tanks or leaking underground storage tanks/ fuel tanks/ septic tanks
- Leaching of contaminants from landfills that are leaking below ground
- Reverse injection of effluent into deep injection wells
- Leaching of contaminants from underground leaking pipelines carrying liquid chemicals

- Contaminated aquifers provide a variety of exposure pathways to various receptors, including but not limited to, most importantly Humans, Livestock, including cattle, poultry, flora, fauna etc. These pathways include, but are not limited to dermal contact with contaminated groundwater, ingestion of contaminated groundwater and ingestion of crops that are irrigated with contaminated groundwater.

3.2 Quantification of damage to groundwater

The pollutant which enter subsurface zone creates a contamination plume within the aquifer. Thus, small amount of certain pollutant can contaminate large areas. Flow through groundwater is govern by two physical process that are advection and hydrodynamic dispersion. Advection is the component of solute movement attributed to transport by flowing groundwater. The rate of transport is equals to average linear groundwater velocity, v* where v*=v/n, v being the specific discharge and n the porosity.

Further, solute transport equation is used to represent the movement of flux of solute mass through a control volume. The equation states that the sum of all mass, which creates solute with the control volume, must be equal to a change in the concentration of solute with the control volume.

$$\frac{\partial C}{\partial x} = \left[\frac{\partial}{\partial x}\left(D_x \frac{\partial C}{\partial x}\right) + \frac{\partial}{\partial y}\left(D_y \frac{\partial C}{\partial y}\right) + \frac{\partial}{\partial z}\left(D_z \frac{\partial C}{\partial z}\right)\right] - \left[\frac{\partial}{\partial x}(V_x C) + \frac{\partial}{\partial y}(V_y C) + \frac{\partial}{\partial z}(V_z C)\right]$$

Where,

V_x, V_y,V_z = Seepage velocities in x,y,z directions, m/s

D_x, D_y,D_z = Dispersion coefficient, m^2/sec

C = Solute concentration, mg/m^3

T = Time, (s)

Visual MODFLOW can also be used to predict the ground water flow with the contaminate transport. With the use of geological and hydraulic data the potential area of pollutant transport and its concentration can be simulated with the help of MODFLOW and MT3D. Using this model the concentration of pollutant at the user end can be determined.

3.3 Cost estimation to damages

Methods for estimating cost to human health and cost of damage to environmental property described under surface water may be transferred for ground water damage cost estimation. However, while calculating EDC for groundwater pollution ecological economic assessment of groundwater is essential. This is elucidated with an example on removal of groundwater (GW) deposit due to mining activity in an area,

Relevant parameters are,

- Monetary value co-efficient of the damage caused by destruction & removal of ground water (K *deposit*)
- Static reserve's assessment co-efficient of the ground water (K *static reserve*)
- Monetary value co-efficient of damage caused by the water removed (K *water infiltration*)
- Basic price of ground water (Rs./ m^3)
- Volume of groundwater that is being removed (m^3)
- Water return coefficient of groundwater

Total cost of GW removed = Basic price of GW X Water return coefficient of GW X Volume of GW being removed (K *deposit* + K *static reserve* + K *water infiltration*)

4. SOIL

4.1 Applicability

- Illegal dumping of waste (hazardous or nonhazardous) on open parcels of land
- Discharge of untreated or inadequately treated effluent onto open parcels of land
- Boundary breaches wherein wastes might either get spilled onto open parcels of adjoining land, and/ or sub grade breaches where wastes and/ or leachate seeps into the subsoil and potentially ultimately into the aquifer
- Spills of chemicals/ wastes during transportation, leakages from trucks, tanks, pipelines etc.
- Impacted soils can lead to indirect impacts including rendering the land as not usable for agricultural purposes, serving as a continuous source of contamination to groundwater, serve as a direct exposure pathway to humans who may come into contact with the contaminated soil media.

- Soils that are contaminated provide a variety of exposure pathways to various receptors including but not limited to, most importantly humans, livestock, including cattle, poultry, etc. These pathways include, but are not limited to dermal contact with contaminated soils, incidental ingestion of contaminated soils, ingestion of crops that are grown on contaminated soils, inhalation of vapors from wastes that are dumped on soils

In India, there are no comprehensive soil quality regulations and standards to ascertain the seriousness and quantification of contamination, however, internationally adopted standards can be applied selectively for setting screening and response levels for contaminated soils.

****

Item No. 01 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 606/2018

Compliance of Municipal Solid Waste Management Rules, 2016
(State of Karnataka)

Date of hearing: 24.04.2019

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

For Applicant(s):
For Respondent (s): Mr. T. M. Vijay Bhaskar, Chief Secretary, State of Karnataka
Ms. Sneha R. Iyer, Advocate
Dr. Mahendra Jain, Addl. Chief Secretary, Urban Development Department, Karnataka
Mr. Nilaya Mitash, Resident Commissioner, Karnataka Bhawan, New Delhi
Mr. Anjum Parvez, Principal Secretary, Urban Development Department, Bengaluru
Mr. Manoj Kumar, IFS, Member Secretary, Karnataka PCB
Mr. Somesh, Executive Engineer, Dept. of Municipal Admn, Bengaluru
Mr. Randeep, Special Commissioner, BBMP

ORDER

1. The issue for consideration is status of compliance of orders of this Tribunal on the subject of solid waste management and allied issues.

I. PROCEEDINGS IN ALMITRA PATEL:

2. The matter arose before this Tribunal on transfer of proceedings in *Writ Petition No. 888/1996, Almitra H. Patel Vs. Union of India & Ors.*, by the Hon'ble Supreme Court, vide order dated 02.09.2014.

3. We may note that the issue has been subject matter of consideration before the Hon'ble Supreme Court in several proceedings, including in *Municipal Council, Ratlam vs. Vardhichand*[1] and *B.L. Wadhera v. Union of India and Ors.*[2] . It has been categorically laid down that clean environment is fundamental right of citizens under Article 21 and it is for the local bodies as well as the State to ensure that public health is preserved by taking all possible steps. For doing so, financial inability cannot be pleaded.

4. The Hon'ble Supreme Court had appointed Barman Committee which gave report on 06.01.1998 and it was duly accepted. The same led to draft for management of MSW Rules, 1999 which were replaced by 2000 Rules and are now succeeded by 2016 Rules. The Hon'ble Supreme Court gave directions for proper management of municipal solid waste, *inter-alia*, vide orders dated 24.08.2000, 04.10.2004, 15.05.2007 and 19.07.2010.

5. All the States were parties before the Hon'ble Supreme Court and draft action plans were prepared which were to be updated, as per revised Rules.

6. It has been observed by the Hon'ble Supreme Court in *Almitra H. Patel and Anr. v. Union of India and Ors.*[3] that the local authorities constituted for providing services to the citizens are lethargic and insufficient in their functioning which is impermissible. Non-accountability has led to lack of effort on the part of the employees. Domestic garbage and sewage along

[1] (1980) 4 SCC 162
[2] (1996) 2 SCC 594
[3] (2000) 2 SCC 678

with poor drainage system in an unplanned manner contribute heavily to the problem of solid waste. The number of slums have multiplied significantly occupying large areas of public land. Promise of free land attracts more land grabbers. Instead of "slum clearance" there is "slum creation" in cities which is further aggravating the problem of domestic waste being strewn in the open. Accordingly, the Court directed that provisions pertaining to sanitation and public health under the DMC Act, 1957, the New Delhi Municipal Council Act, 1994 and Cantonments Act, 1994 be complied with, streets and public premises be cleaned daily, statutory authorities levy and recover charges from any person violating laws and ensure scientific disposal of waste, landfill sites be identified keeping in mind requirement of the city for next 20 years and environmental considerations, sites be identified for setting up of compost plants, steps be taken to prevent fresh encroachments and compliance report be submitted within eight weeks.

7. The Hon'ble Supreme Court again in *Almitra H. Patel and Anr. v. Union of India and Ors.*[4] while further reviewing the progress noted the following suggestions for consideration by the State Governments and Central Government and SPCBs/PCCs:-

> *"1. As a result of the Hon'ble Supreme Court's orders on 26.7.2004, in Maharashtra the number of authorizations granted for solid waste management (SWM) has increased from 32% to 98%, in Gujarat from 58% to 92% and in M.P. from NIL to 34%. No affidavits at all have been received from the 24 other States/UTs for which CPCB reported NIL or less than 3% authorisations*

[4] (2004) 13 SCC 538

in February 2004. All these States and their SPCBs can study and learn from Karnataka, Maharashtra and Gujarat's successes.

2. All States/UTs and their SPCBs/PCCs have totally ignored the improvement of existing open dumps, due by 31.12.2001, let alone identifying and monitoring the existing sites. Simple steps can be taken immediately at almost no cost by every single ULB to prevent monsoon water percolation through the heaps, which produces highly polluting black run-off(leachate). Waste heaps can be made convex to eliminate standing water, upslope diversion drains can prevent water inflow, downslope diversion drains can capture leachate for recirculation onto the heaps, and disused heaps can be given soil cover for vegetative healing.

3. Lack of funds is no excuse for inaction. Smaller towns in every State should go and learn from Suryapet in A.P. (population 103,000) and Namakkal in T.N. (population 53,000) which have both seen dustbin-free 'zero garbage towns' complying with the MSW Rules since 2003 with no financial input from the State or the Centre, just good management and a sense of commitment.

4. States seems to use the Rules as an excuse to milk funds from the Centre, by making that a precondition for action and inflating waste processing costs 2-3 fold. The Supreme Court Committee recommended 1/3 contribution each from the city, State and Centre. Before seeking 70-80% Centre's contribution, every State should first ensure that each city first spends its own share to immediately make its wastes non-polluting by simple sanitizing/stabilizing, which is always the first step in composting viz. inoculate the waste with cow dung solution or bio culture and placing it in windrows (long heaps) which are turned at least once or twice over a period of 45 to 60 days.

5. Unless each State creates a focused 'solid waste management cell' and rewards its cities for good performance, both of which Maharashtra has done, compliance with the MSW Rules seems to be an illusion.

> *6. The admitted position is that the MSW Rules have not been complied with even after four years. None of the functionaries have bothered or discharged their duties to ensure compliance. Even existing dumps have not been improved. Thus, deeper thought and urgent and immediate action is necessary to ensure compliance in future."*

8. After transfer of proceedings to this Tribunal on 02.09.2014, the matter was taken up from time to time and several directions were issued. Finally vide order dated 22.12.2016, after noticing that the SWM Rules, 2016 had been notified on 08.04.2016 which laid down elaborate mechanism to deal with the solid waste management, the Tribunal directed as follows:

> *"1. Every State and Union Territory shall enforce and implement the Solid Waste Management Rules, 2016 in all respects and without any further delay.*
>
> *2. The directions contained in this judgment shall apply to the entire country. All the State Governments and Union Territories shall be obliged to implement and enforce these directions without any alteration or reservation.*
>
> *3. All the State Governments and Union Territories shall prepare an action plan in terms of the Rules of 2016 and the directions in this judgment, within four weeks from the date of pronouncement of the judgment. The action plan would relate to the management and disposal of waste in the entire State. The steps are required to be taken in a time bound manner. Establishment and operationalization of the plants for processing and disposal of the waste and selection and specifications of landfill sites which have to be constructed, be prepared and maintained strictly in accordance with the Rules of 2016.*
>
> *4. The period of six months specified under Rule 6(b), 18, 23 of the Rules of 2016 has already lapsed. All the stakeholders including the Central Government and respective State Governments/UTs have failed to take action in terms thereof within the stipulated*

period. By way of last opportunity, we direct that the period of six months shall be reckoned w.e.f. 1st January, 2017. There shall be no extension given to any stakeholders for compliance with these provisions any further.

The period of one year specified under Rule 11(f) 12(a), 15(e), 22(1) and 22(2) has lapsed. The concerned stakeholders have obviously not taken effective steps in discharging their statutory obligations under these provisions. Therefore, we direct that the said period of one year shall commence with effect from 1st July, 2017. For this also, no extension shall be provided.

Any State or Union Territory which now fails to comply with the statutory obligations as afore indicated shall be liable to be proceeded against in accordance with Section 15 of the Environment (Protection) Act, 1986. Besides that, it would also be liable to pay environmental compensation, as may be imposed by this Tribunal. In addition to this, the senior most officer in-charge in the State Government/Urban Local Body shall be liable to be personally proceeded against for violation of the Rules and orders passed by this Tribunal.

5. *The Central Government, State Government, Local Authorities and citizens shall perform their respective obligations/duties as contemplated under the Rules of 2016, now, without any further delay or demur.*

6. *All the State Governments, its departments and local authorities shall operate in complete co-ordination and cooperation with each other and ensure that the solid waste generated in the State is managed, processed and disposed of strictly in accordance with the Rules of 2016.*

7. *Wherever a Waste to Energy plant is established for processing of the waste, it shall be ensured that there is mandatory and proper segregation prior to incineration relatable to the quantum of the waste.*

8. *It shall be mandatory to provide for a buffer zone around plants and landfill sites whether they are geographically integrated or are located separately. The buffer zone necessarily need not be of 500 meters wherever there is a land constraint. The purpose of the buffer zone should be to segregate the plant by means of a green belt from surrounding*

areas so as to prevent and control pollution, besides, the site of the project should be horticulturally beautified. This should be decided by the authorities concerned and the Rules are silent with regard to extent of buffer zone. However, the Urban Development Manual provides for the same. Hence, we hold that this provision is not mandatory, but is directory.

We make it clear that buffer zone and green belt are essential and their extent would have to be decided on a case to case basis.

9. *We direct that the Committees constituted under Rule-5 would meet at least once in three months and not once in a year as stipulated under the Rules of 2016. The minutes of the meeting shall be placed in the public domain. Directions, on the basis of the minutes, shall be issued immediately after the meeting, to the concerned States, local bodies, departments and Project Proponents.*

10. *The State Government and the local authorities shall issue directives to all concerned, making it mandatory for the power generation and cement plants within its jurisdiction to buy and use RDF as fuel in their respective plants, wherever such plant is located within a 100 km radius of the facility.*

In other words, it will be obligatory on the part of the State, local authorities to create a market for consumption of RDF. It is also for the reason that, even in Waste to Energy plants, Waste–RDF–Energy is a preferred choice.

11. *In Waste to Energy plant by direct incineration, absolute segregation shall be mandatory and be part of the terms and conditions of the contract.*

12. *The tipping fee, wherever payable to the concessionaire/operator of the facility, will not only be relatable to the quantum of waste supplied to the concessionaire/operator but also to the efficient and regular functioning of the plant. Wherever, tipping fee is related to load of the waste, proper computerised weighing machines should be connected to the online system of the concerned departments and local authorities mandatorily.*

13. *Wherever, the waste is to be collected by the concessionaire/operator of the facility, there it shall*

be obligatory for him to segregate inert and C&D waste at source/collection point and then transport it in accordance with the Rules of 2016 to the identified sites.

14. *The landfill sites shall be subjected to bio-stabilisation within six months from the date of pronouncement of the order. The windrows should be turned at regular intervals. At the landfill sites, every effort should be made to prevent leachate and generation of Methane. The stabilized waste should be subjected to composting, which should then be utilized as compost, ready for use as organic manure.*

15. *Landfills should preferably be used only for depositing of inert waste and rejects. However, if the authorities are compelled to use the landfill for good and valid reasons, then the waste (other than inert) to be deposited at such landfill sites be segregated and handled in terms of Direction 13.*

16. *The deposited non-biodegradable and inert waste or such waste now brought to land fill sites should be definitely and scientifically segregated and to be used forfilling up of appropriate areas and forconstruction of roads and embankments in all road projects all over the country. To this effect, there should be a specific stipulation in the contract awarding work to concessionaire/operator of the facility.*

17. *The State Government, Local Authorities, Pollution Control Boards of the respective States, Pollution Control Committees of the UTs and the concerned departments would ensure that they open or cause to be opened in discharge of Extended Producer Responsibility, appropriate number of centers in every colony of every district in the State which would collect or require residents of the locality to deposit the domestic hazardous waste like fluorescent tubes, bulbs, batteries, electronic items, syringe, expired medicines and such other allied items. Hazardous waste, so collected by the centers should be either sent for recycling, wherever possible and the remnant thereof should be transported to the hazardous waste disposal facility.*

18. *We direct MoEF&CC, and the State Governments to consider and pass appropriate directions in relation to ban on short life PVC and chlorinated plastics as expeditiously as possible and, in any case, not later*

than six months from the date of pronouncement of this judgment.

19. *The directions and orders passed in this judgment shall not affect any existing contracts, however, we still direct that the parties to the contract relating to management or disposal of waste should, by mutual consent, bring their performance, rights and liabilities in consonance with this judgment of the Tribunal and the Rules of 2016. However, to all the concessionaire/operators of facility even under process, this judgment and the Rules of 2016 shall completely and comprehensively apply.*

20. *We specifically direct that there shall be complete prohibition on open burning of waste on lands, including at landfill sites. For each such incident or default, violators including the project proponent, concessionaire, ULB, any person or body responsible for such burning, shall be liable to pay environmental compensation of Rs. 5,000/- (Rs. Five Thousand only) in case of simple burning, while Rs. 25,000/- (Rs. Twenty Five Thousand only) in case of bulk waste burning. Environmental compensation shall be recovered as arrears of land revenue by the competent authority in accordance with law.*

21. *All the local authorities, concessionaire, operator of the facility shall be obliged to display on their respective websites the data in relation to the functioning of the plant and its adherence to the prescribed parameters. This data shall be placed in the public domain and any person would be entitled to approach the authority, if the plant is not operating as per specified parameters.*

22. *We direct the CPCB and the respective State Boards to conduct survey and research by monitoring the incidents of such waste burning and to submit a report to the Tribunal as to what pollutants are emitted by such illegal and unauthorized burning of waste.*

23. *That the directions contained in the judgment of the Tribunal in the case of 'Kudrat Sandhu Vs. Govt. of NCT & Ors.', O.A. No. 281 of 2016, shall mutatis mutandis apply to this judgment and consequently to all the stakeholders all over the country.*

24. *That any States/UTs, local authorities, concessionaires, facility operators, any stakeholders,*

generators of waste and any person who violates or fails to comply with the Rules of 2016 in the entire country and the directions contained in this judgment shall be liable for penal action in accordance with Section-15 of the Environment (Protection) Act, 1986 and shall also be liable to pay environmental compensation in terms of Sections 15 & 17 of the National Green Tribunal Act, 2010 to the extent determined by the Tribunal.

25. *That the State Governments/UTs, public authorities, concessionaire/operators shall take all steps to create public awareness about the facilities available, processing of the waste, obligations of the public at large, public authorities, concessionaire and facility operators under the Rules and this judgment. They shall hold program for public awareness for that purpose at regular intervals. This program should be conducted in the local languages of the concerned States/UTs/Districts.*

26. *We expect all the concerned authorities to take note of the fact that the Rules of 2016 recognize only a landfill site and not dumping site and to take appropriate actions in that behalf.*

27. *We further direct that the directions contained in this judgment and the obligations contained under the Rules of 2016 should be circulated and published in the local languages.*

28. *Every Advisory Committee in the State shall also act as a Monitoring Committee for proper implementation of these directions and the Rules of 2016.*

29. *Copy of this judgment be circulated to all the Chief Secretaries/Advisers of States/UTs by the Registry of the Tribunal. The said authorities are hereby directed to take immediate steps to comply with all the directions contained in this judgment and submit a report of compliance to the Tribunal within one month from the date they receive copy of this judgment."*

II. PREVIOUS PROCEEDINGS IN PRESENT MATTER:

9. The Tribunal in a review meeting on the administrative side with the CPCB and municipal solid waste management experts, on 23.07.2018

considered the matter in the light of annual report prepared by the CPCB in April 2018 under Rule 24 of the MSW Rules and noticed serious deficiencies. Accordingly, it was decided to take up the issue of execution of judgment dated 22.12.2016 in *Mrs. Almitra H. Patel & Anr. Vs. Union of India & Ors. (supra),* by way of interaction with all the States/UTs through video conferencing. For this purpose, meetings were held on 02.08.2018, 07.08.2018, 08.08.2018, 13.08.2018 and 20.08.2018.

10. At the conclusion of the interaction, the Tribunal declared that the mandatory provision of the Rules and directions should be implemented in a time bound manner. Following specific steps were required to be taken:

i. Action plans were to be submitted by all the States to CPCB latest by 31.10.2018 and executed in the outer deadline of 31.12.2019 which should be overseen by the Principal Secretaries of Urban and Rural Development Departments of the States.

ii. The States should have Monitoring Committees headed by the Secretary, Urban Development Department with the Secretary of Environment Department as Members and CPCB and State Pollution Control Boards (SPCBs) assisting the Committees.

iii. They should have interaction with the local bodies once in two weeks.

iv. Local bodies are to furnish their reports to State Committees twice a month.

v. The State Committees may take a call on technical and policy issues.

vi. Local bodies may have suitable nodal officers. Bigger local bodies may have their own Committees headed by Senior Officers.

vii. Public involvement may be encouraged and status of the steps taken be put in public domain.

viii. The State Level Committees are to give their reports to the Regional Monitoring Committees on monthly basis.[5]

ix. Instead of every local body separately floating tenders, the standardized technical specifications be involved and adopted.[6]

x. Best practices may be adopted, including setting up of Control Rooms where citizens can upload photos of garbage which may be looked into by the specified representatives of local bodies, at local level as well as State level.

xi. It was directed that mechanism be evolved for citizens to receive and give information.

xii. CCTV cameras be installed at dumping sites.

xiii. GPS be installed in garbage collection vans. This may be monitored appropriately.[7]

11. Performance audit was to be conducted for 500 ULBs with population of 1 lakh and above initially, as suggested by the MoHUA as follows:

	Key Parameters/ Indicators	**Description of Parameters/Indicators for physical evaluation**
1	**Door to Door Collection**	Door to door collection of segregated solid waste from all households including slums and

[5]Para 21
[6] Para 22
[7] Para 23

		informal settlements, commercial, institutional and other non-residential premises.
		Transportation in covered vehicles to processing or disposal facilities
2	**Source Segregation**	Segregation of waste by households into Biodegradable, non-biodegradable, domestic hazardous.
3	**Litter Bins & Waste Storage Bins**	• Installation of Twin-bin/ segregated litter bins in commercial & public areas at every 50-100 meters. • Installation of Waste storage bins in strategic locations across the city, as per requirement (Unless Binless) • Elimination of Garbage Vulnerable Points.
4	**Transfer Stations**	Installation of Transfer Stations instead of secondary storage bins in cities with population above 5 lakhs.
5	**Separate transportation**	• Compartmentalization of vehicles for the collection of different fractions of waste. • Use of GPS in collection and transportation vehicles to be made mandatory at least in cities with population above 5 lakh along with the publication of route map.
6	**Public Sweeping**	• All public and commercial areas to have twice daily sweeping, including night sweeping and residential areas to have daily sweeping.
7	**Waste Processing** • **Wet Waste** • **Dry Waste** • **MRF Facility**	• Separate space for segregation, storage, decentralised processing of solid waste to be demarcated • Establishing systems for home/decentralised and centralised composting • Setting up of MRF Facilities.
8	**Scientific Landfill**	• Setting up common or regional sanitary landfills by all local bodies for the disposal of permitted waste under the rules • Systems for the treatment of legacy waste to be established.
9	**C&D Waste**	Ensure separate storage, collection and transportation of construction and demolition wastes.
10	**Plastic Waste**	Implementation of ban on plastics below <50 microns thickness and single use plastics.
11	**Bulk Waste Generators (BWGs)**	Bulk waste generators to set up decentralized waste processing facilities as per SWM Rules, 2016.

12	**RDF**	Mandatory arrangements have to be made by cement plants to collect and use RDF, from the RDF plants, located within 200 kms.
13	**Preventing solid waste from entering into water bodies**	Installation of suitable mechanisms such as screen mesh, grill, nets, etc. in water bodies such as nallahs, drains, to arrest solid waste from entering into water bodies.
14	**User Fees**	Waste Generators paying user fee for solid waste management, as specified in the bye-laws of the local bodies.
15	**Penalty provision**	Prescribe criteria for levying of spot fine for persons who litters or fails to comply with the provisions of these rules and delegate powers to officers or local bodies to levy spot fines as per the byelaws framed.
16	**Notification of Bye Laws**	Frame bye-laws incorporating the provisions of MSW Rules, 2016 and ensuring timely implementation.
17	**Citizen Grievance Redressal**	Resolution of complaints on Swachhata App within SLA.
18	**Monitoring mechanism**	States/ULBs to update month wise targets/action plans on the online MIS.

12. The Regional Committees were to be headed either by former High Court Judges or by Senior Retired Officers and Apex Committees by a former Supreme Court Judge.[8] Common problems faced and suggestions were to be noted in tabular chart.[9]The Committees were to function for a period of one year subject to further orders.[10]

13. The matter was again taken up on 16.01.2019 in light of reports received from some of the Committees, especially from the State of Uttar Pradesh.

14. It was noticed that timeline of two years had expired which was the period prescribed for steps 1 to 7 under Rule 22 and three years is to

[8] Paras 18 and 20
[9] Para 14
[10] Para 18

expire on 08.04.2019 which covers steps upto serial number 10. Since violation of Rules are statutory offences under the Environment (Protection) Act, 1986 and results in deterioration of environment, affecting the life of the citizens, it was noted that the authorities may be made accountable for their lapses and required to furnish performance guarantee for compliance or pay damages as had been directed in some of the cases.[11]

15. The Tribunal noted that solid waste management is of paramount importance for protection of environment, as the statistics paint a dismal picture of the environment in the country. The Tribunal had also referred to proceedings before it, relating to 351 polluted river stretches 102 non-attainment cities in terms of ambient air quality and 100 industrial clusters which are critically polluted as per data available with CPCB. The Tribunal had taken cognizance of such serious environmental issues and required the respective States to prepare time bound action plans and execute the same so as to restore water and air quality, as per prescribed norms.[12]

---

[11]Para 20. Cases referred to in the said para are as follows:

- (a). All India Lokadhikar Sangathan vs. Govt of NCT Delhi & Anr, E.A No. 11/2017, Date of Order 16.10.2018;
  (b). Sobha Singh vs. State of Punjab & Ors. O.A. No. 916/2018, Date of Order 14.11.2018;
  (c). Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & Ors. O.A No. 110 (THC)/2012, Date of Order 04.01.2019;
  (d). Ms. Ankita Sinha vs. State of Maharashtra & Ors. O.A. No. 510/2018, Date of Order 30.10.2018,
  (e). Sudarsan Das vs. State of West Bengal & Ors. O.A. No. 173/2018, Date of Order 04.09.2018;
  (f). Court on its Own Motion vs. State of Karnataka, O.A. No. 125/2017, Date of Order 06.12.2018.

