

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****PRINCIPAL BENCH AT NEW DELHI****ORIGINAL APPLICATION NO. 241 OF 2021****IN THE MATTER OF:**

RAJA MUZAFFAR BHAT

...APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

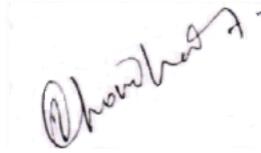
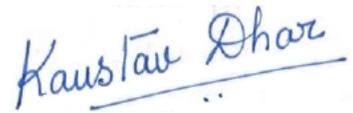
...RESPONDENTS

**INDEX**

<b>S.N.</b>	<b>PARTICULARS</b>	<b>PG.NO</b>
1.	<b>Submissions on behalf of Applicant on Imposition of Environmental Compensation.</b>	<b>469-486</b>
2.	<b><u>ANNEXURE A/1</u></b> Copy of the order and judgment dated 22.02.2017 passed by the Hon'ble Supreme Court in <i>Paryavaran Suraksha Samiti &amp; Anr. vs. Union of India &amp; Ors.</i> (2017) 5 SCC 326.	<b>487-491</b>
3.	<b><u>ANNEXURE A/2</u></b> Copy of the order dated 28.08.2019 passed by the Hon'ble Tribunal in <i>Paryavaran Suraksha Samiti &amp; Anr. v. Union of India &amp; Ors.</i> - Original Application No. 593/2017.	<b>492-515</b>
4.	<b><u>ANNEXURE A/3</u></b> Copy of the relevant part of the report dated 15.07.2019 of CPCB which has been relied by this Hon'ble Tribunal in para 14 of the order dated 28.08.2019.	<b>516-525</b>
5.	<b><u>ANNEXURE A/4</u></b> Copy of the images taken by the Applicant on 08.07.2024 showing pumping stations are dewatering sewage directly into River Doodh Ganga at various places like Bagh-e-Mehtab, Chanpora across Doodh Ganga.	<b>526</b>
6.	<b><u>ANNEXURE A/5</u></b> Copy of the images taken by the Applicant on 08.07.2024 showing wastes are scattered at Chadoora and Chanapoor Bypass Bridge.	<b>527-529</b>
7.	<b><u>ANNEXURE A/6</u></b> Copy of the images taken by the Applicant on 08.07.2024 of the River Doodh Ganga showing the irrevocable damages and its	<b>530-531</b>

	impact upon River Doodh Ganga as a result of illegal and unscientific mining.	
8.	<b>Service of Proof</b>	<b>532</b>

THROUGH

**RITWICK DUTTA****RAHUL CHOUDHARY****KAUSTAV DHAR****ADVOCATES**N-73, LOWER GROUND FLOOR,  
GREATER KAILASH-I  
NEW DELHI-110048Email: [dclaw160@gmail.com](mailto:dclaw160@gmail.com)**PLACE:** NEW DELHI**DATE:** 09.07.2023

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****PRINCIPAL BENCH AT NEW DELHI****ORIGINAL APPLICATION NO. 241 OF 2021****IN THE MATTER OF:**

RAJA MUZAFFAR BHAT

...APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

**SUBMISSION ON BEHALF OF APPLICANT ON IMPOSITION OF  
ENVIRONMENTAL COMPENSATION****MOST RESPECTFULLY SHOWETH**

1. That the applicant has filed the above titled Application raising the issue of large scale pollution of river Doodhganga and Mamath Kull in the area falling under Respondent No. 6, the Srinagar Municipal Corporation, the Respondent No. 7 Municipal Committee Budgam and Respondent No. 8 Municipal Committee Chadoora in the District of Srinagar and Budgam in Jammu and Kashmir. The Hon'ble Tribunal has repeatedly heard the matter and directions are passed from time to time. That the Hon'ble Tribunal *vide* order dated 03.04.2024 recorded that no serious effort has been made by the local bodies even though the initial order was passed on 18.10.2021. Taking note of grievances in the Application, the Hon'ble Tribunal recorded that the only option left is to impose Environmental Compensation (EC) on the violators for continuous violation of environmental norms. The Hon'ble Tribunal also granted liberty to the Applicant to place on record all material relevant for the purpose of imposition of Environmental Compensation.  
  
The Applicant is making submission and placing on record/documents related to imposition of Environmental Compensation on the concerned Respondents in following paras.

2. That the concerned authorities, the Respondent No. 6 to 8 along with the State Government Respondent No.2 were required to ensure that no untreated sewage is being discharged after the Government of India notified the Water (Prevention and Control of Pollution) Act , 1974 for prevention and control of water pollution and maintaining or restoring of wholesomeness of water. It is submitted that Section 25 of the Act provides that no person shall discharge sewage into the stream or well or land. However, the liability of the Respondents cannot escape from the time when by order and judgment dated 22.02.2017 the Hon'ble Supreme Court in ***Paryavaran Suraksha Samiti & Anr. vs. Union of India & Ors. (2017) 5 SCC 326***, directed for setting up of sewage treatment plants within three years from the date of the order. That for the purpose of convenience, the Applicant is pointing out following dates and events for consideration of imposition of Environmental Compensation:

- i. **22.02.2017** – The Hon'ble Supreme Court vide order and judgment 22.02.2017 in ***Paryavaran Suraksha Samiti & Anr. vs. Union of India & Ors. (2017) 5 SCC 326*** has fixed the time of CETP and Sewage Treatment Plant three years from the date of the order. The judgment also recorded about the manner in which the financial constraints has to be dealt with and also granted liberty to private individuals to approach this Hon'ble Tribunal if the direction of the Hon'ble Supreme Court is not complied. The Hon'ble Supreme Court has also directed the State Pollution Control Board to initiate civil or criminal action against the defaulters. The relevant paragraphs of judgment dated 22.02.2017 is reproduced here for reference:

*"8. In view of the fact, that the financial position has been taken care of, as has been expressed above, we are of the view that the setting up of "common effluent treatment plants", should be taken up as an urgent mission. **With reference to common effluent treatment plants, which are already under implementation, we hope and expect that they would be completed within the timelines***

**already postulated.** *With reference to common effluent treatment plants, which are yet to be set up, we consider it just and appropriate to direct the State Governments concerned (including the Union Territories concerned) to complete the same within a period of three years, from today. We are also of the view that while acquiring land for the "common effluent treatment plants", the State Governments concerned (including the Union Territories concerned) will acquire such additional land, as may be required for setting up "zero liquid discharge plants", if and when required in the future.*

*10. Given the responsibility vested in municipalities under Article 243-W of the Constitution, as also, in Item 6 of Schedule XII, wherein the aforesaid obligation, pointedly extends to "public health, sanitation conservancy and solid waste management", we are of the view, that the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). Given the aforesaid responsibility, the municipalities (and/or local bodies) concerned, cannot be permitted to shy away from discharging this onerous duty. In case there are further financial constraints, the remedy lies in Articles 243-X and 243-Y of the Constitution. It will be open to the municipalities (and/or local bodies) concerned, to evolve norms to recover funds for the purpose of generating finances to install and run all the "common effluent treatment plants", within the purview of the provisions referred to hereinabove. Needless to mention that such norms as may be evolved for generating financial resources, may include all or any of the commercial, industrial and domestic beneficiaries, of the facility. The process of evolving the above norms, shall be supervised by the State Government (Union Territory) concerned, through the Secretaries, Urban Development and Local Bodies, respectively, (depending on the location of the respective common effluent treatment plant). The norms for generating funds for setting up and/or operating the "common effluent treatment plant" shall be finalized, on or before 31.3.2017, so as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement of the next financial year, the State Governments (or the Union Territories) concerned, shall cater*

*to the financial requirements, of running the "common effluent treatment plants", which are presently dysfunctional, from their own financial resources.*

*11. Just in the manner suggested hereinabove, for the purpose of setting up of "common effluent treatment plants", the State Governments concerned (including, the Union Territories concerned) will prioritize such cities, towns and villages, which discharge industrial pollutants and sewer, directly into rivers and water bodies.*

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

***15. Liberty is granted to private individuals and organizations, to approach the Bench concerned of the jurisdictional National Green Tribunal, for appropriate orders, by pointing out deficiencies, in implementation of the above directions."***

It is clear from reading para 8 with para 10 of the judgment that three years' time was granted from 22.02.2017 to set up the sewage treatment plant (STP) by the concerned local bodies. Further, the judgment has also made State Government along with the local bodies responsible for compliance of the directions and State Pollution Control Board to initiate action against non-compliance. In the present case, Respondent No. 6, 7 and 8 the local bodies, the State and the Jammu and Kashmir Pollution Control Committee are also liable for allowing the continuation of the pollution of the river.

