

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE**BENCH, PUNE, AT PUNE****ORIGINAL APPLICATION No. 1 OF 2024**

VISHAL SHANTARAM DARWATKAR

... **APPLICANT**

V/s.

UNION OF INDIA AND OTHERS

... **RESPONDENTS****INDEX**

SR NO	ANNE XURE	PARTICULARS	PAGE NOS.	
			From	To
1.		Index	-	1535
2.		Reply	1536	1542
3.		Affidavit in Support	-	1543
4.	R-1	Copy of the judgment of the Supreme Court of India	1544	1569
5.	R-2	Copy of the judgment of the Supreme Court of India in the matter of Deepak Nitrite Vs State of Gujarat and Ors	1570	1576
6.	R-3	Copy of the judgment of the Hon'ble High Court of Rajasthan at Jodhpur in the matter of M/s. Tata Bricks Company Vs Rajasthan State Pollution Control Board & Ors	1577	1600
		LAST PAGE NO.		1600

PUNE

DATE : 27/03/2024


ADVOCATE FOR RESPONDENT NO. 10

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**WESTERN ZONE BENCH PUNEAT PUNE****ORIGINAL APPLICATION No. 1 OF 2024****VISHAL SHANTARAM DARWATKAR ...APPLICANT****V/s.****UNION OF INDIA AND OTHERS ... RESPONDENTS****REPLY ON BEHALF OF**
RESPONDENT NO. 10 (M/S.
MAHANAGAR REALTY) TO
THE ADDITIONAL
AFFIDAVIT BY RESPONDENT
NO.4 (MPCB) ON 1.08.2025**MAY IT PLEASE THE HON'BLE TRIBUNAL: -**

1. The present reply is being filed to the Additional Affidavit by the Respondent No.4 dated 1/08/2025.
2. At the outset, the Respondent No.10 does not admit what is stated in the Affidavit filed by the Respondent No.4 except what forms part of the record and denies everything in the said application that is contrary to what is stated and/or inconsistent herein. The Respondent

No.10 reserves its right to file an additional reply at a later stage if required.

3. The Respondent No.10 submits that nothing, not expressly admitted, herein ought to be taken as admitted by the Respondent No.10 or be deemed to have been admitted by Respondent No.10 for want of specific traverse. The Respondent No.10 states that for the purpose of brevity, the Respondent No.10 is not denying each and every allegation, statement or contention of the Applicant which is ex-facie contrary to the Respondent No.10's contentions and its stand in the present case except to the extent that such allegations, statements or contentions necessitate comment or warrant a reply.
4. The Respondent No.10 submits that averments made in para 1 to para 2 are matter of record and does not warrant reply of Respondent No.10.
5. The Respondent No. 10 submits that description of the project of this Respondent in para 3 is matter of record and does not warrant reply of the Respondent No.10.
6. The Respondent No.10 submits that the averments made in para 3.I to 3.II are denied by the Respondent No.10; the contentions to the para 3.I to 3.II are as follows :-

- A. The Respondent No.4 has failed to show any damage caused to the environment due to the Respondent No.10. The Respondent No.10 further submits that the Gaps if at all are procedural lapse and it does not substantiate that any damage to the environment.
- B. The Respondent No.4 has turned his blind eye towards the representation made by the Respondent No.10 to the Respondent No.4 on dated 16th June 2025.
- C. In the said representation, the Respondent No.10 annexed the correct dates of the respective applications made by the Respondent No.10 to the Respondent No.4. It is clearly depict able that the calculations done by the Respondent No.4 are erroneous and not according to the facts. **(Refer Page No. 1527 of the court file).**
- D. The Respondent No.4 did not even consider its own circulars while calculating the Environmental Damage Compensation. In the circular dated 29/03/2021 of the Respondent No.4 it is stated that ‘MoEF&CC, Gol vide Notification dated 18th Jan, 2021 has passed the order- *"9A. Notwithstanding anything contained in this notification, the period from the 1st April, 2020 to the 31st March, 2021 shall not be considered*

for the purpose of calculation of the period of validity of Prior Environmental Clearances granted under the provisions of this notification in view of outbreak of Corona Virus (COVID-19) and subsequent lockdowns (total or partial) declared for its control, however, all activities undertaken during this period in respect of the Environmental Clearance granted shall be treated as valid.’ It is further mentioned in said circular that ‘The Board has issued Circular dated 12/7/2022 regarding provision of penal fees for occupiers violating combine consent regime prescribed under Air/Water Act. Now therefore, the period from 1st April 2019 to 31st March 2021 is exempted for submission of application for consent/Authorization. For this period, only regular consent fees will be charged.’ (Refer Page No. 1529 to 1530 of the court file).

7. The Respondent No.10 further submits that the Hon’ble Supreme Court of India in the matter of D.P.C.C Vs Lodhi Property Co. Ltd. ETC. has stated that

“30. The Board’s powers under Section 33A of the Water Act and Section 31A of the Air Act have to be read in light of the legal position on the application of Polluter Pays principle as

formulated and explained. This means that State Board cannot impose environmental damages in case of every contravention or offence under the Water Act and Air Act. It is only when the State Board has made a determination that some form of environmental damage or harm has been caused by the erring entity, or the same is so imminent, that the State Board must initiate action under Section 33A of the Water Act and Section 31A of the Air Act.”

“35. To ensure that Board impose restitutionary and the compensatory environmental damages in a fair transparent, non-arbitrary manner with procedural certainty, necessary subordinate legislation in the form of rules and regulations must be notified....”

Copy of the judgment of the Supreme Court of India is annexed and marked as **ANNEXURE-R-1**.

8. The Respondent No.10 further submits that the Respondent No.4 has imposed EDC without any apprehension of environmental damages and the calculated EDC is not accordance with correct facts and dates; just for the sake of complying with the Hon’ble Tribunal’s direction they have calculated the Environmental Damage Compensation. The said Environmental Damage Compensation is arbitrary in manner and without considering the Respondent No.10’s representation.

9. The Respondent No.10 submits that the Hon'ble Supreme Court of India in the matter of Deepak Nitrite Vs State of Gujarat and Ors has stated that Compensation/ Damages can be levied if there is an environmental damage. There shall be findings of such environmental damage. Copy of the judgment of the Supreme Court of India in the matter of Deepak Nitrite Vs State of Gujarat and Ors is annexed and marked as **ANNEXURE-R-2**.
10. The Respondent No.10 submits that the Hon'ble High Court of Rajasthan at Jodhpur in the matter of M/s. Tata Bricks Company Vs Rajasthan State Pollution Control Board & Ors held that General Framework for imposing Environmental Damages", must be thoroughly reviewed and issued as formal Rules and Regulations. This process is necessary to enable the declaration of law and ensure its recognition and easy implementation. The Hon'ble High Court further held that power to impose or collect restitutionary or compensatory damages can only be exercised after the relevant principles and procedures are detailed within subordinate legislation. Copy of the judgment of the Hon'ble High Court of Rajasthan at Jodhpur in the matter of M/s. Tata Bricks Company Vs Rajasthan State Pollution Control Board & Ors is annexed and marked as **ANNEXURE-R-3**.

11. The Respondent No. 10 respectfully submits that the gap between Consent of Establish and Consent to Operate was merely due to Covid-19 pandemic and procedural lapse. The Respondent No.10 further submits that the said delay was not a deliberate act of the Respondent No.10, imposing Environmental Damage Compensation will be harsh and could lead to hardship for the Respondent No.10. It is prayed that this Hon'ble Tribunal may kindly not impose Environmental Damage Compensation on the Respondent No.10.

PUNE

DATE: 27/03/2026

A handwritten signature in blue ink, appearing to read 'D. S. ...', with a stylized flourish underneath.

ADVOCATE FOR RESPONDENT NO.10

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

ORIGINAL APPLICATION No. 1 OF 2024

VISHAL SHANTARAM DARWATKAR ... APPLICANT

V/s.

UNION OF INDIA AND OTHERS ... RESPONDENTS

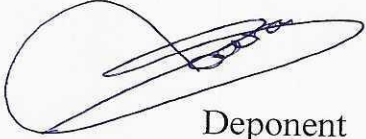
AFFIDAVIT IN SUPPORT

I, Sawrnsingh Gyansingh Sohal, Age- 56 Years, Occupation: Business, having address at Office No. 6th Floor, San Mahu Complex, 5, Bund Garden Road, Pune – 411001 do hereby state on solemn affirmation as under: -

I am the authorised signatory of the Respondent No.10 above named and responsible for day to day administration of my business. As such, I have gone through the memo of Reply and annexure thereto being filed today. I find that the contents therein are true and correct to the best of my knowledge and belief and which may be treated as part and parcel of the present affidavit.

WHATEVER STATED ABOVE is true and correct to the best of my knowledge and belief. In witness whereof I have signed hereunder at _____ on _____ day of March 2026.

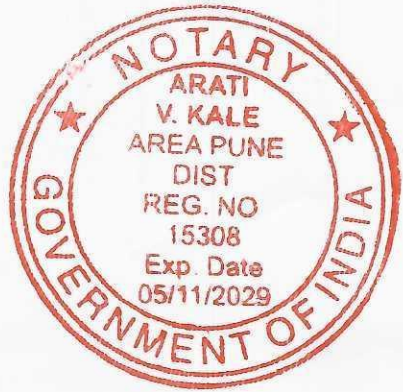
27 MAR 2026



Deponent

BEFORE ME

Arati V. Kale
ARATI V. KALE
NOTARY, GOVT. OF INDIA
PUNE, MAHARASHTRA
Noted And Registered
At Serial Number.....*444/2026*



ANNEXURE-R-1

670

SUPREME COURT CASES

(2026) 2 SCC

(2026) 2 Supreme Court Cases 670

2J

(BEFORE P.S. NARASIMHA AND MANOJ MISRA, JJ.)

DELHI POLLUTION CONTROL COMMITTEE

.. Appellant;

Versus

LODHI PROPERTY COMPANY LIMITED

AND OTHERS

.. Respondents.

Civil Appeals Nos. 757-60 of 2013[†] with

Nos. 1977-2011 of 2013[†], decided on August 4, 2025

A. Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Ex Ante Measures/Restitution/Compensation — Potential environmental damage — Restitutionary and compensatory damages — Ex ante measures — Powers of Regulatory Boards — Law clarified

— Environmental regulators, Pollution Control Boards exercising powers under Water and Air Acts, held, can impose and collect restitutionary or compensatory damages in form of fixed sum of monies or require furnishing of bank guarantees as an ex ante measure to prevent potential environmental damage

— Water/River/Coastal Pollution — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 33-A and 25 — Air (Prevention and Control of Pollution) Act, 1981 — Ss. 31-A, 21 and 22 — Environment (Protection) Act, 1986, S. 5

B. Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Tortious liability of State/State officials/Others — Pollution is a civil wrong — By its very nature, it is a tort committed against community as a whole — A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of environment and ecology — He has also to pay damages to those who have suffered loss on account of act of offender

— Tort Law — Public Law Torts — Environmental Torts

C. Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Application of Polluter Pays principle not only includes payment for restoring damaged environment, taking remedial action to deal with damage and compensating for direct harm caused, but also for avoiding pollution

D. Environment Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Powers of Statutory Boards, such as under Air Act and Water Act to direct payment of restitutionary and compensatory damages as a remedial measure for environmental damage or as an ex ante measure towards potential environmental damage on the one hand; and punitive action of fine or imprisonment, on the other — Distinguished — Scope of these powers — Manner in which to be exercised — Law clarified

[†] Arising from the Judgment and Order in *Delhi Pollution Control Committee v Splendor Landbase Ltd.*, 2012 SCC OnLine Del 400 (Delhi High Court, LPA No. 895 of 2010, dt. 23-1-2012) [Partly reversed]

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 671

a — Environment (Protection) Act, 1986 — S. 5 — Water/River/Coastal Pollution — Water (Prevention and Control of Pollution) Act, 1974 — Ss. 33-A and 25 — Air (Prevention and Control of Pollution) Act, 1981, Ss. 31-A, 21 and 22

b Pursuant to directions of Ministry of Environment, Forest and Climate Change (MoEFCC) to take appropriate action against certain entities operating in violation of environmental norms, show-cause notices were issued for violation of Section 25 of the Water Act and Sections 21 and 22 of the Air Act. These entities were either residential complexes, commercial complexes or shopping malls. Show-cause notices were issued on ground that they proceeded with construction and in fact, were operating without obtaining mandatory “consent to establish” and “consent to operate” under Section 25 of the Water Act and Section 21 of the Air Act. Show-cause notices were challenged by way of writ petitions in the Delhi High Court. The High Court recorded finding that Pollution Control Boards are not empowered to levy compensatory damages in exercise of powers under Section 33-A of the Water Act and Section 31-A of the Air Act, on ground that such an action amounts to imposition of penalty provided for in Chapters VII and VI of respective Acts, and as such, procedure contemplated thereunder will be the only method for imposing and collecting compensatory damage.

Thus the present appeals in the Supreme Court.

d The issue for determination before the Supreme Court was: Whether the regulatory Boards can, in exercise of powers under Section 33-A of the Water Act and Section 31-A of the Air Act, impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an ex ante measure towards potential environmental damage?