[12] Para 21. Cases referred to in the said para are as follows:

- O.A. No. 110 (THC)/2012-Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & Ors.
- O.A. No. 673/2018, News item published in 'The Hindu' authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB" dated 20.09.2018: wherein

16. The Tribunal also noted that there was a need to conduct performance audit of statutory regulators so that they are manned by competent as well as credible persons and there is a regime of their accountability, as observed by Hon'ble Supreme Court. Failure to do so would be disastrous for the health of the citizens and defeat the very purpose of regulatory regime manned to protect the environment. Accordingly, it was held that the issues being interconnected, an integral approach was required in the matter for sustainable development. Coordination was required with different authorities of the State, which was not possible without involvement of the Chief Secretaries.[13]

---

the Tribunal issued directions to prepare and implement Action Plans to rejuvenate and restore the 351 polluted river stretches.

- Original Application No. 681/2018, News Item Published in "The Times of India' Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15" dated 08.10.2018: wherein the Tribunal directed Action Plans to be prepared for the 102 non-attained cities to bring the standards of air quality within the prescribed norms.
- Original Application No. 1038/2018, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" dated 13.12.2018: wherein the Tribunal directed preparation of time bound Action Plans to ensure that all industrial clusters comply with the parameters laid down in Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974.
- Original Application No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2016 dated 31.08.2018: wherein the Tribunal constituted Apex and Regional Monitoring Committees for effective implementation of MSW Rules, 2016.

[13]Paras 21 to 25. Cases referred to in the said paras are as follows:

- Aryavart Foundation v. M/s Vapi Green Enviro Ltd. & Ors, O.A. No.95/2018.
- https://niti.gov.in/writereaddata/files/new_initiatives/presentation-on-CWMI.pdf- India ranks 120th in 122 countries in Water Quality Index as per Niti Ayog Report, https://www.thehindu.com/sci-tech/energy-andenvironment/india-ranked-no-1-in-pollution-related-deaths-report/article19887858.ece- Most pollution-linked deaths occur in India, https://www.hindustantimes.com/india-news/delhi-world-s-most-polluted-city-mumbaiworse-than-beijing-who/story-m4JFTO63r7x4Ti8ZbHF7mM.html- Delhi's most polluted city, Mumbai worse than Beijing as per WHO; http://www.un.org/waterforlifedecade/pdf/global_drinking_water_quality_index.pdf- WHO Water Quality Index .
- News Item published in 'The Times of India' Authored by Shri. Vishwa Mohan Titled "NCAP with Multiple Timelines to Clear Air in 102 Cities to be released around August 15" O.A. No. 681/2018- http://www.greentribunal.gov.in/DisplayFile.aspx
- https://www.ndtv.com/delhi-news/delhis-air-pollution-has-caused-of-death-of-15-000-people-study-1883022.
- Sudarsan Das vs. State of West Bengal & Ors. O.A. No. 173/2018 Order dated 04.09.2018
- Shailesh Singh vs. Hotel Holiday Regency, Moradabad & Ors. O.A. No. 176/2015, order dated 3.1.2019

17. The Tribunal also considered its experience of administrative interaction held on the subject on 04.12.2018 with the Committees appointed and found that the mechanism had not become as effective as expected.[14]

18. The Tribunal accordingly modified the mechanism of Committees. For the States, Member Secretaries of the SPCBs were made the Convener of the Committees. Secretaries of Urban Development, Local Bodies, Local Self-Government, Environment, Rural Development Health and representatives of CPCB, wherever CPCB office is existing were to be Members. The Committees were to work for six months or as may be considered necessary.[15]

19. The Committees constituted under the Rules were to work in tandem with the Committees constituted by the Tribunal. The CPCB was to prepare Standard Operating Procedure (SOP) for implementation of Clause J for dealing with the legacy waste. The Collectors were to have monthly meetings, as per Rule 12 and submit reports to State Urban Development Departments, with a copy to State Level

---

- Aryavart Foundation v. M/s Vapi Green Enviro Ltd. & Ors O.A. No.95/2018, order dated 11.01.2019.

[14] Para 26.

[15] Para 28. Cases referred to in the said para are as follows:

- See order dated 198.9.2018 of this Tribunal in O.A No. 606/2018 to the effect that the non-official Chairperson will be pa9id consolidated amount equal to basic pay of the post held by the incumbent. A former Judge of Hon'ble Supreme Court will be entitled to Rs. 2.50 Lakhs per month. A former Judge of the High Court will be paid Rs. 2.25 Lakhs per month. On same pattern, remuneration may be fixed for any other retired Member.
- E.A. No.32/2016 order dated 15.11.2018- Clarifying that while the State may provide the logistics and other facilities, the financial aspects may be taken care of by the State Pollution Control Boards/Committees. The financial aspects will include the remuneration or other incidental expenses which may be increased with a view to effectively execute the directions of this Tribunal. Such expenses may include secretarial assistance, travel as well as cost incurred for any technical assistance.
- Apart from remuneration, all actual expenses incurred in taking assistance for secretarial working will be reimbursed by concerned PCB as already directed vide order dated 17.12.2018 E.A. No.32/2016, Amresh Singh v. Union of India & Ors.

Committees.16CPCB has since prepared such SOP and circulated to the State Pollution Control Boards in February 2019. We are given to understand that such procedure has been successfully implemented at places such as Goa, Indore and Kumbhkonam.

20. Every State was to constitute a Special Task Force (STF) in each District with four members – one each nominated by the District Magistrate, Superintendent of Police, Regional Officer of the SPCBs and the District Legal Services Authority (DLSA) for awareness by involving educational, religious and social organizations, including local Eco-clubs. This was also to apply with regard to awareness in respect of other connected issues i.e. polluted rivers, air pollution, etc. In this regard, reference was made to directions of the Hon'ble Supreme Court requiring such awareness programmes to be undertaken.[17]

21. The Tribunal also referred to its order dated 19.12.2018, in Original Application No. 673/2018, for laying down scale of compensation to be recovered from each State/UT in failing to carry out directions of this Tribunal on the issue of preparing action plans for river stretches. Similar pattern was proposed in case of failing to carry out directions in the present case.[18]

---

[16] Para 32.

[17] Paras 35 and 36. Cases referred to in the said paras are as follows:

- O.A. No. 138/2016 order dated 27.08.2018
- O.A.No. 673/2018, order dated 20.09.2018
- Suo Moto Application No. 290/2017, order dated 24.10.2018
- O.A. No. 200/2014 order dated 29.11.2018
- (2004)1 SCC 571
- (2005)5 SCC 733

[18] Para 38. Cases referred to in the said para are as follows:

- Threat to life arising out of coal mining in south Garo Hills district v. State of Meghalaya & Ors O.A. No. 110(THC)/2012.

22. The Chief Secretaries/Advisor of all the States and UTs were required to appear in person and be ready on the following specific points:

> *"a. Status of compliance of SWM Rule, 2016, Plastic Waste Management Rules, 2016 and Bio-Medical Waste Management Rules, 2016 in their respective areas.*
>
> *b. Status of functioning of Committees constituted by this order.*
>
> *c. Status of the Action Plan in compliance vide order dated 20.09.2018 in the News Item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB (Original Application No. 673/2018).*
>
> *d. Status of functioning of Committees constituted in News Item Published in "The Times of India' Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15" dated 08.10.2018.*
>
> *e. Status of Action Plan with regard to identification of polluted industrial clusters in O.A. No. 1038/2018, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "CPCB to rank industrial units on pollution levels" dated 13.12.2018.*
>
> *f. Status of the work in compliance of the directions passed in O.A. No. 173 of 2018, Sudarsan Das v. State of West Bengal &Ors. Order dated 04.09.2018.*
>
> *g. Total amount collected from erring industries on the basis of 'Polluter Pays' principle, 'Precautionary principle' and details of utilization of funds collected.*
>
> *h. Status of the identification and development of Model Cities and Towns in the State in the first phase which*

- News Item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB (O.A. No. 673/2018) vide order dated 19.12.2018- wherein this Tribunal held that compensation for damage to the environment will be payable by each of the States/ UTs at the rate of Rs. One Crore per month for each of the Priority- I and Priority- II stretches, Rs. 50 lacs per month for stretches in Priority- III and Rs. 25 lacs per month each for Priority- IV and Priority- V stretches.

can be replicated later for other cities and towns of the State."

23. It was also directed that they may not nominate other officer for appearance before this Tribunal. However, they may seek change of date, with advance intimation.[19]

24. Further direction was for the State to display on their respective websites the progress made on the above issues.[20]Under Rule 14, the CPCB was directed to coordinate with the Committees.[21]

25. Accordingly, Chief Secretaries/Advisor of Himachal Pradesh, Haryana, Punjab, Uttarakhand, Delhi, Bihar, Odisha, Chandigarh, West Bengal, Maharashtra, Gujarat, Goa, Daman & Diu and Dadra and Nagar Haveli, Madhya Pradesh, Rajasthan, Meghalaya and Tamil Nadu have already appeared before this Tribunal on 05.03.2019, 06.03.2019, 07.03.2019, 11.03.2019, 15.03.2019, 26.03.2019, 26.03.2019, 02.04.2019, 08.04.2019, 09.04.2019, 10.04.2019, 11.04.2019, 15.04.2019, 16.04.2019, 22.04.2019 and 23.04.2019 respectively and their reports were duly considered. Directions have been given for further course of action and they have been directed to appear in person again with status of compliance and progress after six months. This has become necessary to ensure that environment protection and restoration is given highest priority in view of serious challenge posed by deteriorated environment and large scale violations which are not satisfactorily dealt with by the administrative machinery of the

[19] Paras 40 and 41
[20] Para 42
[21] Para 45

Government. The Tribunal hopes and expects that continued involvement of Chief Secretaries/Advisor will result in improvement of the situation and lead to better protection of quality of air, water and environment and help public health. We may note that after order dated 16.01.2019 some of the issues referred to in Para 22 hereinabove have been dealt with by further orders of this Tribunal.[22]

26. Vide order dated 05.03.2019, dealing with State of Himachal Pradesh, it has been directed that the Apex Committee is to conclude its proceedings by 30.04.2019 and furnish its final report. Thereafter, monitoring at apex level can be done by MoEF&CC and CPCB in terms of Rules 5 and 14 of the SWM Rules respectively and direction of this Tribunal vide order dated 22.12.2016 [Para 43(9)]. However, the State Level Committees as directed by the Tribunal headed by retired Judges and the Chief Secretaries will continue including the State and District Level Committees. After expiry of the term of the Committees after 16.07.2019, the Chief Secretary may take a decision whether such Committees are required to continue further.

III. <u>PRESENT PROCEEDINGS:</u>

27. In pursuance of above, Mr. T. M. Vijay Bhaskar, Chief Secretary, State of Karnataka is present in person.

---

[22](a). Order dated 08.04.2019 in O.A. No. 673/2018, News item published in 'The Hindu' authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB".

(b). Order dated 15.03.2019 in O.A. No. 681/2018, News Item Published in "The Times of India' Authored by Shri Vishwa Mohan Titled "NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15".

(c). Order dated 05.04.2019 in Sudarsan Das vs. State of West Bengal &Ors., O.A. No. 173/2018.

28. An affidavit has been filed on 23.04.2019on behalf of State of Karnataka indicating status of compliance of order dated 16.01.2019. The compliance report indicates some of the steps taken for solid waste management. Status of compliance of Plastic Waste Management Rules, 2016, Bio-medical Waste Management Rules, 2016, polluted river stretches and air polluted cities have also been mentioned.

29. Some of the progress made of the State of Karnataka as stated in the compliance affidavit are as follows:

i. 5605 wards out of total 6609 wards have achieved 100% Door to Door collection and the efficiency is about 85%

ii. "Uttara Kannada" district in Karnataka has been made as a model district by achieving more than 95% source segregation and 91% of waste processing.

iii. As a part of Green initiative, Karnataka State adopted the use of electrically operated vehicles in few Urban Local Bodies for door to door collection. Six Biomethanisation plants are established which generate about 201 KW of power every day.

iv. Installation of lane composters for managing wet waste at street level itself. This has positively impacted in the amount of wet waste going out of the ward.

v. Biomedical Waste Management and Monitoring Software has been developed and linked to the Department Website as a common portal for each Healthcare Facility, the state to login

and enter data on day to day generation of Biomedical Waste as per categories in Schedule-I.

vi. 7000 Health Records have been printed and distributed to Health Staffs to undergo Health Check-up as per BMW Rules 2016 and to keep records of the same.

vii. Bus panel advertisement have been placed on 2,228 buses to encourage segregation at source, creating general awareness about waste processing and disposable decentralized way and creating awareness on personal hygiene and city sanitation.

viii. All districts have constituted Special Task Force (STF) for creating awareness.

30. From perusal of the compliance affidavit and after hearing submissions of the State, we find that steps required to be taken under Rule 22 of the Solid Waste Management Rules, 2016 have not yet been fully completed. It is not clear whether the local bodies have submitted their annual reports to the State Pollution Control Board (SPCB) under Rule 24 and whether SPCB has submitted consolidated annual report to the Central Pollution Control Board (CPCB) under the said Rules. We have also found the steps taken for plastic waste management and bio-medical waste management to be inadequate.

31. From the compliance affidavit furnished by the Chief Secretary, huge gap is noticed in the steps taken and the steps required to be taken in terms of the Rules and for ensuring sustainable development. Unless

such steps are taken, the unsatisfactory state of environment in the country in general and in the State in particular may not improve.

32. We take note of some of the articles published in the media. Information in the said articles needs to be cross checked and remedial measures taken, if necessary. It is reported as follows:

(a). In southern India, Karnataka has the worst quality of air that kills 95 persons out of every 100,000 population, as per India's first comprehensive state-wide estimates of deaths, disease burden, and life expectancy reduction associated with air pollution.[23] One of the findings was continued high use of solid fuel by states like Karnataka and Kerala that are considered economically well-off with a high-proportion of literates. In Karnataka 42.8% people continue using solid fuel.[24]

(b). As per reports, more than half of the country's critically-polluted water bodies, in terms of chemical pollution, are found in Karnataka, with its capital itself accounting for 17 lakes and tanks with the highest chemical pollution. From Bellandur to Hebbal, 17 lakes and tanks in the city have been categorized as critically-polluted with Chemical Oxygen Demand (COD) levels, which indicate chemical pollution, topping 250 microgrammes per litre. As per research study, Arkavathy and Vrishabhavathy carry the sewage and industrial effluents from industries in and around Bengaluru. [25]

---

[23]https://www.deccanherald.com/national/among-south-india-karnataka-706737.html
[24]*ibid*
[25]https://www.thehindu.com/news/cities/bangalore/bengaluru-tops-in-water-bodies-with-chemical-pollution/article23324428.ece

(c). Cauvery, the 765 kilometre long river which flows through the states of Karnataka and Tamil Nadu has been victim of disposal of untreated effluents, resulting in the river water becoming polluted at various sections of the river. Even the colour of Cauvery's water has changed in some places due to disposal of toxic effluents.[26]

(d). As reported, the collapse of Mularpatna Bridge, the first ever bridge in the coastal region in Karnataka, on June 26, 2018, brought the stronghold of Sand Mafia in the region into the limelight.[27]As per newspaper reports, the locals have been informing the officials about the illegal extraction of sand at the base of the bridge, weakening and damaging the pillars supporting the bridge. But concrete action has not been taken. The officials at Department of Mines and Geology have registered 16 cases daily related to Sand Mafia in Karnataka from 2015-2017. As many as 12,318 cases were booked during this period, all of them mentioning illegal sand mining, transportation, storage, and use of filter sand. The numbers here explain the scale of operation the Mafias are running in the state.[28] Almost all the major rivers in the state, such as Cauvery, Hemavathi, Tungabhadra, Krishna, Ghataprabha, Bhima, Vedavati and Netravati, are bearing the brunt of illegal sand mining. Numerous streams and tanks are also exploited indiscriminately.[29]

---

[26]https://swachhindia.ndtv.com/karnataka-and-tamil-nadus-lifeline-cauvery-is-battling-with-pollution-10661/

[27]https://www.newsclick.in/sand-mafia-network-politicians-construction-companies-and-criminals

[28]*Ibid.*

[29]https://www.deccanherald.com/exclusives/illegal-sand-mining-wrecking.html

33. Some of the issues relating to the protection of environment in the State of Karnataka have been considered by this Tribunal in its orders.[30]

34. On behalf of CPCB, some data has been furnished in respect of State of Karnataka and the same is summarized as under:-

1	**Solid Waste Management**	Number of towns to be covered: 277 Local Bodies : 277 Waste Generation : 11085 TPD Collected : 9866 TPD Treated : 3494 TPD Landfilling : 7591 TPD No. of Dump sites : not indicated
2	**Plastic Waste Management**	Waste Generation : 419600 No. of registered manufacturing units : 301 No. of unregistered manufacturing units: Not provided
3	**Biomedical Waste**	No of Hospitals : 32364 Authorizations granted : 23864

[30](a). Order dated 13.08.2018 in Venkatesh & Ors. Vs Union of India &Ors., O.A. No. 179/2017 - Dumping of solid waste in illegal manner

(b). Order dated 24.08.2018 in Goa Foundation Vs. Union of India, O.A. No. 597/2018 - Declaration of deemed forest and protection of eco sensitive area in the Western Ghats in relation to State of Karnataka.

(c). Order dated 04.09.2018 in Sri K. S. Ravi Vs. State of Karnataka &Ors., O.A. No. 01/2018 - Construction of the project on the bank of Kaikondrahalli Lake in Bengaluru which is a buffer/no development/no construction Zone.

(e). Order dated 10.09.2018 in Anand Vinay Vs. State of Karnataka, O.A. No. 613/2018 - Lake adjacent to NICE Express Way in between Tumkur road NH 4 and Magadi road polluted by sewage and industrial untreated water and by bad smell

(f). Order dated 24.09.2018 in Akash Vashishtha Vs. Union of India &Ors., O.A. No. 676/2018 - Prohibition for immersion of non eco-friendly idols in water bodies.

(g). Order dated 25.09.2018 in National Green Tribunal Bar Association Vs. Dr. Sarvabhoum Bagali (State of Karnataka), O.A. No. 366/ 2015 - Illegal sand mining on the border of States of Maharashtra and Karnataka on the river beds of Bhima river.

(h). Order dated 26.09.2018 in Shri Vinay Shivanand Nayak Vs. State of Karnataka &Ors., O.A. No. 176/2018 - BS-II & BS-III Compliant for public transport vehicles; purchase of 1000 BS-IV Compliant vehicles

(i). Order dated 06.12.2018 in Court on its own Motion vs. State of Karnataka, O.A. No. 125/2017 - Contamination of water bodies at Bengaluru – Bellandur lake, Agara lake and Varthur lake on account of discharge of untreated sewage and other effluents.

(j). Order dated 19.12.2018 in Anand Vinay vs. State of Karnataka, O.A. No. 613/2018 - Pollution of lake between Tumkur Road (NH-4) and Magadi Main Road on account of municipal sewage and untreated industrial effluents.

		Waste Generation : 67339kg/d Treatment : 67339kg/d Common Bio-medical waste Treatment Facilities : 26 in operation, 04 under installation No. of Captive Facilities : 3327
4	**Polluted River Stretches**	P(III)- 4 P(IV)- 7 P(V)- 6 Total = 17
5	**Air Quality Management**	Bangalore, Devanagere, Gulburga, Hubli-Dharwad
6	**Industrial Clusters**	Bhadravati, Mangalore, Bidar, Peenya, Raichur, KIADB(Jigini)
7	**ETP, CETP, STPs**	**ETPs** No. of industries which require ETP : 3265 No. of industries having functional ETP: 3062 No. of industries complying : 2994 No. of industries non-complying : 68 **STPs** No. of STPs : 2586 No. of STPs complying : 2527 No. of STPs non-complying: 59 No. of under construction/proposed STPs : 85 **CETPs** No. of CETPs :8 No. of CETPs complying : 7 No. of CETPs non-complying:1 No under construction/proposed CETPs in the State: 4

35. These facts have been brought to the notice of the Chief Secretary so that necessary action is considered and taken.

36. Needless to say that improvement in environment is not only inalienable duty of the State, but is also necessary for sustainable development which is essential for the health and well-being of citizens as well as for intergenerational equity. These principles require that all human activities should be conducted in such a way that the rights of future generations to access clean air and potable water are not taken

away. At the cost of repetition, it may be mentioned that water is being polluted because of discharge of untreated sewage and effluents. Air pollution is result of failure to manage solid waste and to prevent other causes leading to air pollution. There are also other issues like deterioration in groundwater level, damage to forests and wild life, unscientific and uncontrolled sand mining etc. Unsatisfactory implementation of law is clear from the fact that inspite of severe damage, there is no report of any convictions being recorded against the polluters, nor adequate compensation has been recovered for damage caused to the environment. Steps for community involvement are not adequate. There is reluctance even to declare some major cities as fully compliant with the environment norms. The authorities have not been able to evolve simplified and standard procedure for preparing project reports and giving of contracts. There is no satisfactory plan for reuse of the treated water or use of treated sewage or waste and for segregation and collection of solid waste, for managing the legacy waste or other wastes, etc.

37. Since we have found huge gap in steps taken and steps required to be taken to remedy the unsatisfactory state of environment, we had an interaction with the Chief Secretary about the way forward. The gap in the mandate of law on the one hand and actual compliance with law on the other has manifested itself in the form of polluted water, air and land. Its actual measurement in terms of monetary value or the loss on account of adverse impact on public health and environment or otherwise in terms of number of deaths or diseases does not appear to

have been duly and exhaustively undertaken by the official machinery so far for the country or for any particular area. The private reports mention number of deaths and diseases. Death by pollution may be comparable to an offence of homicide and any disease on that account may be likewise comparable to attempt to murder or grievous hurt. Polluter is, thus, liable to be dealt with in the same manner as a person committing any other heinous crime as per law of the land. Mere fact that such polluter creates wealth or employment does not make the offence less serious. The statutory framework prohibits polluting activity and provides for penal consequences. Further, the 'Polluter Pays' principle requires compensation to be recovered to meet the cost of remedying the adverse impact of pollution. Governance of such laws can be held to be satisfactory if the magnitude of punishment of law violators corresponds to the extent of violation of law and the compensation recovered is adequate to meet the cost of damage. There is enough evidence of pollution but no data is shown of corresponding convictions or recovery of adequate compensation for restoration of environment. This calls for authentic study of the extent of damage to the environment and to the public health so that policy makers and law enforcers can bridge the gap.

38. In case extent of convictions for the environment related offences do not correspond to the extent of crime, paradigm shift in policies and strategies for implementation of law may need to be considered. Similarly, the mechanism for recovery of compensation may need to be revised on that pattern. Such review of policy cannot be left to the local

bodies or the Pollution Control Boards but has to be at highest level in the State and further review at the national level. As noted in some of the studies, the ranking of the country in compliance of environmental norms needs to be brought to respectable higher position which may be possible only if there is change in policies and strategies for implementation of necessary norms at every level in right direction. The scale of compensation needs to be suitably revised so that the same is deterrent and adequate to meet the cost of reversing the pollution.

39. Authentic data is required to be compiled which is necessary for proper policy making. The Rules provide for such data to be collected at the state level as well as at the national level. If such data is not furnished timely from ground level with all the requisite details, the policy making remains deficient. Since none of the States is fully compliant with the mandate of statutory waste management rules under various headings, as already noted, remedial measures are necessary. We consider it necessary to observe that at least some major cities/towns/villages be first developed as model and thereafter successful experiment replicated in remaining cities/towns/villages.

40. Though environment is priceless and no amount of compensation may be sufficient for real restoration of environment to its pristine glory, the 'Polluter Pays' principle requires cost of restoration to be recovered which should be deterrent and also include Net Present Value (NPV) for environmental services forgone forever. Though such compensation is to be primarily recovered from polluters, where authorities fail to implement law and recover compensation on account of collusion or

inaction, such authorities can also be made accountable and required to pay compensation. Strong central mechanism of auditing the compliance of environmental laws by the States and the Union Territories (UTs) is necessary. We are also of the view that to encourage enforcement of environmental laws, cognizance of performance or otherwise need to be taken by authorities allocating funds. Incentives can be given to encourage compliance and those deficient in compliance may be required to comply as a condition for getting grants or part of such grants. Such a policy may be a step in the right direction for achieving sustainable development goals. We take note of discussion on the subject in the minutes of National Development Council held on 01.10.1990.[31] Therein a formula called "Gadgil – Mukerjee" formula is referred to envisaging grants to meet environmental problems. We may add that while such grants may be necessary, there may be a condition requiring measurable and demonstrable improvement in time bound manner as a condition for the grant.

41. One major hurdle in compliance of the Rules is lack of institutional training mechanism. Scheme of Rules and strategies for implementation, including technology to be used, best practices to be employed need to be identified. Resource persons, target group of persons to be trained, location at which training is to be undertaken need to be worked out.

