

159

BEFORE THE NATIONAL GREEN TRIBUNAL, NEW DELHI

Original Application No. 424 OF 2022

IN THE MATTER OF:

JITENDER SINGH & ORS.

...Applicants

Versus

STATE OF RAJASTHAN & ORS

...Respondents

INDEX

SR. NO.	PARTICULARS	PAGE NOS.
1.	REPLY ON BEHALF OF THE RESPONDENT No. 8 AND 9 ALONGWITH AFFIDAVIT	1-13
2.	<u>ANNEXURE:R/1</u> A copy of the order dated 20.02.2020 denying consent to establish to the answering respondent issued by the Rajasthan Pollution Control Board.	14-15
3.	<u>ANNEXURE:R/2</u> A copy of the State Board guidelines in respect to the "Mechanism of Calculation, imposition and recovery of environmental compensation"	16-34
4.	<u>ANNEXURE:R/3</u> A copy of the status of writ petition filed before the Hon'ble Rajasthan High Court, Principal bench at Jodhpur.	-35-
5.	<u>ANNEXURE:R/4</u> A copy of the order dated 03.02.2023 passed by the Hon'ble Rajasthan High Court, Principal bench at Jodhpur in S.B. Civil Writ Petition No. 119 of 2023.	-36-
6.	<u>ANNEXURE:R/5</u> A copy of the order dated 18.10.2022 passed by the Hon'ble Tribunal, Principal	37-40

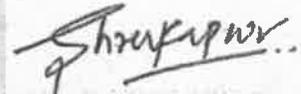
160

	Bench at New Delhi in <i>Original Application</i> <i>No. 407 of 2022</i>	
7.	<u>ANNEXURE:R/6</u> A copy of the relevant letters issued by various authorities	41-45
8.	<u>VAKALATNAMA</u>	-46-

9. PROOF OF SERVICE

-47-

FILED BY:



(SHREY KAPOOR)

ADVOCATE FOR THE RESPONDENT No.8 and 9

D-66, 3rd Floor, Panchsheel Enclave,

New Delhi - 110017

Mob: 9717755441

E-mail: adv.shrey.kapoor@gmail.com

aorshrevkapoor@gmail.com

Filed on: 09.05.2023

Place : New Delhi.

BEFORE THE NATIONAL GREEN TRIBUNAL, NEW DELHI

Original Application No. 424 OF 2022

IN THE MATTER OF:

JITENDER SINGH & ORS.

...Applicants

Versus

STATE OF RAJASTHAN & ORS

...Respondents

REPLY ON BEHALF OF THE RESPONDENT NO. 8 AND 9.

I, Devender Singh, S/o. Sh. Bhawani Singh, Aged about 30 years, R/o. Khasra No. 149/2, Village Bhandu Kallan, Tehsil Luni, District Jodhpur, Rajasthan, do hereby solemnly affirm and state on oath as under:-

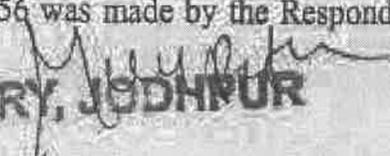
1. That I have read and understood the contents of captioned Original Application along-with the copies of the application, reports of the Joint Committee and the documents attached thereto. I say that I being Respondent No.9 in the captioned Original Application, I am well conversant with the facts and as such I am submitting reply on my as well as on behalf of my father (Respondent No.8) so as to place true and correct facts before this Hon'ble Court which are being detailed out herein below.
2. That in the month of March, 2023, the notice dated 27.01.2023 issued by the registry of this Hon'ble Tribunal was received to the answering respondents from which the answering respondents were made aware of the issuances of notices and captioned proceedings being adjudicated by this Hon'ble Tribunal. It is relevant to mention here that the answering respondents were not aware of issuance of any such notices, prior to the

Devender Singh
 NOTARY, JODHPUR
 07/03/2023
 (D.O)

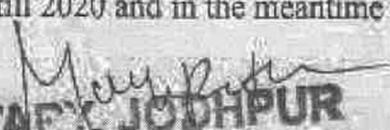
receipt of the said notice issued by this Hon'ble Tribunal, in the month of March, 2023.

3. That the answering respondents have gone through the application filed by the applicant herein and also perused the documents pertaining to the captioned case. I state that all the averments and allegations made in the aforesaid application, unless specifically admitted herein, are denied. All the averments and allegations made by the applicant are contrary to and inconsistent with the facts, circumstances and the evidence on record.
4. That the answering Respondents submits that the relevant true facts and circumstances have not been submitted by the applicant before this Hon'ble Tribunal and thus the applicant is misleading this Hon'ble Tribunal. Therefore, the following material facts, objection and submission are being made for the proper adjudication of the captioned original application.
 - i. It is submitted at the outset that the applicant has not approached this Hon'ble Court with clean hands. The material facts which have direct bearing on the issue of the present application has not been disclosed by the applicant.
 - ii. That on 25.08.2015, the Respondent No.8 being the owner of the land in question i.e., 149/2 situated in village Bhandu Kalan, Tehsil Luni, District - Jodhpur (Rajasthan) by virtue of the gift deed dated 25.08.2015 gifted the said land to his son i.e., the Respondent No.9. Consequently, the revenue authority allotted the said transferred portion of land in favour of the Respondent No.9.
 - iii. In pursuance to the said transfer of land being recorded in the name of Respondent No.9, an application under Section 90-A of the Rajasthan Land Revenue Act, 1956 was made by the Respondent No.9 before the

NOTARY, JODHPUR



- Jodhpur Development Authority for conversion of land use. It is relevant to point out here that the said application seeking conversion is still pending consideration with the Jodhpur Development Authority till date.
- iv. That on 17.04.2018, the Respondent No.9 made an application before the concerned authority i.e., Rajasthan Pollution Control Board for establishing an industrial unit on Khasra No.149/2 by seeking "Consent to Establish" in the name of his firm.
- v. While the above-mentioned application seeking "Consent to Establish" kept pending, the officials of the Rajasthan Pollution Control Board served two notices dated 08.05.2019 to the answering Respondent No.9 for the purpose of inspection and to have sample analyzed. The Respondent No.9 being in the *bona-fide* belief that since the application seeking Consent to Establish is pending with them therefore as a routine manner the inspection notice had come for which the answering Respondents have never objected and had cooperated the officials in the inspection.
- vi. The answering respondents were not aware of the real intention of the officials of the State Govt., the officials of the Rajasthan State Pollution Control Board visited the unit of the answering respondents along with officials of the State Govt., Electricity Department and Police and without giving any prior notice demolished the entire unit to the ground. Since then the unit is non-functional and the answering respondents are struggling with the authorities.
- vii. Without prejudice to the other right and contentions, it is most respectfully submitted that the above-mentioned application dated 17.04.2018 made to the Rajasthan State Pollution Control Board remained pending till 2020 and in the meantime the government officials


NOTARY, JODHPUR



demolished the unit of the answering respondents that too in complete ignorance of the law i.e. as per mandate (deemed consent) of Section 25(7) of the Water (Prevention and Control of Pollution) Act, 1974 automatically comes into operation which reads as under: -

“(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.”

- viii. It is an admitted position that the authorities have not acted promptly by not taking decision on the application of the Respondent No.9 therefore in view of the mandate envisaged under Section 25(7) of the Water (Prevention and Control of Pollution) Act, 1974 the Respondent No.9 having deemed consent, had established and operated its industrial unit over his land by virtue of the above-mentioned deeming provision.
- ix. That to the utter shock and surprise of the answering Respondent(s), the Rajasthan State Pollution Control Board on 04.07.2019 out of nowhere imposed penalty upon the Respondent No.9 to the tune of Rs. 2 Crores as interim environmental compensation, without even providing any prior notice or affording any reasonable opportunity of being heard.
- x. That on 01.08.2019, the Respondent No.9 made a representation/ reply to the Member Secretary, Rajasthan Pollution Control Board for reconsidering the penalty notice and also to provide fair and reasonable opportunity of hearing but no such opportunity was provided.
- xi. That on 26.12.2019, another representation to the Chairman of the Rajasthan Pollution Control Board was made by the answering Respondent. In the representation, the answering respondent raised concerns that the Board had imposed Environmental Compensation on

NOTARY, UDAHPUR

several other industries of a similar nature, which were also operating without the necessary consent to operate from the Board. However, unlike the answering respondent, none of those industries were demolished by the Board. The respondent sought an explanation from the Board regarding why their approach was different in the case of the answering respondent. Unfortunately, the Board did not provide any concrete or reasonable response to the respondent's inquiry.

- xii. That on 16.01.2020, the Pollution Control Board issued a show cause to the answering respondent indicating *inter-alia* deficiencies observed with respect to the consent to establish application which was kept pending before it since 17.04.2018.
- xiii. It is worth mentioning here that the above-mentioned show-cause notice is self-sufficient to establish the casual approach of the board towards the answering respondent. The board kept sleeping over the application of the answering respondent and acted like the same was never filed and demolished the unit of the answering respondent. If at all there were any deficiencies in the application then the board should have acted fairly and informed the respondent timely so that the same would have been rectified by the answering respondent. But for the reason best known to the authorities, the board preferred not to do so and demolished the unit of the answering respondent herein a year prior to pointing out the defects.
- xiv. The actions of the authorities, in demolishing the unit and subsequently identifying deficiencies, appear to be indicative of *mala-fide* intent on their part. Furthermore, on 20.02.2020, the Board denied the respondent's consent application, which may have been done in an

NOTARY, JODHPUR

attempt to shield themselves from any potential repercussions for the illegal demolition of the answering respondent's unit.