Allowing the appeals, the Supreme Court

e *Held :*

Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender. (Para 24)

f *M.C. Mehta v. Kamal Nath*, (2000) 6 SCC 213, *followed*

Powers of the Central Government to issue directions under Section 5 read with Section 3 of the Environment Protection Act, 1986 include the power to impose costs for remedial measures. (Para 26)

Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212, *followed*

Liability for environmental damage includes both a compensatory aspect and a restorative or remedial aspect. (Para 27)

g *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, *followed*

Application of the Polluter Pays principle not only includes payment for restoring the damaged environment, taking remedial action to deal with the damage and compensating for the direct harm caused, but also for avoiding pollution. (Para 28)

h *Research Foundation for Science (18) v. Union of India*, (2005) 13 SCC 186, *followed*

Deepak Nitrite Ltd. v. State of Gujarat, (2004) 6 SCC 402, *distinguished on fact*

672

SUPREME COURT CASES

(2026) 2 SCC

Bringing the culprits to face the proceedings is a different matter and restoration of the damage already done is a different matter. The State cannot run away from its responsibilities to restore the damage done to the forest. The State, apart from preventing such acts in the future, should take immediate steps for restoration of the damage already done; undertake an exercise for determining the valuation of the damage done and recover it from the persons found responsible for causing such damage. (Paras 30 to 32)

T.N. Godavarman Thirumulpad, In re. (2025) 2 SCC 641, followed

State Pollution Control Board v. Swastik Ispat (P) Ltd., 2014 SCC OnLine NGT 13, approved

Based on a review of precedents on this issue, the following legal position emerges:

(1) There is a distinction between a direction for payment of restitutionary and compensatory damages as a remedial measure for environmental damage or as an ex ante measure towards potential environmental damage on the one hand; and a punitive action of fine or imprisonment for violations under Chapters VII of the Water Act and VI of the Air Act on the other hand.

(2) If directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute for example under chapters VII and VI of the Water and Air Acts, respectively.

(3) Indian environmental law has assimilated the principle of Polluter Pays and there is also a statutory incorporation of this principle in our laws. The invocation of this principle is triggered in the situations; (i) when an established threshold or prescribed requirement is exceeded or breached, and it does result in environmental damage; (ii) when an established threshold or prescribed requirement is not exceeded or breached, nevertheless the act in question results in environmental damage; and also (iii) when a potential risk or a likely adverse impact to the environment is anticipated, irrespective of whether or not prescribed thresholds or requirements are exceeded or breached.

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

(5) The powers of the Boards under Sections 33-A and 31-A of the Water and Air Acts are identical to that of Section 5 of the Environment Protection Act. Under Section 5, the Central Government or its delegate has the power to issue directions to the polluting industry to pay certain amounts and utilise the said fund for carrying out remedial measures. The Boards are empowered to take similar actions under Sections 33-A and 31-A of the Acts. (Para 34)

Therefore, the Division Bench of the High Court was not correct in restrictively reading powers of the Boards. These regulators in exercise of powers under Sections 33-A and 31-A of the Water and Air Acts can impose and collect, as restitutionary or compensatory damages fixed sum of monies or require furnishing bank guarantees as an ex ante measure towards potential or actual environmental damage. (Para 34)

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 673

a The Boards have powers to issue directions for payment of environmental damages under Section 33-A of the Water Act and Section 31-A of the Air Act. A restrictive interpretation which fails to differentiate between environmental damages and punitive action significantly encumbers the Board's ability to discharge its duties. (Para 35)

State Pollution Control Board v. Swastik Ispat (P) Ltd., 2014 SCC OnLine NGT 13, approved

b The Board's powers under Section 33-A of the Water Act and Section 31-A of the Air Act have to be read in light of the legal position on the application of Polluter Pays principle as formulated and explained. This means that the State Board cannot impose environmental damages in case of every contravention or offence under the Water Act and Air Act. It is only when the State Board has made a determination that some form of environmental damage or harm has been caused by the erring entity, or the same is so imminent, that the State Board must initiate action under Section 33-A of the Water Act and Section 31-A of the Air Act. (Para 36)

c Given their broad statutory mandate and the significant duty towards public health and environmental protection the Boards must have the power and distinction to decide the appropriate action against a polluting entity. It is essential that the Boards function effectively and efficiently by adopting such measures as is necessary in a given situation. The Boards can decide whether a polluting entity needs to be punished by imposition of penalty or if the situation demands immediate restoration of the environmental damage by the polluter or both. (Para 38)

d While the Boards have the power to direct the payment of environmental damages however, this power must always be guided by two overarching principles. First, that the power cannot be exercised in an arbitrary manner; and second, the process of exercising this power must be infused with transparency. (Para 39)

e Environmental governance is founded on the rule of law and emerges from the values of Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution, proper structures for environmental decision-making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place. (Para 40)

Bengaluru Development Authority v. Sudhakar Hegde, (2020) 15 SCC 63, followed

f To ensure that the Boards impose restitutionary and the compensatory environmental damages in a fair transparent, non-arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of rules and regulations must be notified. This shall include methods by which environmental damage is determined, and the consequent quantum of damages is assessed. They may also incorporate certain basic principles of natural justice for fairness in action. (Para 41)

g *Compliance of Municipal Solid Waste Management Rules, 2016 (State of Karnataka)*, In re, 2019 SCC OnLine NGT 2926; *Compliance of Municipal Solid Waste Management Rules, 2016 (State of Mizoram)*, In re, 2019 SCC OnLine NGT 2927, referred to

h In the facts and circumstances of the case while the appeal has been allowed on the principle of law there shall not be any consequential direction for reviving the show-cause notices which have been set aside concurrently by the Single as well as by the Division Bench of the High Court. If certain amounts have been collected on the basis of the said show-cause notices they shall be returned by DPCC. (Para 44)

For the reasons stated above following directions are issued:

(1) These appeals are allowed and the judgment and order dated 23-1-2012, passed by the Division Bench of the High Court of Delhi to the extent of declaration of law is set aside but direct that the show-cause notices that have been set aside by the High Court shall not be revived. a

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

(3) Power to impose or collect restitutionary or compensatory damages or the requirement to furnish bank guarantees as an ex ante measure under Sections 33-A and 31-A of the Water and Air Acts shall be enforced only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation. (Para 45)

Delhi Pollution Control Committee v. Splendor Landbase Ltd., 2012 SCC OnLine Del 400, partly reversed c

Splendor Landbase Ltd. v. Delhi Pollution Control Committee, 2010 SCC OnLine Del 3466 : (2010) 173 DLT 52; *Bharti Realty Ltd. v. Delhi Pollution Control Committee*, 2011 SCC OnLine Del 2849; *Anush Finlease & Construction (P) Ltd. v. Delhi Pollution Control Committee*, 2011 SCC OnLine Del 3899, referred to

Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 : (1998) 111 STC 467; *State of M.P. v. Centre for Environment Protection Research & Development*, (2020) 9 SCC 781; *Chandra Kishore Jha v. Mahavir Prasad*, (1999) 8 SCC 266, cited d

Appeals partly allowed

RM-D/72688/C

Advocates who appeared in this case :

Pradeep Misra (Advocate-on-Record), Daleep Dhyani, Dinesh Jindal, Suraj Singh, Ninad Laud (Amicus Curiae), Ivo M.S. D'Costa, Rashika Narain and Ms Ishani Shekhar, Advocates, for the Appellant;

Pinaki Misra, Senior Advocate [Pravin Bahadur, Kishan Rawat, Rajan Narain (Advocate-on-Record), S.S. Shroff (Advocate-on-Record), Ajit Warriar, Angad Kochhar, Ms Sakshi Agarwal, Mohit D. Ram (Advocate-on-Record), Ms Nayan Gupta, Ms Priya Puri (Advocate-on-Record), Navin Prakash (Advocate-on-Record) and Umesh Kr. Khaitan (Advocate-on-Record), Advocates], for the Respondents. e

Chronological list of cases cited

	<i>on page(s)</i>	
1. (2025) 2 SCC 641, <i>T.N. Godavarman Thirumulpad, In re</i>	690d	
2. (2020) 15 SCC 63, <i>Bengaluru Development Authority v. Sudhakar Hegde</i>	694b	f
3. (2020) 9 SCC 781, <i>State of M.P. v. Centre for Environment Protection Research & Development</i>	680a-b	
4. 2019 SCC OnLine NGT 2927, <i>Compliance of Municipal Solid Waste Management Rules, 2016 (State of Mizoram), In re</i>	694f-g	
5. 2019 SCC OnLine NGT 2926, <i>Compliance of Municipal Solid Waste Management Rules, 2016 (State of Karnataka), In re</i>	694f-g	
6. 2014 SCC OnLine NGT 13, <i>State Pollution Control Board v. Swastik Ispat (P) Ltd.</i>	689d, 689d-e, 690c, 692b-c	g
7. 2012 SCC OnLine Del 400, <i>Delhi Pollution Control Committee v. Splendor Landbase Ltd. (partly reversed)</i>	675d-e, 676a, 677f-g, 677g, 678a-b, 678b, 680b, 689d-e, 695e	
8. 2011 SCC OnLine Del 3899, <i>Anush Finlease & Construction (P) Ltd. v. Delhi Pollution Control Committee</i>	675d-e, 677a, 677b, 677e, 677g	h

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 675

9. 2011 SCC OnLine Del 2849, *Bharti Realty Ltd. v. Delhi Pollution Control Committee* 675d-e, 677a, 677b, 677e, 677g
- a 10. 2010 SCC OnLine Del 3466, *Splendor Landbase Ltd. v. Delhi Pollution Control Committee* 675d-e, 676f-g, 677a-b, 677b, 677c-d, 677e-f, 677f, 677g, 677g-h, 690a, 690c, 690c-d
11. (2005) 13 SCC 186, *Research Foundation for Science (18) v. Union of India* 688e-f, 689a, 689b
12. (2004) 6 SCC 402, *Deepak Nitrite Ltd. v. State of Gujarat* 689a
- b 13. (2000) 6 SCC 213, *M.C. Mehta v. Kamal Nath* 680a, 686f-g
14. (1999) 8 SCC 266, *Chandra Kishore Jha v. Mahavir Prasad* 680c-d
15. (1997) 5 SCC 536 : (1998) 111 STC 467, *Mafatlal Industries Ltd. v. Union of India* 679c
16. (1996) 5 SCC 647, *Vellore Citizens' Welfare Forum v. Union of India* 688c-d, 691c
17. (1996) 3 SCC 212, *Indian Council for Enviro-Legal Action v. Union of India* 687c-d, 691c

c

JUDGMENT

CONTENTS

Sl. No.	Headings	Page No.
d 1.	Introduction	676
2.	Facts	676
3.	Single Judge's judgment and orders ^{1, 2, 3}	677
4.	Impugned order ⁴ of the Division Bench	677
e 5.	Submissions	679
6.	Issue	680
7.	Existing legal regime for pollution control in India	680
8.	Insertion of Sections 33-A & 31-A in Water and Air Acts	683
9.	Interpretation of and for environmental institutions	686
f 10.	Duty to restitute v. Power to punish and penalise	686
11.	Principles	691
	A. Board's responsibility to choose appropriate course of action	693
	B. Powers must be guided by transparency and non-arbitrariness	694

g

1 *Splendor Landbase Ltd. v. Delhi Pollution Control Committee*, 2010 SCC OnLine Del 3466 : (2010) 173 DLT 52

2 *Bharti Realty Ltd. v. Delhi Pollution Control Committee*, 2011 SCC OnLine Del 2849

h 3 *Anush Finlease & Construction (P) Ltd. v. Delhi Pollution Control Committee*, 2011 SCC OnLine Del 3899

4 *Delhi Pollution Control Committee v. Splendor Landbase Ltd.*, 2012 SCC OnLine Del 400

1. Introduction

1. The Delhi Pollution Control Committee (DPCC)⁵ is in appeal against the judgment⁴ of the Division Bench of the High Court holding that it is not empowered to levy compensatory damages in exercise of powers under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31-A of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as “the Water Act” and “the Air Act”, respectively) on the ground that such an action amounts to imposition of penalty provided for in Chapters VII and VI of the respective Acts, and as such, procedure contemplated thereunder will be the only method for imposing and collecting compensatory damage.

2. Having considered the principles that govern Indian environmental laws, we have held that the environmental regulators, the Pollution Control Boards exercising powers under the Water and Air Acts, can impose and collect restitutionary or compensatory damages in the form of fixed sum of monies or require furnishing of bank guarantees as an *ex ante* measure to prevent potential environmental damage. These powers are incidental and ancillary to the empowerment under Sections 33-A and 31-A of the Water and Air Acts. At the same time, we have directed that the powers must be exercised as per the procedure laid down by subordinate legislation incorporating necessary principles of natural justice, transparency and certainty.