[31] http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wg_state_finan0106.pdf

42. It is also necessary to have an Environment Plan for the country as well as for the States which may identify and publish gaps in compliance of environmental law and indicate action plan to remedy the same. Compliance of environmental norms also requires carrying capacity study not only of eco-sensitive areas but also areas where violation of environmental laws has clearly surfaced out based on scientific data published by CPCB such as non-attainment cities in terms of air quality, critically polluted industrial clusters on account of air/water pollution, polluted river stretches etc. Drastic remedial measures may be necessary to deal with the same which should not merely be responsive but proactive by way of planning population density, vehicle numbers, nature and quality of vehicles, nature and quality of activity to be allowed. Absence of such measures may render it difficult to meaningfully implement the accepted norms of 'Sustainable Development' or 'Intergenerational Equity'. Such planning is part of 'Precautionary' principle. 'Polluter Pays' principle can be meaningfully implemented only when assessment of damage is realistic and compensation recovered matches the extent of damage. As per census of India 2011, there are 475 places with 981 overgrowths (OGs) have been identified as Urban Agglomeration (UA). The number of total towns in India is 7,935 (Statutory Towns 4,041 + Census Towns 3,894). There are total 6,166 Urban Agglomeration/towns which constitutes the urban frame of the country. During FY 2017-2018, out of 35 SPCBs/PCCs only 16 SPCBs/ PCCs reported the status of Solid Waste Management Rules, 2016.[32]In view of these statistics, emergent

[32] Annual report of CPCB for the year 2017-18 accessible at: http://cpcb.nic.in/uploads/hwmd/

and stringent measures are required for compliance of environmental norms.

43. We discussed with the Chief Secretary the above unsatisfactory situation of environment and about need for having an effective Monitoring Cell directly attached to the office of the Chief Secretary with experts in environment and related issues to assist the Chief Secretary.

44. The presence of Chief Secretary before this Tribunal was directed with an expectation that there will be realization of seriousness at the highest level which may percolate in the administration for effective action and delivery.

45. By now we have had interaction with the Chief Secretaries of 14 States and 4 Union Territories mentioned in paragraph 25 above with reference to issues summed up in paragraph 22 above as well as other important issues relating to environment in the said States and Union Territories. We have also reviewed the enforcement mechanism. We have found that not even in one State or Union Territory environment norms as laid down in statutory rules have been fully complied. As already noted in order of this Tribunal dated 16.01.2019, statutory timelines prescribed under the SWM Rules have expired. We have noticed huge gap with respect to all the States and Union Territories on the subject of compliance of waste management rules which has a huge potential for continued damage to the public health. As already noted, sewage management is quite inadequate, discharge of untreated

---

MSW_AnnualReport_2017-18.pdf

industrial effluents poses serious threat to the water quality, legacy waste remains to be tackled, integrated waste processing plants remain to be set up. 102 major cities are non-attainment cities in terms of air pollution. 100 industrial clusters are critically polluted. Still, hardly there are significant convictions or recovery of environment compensation which may correspond to the cost of restitution of environment. The States have not been able to adequately meet the challenge of finalizing efficient technology to be employed, arrange financial resources, human resources, community involvement, finalise standard operating procedures (SOP) to be followed. While the Chief Secretaries who have so far appeared after interaction with their concerned Departments have assured future action, the data available on record calls for not only urgent measures but also higher level monitoring mechanism. Concept of cooperative federalism is an accepted principle of governance in Indian Constitutional law. GST regime is one such instance. The concept has been *inter-alia* referred to in recent decisions of the Hon'ble Supreme Court in *Jindal Stainless Ltd. v. State of Haryana*[33] and *Swaraj Abhiyan v. Union of India*[34]. This Tribunal without formally referring to the same principle, applied this principle in directing constitution of a Central Monitoring Committee (CMC) to undertake a national initiative by way of preparation and enforcement of a national plan to make polluted river stretches pollution free. CMC envisages representatives from Niti Aayog, Ministry of Water Resources, Urban Development Department,

[33] 2017 (12) SCC 1
[34] 2018 (12) SCC 170

MoEF&CC, NMCG and CPCB. The CMC is to coordinate with River Rejuvenation Committees (RRCs) of States and oversee execution of action plans with reference to timeliness, budgetary mechanism and other factors. The Chief Secretaries of the States are nodal agencies at State level. Its first meeting is proposed by 30.06.2019. If it is not found viable to hold meeting by 30.06.2019, the same may be held by 31.07.2019. This direction was found necessary after steps to make 351 polluted river stretches pollution free were held to be inadequate Right to Life requires availability of clean drinking water and clean environment for all. This is also necessary to enforce principles of environmental jurisprudence incorporated under Section 20 of the National Green Tribunal Act, 2010 in light of Stockholm Declaration (1972) i.e. 'Precautionary' principle, 'Sustainable Development' principle and 'Polluter Pays' principle. The Tribunal, found that inspite of repeated directions of the Hon'ble Supreme Court as well as this Tribunal, action by the States to tackle pollution of the rivers was inadequate which required a CMC. The Tribunal also noted that well known cause of pollution of rivers was dumping of sewage, industrial waste, garbage, plastic waste, e-waste, bio-medical waste, municipal solid waste, diversion of river waters, encroachments of catchment areas and floodplains, over drawal of groundwater, degradation on account of illegal sand mining. Satisfactory situation had not been achieved on the subject of installation and operation of ETPs, CETPs and STPs as noted by the Hon'ble Supreme Court in *Paryavaran Suraksha Samiti v. Union of India & Ors.*[35]. The State PCBs needed

[35] (2017) 5 SCC 326

revamping, not fully equipped to handle the situation as noted by this Tribunal in a detailed order dated 19.02.2019, passed in the case of *Aryavart Foundation v. M/s Vapi Green Enviro Ltd. & Ors*, O.A. No.95/2018. Earlier, the Tribunal took up the matter of 351 river stretches vide order dated 11.01.2019 in Original Application No. 673/2018 and required all the States and Union Territories concerned to constitute RRCs and furnish action plans with a view to bring the water quality within norms for bathing within six months from date of finalization of action plan. Though action plans were submitted by substantial number of States the same were not adequate as found vide order dated 08.04.2019. It was thus felt that leaving the matter to the States may not achieve the target of making river stretches pollution free. Accordingly, CMC was directed to be constituted.

46. After thorough consideration of the matter in light of the compliance reports/action plans submitted by 14 States and 4 Union Territories on issues highlighted in paragraph 22 of the order in pursuance of order dated 16.01.2019 in Original Application No. 606/2018 and finding huge gap in the action taken and proposed on the one hand and action required on the other, we find that constitution of Central Monitoring Committee representing concerned Departments of the Central Government with the involvement of all the Chief Secretaries of the States in the spirit of cooperative federalism, will not serve the purpose unless issue of waste disposal and other such issues which are integral to pollution of 351 river stretches are also brought within the purview of CMC. Consistent with this thought, the issues of 102 major non-attainment cities and 100 critically polluted industrial clusters are also

integral part of the issue of waste management. Sand mining in rivers is also likewise integral to rejuvenation of polluted river stretches. So is the position of ground water incidental to the flow of rivers and re-use of treated waste water. While individual Committees have been constituted for execution of orders of this Tribunal including Committees with respect to rivers Ganga, Yamuna, Ghaggar, Satluj, Beas, Hindon, Ami, Kasaradi etc., a robust umbrella monitoring system is required to be worked out consistent with the order dated 08.04.2019 (*supra*). Such system will be consistent with the other projects of Central Government such as '*Swachh Bharat Mission*' and '*Namami Gange'*. Accordingly, we direct that the CMC constituted in terms of paragraph 43 of order dated 08.04.2019 (*supra*) to also take cognizance of connected issues of waste management for remedying pollution of water, air and soil as mentioned paragraph 22 or other issues which may be incidental. For this purpose, the Committee is at liberty to coopt representatives from any other concerned Ministry such as Ministry of Industry and Ministry of Finance.

47. We may also mention that the Chief Secretaries of the States have to continue to monitor the issues. On the pattern of directions already issued to the 14 States and 4 Union Territories mentioned above, the directions to the State of Karnataka will be as follows:-

i. Steps for compliance of Rule 22 and 24 of SWM Rules be now taken within six weeks to the extent not yet taken. Similar steps be taken with regard to Bio-Medical Waste Management Rules and Plastic Waste Management Rules.

ii. Atleast three major cities and three major towns in the State and atleast three Panchayats in every District may be notified on the website within two weeks from today as model cities/towns/villages which will be made fully compliant within the next six months. Remaining cities, towns and villages Panchayats of the State may be made fully compliant in respect of environmental norms within one year.

iii. A quarterly report be furnished by the Chief Secretary, every three months. First such report shall be furnished by July 25, 2019.

iv. The Chief Secretary may personally monitor the progress, atleast once in a month, with all the District Magistrates.

v. The District Magistrates may monitor the status of compliance of environmental norms, atleast once in two weeks.

vi. The District Magistrates or other Officers may be imparted requisite training.

vii. Estimate of value of environmental degradation and cost of restoration be prepared and compensation be planned and recovered from polluters for environmental restoration and restitution on that basis.

viii. Performance audit of functioning of all regulatory bodies may be got conducted and remedial measures be taken, within six months.

ix. Introduction of a policy of giving ranking, based on performance on the subject of environment and giving of rewards or other incentives on that basis to individual areas,

localities, institutions or individuals may be considered. This may also include encouraging students or other citizens significantly contributing to the cause of environment. The best practices may be evolved, if necessary, in the light of experiences on the subject. This may help in educating and involving public at large which may help in enhancing of environmental laws.

x. The Chief Secretary may remain present in person before the Tribunal with the status of compliance in respect of various issues mentioned in para 22 as well as any other issues discussed in the above order on 01.11.2019.It is made clear that Chief Secretary may not delegate the above function and the further requirement of appearance before this Tribunal to anyone else. However, it will be open to him to change the date, by advance intimation by e-mail at ngt.filing@gmail.com to adjust their convenience.

48. We direct the CPCB to explore undertaking carrying capacity study of all eco sensitive areas and such areas where scientific evidence has established violation of environmental norms in the form of non-attainment cities, polluted river stretches and critically polluted industrial clusters and suggest remedial measures. In doing so, CPCB may also have regard of directions of this Tribunal, *inter-alia*, in *Anil Tharthare Vs. The Secretary, Envt. Dept. Govt. of Maharashtra &*

Ors.,[36]*Ajay Khera Vs. Container Corporation of India Limited & Ors.*[37] and *Westend Green Farms Society Vs. Union of India & Ors.*[38] CPCB is at liberty to work out an appropriate mechanism for such study and utilize funds collected by way of environment compensation for restoration of environment. If required, help of State Boards or any other institution may be taken. A preliminary report in this regard may be furnished to this Tribunal on or before 31.07.2019 by e-mail at ngt.filing@gmail.com.

49. The issue of recovery of damages from the States for their failure to comply with the environmental norms, including the statutory rules and orders of this Tribunal, will be considered will be considered later. The Tribunal may also consider the requirement of performance guarantee of a particular amount in case progress achieved is not found to be satisfactory.

50. There is need to develop an institutional training mechanism involving technical, social and environmental issues for training of officers concerned with enforcement of environment norms at ground level. Training may be ongoing process at national level, State level and other appropriate levels as may be found necessary. Accordingly, CPCB has

---

[36] Para 33 of the order wherein the Tribunal directed constitution of a five Members Expert Committee to carry out carrying capacity study of the area for relevant environment parameters and impact of such expansion on already congested and stressed areas.

[37] Para 18 of the order wherein the Tribunal directed assessment of carrying capacity for the NCT of Delhi as well as other major cities particularly 102 non-attainment cities within reasonable time, preferably in one year. The assessment would specifically study capacity in terms of number of vehicles, extent of population, extent of nature of different activities – institutional, industrial and commercial etc.

[38] para 28 of the order wherein the Tribunal directed carrying capacity assessment to regulate activities violating environmental laws.

been directed to prepare such program[39]indicating persons required to be imparted training, subjects of training, resource persons, location of training, duration of training programmes etc. CPCB will be free to coordinate with available training institutions for use of infrastructure such as judicial academies, police academies, administrative academies, forest academies etc. as may be found viable. CPCB will be free to utilize funds collected by way of environmental compensation for this purpose also in same manner as for carrying capacity study and also take help from State Boards or any institution. A report in this regard may be now furnished within three months instead of one month as earlier stipulated in order dated 22.04.2019.

51. Apart from carrying out studies by the State, CPCB has been directed to explore preparation of Annual Environment Plan for the country giving status of compliance of environmental norms and gaps, if any. In the process, undertaking of assessment of damage to the environment in monetary terms may be considered so that by applying 'Polluter Pays' principle the cost of damage is recovered from identified polluters. This concept is necessary for effective enforcement of environmental rule of law. CPCB may be at liberty to involve such other agencies as it may consider necessary.[40] A preliminary report on this exercise may be furnished to this Tribunal on or before 31.07.2019. The CPCB will

[39] vide order dated 22.04.2019,in O.A. No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2018 (State of Meghalaya).
[40] Vide order dated 23.04.2019 in O.A. No. 606/2018, Compliance of Municipal Solid Waste Management Rules, 2018 (State of Tamil Nadu).

be at liberty to utilize funds collected by way of environmental compensation for restoration of environment.

52. CPCB may also coordinate the IEC programmes in terms of order dated 16.01.2019 by coordinating with National Level Legal Services Authority directly and with State Legal Services Authorities and District Legal Services Authorities through State PCBs and furnish a report by 31.07.2019.

53. The Registry may furnish set of all the action plans/compliance reports received in pursuance order dated 16.01.2019 for consideration of the matter at the time of appearance of the Chief Secretaries to the CPCB by e-mail and similar affidavits in future for the remaining States where Chief Secretaries have yet to appear may also be furnished to CPCB so that gap analysis can be brought to the notice of the CMC for appropriate consideration. Such gap analysis report be prepared by 15.07.2019 and furnished to members of CMC and Chief Secretaries and also placed on website of CPCB.

A copy of this order be sent to MoEF&CC, CPCB, Finance Commission and Niti Aayog and Chief Secretaries of States and Union Territories mentioned in paragraph 25 by e-mail.

Put up the report which may be received on 29.08.2019.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

April 24, 2019
Original Application No. 606/2018

-TRUE COPY-

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Writ Petition No. 645/2025

M/s. Tata Bricks Company (Old Name Vip Int Udyog), Chakk-66 G.b., Tehsil - Anoopgarh, District Sri Ganganagar Through Its Proprietor Jitin Kumar S/o Amarjeet Kumar, Aged About 27 Years, R/o Ward No. 11, Sri Vijaynagar, District Sri Ganganagar (Raj.).

----Petitioner

Versus

1. Rajasthan State Pollution Control Board, Through Its Member Secretary, Jhalana Industrial Area, Jhalana Dungari, Jaipur.
2. Environment Engineer (Env. Comp.), Rajasthan State Pollution Control Board, Headquarter, 4 Institutional Area, Jhalana Dungari, Jaipur.
3. Regional Officer, Rajasthan State Pollution Control Board, Plot No. Spl-33, Bichhwal Industrial Area, Bikaner

----Respondents

For Petitioner(s)	:	Mr. Manish Shishodia, Sr. Advocate with Mr. D.S. Thind Mr. Harshvardhan Rathore Mr. Vijay Kumar Aggarwal Mr. Hemant Kumar Jain Mr. Bhuvneshwar Singh Sodha Mr. Deepesh Birla Mr. Amit Kumar Ms. Sonika Punia Mr. S.R. Godara Mr. Hans Raj Choudhary
For Respondent(s)	:	Mr. Sajjan Singh Rathore, AAG with Mr. Pravin Kumar Choudhary Mr. Mahendra Bishnoi Mr. Sanjay Raj Paliwal Ms. Neelam Sharma, AGC

HON'BLE MR. JUSTICE SUNIL BENIWAL

Order

Reportable

Reserved on : 23/09/2025
Pronounced on : 30/10/2025

1. Learned Senior Counsel, Mr. Manish Shishodia, appearing on behalf of the petitioners, at the outset, submitted that he proposes to make some preliminary submissions, which are identical in the present writ petition, along with other writ petitions mentioned in **Schedule-A**, attached with this order, which may be treated as part of this order.

2. It is submitted by the learned Senior counsel that the present bunch of petitions have been filed feeling aggrieved of the imposition of environmental compensation by the respondent – Rajasthan State Pollution Control Board ("RSPCB"), pursuant to the directions issued by the National Green Tribunal ("NGT").

2.1 It is further submitted by the learned Senior Counsel that his preliminary submissions may be considered and decided first, without going into the merits of individual writ petitions and if his preliminary submissions are decided and are accepted, then the entire bunch of writ petitions could be decided accordingly. It is also submitted that if this Court is not inclined to accept the preliminary submissions, then the writ petitions may be posted again for deciding the same on merits.

2.2 Considering the submissions made above, the preliminary submissions are being considered and decided first.

3. At this stage, although this Court is not deliberating the factual aspects involved in this bunch of writ petitions, however, it would be relevant to produce background of the matter for clarity. Hence, for brevity, the facts of writ petition No.645/2025 are considered.

3.1 The petitioner, to operate as a brick kiln, had applied to RSPCB for grant of Consent to Operate on 26.11.2021 and the same was granted on 13.02.2022 (Annex.3) for the period from 26.11.2021 to 31.10.2031. However, in the meanwhile, a show cause notice dated 19.01.2022 (Annex.4) was issued by RSPCB in pursuance of directions issued by the NGT vide order dated 10.11.2021 in the case of Hakam Singh & Anr. Vs. State of Rajasthan & Ors.; O.A. No.262/2020 and imposition of Environmental Compensation was sought alleging operation of unit without obtaining Consent to Operate.

3.2 Thereafter, Environmental Compensation to the tune of Rs.15,60,000/- was levied vide order dated 08.03.2022 (Annex.5) passed by RSPCB. Aggrieved of the same, the petitioner preferred a writ petition being SBCWP No.7580/2022, which is pending and is tagged with the present bunch of writ petitions.

3.3 The petitioner also approached the NGT seeking impleadment as party in the aforesaid case pending before it. The NGT, while disposing of the application for impleadment on 11.07.2022, directed that the order dated 08.03.2022 (Annex.5) be treated a notice and granted time to the petitioner to file response to the same.

3.4 The petitioner thereafter submitted a reply pursuant to the aforesaid order passed by the NGT and thereafter the impugned show cause notice dated 18.12.2024 (Annex.7) came to be passed seeking to revoke consent to operate on account of non-deposition of Environmental Compensation been imposed vide order dated 08.03.2022.

3.5 In similar manner, Environmental Compensation has been imposed by RSPCB on the petitioners alleging operation of brick kilns without Consent to Operate. The said imposition of Environmental Compensation has been challenged in the present bunch of writ petitions alleging the same to have been levied without jurisdiction/authority.

4. The preliminary submission, which is common in all the writ petitions, is that the RSPCB is not competent under the law to impose Environmental Compensation. In support of such submission, learned Senior Counsel, Mr. Shishodia, made the following submissions:-

4.1 The RSPCB has exceeded its jurisdiction in imposing Environmental Compensation upon the petitioner as it has no authority under the law to do so and has relied upon the judgment passed by the Division Bench of the Allahabad High Court (Lucknow Bench) in the case of **Suez India Pvt. Ltd. Vs. Uttar Pradesh Pollution Control Board & other connected matters**, decided on 17.07.2025. While relying on the aforesaid judgment, the learned Senior Counsel has referred to para Nos.2, 13, 39, 43, 44, 47, 51, 54, 63, 66, 67, 78, 70, 80, 82 and 83 and while taking this Court to the above referred paragraphs of the judgment, he argued that the State Pollution Control Board has no power to impose Environmental Compensation on any person or industry and it can merely file an application before the NGT under Section 15 read with Section 18 of the National Green Tribunal Act, 2010 ("NGT Act") for issuance of a direction to the person concerned for demand of the same.

4.2. He also placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of **Kantha Vibhag Yuva Koli Samaj Parivartan Vs. State of Gujarat & Ors.** [**(2023) 13 SCC 525**] and referred to para Nos.3, 5, 6 and 14 to 17 of the aforesaid judgment and submitted that the NGT could not abdicate its jurisdiction and could not entrust judicial function to any administrative expert body. Such function is not delegable. He argued that Section 15 of the NGT Act empowers the NGT to award compensation to the victim of pollution and the environmental damages to provide for restitution of property, which has been damaged and for the restitution of environment. He also argued that it is the NGT alone, who has been entrusted by the Act and it is rather core adjudicatory function, which cannot be delegated to any administrative expert body.

4.3. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **D.P.C.C. Vs. Lodhi Property Co. Ltd. & other connected matters,** [**2025 SCC OnLine SC 1601**] while contending that power to impose or collect restitution or compensatory damages can be imposed only after detailing the principle and the procedure incorporating basic principles of natural justice in the subordinate legislation.

He further contended that the Hon'ble Apex Court has clearly opined that without there being any legislative regulatory mechanism, the State Pollution Control Board cannot demand Environmental Compensation.

The Hon'ble Apex Court, in the aforesaid judgment in the case of Lodhi Property Co. Ltd. (supra), has laid down that guidelines issued by the Central Pollution Control Board, in its

document "General Framework for Imposing Environmental Damages" which were issued in December, 2022, are required to reviewed thoroughly and issued in form of Rules & Regulations as this will enable declaration of law and ensure its recognition and easy implementation. While elaborating his submission, learned Senior Counsel has referred to para Nos.2, 3, 6, 12, 30, 31, 33, 35, 37 and 39 of the aforesaid judgment and while taking this Court to the above referred paragraphs of the said judgment, he submitted that the Hon'ble Apex Court, in concluding para, has specifically observed that the State Pollution Control Board, shall impose or collect restitutionary or compensatory damages only after detailing the principle and procedure incorporation basic principles of natural justice in the subordinate legislation. That being so, unless the necessary Rules & Regulations are framed and are incorporated and declared as a law, the State Pollution Control Board has no authority to impose Environmental Compensation upon the petitioners, based on the guidelines which have no legislative competence.

4.4. The Environmental Compensation has been calculated without any formula and there is no transparency as to on what basis the figure mentioned as Environmental Compensation has been arrived at by the RSPCB. He submitted that the alleged mechanism does not carry any statutory force as it has not been notified in the official gazette. There is no material available on record nor any impugned orders to reflect as to who has suffered damages or harmed. The impugned orders have been passed in cyclostyled manner without due application of mind.

Based on the above, learned Senior Counsel Mr. Shishodia submitted that the present bunch of petitions deserves to be allowed on the above preliminary submissions and the impugned orders passed in the present bunch of petitions are required to be quashed and set aside on this count alone and any amount recovered towards Environmental Compensation from the petitioners, during pendency of the present bunch of petitions, is required to be refunded.

5. Learned counsel Mr. Vijay Kumar Aggarwal, appearing in SBCWP No.6090/2022 while adopting the arguments as advanced by learned Senior Counsel Mr. Shishodia, submitted that appeal against the impugned order is not maintainable as they are composite orders passed under both the Air (Prevention and Control of Pollution) Act, 1981 ("Act of 1981") and the Water (Prevention and Control of Pollution) Act, 1974 ("Act of 1974"). He submitted that there is no provision provided under the Act of 1981 to appeal against the directions issued under Section 31 of the said Act. The remedy available under the Act of 1974 cannot be availed to appeal against the composite impugned orders and, therefore, the objections as raised by the respondents in their reply with regard to the maintainability of the present writ petitions deserve to be rejected.

5.1. He placed reliance on the judgment of the Hon'ble Apex Court in the case of **Tamil Nadu Pollution Control Board Vs. Sterlite Industries (I) Ltd. & Ors.** [**(2019) 19 SCC 479**].

5.2. He also submitted that brick-kilns work on different scale and level, meaning thereby, the capability and investment, therefore,

mechanism to impose Environmental Compensation, without any prescribed mode of calculation, is also not comprehensible.

6. Learned Counsel Mr. Hemant Kumar Jain, appearing in SBCWP No.3088/2023 while adopting the arguments as advanced by learned Senior Counsel Mr. Shishodia and Mr. Vijay Kumar Aggarwal, further submitted that even if appeal is to be preferred, the same cannot be done as the Appellate Authority at Jaipur is not functioning and, therefore, writ petitions are required to be heard on merit.

7. Per contra, learned counsel for the RSPCB as well as the State, made the following submissions:-

7.1 The respondent-RSPCB was right in imposing Environmental Compensation upon the petitioner as an inspection was carried out in view of the direction issued by the NGT and during inspection, it was noted that the brick kilns, being operated by the petitioners, were running without Consent to Operate or in some cases, without seeking necessary conversion.

It is submitted that the Environmental Compensation is calculated for the period in which the petitioners-industries were found to be running without Consent to Operate and, therefore, the RSPCB was fully justified in imposing environmental compensation.

It is submitted that penalty for violation and environmental damages are two different subjects and as far as penalty is concerned, the same is for the purpose of penalizing the person for not adhering to the norms and the guidelines under which he is supposed to run brick-kilns and environmental compensation is a compensation, which is levied on the default for causing

environmental pollution and the environmental compensation is recovered as to restore the damage caused on account of such environmental damage.

7.2 The State Pollution Control Board is under obligation to consider the direction issued by the Central Pollution Control Board as per Section 18(1)(b) of the Act of 1981. Thus, in view of the same and considering the judgment rendered by the Hon'ble Apex Court in the case of **Paryavaran Suraksha Samiti & Ors. Vs. Union of India & Ors.** [**(2017) 5 SCC 326**], the mechanism of calculation, imposition and recovery of environmental compensation has been formulated, which under clause (2) provides the procedure for calculating amount of environmental compensation. That being so, the action of the respondent-RSPCB in imposing Environmental Compensation cannot be held to be illegal or arbitrary in any manner.

7.3 The NGT, vide its order dated 11.02.2021, has delegated to the State Pollution Control Boards, the authority to assess and recover compensation from brick kilns, therefore, the impugned orders were rightly passed.