A true copy of the order and judgment dated 22.02.2017 passed by the Hon'ble Supreme Court in ***Paryavaran Suraksha Samiti & Anr. vs. Union of India & Ors.*** (2017) 5 SCC 326 is annexed herewith and marked as **ANNEXURE A-1.**

- ii. **28.08.2019** – The Hon'ble Tribunal taking note of the Supreme Court judgment of setting up of sewage treatment plant also directed

vide order dated 28.08.2019 in ***Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors. - Original Application No. 593/2017*** for 100% treatment of sewage. The Hon'ble Tribunal has also held that the State would be responsible in case of failure of local bodies in setting up of STPs and MSW facilities and directed State/UTs to enforce compensation regime with effect from 01.04.2020. The relevant part of the order is reproduced here for reference:

***"The issue of ETPs/CETPs is being dealt with by an appropriate action against polluting industries. Setting up of STPs and MSW facilities is the responsibility of Local Bodies and in case of their default, of the States. Their failure on the subject has to be adequately monitored. Recovery of compensation on 'Polluter Pays' principle is a part of enforcement strategy but not a substitute for compliance. It is thus necessary to issue directions to all the States/UTs to enforce the compensation regime, latest with effect from 01.04.2020. We may not be taken to be condoning any past violations. The States/UTs have to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies. On failure of the States/UTs, the States/UTs themselves have to pay the requisite amount of compensation to be deposited with the CPCB for restoration of environment. The Chief Secretaries of all the States may furnish their respective compliance reports as per directions already issued in O.A. No. 606/2018."***

It is submitted that as per the direction passed by this Hon'ble Tribunal the States and the Union Territories were required to enforce recovery of compensation from 01.04.2020 for the defaulting local bodies and in failure the State and UTs were themselves required to deposit compensation amount with Central Pollution Control Board.

A true copy of the order dated 28.08.2019 passed by the Hon'ble Tribunal in ***Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors. -***

Original Application No. 593/2017 is annexed herewith and marked as

**ANNEXURE A-2.**

The Hon'ble Tribunal has further in para 14 of the order dated 28.08.2019 has also recorded from the report of the CPCB about calculation of Environmental Compensation. The Hon'ble Tribunal may refer to the formula provided in the report and recorded in the order to calculate the exact compensation for non-installation of STPs.

A true copy of the relevant part of the report dated 15.07.2019 of CPCB which has been relied by this Hon'ble Tribunal in para 14 of the order dated 28.08.2019 is annexed herewith and marked as **ANNEXURE A-3.**

- iii. **11.08.2021** - That on noting the illegalities that a continuous pollution is caused by discharging liquid and solid wastes unscientifically in the Doodh Ganga River, the Applicant made a representation to the concerned authorities i.e., Respondents No. 1 to 7. vide letter dated 11.08.2021, highlighting the need to protect and restore the rivers by asking them to take necessary actions to ensure prevention and control of water pollution in river Doodh Ganga and Mamath Kull. Copy of the representation dated 11.08.2021 sent by the Applicant is annexed herewith as Annexure – A/9. (Page no. 58 -62 of the Application). However, no concrete action was taken by the respondent authorities.
- iv. **25.09.2021** – The Applicant herein filed the Original Application No. 241 of 2021 raising the issue of discharge of untreated sewage and dumping of municipal solid waste unscientifically in river Doodh Ganga and Mamath Kull, in Srinagar and Budgam Districts, Jammu and Kashmir. It is pertinent to point out that rather than setting up the STPs the Srinagar Municipal Corporation had set up a pumping station for discharge of untreated sewage directly into the river Doodhganga.

- v. **28.10.2021** – The Hon'ble Tribunal considered the O.A. No. 241 of 2021 of the Applicant herein and constituted five-member Joint Committee of CPCB, J&K PCC, Deputy Commissioners, Srinagar and Budgam and the Director, Urban Local Bodies, J&K and directed factual report to be filed.
- vi. **14.01.2022** – Report was filed by Additional Secretary to Government, Housing and Urban Development Department (Page 110) in response to the direction of the Hon'ble Tribunal. The report accepted that Srinagar Municipal Corporation has set up 13 dewatering station and discharging about 12.25 MLD of sewage in Doodhganga and 14.11 MLD goes into septic tanks. The report also recorded about setting up of modular sewage treatment plant for which DPRs were to be ready by 31.03.2022. It also recorded about comprehensive sewage scheme of 125.5 MLD has also been proposed for funding and the modular STP are interim measures. However, neither the modular STP has been set up nor any step taken for setting up of comprehensive STP. It is crucial to note that till date the pumping stations are dewatering sewage directly into River Doodh Ganga at various places like Bagh-e-Mehtab, Chanpora across Doodh Ganga. Since the water from Doodh Ganga is being lifted by the water filtration plant of Public Health Engineering Department (Jal Shakti) at Kralpora and is thereafter supplied to various local villages having an estimated reach of 5 lakhs population, the Doodh Ganga River immediately needs the installation of modular STPs and permanent STPs for survival. That there cannot be any ad hoc solutions to this crucial environmental issue.

The Report filed by the Housing and Urban Development Department has recorded that total sewage generated from 7 wards of Srinagar Municipal Corporation is estimated as 16.36 MLD out of which only 4.11 MLD gets

treated in Septic Tanks/Soakage Pits, the rest 16.36 MLD untreated sewage gets directly dumped into the Doodh Ganga River. (Page 113). The report merely proposes to construct modular sewage treatment plants as a short term plan. However, till date the same has not been complied and the sewage is persistently discharged into the Doodh Ganga. Further, the report also claims that the MC Budgam and MC Chadoora have taken measures to ensure strict prohibition for illegal dumping of waste on the banks of River Doodh Ganga as a result no waste is dumped within 500 meters of the banks of the river. However, the reality on ground starkly shows a different picture. Unsegregated wastes are dumped unscientifically across the banks of Doodh Ganga in complete violation of SWM Rules, 2016.

Copy of the images taken by the Applicant on 08.07.2024 showing pumping stations are dewatering sewage directly into River Doodh Ganga at various places like Bagh-e-Mehtab, Chanpora across Doodh Ganga are annexed herewith as **ANNEXURE A/4**.

- vii. **24.06.2022** – This Hon'ble Tribunal *vide* order dated 08.03.2022, has specifically and categorically directed the Chief Secretary of Jammu and Kashmir to take remedial action to remedy the situation by ensuring clean environment and also taking coercive measures against the erring irresponsible officers, acting in contempt of the directions of the Hon'ble Supreme Court and this Hon'ble Tribunal causing detriment to the environment and public health. The Action Taken Report dated 24.06.2022 laid down recommendations given by the Joint Committee thereby listing out Short Term and Long Term Action Plans to be prepared by respective Departments. However, till date no necessary action has been taken with regard to the compliance on the installation of Modular STPs.

