

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

APPEAL NO. 27/2024 (WZ)

IN THE MATTER OF: -

SAMRUDHI SUGAR LIMITED

APPELLANT

VERSUS

CENTRAL POLLUTION CONTROL
BOARD & ORS.

RESPONDENT(S)

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Pratik D. Bhanre

Pratik D. Bhanre

(Scientist 'E' & Regional Director)
Central Pollution Control Board

प्रतिक भरणे / Pratik Bhanre

क्षेत्रीय निदेशक / Regional Director

केन्द्रीय प्रदूषण नियंत्रण बोर्ड

Central Pollution Control Board

क्षेत्रीय निदेशालय, पुणे / Regional Directorate, Pune

पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार

M/o Env't. Forest & Climate Change, Govt. Of India

कक्ष नं. ११०, हीराबाई धनकुटे हॉल, बानेर रोड, बानेर, पुणे - ४११ ०४५

Sr. No. 110, Hirabai Dhankude Hall, Baner Road, Baner, Pune - 411 045

Place: Pune

Date: 23/08/2025



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

APPEAL NO. 27/2024 (WZ)

IN THE MATTER OF: -

SAMRUDHI SUGAR LIMITED

APPELLANT

VERSUS

CENTRAL POLLUTION CONTROL
BOARD & ORS.

RESPONDENT(S)

REPLY ON BEHALF OF RESPONDENT NO. 01,
CENTRAL POLLUTION CONTROL BOARD (CPCB)

1. That, the present Appeal has been filed by the Appellant, M/s Samrudhi Sugars Ltd., against the directions dated 04/01/2024 issued by Respondent No.1 i.e. Central Pollution Control Board (hereinafter referred to as "CPCB" or "Answering Respondent") under section 5 of the Environment (Protection) Act, 1986 for imposing Environmental Compensation of Rs.1,27,20,000/- (Rs. One Crore Twenty-Seven Lakhs Twenty thousand) upon the Appellant for the delay in installation of real-time Online Continuous Effluent Monitoring System (hereinafter referred as 'OCEMS') at the effluent treatment plant (ETP) and its connectivity to CPCB server.
2. That, the Hon'ble National Green Tribunal (hereinafter referred to as "Hon'ble NGT") vide order dated 07/08/2025 has sought the reply of CPCB in the instant matter. The Hon'ble NGT has directed that,

"4. Learned counsel for Respondent No. 1 submits that he may be allowed two weeks' time to submit an affidavit to answer the query made by this Tribunal as to when the impugned order was passed on 04.01.2024, the guidelines, which were framed in the year 2019, name of which is cited

by us, were used instead of the new guidelines by the name "General Framework for Imposing Environmental Damage Compensation", which was issued on subsequent date i.e. December 2022"

3. That, it is humbly submitted that the direction, dated 04/01/2024, was issued by CPCB under Section 5 of Environment (Protection) Act, 1986 to M/s Samrudhi Sugar Ltd., Dist. Jalna, Maharashtra (herein after referred as "The Unit") and directed to deposit an Environmental Compensation of Rs.1,27,20,000/- for operating their industry during crushing season 2017-18, 2018-19, and 2019-20 without installation and connectivity of real-time OCEMS devices with CPCB server in violation of CPCB's closure direction dated 22/03/2016.
4. That, in compliance of the Hon'ble NGT, Principal Bench, order in the matter of OA. No. 593/2017 {WP (CIVIL) No. 375/2012}, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors., a Committee was constituted by CPCB for preparing report on methodology for assessing Environmental Compensation (EC). That the report titled "Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund " of the aforesaid Committee was submitted before the Hon'ble NGT. The aforesaid report was accepted by Hon'ble NGT vide its order dated 28/08/2019. The said report stipulates the following cases for levying Environmental Compensation:
 - a. Discharges in violation of consent conditions, mainly prescribed standards / consent limits.
 - b. Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.



- 
- c. Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
 - d. Accidental discharges lasting for short durations resulting into damage to the environment.
 - e. Intentional discharges to the environment, land, water and air resulting into acute injury or damage to the environment.
 - f. Injection of treated/partially treated/ untreated effluents to ground water.

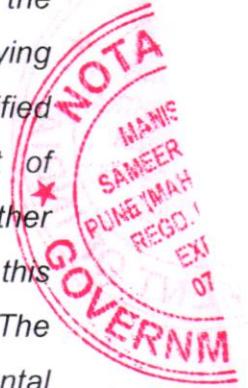
As the violation in instant matter by the Appellant was related to the aforesaid S. No. (b) i.e. "Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS (online continuous effluent/emission monitoring system), non-adherence to the action plans submitted etc.", the EC has accordingly been calculated and imposed on the appellant unit by CPCB following the methodology mentioned in the aforesaid accepted Report of the CPCB In-house Committee on "Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund".

Copy of the Hon'ble NGT order dated 28/08/2019 in the matter in OA. No.593/2017 is annexed as **Annexure-R1-I**.

5. That, it is humbly submitted that in a matter related to compliance of Municipal Solid Waste Management Rules, 2016 in OA No. 606/2018; Hon'ble NGT vide its order dated 24/04/2019 passed certain direction to CPCB and the relevant excerpts of the order are reproduced as below:

"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. A preliminary report on this exercise may be furnished to this Tribunal on or before 31.07.2019. The CPCB will be at liberty to utilize funds collected by way of environmental compensation for restoration of environment."



The Hon'ble NGT order dated 24/04/2019 in O.A. 606/2018 is annexed as **Annexure- R1-II.**

6. That, it is humbly submitted that, the "General Framework for Imposing Environmental Damage Compensation" was prepared and submitted in pursuant to the aforementioned order dated 24/04/2019, as a Preliminary framework for imposing environmental damage compensation wherein information related to conducting investigation of damaged area, identifying direct and indirect liabilities, components of environmental damage compensation, indicative methods for quantification of damage, etc. were captured.

It is humbly submitted that the "General Framework for Imposing Environmental Damage Compensation" report of December, 2022 was submitted by CPCB in compliance to the Hon'ble NGT, order dated 24/04/2019 in OA. No. 606/2018. However, no order has been passed by the Hon'ble NGT regarding acceptance of the said report of December 2022.

Further, it is humbly submitted that the "General Framework for Imposing Environmental Damage Compensation" report of December, 2022 does

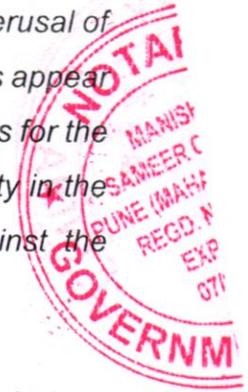
not include environmental compensation due to violations related to non-compliance with the directions issued i.e. direction for closure due to non-installation of OCEMS. The EC for such violation is, however, covered in the aforesaid report of the CPCB In-house Committee titled "Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund", which has been accepted by the Hon'ble NGT.

That, it is humbly prayed by this answering respondent that, the above Appeal No. 27/2024 filed in the Hon'ble Tribunal do not merit any discussion/consideration and is liable to be dismissed at this stage only. It is humbly submitted that the Environmental Compensation has been imposed on the Appellant Unit by following complete due process of natural justice whereby a show cause notice was issued before imposition of Environmental Compensation and thereafter an opportunity of personal hearing was also accorded to the appellant Unit. Further, Hon'ble NGT in similar type of cases previously filed in the past have been duly disposed by this Hon'ble Tribunal. The orders passed in similar type of prominent Appeals are placed below for kind consideration:

A. Appeal No. 33/2020 (WZ), Sadashivrao Mandlik Kagal Taluka Sahakari Sakhar Karkhana Ltd. Vs Central Pollution Control Board.

The appeal was filed by the Appellant Sadashivrao Mandlik Kagal Taluka Sahakari Sakhar Karkhana Ltd. against CPCB order dated 20/12/2019 regarding deposition of EC due to start of manufacturing operation without installation and connectivity of OCEMS devices with CPCB server and notwithstanding CPCBs closure direction. The Unit moved to Hon'ble NGT to challenge the order dated 20/12/2019. The Hon'ble NGT vide order dated 03/08/2022 (**Annexure-R1-III**) dismissed the appeal and stated:

" 27. All these queries could not be answered appropriately and convincingly. Therefore, we are of the view that from the perusal of evidence which has come on record that the Appellant does appear to have failed in its duty to transmit data to the Respondents for the aforesaid period of 20 days and we do not find any infirmity in the impugned order whereby compensation is slapped against the Appellant."



B. Appeal No. 39/2020 (WZ), Shri Sant Damaji Sahakari SakharKarkhana Ltd. Vs Central Pollution Control Board.

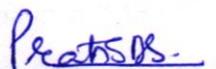
The appeal was filed by the Appellant Shri Sant Damaji Sahakari Sakhar Karkhana Ltd. against CPCB order dated 17/12/2019 regarding deposition of environmental compensation (EC) due to start of manufacturing operations without installation and connectivity of OCEMS devices with CPCB server and notwithstanding CPCBs closure direction. The Unit moved to Hon'ble NGT to challenge the order dated 17/12/2019. The Hon'ble NGT vide order dated 17/08/2022 (**Annexure-R1-IV**) dismissed the appeal and stated:

"...10. In response from the side of Respondents it is vehemently argued that merely installing and commissioning of Online Continuous Effluent Monitoring System (OCEMS) would not be sufficient in this case, because it was the duty of the Appellant to ensure that the data was transmitted to Respondents. In the present case, the Appellant did not ensure transmission of data for the afore- mentioned period which is calculated to be 63 days and calculation of EC is assessed on the basis of ratio laid down in Paryavaran Suraksha Samiti & Anr. Vs Union of India & Ors by the Tribunal. Hence, it cannot be said that any irregularity or illegality has been committed on the part of Respondents in assessing the environmental loss."

C. **Appeal No. 40/2020 (WZ), Bhairavnath Sugar Works Ltd. Vs Central Pollution Control Board.** The appeal was filed by the Bhairavnath Sugar Works Ltd. (Appellant) against CPCB order dated 18/12/2019 regarding deposition of EC due to start of manufacturing operations without installation and connectivity of OCEMS devices with CPCB server and notwithstanding CPCB's closure direction. The Unit moved to Hon'ble NGT to challenge the order dated 18/12/2019. The Hon'ble NGT vide order dated 03/08/2022 (**Annexure-R1-V**) dismissed the appeal and stated:

"...14. All these queries could not be answered appropriately and convincingly. Therefore, we are of the view that from the perusal of evidence which has come on record, the Appellant does appear to have failed in his duty to transmit data to the Respondents for the aforesaid period of 29 days and we do not find any infirmity in the impugned order whereby compensation is slapped against the Appellant."