7.4 While responding to the submission made with regard to direction issued in the case of Lodhi Properties (supra), it is submitted on behalf of the respondents that the Hon'ble Apex Court has not declared the method of calculating as unconstitutional and, therefore, it cannot be concluded that there is anything wrong in the formula for calculation, rather, the direction has been given only to give statutory colour to the guidelines.

7.5 While responding the submissions with regard to damage suffered, it is submitted by the respondents that compensation has been imposed on the petitioners on account of non-compliance with requisite of obtaining/renewing Consent to Operate and, therefore, the question as to who has suffered damage does not arise.

7.6 The petitioners have not challenged the order dated 11.02.2021, passed by the NGT, pursuant to which, the impugned orders/notices have been issued to the petitioners imposing Environmental Compensation. The said order of NGT is the whole genesis in this litigation as every action ranging from site inspection to issuance of the impugned orders has been carried out as per direction issued in the said order and, therefore, without challenging the same, the present writ petitions are not maintainable. In support of this submission, learned counsel has placed reliance on the judgment of the Meghalaya High Court rendered in the case of **Dayanidhi Ventures Pvt. Ltd. Vs. Meghalaya State Pollution Control Board & Ors.** [**WP(C) No.338/2021, decided on 16.12.2021**].

7.7 The judgment rendered in the case of Lodhi Properties (supra), does not help the petitioners as the impugned communications, passed due to the non-compliance of possessing Consent to Operate. Further, the Court has, in no manner, denied the authority of State Pollution Control Boards to levy environmental compensation.

7.8 The action of the RSPCB cannot be said to be arbitrary or unreasonable as show cause notices were issued to which respective replies were filed by the petitioners and subsequent

thereto, the impugned communications were issued. The 'Polluter Pays Principle' not only applies to emission of actual pollution but also to non-compliance of requisite permissions to maintain the environmental law compliance concerning pollution and Consent to Operate comes within the ambit of such compliance as action plan as to how the work will be carried and emissions would be maintained has to be submitted before NOC can be issued.

7.9 The Allahabad High Court, in the case of **M/s. Ramesh Dyeing and Washing, Ghaziabad Vs. State of U.P.** [**Writ(C) No.7305/2025**, decided on 21.08.2025], dismissed the writ petition while relying on the judgment of the Hon'ble Apex Court in the case of Lodhi Properties (supra) and observed that Pollution Control Board has jurisdiction to impose Environmental Compensation.

7.10 In response to the submission made by Mr. Vijay Kumar Aggarwal, it is submitted that the impugned communications are composite in nature, however, remedy of petitioners lies before the NGT itself as the communications have been issued in compliance of the direction of the NGT.

7.11 While responding to the submissions made by Mr. Hemant Kumar Jain, it is submitted that the appellate authority has been notified on 18.09.2025 and, therefore, the submission made by him is incorrect on the face of it. Thus, the petitioner very well has an alternative remedy to approach the Appellate Authority. Reliance has been placed on the judgment of Allahabad High Court delivered in the case of **Nagar Palika Parishad Vs. State of UP & Ors.** [**(2024) ILR 12 All. 741**].

8. Heard learned counsel for the parties and perused the record.

9. One of the argument raised by the respondents is with regard to the maintainability of writ petitions in view of the fact that the petitioners have equally efficacious alternative remedy.

9.1 This Court deems it appropriate to deal with the issue of alternative remedy at first.

9.2 The counsel for the petitioners, while making preliminary submissions, have submitted that RSPCB exceeded its jurisdiction in calculating and imposing Environmental Compensation upon the petitioners, more particularly in view of not having legislative competence to take such action.

9.3 It may also be noted that order/show cause notice is challenged by the petitioners on ground of it being without jurisdiction. If order/action is without jurisdiction, then writ petition is maintainable despite alternative remedy being available, as has been held by the Hon'ble Apex Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors.** [**(1998) 8 SCC 1**], wherein it was observed as under:-

> *"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Qua Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*
>
> *15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that*

if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.

But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. Rashid Ahmad v. Municipal Board, kairana, [1950]1SCR566 , laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting Writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. The Income Tax Investigation Commissioner, [1954]25ITR167(SC) which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that Writ Petition under Article 226 could still be entertained in exceptional circumstances.

XXX XXX

20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

9.4 It is further to be noted that the impugned orders are composite in nature as they have been passed under the Act of 1981 so also Act of 1974, thus remedy of appeal cannot be availed as held by the Hon'ble Apex Court in the case of Sterlite Industries (supra) wherein the Court observed as under:-

"35...At this juncture, it is important to state that Section 33B of the Water Act and Section 31B of the Air Act were both enacted on 18.10.2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued Under Section 33A of the Water Act are appealable to the NGT, directions issued Under Section 31A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given Under Section 31A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders.....However, Shri Sundaram argued, with particular reference to the explanation to Section 31A of the Air Act that "directions" partake of the nature of "orders" when closure of any particular industry or stoppage of supply of electricity qua any single industry is made, and therefore, such directions are appealable as orders Under Section 31 of the Air Act. This argument is also of no avail as Section 33A of the Water Act contains an identical explanation to that contained in Section 31A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable."

Thus, this Court is well within its jurisdiction to entertain the present writ petitions.

10. Now, I propose to deal with the issue submitted in the form of preliminary submission, which is as to whether Rajasthan State Pollution Control Board is competent to impose Environmental Compensation, as has been imposed in the orders impugned in the present bunch of petitions.

10.1 In order to adjudicate the above issue, it would be appropriate to first consider the judgment of the Hon'ble Apex Court in the case of Lodhi Properties (supra). Before considering the said judgment, it would be appropriate to reproduce certain relevant paragraphs of the judgment, which are reproduced as under:-

"31. At this stage, we must also take note of the recent 2024 amendments to the Water and Air Acts. Two major changes relevant for our consideration are that of decriminalisation and introduction of the office of "Adjudicatory Officer". Even after the amendments, in our opinion, there is no conflict between the powers of the State Boards to direct payment of environmental damages under Sections 33A and 31A of the Water and Air Acts and the powers of the Adjudicating Officer to impose penalties under Chapter VII of the Water Act and Chapter VI of the Air Act. The decriminalization of offences under these Chapters has not removed the punitive nature of actions that can be taken under them. There remains a clear distinction between the nature of directions that the State Boards can issue under Sections 33A and 31A of the Water and Air Acts for payment of environmental damage and the determination by Adjudicating Officers. The former is compensatory in nature and will be resorted to when remedial measures are being undertaken to restore the degraded environment or pollution caused. The latter is a penalty for an offence under the law and is imposed with the objective of punishing the offender. This penalty collected here will not be specifically directed towards the restoration of the degraded environment (for instance, to decontaminate a pond that has beenpolluted due to discharge of untreated sewage). It will be deposited in the Environmental Protection Fund that is to be set up under Section 16 of the Environment (Protection) Act. According to Section 16(3) of the EP Act, the Fund shall be used for, (a) the promotion of awareness, education and research for the protection of environment; (b) the expenses for achieving the objects and for purposes of the Air (Prevention and Control of Pollution) Act, 1981(14 of 1981) and under this Act; and (c) such other purposes, as may be prescribed.

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

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

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

33. While we hold that the Boards have the power to direct the payment of environmental damages, we make it clear that

this power must always be guided by two overarching principles. First, that the power cannot be exercised in an arbitrary manner; and second, the process of exercising this power must be infused with transparency.

...

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

36. These Rules must also create enabling framework for citizens to file complaints about environmental damage. Public participation in environmental protection has assumed great importance with climate change threatening to drastically disrupt our way of living. Boards, being the first line of defence against polluting activities, must provide easy accessibility and encourage public participation in their function and decision making.

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

39. For the reasons stated above:

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

(b) we direct that the Pollution Control Boards can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank

guarantees as an ex-ante measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts.

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

10.2 A perusal of the above judgment, more particularly, the paragraphs as reproduced above, reflects that the Hon'ble Apex Court, in para No.39 of the judgment, has specifically concluded and directed that power to impose or collect restitutionary or compensatory damages or requirement of furnishing a bank guarantee as an ex-ante measure under Sections 33A and 31A of the Water and Air Act respectively shall be imposed only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation. Meaning thereby, the Hon'ble Apex Court, while considering the issue of imposition of the Environmental Compensation by the State Pollution Control Boards, observed that the State Pollution Control Boards can impose restitutionary or compensatory environmental damages but only after having competence of subordinate legislation in the form of Rules & Regulations.

In para No.35 of the said judgment, the Hon'ble Apex Court has further observed that to ensure that the Boards can impose restitutionary and compensatory damages in a fair, transparent, and non-arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of Rules and Regulations must be notified. This shall include methods by which environmental damages is determined, and the consequent quantum of damages

are assessed. While bringing such Rules & Regulations, it may also incorporate certain principles of natural justice for fairness in action.

It is further observed that presently there is no legislation providing method of calculating Environmental Compensation and environmental damages being levied by the Boards on the basis of the certain guidelines issued by the Central Pollution Control Board in its document "General Framework for imposing environmental damage compensation" issued in December, 2022. It is noted by the Hon'ble Apex Court that these guidelines seem to have been issued pursuant to the directions of the NGT and the same are required to be reviewed thoroughly and are required to be issued in the form of Rules & Regulations.

10.3 Considering the observations made by the Hon'ble Apex Court, this Court is of the firm opinion that the RSPCB could not have demanded Environmental Compensation while considering the fact that there is no statutory backing with regard to the mechanism to calculate Environmental Compensation so also to have an authority to demand such Environmental Compensation.

10.4 Counsel for the respondents have stated that the Allahabad High Court, after considering the judgment of the Hon'ble Apex Court in the case of Lodhi Properties (supra), dismissed the writ petitions, however, it is noted that the Allahabad High Court has considered the only issue with regard to competence of the State Pollution Control Board and has not considered the directions issued by the Hon'ble Apex Court, which mandated that the State Pollution Control Boards could demand Environmental Compensation only after framing Rules & Regulations.

10.5 There is no dispute to the fact that presently the formula, as applied by the RSPCB is based on the guidelines "Mechanism of Calculation, Imposition and Recovery of Environmental Compensation". These guidelines have no statutory backing and, therefore, considering the judgment of the Hon'ble Apex Court, the RSPCB has no authority of law in demanding such Environmental Compensation. It is also to be noted that in the present case, demands were raised in the year 2022-23. The Hon'ble Apex Court has though decided the issue regard to the competency of State Pollution Control Boards to impose Environmental Compensation recently in the case of Lodhi Property (supra) which was decided on 04.08.2025, and the demands raised in the present writ petitions are prior to it, yet considering the settled law on the prospective and retrospective operation of the judgments rendered by the Courts, which does not require much deliberation, it is clear that the observations made by the Hon'ble Apex Court in the said case would apply to impugned orders in the present bunch of writ petitions. The said of proposition of law was recently discussed by the Hon'ble Apex Court in the case of **Kanishk Sinha & Anr. Vs. The State of West Bengal & Anr.; 2025 INSC 278** wherein the Court observed that whereas the law made by the Legislature is always prospective in nature unless it has been specifically stated retrospective, the reverse is true for judicial pronouncements. The judgment of the Court will always be retrospective in nature unless judgment itself specifically states that the judgment will operate prospectively. That being so, once it is held by the Hon'ble Apex Court that the Environmental Compensation could only be

imposed by the State Pollution Control Boards after it attains the legislative colour, the demand raised by the State Pollution Control Boards could not be allowed to stand and the impugned orders in the present bunch of petitions deserves to be quashed and set aside.

11. Another ground which has been raised by the learned counsel for the respondents to the effect that the order passed by NGT in pursuance of which the impugned orders have been passed by the RSPCB, has not been challenged before this Court, this Court is of the opinion that when the entire exercise of inspection and imposition of the environmental compensation has been carried out by the RSPCB then, it can be safely concluded that the said exercise constitutes an independent action which can be challenged under writ jurisdiction without challenging the order of NGT considering the fact that the impugned orders are composite in nature; more particularly, when the core issue is with regard to the competence and jurisdiction of the RSPCB to levy environmental compensation.

12. Some additional submissions have also been made by the petitioners as well as by the respondents on some other issues but this Court does not deem it necessary to examine the same as the core issue is only with regard to the competence of the RSPCB to impose impose Environmental Compensation in absence of statutory backing.

13. In view of the above, the preliminary submissions, as raised by the petitioners, is accepted. The writ petitions are allowed. The impugned orders/notices/communications in the present writ petitions are hereby quashed and set aside.

14. It is hereby directed that if any amount has been collected or deposited in lieu of demand raised vide impugned orders/notices/ communications, the same shall be refunded to the respective petitioners within a period of six weeks from the date of receipt of certified copy of this order and if amounts are not deposited or collected, the respondent-RSPCB shall not take any further action.

15. However, the respondent-RSPCB can impose and collect restitutionary and compensatory damages so also damages qua potential environmental damage while exercising powers under Sections 33A of the Act of 1974 and 31A of the Act of 1981 provided the subordinate legislation is enacted detailing the principles and procedure incorporating basic principles of natural justice.

16. All pending applications, if any, shall also stand disposed of accordingly.

(SUNIL BENIWAL),J

skm/-

Schedule-A

S.No.	Case No.	Title
1.	CW 6090/2022	Sagar Bricks Vs. Raj. State Pollution Control Board
2.	CW 6434/2022	Tara Bricks Ind Vs. Raj. State Pollution Control Board
3.	CW 7580/2022	Tata Brick Co. Vs. Raj. State Pollution Control Board
4.	CW 7588/2022	Tata Brick Vs. Raj. State Pollution Control Board
5.	CW 7683/2022	Tata Brick Chak 7 APM Vs. Raj. State Pollution Control Board
6.	CW 8086/2022	Shree Mahadev Int Udyog Vs. Raj. State Pollution Control Board
7.	CW 9250/2022	M/s Anil Bricks Co. Vs. Raj. State Pollution Control Board
8.	CW 10175/2022	Shree Gurunanak Bricks Vs. Raj. State Pollution Control Board
9.	CW 10401/2022	Jai Sri Krishna Int Udyog Vs. Raj. State Pollution Control Board
10.	CW 12532/2022	M/s. Mandeep Singh Ranjeet Singh Vs. Raj. State Pollution Control Board
11.	CW 14698/2022	Satya Narayan Shiv Kumar Vs. Raj. State Pollution Control Board
12.	CW 15928/2022	Satguru Int Udyog Vs. Raj. State Pollution Control Board
13.	CW 15941/2022	Sri Balaji Bricks Udhyog Vs. Raj. State Pollution Control Board
14.	CW 16809/2022	M/s. Saharan Int Ydyog, Chak 5 MLD Vs. Raj. State Pollution Control Board
15.	CW 16810/2022	M/s. Shree Shyam Kilan Company Vs. Raj. State Pollution Control Board
16.	CW 16836/2022	Sagar Bricks Vs. Raj. State Pollution Control Board
17.	CW 16934/2022	M/s. Balaji Suppliers Vs. Raj. State Pollution Control Board
18.	CW 17254/2022	M/s. Choudhary Bricks Udyog Vs. Raj. State Pollution Control Board
19.	CW 17569/2022	M/s. Kamal Int Udhyog Vs. Raj. State Pollution Control Board
20.	CW 17590/2022	M/s. Bika Bricks Vs. Raj. State Pollution Control Board
21.	CW 17854/2022	M/s. Shree Shyam Bricks Vs. Raj. State Pollution Control Board
22.	CW 18322/2022	Jai Vaishno Int Udhyog Vs. Raj. State Pollution Control Board
23.	CW 19022/2022	M/s. Jyani Bricks Industries Vs. Raj. State Pollution Control Board
24.	CW 19179/2022	M/s. Khan Int Udyog Vs. Raj. State Pollution Control Board
25.	CW 19187/2022	M/s. Mohan Lal Jakhar Bricks Vs. Raj. State Pollution Control Board
26.	CW 19422/2022	M/s. Jyani Int Udyog Vs. Raj. State Pollution Control Board

27.	CW 1/2023	M/s. Murliwala Int Udhyog Vs. Raj. State Pollution Control Board
28.	CW 77/2023	M/s. Prince Bricks Co. Vs. Raj. State Pollution Control Board
29.	CW 340/2023	M/s. Bhadu Kiln Udhyog Vs. Raj. State Pollution Control Board
30.	CW 1167/2023	M/s. Angri Devi Vs. Raj. State Pollution Control Board
31.	CW 1171/2023	M/s. Jai Bricks Vs. Raj. State Pollution Control Board
32.	CW 2065/2023	M/s. Bika Int Udhyog Vs. Raj. State Pollution Control Board
33.	CW 2454/2023	M/s. Akal Int Udhyog Vs. Raj. State Pollution Control Board
34.	CW 3087/2023	M/s. Balaji Bricks Vs. Raj. State Pollution Control Board
35.	CW 3088/2023	M/s. S.S. Bricks Industries Vs. Raj. State Pollution Control Board
36.	CW 12951/2023	Shri Veer Tejaji Int Udhyog Vs. Raj. State Pollution Control Board
37.	CW 13152/2023	M/s. Champa Devi Bricks Udhyog Vs. Raj. State Pollution Control Board
38.	CW 15138/2023	M/s. Shri Balaji Int Udhyog Vs. Raj. State Pollution Control Board
39.	CW 17165/2023	M/s. Jai Durga Int Udhyog Vs. Raj. State Pollution Control Board
40.	CW 17755/2023	M/s. Kooldiya Int Udhyog Vs. Raj. State Pollution Control Board
41.	CW 14245/2024	KBI Industries Vs. Raj. State Pollution Control Board
42.	CW 16120/2024	M/s. Kalgidhar Bricks Vs. Raj. State Pollution Control Board
43.	CW 17118/2024	M/s. Kamra Kiln Company Vs. Raj. State Pollution Control Board
44.	CW 17895/2024	M/s. Shri Ganesh Int Udhyog Vs. Raj. State Pollution Control Board
45.	CW 18137/2024	M/s. Waheguru Int Udhyog Vs. Raj. State Pollution Control Board
46.	CW 18573/2024	M/s. Balana Int Udhyog Vs. Raj. State Pollution Control Board
47.	CW 99/2025	M/s. Raj Int Udhyog Vs. Raj. State Pollution Control Board
48.	CW 189/2025	M/s. Chug Brick Industries Vs. Raj. State Pollution Control Board
49.	CW 657/2025	M/s. Shree Shyam Int Udhyog Vs. Raj. State Pollution Control Board
50.	CW 664/2025	M/s. Tata Bricks Vs. Raj. State Pollution Control Board
51.	CW 669/2025	M/s Tata Brick Vs. Raj. State Pollution Control Board
52.	CW 673/2025	M/s. Arora Bricks Industries Vs. Raj. State Pollution Control Board

53.	CW 678/2025	M/s. Tata Bricks Industries Vs. Raj. State Pollution Control Board
54.	CW 818/2025	M/s. Mandeep Singh Ranjeet Singh Vs. Raj. State Pollution Control Board
55.	CW 3105/2025	M/s. S.M. Bricks Suppliers Vs. Raj. State Pollution Control Board
56.	CW 19009/2024	M/s. Rishabh Traders Vs. Raj. State Pollution Control Board

ANNEXURE I

Minutes of Meeting of Committee of Experts constituted in the matter of Hon'ble NGT OA No. 360/2015 regarding preparation of scale of compensation to be adopted in whole country.

Hon'ble NGT in OA No. 360/2015 in the matter of National Green Tribunal Bar Association Vs. Virender Singh (State of Gujarat) and 13 other clubbed cases regarding illegal sand mining, vide order dated-17.08.2020 directed committee to look into the suggestion of Amicus in the matter and scale of compensation to be finalized.

In view of above, a meeting of committee of experts was convened on at 11:00 AM on 11.09.2020 through video-conferencing in CPCB. Committee experts and officials of CPCB were present in the meeting.

Shri Nazimuddin, Additional Director & Head - IPC-II Division, welcomed the committee experts and explained the purpose of the meeting through briefing the order, apprised that no further inputs have been received from Amicus Curiae and requested experts to provide their views and opinion in the matter.

Dr. K.S. Kavikumar, Professor, MSE Chennai, said that the scale of compensation suggested in the committee report (submitted earlier in NGT) that the compensation should not include the market value of seized material as material is recovered. Further, he highlighted the importance of **risk factor and deterrence factor** adopted for calculating the compensation and expressed to stick to the scale of compensation suggested by committee experts.

Dr. Yogesh Dubey, Associate Professor, IIFM Bhopal, expressed that the ease of application of the scale of compensation is understandable, simpler and useful to its applicant (inspection team or local authorities) and agreed that **risk factor and deterrence factor** are key factors in the suggested scale of compensation and needs to be retained.

Dr. Purnamita Dasgupta, Professor, IEG Delhi, agreed with the views of other committee experts to retain the scale of compensation suggested by the committee. Further, she said that the objectives of scale of compensation is not limited to only levying compensation but it was also to halt the further ecological damage in the country. The formula suggested also takes care of the need for recognising the heterogeneity of the conditions of river basins existing in the country by incorporating a range of risk and deterrence factors. She expressed that the **risk factor and deterrence factor** are important. The scale of compensation suggested by the committee is overall straightforward enough for computing compensation and maybe considered for adoption.

Shri A. Sudhakar, Scientist E, CPCB Delhi, suggested that the scale of compensation suggested by committee may be adopted for few years and subsequently may be revised based on the suggestions of the State Authorities. He agreed with other experts for inclusion of **risk factor and deterrence factor** as suggested by the committee in the scale of compensation, and expressed that the compensation should be deterrent enough in order to prevent the illegal mining by anyone.

Shri Sundeep, Director, MoEF&CC Delhi, said that the scale of compensation suggested by committee was an interim arrangement to act as guiding factor for the purpose till the detailed studies are conducted. He opined that scale of compensation suggested by the committee was comprehensive, could be applied to specific sites and for which, **risk factor and deterrence factor** were included. Further, he expressed that the rationale behind the suggestion of amicus in reference to factor to be adopted is not fully explained. Also, he opined that ecological damage cannot only be governed with respect to illegal mined material, instead it need to be governed on the basis of ground factors. He supported the views of other committee experts to stick to scale of compensation suggested by the committee.

Meeting ended with vote of thanks to committee experts.

-TRUE COPY-

No. CPCB/IPC-II/NGT-OA(360/2015)/2021/2027-2061 11 June, 2021

To,

The Environment Secretary,
(As per list)

Sub.: Direction under Section 5 of The Environment (Protection) Act, 1986 regarding development of mechanism for assessment and recovery of compensation as per Hon'ble NGT order dated-26.02.2021 in O.A. No. 360/2015-reg.

WHEREAS, Hon'ble National Green Tribunal (NGT) by order dated-26.02.2021 (Para 10 to 12 & 25) in O.A. No. 360 of 2015 (and other clubbed applications) has accepted the report of an Expert Committee constituted by NGT order regarding Scale of Environmental Compensation to deal with the cases of illegal sand mining, that was submitted by CPCB to NGT on 30.01.2020, and which was re-iterated in the report submitted by CPCB to NGT on dated-12.10.2020 (available at NGT website at the link*https://greentribunal.gov.in/news-update?title=360+of+2015*);

WHEREAS, Hon'ble NGT by the above mentioned order dated-26.02.2021 (Para 25) has directed that the scale of compensation calculated with reference to Approach II of the Expert Committee report dated-30.01.2020 be adopted by all the States/UTs and that the recovered compensation may be kept in a separate account and utilized for restoration of environment by preparing an appropriate action plan under the directions of the Environment Secretary with the assistance of such individual/ institutions as may be considered necessary;

WHEREAS, by the above mentioned order dated-26.02.2021 (Para 25), Hon'ble NGT has further directed CPCB to issue an appropriate statutory direction to Environment Secretaries of all the States / UTs for the facility of monitoring and compliance of above NGT direction;

AND WHEREAS, Central Government has delegated the power to issue directions under Section 5 of the Environment (Protection) Act, 1986 to CPCB also,

NOW THEREFORE, in compliance of above mentioned direction of NGT and in exercise of powers under Section 5 of the Environment (Protection) Act, 1986, you are hereby directed to evolve an appropriate mechanism for assessment and recovery of compensation in all Districts of the State and for utilization of the recovered compensation for restoration of environment by preparing an appropriate action plan, as per order dated-26.02.2021 of Hon'ble National Green Tribunal (Principal Bench) in OA No. 360/2015.

The action taken report in above reference may be provided to CPCB within one month.

