

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

Appeal No. 54/2024

IN THE MATTER OF:

Hotel Charlene & Ors.

Applicant

Versus

Uttarakhand Pollution Control Board

Respondent

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Dated: April, 2025

K. P. Gautam
Advocate
Supreme Court of India
Reg. No. D/119/98

Advocate
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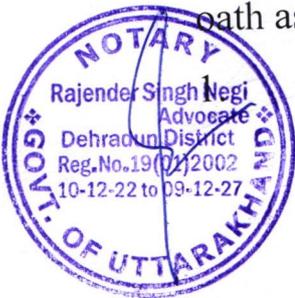
Respondent

RESPONSE AFFIDAVIT ON BEHALF OF RESPONDENT
(UTTARAKHAND POLLUTION CONTROL BOARD)

Affidavit of Dr. Parag Madhukar Dhakate, aged about 47 years S/o Shr. M.B Dhakate presently posted as Member Secretary, Uttarakhand Pollution Control Borad, Uttarakhand.

Deponent

I, the above-named deponent does hereby solemnly affirm and state on oath as under: -



That the deponent is presently posted as the Member Secretary, Uttarakhand Pollution Control Borad and is competent to sign and file the instant affidavit on behalf of respondent and as such he is well acquainted with the facts and circumstances of the case.

2. That the deponent has gone through the contents of the above-noted Appeal (hereinafter referred to as 'the said appeal') along

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with the annexures and affidavit filed by the appellant and has fully understood the contents thereof and is in a position to reply to the same.

PARA WISE REPLY:

1-2. That the contents of Paragraph No. 1 and 2 of the said appeal do not call for any reply.

3. That the contents of Paragraph No. 3 of the said appeal are admitted only to the extent its matter of record. However, it is pertinent to mention that the impugned notices/orders dated 08.11.2024 were issued in strict compliance with the directions issued by this Hon'ble Tribunal vide order dated 29.07.2024 passed in OA No. 353/2022, Kartik Sharma vs. State of Uttarakhand. As per the order of this Hon'ble Tribunal, the UKPCB reassessed and imposed environmental compensation from the date of actual violation rather than from the date of show cause notice. Furthermore, earlier Show Cause Notice dated 09.05.2023 was issued to the Appellant under Section 33A of the Water (Prevention & Control of Pollution) Act and Section 31A of the Air (Prevention & Control of Pollution) Act which covered the underlying violations - operation without valid consent and non-compliance with the environmental norm. The reassessment merely involves recalculating the quantum of compensation for the same violations based on revised parameters as directed by this Hon'ble Tribunal. The essential nature of violations remained unchanged. Section 33A of the Water Act empowers the Board to issue directions in exercising its powers and



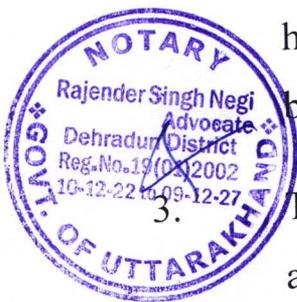
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performing its functions. This provision requires that reasonable opportunity be given before issuing directions, which was fulfilled through the original show cause notice and the Appellant acknowledging the violations on its part, paid the earlier EC imposed without any protest or demur.

A. REPLY TO FACTS

1. That the contents of Paragraph No. 1 of the said appeal are admitted only in so far as they are a matter of record. However, it is pertinent to mention that the impugned notices/orders dated 08.11.2024 is just and fair and in accordance with the directions issued by this Hon'ble Tribunal vide order dated 29.07.2024 passed in OA No. 353/2022, therefore deserves to be upheld.

2. That the contents of Paragraph No. 2 of the said appeal are admitted only in so far as they are a matter of record. True facts have already been stated in the preceding paragraphs and are not being repeated for the sake of brevity.