A copy of the order dated 20.02.2020 denying consent to establish to the answering respondent issued by the Rajasthan Pollution Control Board is annexed herewith and marked as ANNEXURE: R/1.

xv. That without prejudice to the contention made herein above, it is respectfully submitted that the consent to establish is the initial phase, and upon obtaining the same, the project proponent must apply for consent to operate. There have been instances where the pollution control board has granted consents to either establish or operate retrospectively, from the date of filing the application. Similarly, the respondent was under the impression that if any deficiencies were identified by the Board, they would be rectified in due course of time, and the Board would subsequently issue consent from the date of the application.

xvi. It is further relevant to mention here that on 08.01.2020, the State Board issued guidelines in respect to the "Mechanism of Calculation, imposition and recovery of environmental compensation". In the said guidelines, the procedure for laying of Environmental Compensation has been mentioned. The said guidelines do not speak about demolishing of any industrial unit by the board. Therefore, the act of demolishing the unit is *de-hors* the law and also the guidelines issued by the board. A copy of the State Board guidelines in respect to the "Mechanism of Calculation, imposition and recovery of environmental compensation" is annexed herewith and marked as ANNEXURE: R/2.

**ISSUE OF IMPOSITION OF PENALTY IS PENDING SUB-
JUDICE BEFORE THE HON'BLE HIGH COURT OF
RAJASTHAN.**

NOTARY JODHPUR



5. It is respectfully submitted that being aggrieved by the imposition of huge penalty by the Board to the tune of Rs. 2 Crores, the answering Respondents on 05.03.2020 made an appeal under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 before the Appellate Authority bearing Appeal No.1 of 2020. It is relevant to mention herein that the said appeal is pending before the Appellate Authority and no effective hearing has ever been taken place till date.
6. Since Appellate Authority was not holding the sitting and the demand remains active, the answering respondents left with no option then to approach the Hon'ble Rajasthan High Court, Principal Seat, Jodhpur on 22.12.2022 by way of *S.B. Civil Writ Petition No. 119 of 2023* titled "*Shri. Bhawani Singh vs. Member Secretary, Rajasthan Pollution Control Board*" praying inter-alia as under :
- a) *by an appropriate writ, order or direction the writ petition by the petitioner may kindly be allowed.*
 - b) *by an appropriate writ, order or direction, impugned Order dated 04.07.2019 (Annex.6) passed by the respondent – Board as well as consequential all proceedings arising therefrom against the petitioner may kindly be declared illegal and accordingly, be quashed and set aside."*
 - c) *by an appropriate writ, order or direction, the respondent – Board may kindly be directed to grant compensation in favour of the petitioner for illegal demolition of his property and machinery situated on his land bearing Khasra No. 149/1.*
 - d) *Any other appropriate order, which this Hon'ble Court deems fit and proper in the peculiar facts and circumstances of the present case, may kindly be passed in favour of the petitioner.*
 - e) *Cost of writ petition may please be awarded in favour of petitioner.*


 NOTARY, JODHPUR



A copy of the status of writ petition filed before the Hon'ble Rajasthan High Court, Principal bench at Jodhpur is annexed herewith and marked as ANNEXURE:R/3.

7. That the said Writ Petition was listed before the Hon'ble High Court on 03.02.2023 whereby the Hon'ble High Court was pleased to direct the Rajasthan State Pollution Control Board to not to recover the amount in pursuance to the penalty imposed vide notice dated 04.07.2019. The operative portion of the order passed by the Hon'ble High Court is being reproduced herein below for ready reference: -

"Mr. Sajjan Singh Rathore, learned counsel for the respondent seeks some time to file reply to the writ petition. Time prayed for is allowed.

List the matter on 20.02.2023.

Meanwhile and till the next date of hearing, the respondent shall not recover the amount due from the petitioner in pursuance of the notice dated 04.07.2019 (Annexure-6).

The respondent will be at liberty to file an appropriate application for vacation of the interim order".

A copy of the order dated 03.02.2023 passed by the Hon'ble Rajasthan High Court, Principal bench at Jodhpur in S.B. Civil Writ Petition No. 119 of 2023 is annexed herewith and marked as ANNEXURE: R/4.

8. Therefore, the Hon'ble High Court of Rajasthan is already seized of the issue pertaining to the imposition of penalty by the pollution Board, Rajasthan which ultimately has to be decided by the Constitutional Court now. Therefore, it would be appropriate to refer to the recent reportable judgment passed by the Hon'ble Supreme Court in the case of "*State of Andhra Pradesh vs. Raghu Tamakrishna Raju Kanumuru (M.P) (2022) 8 SCC 156*" has settled the position that: -

NOTARY, JODHPUR

"13. We are, therefore, of the considered view that it was not appropriate on the part of the learned NGT to have continued with the proceedings before it, specifically, when it was pointed that the High Court was also in seisin of the matter and had passed an interim order permitting the construction. The conflicting orders passed by the learned NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow. There can be no manner of doubt that in such a situation, it is the orders passed by the constitutional courts, which would be prevailing over the orders passed by the statutory tribunals."

9. Similarly, this Hon'ble Tribunal recently in the case of "*Narayan Das Talsani*" bearing *Original Application No. 407/2022* vide its order dated 18.10.2022 was also of the view that if the same subject matter is already pending adjudication before the Hon'ble High Court then in order to avoid duplicacy/conflict of orders, it will be appropriate that this Hon'ble Tribunal does not continue with the proceedings. The relevant portion of the order dated 18.10.2022 passed by this Hon'ble Tribunal is being reproduced herein below for ready reference:

"The Hon'ble High Court of Judicature of Rajasthan, Jodhpur is already seized with the matter on Civil Writ Petition (PIL) No. 10600 of 2020 titled Devkishan Gawlani Vs. State of Rajasthan and others, which was filed before filing of the present original application and for the purpose of avoiding duplicacy/conflict of orders, it will be appropriate that this Tribunal does not continue with the proceedings on the present original application as the applicant can also move to Hon'ble High Court of Judicature of Rajasthan, Jodhpur by way of appropriate proceedings for appropriate relief."

A copy of the order dated 18.10.2022 passed by the Hon'ble Tribunal, Principal Bench at New Delhi in *Original Application No. 407 of 2022* is annexed herewith and marked as ANNEXURE: R/5.

10. In light of above, it is respectfully submitted that the issue as to whether the imposition of the penalty rightly imposed or not is now to be

[Signature]
NOTARY, JODHPUR

[Signature]

ascertained by the Hon'ble High Court therefore any order passed by this Hon'ble Court in this regard would create multiplicity of orders and proceedings.

THE UNIT IS NON-FUNCTIONAL SINCE 08.05.2019 AS THE SAME WAS ILLEGALLY DEMOLISHED WHICH HAD ALSO BEEN ACKNOWLEDGED BY THE COMMITTEE APPOINTED BY THIS HON'BLE TRIBUNAL.

11. It is respectfully submitted that the unit of the answering respondent had been illegally demolished by the authorities on 08.05.2019 without due process of law and also without affording any opportunity of being heard to the answering respondent causing huge loss of property and machineries.
12. The fact that the unit is non-functional has also been acknowledged by the Joint Committee appointed by this Hon'ble Tribunal vide its order dated 13.07.2022 wherein the Joint Committee was constituted comprising of representative of CPCB, Principal Secretary, Department of Industries, Government of Rajasthan, State PCB, and Collector, Jodhpur so as to verify the factual position by undertaking site visits and further directed to furnish the factual and action taken report within two month before this Hon'ble Tribunal.
13. That from the documents so received with the captioned application which included the joint committee report dated 06.10.2022 filed by the Joint Committee so constituted by this Hon'ble Tribunal found the unit as non-operational. However, the Committee has made certain recommendations for which the compliance report was filed by the State Pollution Control Board which reveals that :


NOTARY, JODHPUR



- (i) The Superintendent Engineer (D.C), Jodhpur Vidyut Vitran Nigam Ltd. (JdVVNL) has confirmed that the Electricity disconnection had already been done on 08.05.2019 i.e., the date of demolition. Since then no new electricity connection has been issued to the answering respondents.
- (ii) Office of the Assistant Police Commissioner, Boranada, Commissionerate, Jodhpur found the industry non-operational during the joint inspection and the industry is also under regular vigilance by the official of the Police Station. Presently the industry is non-operational.
- (iii) The Jal Shakti Mantralaya, WRD, CGWB, Western Region, the application for NOC from the CGWA had already been rejected on 24.05.2018.
- (iv) Proceedings for cancellation of land rights of Khasra No. 149/01 and 149/02 is pending sub-judice as Case No.34/2019 at SDM Court

A copy of the relevant letters issued by various authorities are annexed herewith and marked as ANNEXURE: R/6.