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
निर्गत...NSingh...
दिनांक 14/06/2021

(Naresh Pal Gangwar)
Chairman
O/C

Copy for information to:

1. **The Joint Secretary,** : for information, please
   IA-II Division,
   Ministry of Environment, Forest & Climate Change,
   Indira Paryavaran Bhawan,
   Jor Bagh Road, New Delhi – 110003

2. **The Member Secretary,** : for information, please
   SPCBs/PCCs
   (As per list)

(Prashant Gargava)
Member Secretary

o/c

S.No.	States/UTs	Address	
		Environment Secretary - Office	Member Secretary - Office
1.	Andaman & Nicobar Islands	The Environment Secretary, Department of Environment & Forest, O/o Secretary (G/A), Andaman & Nicobar Administration, Secretariat, Port Blair, ANDAMAN & NICOBAR	The Member Secretary, Andaman & Nicobar Islands Pollution Control Committee, Department of Science & Technology, Dollygunj Van Sadan, P.O. Haddo Port Blair – 744102 ANDAMAN & NICOBAR
2.	Andhra Pradesh	The Environment Secretary, Department of Environment, Forest, Science & technology, 4th Block, 1st Floor, Room No. 268, A.P. Secretariat Office, Velagapudi, ANDHRA PRADESH	The Member Secretary, Andhra Pradesh Pollution Control Board D. No. 33-26-14 D/2, Near Sunrise Hospital, Pushpa Hotel Centre, Chalamalavari Street, Kasturibaipet, Vijayawada – 520 010 ANDHRA PRADESH
3.	Arunachal Pradesh	The Environment Secretary, Department of Environment & Forest, Civil Secretariat, Itanagar – 791 111 ARUNACHAL PRADESH	The Member Secretary, Arunachal Pradesh State Pollution Control Board Govt. of Arunachal Pradesh, Department of Environment & Forests, Paryavaran Bhawan, Yupia Road, Papu Nalah, Naharlagun - 791 110 ARUNACHAL PRADESH
4.	Assam	The Environment Secretary, Department of Environment & Forest, Assam Secretariat, Block 'A', 2nd Floor Dispur, Guwahati – 781 006 ASSAM	The Member Secretary, Pollution Control Board- Assam, Bamunimaidam, Guwahati – 781 021 ASSAM
5.	Bihar	The Environment Secretary, Department of Environment, Forest & Climate Change, Van Vibhag Road, Nehru Nagar, Patliputra Colony, Patna - 800 013 BIHAR	The Member Secretary, Bihar State Pollution Control Board, Parivesh Bhawan, Plot No. NS-B/2, Paliputra Industrial Area, Patliputra, Patna – 800 023 BIHAR
6.	Chandigarh	The Environment Secretary, Department of Environment & Climate Change, MGSIPA Complex, Sector 26, CHANDIGARH – 160 019	The Member Secretary, Chandigarh Pollution Control Committee Paryavaran Bhawan, Ground Floor, Sector-19 B, Madhya Marg, CHANDIGARH – 160 019
7.	Chhattisgarh	The Environment Secretary, Department of Environment, Mahanadi Bhawan, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur- 492 001 CHHATTISGARH	The Member Secretary, Chhattisgarh State Environment Conservation Board, Paryavas Bhawan, North Block Sector-19, Atal Nagar, Raipur - 492 002, CHHATTISGARH

8.	Dadra & Nagar Haveli, Daman & Diu	The Environment Secretary, Department of Environment & Forest Secretariat, Daman, Fort Area, Post Office Moti Daman – 396 220 DAMAN & DIU	The Member Secretary, Pollution Control Committee, UTs of Daman, Diu and Dadra & Nagar Haveli Fort Area, Court Compound, Moti Daman - 396 220 DAMAN & DIU
09.	Delhi	The Environment Secretary, Department of Environment, 6th Level, Delhi Secretariat, IP Estate, DELHI – 110 002	The Member Secretary, Delhi Pollution Control Committee, Government of N.C.T. Delhi 4th Floor, ISBT Building, Kashmere Gate, DELHI-110 006
10.	Goa	The Environment Secretary, Department of Environment and Climate Change , 4th Floor Dempo Towers, Patto - Panaji - 403 511. GOA	The Member Secretary, Goa State Pollution Control Board Nr. Pilerne Industrial Estate, Opp. Saligao Seminary, Saligao - Bardez Goa – 403 511 GOA
11.	Gujarat	The Environment Secretary, Forests & Environment Department, Block 14, 8 th floor, Sachivalaya, Gandhinagar - 382 010 GUJARAT	The Member Secretary, Gujarat Pollution Control Board Paryavaran Bhavan, Sector 10-A, Gandhi Nagar 382 010, GUJARAT
12.	Haryana	The Environment Secretary, Department of Environment & Climate Change, Seventh Floor, Main Secretariat, Sector 16, CHANDIGARH – 160 017	The Member Secretary, Haryana State Pollution Control Board C-11, Sector-6, Panchkula- 134109, HARYANA
13.	Himachal Pradesh	The Environment Secretary, Department of Environment, Science & Technology, Paryavaran Bhawan, Near US Club, Shimla – 171 001 HIMACHAL PRADESH	The Member Secretary, Himachal Pradesh State Pollution Control Board Him Parivesh, Phase-III, New Shimla – 171 009 HIMACHAL PRADESH
14.	Jammu & Kashmir	The Environment Secretary, Department of Forest, Environment & Ecology, 4th Floor, Mini Block Secretariat, Jammu, JAMMU & KASHMIR	The Member Secretary, J&K Pollution Control Board, Parivesh Bhawan, Shiekh-ul- Campus, Behind Govt. Silk Factory, Raj Bagh, Srinagar – 190 008 JAMMU & KASHMIR
15.	Jharkhand	The Environment Secretary, Department of Environment, Forest & Climate Change, Nepal House, Doranda, Ranchi – 834 002 JHARKHAND	The Member Secretary, Jharkhand State Pollution Control Board T.A. Bldg., HEC, P. O. Dhurwa, Ranchi - 834 004 JHARKHAND
16.	Karnataka	The Environment Secretary, Forest, Ecology and Environment Department,	The Member Secretary, Karnataka State Pollution Control Board “Parisara Bhavan”, #49,4th & 5th Floor, Church Street, Bangalore 560 001

		Secretariat, 4th Floor, M. S. Building, Bangalore – 560 001 KARNATAKA	KARANATAKA
17.	Kerala	The Environment Secretary, Department of Environment and Climate Change, 4th Floor, K.S.R.T.C Bus Terminal Thampanoor, Thiruvananthapuram – 695 001 KERALA	The Member Secretary, Kerala State Pollution Control Board Head Office, Pattom. P. O Thiruvananthapuram - 695 004 KERALA
18.	Lakshadweep	The Environment Secretary, Department of Environment and Forest, 1st Floor, Paryavaran Bhavan, Kavaratti, LAKSHADWEEP	The Member Secretary, Lakshadweep Pollution Control Committee, Department of Science, Technology & Environment, Kavarati – 682 555, LAKSHADWEEP
19.	Madhya Pradesh	The Environment Secretary, Housing and Environment Department, Paryavaran Parisar, E- 5, Arera Colony, Bhopal – 462 016 MADHYA PRADESH	The Member Secretary, Madhya Pradesh Pollution Control Board Paryavaran Parisar, E-5, Arera Colony Bhopal - 462 016 MADHYA PRADESH
20.	Maharashtra	The Environment Secretary, Environment & Climate Change Department, New Administrative Building, Madam Kama Road, Hutatma Chowak, Mumbai – 400 032 MAHARASHTRA	The Member Secretary, Maharashtra Pollution Control Board, Kalpataru Points, 3rd & 4th Floor, Sion Matunga Scheme Road No.6 Opp. Cine Planet, Sion Circle, Sion (E), Mumbai-400 022 MAHARASHTRA
21.	Manipur	The Environment Secretary, Directorate of Environment and Climate Change, Mini Secretariat Rd, opposite Superitendant of Police, Porompat – 795 010 MANIPUR	The Member Secretary, Manipur Pollution Control Board Lamphalpat, Imphal – 795 004, MANIPUR
22.	Meghalaya	The Environment Secretary, Forest and Environment Department, Secretariat Building, North Range, Forest Colony, Khasi Hills, Shillong – 793 001 MEGHALAYA	The Member Secretary, Meghalaya State Pollution Control Board, “ARDEN”, Lumpyngngad, Shillong – 793 014, MEGHALAYA
23.	Mizoram	The Environment Secretary, Department of Environment, Forest & Climate Change, Tuikhuahtlang, Aizawl, MIZORAM	The Member Secretary, Mizoram Pollution Control Board New Secretariat Complex, Khatla, Aizawl – 796 001, MIZORAM
24.	Nagaland	The Environment Secretary, Department of Environment, Forest & Climate Change,	The Member Secretary, Nagaland Pollution Control Board Signal Point, Dimapur,

		New Secretariat, Kohima, NAGALAND	NAGALAND
25.	Odisha	The Environment Secretary, Forest & Environment Department, Kharavel Bhavan, Bhubaneswar, ODISHA	The Member Secretary, Odisha State Pollution Control Board Paribesh Bhawan, A-118, Nilakantha Nagar Unit VIII Bhubaneswar – 751 012, ODISHA
26.	Puducherry	The Environment Secretary, Department of Science, Technology and Environment, III Floor, PHB Building Anna Nagar, PUDUCHERRY - 605 005	The Member Secretary, Puducherry Pollution Control Committee 'B' Block, Ground Floor, Chief Secretariat, PUDUCHERRY-605 001
27.	Punjab	The Environment Secretary, Department of Science, Technology and Environment, 6th Floor, Punjab Civil Secretariat-2, Sector 9, CHANDIGARH – 160 009	The Member Secretary, Punjab Pollution Control Board Vatavaran Bhawan, Nabha Road Patiala 147 001 PUNJAB
28.	Rajasthan	The Environment Secretary, Department of Environment, 4, Jhalana Institutional Area, Jhalana Doongri, Jaipur – 302 004 RAJASTHAN	The Member Secretary, Rajasthan Pollution Control Board, A-4, Institutional Area, Jalana Dungri, Jaipur 302 004, RAJASTHAN
29.	Sikkim	The Environment Secretary, Forest and Environment Department, Government of Sikkim Forest Secretariat Deorali - 737102 Gangtok, East Sikkim, SIKKIM	The Member Secretary, Sikkim State Pollution Control Board State Land Use & Environment Cell Govt. of Sikkim, Deorali Gangtok – 737 102 SIKKIM
30.	Tamil Nadu	The Environment Secretary, Department of Environment, No. 1, Jeenis Road, Panagal Building, Ground Floor, Saidapet, Chennai – 600 015 TAMIL NADU	The Member Secretary, Tamil Nadu Pollution Control Board 76, Anna Salai, Guindy Industrial Estate, Race View Colony, Guindy, Chennai – 600 032 TAMIL NADU
31.	Telangana	The Environment Secretary, Department of Environment, Forests, Science and Technology, Telangana Secretariat 5th Floor, Burgula Rama Krishna Rao Bhavan, NH 44, Hill Fort, Adarsh Nagar, Hyderabad – 500 063 TELANGANA	The Member Secretary, Telangana State Pollution Control Board Paryavaran Bhawan, A-III, Industrial Estate, Sanathnagar, Hyderabad – 500 018 TELANGANA
32.	Tripura	The Environment Secretary, Department of Science, Technology & Environment,	The Member Secretary, Tripura State Pollution Control Board Parivesh Bhawan, Pandit Nehru Complex

		Vigyan Prajukti O Paribesh Bhawan, P.N. Complex, Gorkhabasti, Agartala – 799 006, West Tripura TRIPURA	P.O. Kunjaban, Gorkhabasti, Agartala – 799 006 TRIPURA
33.	Uttar Pradesh	The Environment Secretary, Environment, Forest and Climate Change Department, Bapu Bhawan Secretariat, Vidhan Sabha, Lucknow – 226 001 UTTAR PRADESH	The Member Secretary, Uttar Pradesh Pollution Control Board IIIrd Floor PICUP Bhavan Vibhuthi Khand, Gomti Nagar, Lucknow – 226 020 UTTAR PRADESH
34.	Uttarakhand	The Environment Secretary, Department of Environment & Forest, 4, Subhash Road, Secretariat, 4th floor, New Building, Dehradun – 248 001 UTTARAKHAND	The Member Secretary, Uttarakhand Environment Protection & Pollution Control Board 29/20, Nemi Road, Dalanwala, Dehradun – 268 001 UTTARAKHAND
35.	West Bengal	The Environment Secretary, Department of Environment, 5th Floor, Pranisampad Bhawan, Block LB-II, Salt Lake, Sector III, Bidhannagar, Kolkata – 700 106 WEST BENGAL	The Member Secretary, West Bengal Pollution Control Board Paribesh Bhavan, 10-A, Block LA, Sector III, Salt Lake City, Kolkata-700 091 WEST BENGAL

-TRUE COPY-

ANNEXURE-R-11

Enforcement & Monitoring Guidelines for Sand Mining

Ministry of Environment, Forest and Climate change

January, 2020

Table of Content

Table of Annexure

1.0 INTRODUCTION

The Ministry of Environment Forest & Climate Change formulated the Sustainable Sand Management Guidelines 2016 which focuses on the Management of Sand Mining in the Country. But in the recent past, it has been observed that apart from management and systematic mining practices there is an urgent need to have a guideline for effective enforcement of regulatory provision and their monitoring.

Section 23 C of MMDR, Act 1957 empowered the State Government to make rules for preventing illegal mining, transportation and storage of minerals. But in the recent past, it has been observed that there was large number of illegal mining cases in the Country and in some cases, many of the officers lost their lives while executing their duties for curbing illegal mining incidence. The illegal and uncontrolled illegal mining leads to loss of revenue to the State and degradation of the environment.

India is developing at a faster pace and much technological advancement has already been taken place in the surveillance and remote monitoring in the field of mining. Thus, it is prudent to utilize the technological advancement for the effective monitoring of the mining activities particularly sand mining in the country.

Use of latest remote surveillance and IT services helps in effective monitoring of the sand mining activity in-country and also assist the government in controlling the illegal mining activity in the country. Thus, there is a need for an effective policy for monitoring of sand mining in the Country which can be enforced on the ground. These guidelines focus on the effective monitoring of the sand mining since from the identification of sand mineral sources to its dispatch and end-use by consumers and the general public. Further, the effective monitoring and enforcement require efforts from not only Government agencies but also by consumers and the general public.

It is the responsibility of every citizen of India to protect the environment and effective monitoring can only be possible when all the stakeholders viz. Central Government, State Government, Leaseholders/Mine Owners, Distributors, Dealers, Transporters and Consumers (bulk & retail) will contribute towards sustainable mining, and comply with all the statutory provisions. It is felt necessary to identify the minimum requirements across all geographical region to have a uniform protocol for monitoring and enforcement of regulatory provision prescribed for sustainable sand and gravel mining.

This document will serve as a guideline for collection of critical information for enforcement of the regulatory provision(s) and also highlights the essential infrastructural requirements necessary for effective monitoring for Sustainable Sand Mining.

The document is prepared in consideration of various orders/directions issued by Hon'ble NGT in matters pertaining to illegal sand mining and also based on the reports submitted by expert committees and investigation teams.

Further, this document is supplemental to the existing "Sustainable Sand Mining Management Guideline-2016" (SSMG-2016), and these two guidelines viz. "Enforcement & Monitoring Guidelines for Sand Mining" (EMGSM-2020) and SSMG-2016 shall be read and implemented in sync with each other. In case, any ambiguity or variation between the provision of both these document arises, the provision made in "Enforcement & Monitoring Guidelines for Sand Mining-2020 "shall prevail.

2.0 NEED FOR POLICY GUIDELINES

The Ministry of Environment, Forest & Climate Change (MoEF&CC) published Environmental Impact Assessment Notification 1994 which is only applicable for the Major Minerals more than 5 ha. In order to cover the minor minerals also into the preview of EIA, the MoEF&CC issued EIA Notification 2006 for Major & Minor Mineral more than 5 Ha. The Hon'ble Supreme Court in its Judgment dated the 27th February 2012 in I.A. No.12- 13 of 2011 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of Deepak Kumar etc. Vs. State of Haryana and Others etc. made prior environment clearance mandatory for mining of minor minerals irrespective of the area of mining lease. In order to comply with the judgment of Hon'ble Supreme Court, the Ministry issued S.O.141 (E) dated 15.01.2016. Further, MoEF&CC published Sustainable Sand Mining Management Guidelines 2016 for scientific and sustainable sand mining in the Country. The recommendations for the management of sustainable sand extraction are the key objective of the Guidelines. Special emphasis is given on monitoring of the mined out material, which is key to the success of the environmental management plan. Use of IT and IT-enabled services for effective monitoring of the quantity of mined out material and transportation along with process re-engineering has been made a part of the Guidelines. Guidelines support the fundamental concept, promote environmental protection, limit negative physiological, hydrogeological and social impacts underpinning sustainable economic growth.

The Hon'ble NGT in its order dated 04.09.2018 in O.A. 173/2018 in the matter of Sudarsan Das vs. State of West Bengal & Ors. Inter-alia observed that "***There can be no two views that an effective institutional monitoring mechanism is required not only at the stage when Environmental Clearance is granted but also at subsequent stages". "The guidelines focus on the preparation of District Survey Report and the Management Plan" … We are of the view that all the safeguards which are suggested***

in sustainable sand mining guidelines as well as notification dated 15.01.2016 ought to be scrupulously followed."...It is a known fact that in spite of the above-suggested guidelines being in existence, on the ground level, illegal mining is still going on. The existing mechanism has not been successful and effective in remedying the situation." ..." Since there is an utter failure in the current monitoring mechanism followed by the State Boards, SEIAAs and DEIAAs, it is required to be revised for effective monitoring of sand and gravel mining and a dedicated monitoring mechanism be set up."

The Hon'ble NGT in its order dated 04.09.2018 in O.A. 173/2018 in the matter of Sudarsan Das vs. State of West Bengal & Ors. directed that ***MoEF&CC has issued directions from time to time under Section 3 and 5 of the Environment (Protection) Act, 1986. The MoEF&CC needs to revise its directions keeping in mind the following:***

- *Mining Surveillance System discussed in para 23 above be finalized in consultation with ISRO Hyderabad.*
- *Safeguards suggested in Sustainable Sand Mining Guidelines published by the MoEF&CC in the year 2016.*
- *Suggestions in the High Power Committee Report.*
- *The requirement of demarcation of boundaries being published in respect of different leases in the public domain.*
- *Need to issue SOP laying down mechanism to evaluate loss to the ecology and to recover the cost of restoration of such damage from the legal or illegal miners. Such evaluation must include the cost of mining material as well as the cost of ecological restoration and the net present value of future ecosystem services forgone.*
- *Need to set up a dedicated institutional mechanism for effective monitoring of sand and gravel mining which may also take care of mining done without any Environmental Clearance as well as mining done in violation of Environmental Clearance conditions.*

- *The Mining Department may make a provision for keeping apart at least 25% of the value of mined material for the restoration of the area affected by the mining and also for compensating the inhabitants affected by the mining.*

- *One of the conditions of every lease of mine or minerals would be that there will be independent environmental audit at least once in a year by reputed third party entity and report of such audit be placed in the public domain.*

- *In the course of such an environmental audit, a three-member committee of the local inhabitants will also be associated. Composition of three members committee may preferably include ex-servicemen, a former teacher and former civil servant. The Committee will be nominated by the District Magistrate.*

The Hon'ble NGT in its order dated 05.09.2018 in O.A. 44/2016 in the matter of Mushtakeem Vs. MoEF & CC & Ors. Inter-alia observed the following:

"Para 20. In Original Application No. 481/2016, the allegation is that there is the connivance of the District Administration with the miners and mining is going in violation of conditions of Environmental Clearance. According to the applicant, an effective mechanism is required to be evolved so that illegal mining does not place."

"Para 22. We proceed to consider the main question proposed for the consideration stated earlier hereinabove as to ***how to ensure the protection of the environment by checking illegal mining."***

"Para 23. We have dealt with the identical issue relating to the illegal sand mining in the border districts in the State of West Bengal and Odisha in the order dated 04th September 2018 in Sudarsan Das Vs. State of West Bengal & Ors., Original Application No. 173 of 2018. We have directed the MoEF&CC to revise the guidelines on the subject for an effective mechanism for sand mining, relevant portions of which are reproduced below: -..."

The Hon'ble NGT in its order dated 10.09.2018 in O.A. 304/2015 in the matter of Jai Singh & Anr.Vs. Union of India Ors. inter-alia observed the following:

"Para 6. After disposal of the above matters, a disturbing event widely reported in media which took place on 07th September 2018 has been brought to our notice. ***A Deputy Ranger who tried to stop illegal mining was killed by mining mafia at Morena in the State of M.P.***

"Para 7. The above disturbing event may also be kept in mind by the MoEF, while considering the issuance of revised guidelines in light of the judgment dated 05th September 2018 (Supra)."

The Hon'ble NGT in its order dated 05.04.2019 in O.A. 360/2015 in the matter of National Green Tribunal Bar Association & Anr.Vs. Union of India & Ors. inter-alia observed the following:

"*The 2016 Guidelines need revision in the light of the report of High Powered Committee in September 2016, failure of Monitoring mechanism followed by State Boards, SEIIAs, DEIAAs and MSS system developed by Ministry of Mines & IBM with the assistance of BISAG and MAITY and other observations quoted in paras 12 to 15 above.*

50. As noted earlier in paras 17, 23, 27, 31 and 35, States of West Bengal, Odisha, Gujarat, Karnataka, Maharashtra, Punjab, Haryana and Uttar

Pradesh are required to follow SSMG, 2016 as may be revised by MoEF&CC and even other States where illegal sand mining is taking place.

The States may review the monitoring mechanism in terms of several directions of the Tribunal and guidelines of MoEF&CC.

The international conservation concern regarding natural wealth is a universal demand. Article 51(a) subsection (G) of the constitution requires every citizen of India to protect and improve the natural environment including forest, lakes, rivers, wildlife and to have compassion for the living creature.

The Hon'ble Supreme Court in the case of M.C. Mehta Vs. Kamal Nath (1997) 1 SCC 388 held that under Article of Indian Constitution incorporates the "Public Trust Doctrine" and as such extents to the protection of all-natural resources which includes the protection of flora and fauna.

The Hon'ble Supreme Court in the case of Vellore Citizens Welfare Forum Vs. Union of India & Ors (1996) held that the precautionary principle is part of the Environmental Law in India. It further stated that onus of proof is on the actor of the developer/industrialize to show that its actions are environmentally benign."

3.0 OBJECTIVE OF GUIDLINES

- Identification and Quantification of Mineral Resource and its optimal utilization.
- To regulate the Sand & Gravel Mining in the Country since its identification to its final end-use by the consumers and the general public.
- Use of IT-enabled services & latest technologies for surveillance of the sand mining at each step.
- Reduction in demand & supply gaps.
- Setting up the procedure for replenishment study of Sand.
- Post Environmental Clearance Monitoring.
- Procedure for Environmental Audit.
- To control the instance of illegal mining.

4.0 REQUIREMENTS FOR MONITORING & ENFOCEMENT

Sustainable Sand Mining Management Guidelines (SSMMG) 2016 and past experience suggest that the source of sand in India are through

a) River (riverbed and flood plain),
b) Lakes and reservoirs,
c) Agricultural fields,
d) Coastal / marine sand,
e) Palaeo-channels and
f) Manufactured Sand (M-Sand).

The SSMMG-2016 highlights the identification of the sand mining sources, replenishment of the River Bed Material (Sand, Boulder, Gravel, Cobble etc.), preparation of Districts Survey Report, and Standard Environmental Conditions suitable for sand mining projects.

The necessary requirements to comply with the direction of Hon'ble NGT and to facilitate effective monitoring and enforcement of regulatory provision for sand mining in the country are as follows:

i) Identification of sand mining sources, its quantification and feasibility for mining considering various environmental (proximity of protected area, wetlands, creeks, forest etc.) and other factors such as important structures, places of archaeological importance, habitation, prohibited area etc.

ii) The mining lease auctioned by State government as per their Minor Mineral Concession Rules are granted of Letter of Intent (LoI), but it has been observed that many of the sites are not suitable w.r.t environmental aspects. In most of the cases, the unplanned grant of mining lease leads to formation of cluster and/or contiguous cluster

of small mining leases which sometimes is difficult to regulate and monitor. In order to address such issues, more emphasis is required on the preparation of District Survey Report and its format for reporting,

iii) Mining Plan is an important document to assist the mine owner to operate the mine in a scientific manner. States have their own format for preparation of mining plan and it is observed that recording of the initial level of mining lease at shorter interval say 25m X 25 m grid interval is not present.

iv) There is no practice for regular replenishment study to ascertain the rate of depositing, plan and section needs to be prepared based on the restrictions provided in letter of intent and provisions of Sustainable Sand Mining Management Guidelines 2016.

v) Environmental Clearance is a process wherein the regulatory authorities after considering the potential environment impact of mining clearance is granted with a set of specific & standard conditions to carry out mining operations, but often it is observed that letter of intent is granted for a location which has less potential for mining and not feasible for environment-friendly mining. This leads to an unnecessary financial burden on the mine owners and litigations. Thus, LoI should be preferably granted for those locations which have the least possibility of an impact on the environment and nearby habitation.

vi) It is the responsibility of the mine owner to obtain all the statutory clearance and comply with the conditions stipulated in the clearance letter. Mining should be carried out within the mining lease area as per

approved mining plan or mining plan concurred by other regulatory authorities.

vii) Mining operation also involves transportation of mineral from the mining area to end-user and its necessary that movement of the mineral needs to be monitored.

The State Government already have power under section 23c of MMDR, Act 1957 to make rules for preventing illegal mining, transportation and storage of minerals. However, there are instances of illegal mining which shows that there is a need for strengthening the system of mineral dispatch and its monitoring. This document provides good practices already under implementation by various states for regulating the mineral sale, dispatch, storage, transportation and use.

viii) The river reaches with sand provide the resource and thus it is necessary to ascertain the rate of replenishment of the mineral. Regular replenishment study needs to be carried out to keep a balance between deposition and extraction. This document provides the procedure to be followed for conducting replenishment study.

ix) Even after all the regulatory procedure and policy being in place, there are instances where illegal mining is taking place. There is a need for regular surveillance of the sand mining reaches. The monitoring agencies can monitor the sites remotely by using Unmanned Artificial Vehicles (UAVs)/Drone which is now a viable option. The drone can also be used for reserves estimation, quantity estimation, land use monitoring. This document highlights possible use of IT/Satellite/Drone technology for effective monitoring of sand mining.

4.1 Identification of possible sand mining sources and preparation of District Survey Report (DSR)

4.1.1 Preparation of District Survey Report.

"Sustainable Sand Mining Guidelines, 2016" issued by MoEF&CC requires preparation of District Survey Report (DSR), which is an important initial step before grant of mining lease/LoI. The guidelines emphasize detailed procedure to be followed for the purpose of identification of areas of aggradation/ deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited. Calculation of annual rate of replenishment, allowing time for replenishment after mining, identification of ways of scientific and systematic mining; identifying measures for protection of environment and ecology and determining measures for protection of bank erosion, benchmark (BM) with respect to mean Sea Level (MSL) should be made essential in mining channel reaches (MCR) below which no mining shall be allowed.

The Hon'ble NGT in its Judgment dated 08.12.2017 in the matter of Anjani Kumar vs State of Uttar Pradesh & Ors. inter-alia mentioned the following regarding sand mining in the Uttar Pradesh.

