

**BEFORE THE NATIONAL GREEN TRIBUNAL**  
**WESTERN ZONE BENCH AT PUNE**  
**ORIGINAL APPLICATION NO. 71 OF 2020**

**IN THE MATTER OF:**

**SARANG YADWAKAR AND ANR.**

**... APPLICANT**

**VERSUS**

**GOKHALE LANDMARKS LLP AND ORS.**

**...RESPONDENTS**

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**THROUGH**



**RITWICK DUTTA**



**RAHUL CHOUDHARY**



**KANIKA SOOD  
ADVOCATES**

COUNSELS FOR THE APPLICANT  
N-71, Lower Ground Floor, Greater Kailash-I  
New Delhi- 110048  
Mobile: 9312407881  
Email: [litigation.life@gmail.com](mailto:litigation.life@gmail.com)

**Place:** New Delhi

**Date:** 22.03.2021

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**RESPONSE TO COMMITTEE REPORT FILED ON BEHALF OF THE  
MAHARASHTRA POLLUTION CONTROL BOARD ON 11.02.2021**

**Most respectfully showeth:**

1. That the Applicant is filing this response to the Committee Report filed on 11.02.2021 by the Maharashtra Pollution Control Board pursuant to the Order dated 16.10.2020 passed by the Hon'ble Tribunal which affirm that due to damage of trunk line and chamber, raw sewage was flowing in to the nallah which leads to the Mulha river for 201 days (86 days in the 1<sup>st</sup> instance and 115 days in the 2<sup>nd</sup> instance).
2. The Applicant had filed Original Application No. 71 of 2020 under Section 14 and Section 15(3) read with Section 20 of the National Green Tribunal Act, 2010 raising the issue of water pollution caused due to the release of untreated sewage from damaged and broken sewer line.
3. The Applicant submitted in the above Original Application that two inspection chambers of the sewer line were illegally broken by Respondent No. 1, Gokhale Landmarks LLP to facilitate the construction of the basement of their project "Gokhale Business Bay" situated at S. No. 20/2, Plot No. A6, CTS. No. 667, Kothrud, Pune. The breakage caused the discharge of untreated raw sewage, which would have otherwise been treated at PMC Sewage Treatment Plant (STP), into a nallah flowing to Mutha river leading to pollution of river water as well as ground water for almost one year.
4. The Hon'ble Tribunal *vide* Order dated 16.10.2020 constituted a committee "consisting (i) Pune Municipal Corporation and (ii) Maharashtra State Pollution 3

*Control Board (SPCB) and to direct them submit a factual and action taken report. Report be submitted within six weeks'.*

5. That the committee found that for the 201 days, the untreated raw sewage was flowing into the nallah was 20.24 MLD per day. The Applicant submits that the findings of the committee show the level of environmental damage that has taken place due to the negligence of the Respondent No. 1, Gokhale Landmarks LLP.
6. The Applicant submits that in light of the report, the Respondent No. 1 should pay Environmental Compensation. The Applicant has calculated the Environmental Compensation based on the formula set out in the 'Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund'. The formula set out in the report is based on the formula accepted by the Hon'ble Tribunal in **Paryavaran Surakhsha Samiti & Anr. vs. Union of India & Ors. (OA No. 593/2017)** in the Order dated 28.08.2019.

The formula is as follows:

$$\text{EC (Lacs Rs.)} = [17.5(\text{Total Sewage Generation} - \text{Installed Treatment Capacity}) + 55.5(\text{Total Sewage Generation} - \text{Operational Capacity})] + 0.2 (\text{Sewage Generation} - \text{Operational Capacity}) \times N + \text{Marginal Cost of Environmental Externality} \times (\text{Total Sewage Generation} - \text{Operational Capacity}) \times N$$

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

*Quantity of Sewage is in MLD'*

A copy of the 'Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund' is annexed here as **ANNEXURE A-1.**