14. In view of the above-mentioned facts and circumstances, it is most respectfully submitted that the unit of the answering respondent is non-functional since 08.05.2019 on account of the illegal demolition done by the State Authorities due to which the answering respondent had suffered huge losses. Moreover, the State Pollution Control Board had also imposed an illegal penalty of Rs. 2 Crore as interim Environmental Compensation which had been challenged by the answering respondent before the Hon'ble Rajasthan High Court, Principal Bench, Jodhpur who was kind enough to direct the State Board to not to recover the same till

NOTARY JODHPUR



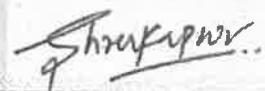
further orders. Therefore, it is most respectfully submitted that this Hon'ble Court may kindly dispose of the captioned Original Application in light of the same and if at all the applicant has any grievance he may approach the Hon'ble High Court wherein the said allegations may also be dealt with along-with the issue of compensation.

15. It is submitted that no new facts have been stated herein and the affidavit in support to this reply is attached herewith.

In the aforesaid premises, it is most respectfully prayed that the captioned original application filed by the applicant is misconceived and not maintainable in law and, therefore, liable to be dismissed.

HUMBLE ANSWERING RESPONDENT NO. 8 & 9

FILED BY:



(SHREY KAPOOR)

ADVOCATE FOR THE RESPONDENT No.8 &9.

Filed on: 09.05.2023

Place: New Delhi

NOTARY, JOZHPUR 09/05/2023





BEFORE THE NATIONAL GREEN TRIBUNAL, NEW DELHI

Original Application No. 424 OF 2022

IN THE MATTER OF:

JITENDER SINGH & ORS.

...Applicants

Versus

STATE OF RAJASTHAN & ORS

...Respondents

AFFIDAVIT IN SUPPORT OF REPLY

I, Devender Singh, S/o. Sh. Bhawani Singh, Aged about 30 years, R/o. Khasra No. 149/2, Village BhanduKallan, Tehsil Luni, District – Jodhpur –Rajasthan, do hereby solemnly affirm and state on as under:-

1. That I am the Respondent No.9 in the captioned Original Application and competent to swear this affidavit on my behalf and also on behalf of my father who is Respondent No.8 in the captioned Original Application.

That I have gone through the contents of the accompanying reply which has been drafted under my instructions. The contents of which are true to my knowledge and belief.

3. That the annexures filed along-with the accompanying reply are true copies of their respective originals.

4. That the contents of this affidavit are true to my knowledge and belief.



(Signature)

DEPONENT

VERIFICATION

Verified at Jodhpur on this 9th day of May, 2023 that the contents of my aforesaid affidavit are true and correct to my knowledge and belief. No part of it is false nor anything material has been concealed therefrom.

Sworn Before Me by
Who is identified by.....

ATTESTED

NOTARY, JODHPUR

DEPONENT

ATTESTED

NOTARY, JODHPUR

IDENTIFIED BY
ENTERED IN NOTARY REGISTER AT SERIAL No. 08 OF 05/05/2023
(MANJU RATHORE)
NOTARY, JODHPUR

(Signature)
DEPONENT

09/05/2023



174

RAJASTHAN STATE POLLUTION CONTROL BOARD
4, Institutional Area, Hlalna Doongari, Jaipur-302 004
Phone: 0141-5159600, 5159695 Fax: 0141-5159697

14

ANNEXURE:R/1

Registered



File No : F(Tech)/Jodhpur(Luni)/6465(1)/2019-2020/5176-5179

Order No: 2019-2020/TCI/6643 Dated 20/02/2020

Date: 20/02/2020

Unit Id : 93740

M/s NAAGNECHI ENTERPRISES

WARD NO-9, RAJPUTO KA MOHALLA, BHANDUKALAN

Subj: Refusal of Consent to Establish application under provisions of Water (Prevention & Control of Pollution) Act, 1974.

Ref: Your application No, 213623 dated 17/04/2018 for Consent to Establish received on dated 17/04/2018.

Sir,

Apropos above, it is to inform you that applications for Consent to Establish for TEXTILE UNIT situated at KHASRA NO-149/2 BHANDU KALAN Tehsil: Luni District: Jodhpur under reference is hereby refused under the provisions of Section 25/26 of Water (Prevention & Control of Pollution) Act, 1974 for the reasons that:

- 1 After examining the application for consent to establish a show cause notice for intended refusal of consent to establish was issued by the Board vide letter dated 16.01.2020 for the following deficiencies:-
 - (a) Land conversion letter and land ownership documents have not been submitted.
 - (b) Water balance details have not been submitted.
 - (c) Detailed proposal for treatment of the effluent to achieve the zero liquid discharge (ZLD) has not been submitted.
 - (d) NOC from CGWA for abstraction of ground water has not been submitted.
 - (e) Environmental compensation has not been deposited in compliance to directions issued vide letter dated 04.07.2019.
 - (f) Total deposited fee is Rs. 21000/-, which is inadequate, as applicable fee is Rs. 31500/-.
- 2 The industry has failed to submit reply of the show cause notice dated 16.01.2020.

It may be noted that the industry's fresh application for grant of Consent to Establish, submitted soon after the refusal, shall not be treated as complete application unless it is supported with evidence-based proof for addressal of the issues/ reasons for the refusal of earlier consent or application, and thus may again be refused without any further notice.

It is further to inform you that after refusal of Consent to Establish legally you can not Establish the plant.

27/02/2020

175



RAJASTHAN STATE POLLUTION CONTROL BOARD
4, Institutional Area, Jhalana Doongari, Jaipur-302 004
Phone: 0141-5159600,5159695 Fax: 0141-5159697

15

Registered

File No : F(Tech)/Jodhpur(Luni)/6465(1)/2019-2020/5176-5179

Order No: 2019-2020/TCD/6643 Dated 20/02/2020

Date: 20/02/2020

Unit id : 93740.

Yours sincerely

Member Secretary

Copy To:-

- 1 P.S. to Chairperson, RSPCB, Jaipur.
- 2 Regional Officer, Regional Office, Rajasthan State Pollution Control Board, Jodhpur.
- 3 Master File.

Group Incharge

21/02/2020

176

ANNEXURE:R/2

16



Rajasthan State Pollution Control Board

Headquarter, 4, Institutional Area, JhalanaDoongri, Jaipur-302004

Phone :0141-5159699,5159604 e-mail : member-secretary@rpcb.nic.in

TollFreeHelpLineNo. : 18001806127 Ext. 7

OFFICE ORDER

For compliance of directions passed by the Hon'ble Supreme Court and Hon'ble National Green Tribunal, this office has constituted Environmental Compensation Cell as well as Environmental Compensation Committee vide office order no F-10(193-corres)/RPCB/Plg./E.C./1306-1337 and no 1338-1369 dated 25.06.2019.

In continuation to these office orders, the State Board hereby issues mechanism for assessing, imposition and recovery of environmental compensation from the defaulter units, copy enclosed.

The ROs and GICs are directed to submit proposals in accordance with this mechanism.

Environmental Compensation Committee is directed to assess Environmental Compensation from the defaulters accordingly. Committee shall also reassess the Environmental Compensation amount and take necessary action for its recovery in the matter of those units on which interim Environmental Compensation has already been imposed.

This bears approval of the competent authority.

-sd-

(Shailaja Deval)
Member Secretary

F(Env. Comp.-18) RPCB/EG-257+0297

Date: 08/01/2020

Copy to following for information and necessary action:-

1. P.S. to Chairperson, RSPCB, Jaipur.
2. Addln. P.S. to Member Secretary, RSPCB, Jaipur.
3. Chief Environment Engineer, RSPCB, Jaipur/ Chief Scientific Officer, RSPCB, Jaipur/ Chief Accounts Officer, RSPCB, Jaipur/ Head of Office, RSPCB, Jaipur.
4. Group In charge, Environmental Clearance/Hazardous /MSW/BMW& E-waste/Hotel, Oil & Metals /Textile/Cement &Power /Planning/IT/CD&Cess/MUID/Mines/DF/ IEC/VTR/SPIO/Training & Project/SCMG &DS/Legal, RSPCB, Jaipur.
5. Regional Officer, Regional Office, RSPCB, Kota/Jaipur(S)/Jaipur(N)/Bikaner/Alwar/Udaipur/Bharatpur/Chittorgarh/ Kishangarh/Pali/Sikar/Bhilwara/ Balotra/Jodhpur/Bhiwadi.
6. Master File.


Member secretary

**Mechanism of
Calculation, Imposition & Recovery of
Environmental Compensation**



Rajasthan State Pollution Control Board

Headquarter, 4, Institutional Area,
Jhalana Doongri,
Jaipur-302004

1. Background

The Hon'ble Supreme Court in Writ Petition Civil No. 375/2012 Paryavaran Suraksha Samiti & Others. Vs Union of India & Others and the Hon'ble NGT in Original Application No. 606/2018 - Compliance of Municipal Solid Waste Management Rules, 2016 and in several other cases has directed the Board to impose Environmental Compensation on all the individuals/ units /industries/ mines/ institution/ entities etc. who are causing damage to the environment on the principle of 'POLLUTER PAYS'.