2. Facts

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

4. The show-cause notices were challenged by way of 38 writ petitions before the Delhi High Court. The challenge culminated in the judgment of a Single Judge dated 30-9-2010 in *Splendor Landbase Ltd. v. Delhi Pollution Control Committee*¹. The learned Single Judge considered the question as to whether a State Board can levy environmental damages in the form of fixed sums of money or require an entity to furnish a bank guarantee as a condition for

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

⁴ *Delhi Pollution Control Committee v. Splendor Landbase Ltd.*, 2012 SCC OnLine Del 400

¹ 2010 SCC OnLine Del 3466 : (2010) 173 DLT 52

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 677

a grant of consent under Section 33-A of the Water Act and/or Section 31-A of the Air Act. Similar writ petitions were considered and decided by another Single Judge Bench in *Bharti Realty Ltd. v. Delhi Pollution Control Committee*² and *Anush Finlease & Construction (P) Ltd. v. Delhi Pollution Control Committee*³ on 12-7-2011 and 15-9-2011 and were disposed of in terms of the decision in *Splendor Landbase Ltd. v. Delhi Pollution Control Committee*¹. The reasoning adopted in the judgment and orders passed by the Single Judges are as follows.

b **3. Single Judge's judgment and orders**^{1, 2, 3}

c **5.** In *Splendor Landbase Ltd. v. Delhi Pollution Control Committee*¹ (hereinafter referred to as "*Splendor*"), the learned Single Judge by his judgment dated 30-9-2010 dealt with two major issues — firstly, whether proprietors of properties over 20,000 square meters are required to obtain consent to establish and consent to operate under the Water Act and the Air Act independently, despite obtaining EIA Clearance from the Ministry; and secondly, whether the Boards can levy penalties, fines, environmental damages in the form of fixed sums of monies or call for bank guarantees as a condition to grant consent under the Water and Air Acts? While the first question was answered in the affirmative, the second was answered in the negative.

d **6.** It was held in *Splendor*¹ that the power to levy penalty is in the nature of a penal power and as such a penalty cannot be imposed without there being an enabling statutory power. For this reason, the Single Judge held that the Board has no power to levy penalty or damage, even on the basis of the general powers under Sections 31-A or 33-A of the Acts. The learned Judge criticised the monetary demand as a pre-condition for grant of consent under the Acts on the ground that it has no statutory backing.

e **7.** In the other batch of cases i.e. in *Bharti Realty Ltd. v. Delhi Pollution Control Committee*² and *Anush Finlease & Construction (P) Ltd. v. Delhi Pollution Control Committee*³, decided on 12-7-2011 and 15-9-2011, the learned Single Judge was constrained to enquire into the matter in detail as writ appeals against the judgment in *Splendor*¹ were already pending before a Division Bench. Therefore, the Single Judge allowed the writ petitions following the decision in *Splendor*¹ and holding that the Board has no power to impose and collect compensatory damages. In these cases, the learned Judge also directed refund of the amounts collected. However, no interest was granted to the respondents as they chose to comply with the demand instead of challenging the same at the relevant point in time.

f **4. Impugned order⁴ of the Division Bench**

g **8.** The decisions^{1, 2, 3} of the Single Judges were challenged by the appellant before the Division Bench of the High Court. By the judgment⁴ impugned before us, the Division Bench upheld the findings of the Single Judge in *Splendor*¹ that the power to issue directions under Sections 33-A and 31-A

2 2011 SCC OnLine Del 2849

3 2011 SCC OnLine Del 3899

h 1 *Splendor Landbase Ltd. v. Delhi Pollution Control Committee*, 2010 SCC OnLine Del 3466 : (2010) 173 DLT 52

4 *Delhi Pollution Control Committee v. Splendor Landbase Ltd.*, 2012 SCC OnLine Del 400

678

SUPREME COURT CASES

(2026) 2 SCC

under the two Acts does not confer the power to levy “penalty”. The High Court further observed that under Chapter VII and Chapter VI of the Water and Air Acts penalties can be levied only by courts and that too after taking cognizance of offences specified under the two Acts. Provided that the procedure so prescribed under the statute has to be followed mandatorily, the Division Bench held that the appellants would not be entitled to impose compensation or direct deposit of bank guarantees.

9. The relevant portion of the judgment of the Division Bench⁴ of the High Court is as follows: (*Delhi Pollution Control Committee case*⁴, SCC OnLine Del paras 37, 40 & 42)

“37. We concur with the reasoning of the learned Single Judge in paras 58 to 64 of the impugned decision and thus do not elaborate any further, but would additionally highlight that the power to issue directions under Section 33-A of the Water Act and the power to issue directions under Section 31-A of the Air Act, on their plain language, does not confer the power to levy any penalty. We would further highlight that under Chapter VII of the Water Act and under Chapter VI of the Air Act penalties and procedure to levy the same have been set out. A perusal of the provisions under the Water Act would reveal that penalties can be levied as per procedure prescribed and only Courts can take cognizance of offences under the Act and levy penalties, whether by way of imprisonment or fine. Similar is the position under the Air Act. The legislature having enacted specific provisions for levy of penalties and procedures to be followed has specifically made the offences cognizable by Courts and the power to levy penalties under both Acts has been vested in the Courts. The role of the Pollution Control Boards is to initiate proceedings before the court of competent jurisdiction and no more.

* * *

40. The language of sub-section (5) of Section 25 of the Water Act makes it plain clear that the only solution to a situation of a building being constructed to establish an industry, operation or process without obtaining prior consent of the State Pollution Control Board is the power of the Board to serve upon the person concerned a notice imposing such conditions as might have been imposed on an application seeking prior consent; and we find that the learned Single Judge has correctly so opined and has rightly issued the direction that the only way out, pertaining to the Water Act, is to permit DPCC to inspect the shopping malls and the shopping commercial complexes and if it is found that pertaining to discharge of sewage from these buildings any steps are required to prevent water pollution, DPCC would be authorised to issue notices requiring the owner of the building to take steps in terms of the notice issued. Pertaining to the Air Act, notwithstanding there being no similar provision, but the concept of a post decisional hearing may be made applicable with the modification that no hearing would be required inasmuch as there is no decision, but DPCC should be empowered to inspect the shopping malls and the shopping commercial complexes and pertaining to air pollution,...

⁴ *Delhi Pollution Control Committee v. Splendor Landbase Ltd.*, 2012 SCC OnLine Del 400

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 679

a if the owners of the buildings do not take corrective action, DPCC would always have the power to file criminal complaints before the courts of competent jurisdiction, which courts would alone have the power to impose fine and additionally impose sentence of imprisonment upon the offending persons.

* * *

b 42. In a few cases, we find that since DPCC was not permitting the buildings to be occupied, under protest, the owners paid the penalty to DPCC and have immediately approached the Court seeking refund and the same has been ordered for the reason neither under the Water Act nor under the Air Act there exists any power in DPCC to levy penalty or impose conditions of furnishing bank guarantee. The decision of the learned Single Judge is correct in directing the bank guarantees to be discharged and penalties levied to be refunded for the reason the said act of DPCC is ultra-vires its power under the two statutes and the levy of penalty is without any authority of law. In the decision reported as *Mafatlal Industries Ltd. v. Union of India*⁶, under writ jurisdiction refund can be directed where the levy is without jurisdiction and the same would include a penalty levied without any jurisdiction. In the instant case the penalty levied is unconstitutional being not sanctioned by any power vested in DPCC either under the Water Act or the Air Act. The impugned decisions where penalty levied has been directed to be refunded are upheld.”

5. Submissions

e 10. Mr Pradeep Mishra appearing on behalf of the appellant DPCC submitted that the High Court erred in holding that the State Boards are not empowered to impose environmental damages under Sections 33-A and 31-A of Water and Air Acts. He has argued that the application of the principle of *Polluter Pays* is distinct from the requirement of authority of law to impose tax or penalty.

f 11. We have requested Mr Ninad Laud, learned counsel to assist us in the matter. He has gracefully accepted and has eminently assisted the Court. He has submitted that as per broad scheme of the Acts and also the Statement of Objects and Reasons, State Boards are empowered to act on their own while enforcing Sections 25 and 26 and also while issuing directions under Sections 33-A and 31-A. However, when faced with non-compliances, recourse to judicial process is contemplated under Sections 49 and 43 of the Water and the Air Acts, respectively. Further, neither Rule 34 of the Water (Prevention & Control of Pollution) Rules, 1975 nor Rule 20-A of the Air (Prevention & Control of Pollution) Rules, 1983, while providing a mechanism to administer Section 33-A and Section 31-A, contemplate monetary penalties. Countering the submission of Mr Pradeep Misra on the principle of *Polluter Pays* to encourage reading the power to impose and collect environmental damages under Sections 33-A and 31-A of the respective Acts, he would submit such an approach is impermissible as the said power is specifically and separately provided under Chapters VII and VI therein. Relying on the decision of this

h

6 (1997) 5 SCC 536 : (1998) 111 STC 467

Court in *M.C. Mehta v. Kamal Nath*⁷, he would submit, after considering the scheme of penal provisions under the Water Act, the Air Act and the Environment (Protection) Act, 1986, the Supreme Court held that penalties under the Acts befall a person only after finding of guilt upon trial by a court of law. Referring to the legitimacy of the State Board's action demanding bank guarantees to secure compliance with conditions, he would submit that no penalty, other than that contemplated in the statute or statutory scheme can be imposed.⁸

12. We have also heard Mr Pinaki Misra, Senior Advocate and other learned counsel and they have strongly supported the decision⁴ of the Division Bench.

12.1. The counsel for M/s Laxmi Buildtech Pvt. Ltd.⁹ has submitted that they have neither violated nor acted in breach of any provision of environmental laws and therefore they cannot be subjected to any penalty or criminal prosecution. The counsel for the other respondents further submitted that they have deemed consent as well as EIA clearance from the Ministry. They have also submitted that imposition and collection of damages by the State Boards is outside the powers vested in them under the Water and Air Acts.

12.2. The counsel for M/s Bharti Realty Ltd. has submitted that it is a settled principle of law that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and no other.¹⁰ This principle, according to the learned counsel, squarely applies to the present case as Chapter VII and Chapter VI of the Water and Air Acts have a prescribed procedure to be followed before imposing penalties. It is further argued that the role of any State Board is in the nature of a complainant and not that of an adjudicatory authority. In this vein, it is submitted that any other interpretation would render the chapter on "Penalties and Procedures" nugatory and otiose. It is also submitted that the power to give directions under Sections 33-A and 31-A of the Water and Air Acts is "subject to provisions of this Act". Written submissions also refer to the recent amendments to the Water and Air Acts, empowering an Adjudicating Officer, not below the rank of Joint Secretary of Government of India or Secretary to State Government, for imposing penalties for contravention of provisions of the Acts.

6. Issue

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

7. Existing legal regime for pollution control in India

14. Under the Water Act and the Air Act, the State Boards have a broad statutory mandate to prevent, control and abate water pollution and air pollution. Under Section 17 of the Water Act, the State Boards are to shoulder

⁷ (2000) 6 SCC 213, paras 13-17

⁸ *State of M.P. v. Centre for Environment Protection Research & Development*, (2020) 9 SCC 781

⁴ *Delhi Pollution Control Committee v. Splendor Landbase Ltd.*, 2012 SCC OnLine Del 400

⁹ Civil Appeal No. 2001 of 2013.

¹⁰ *Chandra Kishore Jha v. Mahavir Prasad*, (1999) 8 SCC 266

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 681

enormous responsibilities and their functions are reproduced herein for ready reference:

- a* “**17. Functions of State Board.**—(1) Subject to the provisions of this Act, the functions of a State Board shall be—
- (a)* to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;
- b* *(b)* to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;
- (c)* to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;
- (d)* to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
- c* *(e)* to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;
- (f)* to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;
- d* *(g)* to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;
- (h)* to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;
- e* *(i)* to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;
- (j)* to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;
- f* *(k)* to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;
- g*
- h*

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

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

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

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

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

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

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

15. Section 17 of the Air Act¹¹, substantially similar to its equivalent under the Water Act, also indicates the crucial responsibilities of the State Boards d

11 Section 17 of the Air Act states—

“17. **Functions of State Boards.**—(1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the functions of a State Board shall be— e

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

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

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

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

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

(f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;

(g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft; h

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 683

a in discharge of their mandate. Chapter V of the Water Act and Chapter IV of the Air Act include provisions that prescribe the regulatory powers of the State Boards. These powers include the power to issue, modify or withdraw consent¹², power to obtain information¹³, power of entry and inspection¹⁴ and power to take samples¹⁵.

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

b **16.** In 1988, both the Acts were amended. Notably, through amendments the State Boards were further empowered to give directions under Section 33-A of the Water Act and Section 31-A¹⁶ of the Air Act. These two provisions are identically worded. Section 33-A of the Water Act is as under:

“**33-A. Power to give directions.**—Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the

c

 (Footnote 11 *contd.*)

d Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;

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

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

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

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

12 Sections 25, 27 of the Water Act and Section 21 of the Air Act

13 Section 20 of the Water Act and Section 25 of the Air Act

f 14 Section 23 of the Water Act and Section 24 of Air Act

15 Section 21 of the Water Act and Section 26 of the Air Act

16 Section 31-A of the Air Act states—

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

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

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

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

684

SUPREME COURT CASES

(2026) 2 SCC

exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions. a

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

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

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

17. The directions contemplated under Sections 33-A and 31-A of the Water and Air Acts must be in furtherance of the powers and functions of the Boards and they must be in writing. These provisions, declares that the power to issue directions will include the power to direct closure, prohibition or regulation of any industry, operation or process. Further, this power extends to directing the stoppage or regulation of supply of electricity, water or any other service. The power to give directions has been worded broadly, and it allows the Boards significant flexibility in deciding the nature of directions. c

18. The legislative intention of granting these powers through the 1988 amendment can be inferred from the Statement of Objects and Reasons of the Water Act, which reads as follows: d

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

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

* * *

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

* * *

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

h

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 685

19. Similar objective is expressed for the amendment introduced in the Air Act.¹⁷

a **20.** An appeal against directions issued under Section 33-A of the Water Act by the State Board can be filed before the National Green Tribunal under Section 33-B, introduced in 2010¹⁸. Unlike the Water Act there is no specific appeal provision against directions issued under Section 31-A of the Air Act. This asymmetry must be addressed legislatively.

b **21.** Offences and penalties under the two Acts, and the related procedures, are covered in Chapter VII of the Water Act and Chapter VI of the Air Act. These chapters have undergone significant and substantial amendments. Prior to the amendments, the two Acts stipulated penalties in the form of imprisonment, monetary fine or both for offences under the statute. Courts could only take cognizance of an offence if a complaint was filed by a Board

c or any officer authorised by it, or by any person who had given notice of the alleged offence and of his intention to make a complaint. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class can try an offence punishable under the two Acts. Be that as it may, for the present purpose we have to examine and interpret Sections 33-A and 31-A of the Water and Air Acts.

d

¹⁷ Statement of Objects and Reasons for the Air Act states,

e **“2.** The Air Act is implemented by the Central and State Governments and the Central and State Boards. Over the past few years, the implementing agencies have experienced some administrative and practical difficulties in effectively implementing the provisions of this Act and have brought these to the notice of Government.