That Para No. 8 of the Report dated 24.06.2022 states that the Municipal Committee Chadoora has taken necessary action on solid waste management and the waste scattered on the banks of Doodh

Ganga. The Applicant herein submits that despite a passage of 3 years since directions has been passed by this Hon'ble Tribunal, at rural areas like Wathoora, Gopalpora, Kralpora located at the downstream of Chadoora town, unsegregated wastes are scattered all over the banks. The Applicant submits that the unsegregated municipal solid wastes are lifted from the banks of Doodh Ganga and also from Chadoora town and is taken to Chanapora Bypass Bridge which is few meters away from the embankments. The Chanapora Bypass Bridge is made the collection point. Hence, there is an absolute violation of the MSW Management Rules, 2016. The response

Copy of the images taken by the Applicant on 08.07.2024 showing wastes are scattered at Chadoora and Chanapora Bypass Bridge are annexed herewith as **ANNEXURE A-5.**

Further, the Mining Department has given an undertaking that no illegal mining is taking place (Page No. 158). It is crucial to submit that no necessary action has taken place in the Doodh Ganga River to restore the irrevocable damages caused as a result of such mining activity. There has been major loss of livelihood due to loss of irrigation and among fisher folks. The embankments have been sabotaged completely which will cause major threats to flood during monsoons.

Copy of the images taken by the Applicant on 08.07.2024 of the River Doodh Ganga showing the irrevocable damages and its impact upon River Doodh Ganga as a result of illegal and unscientific mining is annexed herewith as **ANNEXURE A-6.**

- viii. **28.04.2023** – The Action Taken Report filed by the Housing and Urban Development Department stated that Detailed Project Reports for Daily Dry Weather Flow discharging into Doodh Ganga were sent to IIT Roorkee for technical appraisal. Several other measures taken

as recorded in the report are door to door waste collection, removal of legacy waste, closure of waste collection point, Campaigning, Capacity Building Programme, (Page No. 216 – 219) however, the reality on ground starkly a complete different picture. The mere initiatives have been taken only on pen and paper as till date the violation persists. Unsegregated wastes are all scattered on the banks of River Doodh Ganga. No constructive and substantive measures has been taken despite passage of so many years.

- ix. **18.11.2023** – That the Principal Secretary, Housing and Urban Development Department, Jammu and Kashmir filed Compliance Report dated 18.11.2023, in compliance to the order dated 30.05.2023 passed by this Hon'ble Tribunal. The Applicant herein submits that there is a persistent unauthorized and unchecked waste disposal endangering Doodhganga River Bank. That the Municipal Committee Chadoora, Srinagar Municipal Corporation and District Administration Budgam has miserably failed to take necessary actions with regard to waste management alongside the banks of Doodh Ganga River. It is emphasized that there has been a conspicuous absence of regular initiatives addressing the pervasive issue of solid waste accumulation and legacy waste management along the banks of Doodhganga. That the significant concern is despite the passage of four (4) years, there is a persistent alarming proliferation of garbage heaps along key stretches of Doodhganga, notably at Borwah, Sojam, Hanjugund, Wathoora, Stadium Colony, Chinar Colony Wathoora, Kralpora, Mouchwa, and various other critical locations.

The Applicant herein submits that the liquid waste continues to enter Doodhganga at multiple locations from Brenwar Budgam to Tengpora Srinagar via Surasyar, Nowhar, Borwah, Sojam, Chadoora town, Hanjugund, Wathoora, Kralpora, Mouchwa. Unfortunately the said

contaminated water is lifted at Doodhganga water supply scheme and supplied to more than 6 lakhs population of Srinagar District and some parts of District Budgam.

The Applicant submits that as per the earlier report dated 14.01.2022 in Page No. 3 of the report under Para A submitted by J&K Housing and Urban Development Department, it has proposed to set up Modular Sewage Treatment Plant as a temporary measure in the first phase and under the second phase, permanent STPs to be constructed and modular STPs to be relocated to rural areas for further service. The Report further states that the DPRs for the modular STPs are finalized and the same will be ready by 31st March, 2022. However, to this day, no modular STPs have been established along the banks of the Doodh Ganga River, let alone permanent STPs and hence the timeline has been miserably failed by the J&K Housing and Urban Development Department.

- x. **01.02.2024** – The Secretary of Housing and Urban Development Department has filed a Compliance Report dated 01.02.2024 in terms of order dated 23.11.2023. The Report states that the requisite funds of Rs. 32 crores is released in favour of Director Urban Local Bodies Kashmir and Chief Engineer J&K and further the department has conveyed approval to Action Plan for an amount of Rs. 3.03 crores. That the activities approved under the Action Plan are listed out at Page No. 381. The Applicant pertinently points out that none of the proposed activities address the treatment of legacy wastes, bioremediation, or the installation of Sewage Treatment Plants. Instead, the plans focus solely on the beautification of Doodh Ganga at Chadoorah and the development of a park at Mamath Kull. Despite these beautification efforts being listed, the reality on the ground, as evidenced by photographs taken on March 31, 2024, shows that heaps of municipal waste still remain along the banks, indicating that

even the proposed aesthetic improvements have not been implemented.

3. That The Applicant submits that despite the passage of four years, there has been no significant improvement in the situation. On the contrary, there has been a gradual worsening of conditions, highlighting a stark failure on the part of stakeholders to fulfil their duties diligently. In this regard, the Applicant herein states that it pertinent to highlight that the Hon'ble Supreme Court in the matter titled **M.C. Mehta (Stubble Burning & Air Quality) v. Union of India, (2020) 7 SCC 573** in respect of Air pollution held that the every agency is responsible for ensuring compliance with environmental laws and any inaction is clearly tortious and punishable under statutory provisions. The relevant paragraph reads:

*"6. Everybody has to be answerable including the top State machinery percolating down to the level of gram panchayat. The very purpose of giving administration power up to the panchayat level is that there has to be proper administration and there is no room for such activities. The action is clearly tortious one and is clearly punishable under statutory provisions, besides the violation of the Court's order. In the circumstances, as widespread stubble burning has taken place, we direct the States of Punjab and Haryana and adjoining State of Uttar Pradesh where there is blatant violation which has taken place, to halt it. We direct the Chief Secretaries of the States of Punjab, Haryana and Uttar Pradesh to be present in this Court on 6-11-2019 including Chief Secretary of the Government of NCT of Delhi".*

4. Further, the Hon'ble Supreme Court in **NHAI v. Aam Aadmi Lokmanch, (2021) 11 SCC 566** has held that the statutory authorities and government agencies are also liable for the failure to perform the statutory duty. The Hon'ble Court held that NHAI is liable for the accident since, they failed to maintain the same properly. The relevant para reads as follows:

*"67. Having regard to the duty imposed on NHAI by virtue of Sections 4 and 5 of the Highways Act, read with Section 16 of the NHAI Act, there can be no manner of doubt that NHAI was responsible for the maintenance of the highway, including the stretch upon which the accident occurred. The report of the Sub-Divisional Officer clearly shows that inspection reports were furnished to NHAI shortly before the incident, highlighting the deficiencies; also, NHAI's correspondence with Rathod, and the local administration, reveal that it was aware of the danger and likelihood of risk to human life, and the foreseeability of the event that actually occurred later. Further, letters addressed by the local administration and NHAI to Rathod similarly show that it was incumbent upon him to take remedial action. The failure of NHAI to ensure remedial action, and likewise the failure by Rathod to take measures to prevent the accident, prima facie, disclose their liability."*

5. Thus, it is pertinent to be noted that that statutory authorities and government agencies i.e., Municipal Committee Chadoora, Srinanagar Municipal Corporation and District Administration Budgam are equally accountable for their failure to fulfill their statutory duties despite a passage of 4 years and despite several directions passed by this Hon'ble Tribunal.