The Hon'ble National Green Tribunal, in the matter of OA No.593/2011 – Paryavaran Suraksha Samiti and Others. Vs. Union of India and Ors., in the order dated 19.02.2019 directed that:-

"CPCB may take penal action for failure against those accountable for setting up and maintaining STPs, CETPs and ETPs and CPCB may also assess and recover compensation for damage to the environment and the said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment".

The NGT vide Order dated 12.03.2019 in OA No. 710/2017 held that the SPCBs are also authorized to recover compensation from the polluters or laying down their own scale which should not be less than the scale fixed by CPCB.

The CPCB has developed methodology for assessing environmental compensation for industries and guidelines for assessing environmental compensation charges against health care facilities and common biomedical waste treatment facilities.

The State Board vide orders dated 25.06.2019 has already constituted an Environmental Compensation Cell and Environmental Compensation Committee (ECC). So far, the State Board has been levying interim environmental compensation on defaulters based on its own criteria.

The State Board hereby devises mechanism for assessing environmental compensation on the lines of guidelines/ methodology framed/ suggested by CPCB.

2. Procedure for calculating amount of environmental compensation for industries

The environmental compensation for the industries will be calculated as per the following formula:

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

Where, EC is the amount of environmental compensation in Rs.

PI is Pollution Index of sector

N is the number of days of violation

S is a factor for scale of operation

LF is location factor

RF is a factor in Rupees for EC, which takes into account the violations on part of the PP

The above variables may be fixed as per following procedure:-

PI (Pollution Index)

The following values of PI have been recommended in the CPCB report:-

Category	Red	Orange	Green
PI	80	50	30

On similar lines, values of PI for industries, hotels, construction projects, hospitals, mines, common facilities etc. are indicated at annexure 'A'.

S (Scale of operation)

Value of S may be taken varying from 0.25 to 1.25 depending upon the scale of operation. Different values of S has been worked out for Industries, Hotels, Mines, Hospitals, HCEs other than hospitals, construction projects, CETP/ STP, CTDF for HW, CTDF for BMW,

CTDF for E-waste and other activities having only source of pollution such as DG sets. These values are given at Annexure 'B'.

LF (Location Factor)

Value of Location Factor will be based on population of the city/town and location of the industrial activity. For the industrial unit located within municipal boundary or up to 10 Km distance from the municipal boundary of the city/town, following values of location factors (LF) has been taken based on the population of the city/town:

S.No.	Population(in Lacs)*	Location Factor
1	Upto one lac	1.0
2	More than one lac upto 5 lac	1.25
3	More than 5 lac upto 10 lac	1.5
4	More than 10 lac	2.0

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

LF will be 1.0 in case unit is located at a distance > 10Km from the municipal boundary.

RF (Rupee Factor)

Value of RF will include all possible violations and each violation will have different weightage depending upon its gravity/ impact on the environment and RF is equal to sum of 200+ weightages of all violations. However, an upper limit of 300 has been considered which means that the RF will not exceed 300 in any case. Values of weightages of various violations for different sectors are listed at Annexure 'C'.

Note:-

- i. In any case, N (number of days) may be different for various violations. In such case, the amount will be calculated individually for different violations and added.
- ii. In case of results of analysis not conforming to the prescribed standards, the number of days will be counted from the date of collection of sample up to the date of

submission of analysis report (from State Board or laboratory recognized by the RSPCB/CPCB/MoEF& CC) conforming to the prescribed standards after rectifying the shortcomings in pollution control measures by the Project Proponent.

- iii. In case of repetition of violations, the amount of environmental compensation will be increased by 25%, on each repetition.
- iv. Although effort has been made to include all possible violations, which a PP may make, there might be cases of violations which do not fit into any of the category. In such cases, the ECC will decide the weightage and RF of such violation.

3. Guidelines for imposing environmental compensation on violators

Following cases will be considered for taking cognizance of non-compliance and fit for levying Environmental Compensation:-

1. Discharging environmental pollutants in excess of the standards prescribed under EP Rules and/ or prescribed in the consent orders issued under Air /Water Act.
2. Non-compliance of the directions issued by the State Board such as directions under section 33A/ 31A of Water & Air Acts or section 5 of E.P Act or non-adherence to the action plans submitted to the Board etc.
3. Failure to install OCEMS, intentional avoidance of data submission or data manipulation by tampering OCEMS.
4. Accidental discharge of effluent/ emissions for short durations which may cause damage to the environment.
5. Intentional discharge of effluent or emissions including bypassing pollution control devices, which may result in damage to the environment.
6. Discharge or disposal of effluent at a point/ place other than permitted in the consent order or environmental clearance.
7. Failure to prevent discharge of pollutants into water bodies.
8. Operating without obtaining prior consent to operate under the Water (Prevention and Control of Pollution) Act, 1974 and/or Air (Prevention and Control of Pollution) Act, 1981.

9. Operation of Health Care Facilities without authorization under BMWM Rules, 2016;
10. No membership of CBWTF for disposal of biomedical waste;
11. Improper Segregation of generated biomedical waste as per color coded system prescribed under BMWM Rules, 2016;
12. No facility for pre-treatment of yellow (h) category waste (microbiology, biotechnology and other clinical laboratory waste);
13. Storage facility not provided for segregated biomedical waste (applicable for bedded hospitals);
14. Not provided Effluent Treatment Plant for treatment of wastewater, in case when city sewerage network is not connected to terminal STP; and
15. Non-compliance to other responsibilities as stipulated for Healthcare Facilities under BMWM Rules, 2016.
16. Any other violation of Environmental Regulations not covered above which ECC deems fit for imposition of environmental compensation.

Note –

- i) In any case, minimum compensation shall be as under:

1	Hospitals	1200/- per day
2	Common BMW disposal facility	3000/- per day
3	Discharge of untreated/partial treated Sewage (city population more than 15 lacs)	Rs 10crore
4	Discharge of untreated/partial treated Sewage (city population more than 5 lacs upto 15lacs)	Rs 1crore
5	Discharge of untreated/partial treated Sewage (city population more than 1 lacs upto 5lacs)	Rs 10 lac
6	Discharge of untreated/partial treated Sewage (city population upto 1lac)	Rs 5lac
7	Improper Solid Waste Management (city	Rs 5crore

	population more than 15 lacs)	
8	Improper Solid Waste Management(city population more than 5 lacs upto 15lacs)	Rs 1crore
9	Improper Solid Waste Management(city population more than 1 lacs upto 5lacs)	Rs 10 lac
10	Improper Solid Waste Management (city population upto 1lac)	Rs 5lac
11	Other units	5000 /- per day

- ii) In specific cases, where the Board is of the view that the damages caused to the environment are of such magnitude that it may require enormous efforts/ money to restore the environment or reconstruct/ repair property including damage to crop/ crop yield or compensate the affected masses till such restoration is completed, a detailed study may be ordered to be carried out by ECC through one or more expert agencies/ institutions to assess such damages and work out the cost of restoration and environmental compensation to be levied on polluters. The expenditure incurred on such study (studies) shall be borne by the polluters.
- iii) The formula for working out environmental compensation as given in these guidelines is for causing minor undetectable damages to the environment.
- iv) Number of days for which violation took place is the period between the day of violation observed/due date of implementation /compliance and the day of compliance verified by the Regional Office.

4. Imposition of Interim Environmental Compensation

Since imposition of final EC can be done only after the industry/project proponent rectifies the violation, the ECC may impose interim EC on the basis of period of violation when the violation was detected by the State Board and time period needed to rectify the violations available if any. In case no such time period is available, ECC may impose interim EC based on estimated time by which the violation can be rectified.

However, in all such cases where interim EC has been imposed will be reviewed by ECC for deciding final EC once the violations are completely rectified and verified by the State Board.

5. Procedure to impose Environmental Compensation

Following procedure shall be adopted by GICs and ROs in cases of EC:-

1. Regional Officer will forward the case for imposing EC to the respective GIC with all supporting documents. The GIC at his level may also initiate cases for imposing EC.
2. GIC shall process the case on Group file and decision regarding imposition of EC will be taken after due approval of the Chairperson within a period of 10 days after receipt of complete proposal from Regional Officer.
3. The case for imposition of EC will be forwarded to the EC cell mentioning all the details of violations and grounds on which EC is being recommended on the industry/ mine/ hospital/other units within a period of 7 days. A format of Data Sheet which should mandatorily be enclosed with each case forwarded to ECC for imposing EC is enclosed as annexure 'D'. A soft copy of the proposals with Data Sheet may also be forwarded by the GIC to ECC.
4. The Environmental Compensation Committee (ECC) will consider details furnished in the Data Sheet and take a view on the tentative amount of EC to be imposed within 15 days' time from receipt of the proposal from the GIC.
5. OBH will be given to the PP before Chairperson prior to deciding the final amount of EC for which a show cause notice for intended directions under section 31 A of the Air Act, 1981 and 33 A of the Water Act, 1974 or E.P Act, 1986 will be issued by EC Cell mentioning the ground on which EC is proposed to be imposed and the tentative amount of EC.

6. After the outcome of the OBH, directions to impose EC under section 31 A of the Air Act, 1981 and 33 A of the Water Act, 1974 or E.P Act, 1986 will be issued after due approval of the Chairperson within 10 days from the date on which OBH was held.