7. While calculating the Environmental Compensation, the Applicant has considered the Total sewage generation minus Installed/Operational Treatment Capacity to be 20.24 (in consonance with the committee's findings) and the marginal cost of Environmental Externality factor to be 0.1, as per the guidelines from CPCB in 'Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund'. Hence, the Environmental Compensation payable should be:

$$\text{EC (Lacs Rs.)} = [17.5*20.24 + 55.5*20.24] + 0.2*20.24*201 + 0.1*20.24*210$$

**EC (Lacs Rs.)** = [354.20 + 1123.32] + 813.64 + 425.04

**EC (Lacs Rs.)** = 1477.52 + 2148 + 1074

**EC (Lacs Rs.)** = 4699.53

**EC (Lacs Rs.) = 46 crores 99 lacs.**

The above calculation is based on the estimation of the Applicant, however, till the amount is verified by the CPCB or SPCB.

8. It is submitted that apart from Environmental Compensation which is payable as per Section 15 of the NGT Act, 2010, there are other remedies under Section 43 of the Water (Prevention and Control of Pollution) Act, 1974 including criminal prosecution.
9. That this Hon'ble Tribunal in **Praveen Kakar & Ors. Applicant(s) v. Ministry of Environment & Forests & Ors. (Original Application No. 661/2018)** vide Order dated 08.01.2019 had directed the CPCB to take action and initiate criminal prosecution under the Air and Water Act:

*"we direct CPCB to exercise its statutory power to determine and recover the damages and issue appropriate further directions for closure of the project and initiating prosecution in accordance with the procedure prescribed under Air Act and Water Act."*

10. Further, in **Karnail Singh & Ors. [Original Application No. 33/2013 (THC)] Vs. CPCB & Ors., Original Application No. 30/2013 (THC)** vide Order dated 25.10.2018, this Hon'ble Tribunal had directed the Member Secretary of the SPCB to initiate criminal prosecution:

*"A copy of this order shall be sent immediately to the Chief Secretary of State of Punjab, Director General of Police, Punjab, Chairman /Managing Director of State Power Corporation Ltd, Principal Secretary/Additional Secretary Industries, State of Punjab and Chairman and Member Secretary of State Pollution Board for information and with the direction to immediately initiate criminal prosecution against these defaulting industries and send a report to the Tribunal within one week."*

11. Therefore, in light of the statutory provisions and orders of this Hon'ble Tribunal it is prayed that Respondent No. 1 be directed to pay environmental compensation to 46 crores 99 lakhs and pay interim compensation till the completion of the proceedings. And also direct the State Pollution Control Board to initiate criminal proceedings under the Water (Prevention and Control of Pollution) Act, 1974.

In light of the above facts and submissions, this Hon'ble Tribunal may be pleased to pass any other orders as they may deem fit and proper in facts and circumstances of the case.



**APPELLANT NO. 1**

THROUGH



**RITWICK DUTTA      RAHUL CHAUDHARY KANIKA SOOD**  
**ADVOCATES**

Counsels for Appellant

N-71, Lower Ground Floor, Greater Kailash- I,

New Delhi- 110048

E-mail: [litigation.life@gmail.com](mailto:litigation.life@gmail.com)

Mob: +91 9312407881

Place: New Delhi

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**VERSUS**

**M/S GOKHALE LANDMARKS LLP & ORS**

**...Respondent(s)**

**AFFIDAVIT**

I, Sarang Yadwadkar, aged about 62 years, s/o Vaman Krishna Yadwadkar, residing at A-9, Pradnyangad, S. No.119/3, Sinhagad Road, Pune- 411030 <sup>currently in New Delhi</sup> do hereby state and declare on solemn affirmation as under:

- 1. That I am the Applicant in the above titled Application, and hence well conversant with the facts and circumstances described in the present case and as such, I am competent to swear this affidavit.
- 2. That the contents of the accompanying IA in the Application are true and correct and nothing material has been concealed therefrom.