3. That the contents of Paragraph No. 3 of the said appeal are wrong and hence denied. It is pertinent to mention that initial Show Cause Notice dated 09.05.2023 provided the Appellant an opportunity to present its case but Appellant without any protest and demur paid the EC imposed. The subsequent reassessment of environmental compensation was done pursuant to the specific directions of this Hon'ble Tribunal, which had been deliberating

this matter with the full participation of all stakeholders since May 2022. The requirements of natural justice are contextual and flexible. When a violation is persistent and clearly established, and when a statutory authority reassesses, compensation based on the tribunal's directions, the rigors of natural justice stand satisfied with the initial notice and opportunity to respond.

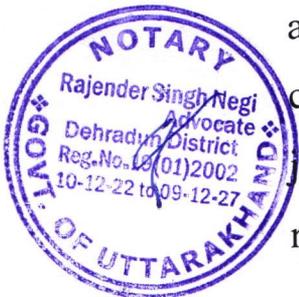
- 4-5 That the contents of Paragraph No. 4 and 5 of the said appeal are admitted only in so far as they are a matter of record.
6. That the contents of Paragraph No. 6 of the said appeal are not admitted as stated. All insinuation directed against the respondent is vehemently denied. It is pertinent to mention that environmental compensation has been imposed against the appellants for violation of environmental norms, therefore, the appellants cannot take plea of being small industries and that they succumbed to the pressure of the authority. If the Appellant was aggrieved by any of the show cause notice issued by the Respondent herein, the Appellant had all the legal remedies before him to exercise.
7. That the contents of Paragraph No. 7 of the said appeal are admitted only in so far as they are a matter of record. However, it is reiterated that environmental compensation has been imposed for past violations on the part of the appellant hotel.
8. That the contents of Paragraph No. 8 of the said appeal are admitted only in so far as they are a matter of record. Anything contrary thereto is vehemently denied.



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9. That the contents of Paragraph No. 9 of the said appeal do not call for any reply as the Compensation was reassessed from the date of violation and not from date of show cause notice as per this Hon'ble Tribunal's Order dated 29.07.2024.

10. That the contents of Paragraph No. 10 of the said appeal are wrong false and are vehemently denied. It is pertinent to mention that impugned orders/notices dated 08.11.2024 were issued in strict compliance with the directions issued by this Hon'ble Tribunal vide order dated 29.07.2024 passed in OA No. 353/2022, Kartik Sharma vs. State of Uttarakhand. Further, initial Show Cause Notice dated 09.05.2023 provided the Appellant an opportunity to present its case. The subsequent reassessment of environmental compensation was done pursuant to the specific directions of this Hon'ble Tribunal, which had been deliberating this matter with the full participation of all stakeholders since May 2022. The requirements of natural justice are contextual and flexible. When a violation is persistent and clearly established, and when a statutory authority reassesses, compensation based on the tribunal's directions, the rigors of natural justice stand satisfied with the initial notice and opportunity to respond.



11. That in reply of the contents of Paragraph No. 11 of the said appeal it is reiterated that impugned orders/notices dated 08.11.2024 were issued in strict compliance with the directions issued by this Hon'ble Tribunal vide order dated 29.07.2024 passed in OA No. 353/2022, Kartik Sharma vs. State of

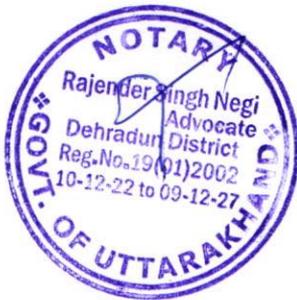

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Uttarakhand. The decision about violation of environmental norms is not reviewed but the EC is reassessed as per the order of this Court.