6. **Mechanism to recover Environmental Compensation**

Following procedure will be adopted for recovery of the EC imposed by the State Board:-

1. EC imposed will need to be deposited by PP at concerned Regional Offices within a period of 60 days from issue of directions.
2. In case of failure to deposit EC amount within 60 days, the defaulting PP shall be liable to pay additional 1.5% of the EC amount per month till such payment is made.
3. Concerned Regional Officers will follow up with the units which fail to deposit EC within the stipulated time period through holding of camps, meeting with Associations, or by providing OBH at their level. This process will be completed by ROs within a period of 30 days after expiry of the time by which the EC was to be deposited by the PP.
4. Thereafter, Regional Officers will intimate details of units which fail to deposit EC despite their best efforts to EC Cell with a copy to concerned GIC, along with *correspondence address, e-mail address and mobile numbers. (action to be taken by Regional Officers within next 15 days).*
5. Final OBH will be given to the PP at the Head Office before Chairperson before taking any further action. Suitable time extension may be considered during the OBH based on the facts of each individual case.
6. Names of units which fail to deposit EC amount even after the additional time granted during OBH will be recommended by EC Cell to concerning GICs within a period of 15 days from expiry of additional time for taking action regarding refusal/revocation of consent and issue of closure directions.

7. No new/renewal of CTE/CTO of the defaulter shall be entertained until and unless the EC is deposited.
8. Concerned GIC will ensure that process of refusal/revocation of consent and issue of directions for closure under section 33 A of the Water Act and/or 31 A of the Air Act or section 5 of E.P. Act is completed within a period of 30 days after receipt of recommendation from EC Cell.
9. Legal actions/prosecution/contempt of Hon'ble court/NGT order against the defaulter in accordance with law will also be initiated against the unit by concerned GIC. The legal action may include filing of prosecution against the unit under the provisions of Water/Air Act/EP Act or an execution application before the Hon'ble Tribunal.
10. After expiry of six months by the defaulter in depositing the EC, the concerned District collector shall be requested to recover the EC amount in accordance with law i.e. Rajasthan Public Demand recovery Act, 1952 or any other Act for the time being in force.

7. Mechanism for Appeal

Any person aggrieved by the directions of the State Board regarding imposition of EC may prefer an appeal before the competent authority within 30 days of issue of the directions (competent authority under Air Act is Appellate Authority constituted by the State Government and Hon'ble NGT under Water Act and E.P. Act).

Annexure-'A'

Pollution index			
S. No.	Polluter type	Category	PI
1	Industry	Red	80
2	Industry	Orange	50
3	Industry	Green	30
4	Hotel	Red	80
5	Hotel	Orange	50
6	Construction projects	Orange	50
7	Construction projects	Green	30
8	Hospitals	Red	80
9	HCEs other than hospitals	Red	80
10	Mine	Red	80
11	CTDF (HW)	Red	80
12	CTDF (BMW)	Red	80
13	Land Fill Site (MSW)	Red	80
14	E-waste recycling/refurbishing/dismantling	Red	80
15	CETP/ STP	Red	80
16	Activities/ operations (no industry) and not covered above; like D.G. set etc.	Green / White	30

Annexure-'B'

Industry	S factor			
	micro	small	medium	large
	0.25	0.5	1	1.25
Hotel	upto 50 beds	more than 50 beds and less than 300 beds	300 beds or more	
	0.25	0.5	1.25	
Construction projects	built up area less than 20000 sq metre	built up area more than 20000 sq metre and upto 1.50 lac sqm.	built up area more than 1.5 lac sq m. Upto 5 lac sq.m.	built up area more than 5 lac sq.m.
	0.25	0.5	0.75	1.25
Hospitals	upto 20 beds	more than 20 and upto 200 beds	more than 200 and upto 500 beds	more than 500 beds
	0.25	0.5	0.75	1.25
HCEs other than hospitals	Clinics/ dispensaries	Animal houses	Veterinary institues	
	0.25	0.5	0.5	
Mine	upto 5 ha	more than 5 ha and upto 100 ha	more than 100 ha.	
	0.25	0.5	1.25	
CTDF (HW)	Area of facility upto 10Acre	Area of facility more than 10 upto 20 Acre	Area of facility more than 20 Acre	
	0.25	0.5	1.25	
CTDF (e-Waste)	Area of facility upto 1000 square meter	Area of facility more than 1000 square meter upto 5000 square meter	Area of facility more than 5000 square meter upto 10000 square meter	Area of facility more than 10000 square meter
	0.25	0.5	0.75	1
CTDF (BMW)	Bed connected with facility upto 5000	Bed connected with facility from 5001 upto 10000	Bed connected with facility more than 10000	
	0.25	0.5	1.25	
Land Fill Site(MSW)	Benifited population upto 1 Lac	Benifited population more than 1 Lac upto 5 Lac	Benifited population more than 5 Lac upto 10 Lac	Benifited population more than 10 Lac
	0.25	0.5	1	1.25
CETP/ STP	Design capacity upto 200 kld	Design capacity more than 200 kld and upto 1 MLD	Design capacity more than 1 MLD and upto 10 MLD	Design capacity more than 10 MLD
	0.25	0.5	1	1.25
Activities/ operations not covered above; like D.G. set etc.	D.G. set upto 1 MVA	D.G. set more than 1 MVA and less than 5 MVA	D.G. set of 5 MVA or more	
	0.25	0.5	0.75	

180

Annexure-C

Weghtage of violations											
Industry/ Hotel/ Construction projects		Hospital/ HCEs		Mine		CTDF (HW/E-Waste/ BMW/ MSW)		CETP/ STP		Activities/ operations not covered above; like D.G.	
RF	Violation	RF	Violation	RF	Violation	RF	Violation	RF	Violation	RF	Violation
10	Operating without consent	10	Operating without consent or authorisation	10	Operating without consent	10	Operating without consent or authorisation	10	Operating without consent or authorisation	10	Operating without consent
15	Operating in violation of closure directions	15	Operating in violation of closure directions	15	Operating in violation of closure directions	15	Operating in violation of directions under section 31A/ 33A	15	Operating in violation of directions under section 31A/ 33A	15	Operating in violation of closure directions
20	Abstraction of ground water without permission	20	ETP not provided	25	Violation of EIA Notification or EC conditions	20	Violation of EIA Notification or EC conditions	20	Violation of EIA Notification or EC conditions	15	Inadequate height of DG stack
25	Effluent/ emission not conforming to standards (exceedance more than 25%)	30	No arrangement/membership for disposal of BMW with CBWTF	20	Indiscriminate disposal of mine waste within lease area	20	Abstraction of ground water without permission	10	Abstraction of ground water without permission	20	Acoustic enclosures not provided with DG set
25	Making discharge of effluent at any place in violation of consent conditions or bypassing SCADA (in case of CETP connected units)	25	Effluent/ emission not conforming to standards (exceedance more than 25%)	25	Indiscriminate disposal of mine waste outside lease area	25	Effluent/ emission not conforming to standards (exceedance more than 25%)	25	Effluent/ emission not conforming to standards (exceedance more than 25%)	25	Making discharge of effluent at any place in violation of consent conditions

Manufacturing a product, which is banned/ prohibited	25	Making discharge of effluent at any place in violation of consent conditions	10	Making discharge of effluent at any place in violation of consent conditions	25	Making discharge of effluent at any place in violation of consent conditions	25	Violation of consent condition	20
Indiscriminate handling/ storage/ disposal of HW	25	Improper segregation of BMW	15	Inadequate PCM (Air or Water)	20	Not collecting BMW from designated HCEs regularly	15	If handling of HW is involved	25
Adequate PCM not installed	25	Improper storage of BMW	20	Any other violation of Rules	10	Improper storage of waste	20	Any other violation of Rules	10
Adequate PCM installed, however not meeting the prescribed standards	10	BMW not collected and disposed within 48 hours	20		20	Not complying with standards of autoclave/ microwave	20		
OCEMS required but not installed	15	Adequate PCM not installed	25			Running without STP	30	OCEMS required but not installed	15
Intentional avoidance of data submission or data tampering the OCEMS	10	Adequate PCM installed, however not meeting the prescribed standards	10			Running with inadequate capacity of STP	15	Intentional avoidance of data submission or data manipulation by tampering the OCEMS	10

Any other violation of Rules	10	Any other violation of Rules	10		OCEMS required but not installed	15			
					Intentional avoidance of data submission or data manipulation by tampering the OCEMS	10			
					Any other violation of Rules	10			
Total (RF)	215	Total (RF)	225	Total (RF)	135	Total (RF)	240	Total (RF)	170
									140

1101

192

Annexure-D

Data sheet for cases forwarded to ECC for imposing Environmental Compensation (EC)

A. General information

1.	Name of establishment/ entity	
2.	Site address	
3.	Distance from the nearest boundary of the nearest city/town (in kilometres)	
4.	Population of the nearest city/town as per latest Census of India (in Lacs)	
5.	District	
6.	Correspondence address	
7.	Unit ID (in MIS, if any)	
8.	Email ID	
9.	Category - Red/ Orange/ Green	
10.	Type (Sector), as per categorization of the Board	
11.	Size- In case of industry (Large/ Medium/ Small/ Micro) In case of hospital (Number of beds) In case of other HCFs whether it is Clinics/dispensaries/animal House/Veterinary institutes In case of Hotel (number of beds and star) In case of mine (lease area)	

<p>In case of CETP/ STP (Capacity in MLD)</p> <p>In case of CTDF for HW(Total land in Acre)</p> <p>In case of CTDF for BMW(No. Of beds connected)</p> <p>In case of CTDF for E-Waste(Total land in Square metre)</p> <p>MSW (Total population of the city/town)</p> <p>In case of building/ construction projects, total built up area</p> <p>In case of D.G. Set(Capacity)</p>	
---	--

B. Details of violations:-

1.	Details of violations for which EC is being recommended.	1.
2.	Period of violation in number of days (If period of violation is not available period from the date of violation observed first time up to date of expected rectification may be given).	
3.	Details of NGT/ court orders if any, for imposing EC on this entity.	