8. That in light of the above submission, it is respectfully submitted that the Hon'ble Tribunal may kindly reject/dismiss the present Appeal and this Answering Respondent i.e. CPCB, shall abide by any order(s) or direction(s) passed by this Hon'ble Tribunal in the instant Appeal.


Pratik D. Bharne

(Scientist 'E' & Regional Director)
Central Pollution Control Board

प्रतिक भरणे / Pratik Bharne
क्षेत्रीय निदेशक / Regional Director
केन्द्रीय प्रदूषण नियंत्रण बोर्ड
Central Pollution Control Board
क्षेत्रीय निदेशालय, पुणे / Regional Directorate, Pune
पर्यावरण, वन एवं जलवायु परीक्षण मंत्रालय, भारत सरकार
M/o Env't. Forest & Climate Change, Govt. Of India
कॉ. नं. ११०, शिवाजी प्रकल्प रोड, बाहेर, पुणे - ४११ ०१६
S. No. 110, Shivaji Nagar, Outer Ring Road, Pune - 411 016

प्रतिक भरणे / Pratik Bharne
क्षेत्रीय निदेशक / Regional Director
केन्द्रीय प्रदूषण नियंत्रण बोर्ड
Central Pollution Control Board
क्षेत्रीय निदेशालय, पुणे / Regional Directorate, Pune
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WESTERN ZONE BENCH, PUNE

APPEAL NO. 27/2024 (WZ)

IN THE MATTER OF: -

SAMRUDHI SUGAR LIMITED

APPELLANT

VERSUS

CENTRAL POLLUTION CONTROL
BOARD & ORS.

RESPONDENT(S)

AFFIDAVIT

I, Pratik D. Bharne, working as Scientist 'E' & Regional Director in Central Pollution Control Board, Regional Directorate, Survey No. 110, Hirabai Dhankude Multipurpose Hall, Baner Road, Baner, Pune, do hereby solemnly affirm, declare on oath and state as under:

1. That, I am fully conversant with the facts of the case and hence, competent and authorized to depose and swear the present affidavit in my official capacity.
2. That the contents of the reply are true and correct on the basis of the record of the case as maintained in the day-to-day affairs of the CPCB and the contents of the reply may kindly be treated part of this affidavit and the same are not repeated herein for the sake of brevity.

प्रतिक भरणे / Pratik Bharne
क्षेत्रीय निदेशक / Regional Director
केन्द्रीय प्रदूषण नियंत्रण बोर्ड
Central Pollution Control Board
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Sr. No. 110, Hirabai Dhankude Hall, Baner Road, Baner, Pune - 411 045

Pratik D. Bharne
DEPONENT

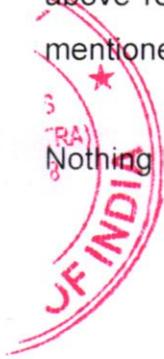
प्रतिक भरणे / Pratik Bharne
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केन्द्रीय प्रदूषण नियंत्रण बोर्ड
Central Pollution Control Board
क्षेत्रीय निदेशालय, पुणे / Regional Directorate, Pune
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार
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Sr. No. 110, Hirabai Dhankude Hall, Baner Road, Baner, Pune - 411 045



VERIFICATION

Verified at Pune on this day.... of 23rd August, 2025 that the contents of the above reply are correct and true on the basis of the record of the cases as mentioned in the day-to-day affairs of the CPCB.

Nothing has been concealed therefrom or mis-stated.



Pratik B.

DEPONENT – Respondent No.01

प्रतिक भरणे / Pratik Bharne

क्षेत्रीय निदेशक / Regional Director
केन्द्रीय प्रदूषण नियंत्रण बोर्ड
Central Pollution Control Board
क्षेत्रीय निदेशालय, पुणे / Regional Directorate, Pune
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Sr. No. 110, Hirabai Dhankude Hall, Baner Road, Baner, Pune - 411 045

COUNSEL for Respondent No. 01



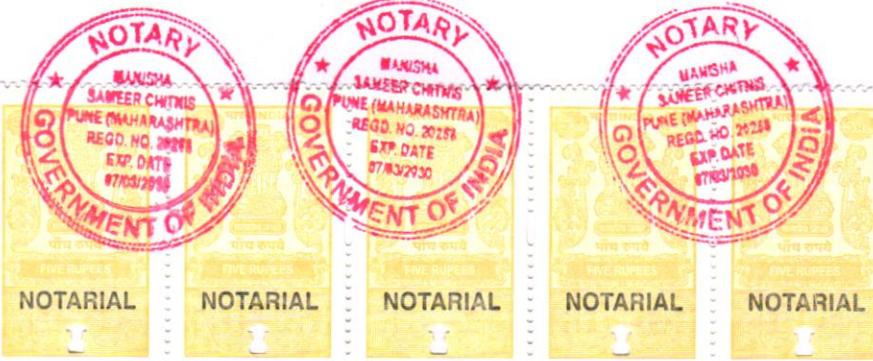
Noted & Registered
At.Sr.No. 524 / 2025

BEFORE ME

Manisha

MANISHA SAMEER CHITNIS
NOTARY
GOVERNMENT OF INDIA

23 AUG 2025



Item No. 02

Court No. 1

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

Original Application No. 593/2017
(arising from W.P. (Civil) No. 375/2012 on the file of the Hon'ble
Supreme Court)

Paryavaran Suraksha Samiti & Anr.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 28.08.2019

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

For Respondent (s): Mr. Shlok Chandra, Advocate for CPCB

ORDER

**Issue for consideration- Remedial action against water
pollution in absence of ETPs/CETPs/STPs**

- The issue for consideration is establishment and functioning of ETPs/CETPs/STPs to prevent untreated sewage/effluents being discharged in water bodies, including rivers and canals meeting such rivers or otherwise. The magnitude of the problem is well acknowledged. In the year 1962 GoI set up a Committee for prevention of water pollution. The recommendations led to enactment of the Water (Prevention and Control of Pollution) Act, 1974 ("Water Act") in pursuance of Article 252 of the Constitution. The Water Act provides for the constitution of a Central Board and

State Boards/Committees. No polluted matter can be discharged into a stream or well or on land, and no industry, operation or process can be established and no out-let for discharge of sewage used without consent of the State Board. The Water Act provides powers to give directions for closing any such activity as well as for prosecution. Power to give directions implicitly includes recovery of compensation on 'Polluter Pays' principle.

2. In spite of above statutory regime we are faced with serious problem of water pollution. The Hon'ble Supreme Court noted¹ that the water pollution caused serious diseases, including Cholera and Typhoid. Water pollution could not be ignored and adequate measures for prevention and control are necessary. Polluting industries were directed to be shifted on 'Precautionary' principle. It is not necessary to refer to all the judgments of the Hon'ble Supreme Court dealing with the significance of water and need to prevent pollution of water. We may only refer to the observations that everyone has right to have access to drinking water in quantum and equality equal to the basic needs. This is fundamental to life and part of Article 21.²

3. As per CPCB's report 2016³, it has been estimated that 61,948 million liters per day (mld) sewage is generated from the urban areas of which treatment capacity of 23,277 mld is currently

¹ (1988) 1 SCC 471

² APPCB vs. Prof. M.V Nayudu (2001) 2 SCC 62 at para 3, 4, State of Orissa Vs. Government of India (2009) 5 SCC 492, at para 58 "Rivers in India are drying up, groundwater is being rapidly depleted, and canals are polluted. Yamuna in Delhi looks like a black drain. Several perennial rivers like Ganga and Brahmaputra are rapidly becoming seasonal. Rivers are dying or declining, and aquifers are getting overpumped. Industries, hotels, etc. are pumping out groundwater at an alarming rate, causing sharp decline in the groundwater levels."

³ http://www.sulabhenvi.nic.in/Database/STST_wastewater_2090.aspx July 16, updated on December 6, 2016

existent in India. Thereby the deficit in capacity of waste treatment is of 62%. There is no data available with regard to generation of sewage in the rural areas.

4. We may note that discharge of untreated effluents and sewage is the principal cause of water pollution in the country as noted in cases relating to pollution of rivers.⁴ Similarly, in the case of 100 polluted industrial clusters being dealt with by this Tribunal⁵, water pollution is one of the factors polluting the said industrial clusters. As already noted, official data of CPCB is to the effect that 351 river stretches in the Country are polluted. The Tribunal held that remedial action for restoration of the said river stretches is necessary.⁶ In the said order, it was observed:

“As already noted, well known causes of pollution of rivers are dumping of untreated sewage and industrial waste, garbage, plastic waste, e-waste, bio-medical waste, municipal solid waste, diversion of river waters, encroachments of catchment areas and floodplains, over drawl of groundwater, river bank erosion on account of illegal sand mining. In spite of directions to install Effluent Treatment Plants (ETPs), Common Effluent Treatment Plants (CETPs), Sewage Treatment Plants (STPs), and adopting other anti-pollution measures, satisfactory situation has not been achieved. Tough governance is the need of the hour. If pollution does not stop, the industry has to be stopped. If sewage dumping does not stop, local bodies have to be made accountable and their heads are to be prosecuted. Steps have to be taken for awareness and public involvement.”