6. The Applicant in this regard further states that the Hon'ble Supreme Court in **Rajkot Municipal Corporation. vs. Manjulben Jayantilal Nakum, (1997) 9 SCC 552** elaborated on the principle of Duty to Care on Statutory Authorities by relying in previous English decisions [*Gorris v. Scott*, (1874) LR 9 Exch 125 and *Kilgollan v. William Cooke & Co. Ltd.*, (1956) 1 WLR 527 : (1956) 2 All ER 294 (CA)]. The Hon'ble Court held:

*"18. The question emerges as to when would the breach of statutory duty under a particular enactment give rise to tortious liability? The statutory duty gives rise to civil action. The statutory negligence is sui generis and independent of any other form of tortious liability. It would, therefore, be of necessity to find out from the construction of each statutory duty whether the particular duty is general duty in public law or private law duty towards the plaintiff. The plaintiff must*

*show that (a) the injury suffered is within the ambit of statute; (b) statutory duty imposes a liability for civil action; (c) the statutory duty was not fulfilled; and (d) the breach of duty has caused him injury. These essentials are required to be considered in each case. The action for breach of statutory duty may belong to the category of either strict or absolute liability which is required, therefore, to be considered in the nature of statutory duty the defendant owes to the plaintiff; whether or not the duty is absolute; and the public policy underlying the duty. In most cases, the statute may not give rise to cause of action unless it is breached and it has caused damage to the plaintiff, though occasionally the statute may make breach of duty actionable per se. The burden, therefore, is on the plaintiff to prove on balance of probabilities that the defendant owes that duty of care to the plaintiff or class of persons to whom he belongs, that defendant was negligent in the performance or omission of that duty and breach of duty caused or materially contributed to his injury and that duty of care is owed on the defendant. If the statute requires certain protection on the principle of *volenti non fit injuria*, the liability stands excluded. The breach of duty created by a statute, if it results in damage to an individual *prima facie*, is tort for which the action for damages will lie in the suit. One would often take the Act, as a whole, to find out the object of the law and to find out whether one has a right and remedy provided for breach of duty. It would, therefore, be of necessity in every case to find the intention of legislature in creating duty and the resultant consequences suffered from the action or omission thereof, which are required to be considered. No action for damages lies if on proper construction of statute, the intention is that some other remedy is available. One of the tests in determining the intention of the statute is to ascertain whether the duty is owed primarily to the general public or community and only incidentally to an individual or primarily to the individual or class of individuals and only incidentally to the general public or the community. If the statute aims at duty to protect a particular citizen or particular class of citizens to which the plaintiff belongs, it *prima facie* creates at the same time correlative right vested in those citizens of which plaintiff is one; he has remedy for enforcement, namely, the action for damages for any loss occasioned due to negligence or for failure of it. But this test is not always conclusive.*

*19. Duty may be of such paramount importance that it is owed to all the public. It would be wrong to think that on an action, the duty could be enforced by way of damages when duty is owed to a section*

*of public and cannot be enforced if an individual sustains damages to whom the Corporation owes no duty and no private interest is infringed. Breach of statutory duty, therefore, requires to be examined in the context in which the duty is created not towards the individual, but has its effect on the right of individual vis-à-vis the society. Statutory duty generally is towards public at large and not towards an individual or individuals and the correlative right is vested in the public and not in private person, even though they may suffer damages. The duty in such a case is to be enforced by way of criminal prosecution or by way of injunction at the suit under Section 19 CPC or with leave of court under Order 1 Rule 8 CPC by public-spirited person or in any appropriate manner to enforce the right and not by way of private action for damages. In that situation, the legislature, while recognising the private right vested in an injured individual, may intend that it shall be maintained solely by some special remedy provided for a particular case and not by ordinary method of an action for damages as penalty or compensation.*

xxx.....

**24. Generally, a public authority entrusted with no statutory obligation to exercise a power, does not come under common law duty of care to do so but by conduct the public authority may place itself in such a situation that it attracts the duty of care which calls for exercise of the power.** Common illustration is provided by an action in which an authority in the exercise of its functions, if it had created a danger, thereby subjecting itself to a duty of care for the safety of others which must be discharged by an exercise of its statutory power or by giving necessary warnings. It is the conduct of the authority in creating the danger that attracts the duty of care as envisaged in *Sheppard v. Borough of Glossop* [*Sheppard v. Borough of Glossop, (1921) 3 KB 132 (CA)*]. The statute does not by itself give rise to a civil action but it forms the formulation on which the common law can build a cause of action.

...

xxx.....

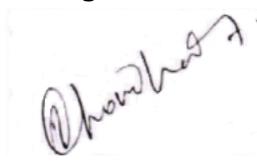
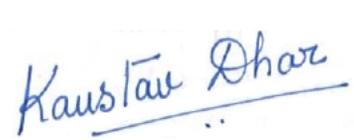
**39. It can be seen that ordinarily the principle of the law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it.** Where the public authority has decided to

*exercise a power and has done it negligently a person who has acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence. Where the damage has resulted from a negligent failure to act there may be greater difficulty in proving causation and requires examination in greater detail."*

That there is a persistent pollution in Doodh Ganga and Mamath Kull, causing progressive environment degradation, clearly highlighting the direct and unequivocal violation of the said provisions and judicial precedents.

7. Thus, in light of the above submissions as well as the facts submitted by the Applicant, it is clear that the due to the nonchalant attitude of the State respondents there persists large-scale pollution in Doodh Ganga River in complete violation of the law and earlier directions of this Hon'ble Tribunal. That there is absolutely no restoration to the irrevocable damages caused to River Doodh Ganga as a result of illegal mining and most importantly till date no development is witnessed with regard to the installation of modular STPs as a short-term remedy. Hence, in the light of the specific directions passed by the Hon'ble Supreme Court in the matter titled ***Paryavaran Suraksha Samiti & Anr. vs. Union of India & Ors. (2017) 5 SCC 326*** and directions passed by this Hon'ble Tribunal in the matter titled ***Paryavaran Suraksha Samiti & Anr. v. Union of India & Ors. (Original Application No. 593/2017)***, this Hon'ble Tribunal may be pleased to impose Environmental Compensation for the deliberate persistent non-compliance of the Municipal Local Bodies and the Pollution Control Committee thereby considering above submissions of the Applicant.

Through

**RITWICK DUTTA RAHUL CHOUDHARY KAUSTAV DHAR**

**COUNSEL FOR THE APPLICANTS**

**Dated:- 09.07.2024**



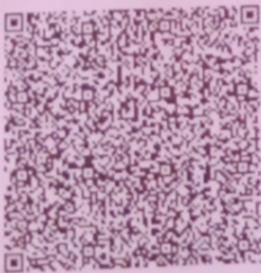
सत्यमेव जयते

## INDIA NON JUDICIAL

### Government of Jammu and Kashmir

#### e-Stamp

Certificate No.	: IN-JK04549768751830W
Certificate Issued Date	: 08-Jul-2024 02:23 PM
Account Reference	: NEWIMPACC (SV)/ jk12669404/ CHADOORA/ JK-BG
Unique Doc. Reference	: SUBIN-JKJK1266940498135406106472W
Purchased by	: Raja Muzzafar Bhat
Description of Document	: Article 4 Affidavit
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: Raja Muzzafar Bhat
Second Party	: Not Applicable
Stamp Duty Paid By	: Raja Muzzafar Bhat
Stamp Duty Amount(Rs.)	: 10 (Ten only)



Please write or type below this line

#### Statutory Alert:

The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding Corporation of India. This Certificate and as available on the website / Mobile App renders it invalid.

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL ZONE BENCH AT NEW DELHI  
ORIGINAL APPLICATION NO. 241 OF 2021

IN THE MATTER OF:

RAJA MUZAFFAR BHAT

...APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENTS

AFFIDAVIT

I, Raja Muzaffar Bhat, S/o Bashir Ahmed Bhat, aged about 45 years, R/o 64, Alamdar Colony, Gopalpura, District Budgam, Jammu and Kashmir – 191193, do hereby solemnly affirm and state as under:

1. I am the Applicant in the above titled Original Application and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Submissions are true and correct and nothing material has been concealed therefrom.

*[Signature]*  
DEPONENT

VERIFICATION

Verified at Shodang on this 8th day of July, 2024 that the contents of the above mentioned Affidavit are true and correct and nothing material has been

concealed therefrom.  
Notary Public on: 8/7/2024  
Raja Muzaffar Bhat  
S/o Bashir Ahmed  
R/o Gopalpura  
Who is identified by [Signature]  
R/o Muzaffar Bhat

*[Handwritten signatures]*  
Adm. Muzaffar Bhat

*[Signature]*  
Gh. Qadir Rather  
Advocate Notary Public  
DIST. Budgam, Kmr.