194

34

4.	Whether EC imposed in past? (Yes/ No)? If yes; please give following details:- i. Date of issuing directions ii. Amount of EC imposed.	
5.	Remarks	

- Please enclose copy of necessary documents such as the inspection report, analysis reports of samples, copy of show cause notices/directions issued etc.

Signature

With name and designation



195

ANNEXURE: R/3

A- A A+ A A

Rajasthan High Court Principal Seat, Jodhpur (राजस्थान उच्च न्यायालय मुख्य पीठ, जोधपुर)

35

Case Status / Pagination Status

Q Case Detail

← Back

PENDING

CNR: RJHC010906272022 Date of query: 05/05/2023 10:23:29 AM
 Reg. Details: CW/119/2023 Filing Details: CW/49474/2022
 Petitioner: SHRI BHAWANI SINGH Respondent: MEMBER SECRETARY
 Petitioner Advocate: KUNAL BISHNOI Respondent Advocate: SAJJAN SINGH RATHORE
 Court Fees : 0 Filed on : 22/12/2022
 Registration Type: Regular Registered on: 03/01/2023
 Bench: Single Bench Stage : FOR ADMISSION - NOTICE SERVED
 Date of Listing: 26/09/2023 Listed in Court No. 8 (Daily) on 23/02/2023
 Last Pagination No. : 79 Next Pagination No. : 80

Department Details

Department Type	Department Code	Department Name
State	174	Pollution-State

Advocate Details

Adv For	Adv Name
R	SAJJAN SINGH RATHORE

Cases in which this is Main Case

Filing Number	Reg. No.	Filing Date
CMS - 49475 / 2022	123 / 2023	22/12/2022

Filing Details

Number	Court Fees	Filing Date	Main case
49474 / 2022	45.00	22/12/2022	- /

Paper Details

No.	Type	Date of filing
2 / 2023	VAKALATNAMA	09/02/2023
MEMBER SECRETARY	SAJJAN SINGH RATHORE	Court Fee : 2.00 Proc. Fee :
1 / 2023	DOCUMENTS	07/01/2023
SHRI BHAWANI SINGH	KUNAL BISHNOI	Court Fee : Proc. Fee :

Orders and Judgements



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR**

36

S.B. Civil Writ Petition No. 119/2023

Shri Bhawani Singh S/o. Shri Mod Singh, aged about 62 years,
R/o. Khasra no.149/1, Village Bhandu Kalan, Tehsil Luni, District
Jodhpour through power of attorney holder Shri Devendra Singh
S/o. Shri Bhawani Singh, aged about 30 years, R/o. Village
Bhandu Kalan, Tehsil Luni, District Jodhpur.

----Petitioner

Versus

Member Secretary, Rajasthan State Pollution Control Board,
Headquarter, 4, Institutional Area, Jhalana Doongari, Jaipur-
302004.

----Respondent

For Petitioner(s) : Mr. Vikas Balia, Sr. Advocate (through
VC) assisted by Mr. Kunal Bishnoi
For Respondent(s) : Mr. Sajjan Singh Rathore

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
Order

03/02/2023

Mr. Sajjan Singh Rathore, learned counsel for the respondent
seeks some time to file the reply to the writ petition.

Time prayed for is allowed.

List the matter on 20.02.2023.

Meanwhile and till the next date of hearing, the respondent
shall not recover the amount due from the petitioner in pursuance
of the notice dated 04.07.2019 (Annexure-6).

The respondent will be at liberty to file an appropriate
application for vacation of the interim order.

(VINIT KUMAR MATHUR),J

142-SunilS/-

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH**

(By Video Conferencing)
Original Application No. 407/2022

Narayan Das Tulsani

...Applicant

Versus

State of Rajasthan

...Respondent

Date of hearing: 18.10.2022

**CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Narayan Das Tulsani and Mr. Anil Tulsani, Advocates.

Respondent: Mr. Nishant Awana and Mr. G.S. Awana, Advocates
alongwith Mr. Pradeep Asnani, Regional Officer for
RSPCB, Bikaner.
Mr. Vikrant Pachnanda and Mr. Mukul Katyal, Advocates
for CPCB.
Mr. Nikhil Jain, Mr. Sanjeet Prohit, Advocates and Mr.
Shiv Prasad Nakate, MD, RIICO, Mr. Ajay Gupta, AGM,
(EM) Cell, RIICO and Mr. Mr. Vinod Kumar, Sr. Regional
Manager.

Application is registered based on a Letter Petition received by Email.

ORDER

1. Mr. Narayan Das Tulsani son of Late. Kishan Chand Tulsani resident of H.No. A-13, Karni Nagar, Pawanpuri near Sahyog park, Bikaner, Rajasthan has sent the present letter petition, which has been treated and registered as Original Application, complaining about violation of conditions of Environmental Clearance (EC) dated 11.04.2017 by Rajasthan State Industrial Development and Investment Corporation Ltd. (RIICO Ltd.).

2. The applicant has submitted that RIICO Ltd. had set up Karni industrial area in phases in the years 1998, 2000, 2005 and 2011. While mentioning the historical background and violations of environmental norms by RIICO Ltd. and issuance of letters/show cause notices in this regard, the applicant has also referred to letter dated 21.02.2022 of Regional Officer, Rajasthan State Pollution Control Board, Bikaner wherein it was observed that RIICO Ltd. has obtained EC from State Environment Impact Assessment Authority Rajasthan (SEIAA) on dated 11.04.2017. As per point No. 11 of EC, there is a provision of Rs. 2600 lacs to set up a CETP, Rs. 175 Lacs for STP, Rs. 300 Lacs for development of landfill site for waste disposal, and Rs. 800 Lacs for a line of internal effluent conveyance system etc., further as per point no. 13 of EC "RIICO Ltd. is proposing to install a CETP for treatment of effluent generated from existing Karni Industrial Area and Industrial Area Bichwal ensuring a Zero Liquid Discharge facility in the proposed project area". RIICO has not submitted compliance report or the conditions of EC. The applicant has submitted that despite EC conditions RIICO Ltd. has not made any arrangement for drainage of trade effluents. For the last 14 years, industrial effluents is getting accumulated in Karni Industrial Area and now 1500 million liters industrial effluents is accumulated in 146000 square meters area causing environmental pollution and contamination of water. Complaints regarding environmental pollution and non-compliance of EC conditions were made to Rajasthan PCB but no action has been taken.

3. Vide order dated 11.07.2022, this Tribunal constituted a Joint Committee comprising of the Regional Office of MoEF & CC, CPCB, CGWA, State PCB and District Magistrate, Bikaner and directed the same to submit Factual and Action Taken Report within two months.

4. In compliance thereof, the Joint Committee submitted Factual and Action Taken Report vide email dated 18.09.2022. Reply was also filed on behalf of State PCB vide email dated 16.09.2022.

5. Vide order dated 20.09.2022, this Tribunal impleaded (1) State of Rajasthan through Chief Secretary, Government of Rajasthan, (2) Integrated Regional Office of MoEF & CC, Jaipur (3) CPCB, (4) CGWA, (5) State PCB (6) District Magistrate, Bikaner as respondents No. 1 to 6 and directed issuance of notices to them. Personal appearance of the Managing Director, RIICO and Regional Officer of State PCB through VC was also ordered. Mr. Nishant Awana, Advocate for RSPCB and Mr. Nikhil Jain and Mr. Abhishek Bisht, Advocates for RIICO appeared on that date and sought time to file reply/response on behalf of RSPCB and RIICO.

6. Mr. Sivprasad Nakate, IAS, Director, RIICO and Mr. Pradeep Asnani, Regional Officer of State PCB have appeared before this Tribunal through VC.

7. Ld Counsel for RSPCB has submitted that Civil **Writ Petition (PIL) No. 10600 of 2020 titled Devkishan Gawlani Vs. State of Rajasthan and others** has been filed before Hon'ble High Court of Judicature of Rajasthan, Jodhpur seeking issuance of directions to RIICO to establish CETP/STP and to restrain the same from permitting to develop any industrial area in the Karni Industrial Area (Extension Project) till the establishment of CETP/STP and to ensure compliance with EC conditions by RIICO. Vide order dated 17.10.2022 Division Bench comprising of the Hon'ble the Chief Justice Mr. Pankaj Mithal and Hon'ble Mr. Justice Sandeep Mehta has directed respondents no. 4 and 5-Chairman and Secretary, RSPCB to take appropriate action in accordance with law against all polluting industries and, if necessary, against RIICO as well and to submit a factual report about the same within a period of six weeks. Ld.