The ways and means to remove these difficulties have been thoroughly examined in consultation with the concerned Central Government departments, the State Governments and the Central and State Boards. Taking into account the views expressed, the Government have decided to make certain amendments to the Act in order to remove such difficulties.

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

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

(vii) It is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending establishments or stoppage or regulation of supply of services such as, water and electricity.

h (viii) It is proposed to empower the Boards to approach courts to obtain orders restraining any person from causing air pollution.”

¹⁸ Act 19 of 2010.

9. Interpretation of and for environmental institutions

22. Our constitutionalism bears the hallmark of an expansive interpretation of fundamental rights. But such creative expansion is only a job half done if the depth of the remedies, consequent upon infringement, remain shallow. In other words, remedial jurisprudence must keep pace with expanding rights and regulatory challenges. It is not sufficient that courts adopt injunctory, mandatory and compensatory remedies, but our regulators also must be empowered in that regard. However, the legislative grammar must be elastic for us to infuse the regulators with power to fashion different remedies. This infusion must also be tampered with the necessary guidelines and parameters of exercise of remedial powers, failing which such infusion would aid arbitrary use. Our firm view is that remedial powers or restitutionary directives are a necessary concomitant of both the fundamental rights of citizens who suffer environmental wrongs and an equal concomitant of the duties of a statutory regulator, which are informed by Part IV-A of the Constitution. To that extent, the functions and powers of a regulator must be inspired by the obligation in Part IV-A and Article 48-A. The State's "endeavour to protect and improve the environment" will be partial, if it does not encompass a duty to restitute.

23. Of all the duties imposed under Article 51-A, the obligation to conserve and protect water and air, is perhaps the most significant, amidst our climate change crisis. The Water Act and the Air Act institutionalised all efforts and actions that need to be taken to protect air that we breathe and water that we consume by creating the Pollution Control Boards. These Boards functioning as our environment regulators are expected to act with *institutional foresight* by evolving necessary policy perspectives and action plans. Working with perpetual seal and succession, they are to develop and retain *institutional memory* so that they can act on the basis of the experience, data and information that they would have gathered and processed. *Institutional expertise* is critical, and these bodies are to employ human resource which have domain expertise and talent. These bodies are intended to maintain *institutional integrity* by taking independent and objective decisions without governmental or industrial control. These values flow naturally if there is *institutional transparency and accountability*. It is in this perspective that we need to interpret Sections 33-A of the Water Act and 31-A of the Air Act.

10. Duty to restitute v. Power to punish and penalise

24. There is a distinction between an action for environmental damages for restitution or remediation and imposition of penalties or fines levied at the culmination of a punitive action. This Court in *M.C. Mehta*⁷, while referring to the provisions of the Water Act, the Air Act and the Environment Protection Act observed: (SCC pp. 222 & 224, paras 17 & 24)

"17. All the three Acts, referred to above, also contemplate the taking of the cognizance of the offences by the court. Thus, a person guilty of contravention of provisions of any of the three Acts which constitutes an offence has to be prosecuted for such offence and in case the offence is found proved then alone can he be punished with imprisonment and fine or

7 *M.C. Mehta v. Kamal Nath*, (2000) 6 SCC 213, paras 13-17

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 687

both. The sine qua non for punishment of imprisonment and fine is a fair trial in a competent court. The punishment of imprisonment or fine can be imposed only after the person is found guilty.

a

* * *

24. Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. *A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender.*” (emphasis supplied)

b

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

c

26. In this context, it is important to turn to one of the key principles of Indian environmental law—the *Polluter Pays* principle. This principle has been a part of Indian jurisprudence since 1996. In *Indian Council for Enviro-Legal Action v. Union of India*¹⁹, this Court held that according to the *Polluter Pays* principle the responsibility for repairing the damage is that of the offending industry. The Court further held that the powers of the Central Government to issue directions under Section 5 read with Section 3 of the Environment Protection Act include the power to impose costs for remedial measures: (SCC pp. 242-43 & 247-48, paras 60 & 67)

d

“60. ... Section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government (or its delegate, as the case may be) to ‘take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment...’. Section 5 clothes the Central Government (or its delegate) with the power to issue directions for achieving the objects of the Act. Read with the wide definition of “environment” in Section 2(a), Sections 3 and 5 clothe the Central Government with all such powers as are ‘necessary or expedient for the purpose of protecting and improving the quality of the environment’. *The Central Government is empowered to take all measures and issue all such directions as are called for, for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilise the amount so recovered for carrying out remedial measures.* This Court can certainly give directions to the Central Government/its delegate to take all such measures, if in a given case this Court finds that such directions are warranted. ...

e

f

g

* * *

h

¹⁹ (1996) 3 SCC 212

67. The question of liability of the respondents to defray the costs of remedial measures can also be looked into from another angle, which has now come to be accepted universally as a sound principle viz. the “Polluter Pays” principle.²⁰ ... Thus, according to this principle, the responsibility for repairing the damage is that of the offending industry. Sections 3 and 5 empower the Central Government to give directions and take measures for giving effect to this principle. In all the circumstances of the case, we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment (Protection) Act, 1986. It is, of course, open to the Central Government to take the help and assistance of State Government, RPCB or such other agency or authority, as they think fit.” (emphasis in original and supplied)

27. Subsequently, the Court in *Vellore Citizens’ Welfare Forum v. Union of India*²¹, has held that the liability for environmental damage includes both a compensatory aspect and a restorative or remedial aspect: (SCC p. 659, para 12)

“12. ... The “Polluter Pays Principle” as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of “Sustainable Development” and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.” (emphasis supplied)

28. Application of the *Polluter Pays* principle not only includes payment for restoring the damaged environment, taking remedial action to deal with the damage and compensating for the direct harm caused, but also for avoiding pollution. In *Research Foundation for Science (18) v. Union of India*²², this Court held: (SCC pp. 200-201, para 29)

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

20 Carolyn Shelbourn, “Historic Pollution — Does the Polluter Pay?”, *Journal of Planning and Environmental Law* (Aug 1974).

21 (1996) 5 SCC 647

22 (2005) 13 SCC 186

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 689

29. The Court in *Research Foundation for Science (18)*²² further held that the observations of the Court in *Deepak Nitrite Ltd. v. State of Gujarat*²³ that “mere violation of the law in not observing the norms would result in degradation of environment would not be correct” were confined to the facts of that case. The Court clarified that the actual degradation of the environment is not a necessary condition for the application of polluter pays principle, as long as the offending activities have the potential of degrading the environment: (*Research Foundation for Science case*²², SCC p. 201, para 30)

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

30. The distinction between a punitive action and a direction to pay environmental damages was made by *State Pollution Control Board v. Swastik Ispat (P) Ltd.*²⁴ The Tribunal in this case was considering the legality of forfeiture of bank guarantees in case a defaulting industry did not comply with the regulatory conditions within the stipulated timeframe. The Tribunal expressly considered the opinion of the High Court in the impugned judgment⁴ before us today and held: (*State Pollution Control Board case*²⁴, SCC OnLine NGT paras 45-46)

“45. It is evident from the above facts and the reasoning that there was actual levy of penalty or damages by DPCC and it was in consequence of such imposition of penalty/damages that the units were called upon to furnish bank guarantees for granting of consent. In other words, bank guarantee was required to be furnished in furtherance to the imposition of a penalty or damages in that case. It was not an act *dehors* the imposition of penalty and had the element of punitive action. In the present case, it is not a consequence of a punitive or penal action but is in exercise of the powers vested in the Board in relation to recalling the conditions of consent and ensuring their implementation while also making compensatory provision for remedying the apprehended wrong to the environment. In the cases in hand, the Board has not imposed any penalty upon the units but has granted consent to them on certain conditions, none of which is punitive. They squarely fall within the power of the Board to prevent and control pollution in consonance with the scheme of the Acts concerned. Thus,

²² *Research Foundation for Science (18) v. Union of India*, (2005) 13 SCC 186

²³ (2004) 6 SCC 402

²⁴ 2014 SCC OnLine NGT 13

⁴ *Delhi Pollution Control Committee v. Splendor Landbase Ltd.*, 2012 SCC OnLine Del 400

on facts, the judgments of the High Court in *Splendor*¹ do not have any application to the present case. In any case, we are of the considered view that asking for a bank guarantee as an interim measure for due performance of the conditions of the consent order being compensatory in nature, is not punitive. a

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

31. In *Swastik Ispat*²⁴, the Green Tribunal correctly interpreted Sections 33-A and 31-A of the Water and Air Acts. The judgment of the High Court in *Splendor*¹ had not yet been taken up or considered by this Court at that time, the Tribunal had to distinguish the facts of *Splendor*¹ to arrive at its own conclusion. In view of our reasoning and interpretation of Sections 33-A and 31-A of the Water and Air Acts, we have no hesitation to hold that the Green Tribunal is correct in its approach. c

32. More recently, in *T.N. Godavarman Thirumulpad, In re*²⁵, this Court while considering the issue of illegal construction in the Corbett Tiger Reserve drew the distinction between action against persons violating the law and measures for restoration of the environmental damage. The Court held: (SCC pp. 728-29, paras 173 & 175) d

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

* * *

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

(emphasis supplied) g

1 *Splendor Landbase Ltd. v. Delhi Pollution Control Committee*, 2010 SCC OnLine Del 3466 : (2010) 173 DLT 52 h

24 *State Pollution Control Board v. Swastik Ispat (P) Ltd.*, 2014 SCC OnLine NGT 13

25 (2025) 2 SCC 641

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 691

11. Principles

33. Based on a review of precedents on this issue, the following legal position emerges:

33.1. There is a distinction between a direction for payment of restitutionary and compensatory damages as a remedial measure for environmental damage or as an *ex ante* measure towards potential environmental damage on the one hand; and a punitive action of fine or imprisonment for violations under Chapters VII of the Water Act and VI of the Air Act on the other hand.

33.2. If directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute for example under Chapters VII and VI of the Water and Air Acts, respectively.

33.3. Indian environmental law has assimilated²⁶ the principle of *Polluter Pays* and there is also a statutory incorporation of this principle in our laws.²⁷ The invocation of this principle is triggered in the situations²⁸; (i) when an established threshold or prescribed requirement is exceeded or breached, and it does result in environmental damage; (ii) when an established threshold or prescribed requirement is not exceeded or breached, nevertheless the act in question results in environmental damage; and also (iii) when a potential risk or a likely adverse impact to the environment is anticipated, irrespective of whether or not prescribed thresholds or requirements are exceeded or breached.

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

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

34. Having considered the principles that govern our environmental laws and on interpretation of Sections 33-A and 31-A of the Water and Air Acts, we

²⁶ *Indian Council For Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647

²⁷ “**20. Tribunal to apply certain principles.**—The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.”

²⁸ Loveleen Bhullar, “The Polluter Pays Principle: Scope and Limits or Judicial Decisions” in Shibani Ghosh (ed.), *Indian Environmental Law* (Orient Black Swan 2019).

are of the opinion that that the Division Bench of the High Court was not correct in restrictively reading powers of the Boards. We are of the opinion that these regulators in exercise of these powers can impose and collect, as restitutionary or compensatory damages fixed sum of monies or require furnishing bank guarantees as an *ex ante* measure towards potential or actual environmental damage.

35. There is no doubt that Section 33-A of the Water Act and Section 31-A of the Air Act give the State Boards powers to issue necessary directions for environmental restoration, remediation and compensation and for the payment of costs for the same. The National Green Tribunal's judgment in *Swastik Ispat*²⁴ correctly identified the Board's powers to issue directions for payment of environmental damages under Section 33-A of the Water Act and Section 31-A of the Air Act. A restrictive interpretation which fails to differentiate between environmental damages and punitive action significantly encumbers the Board's ability to discharge its duties.

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

37. At this stage, we must also take note of the recent 2024 amendments²⁹ to the Water and Air Acts. Two major changes relevant for our consideration are that of decriminalisation³⁰ and introduction of the office of "Adjudicatory

24 *State Pollution Control Board v. Swastik Ispat (P) Ltd.*, 2014 SCC OnLine NGT 13

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

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

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 693

Officer”³¹. Even after the amendments, in our opinion, there is no conflict between the powers of the State Boards to direct payment of environmental damages under Sections 33-A and 31-A of the Water and Air Acts and the powers of the Adjudicating Officer to impose penalties under Chapter VII of the Water Act and Chapter VI of the Air Act. The decriminalization of offences under these chapters has not removed the punitive nature of actions that can be taken under them. There remains a clear distinction between the nature of directions that the State Boards can issue under Sections 33-A and 31-A of the Water and Air Acts for payment of environmental damage and the determination by Adjudicating Officers. The former is compensatory in nature and will be resorted to when remedial measures are being undertaken to restore the degraded environment or pollution caused. The latter is a penalty for an offence under the law and is imposed with the objective of punishing the offender. This penalty collected here will not be specifically directed towards the restoration of the degraded environment (for instance, to decontaminate a pond that has been polluted due to discharge of untreated sewage). It will be deposited in the Environmental Protection Fund that is to be set up under Section 16 of the Environment (Protection) Act. According to Section 16(3) of the EP Act, the Fund shall be used for (a) the promotion of awareness, education and research for the protection of environment; (b) the expenses for achieving the objects and for purposes of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981) and under this Act; and (c) such other purposes, as may be prescribed.