*[Signature]*  
DEPONENT

326

SUPREME COURT CASES

(2017) 5 SCC

**(2017) 5 Supreme Court Cases 326**

(BEFORE JAGDISH SINGH KHEHAR, C.J. AND DR D. Y.

CHANDRACHUD AND SANJAY KISHAN KAUL, JJ.)

PARYAVARAN SURAKSHA SAMITI

AND ANOTHER

.. Appellants;

*Versus*

UNION OF INDIA AND OTHERS

.. Respondents.

Writ Petition (C) No. 375 of 2012<sup>†</sup>, decided on February 22, 2017

**Environment Law — Water/River/Coastal Pollution — Effluents, Sewage, River and Lake Pollution — Effluent treatment plants, common effluent treatment plants, and sewerage treatment plants — Establishment and functionality of — Directions to that effect issued — Industrial units without functional effluent treatment plant directed to not be permitted to be operational — Directions for time-bound construction of common effluent treatment plants and for making sewerage treatment plants functional issued — Mechanism for implementation of these directions also explained — Role of local bodies/Municipalities therein, emphasised**

— Regarding dysfunctional common effluent treatment plants due to lack of finances and maintenance, held, onus on functionality of such plants rests on municipality and/or local bodies under Art. 243-W of Constitution — These authorities cannot shy away from their responsibilities — According to Arts. 243-X and 243-Y, these authorities can evolve norms for revenue generation to install and run common effluent treatment plants — For generation of financial resources, norms may include all or any of commercial or industrial or domestic beneficiaries of facility — Supervising these norms assigned to Secretaries of Urban Development and Local Bodies — These norms to be finalised by 31-3-2017 so that they can be implemented from next financial year — If local authorities not ready with such norms, then concerned governments shall support financial requirement for running dysfunctional common effluent treatment plant — Constitution of India — Arts. 21, 32, 48-A, 243-W, 243-X, and 243-Y and Sch. XII Entry 6 — Water (Prevention and Control of Pollution) Act, 1974, Ss. 24, 25 and 26 (Paras 4 to 17)

G-D/58368/C

Advocates who appeared in this case :

Ms Pinky Anand, Additional Solicitor General, Anil Grover, S.S. Shamsbery, Purushaindra Kaurav, Additional Advocates General and Colin Gonsalves, Senior Advocate [Gunjan Singh (for Ms Jyoti Mendiratta), S.W.A. Qadri, Ajay Sharma, Balendu Shekhar, Ansh Singh Luthra, Hemant Arya (for G.S. Makker), Satish Kumar, Sanjay Kr. Visen, Amit Sharma, Ankit Raj (for Ms Ruchi Kohli), Mishra Saurabh, Ankit Kr. Lal, Ms Vanshujha Shukla, Ms Anuradha Mishra, Ms Hemantika Wahi, Ms Jesal Wahi, Ms Mamta Singh, Ms Bhuvneshwari Pathak Kaushik, Ms Shilpi Satya Priya Satyam, Rahul Kaushik, Ashutosh Kr. Sharma, Tapesh Kr. Singh, Mohd. Waquas, Sukant Vikram, Aditya Pratap Singh, S. Udaya Kr. Sagar, Mrityunjai Singh, Guntur Prabhakar, Ms Prerna Singh, M.R. Shamshad, Rajat Singh, Aditya Samaddar,

<sup>†</sup> Under Article 32 of the Constitution of India

PARYAVARAN SURAKSHA SAMITI v. UNION OF INDIA (*Khehar, C.J.*) 327

*a* Ms Harshita Deshwal, Paramasivam, B. Balaji, Muthuvel Palani, S. Kumar, Vijay Panjwani, Ms Varsha Poddar (for Gopal Singh), Joydeep Mazumdar, Debojyoti Bhattacharya (for Parijat Sinha), Krishnayan Sen, Himanshu Bhushan, Uddyam Mukherjee, Ms Sakshi Kakkar (for C.D. Singh), Mohit Kr. Shah, Gaurav Kanth, Pushkar Taimni, V.N. Raghupathy, Lagnesh Mishra, Parikshit P. Angadi, Prakash Jadhav, Saurabh Ajay Gupta, Nishant Bishnoi (for Kuldeep Singh), C.K. Sasi, Varinder Kr. Sharma and Ms Sunita Sharma, Advocates] for the appearing parties.

The Judgment of the Court was delivered by

*b* **JAGDISH SINGH KHEHAR, C.J.**— The petitioners have approached this Court, seeking a writ in the nature of mandamus, for a direction to the respondents (which includes the Union Government, all the State Governments and the Union Territories), to ensure that no industry which requires “consent to operate” from the Pollution Control Board concerned, is permitted to function, unless it has a functional effluent treatment plant, which is capable to meet the prescribed norms for removing the pollutants from the effluent, before it is discharged.

*c* **2.** The Union of India and the State Governments (including the Union Territories) have filed counter-affidavits, expressing their individual positions. During the course of hearing, the learned counsel representing the respondents, also made some suggestions, which could be highly beneficial, in carrying forward the process of removing pollutants, from the discharged effluent, in a systematic and coordinated manner.

*d* **3.** During the course of hearing, it was not disputed between the rival parties that the initiation of the process has to be at the individual level of the industry itself. It was suggested that each industry which requires “consent to operate” from the Pollution Control Board concerned, should be mandated to set up a functional primary effluent treatment plant. We are informed that only when such an effluent treatment plant has been set up, the Pollution Control Board concerned grants a “no objection” to the industry, and accordingly “consent to operate”, so as to allow the industry to become functional. It is therefore apparent that all running industrial units, which require “consent to operate” from the Pollution Control Board concerned, have a functional primary effluent treatment plant, in place.

*e* **4.** The question that arises for our consideration is, whether the same is maintained in good order, after the industry itself has become functional. The industry requiring “consent to operate”, can be permitted to run, only if its primary effluent treatment plant, is functional. We, therefore, consider it just and appropriate, to direct the State Pollution Control Boards concerned, to issue notices to all industrial units, which require “consent to operate”, by way of a common advertisement, requiring them to make their primary effluent treatment plants fully operational, within three months from today. On the expiry of the notice period of three months, the State Pollution Control Board(s) concerned are mandated to carry out inspections, to verify, whether or not, each industrial unit requiring “consent to operate”, has a functional primary effluent treatment plant. Such of the industrial units, which have not been able to make their primary effluent treatment plant fully operational,

*f*

*g*

*h*



within the notice period, shall be restrained from any further industrial activity. This direction may be implemented by requiring the electricity supply and distribution agency concerned, to disconnect the electricity connection of the defaulting industry. We, therefore, hereby further direct that in case the State Pollution Control Boards concerned make a recommendation to the electrical supply and distribution agency/company concerned, to disconnect electricity supply to an industry, for the reason that its primary effluent treatment plant is not functional, it shall honour such recommendation, and shall disconnect the electricity supply to such defaulting industrial concern, forthwith.

a  
b

5. Such an industrial concern, which has been disabled from carrying on its industrial activities, as has been indicated in the foregoing paragraph, is granted liberty to make its primary effluent treatment plant functional to the required capacity, and thereupon, seek a fresh “consent to operate” from the Pollution Control Board concerned. Only after the receipt of such fresh “consent to operate”, the industrial activities of the disabled industry, can be permitted to be resumed. In carrying out the above exercise, we consider it just and appropriate to require the Pollution Control Boards to carry out inspections, by prioritising inspections of severely and critically polluted industries, so that visible results emerge at the earliest.

c

6. Liberty is hereby granted to private individual(s) and organisations, to address complaints to the Pollution Control Board concerned, if any industry is in default. On the receipt of any such complaint, the Pollution Control Board concerned, shall be obliged to verify the same, and take such action against the defaulting industry, as may be permissible in law. Such action, would be in addition to the discontinuation of industrial activity forthwith, in the manner directed hereinabove (but only after verification).