Counsel for RSPCB has filed copy of the above said Writ Petition and order dated 17.10.2022 and has relied on the observations made by the Hon'ble Supreme Court in its order dated 01.06.2022 passed on Civil Appeal Nos. 4522-4524 of 2022 titled the State of Andhra Pradesh Vs. Raghu Ramakrishna Raju Kanumuru, Member of Parliament (M.P) in support of his submissions.

8. Since the Hon'ble High Court of Judicature of Rajasthan, Jodhpur is already seized with the matter on **Civil Writ Petition (PIL) No. 10600 of 2020 titled Devkishan Gawlani Vs. State of Rajasthan and others**, which was filed before filing of the present original application and for the purpose of avoiding duplicacy/conflict of orders, it will be appropriate that this Tribunal does not continue with the proceedings on the present original application as the applicant can also move to Hon'ble High Court of Judicature of Rajasthan, Jodhpur by way of appropriate proceedings for appropriate relief.

9. In view of the above, the application is disposed of with liberty to the applicant to move to Hon'ble High Court of Judicature of Rajasthan, Jodhpur by way of appropriate proceedings for appropriate relief.

Arun Kumar Tyagi, JM

Dr. Afroz Ahmad, EM

October 18, 2022
AG

राजस्थान सरकार

कार्यालय उपखण्ड अधिकारी, लूणी

क्रमांक :- न्यायिक / 2023 / 05

दिनांक :- 9/1/23

प्रेषित :- श्रीमान अपर जिला कलक्टर महोदय,
प्रथम (शहर) जोधपुर।

विषय :- माननीय न्यायालय एनजीटी में विचाराधीन प्र.सं. 424 / 2022 जितेन्द्र सिंह बनाम राज.
के संवध में।

प्रसंग:- आप श्रीमान जी के पत्रांक:460 दिनांक 30.12.22 के संवध में।

मान्यवर,

उपरोक्त विषयान्तर्गत एवं प्रासंगिक पत्र के संदर्भ में निवेदन है कि उपरोक्त प्रकरण में संयुक्त निरीक्षण रिपोर्ट क्षेत्रीय कार्यालय राजस्थान राज्य प्रदुपण नियंत्रण बोर्ड द्वारा प्रस्तुत की गई, के संवध में अनुशंषा विन्दुओं पर जवाब/कार्यवाही न्यायालय आदेश दिनांक 10.10.2022 द्वारा चाही गई है।

उक्त रिपोर्ट के विन्दु ए अनुसार ग्राम भाण्डू कला के खसरा नंबर 149 / 1,149 / 2 की खातेदारी का निरस्तीकरण राजस्व नियमों के अन्तर्गत करने की तहसीलदार झंवर ने अनुशंषा की है।

उक्त खसरो से संबंधित खातेदारी निरस्तीकरण प्रकरण धारा 177 के तहत प्र.संख्या 34 / 2019 न्यायालय उपखण्ड अधिकारी लूणी में विचाराधीन है जिसकी दिनांक पेशी 18.01.2023 है अतः उक्त प्रकरण निर्णित होने पर श्रीमान जी को अवगत करवा दिया जावेगा। रिपोर्ट श्रीमान जी की सेवा में सादर प्रेषित है।

संलग्न:- तहसीलदार झंवर की रिपोर्ट।

(Handwritten signature)

(Handwritten signature)
उपखण्ड अधिकारी एवं
उपखण्ड मजिस्ट्रेट लूणी
(जोधपुर)

202

42

JODHPUR VIDYUT VITRAN NIGAM LIMITED
DISTRICT CIRCLE, JODHPUR

No. JVVNL/SE/DC/JU/S. /F.

/D. 8/12 Date: -

17 JAN 2023

The Additional District Magistrate (City-II),
Jodhpur

Sub:- Original Application No. 424/ 2022, Jitender Singh & Ors V/s State of Rajasthan before the National Green Tribunal Principal Bench.

In compliance to the directions given in the review meeting taken by you and in continuation to this office letter No.7789 dated 04.01.2023, kindly find enclosed herewith the consumption of M/s Udavat Bricks from Aug. 2016 to May 2019 and M/s. Maa Nagnenchi Enterprises from August 2017 to Oct. 2019 for kind perusal and ready reference.

Encl.: - As Above.


(Er. M. M. Singhvi)
Superintending Engineer (DC)
Jodhpur Discom, Jodhpur

203

Name	Address
M S UDAVAT BRICKS	PROP DEVNDRA SINGH, S O BHAWANI SINGH, BRANDU KALLA,
KNO	A/C No
320321000334	0596-0082

Billing Month Name	Billing Year	Prev Reading Date	Current Reading Date	Meter No	Meter Status	Prev KWH	Current KVAH	Current KWH	Current KVAH	Billed KWH	Billed KVAH	Maximum Demand
May	2019	01-Apr-2019	01-May-2019	9966987	OK	525612	607317	546622	631424	42020	48214	163.600
April	2019	01-Mar-19	01-Apr-19	9966987	OK	508371	587487	525612	607317	34482	39660	165
March	2019	01-Feb-19	01-Mar-19	9966987	OK	488490	564876	508371	587487	39762	45222	149
February	2019	01-Jan-19	01-Feb-19	9966987	OK	469871	544077	488490	564876	37638	41593	134
January	2019	01-Dec-18	01-Jan-19	9966987	OK	454162	526230	469871	544077	31018	35694	130.2
December	2018	01-Nov-18	01-Dec-18	9966987	OK	445767	515205	454162	526230	18790	20050	110.2
November	2018	01-Oct-18	01-Nov-18	9966987	OK	431717	501165	445767	515205	28100	30080	103.8
October	2018	01-Sep-18	01-Oct-18	9966987	OK	419292	487507	431717	501165	24850	27316	95.8
September	2018	01-Aug-18	01-Sep-18	9966987	OK	408531	475981	419292	487507	21422	23052	72.6
August	2018	01-Jul-18	01-Aug-18	9966987	OK	398649	464987	408531	475981	18864	21988	76
July	2018	01-Jun-18	01-Jul-18	9966987	OK	387199	452193	398649	464987	22900	25888	89.4
June	2018	01-May-18	01-Jun-18	9966987	OK	371079	433406	387199	452193	32240	37574	121.48
May	2018	01-Apr-18	01-May-18	9966987	OK	360657	422162	371079	433406	20844	22488	78
April	2018	01-Mar-18	01-Apr-18	9966987	OK	354839	414946	360657	422162	11636	14432	70.4
March	2018	01-Feb-18	01-Mar-18	9966987	OK	345379	404348	354839	414946	18920	21196	66
February	2018	01-Jan-18	01-Feb-18	9966987	OK	334335	392119	345379	404348	22068	24458	80
January	2018	01-Dec-17	01-Jan-18	9966987	OK	322754	379535	334335	392119	23162	25168	74
December	2017	01-Nov-17	01-Dec-17	9966987	OK	312940	368855	322754	379535	19628	21360	75.4
November	2017	01-Oct-17	01-Nov-17	9966987	OK	304550	359640	312940	368855	16780	18430	85
October	2017	01-Sep-17	01-Oct-17	9966987	OK	291550	345843	304550	359640	26060	27594	95.42
September	2017	01-Aug-17	01-Sep-17	9966987	OK	282935	335746	291550	345843	17230	20194	89.4
August	2017	01-Jul-17	01-Aug-17	9966987	OK	274706	326584	282935	335746	16458	18324	71.6
July	2017	01-Jun-17	01-Jul-17	9966987	OK	250908	308241	274706	326584	31596	36686	120.6
June	2017	01-May-17	01-Jun-17	9966987	OK	238346	283898	250908	308241	41124	48886	153.8
May	2017	01-Apr-17	01-May-17	9966987	OK	214497	255771	238346	283898	47698	56254	162.6
April	2017	01-Mar-17	01-Apr-17	9966987	OK	196513	235050	214497	255771	35868	41442	158
March	2017	01-Feb-17	01-Mar-17	9966987	OK	172745	208098	196513	235050	47536	53304	157.6
February	2017	01-Jan-17	01-Feb-17	9966987	OK	147955	180952	172745	208098	49530	54292	163.2
January	2017	01-Dec-16	01-Jan-17	9966987	OK	133007	164191	147955	180952	28896	33522	121.4
December	2016	01-Nov-16	01-Dec-16	9966987	OK	124303	154313	133007	164191	17408	19758	80.8
November	2016	01-Oct-16	01-Nov-16	9966987	OK	114981	143967	124303	154313	18644	20632	74.6
October	2016	01-Sep-16	01-Oct-16	9966987	OK	111164	139843	114981	143967	7634	8308	52.6
September	2016	01-Aug-16	01-Sep-16	9966987	OK	105734	134070	111164	139843	10860	11546	60
August	2016	01-Jul-16	01-Aug-16	9966987	OK	98268	126249	105734	134070	14832	15642	62.2