A. Board’s responsibility to choose appropriate course of action

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

³¹ In the Water Act, Section 45-B puts in place a new office by the title of “Adjudicating Officer”, who would be an officer not below the rank of Joint Secretary to the Centre or Secretary to the State, appointed by the Central Government. Adjudicating Officer is empowered to inquire and impose penalties under Sections 41, 41-A, 42, 43, 44, 45-A and 48. Appeal against such imposition lies before the National Green Tribunal as per Section 45-C. The Adjudicating Officer is further empowered to file a complaint for cognizance under Section 49. Corresponding additions have been made under the Air Act as well under Sections 39-A (Adjudicating Officer), 39-B (appeal to NGT) and 43 (cognizance of offences).

B. Powers must be guided by transparency and non-arbitrariness

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

40. This Court has underscored the importance of strong institutional frameworks in environmental governance that are effective, accountable and transparent. In *Bengaluru Development Authority v. Sudhakar Hegde*³², this Court held: (SCC p. 113, para 95) b

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

41. To ensure that the Boards impose restitutionary and the compensatory environmental damages in a fair transparent, non-arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of rules and regulations must be notified. This shall include methods by which environmental damage is determined, and the consequent quantum of damages are assessed. They may also incorporate certain basic principles of natural justice for fairness in action. At present environmental damages are being levied by the Boards on the basis of certain guidelines issued by the Central Pollution Control Board in its document “*General Framework for Imposing Environmental Damage Compensation*” issued in December 2022. These guidelines seem to have been issued pursuant to the directions of the NGT.³³ It is important that these guidelines are reviewed thoroughly and issued in the form of Rules and Regulations. This will enable declaration of a law that applies and ensures its recognition and easy implementation. f
g

32 (2020) 15 SCC 63

33 Pursuant to the NGT in its order in OA No. 606 of 2018, order dated 24-4-2019 [*Compliance of Municipal Solid Waste Management Rules, 2016 (State of Karnataka), In re*, 2019 SCC OnLine NGT 2926 and *Compliance of Municipal Solid Waste Management Rules, 2016 (State of Mizoram), In re*, 2019 SCC OnLine NGT 2927]. h

DELHI POLLUTION CONTROL COMMITTEE v. LODHI PROPERTY CO. LTD. 695

a **42.** These Rules must also create enabling framework for citizens to file complaints about environmental damage. Public participation in environmental protection has assumed great importance with climate change threatening to drastically disrupt our way of living. Boards, being the first line of defence against polluting activities, must provide easy accessibility and encourage public participation in their function and decision making.

b **43.** While we have reversed the decision of the High Court on the principle of law and hold that the environmental regulators, the Pollution Control Boards, can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an *ex ante* measure towards potential environmental damage in exercise of powers under Sections 33-A and 31-A of the Water and Air Acts, we issue the following consequential directions.

c **44.** In view of the fact that the show-cause notices in these cases relate to the year 2006 and those show-cause notices were set aside by the Single as well as by the Division Benches of the High Court, we are of the opinion that no purpose will be served in reviving the said show-cause notices at this point of time. In the facts and circumstances of the case while we allow the appeal on the principle of law there shall not be any consequential direction for reviving the show-cause notices which have been set aside concurrently by the Single as well as by the Division Bench of the High Court. If certain amounts have been collected on the basis of the said show-cause notices they shall be returned by DPCC within a period of six weeks from the date of this order, and if amounts are not deposited or collected the appellant, DPCC shall not take any further action.

45. For the reasons stated above:

e **45.1.** We allow these appeals and set aside the judgment and order dated 23-1-2012⁴, passed by the Division Bench of the High Court of Delhi to the extent of declaration of law but direct that the show-cause notices that have been set aside by the High Court shall not be revived.

f **45.2.** We direct that the Pollution Control Boards can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an *ex ante* measure towards potential environmental damage in exercise of powers under Sections 33-A and 31-A of the Water and Air Acts.

g **45.3.** It is further directed that the power to impose or collect restitutionary or compensatory damages or the requirement to furnish bank guarantees as an *ex ante* measure under Sections 33-A and 31-A of the Water and Air Acts shall be enforced only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation.

h

⁴ Delhi Pollution Control Committee v. Splendor Landbase Ltd., 2012 SCC OnLine Del 400



ANNEXURE-R-2

402

SUPREME COURT CASES

(2004) 6 SCC

(2004) 6 Supreme Court Cases 402

(BEFORE S. RAJENDRA BABU, C.J. AND G.P. MATHUR, J.)

DEEPAK NITRITE LTD.

.. Appellant;

a

Versus

STATE OF GUJARAT AND OTHERS

.. Respondents.

Civil Appeals No. 1521 of 2001[†] with Nos. 1522-28 of 2001,
decided on May 5, 2004

A. Environment Protection and Pollution Control — Polluter-Pays Principle — Applicability — Held, compensation/damages can be awarded under, only if damage has been caused to the environment by the person concerned — To say that mere violation of the law in not observing the norms would result in damage/degradation of the environment, is not correct — There must be a finding that such damage has in fact resulted — Since, on facts, there was no such finding, High Court directed to further investigate the matter in each of the cases — Such investigation not to be as if it were in an action in tort, but as an action in public law — A broad conclusion in this regard by the High Court would be sufficient — Other directions also given — Environment (Protection) Act, 1986 — S. 3

b

B. Environment Protection and Pollution Control — Polluter-Pays Principle — Compensation — Measure of — Percentage of annual turnover of polluter as a method — If permissible — Held, compensation to be awarded must have some broad correlation not only with the magnitude and capacity of the enterprise but also with the harm caused by it — Maybe, in a given case the percentage of turnover itself may be a proper measure, because the method to be adopted in awarding damages on the basis of the said principle has got to be practical, simple and easy in application — Environment (Protection) Act, 1986 — S. 3 — Torts — Compensation — Measure of

c

d

e

A petition was filed before the High Court in public interest alleging large-scale pollution caused by industries located in Gujarat Industrial Development Corporation (GIDC) Industrial Estate at Nandesari. It is alleged that effluents discharged by the said industries into the effluent-treatment project had exceeded certain parameters fixed by the Gujarat Pollution Control Board (GPCB), thereby causing damage to the environment. On 9-5-1997 the High Court passed an order directing the industries to pay 1% of the maximum annual turnover of any of the preceding three years towards compensation and betterment of environment within a stipulated time. The appeal was against this order.

f

Disposing of the appeals in the terms below, the Supreme Court

Held :

The fact that the industrial units in question have not conformed with the standards prescribed by GPCB, cannot be seriously disputed in these cases. But the question is whether that circumstance by itself can lead to the conclusion that such lapse has caused damage to the environment. No finding is given on that aspect which is necessary to be ascertained because compensation to be awarded

g

[†] From the Judgment and Order dated 26-3-1997 and 9-5-1997 of the Gujarat High Court in C. Applns. Nos. 322, 2108 and 2949 of 1997 in SC Appln. No. 2922 of 1995 : (1997) 1 Guj LR 1062

h

DEEPAK NITRITE LTD. v. STATE OF GUJARAT

403

a must have some broad correlation not only with the magnitude and capacity of the enterprise but also with the harm caused by it. Maybe, in a given case the percentage of the turnover itself may be a proper measure because the method to be adopted in awarding damages on the basis of “polluter-to-pay” principle has got to be practical, simple and easy in application. The appellants also do not contest the legal position that if there is a finding that there has been degradation of environment or any damage caused to any of the victims by the activities of the industrial units certainly damages have to be paid. However, to say that mere violation of the law in not observing the norms would result in degradation of environment would not be correct. (Para 6)

b Therefore, the High Court is directed to further investigate in each of these cases and find out broadly whether there has been any damage caused by any of the industrial units by their activities in not observing the norms prescribed by GPCB as reported by the Modi Committee appointed by the High Court or by an expert body like NEERI and that exercise need not be undertaken by the High Court as if the present proceeding is an action in tort but an action in public law. c A broad conclusion in this regard by the High Court would be sufficient. Therefore the High Court is directed to re-examine this aspect of the matter as to whether there is degradation of environment and as a result thereof any damage is caused to any victim, and what norms should be adopted in the matter of awarding compensation in that regard. In this process it is open to the High Court to consider whether 1% of the turnover itself would be an appropriate formula or not as applicable to the present cases. (Para 7)

d *Pravinbhai Jashbhai Patel v. State of Gujarat*, (1995) 36 Guj LR 1210; *M.C. Mehta v. Union of India*, (1987) 4 SCC 463 : AIR 1988 SC 1037; *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577, referred to
e *Consumer Education & Research Centre v. Union of India*, (1995) 3 SCC 42 : 1995 SCC (L&S) 604 : AIR 1995 SC 922; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647; *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37, cited

D-M/30106/C

Advocates who appeared in this case :

f T.R. Andhyarujina (Amicus Curiae), R.F. Nariman and R.P. Bhatt, Senior Advocates (Maulin Raval, Ashish Chugh, Srikant Doijode, Jay Savla, Ms Reena Bagga, Ms Hemantika Wahi, Ms Aruna Gupta, K.R. Sasiprabhu, Ms Manik Karanjawala, H.S. Parihar, P.H. Parekh, E.R. Kumar, Sanand Ramakrishnan, Vijay Panjwani, Aniruddha P. Mayee, Arvind Minocha, Anip Sachthey, Shrinivas R. Khalap, E. Venu Kumar, Harshad V. Hameed, E.C. Agarwala, Sunil Dogra, Ms Sayali Pathak, Chirag M. Shroff, M.N. Shroff and Ms Meenakshi Arora, Advocates) for the appearing parties.

Chronological list of cases cited

		on page(s)
	1. (1996) 5 SCC 647, <i>Vellore Citizens' Welfare Forum v. Union of India</i>	405f, 406a
g	2. (1995) 36 Guj LR 1210, <i>Pravinbhai Jashbhai Patel v. State of Gujarat</i>	404g-h, 405g, 406d-e, 406f-g, 407b
	3. (1995) 3 SCC 42 : 1995 SCC (L&S) 604 : AIR 1995 SC 922, <i>Consumer Education & Research Centre v. Union of India</i>	405b
	4. (1995) 2 SCC 577, <i>Virender Gaur v. State of Haryana</i>	405b
	5. (1987) 4 SCC 463 : AIR 1988 SC 1037, <i>M.C. Mehta v. Union of India</i>	405b
h	6. (1987) 1 SCC 395 : 1987 SCC (L&S) 37, <i>M.C. Mehta v. Union of India</i>	407d-e

The Judgment of the Court was delivered by

S. RAJENDRA BABU, C.J.— These appeals arise out of a series of orders made by the High Court of Gujarat. A petition was filed before the High Court in public interest alleging large-scale pollution caused by industries located in Gujarat Industrial Development Corporation (GIDC) Industrial Estate at Nandesari. It is alleged that effluents discharged by the said industries into the effluent-treatment project had exceeded certain parameters fixed by the Gujarat Pollution Control Board (GPCB), thereby causing damage to the environment. Some of the industries have set up their own effluent-treatment plants in their factory premises, while some of them have not. The High Court, by an order made on 17-4-1995, directed that the chemical industries in Nandesari should be made parties to the proceedings; thereby 252 industrial units located in Nandesari Industrial Estate, Baroda were made parties to the proceedings, apart from the State of Gujarat, the Central Pollution Control Board, Gujarat Industrial Development Corporation and Nandesari Industries Association. The High Court also issued notices to financial institutions or banks in respect of these proceedings.

2. On 5-5-1995 the High Court appointed a Committee under the Chairmanship of Dr. V.V. Modi to ascertain the position with regard to the extent of pollution in Nandesari Industrial Estate. A common effluent-treatment plant (CETP) was erected by GIDC in Nandesari Industrial Estate on the contribution made by the industrial units in Nandesari Industrial Estate to the extent of about Rs 300 lakhs. Inasmuch as CETP was not achieving the required parameters laid down by GPCB, the High Court, by an order made on 7-8-1996, appointed NEERI as a consultant to assess the treatment facilities and to provide suitable rectification measures for upgrading CETP and effluent-treatment plant facilities. Dr. Modi Committee made a report on 7-9-1996. The High Court restrained several industries from removing their products from their plant without prior permission of the High Court and thereafter, by an order made on 13-9-1996, the High Court permitted them to dispatch materials by depositing a certain sum of money which was the value of the materials. NEERI submitted its report on 31-10-1996. The High Court, while granting permission to some of the industries to carry on their activities, called for turnover figures and profitability data. On 9-5-1997 the High Court passed an order directing the industries to pay 1% of the maximum annual turnover of any of the preceding three years towards compensation and betterment of environment within a stipulated time. It is against this order that the appellants are before us.

3. The High Court in its impugned order followed a decision of the High Court of Gujarat in *Pravinbhai Jashbhai Patel v. State of Gujarat*¹ wherein it was noticed that the industrial units though aware of the requirements of law had not complied with the same nor did they meet the GPCB parameters and they were irresponsible in not wanting or caring to set up effluent-treatment

1 (1995) 36 Guj LR 1210

DEEPAK NITRITE LTD. v. STATE OF GUJARAT (*Rajendra Babu, C.J.*) 405

plants but continued to manufacture, and pollute the environment and the concern shown now in meeting with the pollution-control norms is only

a because of the threatened court order; that pollution caused by these industrial units was adversely affecting a large number of citizens residing in the adjacent cities or villages; that in particular water and air pollution is not only continued in the immediate area in which the pollution is generated, but the same affects other areas as well wherever water or air went; that this Court in *M.C. Mehta v. Union of India*², *Virender Gaur v. State of Haryana*³

b and *Consumer Education & Research Centre v. Union of India*⁴ invoked the provisions of Article 21 of the Constitution of India to declare that the citizens have a fundamental right to live decently, unaffected by pollution. After noticing various contentions, the High Court took the view that 1% of the turnover would be a good measure of assessing damages for the pollution caused by the industrial units and that amount should be kept apart by the

c Ministry of Environment and should be utilised for the works of socio-economic upliftment of the population of the aforesaid affected areas and for the betterment of educational, medical and veterinary facilities and the betterment of the agriculture and livestock in the said villages with certain additional directions in this regard.