d

7. Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants. We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50%, that of the State Government concerned (including the Union Territory concerned) is 25%. The balance 25%, is to be arranged by way of loans from banks. The above loans, are to be repaid, by the industrial areas, and/or industrial clusters. We are also informed that the setting up of a common effluent treatment plant, would ordinarily take approximately two years (in cases where the process has yet to be commenced). The reason for the above prolonged period, for setting up “common effluent treatment plants”, according to the learned counsel, is not only financial, but also, the requirement of land acquisition, for the same.

e  
f

8. In view of the fact that the financial position has been taken care of, as has been expressed above, we are of the view, that the setting up of “common effluent treatment plants”, should be taken up as an urgent mission. With reference to common effluent treatment plants, which are already under implementation, we hope and expect that they would be completed within the timelines already postulated. With reference to common effluent treatment plants, which are yet to be set up, we consider it just and appropriate to direct the State Governments concerned (including the Union Territories concerned) to complete the same within a period of three years, from today. We are also of

g  
h

PARYAVARAN SURAKSHA SAMITI v. UNION OF INDIA (*Khehar, C.J.*) 329

a the view that while acquiring land for the “common effluent treatment plants”, the State Governments concerned (including the Union Territories concerned) will acquire such additional land, as may be required for setting up “zero liquid discharge plants”, if and when required in the future.

b **9.** During the course of hearing, we were informed by the learned counsel that the running of “common effluent treatment plants”, which are in place, is also a matter of serious concern. In this behalf, it was submitted that some of the common effluent treatment plants are dysfunctional, because of lack of finances, whilst some others are dysfunctional, because of the requirement of repairs, which have not been carried out, again because of lack of financial resources.

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

e **11.** Just in the manner suggested hereinabove, for the purpose of setting up of “common effluent treatment plants”, the State Governments concerned (including, the Union Territories concerned) will prioritise such cities, towns and villages, which discharge industrial pollutants and sewer, directly into rivers and water bodies.

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

g **13.** We are of the view that mere directions are inconsequential, unless a rigid implementation mechanism is laid down. We, therefore, hereby

h

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

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

**15.** Liberty is granted to private individuals and organisations, to approach the Bench concerned of the jurisdictional National Green Tribunal, for appropriate orders, by pointing out deficiencies, in implementation of the above directions.

**16.** It however needs to be clarified that the instant directions and timelines shall not in any way dilute any timelines and directions issued by courts or Benches of the National Green Tribunal, hitherto before, wherein the postulated timelines would expire before the ones expressed through the directions recorded above. It is clarified that the timelines expressed hereinabove will be relevant, only in situations where there are no prevalent timeline(s), and also, where a longer period has been provided for.

**17.** It would be in the interest of implementation of the objective sought to be achieved, to also require each State concerned (and each Union Territory concerned) to make provision for “online, real time, continuous monitoring system” to display emission levels, in the public domain, on the portal of the State Pollution Control Board concerned. We are informed that at least three State Governments have already adopted the aforesaid measures. Such measures shall be put in place by all the State Governments concerned (including the Union Territories concerned), within six months from today.

**18.** The instant writ petition stands disposed of, in the aforesaid terms.

\_\_\_\_\_

a

b

c

d

e

f

g

h

Item No. 02

Court No. 1

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

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

Paryavaran Suraksha Samiti &amp; Anr.

Applicant(s)

Versus

Union of India &amp; Ors.

Respondent(s)

Date of hearing: 28.08.2019

**CORAM:**

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

For Respondent (s):

Mr. Shlok Chandra, Advocate for CPCB

**ORDER**

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

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

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

2. In spite of above statutory regime we are faced with serious problem of water pollution. The Hon'ble Supreme Court noted<sup>1</sup> that the water pollution caused serious diseases, including Cholera and Typhoid. Water pollution could not be ignored and adequate measures for prevention and control are necessary. Polluting industries were directed to be shifted on 'Precautionary' principle. It is not necessary to refer to all the judgments of the Hon'ble Supreme Court dealing with the significance of water and need to prevent pollution of water. We may only refer to the observations that everyone has right to have access to drinking water in quantum and equality equal to the basic needs. This is fundamental to life and part of Article 21.<sup>2</sup>
3. As per CPCB's report 2016<sup>3</sup>, it has been estimated that 61,948 million liters per day (mld) sewage is generated from the urban areas of which treatment capacity of 23,277 mld is currently

<sup>1</sup> (1988) 1 SCC 471

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

<sup>3</sup> [http://www.sulabhenviis.nic.in/Database/STST\\_wastewater\\_2090.aspx](http://www.sulabhenviis.nic.in/Database/STST_wastewater_2090.aspx) July 16, updated on December 6, 2016

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

4. We may note that discharge of untreated effluents and sewage is the principal cause of water pollution in the country as noted in cases relating to pollution of rivers.<sup>4</sup> Similarly, in the case of 100 polluted industrial clusters being dealt with by this Tribunal<sup>5</sup>, water pollution is one of the factors polluting the said industrial clusters. As already noted, official data of CPCB is to the effect that 351 river stretches in the Country are polluted. The Tribunal held that remedial action for restoration of the said river stretches is necessary.<sup>6</sup> In the said order, it was observed:

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

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

<sup>5</sup> O.A No. 1038/2018

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

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

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

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

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

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

#### **Background of the present case before this Tribunal**

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

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

<sup>7</sup> (2017) 5 SCC 326

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

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

**11.** Just in the manner suggested hereinabove, for the purpose of setting up of “common effluent treatment plants”, the State Governments concerned (including, the Union Territories concerned) will prioritise such cities, towns and villages, which discharge **industrial pollutants and sewer, directly into rivers and water bodies.**

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

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

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

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

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

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

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

**Reports filed by the CPCB**

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

**I. Report dated 30.05.2019 updated on 19.07.2019**

13. According to updated report dated 19.07.2019, out of 62,897 number of industries requiring ETPs, 60,944 industries are operating with functional ETPs and 1949 industries are operating without ETPs. 59,258 industries are complying with environmental standards and 1,524 industries are noncomplying. There are total 192 CETPs, out of which 133 CETPs are complying with

environmental standards and 59 CETPs are non-complying. There are total 13,709 STPs (Municipal and other than municipal), out of which, 13,113 STPs are complying with environmental standards and 637 STPs are non-complying. 73 CETPs in construction/proposal stage, whereas, for STPs, 1164 projects (municipal and non-municipal) are under construction/proposal stage.

14. A report has also been prepared on the scale of environmental compensation to be recovered from individual/authorities for causing pollution or failure for preventing causing pollution, apart from illegal extraction of ground water, failure to implement Solid waste Management Rules, damage to environment by mining and steps taken to explore preparation of an annual environmental plan for the country. Extracts from the report which are considered significant for this order are:

**“I. Environment Compensation to be levied on Industrial Units**

**Recommendations**

*The Committee made following recommendations:*

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

*1.5.2 In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.*

*1.5.3 The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others {Writ Petition (Civil) No. 375 of 2012}, directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent*

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

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

## II. Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in NCR.

**Table No. 2.1: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.**

Activity	State Of Air Quality	Environmental Compensation (₹)
<b>Industrial Emissions</b>	Severe +/-Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh
	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh
<b>Vapour Recovery System (VRS) at Outlets of Oil Companies</b>		
<b>i. Not installed</b>	Target Date	Rs 1.0 Crore
<b>ii. Non functional</b>	Very poor to Severe +	Rs 50.0 Lakh
	Moderate to Poor	Rs 25.0 Lakh
<b>Construction sites (Offending plot more than 20,000 Sq.m.)</b>	Severe +/-Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh
	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh
<b>Solid waste/ garbage dumping in Industrial Estates</b>	Very poor to Severe +	Rs 25.0 Lakh
	Moderate to Poor	Rs 10.0 Lakh
<b>Failure to water sprinkling on unpaved roads</b>		
<b>a) Hot-spots</b>	Very poor to Severe +	Rs 25.0 Lakh
<b>b) Other than Hot-spots</b>	Very poor to Severe +	Rs 10.0 Lakh

## III. Environmental Compensation to be levied in case of failure of preventing the pollutants being discharged in water bodies and failure to implement waste management rules:

**Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge**

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
<b>Minimum and Maximum values of EC (Total Capital Cost Component)</b>	Min. 2000	Min. 1000	Min. 100