203

204

Name	Address	KNO	A/C No.
M/S MAA MAGNENCHI ENTERPRIZOS	KHASRA NO. 149/2, RHANDU KALLA,	320326006256	9030-0001

Billing Month Name	Billing Year	Prev Reading Date	Current Reading Date	Meter No	Meter Status	Prev KWH	Current KWH	Prev KVAH	Current KVAH	Total Billed KWH	Total Billed KVAH	Total Billed KVA
October	2019	01-Sep-19	01-Oct-19	3132674	OK	78177	81861	81861	81861	0	0	300
September	2019	01-Aug-19	01-Sep-19	3132674	OK	78177	81861	81861	81861	0	0	300
August	2019	01-Jul-19	01-Aug-19	3132674	OK	78177	81861	81861	81861	0	0	300
July	2019	01-May-2019	01-Jul-2019	3132674	OK	78177	81861	81861	81861	0.00	0.00	238.2400
June	2019	01-May-2019	01-Jun-2019	3132674	L	78177	81861	81861	81861	58717.10	62255.23	300.0000
May	2019	01-Apr-2019	01-May-2019	3132674	OK	61850	63224	63224	63224	55203.60	74550.40	238.2400
April	2019	01-Mar-19	01-Apr-19	3132674	OK	49149	50108	50108	50108	50804	52484	300
March	2019	01-Feb-19	01-Mar-19	3132674	OK	35198	35717	35717	35717	55804	57564	300
February	2019	01-Jan-19	01-Feb-19	3132674	OK	21354	21615	21615	21615	55376	56408	300
January	2019	01-Dec-18	01-Jan-19	3132674	OK	9138	9282	9282	9282	48864	49332	300
December	2018	01-Oct-18	01-Dec-18	3132674	OK	56	92	92	92	36324	36757	300
November	2018	01-Oct-18	01-Nov-18	16506833	N	127835	134508	134508	134508	32959	33432	300
October	2018	01-Sep-18	01-Oct-18	16506833	OK	119377	125938	125938	127835	33832	34280	300
September	2018	01-Aug-18	01-Sep-18	16506833	OK	113450	119946	119946	119377	23708	23968	300
August	2018	01-Jul-18	01-Aug-18	16506833	OK	103881	110277	110277	113450	38276	38576	300
July	2018	01-Jun-18	01-Jul-18	16506833	OK	95362	101574	101574	103881	34076	34812	300
June	2018	01-May-18	01-Jun-18	16506833	OK	84014	89508	89508	95362	45392	48264	300
May	2018	01-Apr-18	01-May-18	16506833	OK	76284	81596	81596	84014	30920	31648	300
April	2018	01-Mar-18	01-Apr-18	16506833	OK	71053	76215	76215	76284	20924	21524	300
March	2018	01-Feb-18	01-Mar-18	16506833	OK	64352	69132	69132	71053	28904	28332	300
February	2018	01-Jan-18	01-Feb-18	16506833	OK	57004	61683	61683	64352	29392	29796	300
January	2018	01-Dec-17	01-Jan-18	16506833	OK	49356	53948	53948	57004	30592	30940	300
December	2017	01-Nov-17	01-Dec-17	16506833	OK	41936	46457	46457	49356	29680	29961	300
November	2017	01-Oct-17	01-Nov-17	16506833	OK	35354	39753	39753	41935	26328	26818	300
October	2017	11-May-17	01-Oct-17	16506833	OK	138	191	191	35354	140864	158248	300
September	2017	01-Aug-17	01-Sep-17	16506833	N	138	191	191	0	0	0	300
August	2017	11-May-17	01-Aug-17	16506833	N	138	191	191	0	0	0	300

कार्यालय सहायक पुलिस आयुक्त बोरानाडा, आयुक्तालय जोधपुर

क्रमांक:- 26

दिनांक:-05.01.2023

श्रीमान् अतिरिक्त जिला कलक्टर
(शहर द्वितीय),
जोधपुर।

विषय:- माननीय न्यायालय राष्ट्रीय हरित प्राधिकरण, मुख्य पीठ नई दिल्ली में विचाराधीन मूल प्रार्थना-पत्र संख्या 424/2022 जितेन्द्रसिंह एवं अन्य बनाम राजस्थान राज्य के संबंध में।

प्रसंग:- श्रीमान् का पत्रांक 458 दिनांक 30.12.2022 के संदर्भ में।

महोदय,

उपरोक्त विषयान्तर्गत प्रासंगिक पत्र के संदर्भ में निवेदन है कि माननीय न्यायालय राष्ट्रीय हरित प्राधिकरण, मुख्य पीठ नई दिल्ली में विचाराधीन मूल प्रार्थना-पत्र संख्या 424/2022 जितेन्द्रसिंह एवं अन्य बनाम राजस्थान राज्य में आदेश दिनांक 10.10.2022 एवं संयुक्त निरीक्षण रिपोर्ट दिनांक 13.07.2022 क्षेत्रीय कार्यालय राजस्थान राज्य प्रदूषण नियंत्रण बोर्ड द्वारा प्रस्तुत रिपोर्ट में अंकित बिन्दुओं के संबंध में प्रतिवेदन निम्नानुसार है:-

यह है कि ग्राम भाण्डू, तहसील लूणी, जिला जोधपुर के खसरा संख्या 149/01 व 149/02 में संचालित टेक्सटाईल उद्योग मैसर्स नागनेची इन्टरप्राइजेज का संयुक्त निरीक्षण क्षेत्रीय कार्यालय राजस्थान राज्य प्रदूषण नियंत्रण बोर्ड द्वारा किया जाकर रिपोर्ट दिनांक 13.07.2022 को माननीय न्यायालय में प्रस्तुत की गई। उक्त संयुक्त निरीक्षण के दौरान उक्त टेक्सटाईल उद्योग बंद पाया गया था। संयुक्त निरीक्षण के बाद से ही लगातार पुलिस थाना बोरानाडा, जोधपुर पश्चिम के पुलिस गश्ती दल एवं पुलिस थाना के बीट कानिस्टेबलों एवं आसूचना अधिकारी से उक्त टेक्सटाईल उद्योग पर लगातार निगरानी रखी जा रही है। उक्त टेक्सटाईल उद्योग वर्तमान में बंद पाया गया है, गश्त एवं निगरानी जारी है।

अतः रिपोर्ट सादर प्रेषित है।

भवदीय,



(जयप्रकाश अटल आरपीएस)
सहायक पुलिस आयुक्त,
बोरानाडा, जोधपुर पश्चिम

206

46

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 424 OF 2022

IN THE MATTER OF :-

JITENDER SINGH & ORS.

APPLICANT

VERSUS

STATE OF RAJASTHAN

RESPONDENT

VAKALATNAMA

I/WE MR. DEVENDRA SINGH and BHAWANI SINGH, Respondent No.8 & 9 herein in the above Application/ Petition/ Appeal/ Petition/ Reference/ suit do hereby appoint and retain **SHREY KAPOOR** Advocate to act and appear for me/ us in the above Application/ Suit/ Appeal/ Petition/ Reference/ Review and on my/our behalf, to conduct and prosecute/ defend the same and all proceedings that may be taken in respect of any application connected with the same or any decree or Order passed therein, including proceedings in taxation and application for Review, and to file and obtain return of documents, and deposit and receive any money on my/our behalf in the said Application/ Suit/ Appeal/ Petition/ Reference and in application for Review, and to represent me/us, and to take all necessary steps on my/our behalf in the above matter. I / We agree to pay his fees and our of pocket expenses, agree to rectify all acts done by the aforesaid advocate in pursuance of this authority.

Dated This 6TH Day of May, 2023

ACCEPTED, IDENTIFIED & CERTIFIED

Shrey Kapoor
(SHREY KAPOOR)

Advocate on Record
D-66, 3rd Floor, Panchsheel Enclave,
New Delhi - 110017

ENROL. NO. D/3776/13

D.V. - Divendra Singh

भवानी सिंह - Bhawani Singh

Petitioner(s) Appellant (s)
Respondent (s)/ Caveator (s)

To,

The Registrar,
National Green Tribunal,
New Delhi - 110001.
Sir,



Kindly enter my appearance in the above-mentioned Petition/ Appeal/ Reference / Review made on behalf of the Petitioner(s)/ Appellant(s)/ Respondent(s).

Yours faithfully

Shrey Kapoor
(SHREY KAPOOR)

Advocate for the petitioner(s)
Advocate on Record
Supreme Court of India
Mob. No. 9717766551

DATE: 06.05.2023

207



47

Shrey Kapoor <adv.shrey.kapoor@gmail.com>

Service of Reply Affidavit in the matter of "Jitender Singh & Ors. vs. State of Rajasthan & Ors" bearing O.A. No. 424 of 2022

1 message

Shrey Kapoor <adv.shrey.kapoor@gmail.com>

Tue, May 9, 2023 at 3:43 PM

To: legal.rpcb@gmail.com, jodhpur.collector@gmail.com, rorpcb.jodhpur@gmail.com

Sir(s)

KINDLY FIND ATTACHED HERewith THE REPLY AFFIDAVIT IN THE CAPTIONED OA ON BEHALF OF THE RESPONDENTS

 **REPLY O:B RES 8&9.pdf**

NO. 8 &9.

REGARDS

—
SHREY KAPOOR

Advocate-On-Record.

SUPREME COURT OF INDIA.

Off:- D-66, 3rd Floor, Panchsheel Enclave.

New Delhi - 110017.

Ph:- +91-971-7755-441.