> *"It states that the main object of preparation of District Survey Report is to ensure identification of areas of aggradation/deposition where mining can be allowed and identification of areas of erosion and proximity to infrastructural structures and installation where mining should be prohibited and calculation of annual rate of replenishment and allowing time for replenishment after mining area. Thus, the environmental protection requires a strictly regulated mining in terms of area, quantity as well as most importantly replenishment thereof."*

"The data collection and declared for preparation of DSR shall take precedence over other data and would form the foundation for providing mining lease in terms of Appendix- x to the Notification dated 15th January 2016 must be prepared by the statutory authority stated therein i.e. DEIAA prior to awarding of permits for carrying on mining activity in any part of the State of UP."

The Hon'ble High Court of Jharkhand at Ranchi in its orders dated the 11th April 2018 and 19th June 2018 in W.P. (PIL) No. 1806 of 2015, in the matter of Court on its Own Motion Versus the State of Jharkhand & Others with W.P. (PIL) No. 290 of 2013, in the matter of Hemant Kumar Shilkarwar Versus the State of Jharkhand & Others, has inter-alia directed the preparation of District Survey Report for minor minerals other than Sand and Bajri or delegation of the powers for preparation of format of District Survey Report of minor minerals other than sand and Bajri to the State Government and/or District Environment Impact Assessment Authority and District Expert Appraisal Committee. To comply with the direction of Hon'ble High Court the Ministry has issued S.O. 3611(E) dated 25.07.2018, wherein, the procedure of preparation of DSR is mentioned. But it is felt that still there is other information that needs to be reported in DSR to make it a comprehensive DSR.

Therefore, preparation of District Survey Report is a very important step and sustainable sand mining in any part of the country will depends on the quality of District Survey Report.

Considering the importance of district survey report, the Ministry of Environment Forest and climate change, after consultation with experts dealing with mining-related matters, formulated the following guidelines for the preparation of comprehensive District Survey Report for sand mining.

a) District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (LoI) by Mining department or department dealing the mining activity in respective states.

b) The first step is to develop the inventory of the River Bed Material and Other sand sources in the District. In order to make the inventory of River Bed Material, a detailed survey of the district needs to be carried out, to identify the source of River Bed Material and alternative source of sand (M-Sand). The source will include rivers, de-siltation of reservoir/dams, Patta lands/Khatedari Land, M-sand etc.

The revenue department of Kerala already conducted river mapping and sand auditing of around 20 rivers of Kerala which is a good example wherein the profile of rivers was created at regular intervals and aggradation/deposition was identified along with water level. In the same study, benchmarks were also created at a prominent location at regular interval for future surveying. Such study helps the mining departments to identify the source of sand.

Thus, it is proposed that for preparation of district survey report, the auditing of rivers needs to be carried out. There is already a provision under MMDR Act 2015 for National Mineral Exploration Trust (MET) wherein a 2% of royalty amount to be deposited in the trust. This fund is used for mineral exploration in the country. The Sand Auditing is also a sort of identification of mineral and State Government may request Central Govt. for proving funds for river auditing. The Central Govt. (Ministry of Mines) may also explore the possibilities for providing the funds for river auditing. The other option is that State Govt. may conduct such studies by its own fund and the same may be recovered from the leaseholders to whom the mining lease will be allocated.

c) District Survey Report is to be prepared in such a way that it not only identifies the mineral-bearing area but also define the mining and no mining zones considering various environmental and social factors.

d) Identification of the source of Sand & M-Sand. The sources may be from Rivers, Lakes, Ponds, Dams, De-silting locations, Patta land/Khtedari lands. The details in case of Rivers such as [name, length of river, type (Perennial or Non-Perennial), Villages, Tehsil, District], in case of Lakes, Ponds, Dams, De-silting locations [Name, owned/maintained by (State Govt./PSU), area, Villages, Tehsil, District] in case of Patta land/Khtedari lands [Owner Name, Sy No, Area, Agricultural/Non-Agricultural, Villages, Tehsil, District], in case of M-Sand Plant [Owner Name, Sy No, Area, Quantity/Annum, Villages, Tehsil, District], needs to be recorded as per format given in **Annexure-I.**

e) Defining the sources of Sand/M-Sand in the district is the next step for identification of the potential area of deposition/aggradation wherein mining lease could be granted. Detailed survey needs to be carried out for quantification of minerals. The purpose of mining in the river bed is for channelization of rivers so as to avoid the possibility of flooding and to maintain the flow of the rivers. For this, the entire river stretch needs to be surveyed and original ground level (OGL) to be recorded and area of aggradation/deposition needs to be ascertained by comparing the level difference between the outside riverbed OGL and water level. Once the area of aggradation/deposition are identified, then the quantity of River Bed Material available needs to be calculated. The next step is channelization of the river bed and for this central ¾th part of the river, width needs to be identified on a map. Out of the ¾th part area, where there is a deposition/aggradation of the material needs to be identified. The remaining ¼th area needs to be kept as no mining zone for the

protection of banks. The specific gravity of the material also needs to be ascertained by analyzing the sample from a NABL accredited lab. Thus, the quantity of material available in metric ton needs to be calculated for mining and no mining zone.

Note: As physical survey with conventional method is time-consuming, use of unmanned aerial vehicle (UAV) may be explored to carry out the survey and finalizing the original ground level and for developing a 3D model of the area.

f) The permanent boundary pillars need to be erected after identification of an area of aggradation and deposition outside the bank of the river at a safe location for future surveying. The distance between boundary pillars on each side of the bank shall not be more than 100 meters.

g) Identifying the mining and no mining zone shall follow with defining the area of sensitivity by ascertaining the distance of the mining area from the protected area, forest, bridges, important structures, habitation etc. and based on the sensitivity the area needs to be defined in sensitive and non-sensitive area.

h) Demand and supply of the Riverbed Material through market survey needs to be carried out. In addition to this future demand for the next 5 years also needs to be considered.

i) It is suggested that as far as possible the sensitive areas should be avoided for mining, unless local safety condition arises. Such deviation shall be temporary & shall not be a permanent feature.

j) The final area selected for the mining should be then divided into mining lease as per the requirement of State Government. It is suggested the mining lease area should be so selected as to cover the entire deposition area. Dividing a large area of deposition/aggradation into smaller

mining leases should be avoided as it leads to loss of mineral and indirectly promote illegal mining.

k) Cluster situation shall be examined. A cluster is formed when one mining lease of homogenous mineral is within 500 meters of the other mining lease. In order to reduce the cluster formation mining lease size should be defined in such a way that distance between any two clusters preferably should not be less than 2.5 Km. Mining lease should be defined in such a way that the total area of the mining leases in a cluster should not be more than 10 Ha.

l) The number of a contiguous cluster needs to be ascertained. Contiguous cluster is formed when one cluster is at a distance of 2.5 Km from the other cluster.

m) The mining outside the riverbed on Patta land/Khatedari land be granted when there is possibility of replenishment of material. In case, there is no replenishment then mining lease shall only be granted when there is no riverbed mining possibility within 5 KM of the Patta land/Khatedari land. For government projects, mining could be allowed on Patta land/Khatedari land but the mining should only be done by the Government agency and material should not be used for sale in the open market. Cluster situation as mentioned in para k above is also applicable for the mining in Patta land/Khatedari land.

n) The State Government should define the transportation route from the mining lease considering the maximum production from the mines as at this stage the size of mining leases, their location, the quantity of mineral that can be mined safely etc. is available with the State Government. It is suggested that the transportation route should be selected in such a way that the movement of trucks/tippers/tractors from the villages having habitation should be avoided. The transportation route so

selected should be verified by the State Government for its carrying capacity.

o) Potential site for mining having its impact on the forest, protected area, habitation, bridges etc, shall be avoided. For this, a sub-divisional committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as **Annexure-II**. The Sub-Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in **Annexure-III**. The details of the transportation need to be provided as in **Annexure IV.**

p) **Public consultation-**The Comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the sub-divisional committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & Patta land/Khatedari land, de-siltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per **Annexure-V.** The details regarding cluster and contiguous cluster needs to be provided in **Annexure-VI**. The details of the transportation need to be provided in **Annexure-VII.**

4.2 Grant of Letter of Intent to those mining leases which are falling in potential mining zone

The State Government shall issue letter of intent as per procedure laid down in their Minor Mineral Concession Rules with due consideration of final district survey report. The State Government shall ensure that all the letter of intent shall have complete details of the mining lease including geo-coordinate of the corner points, the involvement of forest land, distance from the forest land, distance from the protected area, distance from other sites of archaeological importance, details of the cluster situation etc. The demarcation of the boundaries of LoI/Lease area shall be placed in public domain along with LoI/lease deed details.

The LOI should not be granted for mining area falling on both riverbed and outside riverbed. Therefore, in the same lease, both types of area should not be included.

The authority responsible for grant of lease for sand mining shall ensure that annual audit of the sand mining process, production and compliance of the imposed conditions by regulatory authority (Environmental clearance or mine plan) shall be one of the essential condition of the lease agreement. The annual audit report shall be submitted to the district administration, which shall be put in public domain through the district website. Any deviation observed shall be appropriately and in-accordance with applicable law shall be dealt by the concerned authority and corrective measures shall also be taken to restoration of ecological/environmental damage, if observed.

4.3 Mining Plan

The preparation of Mining Plan is also very important. The mining plan should include the original ground level recorded at an interval not more than 10M x 10M along & across the length of the river. In addition to this-levels, outside the mining lease and bank of the river up to meters needs to be recorded. In the mining plan, there should be 3 plates for each year production & development planning (pre-monsoon, monsoon and post-monsoon). The time period of monsoon should be defined in the DSR. At the time of review of the mining plan, the details of the replenishment study conducted for all the years needs to be included in the mining plan. The Mining Plan should include the certificate from PCCF on forest land, distance from the protected area, past production details for mining leases seeking expansion.

Following considerations shall be kept in mind for sand/gravel mining while approving mining plan

a) Parts of the river reach that experience deposition or aggradation shall be identified. The Leaseholder/ Environmental Clearance holder may be allowed to extract the sand and gravel deposit in these locations to manage aggradation problem.

b) The distance between sites for sand and gravel mining shall depend on the replenishment rate of the river. Sediment rating curve for the potential sites shall be developed and checked against the extracted volumes of sand and gravel.

c) Sand and gravel may be extracted across the entire active channel during the dry season.

d) Abandoned stream channels on the terrace and inactive floodplains be preferred rather than active channels and their deltas and flood plains. The stream should not be diverted to form the inactive channel.

e) Layers of sand and gravel which could be removed from the river bed shall depend on the width of the river and replenishment rate of the river.

f) Sand and gravel shall not be allowed to be extracted where erosion may occur, such as at the concave bank.

g) Segments of the braided river system should be used preferably falling within the lateral migration area of the river regime that enhances the feasibility of sediment replenishment.

h) Sand and gravel shall not be extracted up to a distance of 1 kilometre (1 km) from major bridges and highways on both sides, or five times (5x) of the span (x) of a bridge/public civil structure (including water intake points) on up-stream side and ten times (10x) the span of such bridge on down-stream side, subjected to a minimum of 250 meters on the upstream side and 500 meters on the downstream side.

i) The sediment sampling should include the bed material and bed material load before, during and after the extraction period. Develop a sediment rating curve at the upstream end of the potential reach using the surveyed cross-section. Using the historical or gauged flow rating curve, determine the suitable period of high flow that can replenish the extracted volume. Calculate the extraction volume based on the sediment rating curve and high flow period after determining the allowable mining depth.

j) Sand and gravel could be extracted from the downstream of the sand bar at river bends. Retaining the upstream one to two-thirds of the bar and riparian vegetation is accepted as a method to promote channel stability.

k) The flood discharge capacity of the river could be maintained in areas where there is a significant flood hazard to existing structures or infrastructure. Sand and gravel mining may be allowed to maintain the natural flow capacity based on surveyed cross-section history. Alternatively, off-channel or floodplain extraction is recommended to allow rivers to replenish the quantity taken out during mining.

l) The Piedmont Zone (Bhabhar area) particularly in the Himalayan foothills, where riverbed material is mined, this sandy-gravelly track constitutes excellent conduits and holds the greater potential for groundwater recharge. Mining in such areas should be preferred in locations selected away from the channel bank stretches.

m) Mining depth should be restricted to 3 meters and distance from the bank should be ¼th or river width and should not be less than 7.5 meters.

n) The borrow area should preferably be located on the riverside of the proposed embankment because they get silted in the course of time. For low embankment, less than 6 m in height, borrow area should not be selected within 25 m from the toe/heel of the embankment. In the case of the higher embankment, the distance should not be less than 50 m. In order to obviate the development of flow parallels to the embankment, crossbars of width eight times the depth of borrow pits spaced 50 to 60 meter center-to-center should be left in the borrow pits.

o) Demarcation of mining area with pillars and geo-referencing should be done prior to the start of mining.

p) A buffer distance /un-mined block of 50 meters after every block of 1000 meters over which mining is undertaken or at such distance as may be the directed/prescribed by the regulatory authority shall be maintained.

q) A buffer distance /unmined block of 50 meters after every block of 1000 meters over which mining is undertaken or at such distance as may be the directed/prescribed by the regulatory authority shall be maintained.

r) River bed sand mining shall be restricted within the central 3/4th width of the river/rivulet or 7.5 meters (inward) from river banks but up to 10% of the width of the river, as the case may be and decided by regulatory authority while granting environmental clearance in consultation with irrigation department. Regulating authority while regulating the zone of river bed mining shall ensure that the objective to minimize the effects of riverbank erosion and consequential channel migration are achieved to the extent possible. In general, the area for removal of minerals shall not exceed 60% of the mine lease area, and any deviation or relaxation in this regard shall be adequately supported by the scientific report.

s) Mining Plan for the mining leases(non-government) on agricultural fields/Patta land shall only be approved if there is a possibility of replenishment of the mineral or when there is no riverbed mining possibility within 5 KM of the Patta land/Khatedari land. For government projects mining could be allowed on Patta land/Khatedari land but the mining should only be done by the Government agency and material should not be used for sale in the open market.

The minerals reserve for river bed area is calculated on the basis of maximum depth of 3 meters and margins, width and other dimensions as mentioned in para (s) above. The area multiplied by depth gives the volume and volume multiplied with bulk density gives the quantity in Metric Ton. In case of river bed, mineable material per hectare area available for actual mining shall not exceed the maximum quantity of 60,000 MT per annum.

4.4 Obtaining Environmental & Other Statutory Clearance

The LOI Holder/Lease Holder to obtain Environmental and Other Statutory Clearances from the concerned authorities as per provision of applicable laws.

4.5 Baseline date before Commencement of Mining Operations

Baseline data in respect of the initial level of mining lease in the interval not more than 25 X 25 meters shall be collected for record by leaseholder. The level of river bed upstream and downstream up to 100 meters also needs to be recorded. The area outside the mining lease/river bank (if lease boundary coincides with mining lease) up to 100 meters from both the banks/mining lease needs to surveyed for initial level.

4.6 Additional measures where project proponent is selected by a bidding

In those states where sand plots are auctioned to the highest bidder, the following is suggested:

It has been observed that bidders try to form a cartel and bids are received for certain plots where legal mining is done, and bids for certain other plots don't elicit any response. Sand from these un-

auctioned plots is then excavated using the same machinery deployed for the excavation of adjacent plot which might have been auctioned off. It is not easily possible for the field machinery to prevent such illegal activities. This may be prevented by having plot of larger size. plots are large in size as possible are identified for auction. Care may be taken to ensure that no continuous stretch of plot in the river bed is divided for auction. A continuous stretch of plot shall be preferred for auction, and the attempt may not be made to auction it off in pieces.

5.0 REPLENISHMENT STUDY

The need for replenishment study for river bed sand is required in order to nullify the adverse impacts arising due to excessing sand extraction. Mining within or near riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in-stream roughness of the bed, flow velocity, discharge capacity, sediment transport capacity, turbidity, temperature etc. Alteration or modification of the above attributes may cause an impact on the ecological equilibrium of the riverine regime, disturbance in channel configuration and flow-paths. This may also cause an adverse impact on in-stream biota and riparian habitats. It is assumed that the riparian habitat disturbance is minimum if the replenishment is equal to excavation for a given stretch. Therefore, to minimize the adverse impact arising out of sand mining in a given river stretch, it is imperative to have a study of replenishment of material during the defined period.

5.1 Generic Structure of Replenishment Study

Initially replenishment study requires four surveys. The first survey needs to be carried out in the month of April for recording the level of mining lease before the monsoon. The second survey is at the time of closing of mines for monsoon season. This survey will provide the quantity of the material excavated before the offset of monsoon. The third survey needs to be carried out after the monsoon to know the quantum of material deposited/replenished in the mining lease. The fourth survey at the end of March to know the quantity of material excavated during the financial year. For the subsequent years, there will be a requirement of only three surveys. The results of year-wise surveys help the state government to establish the replenishment rate of the river. Based on the replenishment rate future auction may be planned.

The replenishment period may vary on nature of the channel and season of deposition arising due to variation in the flow. Such period and season may vary on the geographical and precipitation characteristic of the region and requires to be defined by the local agencies preferable with the help of the Central Water Commission and Indian Meteorological Department. The excavation will, therefore, be limited to estimated replenishment estimated with consideration of other regulatory provisions.

5.2 Methodology for Replenishment Study

The replenishment estimation is based on a theoretical empirical formula with the estimation of bedload transport comprising of analytical models to calculate the replenishment estimation. The iso-pluvial maps of IMD can be used for estimation of rainfall. Catchment yield is computed using different standard empirical formulas relevant to the geographical and channel attributes. eg. Strange's Monsoon runoff curves for runoff coefficient). Peak flood discharge for the study area can be calculated by using Dickens, Jarvis and Rational formula at 25, 50 and 100 years return period. The estimation of bed load transport using Ackers and White Equation or similar can be made. A simulation model is used with basic data generated from the field in the pre-study and post-study period (preferably pre-monsoon and post-monsoon) to estimate the volume of replenished material. The particle size distribution and bulk density of the deposited material are required to be assessed from a NABL recognized laboratory. Considering the bulk density and the volume, the estimation of replenishment in weight will be calculated after considering safeguards and stability of the slopes and riverine regime. Some of the common methods used for field data acquisition for replenishment study

5.2.1. Physical survey of the field by the conventional method

i. The conventional survey technical using DGPS and other survey tools are used to define the topography, contours and offsets of the lease area. The survey should clearly depict the important attributes of the stretch of the river and its nearby important civil and other feature of importance. Such information will provide the eligible spatial area for mining. The contour and the elevation benchmarks will provide the baseline data for assessing the pre and post-study period scenario.

ii. Physical benchmarks are to be fixed at appropriate intervals (preferable 1 in 30 m) and the Reduced Level (RL) shall be validated from a nearby standard RL. These RL should be engraved on a steel plate (Bench Plate) and shall be fixed and placed at locations which are free from any damages and are available in pre and post-study period. The bench plates shall be available for use during the mining period as reference for all mining activity. Reference pillar may also be used in place of Bench Plates with visible and readable demarcation on the ground as common reference points to control the topographic survey and mining activity.

iii Baseline data on elevation status for a grid of 10 m x 10 m is preferred to have accuracy in the assessment. It is expected that two consecutive cross-sections in longitudinal and lateral direction should not be more than 10-meter distance apart, however, the regulatory authority may fix these intervals depending on the geographical and site-specific conditions, only and after providing the scientific reason for such deviation.

iv The changes observed in the elevation in per and post scenario at each node should be depicted in graphical forms with an appropriate scale to estimate the area of deposition and erosion. These graphical

presentations should depict the active channel regime and the flow bed elevation with other important features required to be considered for estimation of the mining area. The area of deposition and erosion shall be calculated for each cross-section after giving due regard to the stability and safety of active channel banks, and other features of importance. The elevation level shall be in reference to the nearest bench-plates established for the purpose.

v The levels (MSL & RL) of the corner point of each grid should be identifiable and safety barriers (Non-Mining) demarcated as restricted in consensus with Mineral Concession Rules of respective State, and the provision mentioned in this Sustainable Sand Mining Management Guidelines.

vi A clear identification is required to be highlighted between grids under mineable and grids under the non-mineable area. These baseline data (pre and post) be subjected to stimulation with the help of data mine software to derive at the replenishment area and corresponding volume and estimated weight.

vii The database should be structured in a tabulated form clearly depicting the nomenclature of the section lines, latitude and longitude of the starting point, chain-age and respective levels of all the points taken on that section line.

viii Net area shall be derived after the summation of the area of deposition minus area of erosion for each cross-section. The volume will be estimated by multiplying the distance between two cross-sections with the average of net area of these two consecutive cross-sections.

ix One sample per 900 square meters (30 m x 30 m) shall be preferred sample density for assessment of bulk density for estimation of deposition rate. Care should be taken that the sample for assessment

of bulk density is taken from the deposition zone and not from erosion. However, depending on the site condition, river morphology and geographical condition, sample density may be adjusted. Reason for such deviation shall be appropriately highlighted in the report with supporting scientific data.

5.2.2. Use of UAV/Drone and other image data processing techniques

With the development in image data processing tools and its accuracy acceptability, Drone/UAV fitted with the advance camera are used for survey purposes. Such technology has promising potential in the survey of sand mining zones due to its fast and reliable output deliveries. The survey is conducted using a set of instruments and compatible software to utilized the properly referenced data for depicting the topography of the study area. Instrument calibration and software compatibility and its validation with the ground data are an essential requirement for using this technique.

The details of the instruments their limitation and software used shall be demonstrated in the form of the accuracy assessment report, through a chapter in the replenishment study report. Other details to be incorporated in the report with regard to the study using such imaginary techniques shall highlight the followings:

a) **Flight Planning:** - The lease co-ordinates and the flight plan devised to capture the front and side overlap percentages for in each flight in reference to global coordinates (Kml or SHP file) system. The software used for the purpose and its details along with limitations with basic analytical assumptions.

b) **Block file generation:** - This operation concerns the selection of the sensor model and the definition of block properties, the addition of

imagery to the block file, marking of GCPs, generation of tie points and refining of the model.

c) **Interior orientation:** - The interior orientation of the stereo pair rational polynomial coefficients (RPC) used, which should be bundled with the scenes. RPCs are coefficient, which is used by photogrammetric software to represent the ground to-image viewing geometry.

d) **Exterior orientation:** For exterior orientation, ground control points shall be used, which are collected from the DGPS survey.

e) **Aero Triangulation:** - A critical phase in photogrammetric mapping is to rectify the satellite imagery at an appropriate tract on the surface of the earth. This is accomplished by collecting horizontal and vertical data [GCP's] to ascertain the spatial location of a number of features that are visible and measurable on the aerial images – this process is often called control bridging, which refers to passing horizontal and vertical information from one aerial image to the next.

f) **Ortho Generation:** - After running the above steps; the software shall automatically generate orthorectified imagery.

g) **DTM extraction:** For extraction of DTM, Generated point cloud data classified manually to extract bare earth.

5.2.3 Accuracy Assessment of Aerial Data:

To check the accuracy of DTM generated by Aerial data, few points are selected and compared with on-site by using DGPS instrument for the ground-truthing purpose. It is preferred to do ground-truthing at minimum 5 locations spread evenly across the lease area. The readings from the DGPS instrument are then compared with the Drone data for accuracy assessment

purpose. A comparative chart will be prepared in comparison of Data related to ground-truthing (by DGPS) and from Drone. Such accuracy assessment report shall a chapter of the replenishment study.

5.2.4 Replenishment study shall have the details of

- List of instruments
- List of software
- Establishment of Benchmark by putting No. of pillar points and various Ground Control Points (GCP) at the site.
- Ground Control Points (GCP) Collection: - Various GCPs were observed by using DGPS for Permanent Benchmarks and for control points.
- The summary of the elevation data from each section's profile based on the post-monsoon the survey should have mentioned in the table form.
- The detail of post-monsoon survey data in the tabular form shall be
- The detailed comparison of both pre-monsoon and post-monsoon elevation data shall be attached
- Cross-sectional depiction of deposition and erosion for each section in pre and post-deposition season shall be given supported by relevant field study data and plan.

6.0 ENFORCEMENT

6.1 Mining Operation:

The mining operations should be strictly carried out in accordance with the approved mining plan and after complying with all the conditions stipulated in Environmental & Other Statutory Clearance. Mine owner shall follow the operational procedure (for sale, dispatch, storage, reserve reconciliation and transportation) as may be defined by the concerned state government in its monitoring guidelines. Mine owner should comply with the recommendation and suggestion made by the High Power Committee as applicable.

6.2 Post Environment Clearnace Monitoring:

It's the responsibility of the EC Holder to comply with the Environmental Clearance conditions and upload the six-monthly EC compliance report on the website of the Ministry. For the category, 'A' mines (>100 Ha individual & cluster) Regional Office of the MoEF&CC are entrusted to carry out EC Monitoring and for the Category 'B' Mines by SEIAA. The monitoring shall be carried out as per the procedure/schedule suggested by MoEF&CC from time to time. MOEF&CC vide its notification S.O. 637(E) dated 28.02.2014 has delegated the power to State/Union Territory Environmental Impact Assessment Authority to issue show cause notice to project proponent in case of violation of Conditions of Environmental Clearance issued by the said authority and to issue direction for keeping the said EC in abeyance or withdrawing it. Thus, for category 'B' (0 to 100 Ha) projects SEIAAs are responsible for EC monitoring.