⁴ O.A No. 673 of 2018 this Tribunal is considering remedial action to rejuvenate 351 polluted river stretches. Therein, other cases of river pollution are mentioned thus “This Tribunal also considered the issue of pollution of river Yamuna, in Manoj Mishra Vs. Union of India, river Ganga in M.C. Mehta Vs. Union of India, river Ramganga which is a tributary of river Ganga in Mahendra Pandey Vs. Union of India & Ors., rivers Sutlej and Beas in the case of Sobha Singh & Ors. Vs. State of Punjab & Ors., river Son in Nityanand Mishra Vs. State of M.P. & Ors., river Ghaggar in Stench Grips Mansa’s Sacred Ghaggar River (Suo-Moto Case)”, river Hindon in Doaba Paryavaran Samiti Vs. State of U.P. & Ors., river Kasardi in Arvind Pundalik Mhatre Vs. Ministry of Environment, Forest and Climate Change & Ors., River Ami, Tapti, Rohani and Ramgarh lake in Meera Shukla Vs. Municipal Corporation, Gorakhpur & Ors., rivers Chenab and Tawi in the case of Amresh Singh Vs. Union of India & Ors. and Subarnarekha in Sudarsan Das Vs. State of West Bengal & Ors. and issued directions from time to time”

⁵ O.A No. 1038/2018

⁶ O. A No.673/2018, order dated 08.04.2019

5. All the States and UTs where polluted river stretches exist are required to constitute River Rejuvenation Committees to prepare actions plans for restoration (which are to be reviewed by the highest authority in the States, i.e Chief Secretary) to be monitored by CPCB and thereafter to be further monitored by this Tribunal. Accordingly, the action plans have been prepared which broadly envisage action to prevent discharge of untreated effluent/sewage. The same are being monitored by the CPCB and by this Tribunal and the matter is now listed for hearing on 29.11.2019. In O.A 606/2018 while dealing with the compliance of Solid Waste Management Rules, 2016, this Tribunal vide order dated 16.01.2019 directed personal appearance of all the Chief Secretaries with their monitoring reports on major environment issues including the rejuvenation of polluted river stretches. The Chief Secretaries of all States/UTs have accordingly appeared and furnished their reports which envisages steps for setting up of ETPs/CETPs/STPs to prevent water pollution. The Chief Secretaries have to appear before this Tribunal with further progress reports on the subjects.

6. Further, control of pollution of river Ganga is being monitored by this Tribunal in O. A No. 200/2014 after transfer from the Hon'ble Supreme Court. Therein timelines have been prescribed to the effect that STPs be set up in time bound manner and no a drop of pollution be discharged in the river. The Tribunal observed

“Bioremediation and/or phytoremediation or any other remediation measures may start as an interim measure positively from 01.11.2019, failing which the State may be liable to pay compensation of Rs. 5 Lakhs per month per drain to be deposited with the CPCB. This however, is not to be taken as an excuse to

delay the installation of STPs. For delay of the work, the Chief Secretary must identify the officers responsible and assign specific responsibilities. Wherever there are violations, adverse entries in the ACRs must be made in respect of such identified officers. For delay in setting up of STPs and sewerage network beyond prescribed timelines, State may be liable to pay Rs. 10 Lakhs per month per STP and its network. It will be open to the State to recover the said amount from the erring officers/contractors.

With regard to works under construction, after 01.07.2020, direction for payment of environmental compensation of Rs. 10 lakhs per month to CPCB for discharging untreated sewage in any drain connected to river Ganga or its tributaries and Rs. 10 lakhs per month to CPCB per incomplete STP and its sewerage network will apply. Further with regard to the sectors where STP and sewerage network works have not yet started, the State has to pay an Environmental Compensation of Rs. 10 lakhs per month after 31.12.2020. The NMCG will also be equally liable for its failure to the extent of 50% of the amount to be paid. Till such compliance, bioremediation or any other appropriate interim measure may start from 01.11.2019.”

Background of the present case before this Tribunal

7. The Hon'ble Supreme Court vide order dated 22.02.2017 in *Paryavaran Suraksha Samiti Vs. Union of India*⁷ transferred the matter for monitoring by this Tribunal in the light of the directions of the Hon'ble Supreme Court requiring establishment and functioning of requisite ETPs/CETPs/STPs and in default to close industrial activities discharging effluents without treatment and to take action against local bodies for failing to install STPs and discharging sewage without treatment. Some of the observations in the judgment of the Hon'ble Supreme Court are:

“ 7. Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants. We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50%, that of the State Government concerned (including the Union Territory concerned) is 25%. The balance 25%, is to be arranged by way of loans from banks. The above loans, are to be repaid, by the industrial areas, and/or

⁷ (2017) 5 SCC 326

industrial clusters. We are also informed that the setting up of a common effluent treatment plant, would ordinarily take approximately two years (in cases where the process has yet to be commenced). The reason for the above prolonged period, for setting up “common effluent treatment plants”, according to the learned counsel, is not only financial, but also, the requirement of land acquisition, for the same.

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10. Given the responsibility vested in municipalities under Article 243-W of the Constitution, as also, in Item 6 of Schedule XII, wherein the aforesaid obligation, pointedly extends to “public health, sanitation conservancy and solid waste management”, we are of the view that the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). Given the aforesaid responsibility, the municipalities (and/or local bodies) concerned, cannot be permitted to shy away from discharging this onerous duty. In case there are further financial constraints, the remedy lies in Articles 243-X and 243-Y of the Constitution. It will be open to the municipalities (and/or local bodies) concerned, to evolve norms to recover funds, for the purpose of generating finances to install and run all the “common effluent treatment plants”, within the purview of the provisions referred to hereinabove. Needless to mention that such norms as may be evolved for generating financial resources, may include all or any of the commercial, industrial and domestic beneficiaries, of the facility. The process of evolving the above norms, shall be supervised by the State Government (Union Territory) concerned, through the Secretaries, Urban Development and Local Bodies, respectively (depending on the location of the respective common effluent treatment plant). **The norms for generating funds for setting up and/or operating the “common effluent treatment plant” shall be finalised, on or before 31-3-2017, so as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement of the next financial year, the State Governments (or the Union Territories) concerned, shall cater to the financial requirements, of running the “common effluent treatment plants”, which are presently dysfunctional, from their own financial resources.**
11. Just in the manner suggested hereinabove, for the purpose of setting up of “common effluent treatment plants”, the State Governments concerned (including, the Union Territories concerned) will prioritise such cities, towns and villages, which discharge **industrial pollutants and sewer, directly into rivers and water bodies.**

12. We are of the view that in the manner suggested above, **the malady of sewer treatment, should also be dealt with simultaneously.** We, therefore, hereby direct that “sewage treatment plants” shall also be set up and made functional, within the timelines and the format, expressed hereinabove.

13. **We are of the view that mere directions are inconsequential, unless a rigid implementation mechanism is laid down.** We, therefore, hereby provide that the directions pertaining to continuation of industrial activity only when there is in place a functional “primary effluent treatment plants”, and the setting up of functional “common effluent treatment plants” within the timelines, expressed above, shall be of the Member Secretaries of the Pollution Control Boards concerned. **The Secretary of the Department of Environment, of the State Government concerned (and the Union Territory concerned), shall be answerable in case of default.** The Secretaries to the Government concerned shall be responsible for monitoring the progress and issuing necessary directions to the Pollution Control Board concerned, as may be required, for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data and shall furnish the same to the Bench of the jurisdictional National Green Tribunal.

14. To supervise complaints of non-implementation of the instant directions, the Benches concerned of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The abovementioned case files will be listed periodically. **The Pollution Control Board concerned is also hereby directed to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters.”**

8. Accordingly, on 25.05.2017, notice was issued to the Central Pollution Control Board (CPCB), the State Pollution Control Boards (SPCBs)/ Pollution Control Committees (PCCs) and the Ministry of Environment, Forest and Climate Change (MoEF&CC). They filed their status reports showing gaps in waste generated and treatment capacity. It was further stated that action had been initiated to remedy the situation. After considering the status

report, the Tribunal, vide orders dated 04.07.2017, 18.09.2017 and 11.10.2017, sought information about the steps taken by the SPCBs/PCCs.

9. Vide order dated 03.08.2018, the matter was reviewed and after noting that in absence of functional ETPs/CETPs/STPs, untreated effluents were being discharged in water bodies leading to contamination of surface and ground water which causes various diseases and also has adverse consequence on aquatic organism due to decreased level of oxygen. The Tribunal directed the CPCB to prepare an action plan. Direction was also given for monitoring by a Committee of two officers – one each representing MoEF&CC and CPCB at least once in every month. CPCB was required to place the progress report every three months on the website and take penal action for failure by way of recovery of compensation for damage to the environment, apart from other steps.
10. Vide order dated 19.02.2019, after considering the status report furnished by the CPCB, based on the reports furnished by the States/UTs, this Tribunal after referring to orders passed in O.A NO. 673/2018 for remedial action in respect of 351 polluted river stretches, which had direct nexus with the steps for ETPs/CETPs/STPs and order passed in O.A No. 606/2018 requiring Chief Secretaries to monitor progress *inter alia* on the subject of control of pollution on the river stretches, directed that the Chief Secretaries may look into the subject of setting up and proper functioning of ETPs/CETPs/STPs in their respective States/UTs. Further direction issued was to prepare a report on

assessment of compensation on account of discharge of untreated sewage and dumping of solid waste, loss to ecological services due to illegal mining, deforestation, after taking inputs from expert bodies. The Tribunal also directed the CPCB to compile its monitoring report with regard to 97 CETPs (assuming the total number of CETPs in the country to be 97) installed in different States. CPCB was also directed to furnish its report in *O.A. No. 95/2018, Aryavart Foundation Vs. M/s Vapi Green Enviro Ltd. & Ors.* which concerned the issue of inadequate functioning CETP leading to water pollution.

Reports filed by the CPCB

11. Accordingly, two reports filed by CPCB, have been put up for consideration today :-
 - (i) Report dated 30.05.2019, updated on 19.07.2019, giving status of setting up of ETPs/CETPs/STPs and methodology for assessing environment compensation for discharge of pollutants in water bodies.
 - (ii) Report dated 14.08.2019 with regard to monitoring of CETPs.
12. We proceed to consider the above reports.

I. 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:

1.5.1 To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, band c, Environmental Compensation may be calculated based on the formula "EC= Pl x N x Rx S x 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 and another v/s Union of India and others {Writ Petition {Civil} No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent

treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.