*[Handwritten Signature]*  
**DEPONENT**

*Identify the deponent/Executant who has signed in my presence*

**VERIFICATION**

I the above-named deponent, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Verified at Pune on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.



*certified that the foregoing statement was declared on solemn affirmation before me which has been read over to the deponent who has admitted*

*is as correct*

*Notary, Delhi*

*- 4 FEB 2021*

*[Handwritten Signature]*  
**DEPONENT**

**Report of the CPCB In-house Committee on  
Methodology for Assessing Environmental  
Compensation and Action Plan to Utilize the Fund**



**CENTRAL POLLUTION CONTROL BOARD**  
"Parivesh Bhawan", East Arjun Nagar,  
Delhi-110032

## Chapter-I: Environment Compensation to be levied on Industrial Units

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### 1.1 Background

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. directed Central Pollution Control Board (CPCB) that:

*“The CPCB may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs. CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the CPCB within three months” (Annexure-I).*

### 1.2 Constitution of the Committee

In this context, Chairman, CPCB constituted a Committee under the Chairmanship of Shri A. Sudhakar, I/c WQM-I with Shri A. K. Vidyarthi, I/c WQM-II, Shri P. K. Gupta, I/c IPC-VI, Shri Nazimuddin I/c IPC-II and Dr. S. K. Paliwal, Scientist 'D' as members. The Committee was asked to deliberate on this issue and come up with a draft formulation before 15.9.2018.

### 1.3 Methodology for Assessing Environmental Compensation

The Committee discussed the issue on 4.9.2018, 13.9.2018, 17.9.2018 and 09.10.2018. A meeting was also held with Senior Officers of CPCB Head Office and Regional Directorates through video conferencing on 28.09.2018 to discuss the draft report and to seek comments/feedbacks. The comments/feedbacks received and deliberations of the Committee on the same are given in **Annexure-II**.

As per the Hon'ble NGT suggestion, CPCB has invited comments of 3 expert institution, namely, Centre for Science and Environment (CSE), Institute of Economic Growth (IEG) and The Energy Research Institute (TERI). A meeting to incorporate the comments of the expert institutions and to finalize the report, was held on 27/03/2019. The CPCB in-house committee on Environmental Compensation has deliberated on the comments and finalized the report accordingly. The Committee's deliberations are attached as **Annexure-III**.

It was deliberated for developing a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies and this is the first attempt made. The committee discussed that environmental compensation should be based on "Polluter Pay Principle". The Committee decided to list the instances for taking cognizance of cases fit for violation and levy environmental compensation.

### Cases considered for levying Environmental Compensation (EC):

- a) Discharges in violation of consent conditions, mainly prescribed standards / consent limits.
- b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
- c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
- d) Accidental discharges lasting for short durations resulting into damage to the environment.
- e) Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.
- f) Injection of treated/partially treated/ untreated effluents to ground water.

**1.3.1** In the instances as mentioned at *a, b and c* above, Pollution Index may be used as a basis to levy the Environmental Compensation. CPCB has published guidelines for categorization of industries into Red, Orange, Green and White based on concept of Pollution Index (PI). The Pollution Index is arrived after considering quantity & quality of emissions/ effluents generated, types of hazardous wastes generated and consumption of resources. Pollution Index of an industrial sector is a numerical number in the range of 0 to 100 and can be represented as follows:

$$PI = f(\text{Water Pollution Score, Air Pollution Score \& HW Generation Score})$$

*Pollution Index* is a number from 0 to 100 and increasing value of PI denotes the increasing degree of pollution *hazard from the industrial sector*.

CPCB has issued directions to all SPCBs/PCCs on 07.03.2016 to adopt the methodology and follow guidelines prepared by CPCB for categorization of industrial sectors into Red, Orange, Green and White.

The concept of Pollution Index, which was deliberated widely with all stakeholders and agreed, shall be used for calculating Environmental Compensation. This may help in implementation of such provision throughout the country, a successful initiative in vital field of industrial pollution control.