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

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

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

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

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

**EC= Capital Cost Factor x [Marginal Average Capital Cost for Treatment Facility x (Total**

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

*Alternatively;*

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

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

*Quantity of Sewage is in MLD*

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

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

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

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

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

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

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

Where;

Waste Quantity in tons per day (TPD)

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

Simplifying;

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

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

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

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

#### **Compensation in Case of Illegal Extraction of Ground Water**

#### **4.5 Formula for Environmental Compensation for illegal extraction of ground water**

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

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

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

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

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

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

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

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

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

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

##### 4.6.1 $ECR_{Gw}$ for Drinking and Domestic use:

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

SI. No.	Area Category	Water Consumption ( $m^3/day$ )			
		<2	2 to <5	5 to <25	25 & above
		<b>Environmental Compensation Rate (<math>ECR_{Gw}</math>) in Rs./<math>m^3</math></b>			
1	Safe	4	6	8	10
2	Semi Critical	12	14	16	20
3	Critical	22	24	26	30
4	Over-Exploited	32	34	36	40
<b>Minimum <math>EC_{Gw}</math>=Rs 10,000/- (for households) and Rs. 50,000 (for institutional activity, commercial complexes, townships etc.)</b>					

##### 4.6.2 $ECR_{Gw}$ for Packaged drinking water units:

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

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

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

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

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

#### **4.6.4 $ECR_{Gw}$ for Industrial Units:**

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

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

#### **4.8 Recommendations**

The committee has given following recommendations:

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

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

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

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

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

#### **Discussion on the report dated 30.05.2019 updated on 19.07.2019**

15. It is clear from the order of the Hon'ble Supreme Court<sup>8</sup> that the responsibility of operating STPs under Article 243W and item 6 of Schedule XII to the Constitution is of local bodies who have to evolve norms to recover funds for the purpose which is to be supervised by the States/UTs. The norms were to be finalized upto 31.03.2017 to be implemented from the next year, i.e 01.04.2018. In absence thereof, the States/UTs have to cater to the financial requirement from its own resources. The States/UTs are to prioritize the cities, towns, villages discharging effluents/sewage directly into the water bodies. Industrial activity without proper treatment plants (ETPs and CETPs) is not to be allowed by the State PCBs and the Secretaries, Environment of the States/UTs are

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

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

16. It is in this background that the present report needs to be appraised and further directions given. As regards the Environmental compensation regime fixed for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. With regard to setting up of STPs, while we appreciate the extensive work of the CPCB based on information furnished by States/UTs, the challenge remains about verification of the said data on the one hand and analysis of the steps taken and required on the other. There is already a database available with the CPCB with regard to ETPs, CETPs, STPs, MSW facilities, Legacy Waste sites. This needs to be collated and river basinwise macro picture needs to be prepared by the CPCB in terms of need for interventions, existing infrastructure and gaps therein. The States have given timelines which need to be effectively monitored both by the CPCB and the Chief Secretaries in terms of its execution.

17. As already noted, prevention of pollution of water is directly linked to access to potable water as well as food safety. Restoration of pristine glory of rivers is also of cultural and ecological significance. This necessitates effective steps to ensure that no pollution is

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

**II. Report dated 14.08.2019 with regard to monitoring of CETPs**

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

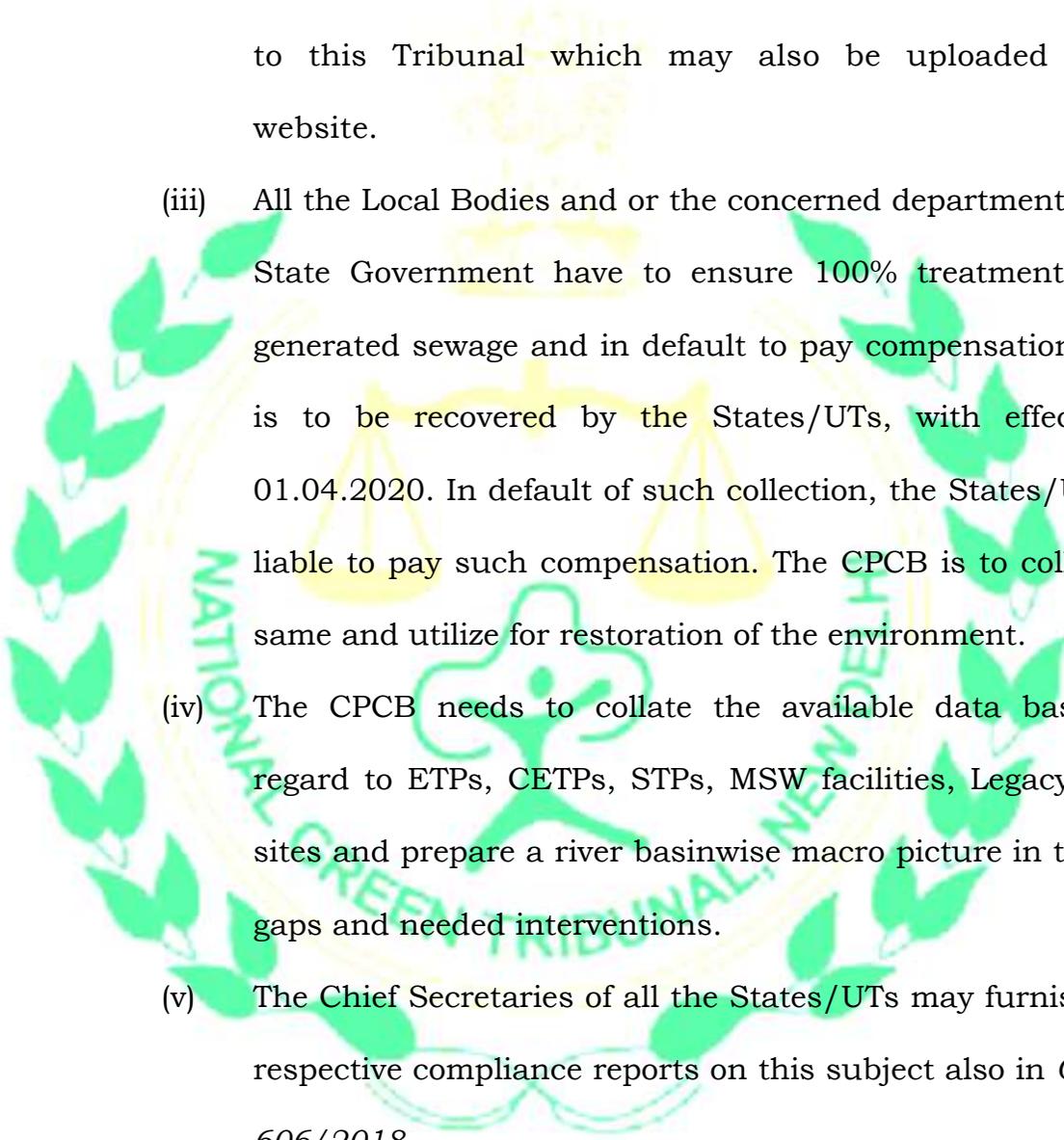
- “1. SPCBs shall direct non-complying CETPs to take immediate corrective actions to comply with the environmental standards.
2. CETP should be directed to take action as per the recommendations provided at Annexure A-N within a time frame.
3. In case of non-complying CETPs, action as deemed fit including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

**Discussion on the report dated 14.08.2019**

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

**Directions**

21. We may now sum up our directions:
- (i) The Environmental compensation regime fixed for industrial units, GRAP, solid waste, sewage and ground water in the report dated 30.05.2019 is accepted and the same may be acted upon as an interim measure.