1.5.4 EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules.

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 Cost Component)	Min. 2000	Min. 1000	Min. 100

recommended by the Committee (Lacs Rs.)	Max. 20000	Max. 10000	Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5

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

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

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

BIS 15-1172:1993 suggests that for communities with population above 100,000, minimum of 150 to 200 lpcd of water demand is to be supplied. Further, 85% of return rate (CPHEEO Manual on Sewerage and Sewage Treatment Systems, 2013), may be considered for calculation of total sewage generation in a city. CPCB Report on "Performance evaluation of sewage treatment plants under NRCD, 2013", describes that the capital cost for 1 MLD STP ranges from 0.63 Cr. to 3 Cr. and O&M cost is around Rs. 30,000 per month. After detail deliberations, the Committee suggested to assume capital cost for STPs as Rs. 1.75 Cr/MLD (marginal average cost). Further, expected cost for conveyance system is assumed as Rs. 5.55 Cr./MLD (marginal average cost) and annual O&M cost as 10% of the combined capital cost. Population of the city may be taken as per the latest Census of India. Based on these assumptions, Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

$$\text{EC} = \text{Capital Cost Factor} \times [\text{Marginal Average Capital Cost for Treatment Facility} \times (\text{Total$$

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

Alternatively;

EC (Lacs Rs.)= [17.S{Total Sewage Generation - Installed Treatment Capacity)+ 55.S{Total Sewage Generation-Operational Capacity}] + 0.2(Sewage Generation-Operational Capacity) x N + Marginal Cost of Environmental Externality x (Total Sewage Generation-Operational Capacity) X N

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

Quantity of Sewage is in MLD

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

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Sewage Generation (MLD) (as per the latest data available with CPCB)	4195	381	486	37
Installed Treatment Capacity (MLD) (as per the latest data available with CPCB)	2500	220	404	45.5
Operational Capacity (MLD) (as per the latest data available with CPCB)	1900	140	300	24.5
Treatment Capacity Gap (MID)	2295	241	186	12.5
Calculated EC (capital cost component for STPs) in Lacs Rs.	29662.50	2817.50	1435.00	0.00

Calculated EC (capital cost component for Conveyance System) in Lacs. Rs.	127372.50	13375.50	10323.00	693.75
Calculated EC (Total capital cost component) in Lacs Rs.	157035.00	16193.00	11758.00	693.75
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 2000 Max. 20000	Min. 1000 Max. 10000	Min. 100 Max. 1000	Min. 100 Max. 1000
Final EC (Total Capital Cost Component) in Lacs Rs.	20000.00	10000.00	1000.00	693.75
Calculated EC (O&M Component in Lacs Rs./day	459.00	48.20	37.20	2.50
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5	Min. 0.5 Max. 5
Final EC (O&M Component) in Lacs. Rs./Day	20.00	10.00	5.00	2.50
Calculated Environmental Externality (Lacs Rs .Per Day)	2.0655	0.2049	0.1395	0.0094
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)	Min. 0.60 Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.05 Max. 0.10	Min. 0.05 Max. 0.10
Final Environmental Externality (Lacs Rs. Per day)	0.80	0.25	0.10	0.05

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

Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

EC = Capital Cost Factor x Marginal Average Cost for Waste Management x (Per day waste generation-Per

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

Where;

Waste Quantity in tons per day (TPD)

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

Simplifying;

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

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

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Waste Generation (kg. per person per day)	0.6	0.5	0.4	0.4
Waste Generation (TPD)	9809.90	880.14	350.79	200.31
Waste Disposal as per Rules (TPD) (assumed as 25% of waste generation for sample calculation)	2452.47	220.04	87.70	50.08
Waste Management Capacity Gap (TPD)	7357.42	660.11	263.09	150.23
Calculated EC (capital cost component) in Lacs. Rs.	17657.82	1584.26	631.42	360.56
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000	Min. 100 Max. 1000

Final EC (capital cost component) in Lacs. Rs.	10000.00	1584.26	631.42	360.56
Calculated EC (O&M Component) in Lacs. Rs./Day	147.15	13.20	5.26	3.00
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./Day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0	Min. 0.1 Max. 1.0
Final EC (O&M Component) in Lacs. Rs./Day	10.00	5.00	1.00	1.00
Calculated Environmental Externality (Lacs Rs. Per Day)	2.58	0.18	0.03	0.02
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)	Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.01 Max. 0.05	Min. 0.01 Max. 0.05
Final Environmental Externality (Lacs Rs. per day)	0.80	0.25	0.03	0.02

Compensation in Case of Illegal Extraction of Ground Water

4.5 Formula for Environmental Compensation for illegal extraction of ground water

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

$$EC_{Gw} = \text{Water Consumption per Day} \times \text{No. of Days} \times \text{Environmental Compensation Rate for illegal extraction of ground water } \{ECR_{Gw}\}$$

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

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

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

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

4.6 Environmental Compensation Rate (ECR_{Gw}) for illegal use of Ground Water:

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

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

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

4.6.1 ECR_{Gw} for Drinking and Domestic use:

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

SI. No.	Area Category	Water Consumption (m^3/day)			
		<2	2 to <5	5 to <25	25 & above
		Environmental Compensation Rate (ECR_{Gw}) in Rs./m^3			
1	Safe	4	6	8	10
2	Semi Critical	12	14	16	20
3	Critical	22	24	26	30
4	Over-Exploited	32	34	36	40

Minimum EC_{Gw} =Rs 10,000/- (for households) and Rs. 50,000 (for institutional activity, commercial complexes, townships etc.)

4.6.2 ECR_{Gw} for Packaged drinking water units:

SI. No.	Area Category	Water Consumption (m^3/day)			
		<200	200 to <1000	1000 to <5000	5000 &
		Environmental Compensation Rate (ECR_{Gw}) in Rs./m^3			
1	Safe	12	18	24	30
2	Semi critical	24	36	48	60
3	Critical	36	48	66	90
4	Over-exploited	48	72	96	120

Minimum EC_{Gw} =Rs 1,00,000/-

4.6.3 ECR_{Gw} for Mining, Infrastructure and Dewatering Projects

SI. No	Area Category	Water Consumption (m^3/day)			
		<200	200 to <1000	1000 to <5000	5000 &
		Environmental Compensation Rate (ECR_{Gw}) in Rs./ m^3			
1	Safe	15	21	30	40
2	Semi critical	30	45	60	75
3	Critical	45	60	85	115
4	Over-exploited	60	90	120	150

Minimum EC_{Gw} =Rs 1,00,000/-

4.6.4 ECR_{Gw} for Industrial Units:

SI. No.	Area Category	Water Consumption (m^3/day)			
		<200	200 to <1000	1000 to <5000	5000 &
		Environmental Compensation Rate (ECR_{Gw}) in			
1	Safe	20	30	40	50
2	Semi critical	40	60	80	100
3	Critical	60	80	110	150
4	Over-exploited	80	120	160	200

Minimum EC_{Gw} = Rs 1,00,000/-

4.8 Recommendations

The committee has given following recommendations:

- The minimum Environmental Compensation for illegal extraction of ground water for domestic purpose will be Rs. 10,000, for institutional/commercial use will be 50,000 and for other uses will be 1,00,000.
- In case of fixation of liability, it always lies with current owner of the premises where illegal extraction is taking place.
- Time duration may be assumed to be one year in case where no evidence for period of installation of bore well could be established.
- For Drinking and Domestic use, where metering is not present but storage tank facility is available, minimum water consumption per day may be assumed as similar to the storage capacity of the tank.
- For industrial ground water use, where metering is not available, water consumption may be assumed as per the consent conditions. Further, where in case industry is operating without consent, water consumption may be calculated based on the plant capacity (on the

recommendation of SPCB/PCC, if required). SPCB/PCC may bring the issue of illegal extraction of ground water in industries in to the notice of CGWA for appropriate action by CGWA.

- Authorities assigned for levy EC and taking penal action are listed below:

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

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

Discussion on the report dated 30.05.2019 updated on 19.07.2019

15. It is clear from the order of the Hon'ble Supreme Court⁸ that the responsibility of operating STPs under Article 243W and item 6 of Schedule XII to the Constitution is of local bodies who have to evolve norms to recover funds for the purpose which is to be supervised by the States/UTs. The norms were to be finalized upto 31.03.2017 to be implemented from the next year, i.e 01.04.2018. In absence thereof, the States/UTs have to cater to the financial requirement from its own resources. The States/UTs are to prioritize the cities, towns, villages discharging effluents/sewage directly into the water bodies. Industrial activity without proper treatment plants (ETPs and CETPs) is not to be allowed by the State PCBs and the Secretaries, Environment of the States/UTs are

⁸ Para 10-13 in *Paryavaran Suraksha Samiti Vs. Union of India, Supra*

to be answerable. Thus, the source for financial resources for the STPs, stands finalized under the binding judgment of the Hon'ble Supreme Court. Authorities and persons accountable are identified. Rigid implementation has been laid down. This Tribunal has been required to monitor compliance of the directions and timelines.

16. It is in this background that the present report needs to be appraised and further directions given. As regards the Environmental compensation regime fixed for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. With regard to setting up of STPs, while we appreciate the extensive work of the CPCB based on information furnished by States/UTs, the challenge remains about verification of the said data on the one hand and analysis of the steps taken and required on the other. There is already a database available with the CPCB with regard to ETPs, CETPs, STPs, MSW facilities, Legacy Waste sites. This needs to be collated and river basinwise macro picture needs to be prepared by the CPCB in terms of need for interventions, existing infrastructure and gaps therein. The States have given timelines which need to be effectively monitored both by the CPCB and the Chief Secretaries in terms of its execution.
17. As already noted, prevention of pollution of water is directly linked to access to potable water as well as food safety. Restoration of pristine glory of rivers is also of cultural and ecological significance. This necessitates effective steps to ensure that no pollution is

discharged in water bodies. Doing so is a criminal offence under the Water Act and is harmful to the environment and public health. 'Precautionary' principle of environmental law is to be enforced. Thus, the mandate of law is that there must be 100% treatment of sewage as well as trade effluents. This Tribunal has already directed in the case of river Ganga that timelines laid down therein be adhered to for setting up of STPs and till then, interim measures be taken for treatment of sewage. There is no reason why this direction be not followed, so as to control pollution of all the river stretches in the country. The issue of ETPs/CETPs is being dealt with by an appropriate action against polluting industries. Setting up of STPs and MSW facilities is the responsibility of Local Bodies and in case of their default, of the States. Their failure on the subject has to be adequately monitored. Recovery of compensation on 'Polluter Pays' principle is a part of enforcement strategy but not a substitute for compliance. It is thus necessary to issue directions to all the States/UTs to enforce the compensation regime, latest with effect from 01.04.2020. We may not be taken to be condoning any past violations. The States/UTs have to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies. On failure of the States/UTs, the States/UTs themselves have to pay the requisite amount of compensation to be deposited with the CPCB for restoration of environment. The Chief Secretaries of all the States may furnish their respective compliance reports as per directions already issued in O.A. No. 606/2018.