6.3 Environment Audit:

The Hon'ble NGT in its order dated 04.09.2018 in O.A. 173/2018 in the matter of Sudarsan Das vs. State of West Bengal & Ors. Inter-alia directed

that "*One of the conditions of every lease of mine or minerals would be that there will be independent environmental audit at least once in a year by reputed third party entity and report of such audit be placed in the public domain. In the course of such an environmental audit, a three-member committee of the local inhabitants will also be associated. Composition of three member's committee may preferably include ex-servicemen, a former teacher and former civil servant. The Committee will be nominated by the District Magistrate.*

The gazette notification on environmental audit has been issued by the Ministry of Environment and Forests on March 13, 1992 (amended vide notification GSR 386 (E) dated April 22, 1993). This notification applies to every person carrying on an industry, operation or process requiring consent to operate under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) or under section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981), or both, or authorization under the Hazardous Waste (Management and Handling) Rules, 1989, issued under the Environment (Protection) Act, 1986 (29 of 1986). The notification requires that an Environmental Statement for the financial year ending the 31st March be submitted to the concerned State Pollution Control Board, on or before the 30th September of the same year.

It is suggested that NABET Accredited consultant may be engaged for Environment Audit and during the course of the audit, a three-member committee nominated by District Magistrate shall be associated.

6.4 Monitoring of Sale & Purchase of Sand:

6.4.1 In order to curb illegal mining it is very necessary that the general public is aware of the legal source of sand and RBM suppliers. The Ministry of Mines issued ***Sand Mining Framework 2018*** wherein it has proposed two mechanisms for the online sale of sand depending on whether there is a free market for sand in the State or the prices are regulated by the Government.

Para 1.2.12.2 Under the market model

In the case of the market model, all the lessees/ certified dealers in the State should register themselves on the online portal/ mobile app. For registering, the lessee/ certified dealer will have to enter the details of its concession/ stockyard, location, the quantity of sand expected on a weekly basis, as per the approved mining plan. Once registered, the online portal/ app will display the name of the reach/ stockyard and sand could be booked by the consumer from those leases/ stockyards and prices up to the delivery level. Further, the lessee/ certified dealer needs to regularly update the sand available in the reach/ stockyard, and they can decide the price at which they want to sell their sand. Anyone who wishes to purchase sand in the State will have the following options for buying:

1. *Mobile app*
2. *Online portal*
3. *Customer care/ telephone call*
4. *Licensed traders*

The consumer needs to register on the portal and log in using his/her credentials (Aadhar card based only). After logging in, the portal will display the entire list of reaches/ stockyards along with the quantity of sand available in those reaches/ stockyards and the quality and price of

sand. The consumer can filter/ sort the reaches/ stockyards based on such parameters as location, quality and price, and book from the lease/ stockyard he/she wishes to. The consumer should also have the option to purchase the sand by ordering at customer care. Also, stockyards should be made around all the major consumption hubs in the State based on their estimated demand.

Para 1.2.12.3 Controlled market prices

In case the prices are regulated by the State Government, the only difference from the previous model is that the price of sand at the river reach/ stockyard shall be uniform across the State/ district based on the quality and transportation lead. A consumer after logging in may choose the reach/ stockyard from which he/she wishes to purchase the sand. The payment for booking the sand in both the cases should be made on the portal/ app so that proper accounting of the sale of sand can be maintained by the Government. Also, stockyards should be made around all the major consumption hubs in the State based on their estimated demand.

It is suggested that the State Government should develop an online portal for sale and purchase of Sand & RBM. In addition to this State Government shall decide on the model viz. *Under market model or Controlled market prices or both* to be adopted for their respective States. The State Government shall accordingly modify their Minor Mineral Concession Rules within 6 months of publication of these guidelines. It is suggested that the controlled price model is more effective in controlling illegal sand mining. Because if the State Government is the only agency to provide the sand in the State, then price and supply of sand can be controlled more effectively. There will be no confusion in the consumers about legality of the purchase as the only source of sand provider is the State Government through its network of registered stockiest, retailers and transporters. The consumers

can fill the online request, pay the amount, select the transporter and give its feedback after the receipt of the sand. The transportation can also be controlled as the tippers used for transportation is registered tippers with GPS facility, the transportation route is well defined for easy monitoring, control over overloading of tippers, control over spillage of mineral etc. The State Govt. shall also make provision for penalizing the persons/agency buying the sand and RBM from the illegal sources.

6.4.2 The Ministry of Mines in its Sand Mining Framework also mentioned the following different level of monitoring:

Para 1.2.13.1 Level 1- Reach/ Stockyard level monitoring

For monitoring of the active reaches:

a. *Quantity of sand to be extracted from the reach should be based on the quantity of sand assessed in the reach by the Joint Inspection Team.*

b. *The lease boundary should be demarcated with geo-coordinates or geo-fenced to ensure that sand extraction is going on only within the permitted area.*

c. *De-casting from river beds should be monitored on a regular basis to keep a track of excavated quantity.*

d. *After every two years, a mandatory audit of the quantity extracted and quantity permitted along with the replenishment rate.*

e. *Mandatory e-pass/ e-permit should be made available at reach level for transportation of any sand by any GPS enabled vehicle with the provision of entering the vehicle number of the sand carrying vehicle and expected delivery address and customer name/ mobile number. Also, provision should be made available for stockyards/ stockiest of sand. In the case of*

nomination based (controlled pricing) business model, the margin of private stockist should be capped over a fixed percentage of notified prices.

f. At the stockyard, the stock supervisor should verify the authenticity of online payment receipt before issuing the transit pass. The loading of sand should be monitored electronically and all transporting vehicles should pass through an electronically monitored weighbridge. g. Real-time data capture for transportation

Para 1.2.13.2 Level 2 - Transportation monitoring

To make transportation monitoring effective and useful, all the sand carrying vehicles (tractors/ trucks) should be registered with the department and GPS equipment should be installed in all the sand carrying vehicles. Weighbridges with CCTV should be installed at all the stockyards, active reaches to ascertain the exact quantity of sand being transported in the vehicle. Check posts with CCTV cameras should be established near all major consumption centres to check if all the transporting vehicles are carrying a valid transport permit. The transport permit generated should contain the security features mentioned under section 5.11 so that one permit cannot be re-used by generating photocopies of the permit.

Para 1.2.13.3 Level 3 - End consumer monitoring/ bulk consumer

For end consumer monitoring, a customer grievance redressal center should be established to enquire about the grievances faced by the sand consumers. The telephone number of the call center should be advertised so that it reaches the general public through which anyone in the State can register his/her complain related to the sand, be it in terms of price or any other grievance. Additionally, profiles of customers should be analyzed such as the delivery of sand at the same address, usage pattern and its comparison with the estimated usage, as mentioned in purpose, etc. Further, surprise checking

should be conducted by the district level committee staff as per instructions of the monitoring agency.

Para 1.2.13.4 Level 4 - Indirect monitoring

Indirect monitoring can be done by determining sand consumption through the quantum of cement sales in the State, as the sale of cement is quite organized and data is easily available at the State level and district levels for the same. From district-wise cement consumption, the further trend of sand consumption can be derived. Any anomalies in the sand consumption/demand can be analyzed further.

Note: *The above monitoring mechanism is just a suggestion and the States may visit Andhra Pradesh and Telangana to study the monitoring mechanism in greater detail.*

It is suggested that State Government may consult with concern department of State of Telangana and Tamil Nadu to have better understanding on their experience and knowledge in adopting best sand mining enforcement provisions and monitoring practices and frame their own regulatory regime and monitoring framework. The framework of monitoring should essential include online sale & purchase of River Bed Material/ Auction of leases, Sand from rivers and other sources, online monitoring of excavation, storage and transportation of mineral for control of illegal mining.

The respective State Governments shall develop the online Sale & Purchase System after defining the model viz. Under market model or Controlled market prices model. The level of monitoring needs to be defined and guidelines need to be finalized by the respective State Governments as per their requirement with due consideration of suggestive guideline in this document. These all measure will help in curbing illegal mining.

7.0 Recommendations of High Power Committee:

A high power committee (HPC) was constituted by Hon'ble National Green Tribunal to assess the status of illegal mining the stretch of River Yamuna, under the chairmanship of Secretary, Ministry of Environment Forest & Climate Change. The committee after exhaustive field survey and interaction with stakeholders and having surprise visits submitted a comprehensive report on river sand mining along with certain recommendations on enforcement requirements and monitoring essentials. The same is provided in the following section for consideration of monitoring / regulatory authority to adopt applicable provisions in their monitoring framework and also to ensure that the infrastructural requirements recommended by the HPC are put in use at all locations including the lease area.

7.1 Recommendations of High Power Committee (HPC)

The following recommendation of the High Power Committee shall be considered while framing the monitoring mechanism by the State Government.

i. Project Proponent must ensure that following security features are included in the Transport Permission/Permits (TP) so that duplicate/fraudulent/forged TPs for transport, not accounted for in the IT-based system, is not possible.:

(a) Printed on Indian Bank Association (IBA) approved
(b) Magnetic Ink Character Recognition Code (MICR) paper;
(c) Unique Barcode;
(d) Unique Quick Response Code (QR);
(e) Fugitive Ink Background;
(f) Invisible Ink Mark;
(g) Void Pantograph;
(h) Watermark.

ii. Project Proponent must ensure that CCTV camera, Personal Computer (PC) or laptop, Internet Connection, Power Back up, access control of mine lease site; and arrangement for weight or approximation of weight of mined out mineral on basis of volume of the trailer of vehicle used at mine lease site are available.

iii. The PP has to enter the destination, distance between plot and destination, vehicle number etc in the system. After scanning, unique bar code number, invoice date time and validity date-time are generated by the software which gets printed individually on each TP Validity of TP is calculated based on the distance between plot and destination. After validity time is over the TP stands invalid.

iv. The officers involved in monitoring should be provided with mobile application and/or bar code scanners using which the TP can be checked anywhere on road. As soon as the bar or QR code on TP gets scanned through using the mobile application and/or scanner or vehicle number is entered into the application or sent by SMS to a predefined number, all details of TP such as plot details, vehicle details, validity time, etc. should be fetched from the server. This means if anything is re-written on TP and attempt is made to reuse the same, it can be traced immediately. Various reports can be generated using the system showing daily lifting reports and user performance report. This way the vehicles carrying sand can be tracked from source to destination.

v. The facility to fetch details using mobile app, website and SMS may be made available to the general public as well. However, they shall not be allowed to stop the vehicles to check the transportation. The only option that they should have is to check vehicle numbers of the passing vehicle in the mobile app or SMS for the validity of the pass. The only result that should be available to them should be if the vehicle carrying sand has a

valid permit at the relevant point of time or not. If the citizen finds that the vehicle doesn't have such a permit, as ascertained from mobile app or website or SMS, he should alert local authorities, who shall then take further action as per the law.

vi. In case, the vehicle break-down, the validity of Transport Permit or Receipt shall be extended by sending SMS by the driver in specific format to report the breakdown of the vehicle. The server will register this information and register the breakdown. The State can also establish a call center, which can register breakdowns of such vehicles and extend the validity period. The subsequent restart of the vehicle also should be similarly reported to the server/call center.

vii. The route of the vehicle from source to destination shall be tracked through the system using checkpoints, Radio-frequency identification (RFID) tags, and Global Positioning System (GPS) tracking.

viii. The system shall enable the Authorities to develop a periodic report on different parameters like daily lifting report, vehicle log/ history, lifting against allocation, and total lifting. The system can be used to generate auto mails/SMS. This will enable the District Collector / Magistrate and other authorities to get all the relevant details and will enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle should be tracked.

ix. It is necessary to prevent any truck/vehicle from transporting sand out of the identified plot bypassing the strong IT enabled system. Therefore, at each of the sand plot, the following additional measures should be taken.

(a) There shall be one entry and exit point provided for trucks/vehicles. The said entry point should have facilities as mentioned above. In case, it is necessary to have more than one entry/exit points, all such points shall have checkpoints with facilities as mentioned above. All other possible ways of entry/exit should be closed using barriers like compound, trench, etc. All provisions shall be made to not make it possible for any vehicle to enter or exit without entry into the computerized system.

(b) All such points should have 24X7 CCTV coverage, the footage of which should be made available online to the district administration. In cases, where sufficient internet bandwidth is not available, it may be deposited with the district administration on a weekly basis. If possible, the entry/exit points should have boom barriers which will record the vehicles entering and exiting the plot.

8.0 GENERAL APPROACH TO SUSTAINABLE SAND MINING

8.1 Pre-requisite for starting sand mining operation

i) All district to prepare a comprehensive mining plan for the district as per the provision of District Survey Report. These reports shall be put on the website of District Administration. No mining shall be allowed in the area which has not been identified in the comprehensive mining plan of the District.

ii) Replenishment study should be conducted on regular basis.

iii) All potential rivers mining zone/area shall be identified and put for auction with proper geo-tagged details by the auctioning authority concerned.

iv) The latitude and longitude of each mining lease shall be clearly mentioned in Letter of Intent issued to the potential mine lease. Such information shall be provided on the website of the district administration.

v) The provision of these guidelines shall be considered while identifying the potential stretches /locations and boundaries of the leases for the minable area.

vi) The LoI holder shall seek Environmental Clearance as per the provision of EIA Notification, and the regulatory authority shall ensure that the provision suggested in "Sustainable Sand Mining & Management 2016" and in this documents, as applicable are part of the clearance conditions.

vii) There shall be no river bed mining operation allowed in monsoon

period. The period as defined by IMD Nagpur for each state shall be adhered with.

viii) The monitoring infrastructures including weighbridge and adequate fencing of the lease area, CCTV, Transport permits, etc, as suggested in this document shall be ensured in order to reduce unrecorded dispatch.

ix) Regular monitoring of mined minerals and its transportation and storage shall be ensured and all information shall be captured at centralized database so that easy tracking of illegal material can be done.

x) Annual audit of each mining lease shall be carried out wherein three independent member of repute, nominated by District administration shall also participate.

8.2 Mining of Sand from Agricultural Fields

This practice is prevalent in Haryana; to ensure that mining from outside doesn't affect rivers, no mining is permitted in an area up to a width of 100 meters from the active edge of embankments or distance prescribed by Irrigation department whichever is critical. The top layer of soil varying between 1 and 2 meters is removed and stacked separately and thereafter the sand deposit which maybe 10-15 meter deep is mined. After removing the sand layer up to a maximum depth of 09 meters or the maximum mineable minerals, as permitted by competent authority. The topsoil stacked is spread out on the field and the same is brought under the cultivation. Though the level of this land (mined out area) is lowered to the depth of the excavation and in initial years of cultivation the productivity is low, but the productivity of the fields improves with continued cultivation and addition of organic manure in the field. In Haryana, some leases are of large area

(ranging from 1000 hectare to 2000 hectare) and agricultural fields and river bed both are included in the same lease for mining.

The following recommendations should be kept in mind for mining in such leases:

1. Mining of sand in such mine leases will require environment clearance.
2. The lease should be of sand mining either from the agricultural field or river. In the same lease, both types of area should not be included.
3. The sand mining from the agricultural field is being done in Haryana for a long time and it can be done in a more sustainable manner without adverse impact on agricultural productivity if proper environmental safeguards are taken.
4. The slope of mining area adjacent to agricultural fields should be proper (preferably 45 degree) and adequate gap (minimum 10 feet) be left from adjacent agricultural field to avoid erosion and scouring.

The provision for sand mining in agricultural field may be permitted, whenever replenishment of sand occurs due to natural phenomena.

Permission may also be granted by competent authority (District administration) for excavation of sand/Soil from agricultural fields, after due diligence of this prevailing condition in order to avoid any unacceptable impact on the environment and nearby livelihood from agriculture provided such objective of such excavation mining of Soil/Sand in limited increase the productivity of sand agricultural field.

9.0 MONITORING MECHANISM

9.1 Illegal Mining

The Hon'ble Supreme Court in its Judgment dated 2.08.2017 in W.P 114 of 2014 in the matter of Common Cause Vs Union of India & Ors, inter-alia passed the following:

Para 128. *The simple reason for not accepting this interpretation is that Rule 2(ii-a) of the MCR was inserted by a notification dated 26th July 2012 while we are concerned with an earlier period. That apart, as mentioned above, the holder of a mining lease is required to adhere to the terms of the mining scheme, the mining plan and the mining lease as well as the statutes such as the EPA, the FCA, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981. If any mining operation is conducted in violation of any of these requirements, then that mining operation is illegal or unlawful. Any extraction of a mineral through an illegal or unlawful mining operation would become illegally or unlawfully extracted mineral."*

In view of above Judgement, any mining activities which are not governed under the provision of Environment (Protection) Act, 1985, The Water (Prevention & Control of Pollution Act, 1974, The Air (Prevention & Control of Pollution) Act, 1981, Forest Conservation Act-1980, Wildlife Protection Act - 1972, shall be considered as illegal mining within the provision of section 21(5) of Mines and Minerals (Development & Regulation) Act, 1957 (MMDR Act) and the concerned authority shall take necessary action within the provision of MMDR Act.

As per the provision of 23(C) of MMDR Act, the State Government is empowered to make rules for preventing illegal mining, and transportation

& storage of Illegal minerals. All such mining which qualifies under illegal, shall be dealt with in the provision of MMDR Act by the concern authorities.

State Pollution Control Board (SPCB) is the nodal authority in the State for dealing with cases related to pollution or environment management coming under the purview of the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment Protection Act 1986. SPCB shall initiate appropriate action under the provision of these acts for non-compliance of violation of the provisions.

9.2 Environmental Damage due to illegal mining

The environmental damages incurred or resulting due to illegal mining shall be assessed by a committee constituted by District Administration having expertise from relevant fields, and also having independent representation of locals and State Pollution Control Board. Guidelines for assessment of ecological damages prescribed by the State Government or Concerned Pollution Control Boards or any other authority shall be applicable and compensation as fixed shall be paid by the project proponent, in light of Hon'ble National Green Tribunal orders.

9.3 Monitoring of Mining near Inter-district or inter-state boundary

There are situations where bifurcated river becomes district boundaries or state boundaries in such situation it is difficult to assess the mining potential, or to have close monitoring and enforcement of the regulatory provision. Such challenges have been identified and dealt with in SSMG-2016. However, in the absence of any standardized procedure, the monitoring has not been effectively practiced. This has been highlighted by the High Power Committee constituted by NGT in the matter pertaining to illegal mining.

The districts/state sharing the boundary shall constitute the combined task force for monitoring of mined materials, mining activity and also should actively participate in the preparation of DSR by providing appropriate inputs. In such cases, the draft DSR so prepared shall be put up for public consultation in both the districts through respective district administration website.

The task force shall meet every quarter to reconcile the data collected during the period and identify any gap/ lapses based on the outcome of such meeting. The respective district shall take action/ corrective measures. Effort shall be made for real-time data sharing between both the district.

The task –force shall include essentially the representative of respective districts from the mining department, transport department, regional office of SPCB concerned and a reputed citizen nominated by district administration. The Taskforce shall be headed by officer not less than ADM rank and quarterly outcome shall be submitted to District administration.

In addition to the above, there is a need for strict surveillance, particularly at night. The State of Gujarat has already initiated a program called '*Trinetra*' for night surveillance by using night-vision drones to control illegal mining incidents. This program is giving satisfactory results. Such type of system may also be developed by each State within a reasonable time.

A typical standard operating procedure for assessing illegal mining by the committee constituted shall, but not limited to, include the steps given in the following table. However, the process of assessing can be modified based on site-specific conditions and any deviation shall be recorded in the report with proper justification.

Suggestive standard Practice for assessing illegal mining

Step 1	The assessment team should collect the information and documents prescribed in the Pre-Requisite section.
Step 2	The assessment team should verify the applicability/validity of statutes under EPA-1986, Air and Water Act, MMDR 1957, State Mines and Mineral Rules, etc.
Step 3	Field visit should be conducted for identification of mining lease area (in hectare) and boundary pillar constructed to indicate the same.
Step 4	With the help of GPS instrument, the team should assess the area where any extraction or mining have been carried out on the day of visit and calculate the mined-out area in a hectare.
Step 5	If available, the team may avail the use of latest satellite images for calculating the total mined out area.
Step 6	The team should verify the Ground / Surface Level (in meter above MSL) of at least 04 highest points in or around the area where mining has been done. The Ground/surface level will then be computed based on averaging of 04 highest points verified by the team.
Step 7	With the help of Depth Measurement kit or any depth measuring instruments, the depth should be measured for at least 04 points in the mined-out area. For computing, the depth, averaging of the value obtained at 04 points should be done.
Step 8	Verification of compliance conditions of Environmental Clearance and Consent to operate, mining methodology under Mining Plan
Step 9	Identification of vulnerable impacts observed on the field and non-compliance of conditions of Environmental Clearance and Consent to Operate.

Step 10	Field Survey for identification, monitoring and verification of ecological species based on the information available and documents mentioned in the Pre-requisite section.
Step 11	Preparation of inventory of machinery used/observed on the field (optional)
Step 12	Preparation of inventory of hydraulic structures observed on the field (optional)
Step 13	Water sampling for assessment of water quality including physical and biological parameters. (optional)
Step 14	Reconciliation collation of data/information and compilation to maintain violation.
Step 15	Identification of restoration plan and computation of cost of the restoration plan.

9.4 Monitoring Mechanism

A uniform monitoring mechanism is required to assess the regulatory provision in quantitative terms, with robust institutional and legal framework. Based on past experience and suggestions available, the following requirements are suggested for defining a mechanism for monitoring of mining activities which will help in identification of mining which is operating either illegally or are violating the regulatory provisions. Some suggestion will facilitate direct or indirect information to help in such an assessment.

1. All precaution shall be taken to ensure that the water stream flows unhindered and process of Natural river meandering doesn't get affected due to mining activity.

2. River mining from outside shall not affect rivers, no mining shall be permitted in an area up to a width of 100 meters from the active edge of embankments or distance prescribed by the Irrigation department.

3. The mining from the area outside river bed shall be permitted subject to the condition that a safety margin of two meters (2 m) shall be maintained above the groundwater table while undertaking mining and no mining operation shall be permissible below this level unless specific permission is obtained from the Competent Authority. Further, the mining should not exceed nine-meter (9 m) at any point in time.

4. Survey shall be carried out for identifying the stretches having habitation of freshwater turtles or turtle nesting zones. Similarly, stretches shall be identified for other species of significant importance to the river eco-system. Such stretch with adequate buffer distance shall be declared as no-mining zone and no mining shall be permitted. The regulatory authority as defined for granting Environmental Clearance, while considering the application of issuance of ToR and/or EC for the adjacent block (to non-mining zone) of mining shall take due precaution and impose requisite conditions to safeguard the interest of such species of importance.

5. District administration shall provide detailed information on its website about the sand mines in its district for public information, with an objective to extend all information in public domain so that the citizens are aware of the mining activities and can also report to the district administration on any deviation observed. Appropriate feedback and its redressal mechanism shall also be made operational. The details shall include, but not limited to, lease area, geo-coordinates of lease area and mineable area, transport routes, permitted capacity, regulatory conditions for operation including mining, environmental and social commitments etc.

6. A website needs to be maintain to track the movement of centralised sand mining and a Centralised server system should be made to manage the data related to sand mining across India.

7. The mineral concession holders shall maintain electronic weighbridges at the appropriate location identified by the district mining officer, in order to ensure that all mined minerals from that particular mine are accounted for before the material is dispatched from the mine. The weighing bridge shall have the provision of CCTV camera and all dispatch from the mine shall be accounted for.

8. The mineral movement shall be monitored and controlled through the use of transit permit with security features like printing on IBA approved MICR papers, Unique bar/QR, fugitive ink background, invisible ink mark, void pantographs and watermarks papers or through use of RFID tagged transit permits and IT /IT-enabled services. Such monitoring system shall be created and made operationalised by State Mining department and district level mining officer shall be responsible for ensuring that all legal and operational mines are connected and providing the requisite information on the system. Regular check and associated report shall be submitted to DLTF and uploaded on the website.

9. State Government shall constitute a District Level Task Force (DLTF) under the Chairmanship of Deputy Commissioner/District Magistrate/Collector with Superintendents of Police and other related senior functionaries (District Forest Officer, District transport officer, Regional officer- SPCBs, Senior Officer of Irrigation Department, District Mining Officer) with one/two independent member nominated by the Commissioner concerned. The independent member shall be retired government officials/teacher or ex-serviceman or ex-judiciary member.

The DLTF shall keep regular watch over the mining activities and movement of minerals in the district. The DLTF shall have its regular meeting, preferably every month to reconcile the information from the mining activity, and other observations made during the month and take appropriate corrective and remedial action, which may include a recommendation for revoking mining lease or environmental clearance. The DLTF may constitute an independent committee of the expert to assess the environmental or ecological damage caused due to illegal mining and recommend recovery of environmental compensation from the miner's concern. The recommendation may also include action under the provision of E(P) Act, 1986.

10. The area not identified for mining due to restriction or otherwise are also to be monitored on a regular basis by the DLTF. Any observations of mining activity from the restricted area shall be reported and corrective measures shall be initiated on an urgent basis by the DLTF.

11. The dispatch routes shall be defined in the Environmental Clearance and shall be avoided through densely habituated area and the increase in the number of vehicle movement on the road shall be in agreement with the IRC guidelines / carrying capacity of the road. The alternate and dedicated route shall be explored and preferred for movement of mining to avoid inconvenience to the local habitat. The mining production capacity, by volume/weight, shall be governed by total permissible dispatch calculated based on the carrying capacity of dispatch link roads and accordingly, the production should be regulated.

12. The movement of minerals shall be reconciled with the data collected from the mines and various Naka/check posts. Other measures may also include a general survey of the potential mineable area in the district

which has not been leased/auctioned or permitted for mining due to regulatory or other reasons.

13. The location and number of check post requirement shall be reviewed by DLTF on a regular basis so that appropriate changes in location/number could be made as per the requirement. Such review shall be carried out on a regular basis for the district on inter-state boundary or district providing multiple passages between two districts of different states.

14. The district administration shall compile the information from their district of the permitted and legal mined out minerals and other details and share such information and intelligence with the officials of the adjoining district (Inter or/and Intra State) for reconciliation. The information shall include the area of operation, permissible quantity, mined out minerals (production) the permitted route etc., and other observations, especially where the mine lease boundary is congruent with the district boundary. Such coordination meeting shall be held on a quarterly basis, alternatively in two district headquarters or any other site in two districts decided mutually by the District Magistrate.