After considering various factors including the policy implementation issues, Committee has come up with following formula for levying the Environmental Compensation in instances as mentioned at *a, b and c* including non-compliance of the environmental standards / violation of directions.

The Environmental Compensation shall be based on the following formula:

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

Where,

- EC is Environmental Compensation in ₹
- PI = Pollution Index of industrial sector
- N = Number of days of violation took place
- R = A factor in Rupees (₹) for EC
- S = Factor for scale of operation
- LF = Location factor

The formula incorporates the anticipated severity of environmental pollution in terms of Pollution Index, duration of violation in terms of number of days, scale of operation in terms of micro & small/medium/large industry and location in terms of proximity to the large habitations.

Note:

- a. The industrial sectors have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.
- b. N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.
- c. R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.
- d. S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.
- e. LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

**Table No. 1.1: Location Factor Values**

S. No.	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

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

#LF will be 1.0 in case unit is located >10km from municipal boundary

LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. However, for critically Polluted Areas, LF may be explored in future.

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1<sup>st</sup> repetition, 4 times on 2<sup>nd</sup> repetition and 8 times on further repetitions.
- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.
- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange and Green category of industries varies from 3,750 to 60,000 ₹/day.

**Table No. 1.2: A sample calculation for Environmental Compensation**

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	10,000-60,000	6,250-37,500	5,000-22,500

**1.3.2** In other instances i.e. *d, e and f*, the environmental compensation may contain two parts – one requires providing immediate relief and other long-term measures such as remediation. In all these cases, detailed investigations are required from expert institutions/organizations based on which environmental compensation will be decided. CPCB shall list the expert institutions for this purpose.

In such cases, comprehensive plan for remediation of environmental pollution may be prepared and executed under the supervision of a committee with representatives of SPCB, CPCB and expert institutions/organizations.

#### **1.4 Action Plan for Utilization of Environmental Compensation Fund**

The Committee discussed about the utilization of funds, which will be received by imposing Environmental Compensation. The following Action Plan is proposed to utilize the fund for protection of the environment.

#### **1.4.1. When Environmental Compensation is calculated through the Pollution Index:**

The amount received by imposing the Environmental Compensation to the industries / organization non-complying with the environmental standards / violating any CPCB's directions shall be deposited in a separate bank account. The amount accumulated will be utilized for Protection of Environment. The following schemes were identified, which may be considered for utilization of Environmental Compensation Fund:

- a. Industrial Inspections for compliance verification
- b. Installation of Continuous water quality monitoring stations / Continuous ambient air quality monitoring stations for strengthening of existing monitoring network
- c. Preparation of Comprehensive Industry Documents on Industrial Sectors / clean technology
- d. Investigations of environmental damages, preparation of DPRs
- e. Remediation of contaminated sites
- f. Infrastructure augmentation of Urban Local Bodies (ULBs) /capacity building of SPCBs/PCCs

The above proposed list may include other schemes also, depending upon the requirement.

Considering the availability of accumulated funds, CPCB will finalize the scheme, keeping in mind the priority, to utilize the funds of Environmental Compensation.

#### **1.4.2. When Environmental Compensation is assessed based on actual damage to the environment by Expert Organization/ Agency:**

The amount of Environmental Compensation under this case will be remediation costs, measures requiring immediate and short-term actions, compensation towards loss of ecology, etc., and will be utilized exclusively for the purpose at specific site, based on the detailed investigations by the Expert Organizations/ agencies.

### **1.5 Recommendations**

The Committee made following recommendations:

- 1.5.1 To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, b and c, Environmental Compensation may be calculated based on the formula " $EC = PI \times N \times R \times S \times LF$ ", wherein, PI may be taken as 80, 50 and 30 for red, orange and green category of industries, respectively, and R may be taken as 250. S and LF may be taken as prescribed in the preceding paragraphs.

- 1.5.2 In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.
- 1.5.3 The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.
- 1.5.4 EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules.

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