II. Report dated 14.08.2019 with regard to monitoring of CETPs

18. The Committee inspected 127 CETPs in 14 States. Figure of CETP assumed to be 97 was not correct. 66 CETPs were found to be non-compliant. CPCB directed SPCBs to take following steps:

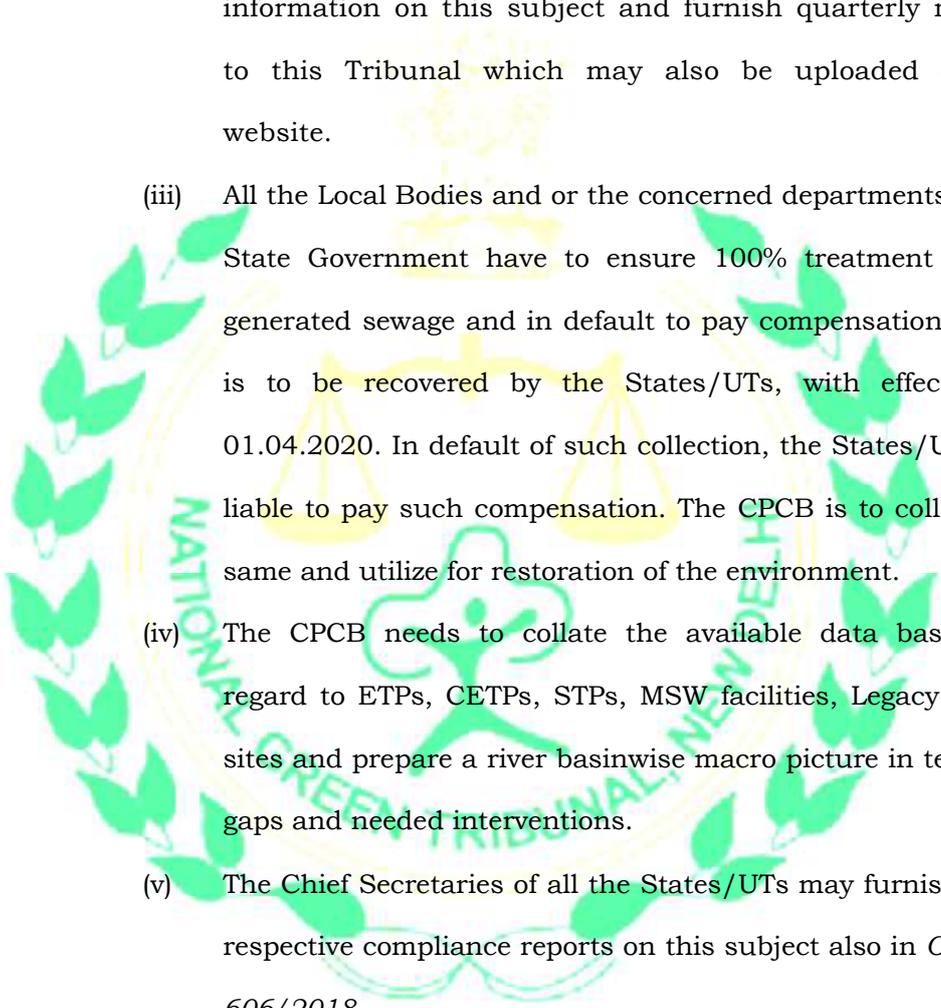
- “1. SPCBs shall direct non-complying CETPs to take immediate corrective actions to comply with the environmental standards.*
- 2. CETP should be directed to take action as per the recommendations provided at Annexure A-N within a time frame.*
- 3. In case of non-complying CETPs, action as deemed fit including levying of environmental compensation may be taken.*
- 4. In case, OCEMS are not connected with CPCB & SPCB servers, ensure a robust system of physical inspections to verify compliance by drawing samples.”*

Discussion on the report dated 14.08.2019

19. We accept the recommendation of the CPCB and direct the Chief Secretaries, State Governments, Union Territories and the SPCBs/PCCs to take further action accordingly and furnish an action taken report accordingly. The CPCB to meanwhile compile and collate information with regard to ETPs, CETPs, STPs, MSW Facilities, Legacy Waste dump sites and complete the pending task on the subject before the next date and furnish a report.
20. The environmental compensation regime for CETP not meeting the prescribed norms need to be evolved by the CPCB.

Directions

21. We may now sum up our 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 non-compliant 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*.

List for further consideration on 21.05.2020, unless required earlier. A copy of this order be placed on the file of O.A. No. 606/2018 relating to all States/UTs and be sent to Chief Secretaries of all States/UTs, Secretary MoEF&CC, Secretary Jal Shakti and Secretary, MoHUA.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

August 28, 2019
Original Application No. 593/2017
(W.P.(Civil) No. 375/2012)
DV



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 for filling up of appropriate areas and for construction 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

⁵Para 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • All public and commercial areas to have twice daily sweeping, including night sweeping and residential areas to have daily sweeping.
7	Waste Processing <ul style="list-style-type: none"> • Wet Waste • Dry Waste • MRF Facility 	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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.⁹The 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

¹¹Para 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.

¹³Paras 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-mumbai-worse-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 19.9.2018 of this Tribunal in O.A No. 606/2018 to the effect that the non-official Chairperson will be paid 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

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- 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. PRESENT PROCEEDINGS:

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 23.04.2019 on 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.²⁷As 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. Sarvabhoom 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	<p style="text-align: center;">ETPs</p> <p>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</p> <p style="text-align: center;">STPs</p> <p>No. of STPs : 2586 No. of STPs complying : 2527 No. of STPs non-complying: 59 No. of under construction/proposed STPs : 85</p> <p style="text-align: center;">CETPs</p> <p>No. of CETPs :8 No. of CETPs complying : 7 No. of CETPs non-complying:1 No under construction/proposed CETPs in the State: 4</p>

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.

³¹http://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, 2016.³²In 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

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 in spite 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, Env't. 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.

³⁸para 28 of the order wherein the Tribunal directed carrying capacity assessment to regulate activities violating environmental laws.

been directed to prepare such program³⁹; 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



**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Appeal No. 33/2020 (WZ)

IN THE MATTER OF:

1. **Sadashivrao Mandlik Kagal Taluka Sahakari Sakhar Karkhana Ltd.**
Sadashivnagar, Hamidwada-kaulage,
Taluka-Kagal, Dist. Kolhapur,
Maharashtra-416235

.....Appellant(s)

Versus

1. **The Chairman**
Central Pollution Control Board
Parivesh Bhavan, East Arjun Nagar,
Shahdara, Delhi-110032.
2. **The Member Secretary**
Maharashtra Pollution Control Board
2nd, 3rd & 4th Floor, Opp. Cine Planet
Near Sion Circle, Sion East, Mumbai — 400022.
3. **The Regional Director (West)**
Central Pollution Control Board
Parivesh Bhavan, Opp. VMC Ward Office No. 10
Subhanpura Vadodara - 390023 (Gujarat).
4. **The District Magistrate**
Collectorate Office,
Dist. Kolhapur
Maharashtra — 414001.
5. **The In-Charge (CP Division)**
Ministry of Environment Forests and Climate Change
Prithvi Block, Indira Paryavaran Bhavan
Jorbagh Road, New Delhi — 110003

.....Respondent(s)

Counsel for Appellant(s):

Mr. Amarjeet Kumar, Advocate

Counsel for Respondent(s):

Mr. Aniruddha Kulkarni, Advocate for R-1(CPCB)

Mr. Vilas Jadhav, Advocate for R-2 MPCB
Mr. D. M. Gupte, Advocate for MoEF &CC(R-5)

PRESENT:

Hon'ble Mr. Justice Dinesh Kumar Singh (Judicial Member)
Hon'ble Dr. Vijay Kulkarni (Expert Member)

Judgment Reserved on: 18.07.2022
Pronounced on: 03.08.2022

JUDGMENT

1. The present Appeal has been filed by the Appellant under Section 18(1) read with Section 16 of the National Green Tribunal Act, 2010 against the order dated 20.12.2019 passed by Respondent No.1 whereby Appellant was directed to deposit Rs. 6,00,000/- (Rupees Six Lakhs Only) as Environmental Compensation in the account of the Central Pollution Control Board (CPCB)/Respondent No.1.
2. In brief the facts are that the Appellant which is a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 has members who are farmers who grow and supply sugarcane to the Appellant.
3. The Appellant had obtained Consent to Operate (CTO) from Respondent No.2/Maharashtra Pollution Control Board (MPCB) which was renewed from time to time, for manufacturing the products,- like Sugar, Bagasse, Press Mud etc.
4. On 24.07.2015, Respondent No.1 issued show cause notice to the Appellant on account of non-installation of Online Continuous Effluent Monitoring System (in short 'OCEMS').
5. By directions dated 22.08.2016, the Respondent No. 1 directed the Appellant not to resume their manufacturing operations till installation and commissioning of OCEMS and transmission of data to SPCB/PCC and CPCB.

6. The Appellant duly got the OCEMS system installed in Appellant's Unit and connectivity with the CPCB servers was established at least, by 28.10.2016 (well before resuming the operations of the Appellant's unit). Upon realizing that OCEMS was successfully installed and commissioned by the start of the crushing season, the Appellant took necessary steps towards resuming its operations (crushing), including procurement of sugar cane for the crushing season 2016-2017.

7. To the utter dismay of the Appellant, the internet services of the BSNL got disputed, at least, as on 05.11.2016, on account of which data from the OCEMS could not be transferred, meaning thereby connectivity of the OCEMS could not be established with the CPCB servers by the Appellant's Unit. Despite its best efforts towards re-establishing of internet services, the internet services could not be resumed which is evident from a letter from BSNL.

8. The Appellant's Unit was forced to initiate its crushing operations on 08.11.2016, as necessary steps by it had already been taken. The internet service by BSNL was resumed on 25.11.2016, immediately, thereafter, the Appellant's Unit took all necessary steps to establish transmission of OCEMS data to the server(s) of Respondent No. 1. The IT team of the Respondent No. 1 verified successful transmission of the OCEMS data, at least, on 28.11.2016, as it is evident from the impugned directions/order. In the meantime, the Maharashtra Pollution Control Board/Respondent No. 2 (MPCB), visited the Appellant's Unit on 26.11.2016 (also on 28.12.2016 and 05.01.2017) and the reports issued by them clearly indicated that the Appellant's Unit was not causing any pollution to the environment and that there had been successful installation/commissioning of the OCEMS in the Appellant's Unit as it is evident from a report dated 28.12.2016.

9. Vide letter dated 05.08.2017, Appellant requested Respondent No.1 to revoke the closure directions drawing attention towards the fact that the Appellant had already complied with the directions of Respondent No. 1 with regards to installation and commissioning of OCEMS. Based on the compliance by the Appellant and after successful verification by IT Division of Respondent No.1, earlier closure direction was revoked vide letter dated 14.08.2017. Thereafter, Respondent No.1 issued directions under Section 5 of the Environmental (Protection) Act, 1986 (in short EPA) to the Appellant by notice dated 28.02.2019, directing the Appellant to deposit Rs. 27,90,000/- (Rupees Twenty Seven Lakhs and Ninety Thousand only) as environmental compensation towards non-compliance of the directions of Respondent No. 1 during the period 08.11.2016 to 08.02.2017.