4. It is now submitted before us by the appellants that a court has no

d power to either impose penalty or fine or make any levy for general betterment unless the statute authorised the same; that, however, in awarding damages it is permissible to make the same exemplary or penal; that award of damages is by way of restitution for the damage caused to victims and for restoration or restitution and for restoration of ecology by way of punishment; that, unless a finding is given by the High Court that there had

e been degradation of environment, question of restitution or awarding damages could not arise; that there is no finding of degradation of environment and, therefore, it is not open to the High Court to impose 1% of the turnover by way of damages. The appellants relied upon a decision of this Court in *Vellore Citizens' Welfare Forum v. Union of India*⁵ in support of this contention. Their argument is that the principle of "polluter to pay" cannot be

f applied unless a finding has been given that the industrial unit concerned is the polluter. In what manner pollution has been caused should have been ascertained, particularly when a separate common effluent-treatment plant had been erected and a channel was provided through which water would flow into the river which would reach the sea thereby not causing any damage anywhere. They seek to bring about difference between *Pravinbhai*

g *Jashbhai Patel case*¹ and the present proceedings to contend that in those cases there was direct evidence of damage having taken place and by way of rule of thumb the High Court adopted the standard of 1% of turnover to be paid by way of damages and that this principle cannot always uniformly be

2 (1987) 4 SCC 463 : AIR 1988 SC 1037

3 (1995) 2 SCC 577

4 (1995) 3 SCC 42 : 1995 SCC (L&S) 604 : AIR 1995 SC 922

5 (1996) 5 SCC 647

h

406

SUPREME COURT CASES

(2004) 6 SCC

applied. They commend us to apply the principle set out by this Court in *Vellore Citizens' Welfare Forum case*⁵ wherein the principle of “polluter to pay” has been applied and wherein it is noticed that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country; once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity; consequently, the polluting industries are absolutely liable to compensate for the harm caused by them to villagers in the affected areas, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas; that the “polluter-pays principle” as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation; that remediation of the damaged environment is part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

5. Shri T.R. Andhyarujina, learned Senior Advocate, who assisted this Court as amicus curiae with great ability, explained to us the background in which the High Court had passed the impugned order. He submitted that the High Court had followed the earlier decision in *Pravinbhai Jashbhai Patel case*¹ wherein standard of 1% of turnover was adopted for closure of polluting units and payment of compensation by such units for polluting river and land; that the basis of this decision in that case was that the polluting industrial units were not meeting the GPCB norms and the continued violation of the law by industrial units had become a habit; that after elaborate discussion, the High Court had concluded that these industries had caused pollution and, therefore, gave certain directions, including for closure of the industrial units until they observed the GPCB norms; that the directions given by the High Court regarding closure and payment of compensation were complied with by the industrial units and this Court did not interfere with the order made by the High Court, therefore, the methodology adopted by the High Court in *Pravinbhai Jashbhai Patel case*¹ can be applied to other industrial units which are causing pollution; that, after investigation made by the Committee or by an expert body there were reports that the industrial units were causing pollution by not complying with the norms prescribed by GPCB and the High Court, in fact, noticed that a number of units have voluntarily agreed to pay 1% of the turnover of a year out of the last three years and there was consensus between all the industries and for betterment of environment, they voluntarily stated before the Court that 1% shall be paid; that one may say that even some of the units having no treatment plant or having inadequate facilities appeared before the High Court stating that they would voluntarily stop manufacturing till installation of proper treatment plant and were in a position to discharge trade effluent meeting with the GPCB norms. Thus, in these cases, the High Court

DEEPAK NITRITE LTD. v. STATE OF GUJARAT (*Rajendra Babu, C.J.*) 407

- restrained firstly, several industries from removing their products from their plant without prior permission of the High Court and thereafter, such units themselves suspended operation of the polluting activities. The High Court, after having considered further reports of the Committee, NEERI and GPCB permitted to restart activities on a trial basis and at the same time, directed that “with regard to 1% payment an order will be passed after the details furnished by the learned counsel”. The High Court thereafter adopted payment of 1% of the turnover method as indicated in *Pravinbhai Jashbhai Patel case*¹. He submitted that in these cases the High Court has through its investigation either by the Committee appointed by itself or expert agency like NEERI found that the industrial units in question were polluting units and had not conformed with the norms prescribed by GPCB and each of the units was discharging effluents into the effluent-channel project constructed by GIDC which in turn discharged the effluents into Mahi river which ultimately reached the sea. Thus the High Court had found that there was extensive environmental degradation as a result of the pollution because of the violation of the pollution laws and on account of such damage, the High Court ordered the payment of 1% compensation as a one-time payment for pollution and damage for a number of years from 1993 to 1996. He further submitted that in no case the High Court ordered compensation without giving a finding that there was environmental degradation and damage as a result of violation or prescribed norms. He also adverted to various decisions of this Court in *M.C. Mehta v. Union of India*⁶ to support the proposition that the measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect and such damage not only extends to restitution for the harm to the environment to compensate the victims of the pollution but also cost of restoring the environment by degradation. This Court reiterated the principle of “polluter to pay” to the effect that one of the principles is to levy damages of a certain percentage of total turnover and the right to a clean and hazardless environment has been recognised as a fundamental right under Article 21 of the Constitution. The Court has innovated new methods and strategies for the purpose of securing enforcement of fundamental rights.

6. The fact that the industrial units in question have not conformed with the standards prescribed by GPCB, cannot be seriously disputed in these cases. But the question is whether that circumstance by itself can lead to the conclusion that such lapse has caused damage to environment. No finding is given on that aspect which is necessary to be ascertained because compensation to be awarded must have some broad correlation not only with the magnitude and capacity of the enterprise but also with the harm caused by it. Maybe, in a given case the percentage of the turnover itself may be a proper measure because the method to be adopted in awarding damages on the basis of “polluter-to-pay” principle has got to be practical, simple and easy in application. The appellants also do not contest the legal position that

6 (1987) 1 SCC 395 : 1987 SCC (L&S) 37

408

SUPREME COURT CASES

(2004) 6 SCC

if there is a finding that there has been degradation of environment or any damage caused to any of the victims by the activities of the industrial units certainly damages have to be paid. However, to say that mere violation of the law in not observing the norms would result in degradation of environment would not be correct. a

7. Therefore, we direct the High Court to further investigate in each of these cases and find out broadly whether there has been any damage caused by any of the industrial units by their activities in not observing the norms prescribed by GPCB as reported by the Modi Committee appointed by the High Court or by an expert body like NEERI and that exercise need not be undertaken by the High Court as if the present proceeding is an action in tort but an action in public law. A broad conclusion in this regard by the High Court would be sufficient. We, therefore, direct the High Court to re-examine this aspect of the matter as to whether there is degradation of environment and as a result thereof any damage is caused to any victim, and what norms should be adopted in the matter of awarding compensation in that regard. In this process it is open to the High Court to consider whether 1% of the turnover itself would be an appropriate formula or not as applicable to the present cases. b c

8. We record our appreciation and gratitude to Shri T.R. Andhyarujina in assisting this Court as amicus curiae. d

9. With these observations, these appeals stand disposed of.

(2004) 6 Supreme Court Cases 408

(BEFORE S.N. VARIAVA AND ARIJIT PASAYAT, JJ.)

COMMISSIONER OF CUSTOMS, KOLKATA .. Appellant; e
Versus

RUPA & CO. LTD. .. Respondent.

Civil Appeals No. 5944 of 2002[†] with Nos. 1975, 3538-62, 3761-63, 4190, 9306-11, 9565-69 of 2003, 1277-85 and 2619 of 2004, decided on July 21, 2004 f

A. Customs Act, 1962 — Ss. 25 and 12 — Exemption — Capital goods imported under EPCG Scheme — Entitlement to 100% exemption under proviso to Noti. No. 29/97-Cus. dated 1-4-1997 — Words “capital goods” required for manufacture of textile garments, held, include not only machinery used directly for manufacture of garments but all machines required for the ultimate manufacture thereof — Hence, fabric/yarn-processing machines, fabric-inspection machines, fabric-knitting machines, fabric-dyeing machines and other such machines imported by garment manufacturers and used to meet the export obligation, held, entitled to 100% exemption — Customs Tariff Act, 1975, S. 3 — Export and Import Policy, April 1997-March 2002 — Customs Tariff — Articles or commodities g

[†] From the Judgment and Order dated 31-1-2002 of the Customs, Excise and Gold (Control) Appellate Tribunal, East Zonal Bench at Kolkata in A. No. C/R-532 of 2001 in FO No. A/154/Kol/2002 h





[2025:RJ-JD:44705]


**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 645/2025

ANNEXURE-R-3

M/s. Tata Bricks Company (Old Name Vip Int Udyog), Chakk-66 G.b., Tehsil - Anoopgarh, District Sri Ganganagar Through Its Proprietor Jitin Kumar S/o Amarjeet Kumar, Aged About 27 Years, R/o Ward No. 11, Sri Vijaynagar, District Sri Ganganagar (Raj.).

-----Petitioner

Versus

1. Rajasthan State Pollution Control Board, Through Its Member Secretary, Jhalana Industrial Area, Jhalana Dungari, Jaipur.
2. Environment Engineer (Env. Comp.), Rajasthan State Pollution Control Board, Headquarter, 4 Institutional Area, Jhalana Dungari, Jaipur.
3. Regional Officer, Rajasthan State Pollution Control Board, Plot No. Spl-33, Bichhwal Industrial Area, Bikaner

-----Respondents

For Petitioner(s) : Mr. Manish Shishodia, Sr. Advocate
with Mr. D.S. Thind
Mr. Harshvardhan Rathore
Mr. Vijay Kumar Aggarwal
Mr. Hemant Kumar Jain
Mr. Bhuvneshwar Singh Sodha
Mr. Deepesh Birla
Mr. Amit Kumar
Ms. Sonika Punia
Mr. S.R. Godara
Mr. Hans Raj Choudhary

For Respondent(s) : Mr. Sajjan Singh Rathore, AAG with
Mr. Pravin Kumar Choudhary
Mr. Mahendra Bishnoi
Mr. Sanjay Raj Paliwal
Ms. Neelam Sharma, AGC

HON'BLE MR. JUSTICE SUNIL BENIWAL**Order****Reportable**



Reserved on : **23/09/2025**

Pronounced on : **30/10/2025**

1. Learned Senior Counsel, Mr. Manish Shishodia, appearing on behalf of the petitioners, at the outset, submitted that he proposes to make some preliminary submissions, which are identical in the present writ petition, along with other writ petitions mentioned in **Schedule-A**, attached with this order, which may be treated as part of this order.

2. It is submitted by the learned Senior counsel that the present bunch of petitions have been filed feeling aggrieved of the imposition of environmental compensation by the respondent – Rajasthan State Pollution Control Board ("RSPCB"), pursuant to the directions issued by the National Green Tribunal ("NGT").

2.1 It is further submitted by the learned Senior Counsel that his preliminary submissions may be considered and decided first, without going into the merits of individual writ petitions and if his preliminary submissions are decided and are accepted, then the entire bunch of writ petitions could be decided accordingly. It is also submitted that if this Court is not inclined to accept the preliminary submissions, then the writ petitions may be posted again for deciding the same on merits.

2.2 Considering the submissions made above, the preliminary submissions are being considered and decided first.

3. At this stage, although this Court is not deliberating the factual aspects involved in this bunch of writ petitions, however, it would be relevant to produce background of the matter for clarity. Hence, for brevity, the facts of writ petition No.645/2025 are considered.





[2025:RJ-JD:44705]



[CW-645/2025]

3.1 The petitioner, to operate as a brick kiln, had applied to RSPCB for grant of Consent to Operate on 26.11.2021 and the same was granted on 13.02.2022 (Annex.3) for the period from 26.11.2021 to 31.10.2031. However, in the meanwhile, a show cause notice dated 19.01.2022 (Annex.4) was issued by RSPCB in pursuance of directions issued by the NGT vide order dated 10.11.2021 in the case of Hakam Singh & Anr. Vs. State of Rajasthan & Ors.; O.A. No.262/2020 and imposition of Environmental Compensation was sought alleging operation of unit without obtaining Consent to Operate.

3.2 Thereafter, Environmental Compensation to the tune of Rs.15,60,000/- was levied vide order dated 08.03.2022 (Annex.5) passed by RSPCB. Aggrieved of the same, the petitioner preferred a writ petition being SBCWP No.7580/2022, which is pending and is tagged with the present bunch of writ petitions.

3.3 The petitioner also approached the NGT seeking impleadment as party in the aforesaid case pending before it. The NGT, while disposing of the application for impleadment on 11.07.2022, directed that the order dated 08.03.2022 (Annex.5) be treated a notice and granted time to the petitioner to file response to the same.