15. The mining department shall include submission of an annual environmental audit report as one of the conditions in the mining lease agreement. The annual audit for each river bed mining lease shall be carried out and the audit report shall be uploaded on the website of district administration. The audit shall be carried out by an independent team of 3 members nominated by District Collector/Magistrate/Commissioner comprising of Ex-Serviceman, Ex-Government officials of repute, Professor or Person having experience of mining/environment. The guidelines and method of the audit shall reflect adequately the monitor-able parameters and output and reflect

the compliance status with respect to the conditions imposed by the regulatory authorities including conditions of Environmental clearance.

16. The in-situ and ex-situ environmental mitigative measures stipulated as EMP, CER, CSR and other environmental and safety conditions in mines including the welfare of labours shall properly reflect in the audit report.

9.5 Suggestive additional requirements are

i. The requirement at the Mine Lease Site:

a. Small Size Plot (Up to 5 hectares): Android Based Smart Phone.
b. Large Size Plots (More than 5 hectares): CCTV camera, Personal Computer (PC), Internet Connection, Power Back up.
c. Access control of mine lease site.
d. Arrangement for weight or approximation of the weight of mined out mineral on the basis of the volume of the trailer of vehicle used.

ii. Scanning of Transport Permit or Receipt and Uploading on Server:

a. Website: Scanning of receipt on mining site can be done through barcode scanner and computer using the software;

b. Android Application: Scanning on mining site can be done using Android Application using a smartphone. It will require internet availability on SIM card;

c. SMS: Transport Permit or Receipt shall be uploaded on the server even by sending SMS through mobile. Once Transport Permit or Receipt get uploaded, a unique invoice code gets generated with its validity period.

iii. Proposed working of the system:

The State Mining Department should print the Transport Permit or Receipt with security features and issue them to the mining leaseholder through the District Collector. Once these Transport Permits or Receipts are issued, they would be uploaded on the server against that mine lease area. Each receipt should be preferable with pre-fixed quantity, so the total quantity gets determined for the receipts issued. When the

Transport Permit or Receipt barcode gets scanned and invoice is generated, that particular barcode gets used and its validity time is recorded on the server. So all the details of transporting of mined out material can be captured on the server and the Transport Permit or Receipt cannot be reused.

iv. Checking On Route:

The staff deployed for the purpose of checking of vehicles carrying mined mineral should be in a position to check the validity of Transport Permit or Receipt by scanning them using the website, Android Application and SMS.

v. Breakdown of Vehicle:

In case the vehicle break-down, the validity of Transport Permit or Receipt shall be extended by sending SMS by the driver in specific format to report the breakdown of the vehicle. The server will register this information and register the breakdown. The State can also establish a call center, which can register breakdowns of such vehicles and extend the validity period. The subsequent restart of the vehicle also should be similarly reported to the server or call center.

vi. Tracking of Vehicles:

The route of the vehicle from source to destination can be tracked through the system using checkpoints, RFID Tags, and GPS tracking.

vii. Alerts or Report Generation and Action Review:

The system will enable the authorities to develop a periodic report on different parameters like daily lifting report, vehicle log or history, lifting against allocation, and total lifting. The system can be used to generate auto mails or SMS. This will enable the District Collector or District Magistrate to get all the relevant details and shall enable the authority to block the scanning facility of any site found to be indulged in irregularity. Whenever any authority intercepts any vehicle transporting illegal sand, it shall get registered on the server and shall be mandatory for the officer to fill in the report on action taken. Every intercepted vehicle shall be tracked.

The monitoring of mined out mineral, environmental clearance conditions and enforcement of Environment Management Plan will be ensured by the regulatory authority and the State Pollution Control Board or Committee. The monitoring arrangements envisaged above shall be put in place. The monitoring of enforcement of environmental clearance conditions shall be done by the Central Pollution Control Board, Ministry of Environment, Forest and Climate Change and the agency nominated by the Ministry for the purpose.

Some of the State has followed the SSMMG-2016 and has also improvised or customized on the provisions given therein, and are successfully in operation. Salient provision adopted at different stages of sand mining in the state of Tamil Nadu is given as **Annexure VIII.**

9.6 Actions against illegal excavation and transport

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

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

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

simultaneously for one offence. What is prohibited in law is an action under the same law for the same act more than once.

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

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

4. It is emphasized that actions, as stated above, are most important to ensure that the IT-based system works. If these exemplary actions are not taken against everyone, it shall create a strong disincentive to those

involved in legal excavation and transportation. For IT-based (or any other) legal system to work, it is necessary to ensure that illegal system stops working altogether.

Annexure-I

Details of Sand/M-Sand Sources

a) Rivers:

River Name/M-Sand Plant	Total Stretch of River (in KM)	Type of River (Perennial or Non-Perennial)

b) De-Siltation Location: (Lakes/Ponds/Dams etc.)

Name of Reservoir/Dams	Maintain/Controlled by State Govt./PSU etc.	Location	District	Tehsil	Village	Size(Ha)

c) Patta Lands/Khatedari Land:

Owner	Sy. No	Area (Ha)	District	Tehsil	Village	Agricultural Land (Yes/No)

d) M-Sand Plants:

Plant Name	Owner	District	Tehsil	Village	Geo-location	Quantity Tonnes/Annum

Note: For inclusion of M-Sand Plant/Patta Land in DSR the plant/landowners need to submit the request to the Mining Department with complete details. Inclusion in DSR does not give them the right to operate the M-Sand Plant/Sand Mining lease.

Annexure-II

List of Potential Mining Leases (existing & proposed)

Rivers

River Details	Lease Details	Area (in Ha)	Distance (in KM) from PA/BR/WC/	Distance from Forest Area (in KM)	Mining leases within 500 meters (if yes cluster area)	Total excavation in Tonnes /Annum considering digging depth max as 3 meters	Mineral to be mined (Sand/ Bajri/ RBM etc.)	Existing / Proposed

Patta Lands/Khatedari Land: (existing & proposed)

Owner	Sy. No	Area	District	Tehsil	Village	Total Reserve (MT)	Total Mineral to be mined (MT)	Existing /Proposed

De-Siltation Location: (Lakes/Ponds/Dams etc.) (Existing & proposed)

Name of Reservoir /Dams	Maintain /Controlled by State Govt./PSU etc.	Location	District	Tehsil	Village	Size (Ha)	Quantity MT / Year	Existing /Proposed

M-Sand Plants :(existing & proposed)

Plant Name	Owner	District	Tehsil	Village	Geo-location	Quantity Tonnes/Annum	Existing/Proposed

Annexure-III

Cluster & Contiguous Cluster details

Clusters:

River Name	Cluster No.	Lease No	Location (Riverbed / Patta Land)	Village	Area (in Ha)	Total Excavation (Ton)	Total Mineral Excavation (Ton)

Contiguous Clusters:

River Name	Contiguous Cluster No.	Cluster No	Number of leases in the cluster	Location (Riverbed / Patta Land)	Distance between clusters	Village	Area of Cluster (Ha)	Total Mineral Excavation (Ton)

Annexure-IV

Transportation Routes for individual leases and leases in Cluster

Lease No	Transportation Route No	Number of tippers /day of lease	Number of tippers /day of all the lease on route	Length of Route in KM	Type of Road (Black Topped/ unpaved)	Recommendation for road (Black Topped/ unpaved)	The road will be Constructed by Govt/ Lease Owner	Route Map & Location

Cluster No	Transportation Route No	Number of tippers /day of cluster	Number of tippers /day of all the clusters on route	Length of Route in KM	Type of Road (Black Topped/ unpaved)	Recommendation for road(Black Topped/ unpaved)	The road will be Constructed by Govt/Lease Owner	Route Map & Location

Annexure-V

Final List of Potential Mining Leases (existing & proposed)

Rivers

River Details	Lease Details	Area (in Ha)	Distance (in KM) from PA/BR/WC/	Distance from Forest Area (in KM)	Mining leases within 500 meters (if yes cluster area)	Total excavation in (MT/Yr) (Mine depth max as 3 m)	Mineral to be mined (Sand/Bajri/RBM etc.)	Existing /Proposed

Patta Lands/Khatedari Land: (existing & proposed)

Owner	Sy. No	Area	District	Tehsil	Village	Total Reserve (MT)	Total Mineral to be mined (MT)	Existing /Proposed

De-Siltation Location: (Lakes/Ponds/Dams etc.) (Existing & proposed)

Name of Reservoir/ Dams	Maintain/ Controlled by State Govt./PSU etc.	Location	Distt.	Tehsil	Village	Size(Ha)	Quantity MT/Year	Existing/ Proposed

M-Sand Plants :(existing & proposed)

Plant Name	Owner	District	Tehsil	Village	Geo-location	Quantity MT/Annum	Existing/Proposed

Annexure-VI

Final List of Cluster & Contiguous Cluster

Clusters:

River Name	Cluster No.	Lease No	Location (Riverbed / Patta Land)	Village	Area (in Ha)	Total Excavation (Ton)	Total Mineral Excavation (Ton)

Contiguous Clusters:

River Name	Contiguous Cluster No.	Cluster No	Number of leases in the cluster	Location (Riverbed /Patta Land)	Distance between clusters	Village	Area of Cluster (in Ha)	Total Mineral Excavation (Ton)

Annexure-VII

Final Transportation Routes for individual leases and leases in Cluster

Lease No	Transportation Route No	Number of tippers /day of lease	Number of tippers /day of all the lease on route	Length of Route in KM	Type of Road (Black Topped/ unpaved)	Recommendation for road(Black Topped/ unpaved)	The road will be Constructed by Govt/Lease Owner	Route Map & Location

Cluster No	Transportation Route No	Number of tippers /day of cluster	Number of tippers /day of all the clusters on route	Length of Route in KM	Type of Road (Black Topped/ unpaved)	Recommendation for road(Black Topped/ unpaved)	The road will be Constructed by Govt/Lease Owner	Route Map & Location

Annexure VIII

Salient provision for sand mining in the state of Tamil Nadu

STEPS TO BE FOLLOWED BEFORE EXECUTION:

- The state as a policy should endeavor to have single authority/agency responsible for all river sand mining in the state with an objective to ease the gap in demand and supply and accordingly, take necessary measures including planning, monitoring of mined material and its transport, and to curb illegal mining and sale of materials.

- The prospective site for sand quarry may be identified based on the availability of adequate sand deposits along the river beds, which hinders the free flow of water and results in flooding during monsoon seasons. Emphasis may be given to such quarry sites which is more viable for replenishment.

- A detailed study may be conducted by engaging expert from reputed Institutions to identify prospective sand reaches, assessment of the impact of sand quarrying on the Ground Water Table and water availability, conduct bore log details and study the social and environmental aspects. The generic requirement for replenishment study is to be followed.

- Once the site is identified for prospective sand quarry site based on the detailed replenishment study, the concerned department shall submit the proposal with the geo-tagged boundary of the proposed mining Precise Area Proposal to the District Collector for approval.

- A joint inspection may be carried out by the RDO/Sub-Collector, Assistant/Deputy Director,

- Executive Engineer, TWAD Board and the PWD officials to consider the various factors before giving consent to the proposal.

- The RDO concerned along with Revenue officials may verify the revenue records of the proposed sand quarrying area and give the NOC.

- The AD/DD Mines may verify the presence of permanent structures such as tower line, bridge, monuments if any, in the vicinity of the proposed mining site as per Tamil Nadu Minor Mineral Concession Rules,1959 (As per Rule 36 " there shall be no quarrying of sand in any river bed or adjoining area or any other area which is located within 500 meter radial distance from the location of any bridge, water supply system, infiltration well or pumping installation of any of the local bodies or Central or State Government Department or the Tamil Nadu Water Supply and Drainage Board head works or any area identified for locating water supply schemes by any of the above mentioned Government Department or other bodies" and " The distance of 50 meter shall be measured in the case of railway, reservoir or canal horizontally from the outer toe of the bank or the outer edge of the cutting, as the case may be …. "). Also, the availability of minerals may be cross verified with the available DSR.

- The TWAD officials may verify the drinking water schemes located nearby the proposed quarry site and the minimum distance required as per statutory norms.

- Based on the feasibility report of the joint inspection by the Revenue, Tamil Nadu Water Supply and Drainage Board and Mining officials/experts, the District Collector may give consent for the Precise Area proposal.

- After getting Precise Area approval, a detailed Mining Plan and sketch shall be prepared by the Executive Engineer, PWD using the services of a NABET accredited consultant who holds the pivotal role in the preparation of mining plan. Due responsibility will be expected on the concerned consultant in the mining plan preparation taking care of adhering to all mining rules, existing as on date. The mining plan shall contain the details of quantity to be excavated, the period of mining, method of excavation, deployment of required machinery, Environment Management Plan (EMP), proposed number of laborers to be deployed and Conceptual Mining Plan, as per Rule 41 of TNMMC Rules 1959. It is also the duty of the consultant to give the safe distance of 50 m or twice the bank height from the toe of the riverbank, whichever is higher and fixing the Geo coordinates for boundaries using DGPS instruments.

- The concerned Executive Engineer, PWD shall submit the Mining Plan prepared by the NABET accredited consultant to the concerned Assistant/Deputy Director, Department of Geology and Mines for approval, as per Rule 42 of TNMMC 1959. After scrutiny, the Assistant/Deputy Director, Department of Geology will present the Mining plan before the State Level Environment Impact Assessment Authority (SEIAA) for granting Environmental Clearance.

- The Executive Engineer, PWD shall prepare Form I and Pre-feasibility report with the help of the consultant and submit to SEIAA for an area less than 50 Ha. or to the Ministry of Environment and Forest and Climate Change (MoEF&CC) for the area more than 50 Ha.

- The State Expert Appraisal Committee (SEAC) under SEIAA, consisting of experts from renowned fields such as Mines, Environment, Sociology etc. shall conduct a site inspection of the proposed sand quarry site and after intense scrutiny, may recommend the proposal to SEIAA for approval.

- SEIAA shall grant Environmental Clearance for the sand quarry proposal after analyzing all the statutory provisions and based on the recommendation of the SEAC.

- The Environmental Clearance shall be informed to the public with basic details through advertisement in at least two widely circulated local newspapers with at least one in the vernacular language of the locality, within 7 days of the receipt of the clearance.

- On receipt of the Environmental Clearance, the Executive Engineer, PWD shall apply for Consent to Establish (CTE), from the Tamil Nadu Pollution Control Board as per the Air and Water Act, to enter upon the sand quarry site and commence the preliminary works such as construction of temporary sheds, bio-toilets, formation of biodegradable road using sugar cane leaves etc., drilling of bore wells etc. as per the statutory requirements. After all the preliminary works are completed, the Executive Engineer, PWD shall apply for the Consent to Operate (CTO) from the Tamil Nadu Pollution Control Board. Earmarking boundary of the identified land site through the concrete posts along with red flags need to be established.

- On receipt of the CTO, the Executive Engineer, PWD shall request the consent of the District Collector to commence the quarries. The District Collector shall request the Taluk Level Task Force comprising of Tahsildar, Inspector of Police, Officials from the Departments of Geology and Mining, Transport and Forest, Assistant Engineer, PWD and the Village Administrative Officer concerned, to verify the compliance of all preconditions mentioned in the Environmental Clearance and grant necessary permission to start the functioning of new sand quarries.

II. STEPS TO BE FOLLOWED DURING EXECUTION:

- Before the commencement of mining operations, the depth of sand quarrying needs to be measured accurately using Advanced technology and new gadgets like Total Stations, Global Positioning System (GPS) instruments etc. The Total Station and GPS instruments also need to be calibrated before measurement. Both the traditional and modern techniques may be infused in the right blend to get an accurate measure of the depth. A clear contour map (0.25m interval) of the levels within 2Km (one Km U/s and one Km D/s) needs to be prepared and submitted to both the Project Director, Sand Quarrying Operations and all the Monitoring Committee members. The depth of sand quarrying shall be restricted to 1 m from the theoretical/design bed level.

- The mining area must be demarcated at a minimum distance of at least 50 m away from the river embankment on either side. The boundaries of the quarries may be fixed with reference to the existing survey marks from the survey fields adjacent to the river. Sand quarrying lease area shall be demarcated on the ground with pucca stone or concrete pillars to show the present natural bed level and the depth of mining allowed.

- Modern techniques such as drone survey may be adopted to assess the depth and quantity of the mined area. Boundary pillars shall be erected at an interval of 50 m each on all four sides of the sand quarry site with red flags on every pillar and also in site pillars. The levels of shoal height, river bed height and depth to be excavated up to one meter downwards shall be marked in the pillars to avoid any deviation from the approved depth of excavation.

- It shall be ensured that no sand quarrying of any type is undertaken with 50m of the distance mentioned in the proposal (whichever is higher)

from both the banks of the river to control and avoid erosion of river banks.

- Temporary access roads or Katcha roads shall be formed between the banks of the river and the mining area with locally available bio-degradable materials such as sugarcane waste (bagasse), hay, etc.

- Proper entry and exit point for the movement of loading vehicles in and out of the sand quarry site shall be carefully located taking into consideration the habitations/settlements in the area.

- To monitor the groundwater level during sand quarrying operations, a network of existing wells may be established around the sand quarrying area and new piezometers must be installed at all sand quarry sites. Monitoring of Ground Water Quality in the vicinity (one Km radius from the sand quarrying site) shall be carried out once in two months.

- Periodic Monitoring (at least four times in a year – pre-monsoon, Monsoon, Post monsoon and winter) once in each season shall be carried out by PWD and the data thus collected may be sent regularly to SEIAA/TNPCB. If at any stage, it is observed that the groundwater table is getting depleted due to the mining activity; necessary corrective measures shall be carried out, which includes immediate stopping of mining.

- Similar to the Baseline studies for data on water, soil and air etc., that is being done before the sand quarrying operations, the air and water quality may be checked periodically by Tamil Nadu Pollution Control Board to ensure that no pollution is caused due to Sand Quarrying Operations. 10. Safety gadgets such as earplugs, goggles, respiratory

devices, luminescent vests etc. may be provided to the workers at the sand quarry site.

- First aid kit with all essentials shall be kept ready at all quarry/depot site, in case of any emergency.

- To prevent air pollution due to the dust during sand quarrying operations and safeguard the persons in the sand quarry and depot site, constant water sprinkling on the pathways and dust prone areas may be done. The sand loaded vehicles are to be covered with a tarpaulin before moving out of the quarries/depots.

- Suitable depots shall be located in the vicinity of the sand quarry site to facilitate the sale of sand. While selecting the site for depots, it must be ensured that the site is within 25 km from the sand quarry site and has an area of around 10-15 Acres with parking facilities and proper entry and exit for smooth movement of the vehicles. The depot site shall preferably be a Government poramboke land, foreshore area of tank bund etc., near an NH/SH/MDR/ODR. In the absence of any Government land in the vicinity, private Patta land may be leased out and rent fixed as per the approved Government rates applicable therein.

- Permission must be obtained from the Electricity Board for power supply to operate the CCTV cameras at sand quarry site and depots.

- Minimum of two CCTV cameras, one each at the entry and exit point and one PTZ camera may be installed at all quarries/depots to monitor illegality if any taking place in the sand quarry/depot.

- To ensure uninterrupted seamless live streaming of videos from the surveillance cameras, a high-speed Internet Lease Line connection may

be made available at all quarries/depots. Arrangements may also be made for online monitoring of the sand quarrying, Centre for Assessing Real-Time Sand Mining (CARS) that could be located at the office of the Project Director in Chennai.

- The live streaming of the videos shall be monitored at a Centralised control room and the data shall be stored in the Server for future references. A robust Customer Care may also be functional 24 x 7 at the Control Room, to redress the grievance of the public.

- Drop gates shall be installed at the entry and exit points of all quarries/depots.

- Display boards shall be erected in local vernacular language at sand quarry/depot site, in the nearest village by which sand transportation will be carried and at the entrance of the village road from the main road.

- The concerned authority of PWD shall call for e-tender to select the contractors for loading/raising of sand at the quarry site, transporting contractors to transport sand from the quarry site to depots and loading/maintenance contractors at depots.

- Sand shall be loaded in the quarries in the PWD tendered GPS fitted vehicles and online transmit permit shall be issued by the competent authorities in PWD to the transporting vehicles to transport sand from the quarry to depots.

- On the arrival of the sand shunting vehicles from quarry to the depot, an online authentication shall be done to confirm the arrival of the

appropriate quantity of sand mentioned in the transport permit into the depot.

- The loading of sand from the depots shall be carried out by booking through the online portal "www.tnsand.in" as done presently. Online transit passes will also be issued to the loaded vehicles which could be verified by using an Android app "TNsand Investigator".

- During operation of the quarries, the PWD officers shall ensure that at no point in time, the depth of quarry exceeds 1 m depth from the river bed level and quarrying is done in a uniform manner over the entire mining area to avoid overexploitation and formation of pits at fixed places.

- Proper registers may be maintained at the entry and exit points of the sand quarry/depot sites and a Loading Register may be made available during inspection. An Inspection Register and a Complaint Register may be made available at the sand quarry/depot site.

- The functioning time of quarries/depots shall be from 7.00 AM to 6.00 PM. No sand transporting vehicles to be parked inside the quarry/depot site during night time.

- A copy of the approved mining plan may be kept at the quarry site for ready reference.

- Photographs and sketch showing the pit dimensions, depth etc. may be recorded every week and maintained in the sand quarry. The Executive Engineer, PWD may inspect each sand quarry on a weekly basis and ensure that mining activities are taking place within the approved boundaries/depth.

- The sand quarrying activity shall be stopped if the entire quantity is quarried even before the expiry of the sand quarry lease period and the same shall be mentioned by the PWD authorities.

- The Taluk Level Taskforce shall inspect the quarries every fortnight, as per G.O. (Ms) No. 135 of Industries Department, dated 13.11.2009 and record the status of the compliance in the registers maintained at the sand quarry site.

- The Taluk Level Task Force has to submit its inspection report to the District Level Task Force chaired by the District Collector. The District Level Task Force has to be convened every month to discuss cases of illegal quarrying. An Environmentalist from reputed State / Central Institution and a legal expert on environmental matters may be part of the District Level Task Force. The District Level Task Force shall also dispose of the petitions on illegal sand quarrying after due enquiry and scrutiny, and pass orders within a period of two months from the date of receipt of the complaint. If any person is aggrieved with the orders passed by the District Level Task Force, an appeal may be preferred before the Appellate Forum.

- The District Collector shall take necessary steps to strengthen the existing District and Taluk Level Committees and act on the complaints received, if any, on illegal sand quarrying and take strict remedial measures to rectify the same in a time-bound manner. The District Level Task Force may send its monthly report to the Appellate Forum formed as per G.O. (Ms) No. 27 of Industries Dept. dated 17.02.2015.

- The Appellate Forum shall hear the appeals filed against the orders passed by the District Level Task Force. The Appellate Forum comprises

of the Secretaries to Government from Industries Department, Public Works Department, Revenue Department, Environment and Forests Department, Commissioner of Geology and Mining and an Expert from a reputed Government Institution.

- The Appellate Forum may convene once in 2 months to deliberate on the reports from the District Level Task Force and shall dispose of the appeals made by the petitioners aggrieved with the orders passed by the District Level Task Force.

- Periodical Capacity building and sensitization of PWD officials on the environmental and legal aspects of sand quarrying may be made mandatory. Continuous training and awareness programs shall be scheduled and conducted by IIT/Anna University for the PWD staff to keep themselves aware of the best practices in this field. It may be ensured that the enforcement officials from the Departments of Revenue, Police, Geology and Mining and Transport in the districts where quarries are situated are given adequate training and capacity building on their duties and responsibilities with respect to inspection of sand quarries and sand transporting vehicles at specified time intervals.

- No blasting shall be carried out any point in time.

- It is the obligation of the Public Works Department to run the quarry in an environmentally friendly and ecologically sustainable manner.

- The Hon'ble High Court-appointed Monitoring Committee shall inspect the sand quarries periodically and submit a report to the Hon'ble High Court.

- The PWD should explore/take necessary steps to introduce Mining Surveillance System (MSS) in line with MSS evolved by the Indian Bureau of Mines and Bhaskaracharya Institute for Space Applications and Geo-informatics (BISAG).

III. STEPS TO BE FOLLOWED AFTER EXECUTION:

- A Judicious mine closure plan may be formulated once the quarry is closed after exhaustion of the quantity of sand.

- Reclamation works may be factored into the contract agreement and strict monitoring by the PWD officials may be initiated to scrupulously follow up the mine closure plan.

- It may be ensured that the total quantity of sand permitted in the EC shall not be exceeded in any case.

- After the exhaustion of the quantity of sand, the sheds constructed at the quarry site may be removed. All the roads and pathways may be levelled so that there is no obstruction for the normal flow in the river.

- All the records/registers may be carefully maintained by the PWD for future reference.

Gmail ENVIRO LEGAL DEFENCE FIRM <eldflegal@gmail.com>

Service in OA No. 756/2023- Sachin Tyagi & Ors. vs. Ritesh Sharma & Anr.

1 message

ELDF <eldflegal@gmail.com> Thu, Mar 19, 2026 at 2:07 PM
To: pradeepmisra@yahoo.com, daleepdhayani@yahoo.co.in, rkhuranalegal@gmail.com, Mukesh Verma <mvermadv@gmail.com>, prasenjeetmohapatra@gmail.com
Cc: Surya Gupta <surya@eldfindia.com>, Shubham Upadhyay <upadhyayshubham5060@gmail.com>, Satvika Krishnan <satvika@eldfindia.com>, Anivarth AO <anivarth@eldfindia.com>

Sir,

Please find attached copy of the Reply on behalf of R-5 in compliance with order dated 29.01.2026.

2026.03.19- Sachin Tyagi Reply (Final).pdf

Thanks & Regards
--
Fahimul Hassan
Clerk
Enviro Legal Defence Firm
29, Presidential Estate LGF,
Nizamuddin East New Delhi – 110013
Ph. No. 011-40573181