10. The Appellant responded by letter dated 09.04.2019, mentioning correct facts and requested Respondent No.2 to withdraw their order for levy of environmental compensation and also inviting attention of Respondent No.1 with regards to the difficulties and losses being faced by the sugar industry in general, and financial position of the Appellant's Unit due to multiple reasons.

11. The Respondent No.1, after giving personal hearing to the Appellant passed amended order on 20.12.2019 (Impugned herein) directing the Appellant to deposit the sum of Rs. 6,00,000/- as environmental compensation for non-compliance of the directions of Respondent No. 1 during the period 08.11.2016 to 28.11.2016 (20 days).

12. It is further submitted that the impugned order is arbitrary because of non-observance of the fact that the aforesaid closure

notice only directed the Appellant “not to resume its operations till installation and commissioning of OCEMS and transmission of data with Respondent Nos. 1 and 2” because the Appellant had already installed and commissioned the online monitoring system (OCEMS) in their factory’s Unit well before the resumption of its operation and these facts were duly conveyed to the Respondent No. 1 from time to time. The Respondent No. 1 ought to have revoked their closure directions without waiting for any further response from the Appellant. The withdrawal process in-fact, has, been unduly delayed by the Respondent No. 1 to the detriment of the Appellant.

13. In view of the compliance by the Appellant regarding installation and commissioning of online monitoring system (OCEMS) in the year 2016 itself, there was no occasion or reason for the Respondent No. 1 to issue closure order dated 22.08.2016. The closure order never directed the Appellant to close down their unit.

14. Further, it is submitted that levy of penalty in form of the environmental compensation is based on the Principle of “Polluter Pays”, which makes it crystal clear-that the actual pollution to the environment is *sine qua non* for imposition of environmental compensation and in the present case there is no evidence led from the side of the Respondent showing any actual pollution caused to the environment by the Unit of the Appellant. The Respondent No.1 failed to take into consideration the factors between 08.11.2016 to 28.11.2016, were not in control of the Appellant that led to the alleged contravention of the directions, as it was the internet services glitch which happened on the part of the BSNL. According to the closure notice dated 22.08.2016 direction was “not to resume its operations till installation and commissioning of online monitoring system and networking of data with Respondent No. 1 and 2” and it remains undisputed that the Appellant had already installed and

commissioned the online monitoring system and networking of data with Respondent No. 1 and 2. Hence, the impugned order be set-aside.

15. In rebuttal, the Respondent Nos. 1 and 3 have stated that IT division of CPCB verified the establishment of initial uninterrupted data connectivity of OCEMS for all the specified parameters from the Appellant's Unit on 28.11.2016 and not on 28.10.2016 as claimed by the Appellant. CPCB has not received any correspondence from the Appellant's Unit regarding interrupted data services from BSNL, hence, reported excuse cannot be considered. The Appellant's Unit should have applied for revocation of closure directions before start of crushing season and not after the end of crushing season.

16. However, after the receipt of the revocation request from the Appellant's Unit vide its letter dated 05.08.2017 and required verification of OCEMS connectivity by IT division, the Answering Respondent issued revocation direction vide letter dated 14.08.2017. It is observed that the Unit had closed its manufacturing operations on 08.02.2017, only after operating it during crushing season 2016-17, which is non-compliance of the closure direction dated 22.08.2016.

17. It is further submitted that EC amount was calculated for a period of 93 days operation against CPCB closure direction during the crushing season 2016-17 as per approved formula. However, at the request of the Appellant's Unit, an opportunity of personal hearing was accorded to him and it was found that the Appellant's Unit had connected the OCEMS to CPCB in mid of crushing season 2016-17. Therefore, the amount only for the period of non-connectivity of OCEMS with CPCB server was reconsidered. IT division had verified that the date of first connectivity of OCEMS data with CPCB server

was 28.11.2016 but the Unit had resumed its manufacturing operations from 08.11.2016, so the EC amount was calculated for the period 08.11.2016 to 28.11.2016 (for 20 days) and the amount of EC was reduced to Rs 6,00,000/-.

18. We have heard the arguments of Learned Counsels for both the parties at length.

19. The Learned Counsel for the Appellant has drawn attention to the notice of Chairman, CPCB issued under Section 5 of the Environment (Protection) Act, 1986 annexed as annexure-III to the reply affidavit and has drawn attention to the last but one paragraph which is quoted herein below:-

“Now, therefore, in view of the above and in exercise of the powers delegated to the Chairman, Central Pollution Control Board under section 5 of the Environment (Protection) Act, 1986, the unit is hereby directed not to resume its manufacturing operations till installation and commissioning of online 24 x 7 monitoring system and data to SPCBs/PCCs and CPCB.”

20. Having pointed it out, it was vehemently argued that nowhere it indicates that the Appellant could not resume the operations without seeking revocation of the said notice because it had permitted resumption of manufacturing operations as soon as the installation and commissioning of online 24x7 monitoring system and data to SPCB/PCC and CPCB was established and in the case in hand, it is apparent that the OCEM system had been installed and therefore, he has not committed any error in resumption of the manufacturing operations.

21. He has drawn attention to the document at page no.31 of the paper book which is annexed as annexure A-2 to the Appeal which is an email in respect of the “CPCB connectivity for Sadashivrao Mandlik

SSK Ltd. is completed” and it was argued that this clearly indicates that on 28.10.2016 OCEMS was established in Appellant’s Unit.

22. Next, he has drawn attention to the Annexure No.A-3 annexed to the Appeal memo which is a letter issued by Junior Landline Officer, Murgud, addressed to the Managing Director of the Appellant’s Unit saying that due to repairing of roads work in the Village Hamidwada from 05.11.2016 to 25.11.2016, the local cable of Hamidwada exchange was disconnected, hence, Appellant’s net services were closed for which apology has been tendered and the connection is reconnected on 26.11.2016. Having drawn attention to this, it is argued that there is no fault on the part of the Appellant, if there is no connectivity of the OCEMS system with the server of CPCB because the fault lies with the BSNL for which he cannot be penalized.

23. From the side of the Respondents, it has been vehemently argued that this evasive plea cannot be taken by the Appellant that the data could not be transmitted to the server of the CPCB/Respondent Nos.2 and 3 because of the internet services having been disrupted because it was bounden duty of the Appellant to establish alternative arrangement of internet connection to transmit the required data.

24. It is further argued that simply establishment of OCEMS was not sufficient because it was bounden duty of the Appellant to ensure that the data was transmitted to the Respondent’s servers which the Appellant failed in ensuring and hence the compensation which has been imposed cannot be set-aside.

25. We during argument also made a query from the Appellant as to why the Appellant could not produce before us the data of the period in question i.e. 08.11.2016 to 28.11.2016 of 20 days which he was supposed to transmit to the Respondents, because a copy of the same ought to have been kept safe with the Appellant for situation like the present one as a proof that the said data did exist and the system was functional.

26. Further, it was also queried as to why, after the internet connection was restored, the entire data of the said period was not transmitted to the Respondents and also in the alternative some individual/officials of the Appellant's Unit could have been sent to the office of the Respondents with the said data immediately after the breakdown of the system, informing about the said data.

27. All these queries could not be answered appropriately and convincingly. Therefore, we are of the view that from the perusal of evidence which has come on record that the Appellant does appear to have failed in its duty to transmit data to the Respondents for the aforesaid period of 20 days and we do not find any infirmity in the impugned order whereby compensation is slapped against the Appellant.

28. Accordingly, this Appeal deserves to be dismissed and accordingly dismissed.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

August 03, 2022.
Appeal No.33/2020 (WZ) JG

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Appeal No.39/2020(WZ)

In the matter of:

SHRI SANT DAMAJI SSK LTD.

A/p Mangalwedha,
Taluk Mangalwedha,
District Solapur
Maharashtra — 413305.

santdamajissk@gmail.com

Appellant(s)

Versus

1. THE MEMBER SECRETARY

Central Pollution Control Board
Parivesh Bhavan, East Arjun Nagar,
Shandara, Delhi-110032.

mscb.cpcb@nic.in

2. THE MEMBER SECRETARY

Maharashtra Pollution Control Board
2nd, 3rd and 4th Floor, Opp. Cine Planet
Near Sion Circle, Sion East,
Mumbai — 400022.

ms@mpcbgov.in

3. THE REGIONAL DIRECTOR (WEST)

Central Pollution Control Board
Parivesh Bhavan, Opp. VMC Ward Office No. 10
Subhanpura Vadodara – 390023.

(Gujarat). brnaidu.cpcb@nic.in

4. THE DISTRICT MAGISTRATE

Collectorate Office, Dist. Solapur
Maharashtra — 414001.

collector.solapur@maharashtra.gov.in

5. THE IN-CHARGE (CP DIVISION)

Ministry of Environment Forests
and Climate Change Prithvi Block,
Prithvi Block, Indira Paryavaran Bhavan
Jorbagh Road, New Delhi — 110003
Hasan-mef@nic.in

Respondent(s)

Counsel For Applicant (s):

Mr. Tarun Khurana, Mr. Tapan
Shah, Mr. Amarjeet Kumar
Advocates

Counsel For Respondent (s)

Mr. Aniruddha Kulkarni,
Advocate for R-1 & 3(CPCB)
Mr. Vilas Jadhav, Advocate for
R- 2 (MPCB)
Mr. D. M. Gupte, Advocate for
R-5 (MoEF&CC)

PRESENT:

CORAM: HON'BLE JUSTICE DINESH KUMAR SINGH, (JUDICIAL MEMBER)

HON'BLE DR. VIJAY KULKARNI, (EXPERT MEMBER)

Reserved on : 12.08.2022
Pronounced on: 17.08.2022

ORDER

1. This Appeal has been preferred against the decision/order dated 17-12-2019 passed by the Respondent No.1- the Central Pollution Control Board (CPCB), whereby Respondent No.1 has directed the Appellant to deposit Environmental Compensation of Rs.18,90,000/- in CPCB's account.