3.4 The petitioner thereafter submitted a reply pursuant to the aforesaid order passed by the NGT and thereafter the impugned show cause notice dated 18.12.2024 (Annex.7) came to be passed seeking to revoke consent to operate on account of non-deposition of Environmental Compensation been imposed vide order dated 08.03.2022.





3.5 In similar manner, Environmental Compensation has been imposed by RSPCB on the petitioners alleging operation of brick kilns without Consent to Operate. The said imposition of Environmental Compensation has been challenged in the present bunch of writ petitions alleging the same to have been levied without jurisdiction/authority.

4. The preliminary submission, which is common in all the writ petitions, is that the RSPCB is not competent under the law to impose Environmental Compensation. In support of such submission, learned Senior Counsel, Mr. Shishodia, made the following submissions:-

4.1 The RSPCB has exceeded its jurisdiction in imposing Environmental Compensation upon the petitioner as it has no authority under the law to do so and has relied upon the judgment passed by the Division Bench of the Allahabad High Court (Lucknow Bench) in the case of **Suez India Pvt. Ltd. Vs. Uttar Pradesh Pollution Control Board & other connected matters**, decided on 17.07.2025. While relying on the aforesaid judgment, the learned Senior Counsel has referred to para Nos.2, 13, 39, 43, 44, 47, 51, 54, 63, 66, 67, 78, 70, 80, 82 and 83 and while taking this Court to the above referred paragraphs of the judgment, he argued that the State Pollution Control Board has no power to impose Environmental Compensation on any person or industry and it can merely file an application before the NGT under Section 15 read with Section 18 of the National Green Tribunal Act, 2010 ("NGT Act") for issuance of a direction to the person concerned for demand of the same.





4.2. He also placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of **Kantha Vibhag Yuva Koli Samaj Parivartan Vs. State of Gujarat & Ors. [(2023) 13 SCC 525]** and referred to para Nos.3, 5, 6 and 14 to 17 of the aforesaid judgment and submitted that the NGT could not abdicate its jurisdiction and could not entrust judicial function to any administrative expert body. Such function is not delegable. He argued that Section 15 of the NGT Act empowers the NGT to award compensation to the victim of pollution and the environmental damages to provide for restitution of property, which has been damaged and for the restitution of environment. He also argued that it is the NGT alone, who has been entrusted by the Act and it is rather core adjudicatory function, which cannot be delegated to any administrative expert body.

4.3. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **D.P.C.C. Vs. Lodhi Property Co. Ltd. & other connected matters, [2025 SCC OnLine SC 1601]** while contending that power to impose or collect restitution or compensatory damages can be imposed only after detailing the principle and the procedure incorporating basic principles of natural justice in the subordinate legislation.

He further contended that the Hon'ble Apex Court has clearly opined that without there being any legislative regulatory mechanism, the State Pollution Control Board cannot demand Environmental Compensation.

The Hon'ble Apex Court, in the aforesaid judgment in the case of Lodhi Property Co. Ltd. (supra), has laid down that guidelines issued by the Central Pollution Control Board, in its





document "General Framework for Imposing Environmental Damages" which were issued in December, 2022, are required to reviewed thoroughly and issued in form of Rules & Regulations as this will enable declaration of law and ensure its recognition and easy implementation. While elaborating his submission, learned Senior Counsel has referred to para Nos.2, 3, 6, 12, 30, 31, 33, 35, 37 and 39 of the aforesaid judgment and while taking this Court to the above referred paragraphs of the said judgment, he submitted that the Hon'ble Apex Court, in concluding para, has specifically observed that the State Pollution Control Board, shall impose or collect restitutionary or compensatory damages only after detailing the principle and procedure incorporation basic principles of natural justice in the subordinate legislation. That being so, unless the necessary Rules & Regulations are framed and are incorporated and declared as a law, the State Pollution Control Board has no authority to impose Environmental Compensation upon the petitioners, based on the guidelines which have no legislative competence.

4.4. The Environmental Compensation has been calculated without any formula and there is no transparency as to on what basis the figure mentioned as Environmental Compensation has been arrived at by the RSPCB. He submitted that the alleged mechanism does not carry any statutory force as it has not been notified in the official gazette. There is no material available on record nor any impugned orders to reflect as to who has suffered damages or harmed. The impugned orders have been passed in cyclostyled manner without due application of mind.





Based on the above, learned Senior Counsel Mr. Shishodia submitted that the present bunch of petitions deserves to be allowed on the above preliminary submissions and the impugned orders passed in the present bunch of petitions are required to be quashed and set aside on this count alone and any amount recovered towards Environmental Compensation from the petitioners, during pendency of the present bunch of petitions, is required to be refunded.

5. Learned counsel Mr. Vijay Kumar Aggarwal, appearing in SBCWP No.6090/2022 while adopting the arguments as advanced by learned Senior Counsel Mr. Shishodia, submitted that appeal against the impugned order is not maintainable as they are composite orders passed under both the Air (Prevention and Control of Pollution) Act, 1981 ("Act of 1981") and the Water (Prevention and Control of Pollution) Act, 1974 ("Act of 1974"). He submitted that there is no provision provided under the Act of 1981 to appeal against the directions issued under Section 31 of the said Act. The remedy available under the Act of 1974 cannot be availed to appeal against the composite impugned orders and, therefore, the objections as raised by the respondents in their reply with regard to the maintainability of the present writ petitions deserve to be rejected.

5.1. He placed reliance on the judgment of the Hon'ble Apex Court in the case of **Tamil Nadu Pollution Control Board Vs. Sterlite Industries (I) Ltd. & Ors. [(2019) 19 SCC 479]**.

5.2. He also submitted that brick-kilns work on different scale and level, meaning thereby, the capability and investment, therefore,





mechanism to impose Environmental Compensation, without any prescribed mode of calculation, is also not comprehensible.

6. Learned Counsel Mr. Hemant Kumar Jain, appearing in SBCWP No.3088/2023 while adopting the arguments as advanced by learned Senior Counsel Mr. Shishodia and Mr. Vijay Kumar Aggarwal, further submitted that even if appeal is to be preferred, the same cannot be done as the Appellate Authority at Jaipur is not functioning and, therefore, writ petitions are required to be heard on merit.

7. Per contra, learned counsel for the RSPCB as well as the State, made the following submissions:-

7.1 The respondent-RSPCB was right in imposing Environmental Compensation upon the petitioner as an inspection was carried out in view of the direction issued by the NGT and during inspection, it was noted that the brick kilns, being operated by the petitioners, were running without Consent to Operate or in some cases, without seeking necessary conversion.

It is submitted that the Environmental Compensation is calculated for the period in which the petitioners-industries were found to be running without Consent to Operate and, therefore, the RSPCB was fully justified in imposing environmental compensation.

It is submitted that penalty for violation and environmental damages are two different subjects and as far as penalty is concerned, the same is for the purpose of penalizing the person for not adhering to the norms and the guidelines under which he is supposed to run brick-kilns and environmental compensation is a compensation, which is levied on the default for causing





environmental pollution and the environmental compensation is recovered as to restore the damage caused on account of such environmental damage.

7.2 The State Pollution Control Board is under obligation to consider the direction issued by the Central Pollution Control Board as per Section 18(1)(b) of the Act of 1981. Thus, in view of the same and considering the judgment rendered by the Hon'ble Apex Court in the case of **Paryavaran Suraksha Samiti & Ors. Vs. Union of India & Ors. [(2017) 5 SCC 326]**, the mechanism of calculation, imposition and recovery of environmental compensation has been formulated, which under clause (2) provides the procedure for calculating amount of environmental compensation. That being so, the action of the respondent-RSPCB in imposing Environmental Compensation cannot be held to be illegal or arbitrary in any manner.

7.3 The NGT, vide its order dated 11.02.2021, has delegated to the State Pollution Control Boards, the authority to assess and recover compensation from brick kilns, therefore, the impugned orders were rightly passed.

7.4 While responding to the submission made with regard to direction issued in the case of Lodhi Properties (supra), it is submitted on behalf of the respondents that the Hon'ble Apex Court has not declared the method of calculating as unconstitutional and, therefore, it cannot be concluded that there is anything wrong in the formula for calculation, rather, the direction has been given only to give statutory colour to the guidelines.





7.5 While responding the submissions with regard to damage suffered, it is submitted by the respondents that compensation has been imposed on the petitioners on account of non-compliance with requisite of obtaining/renewing Consent to Operate and, therefore, the question as to who has suffered damage does not arise.

7.6 The petitioners have not challenged the order dated 11.02.2021, passed by the NGT, pursuant to which, the impugned orders/notices have been issued to the petitioners imposing Environmental Compensation. The said order of NGT is the whole genesis in this litigation as every action ranging from site inspection to issuance of the impugned orders has been carried out as per direction issued in the said order and, therefore, without challenging the same, the present writ petitions are not maintainable. In support of this submission, learned counsel has placed reliance on the judgment of the Meghalaya High Court rendered in the case of **Dayanidhi Ventures Pvt. Ltd. Vs. Meghalaya State Pollution Control Board & Ors. [WP(C) No.338/2021, decided on 16.12.2021]**.

7.7 The judgment rendered in the case of Lodhi Properties (supra), does not help the petitioners as the impugned communications, passed due to the non-compliance of possessing Consent to Operate. Further, the Court has, in no manner, denied the authority of State Pollution Control Boards to levy environmental compensation.

7.8 The action of the RSPCB cannot be said to be arbitrary or unreasonable as show cause notices were issued to which respective replies were filed by the petitioners and subsequent





thereto, the impugned communications were issued. The 'Polluter Pays Principle' not only applies to emission of actual pollution but also to non-compliance of requisite permissions to maintain the environmental law compliance concerning pollution and Consent to Operate comes within the ambit of such compliance as action plan as to how the work will be carried and emissions would be maintained has to be submitted before NOC can be issued.

7.9 The Allahabad High Court, in the case of **M/s. Ramesh Dyeing and Washing, Ghaziabad Vs. State of U.P. [Writ(C) No.7305/2025]**, decided on 21.08.2025], dismissed the writ petition while relying on the judgment of the Hon'ble Apex Court in the case of Lodhi Properties (supra) and observed that Pollution Control Board has jurisdiction to impose Environmental Compensation.

7.10 In response to the submission made by Mr. Vijay Kumar Aggarwal, it is submitted that the impugned communications are composite in nature, however, remedy of petitioners lies before the NGT itself as the communications have been issued in compliance of the direction of the NGT.

7.11 While responding to the submissions made by Mr. Hemant Kumar Jain, it is submitted that the appellate authority has been notified on 18.09.2025 and, therefore, the submission made by him is incorrect on the face of it. Thus, the petitioner very well has an alternative remedy to approach the Appellate Authority. Reliance has been placed on the judgment of Allahabad High Court delivered in the case of **Nagar Palika Parishad Vs. State of UP & Ors. [(2024) ILR 12 All. 741]**.





8. Heard learned counsel for the parties and perused the record.

9. One of the argument raised by the respondents is with regard to the maintainability of writ petitions in view of the fact that the petitioners have equally efficacious alternative remedy.

9.1 This Court deems it appropriate to deal with the issue of alternative remedy at first.

9.2 The counsel for the petitioners, while making preliminary submissions, have submitted that RSPCB exceeded its jurisdiction in calculating and imposing Environmental Compensation upon the petitioners, more particularly in view of not having legislative competence to take such action.

9.3 It may also be noted that order/show cause notice is challenged by the petitioners on ground of it being without jurisdiction. If order/action is without jurisdiction, then writ petition is maintainable despite alternative remedy being available, as has been held by the Hon'ble Apex Court in the case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors. [(1998) 8 SCC 1]**, wherein it was observed as under:-

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Qua Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that





if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.

But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. *Rashid Ahmad v. Municipal Board, kairana, [1950]1SCR566, laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting Writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. The Income Tax Investigation Commissioner, [1954]25ITR167(SC) which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that Writ Petition under Article 226 could still be entertained in exceptional circumstances.*

XXX XXX

20. *Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."*

9.4 It is further to be noted that the impugned orders are composite in nature as they have been passed under the Act of 1981 so also Act of 1974, thus remedy of appeal cannot be availed as held by the Hon'ble Apex Court in the case of Sterlite Industries (supra) wherein the Court observed as under:-





“35...At this juncture, it is important to state that Section 33B of the Water Act and Section 31B of the Air Act were both enacted on 18.10.2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued Under Section 33A of the Water Act are appealable to the NGT, directions issued Under Section 31A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given Under Section 31A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders.....However, Shri Sundaram argued, with particular reference to the explanation to Section 31A of the Air Act that "directions" partake of the nature of "orders" when closure of any particular industry or stoppage of supply of electricity qua any single industry is made, and therefore, such directions are appealable as orders Under Section 31 of the Air Act. This argument is also of no avail as Section 33A of the Water Act contains an identical explanation to that contained in Section 31A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable.”

Thus, this Court is well within its jurisdiction to entertain the present writ petitions.

10. Now, I propose to deal with the issue submitted in the form of preliminary submission, which is as to whether Rajasthan State Pollution Control Board is competent to impose Environmental Compensation, as has been imposed in the orders impugned in the present bunch of petitions.