B. REPLY OF GROUNDS

That the contents of paragraph no. B of the said appeal regarding grounds are not legally tenable and therefore, the present appeal deserves to be dismissed. The Respondent herein opposes appeal of the Appellant, inter alia, on the following grounds:

- I. The Demand Notice dated 08.11.2024 was issued in strict compliance with the order of the Hon'ble Tribunal dated 29.07.2024, which specifically directed the reassessment of environmental compensation for all hotels from the date of actual violation rather than from the date of show cause notice.
- II. The Appellant's contention that principles of natural justice were violated is baseless. The initial Show Cause Notice dated 13.02.2024 provided the Appellant an opportunity to present its case. The subsequent reassessment of environmental compensation was done pursuant to specific directions of this Hon'ble Tribunal, which had been deliberating this matter with the full participation of all stakeholders since May 2022. The requirements of natural justice are contextual and flexible. When a violation is persistent and clearly established, and when a statutory authority reassesses, compensation based on the tribunal's directions, the rigours of natural justice stand satisfied with the initial notice and opportunity to respond.



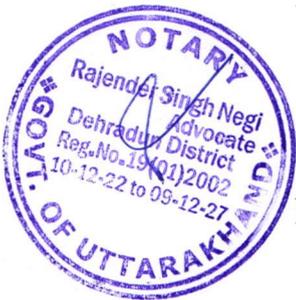
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- III. These parameters were applied uniformly to all violating hotels in Mussoorie after considering factors such as the period of violation, severity of the violation, water consumption patterns, and environmental impact. The Appellant's contention that the demand notice does not explain the basis of calculation is not tenable. The calculation methodology was developed in compliance with this Hon'ble Tribunal's orders and was applied uniformly to all violating establishments.
- IV. The original Show Cause Notice dated 13.02.2024 issued to the Appellant under Section 33A of the Water (Prevention & Control of Pollution) Act and Section 31A of the Air (Prevention & Control of Pollution) Act already covered the underlying violations - operation without valid consent and non-compliance with the environmental norm. The reassessment merely involves recalculating the quantum of compensation for the same violations based on revised parameters as directed by this Hon'ble Tribunal. The essential nature of violations remained unchanged. Section 33A of the Water Act empowers the Board to issue directions in exercising its powers and performing its functions. This provision requires that reasonable opportunity be given before issuing directions, which was fulfilled through the original show cause notice.
- V. The Polluter Pays Principle justifies the summary procedure for the assessment of compensation.



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- VI. When a subsequent order is passed as a continuation of an earlier order, the earlier order merges with the later order. Applying the doctrine of merger as a continuous process, the reassessment merged with the initial assessment, and no further notice was required. A fresh notice is required only when there is a substantial alteration in the nature of proceedings or charges.
- VII. In the present case, there was no alteration in the nature of violations. The reassessment only recalibrated the compensation amount.
- VIII. The Appellant has acknowledged its liability for the underlying violations by paying the initially assessed environmental compensation. Having accepted liability by paying the initial compensation, the Appellant cannot now challenge the reassessment on procedural grounds. The principle of estoppel prevents the Appellant from denying liability when only the quantum is being reassessed. The Tribunal's order dated 29.07.2024 explicitly directed UKPCB to recalculate EC for past violations. This was not a *new* allegation but a recalibration of penalties for already established violations.
- IX. The Appellant's CCA (21.08.2023) was granted subject to compliance with Tribunal orders, including payment of revised EC. The Appellant cannot claim ignorance of this condition



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C. REPLY OF LIMITATION

That the contents of paragraph no. C do not call for any reply.

D. REPLY OF PRAYER

That the contents of paragraph no. D of the said appeal are denied. In view of the above facts and circumstances the appellants are not entitled to claim any relief from this Hon'ble Tribunal, therefore, the present appeal is liable to be dismissed.


Deponent

Verification: -

Verified at Dehradun on the 15 day of April 2025, that the contents of the response affidavit are true and correct to the best of my knowledge and belief based on the official record and nothing is false and no material has been concealed therein.


Deponent



Dated: April, 2025



S. No. 1777

This affidavit is sworn before me by
Shri. Dr. Arun Mohan Singh Cor Dhabu
who is identified by Shri.
at Dehradun on.....


(Rajender Singh Negi)
Advocate & Notary, Dehradun