The brief facts of the case are that:

2. The Appellant is a Co-operative Society registered under the provisions of Maharashtra Co-operative Societies Act, 1960, and its members are primarily farmers who grow and supply sugarcane to the Appellant. The Appellant was granted permission to operate industrial unit for manufacturing sugar and other products, as detailed in the Consent to Operate (CTO) by the Maharashtra State Pollution Control Board (MSPCB), which was renewed from time to time and which was for manufacturing the products, namely; Sugar, Bagasse, Press Mud, inter-alia, others. Vide letter dated 24-7-2015, Respondent No. 1 issued a Show Cause Notice to the Appellant on account of non-installation of Online Continuous Effluent Monitoring System (OCEMS). By their direction dated 22-03-2016, Respondent No. 1, directed the Appellant not to resume their manufacturing operations till installation and commissioning of Online Continuous Effluent Monitoring System (OCEMS) and data to SPCBs/PCCs and CPCB.

3. Respondent No. 2-MPCB visited the Appellant's unit on 22-11-2016, 07-12-2016 and 22-11-2017, and collected samples and issued Reports indicating that the unit was not causing any pollution to the environment. Vide letter dated 17-09-2017 the Appellant informed Respondent No. 1 that their unit had purchased the Online Monitoring System and its installation was going on and the connectivity would be established within 15

days. Accordingly, the equipment was supplied, installed and information thereof was sent by the Appellant to Respondent Nos. 1 and 2 along with self-certificate and Manufacturing Report for 2016-2017. The Online System was also linked to the servers of Respondent Nos. 1 and 2. The Appellant informed the Respondent No.1 that their unit would start crushing for the year 2017-2018 by second week of November 2017. The Appellant also registered their units' details on the online portal of Respondent No. 1. Respondent No. 1 by their order dated 30-11-2017, allowed the Appellant to resume their manufacturing operations. Thereafter, Respondent No. 1 issued a Notice dated 18-03-2019 under Section 5 of the Environmental (Protection) Act, directing the Appellant to deposit Rs. 25,80,000/ as Environmental Compensation towards non-compliance of the directions of Respondent No. 1 during the period 11-11-2016 to 13-01-2016 and 09-11-2017 to 30-11-2017. The Appellant by their letters dated 07-04-2019 and 15-05-2019 and by their representation through their Counsel on 02-06-2019 pointed out the correct facts to the Respondent No. 1 and requested them to withdraw their order for levy of Environment Compensation, pointing out therein that the Appellant had already installed Online Monitoring System during 2016-2017, but despite their steps, the supply and delivery of the equipment got delayed for reasons not in control of the Appellant. Further, it was informed

that due to delay, the connectivity could not be established during 2016-2017, and even in 2017-2018 the connectivity was not continuous. It was also informed by the Appellant that their factory was located in a remote village and, as such, they were facing issues of connectivity for transmitting the data. However, the said issue was resolved after installation of new Mobile Tower.

4. The Appellant moved the Appeal before the Tribunal on 11-06-2019 praying to stay the order of Respondent No. 1, whereon the Tribunal was pleased to direct Respondent No. 1 on 30-07-2019 to afford an opportunity of hearing to the Appellant. Accordingly, after hearing the Appellant, Respondent No.1 passed an amended order on 17-12-2019 (impugned herein) directing the Appellant to deposit Rs.18,19,000/- as Environmental Compensation towards non-compliance of the directions for the period 11-11-2016 to 13-01-2016. Therefore, in this Appeal the challenge is made on the ground that Respondent No.1 erred by not observing the fact that in the Closure Notice the direction to the Appellant was “not to resume its operations till installation and commissioning of Online Monitoring System and networking of data with Respondent Nos.1 and 2”, because the Appellant had already installed and commissioned Online Monitoring System (OCEMS) in the factory unit before resuming its operations, which facts were duly conveyed to the Respondent No.1 from

time to time. It is further mentioned that the actual pollution caused to the environment has also not been ascertained and yet the 'Polluter Pays Principle' has been invoked by the Respondents.

REPLY-AFFIDAVIT OF RESPONDENT NO.2-MPCB DATED: 2-11-2020

5. From the side of Respondent No.2-MPCB it is submitted that the direction of closure to the Appellant Industry issued vide letter dated.22-03-2016 is due to no connectivity of Online Monitoring System to the Central Pollution Control Board (CPCB) as well as MPCB servers for the period of 63 days i.e. 11-11-2016 to 13-01-2017, hence the direction is issued to deposit Environmental Compensation of Rs.18,90,000/- vide directions dated.17-12-2019.

COUNTER AFFIDAVIT OF RESPONDNET NOS. 1 AND 3-CPCB DATED 25-11-2020

6. It is submitted in the reply affidavit that Show-cause Notice dated 24-07-2015 was issued to the Appellant to show cause as to why the unit should not be closed when the unit has not complied fully with the directions issued with respect to installation of OCEMS services, but no reply was received from the Appellant's unit. Thereafter, the name of non-complying units, including that of the Appellant were published in National

daily newspapers dated 15-12-2015 giving opportunity to the units to file reply within a week, but again no reply was received from the Appellant's unit, Hence, the closure direction dated 22-03-2016 was issued under Section 5 of the Environment (Protection) Act, 1986. It is further stated that even after the CPCB's closure direction the unit of the Appellant operated for total 86 days (i.e. from 11-11-2016 to 13-01-2017 and 09-11-2017 to 30.11.2017). The National Green Tribunal, Principal Bench in the matter of **OA No 593/2017 (WP (Civil) No 375/2012), Paryavaran Suraksha Samiti & Anr. Vs Union of India & Ors.** vide order dated 28-08-2019 directed

'...the Environmental Compensation regime fixed for industrial units, GRAP, Solid Waste, Sewage and Groundwater in the Report dated 30-05-2019 is accepted and same may be acted upon as an interim measure'...'.One of the cases to be considered for levying Environmental Compensation in the said Report is 'non-complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.'

Thus, in compliance with above order of the NGT, the answering Respondent levied Environmental Compensation on the Appellant.

7. Further, it is submitted that the NGT in its order dated 22-05-2019 in Appeal No. 44/2019 directed CPCB to consider the

views of the unit and to give opportunity of personal hearing to the unit. In compliance, the opportunity of personal hearing was given to the Appellant's unit on 01-10-2019 and it was resolved that Environmental Compensation (EC) amount levied may be reviewed considering the date of connectivity as verified by the IT division of CPCB and in accordance with CPCB policy on EC. The IT division further verified the date of establishment of initial uninterrupted data connectivity of OCEMS for all the specified parameters as on 06-10-2017. Therefore, the revised EC amount was calculated as Rs. 18,90,000/- for the non-compliance period of 63 days only (i.e. from 11-11-2016 to 13-01-2017). Accordingly, a fresh direction dated 17-12-2019 was issued to the Appellant's unit under Section 5 of the Environment (Protection) Act, 1986, which is challenged before this Tribunal.

8. On the basis of above pleadings, this Tribunal has to decide as to whether the Environmental Compensation imposed upon the Appellant's unit by Respondents by impugned order is in accordance with the Rules and the same should be upheld or should it be set aside?

9. None has appeared from the side of Appellant to press this Appeal, however, we find from the grounds set up in the Appeal to challenge the impugned order are that the Appellant had already installed OCEM system in its premises and had linked the same to the servers of Respondent Nos. 1 and 2, though with

little delay, because of delivery of equipment got delayed despite best efforts having been made on their part. The circumstances for delay were beyond their control, particularly, in view of the fact that the village where the said unit is located is remote one which faces connectivity problem which resulted in delay in transmission of data as well. Further, it is stated that the actual loss to the environment has not been computed and yet the compensation has been determined which is without any basis. Further, it is stated that in the closure notice it was written that 'not to resume its operations till installation and commissioning of Online Continuous Effluent Monitoring System (OCEMS) and networking of data with Respondent Nos.1 and 2' and accordingly, the Appellant had already installed and commissioned Online Monitoring System in their factory before resuming its operations. Therefore, no violations should be treated to have been committed by the Appellant.

10. In response from the side of Respondents it is vehemently argued that merely installing and commissioning of Online Continuous Effluent Monitoring System (OCEMS) would not be sufficient in this case, because it was the duty of the Appellant to ensure that the data was transmitted to Respondents. In the present case, the Appellant did not ensure transmission of data for the afore-mentioned period which is calculated to be 63 days and calculation of EC is assessed on the basis of ratio laid down

in **Paryavaran Suraksha Samiti & Anr. Vs Union of India & Ors** by the Tribunal. Hence, it cannot be said that any irregularity or illegality has been committed on the part of Respondents in assessing the environmental loss.

11. No argument has come forth from the side of Appellant in this case against the arguments of Respondents mentioned above, as none appeared from their side. Therefore, we do not find any merit in this Appeal and are of the view that it was bounden duty of the Appellant to ensure that the data was transmitted to the Respondents within time limit. Even if the Appellant's unit was based in the remote area some communication should have been made to the Respondents regarding difficulty being faced by them and the said information regarding data could have been passed on to the Respondents by-hand through some messenger. Therefore, the appeal deserves to be dismissed and it is accordingly dismissed. Cost easy.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

August 17, 2022
Appeal No.39/2020(WZ) hk

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Appeal No. 40/2020 (WZ)

IN THE MATTER OF:

- 1. Bhairavnath Sugar Works Ltd.**
Taluk Karmala, District Solapur
Maharashtra — 413203

.....Appellant(s)

Versus

- 1. The Chairman**
Central Pollution Control Board
Parivesh Bhavan, East Arjun Nagar,
Shahdara, Delhi-110032.
- 2. The Member Secretary**
Maharashtra Pollution Control Board
2nd, 3rd & 4th Floor, Opp. Cine Planet
Near Sion Circle, Sion East, Mumbai — 400022.
- 3. The Regional Director (West)**
Central Pollution Control Board
Parivesh Bhavan, Opp. VMC Ward Office No. 10
Subhanpura Vadodara - 390023 (Gujarat).
- 4. The District Magistrate**
Collectorate Office,
Dist. Kolhapur
Maharashtra — 414001.
- 5. The In-Charge (CP Division)**
Ministry of Environment Forests and Climate Change
Prithvi Block, Indira Paryavaran Bhavan
Jorbagh Road, New Delhi — 110003

.....Respondent(s)

Counsel for Appellant(s):

Mr. Amarjeet Kumar, Advocate

Counsel for Respondent(s):

Mr. Aniruddha Kulkarni, Advocate for R-1(CPCB)
Mr. Vilas Jadhav, Advocate for MPCB
Mr. D. M. Gupte, Advocate for MoEF & CC(R-5)

PRESENT:

Hon'ble Mr. Justice Dinesh Kumar Singh (Judicial Member)
Hon'ble Dr. Vijay Kulkarni (Expert Member)

Judgment Reserved on: 18.07.2022
Pronounced on: 03.08.2022

JUDGMENT

1. The present Appeal has been filed by the Appellant under Section 18(1) read with Section 16 of the National Green Tribunal Act, 2010 against the order dated 18.12.2019 passed by the Respondent No.1/Central Pollution Control Board (CPCB), directing the Appellant to deposit a sum of Rs. 8,70,000/- (Rupees Eight Lakhs and Seventy Thousand only) by way of Environmental Compensation.
2. The facts in brief are as follows:-
 - (i) The Appellant is a company incorporated under the provisions of the Companies Act, 1956. The members of the Appellant's company are primarily farmers who grow and supply sugarcane to the Appellant.
 - (ii) The Appellant applied and was granted permission to operate an industrial unit for manufacturing sugar and other products, details of which are given in the Consent to Operate (CTO) granted by the Maharashtra State Pollution Control Board (MSPCB). The said consent was renewed from time to time.
 - (iii) On 22.08.2016, the Respondent No.1, directed the Appellant not to resume their manufacturing operations till installation and commissioning of online 24x7 monitoring system and networking of data to SPCB/PCC and CPCB.