10.1 In order to adjudicate the above issue, it would be appropriate to first consider the judgment of the Hon'ble Apex Court in the case of Lodhi Properties (supra). Before considering the said judgment, it would be appropriate to reproduce certain relevant paragraphs of the judgment, which are reproduced as under:-





“31. At this stage, we must also take note of the recent 2024 amendments to the Water and Air Acts. Two major changes relevant for our consideration are that of decriminalisation and introduction of the office of “Adjudicatory Officer”. Even after the amendments, in our opinion, there is no conflict between the powers of the State Boards to direct payment of environmental damages under Sections 33A and 31A of the Water and Air Acts and the powers of the Adjudicating Officer to impose penalties under Chapter VII of the Water Act and Chapter VI of the Air Act. The decriminalization of offences under these Chapters has not removed the punitive nature of actions that can be taken under them. There remains a clear distinction between the nature of directions that the State Boards can issue under Sections 33A and 31A of the Water and Air Acts for payment of environmental damage and the determination by Adjudicating Officers. The former is compensatory in nature and will be resorted to when remedial measures are being undertaken to restore the degraded environment or pollution caused. The latter is a penalty for an offence under the law and is imposed with the objective of punishing the offender. This penalty collected here will not be specifically directed towards the restoration of the degraded environment (for instance, to decontaminate a pond that has been polluted due to discharge of untreated sewage). It will be deposited in the Environmental Protection Fund that is to be set up under Section 16 of the Environment (Protection) Act. According to Section 16(3) of the EP Act, the Fund shall be used for; (a) the promotion of awareness, education and research for the protection of environment; (b) the expenses for achieving the objects and for purposes of the Air (Prevention and Control of Pollution) Act, 1981(14 of 1981) and under this Act; and (c) such other purposes, as may be prescribed.

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

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

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

33. While we hold that the Boards have the power to direct the payment of environmental damages, we make it clear that





this power must always be guided by two overarching principles. First, that the power cannot be exercised in an arbitrary manner; and second, the process of exercising this power must be infused with transparency.

...

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

36. These Rules must also create enabling framework for citizens to file complaints about environmental damage. Public participation in environmental protection has assumed great importance with climate change threatening to drastically disrupt our way of living. Boards, being the first line of defence against polluting activities, must provide easy accessibility and encourage public participation in their function and decision making.

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

39. For the reasons stated above:

- (a) we allow these appeals and set aside the judgement and order dated 23.01.2012, passed by the Division Bench of the High Court of Delhi to the extent of declaration of law but direct that the show cause notices that have been set aside by the High Court shall not be revived.
- (b) we direct that the Pollution Control Boards can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank





guarantees as an ex-ante measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts.

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

10.2 A perusal of the above judgment, more particularly, the paragraphs as reproduced above, reflects that the Hon'ble Apex Court, in para No.39 of the judgment, has specifically concluded and directed that power to impose or collect restitutionary or compensatory damages or requirement of furnishing a bank guarantee as an ex-ante measure under Sections 33A and 31A of the Water and Air Act respectively shall be imposed only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation. Meaning thereby, the Hon'ble Apex Court, while considering the issue of imposition of the Environmental Compensation by the State Pollution Control Boards, observed that the State Pollution Control Boards can impose restitutionary or compensatory environmental damages but only after having competence of subordinate legislation in the form of Rules & Regulations.

In para No.35 of the said judgment, the Hon'ble Apex Court has further observed that to ensure that the Boards can impose restitutionary and compensatory damages in a fair, transparent, and non-arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of Rules and Regulations must be notified. This shall include methods by which environmental damages is determined, and the consequent quantum of damages





are assessed. While bringing such Rules & Regulations, it may also incorporate certain principles of natural justice for fairness in action.

It is further observed that presently there is no legislation providing method of calculating Environmental Compensation and environmental damages being levied by the Boards on the basis of the certain guidelines issued by the Central Pollution Control Board in its document "General Framework for imposing environmental damage compensation" issued in December, 2022. It is noted by the Hon'ble Apex Court that these guidelines seem to have been issued pursuant to the directions of the NGT and the same are required to be reviewed thoroughly and are required to be issued in the form of Rules & Regulations.

10.3 Considering the observations made by the Hon'ble Apex Court, this Court is of the firm opinion that the RSPCB could not have demanded Environmental Compensation while considering the fact that there is no statutory backing with regard to the mechanism to calculate Environmental Compensation so also to have an authority to demand such Environmental Compensation.

10.4 Counsel for the respondents have stated that the Allahabad High Court, after considering the judgment of the Hon'ble Apex Court in the case of Lodhi Properties (supra), dismissed the writ petitions, however, it is noted that the Allahabad High Court has considered the only issue with regard to competence of the State Pollution Control Board and has not considered the directions issued by the Hon'ble Apex Court, which mandated that the State Pollution Control Boards could demand Environmental Compensation only after framing Rules & Regulations.





10.5 There is no dispute to the fact that presently the formula, as applied by the RSPCB is based on the guidelines "Mechanism of Calculation, Imposition and Recovery of Environmental Compensation". These guidelines have no statutory backing and, therefore, considering the judgment of the Hon'ble Apex Court, the RSPCB has no authority of law in demanding such Environmental Compensation. It is also to be noted that in the present case, demands were raised in the year 2022-23. The Hon'ble Apex Court has though decided the issue regard to the competency of State Pollution Control Boards to impose Environmental Compensation recently in the case of Lodhi Property (supra) which was decided on 04.08.2025, and the demands raised in the present writ petitions are prior to it, yet considering the settled law on the prospective and retrospective operation of the judgments rendered by the Courts, which does not require much deliberation, it is clear that the observations made by the Hon'ble Apex Court in the said case would apply to impugned orders in the present bunch of writ petitions. The said of proposition of law was recently discussed by the Hon'ble Apex Court in the case of **Kanishk Sinha & Anr. Vs. The State of West Bengal & Anr.; 2025 INSC 278** wherein the Court observed that whereas the law made by the Legislature is always prospective in nature unless it has been specifically stated retrospective, the reverse is true for judicial pronouncements. The judgment of the Court will always be retrospective in nature unless judgment itself specifically states that the judgment will operate prospectively. That being so, once it is held by the Hon'ble Apex Court that the Environmental Compensation could only be





imposed by the State Pollution Control Boards after it attains the legislative colour, the demand raised by the State Pollution Control Boards could not be allowed to stand and the impugned orders in the present bunch of petitions deserves to be quashed and set aside.

11. Another ground which has been raised by the learned counsel for the respondents to the effect that the order passed by NGT in pursuance of which the impugned orders have been passed by the RSPCB, has not been challenged before this Court, this Court is of the opinion that when the entire exercise of inspection and imposition of the environmental compensation has been carried out by the RSPCB then, it can be safely concluded that the said exercise constitutes an independent action which can be challenged under writ jurisdiction without challenging the order of NGT considering the fact that the impugned orders are composite in nature; more particularly, when the core issue is with regard to the competence and jurisdiction of the RSPCB to levy environmental compensation.

12. Some additional submissions have also been made by the petitioners as well as by the respondents on some other issues but this Court does not deem it necessary to examine the same as the core issue is only with regard to the competence of the RSPCB to impose impose Environmental Compensation in absence of statutory backing.

13. In view of the above, the preliminary submissions, as raised by the petitioners, is accepted. The writ petitions are allowed. The impugned orders/notices/communications in the present writ petitions are hereby quashed and set aside.





14. It is hereby directed that if any amount has been collected or deposited in lieu of demand raised vide impugned orders/notices/communications, the same shall be refunded to the respective petitioners within a period of six weeks from the date of receipt of certified copy of this order and if amounts are not deposited or collected, the respondent-RSPCB shall not take any further action.

15. However, the respondent-RSPCB can impose and collect restitutionary and compensatory damages so also damages qua potential environmental damage while exercising powers under Sections 33A of the Act of 1974 and 31A of the Act of 1981 provided the subordinate legislation is enacted detailing the principles and procedure incorporating basic principles of natural justice.

16. All pending applications, if any, shall also stand disposed of accordingly.

(SUNIL BENIWAL),J

skm/-




Schedule-A

S.No.	Case No.	Title
1.	CW 6090/2022	Sagar Bricks Vs. Raj. State Pollution Control Board
2.	CW 6434/2022	Tara Bricks Ind Vs. Raj. State Pollution Control Board
3.	CW 7580/2022	Tata Brick Co. Vs. Raj. State Pollution Control Board
4.	CW 7588/2022	Tata Brick Vs. Raj. State Pollution Control Board
5.	CW 7683/2022	Tata Brick Chak 7 APM Vs. Raj. State Pollution Control Board
6.	CW 8086/2022	Shree Mahadev Int Udyog Vs. Raj. State Pollution Control Board
7.	CW 9250/2022	M/s Anil Bricks Co. Vs. Raj. State Pollution Control Board
8.	CW 10175/2022	Shree Gurunanak Bricks Vs. Raj. State Pollution Control Board
9.	CW 10401/2022	Jai Sri Krishna Int Udyog Vs. Raj. State Pollution Control Board
10.	CW 12532/2022	M/s. Mandeep Singh Ranjeet Singh Vs. Raj. State Pollution Control Board
11.	CW 14698/2022	Satya Narayan Shiv Kumar Vs. Raj. State Pollution Control Board
12.	CW 15928/2022	Satguru Int Udyog Vs. Raj. State Pollution Control Board
13.	CW 15941/2022	Sri Balaji Bricks Udhog Vs. Raj. State Pollution Control Board
14.	CW 16809/2022	M/s. Saharan Int Ydyog, Chak 5 MLD Vs. Raj. State Pollution Control Board
15.	CW 16810/2022	M/s. Shree Shyam Kilan Company Vs. Raj. State Pollution Control Board
16.	CW 16836/2022	Sagar Bricks Vs. Raj. State Pollution Control Board
17.	CW 16934/2022	M/s. Balaji Suppliers Vs. Raj. State Pollution Control Board
18.	CW 17254/2022	M/s. Choudhary Bricks Udyog Vs. Raj. State Pollution Control Board
19.	CW 17569/2022	M/s. Kamal Int Udhog Vs. Raj. State Pollution Control Board
20.	CW 17590/2022	M/s. Bika Bricks Vs. Raj. State Pollution Control Board
21.	CW 17854/2022	M/s. Shree Shyam Bricks Vs. Raj. State Pollution Control Board
22.	CW 18322/2022	Jai Vaishno Int Udhog Vs. Raj. State Pollution Control Board
23.	CW 19022/2022	M/s. Jyani Bricks Industries Vs. Raj. State Pollution Control Board
24.	CW 19179/2022	M/s. Khan Int Udyog Vs. Raj. State Pollution Control Board
25.	CW 19187/2022	M/s. Mohan Lal Jakhar Bricks Vs. Raj. State Pollution Control Board
26.	CW 19422/2022	M/s. Jyani Int Udyog Vs. Raj. State Pollution Control Board





27.	CW 1/2023	M/s. Murliwala Int Udhyog Vs. Raj. State Pollution Control Board
28.	CW 77/2023	M/s. Prince Bricks Co. Vs. Raj. State Pollution Control Board
29.	CW 340/2023	M/s. Bhadu Kiln Udhyog Vs. Raj. State Pollution Control Board
30.	CW 1167/2023	M/s. Angri Devi Vs. Raj. State Pollution Control Board
31.	CW 1171/2023	M/s. Jai Bricks Vs. Raj. State Pollution Control Board
32.	CW 2065/2023	M/s. Bika Int Udhyog Vs. Raj. State Pollution Control Board
33.	CW 2454/2023	M/s. Akal Int Udhyog Vs. Raj. State Pollution Control Board
34.	CW 3087/2023	M/s. Balaji Bricks Vs. Raj. State Pollution Control Board
35.	CW 3088/2023	M/s. S.S. Bricks Industries Vs. Raj. State Pollution Control Board
36.	CW 12951/2023	Shri Veer Tejaji Int Udhyog Vs. Raj. State Pollution Control Board
37.	CW 13152/2023	M/s. Champa Devi Bricks Udhyog Vs. Raj. State Pollution Control Board
38.	CW 15138/2023	M/s. Shri Balaji Int Udhyog Vs. Raj. State Pollution Control Board
39.	CW 17165/2023	M/s. Jai Durga Int Udhyog Vs. Raj. State Pollution Control Board
40.	CW 17755/2023	M/s. Kooldiya Int Udhyog Vs. Raj. State Pollution Control Board
41.	CW 14245/2024	KBI Industries Vs. Raj. State Pollution Control Board
42.	CW 16120/2024	M/s. Kalgidhar Bricks Vs. Raj. State Pollution Control Board
43.	CW 17118/2024	M/s. Kamra Kiln Company Vs. Raj. State Pollution Control Board
44.	CW 17895/2024	M/s. Shri Ganesh Int Udhyog Vs. Raj. State Pollution Control Board
45.	CW 18137/2024	M/s. Waheguru Int Udhyog Vs. Raj. State Pollution Control Board
46.	CW 18573/2024	M/s. Balana Int Udhyog Vs. Raj. State Pollution Control Board
47.	CW 99/2025	M/s. Raj Int Udhyog Vs. Raj. State Pollution Control Board
48.	CW 189/2025	M/s. Chug Brick Industries Vs. Raj. State Pollution Control Board
49.	CW 657/2025	M/s. Shree Shyam Int Udhyog Vs. Raj. State Pollution Control Board
50.	CW 664/2025	M/s. Tata Bricks Vs. Raj. State Pollution Control Board
51.	CW 669/2025	M/s Tata Brick Vs. Raj. State Pollution Control Board
52.	CW 673/2025	M/s. Arora Bricks Industries Vs. Raj. State Pollution Control Board





53.	CW 678/2025	M/s. Tata Bricks Industries Vs. Raj. State Pollution Control Board
54.	CW 818/2025	M/s. Mandeep Singh Ranjeet Singh Vs. Raj. State Pollution Control Board
55.	CW 3105/2025	M/s. S.M. Bricks Suppliers Vs. Raj. State Pollution Control Board
56.	CW 19009/2024	M/s. Rishabh Traders Vs. Raj. State Pollution Control Board