- (iv) The Online Continuous Effluent Monitoring System (in short 'OCEMS') was duly installed in the factory unit of the Appellant before starting the crushing operation on 07.11.2019 (there seems type mistake by Appellant it should be 2016). The successful installation of the OCEMS was duly acknowledged by the CPCB, at least, on 26.11.2016.
- (v) The Appellant by way of abundant precaution informed the Respondent No. 1 vide letter dated 05.12.2016 regarding installation and commissioning of OCEMS in their factory unit, pursuant to which, the MPCB, SRO Solapur visited the Appellant's unit on 15.12.2016 and submitted the report to the effect that the system was successfully installed and commissioned.
- (vi) The Appellant vide their letter dated 09.08.2017 requested the Respondent No. 1 to revoke the closure directions drawing their attention to the fact that the Appellant had already complied with the directions of Respondent No. 1 regarding installation and commissioning of OCEMS. The Respondent No. 1, based on the compliance made by the Appellant and after successful verification by IT Division thereof, allowed the Appellant to resume its manufacturing, revoking its earlier closure directions.
- (vii) Thereafter, the Respondent No.1 issued directions under Section 5 of the Environment (Protection) Act, 1986 (in short EPA) to the Appellant vide notice dated 05.02.2019 directing to deposit Rs. 14,40,000/- (Rupees Fourteen Lakhs and Forty Thousand only) as environmental compensation towards non-compliance of the directions of Respondent No. 1 during the period 07.11.2016 to 24.12.2016.

- (viii) Thereafter, a representation was made through Counsel by the Appellant requesting for withdrawal of the levy amount, specifically pointing out therein that the Appellant had already complied with the directions regarding installation of OCEM system.
- (ix) The Appellant moved an Appeal before this Tribunal on 14.05.2019 against the imposition of environmental compensation to the tune of Rs, 14,40,000/- on 05.02.2019, whereon, the Tribunal passed order dated 22.05.2019 directing the Respondent No. 1 to provide opportunity of hearing to the Appellant.
- (x) In accordance with the said order, vide letter dated 29.05.2019, the Appellant submitted their view point before Respondent No.1 requesting to revoke the earlier directions towards imposition of environmental compensation and, thereafter, after providing opportunity of hearing, the Respondent No.1 amended earlier order on 18.12.2019, directing the Appellant to deposit a sum of Rs. 8,70,000/- as environmental compensation towards non-compliance of the directions of Respondent No.1 during the period 07.11.2016 to 05.12.2016. It is this order which is under challenge before this Tribunal in the present Appeal on the basis of the grounds set up in paragraph no. 17 of the memo of Appeal.
- (xi) The main ground to challenge the impugned order is that the same has been passed on the premise that the Appellant operated the unit in contravention of the closure notice that the same is erroneous because of the non-observance of the fact by the Respondent No.1 that the said closure notice only directed the Appellant “not to resume its operations till installation and

commissioning of online monitoring system and networking of data with Respondent Nos. 1 and 2”.

- (xii) In the case in hand that the Appellant had already installed and commissioned the online monitoring system (OCEMS) in their factory unit before resuming its operations and these facts were duly conveyed to Respondent No.1 from time to time.
- (xiii) Further, the ground being set up that it is settled position of law that levy of penalty in the form of environmental compensation is based on Principle of ‘Polluter Pays’, which makes it crystal clear-that the actual pollution to the environment is *sine qua non* for imposition of environmental compensation. It is evident that there is no evidence led from the side of the Respondent showing that Appellant had caused actual pollution to the environment in any manner whatsoever.
- (xiv) The OCEMS itself was installed in the year 2016 and the Appellant had diligently provided requisite details of installation and commissioning of the OCEMS.

3. The Respondent No.2 (MPCB) has filed written reply but has not stated anything therein in respect of as to why the order dated 18.12.2019 passed by the Respondent No.1 be not set-aside. It narrates only a detail regarding inspection made of the premises of the Appellant in compliance with the order of this Tribunal dated 30.09.2020. We do not need it appropriate to give details of the said inspection report which have been quoted in the said affidavit.

4. The Respondent Nos.1 and 3 have filed written reply wherein it has been stated in rebuttal by them that it was clearly mentioned in the closure directions dated 22.08.2016 that installation and commissioning of online 24x7 monitoring system and data transfer to State Pollution Control Board and Central Pollution Control Board

servers is compulsory. The acknowledgment receipt dated 26.11.2016 referred by the unit is showing installation and connection of OCEMS to CPCB servers and it does not ensure 24x7 data transfer to CPCB servers. The establishment of continuous uninterrupted data connectivity of OCEMS for all the specified parameters from the Appellant's Unit was received at CPCB servers on 05.12.2016 as verified by the IT division of CPCB. Hence, the EC for the period of manufacturing operations before the connectivity of OCEMS with CPCB servers (i.e. from 07.11.2016 to 05.12.2016) is justified.

5. Further from the side of Respondent Nos. 1 and 3, it is submitted that upon reported compliance and submission of required documents including self-certificate, online registration details, online connectivity details, valid Consent copy vide letter dated 09.08.2017 and subsequent verification by the IT division, CPCB issued revocation order to the unit on 07.09.2017 but simultaneously, the CPCB also informed the Appellant through revocation direction that a separate action shall be initiated as per law for non-compliance of the CPCB's closure direction dated 22.08.2016 by the industry/Appellant wherein they continued the manufacturing operation without seeking revoking of closure directions issued to it.

6. The CPCB in its direction dated 05.12.2019 to the Appellant regarding levying of EC mentioned that in compliance of the NGT's order passed in *O.A. No. 593/2017 (WP) (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors.*, a Committee was constituted by CPCB for preparing report on methodology for assessing penalty & EC. As per the Committee recommendations, one of the cases to be considered for levying environmental compensation is 'not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.' The

report of committee was submitted before NGT on 'Methodology for assessing penalty & EC and action plan to utilize the fund' and the same was accepted by the NGT vide it's order dated 28.08.2019. EC amount was calculated based on guidelines & formula mentioned in the said report. The NGT passed order on 22.05.2019 in Appeal No. 44/2019 directing the CPCB to consider the views of the units and to give opportunity of personal hearing to the unit. In compliance of that, an opportunity of personal hearing was given to the Appellant' Unit on 18.09.2019. After hearing and considering the viewpoints of the unit's representative, it was resolved that EC amount levied may be reviewed considering date of connectivity as verified by IT division of CPCB and in accordance with the CPCB policy on EC. Accordingly, the revised EC amount was calculated to be Rs 8,70,000/- for the non-compliance period of 29 days only (i.e. from 07.11.2016 to 05.12.2016) and a fresh direction was issued on 18.12.2019 which is impugned herein.

7. Therefore, it is submitted that there is no infirmity in the impugned order and it should be upheld and the Appeal should be dismissed.

8. We have heard the arguments of Learned Counsels for both the parties at length.

9. The Learned Counsel for the Appellant has drawn attention to the notice of Chairman, CPCB issued under Section 5 of the Environment (Protection) Act, 1986 annexed as annexure-II to the reply affidavit dated 22.08.2016 and has drawn attention to the last but one paragraph which is quoted herein below:-

“Now, therefore, in view of the above and in exercise of the powers delegated to the Chairman, Central Pollution Control Board under section 5 of the Environment (Protection) Act, 1986, the unit is hereby directed not to resume its manufacturing operations

till installation and commissioning of online 24 x 7 monitoring system and data to SPCBs/PCCs and CPCB.”

10. Having pointed out in the above text, it was vehemently argued that nowhere it indicates that the Appellant could not resume the operations without seeking revocation of the said notice because it had permitted resumption of manufacturing operations as soon as the installation and commissioning of online 24x7 monitoring system and data to SPCB/PCC and CPCB was established and in the case in hand, it is apparent that the OCEM system had been installed and, therefore, the Appellant has not committed any error in resumption of the manufacturing operations.

11. From the side of the Respondents, it has been vehemently argued that simply establishment of OCEMS was not sufficient because it was bounden duty of the Appellant to ensure that the data was transmitted to the Respondent's servers, in which the Appellant failed miserably and hence the compensation which has been imposed cannot be set-aside.

12. We, during argument also made a query from the Appellant as to why the Appellant could not produce before us the data of the period in question i.e. 07.11.2016 to 05.12.2016 of 29 days, which he was supposed to transmit to the Respondents, because a copy of the same ought to have been kept safe with the Appellant for situation like the present one as a proof of the fact that the data did exist and the system was functional during the said period.

13. Further, it was also queried as to why, Appellant has not stated anything about it, the entire data of the said period was not sent

through individual/officials of the Appellant's Unit to the office of the Respondents with the said data.

14. All these queries could not be answered appropriately and convincingly. Therefore, we are of the view that from the perusal of evidence which has come on record, the Appellant does appear to have failed in his duty to transmit data to the Respondents for the aforesaid period of 29 days and we do not find any infirmity in the impugned order whereby compensation is slapped against the Appellant.

15. Accordingly, this Appeal deserves to be dismissed and accordingly dismissed.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

August 03, 2022.
Appeal No. 40/2020 (WZ)
JG