- 
- (ii) SPCBs/PCCs may ensure remedial action against non-compliant CETPs or individual industries in terms of not having ETPs/fully compliant ETPs or operating without consent or in violation of consent conditions. This may be overseen by the CPCB. CPCB may continue to compile information on this subject and furnish quarterly reports to this Tribunal which may also be uploaded on its website.
- (iii) All the Local Bodies and or the concerned departments of the State Government have to ensure 100% treatment of the generated sewage and in default to pay compensation which is to be recovered by the States/UTs, with effect from 01.04.2020. In default of such collection, the States/UTs are liable to pay such compensation. The CPCB is to collect the same and utilize for restoration of the environment.
- (iv) The CPCB needs to collate the available data base with regard to ETPs, CETPs, STPs, MSW facilities, Legacy Waste sites and prepare a river basinwise macro picture in terms of gaps and needed interventions.
- (v) The Chief Secretaries of all the States/UTs may furnish their respective compliance reports on this subject also in *O.A. No. 606/2018*.

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

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

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



**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

## Table of Contents

<b>Chapter-I: Environment Compensation to be levied on Industrial Units .....</b>	<b>3</b>
1.1 Background.....	3
1.2 Constitution of the Committee .....	3
1.3 Methodology for Assessing Environmental Compensation .....	3
1.4 Action Plan for Utilization of Environmental Compensation Fund .....	6
1.5 Recommendations.....	7
<b>Chapter-II: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR. ....</b>	<b>9</b>
2.1 Background.....	9
2.2 Action Plan for Utilization of Environmental Compensation Fund .....	9
<b>Chapter-III: Environmental Compensation to be levied in case of failure of preventing the pollutants being discharged in water bodies and failure to implement waste management rules .....</b>	<b>10</b>
3.1 Background.....	10
3.2 Ideology of Environmental Compensation Formula .....	10
3.3 Environment Compensation for Discharge of Untreated/Partially Treated Sewage by Concerned Individual/Authority:.....	12
3.4 Environment Compensation to be Levied on Concerned Individual/Authority for Improper Solid Waste Management:.....	14
3.3 Action Plan for Utilization of Environmental Compensation Fund .....	15
3.4 Recommendations.....	15
<b>Chapter-IV: Environmental Compensation in Case of Illegal Extraction of Ground Water .....</b>	<b>17</b>
4.1 Background.....	17
4.2 Constitution of the Committee .....	17
4.3 Methodology for Assessing Environmental Compensation .....	17
4.4 Ideology of Environmental Compensation w.r.to illegal extraction of ground water .....	17
4.5 Formula for Environmental Compensation for illegal extraction of ground water .....	18
4.6 Environmental Compensation Rate (ECR <sub>GW</sub> ) for illegal use of Ground Water .....	18
4.7 Relaxation.....	21
4.8 Recommendations.....	21
<b>Annexure-I.....</b>	<b>22</b>
<b>Annexure-II.....</b>	<b>28</b>
<b>Annexure-III.....</b>	<b>31</b>
<b>Annexure-IV.....</b>	<b>34</b>
<b>Annexure-V.....</b>	<b>36</b>
<b>Annexure-VI.....</b>	<b>40</b>
<b>References.....</b>	<b>41</b>

## **Abstract**

Environmental compensation is a policy instrument for the protection of the environment which works on the Polluter Pay Principal. Environmental compensation has already been implemented in various countries, although limited in scope. Experiences from these implementations are mixed and tend to stress the importance of certain principles in order to achieve the overall objective of protection of the environment.

The Hon'ble National Green Tribunal through its various judgments has empowered the Central Pollution Control Board to lay down the methodology to assess and recover compensation for damage to the environment and utilize such amount in terms of an action plan for protection of the environment.

An attempt has been made by the CPCB in-house Committee to develop a methodology for assessing environmental compensation to be levied on concerned industry, authority, individual etc. for the protection of environment. Expert institutions/ NGOs like The Energy and Resources Institute, Centre for Science and Environment-India, Institute of Economic Growth etc. were also consulted to finalize the report. Overall objective is to develop self-sense of responsibility towards the environment and to make defaulters realize their mistake by imposing compensation, which will be utilized for the protection/restoration of the environment.

Although, this is the first attempt in India towards development of methodology for assessing environmental compensation, however, efforts have been made to simplifying the process so that regulatory institutions can easily adopt the methodology for implementation.

## Chapter-III: Environmental Compensation to be levied in case of failure of preventing the pollutants being discharged in water bodies and failure to implement waste management rules

---

### 3.1 Background

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 State Governments (including the concerned Union Territories) to set-up Sewage Treatment Plants (STPs), which are already under implementation, within the time lines already postulated. Further, the STPs, which are yet to set-up, to be completed within a period of three years, from today, i.e. by 22.02.2020.

The Hon'ble NGT in its order dated 06.12.2018 (**Annexure-III**) in the matter of Court of its own motion v/s State of Karnataka (Original Application No. 125/2017 and M.A. No. 1337/2018) has given following directions:

*“Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.”*

### 3.2 Ideology of Environmental Compensation Formula

In compliance of the directions of the Hon'ble Tribunal, the Committee deliberated on the issue of environmental compensation to be recovered from individuals/authorities in case of failure of preventing the pollutants being discharged in water bodies and failure to implement solid and other waste management rules. The Committee has suggested that environmental compensation in these cases should be comprised of two components i.e.

1. Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage management system; and
2. Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because of insufficient capacity of waste/sewage management/treatment facility.

Cost saved/benefits achieved by not having proper waste/sewage management system includes the interest on capital cost of the waste/sewage management facility and daily operation and maintenance (O&M) cost associated with the facility.

The Committee suggested that annual interest rate as 10% on loan amount, borrowed by concerned individual/authority for setting-up waste/sewage management facility, may be assumed as Capital Cost Factor for calculation of environment compensation. Further, as whole O&M cost is saved by concerned individual/authority for not managing required waste/sewage management system, 100% of the O&M cost saved may be considered as O&M cost factor.

Therefore, generalized formula for Environmental Compensation may be described as:

$$EC = \text{Capital Cost Factor} \times \text{Marginal Average Capital Cost for Establishment of Waste or Sewage Management or Treatment Facility} \times (\text{Waste or Sewage Management or Treatment Capacity Gap}) + \text{O\&M Cost Factor} \times \text{Marginal Average O\&M Cost} \times (\text{Waste or Sewage Management or Treatment Capacity Gap}) \times \text{No. of Days for which facility was not available} + \text{Environmental Externality}$$

Cost to the environment due to untreated/partially treated waste/sewage discharge by concerned individual/authority may be assumed as recommended by the committee, which is mentioned below:

**Table No. 3.1: Environmental externality for untreated/partially treated sewage discharge**

Sewage Treatment Capacity Gap (MLD)	Marginal Cost of Environmental Externality (Rs. per MLD/day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
Up to 200	75	Min. 0.05, Max. 0.10
201-500	85	Min. 0.25, Max. 0.35
501 and above	90	Min. 0.60, Max. 0.80

**Table No. 3.2: Environmental externality for improper municipal solid waste management**

Municipal Solid Waste Management Capacity Gap (TPD)	Marginal Cost of Environmental Externality (Rs. per ton per day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
Up to 200	15	Min. 0.01, Max. 0.05
201-500	30	Min. 0.10, Max. 0.15
501-1000	35	Min. 0.25, Max. 0.35
1001-2000	40	Min. 0.50, Max. 0.60
Above 2000		Max. 0.80

The Committee further decided to fix a cap for minimum and maximum cost for capital and O&M component for Environmental Compensation, which are given in below tables:

**Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge**

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 2000 Max. 20000	Min. 1000 Max. 10000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5

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

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

The application of formula for calculation of EC may be further understood with the example of two typical cases.

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

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

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

*Alternatively;*

**EC (Lacs Rs.) = [17.5(Total Sewage Generation – Installed Treatment Capacity) + 55.5(Total Sewage Generation-Operational Capacity)] + 0.2(Sewage Generation-Operational Capacity) x N + Marginal Cost of Environmental Externality x (Total Sewage Generation-Operational Capacity) x N**

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

*Quantity of Sewage is in MLD*

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

City	Delhi	Agra	Gurugram	Ambala
<b>Population (2011)</b>	1,63,49,831	17,60,285	8,76,969	5,00,774
<b>Class</b>	Mega-City	Million-plus City	Class-I Town	Class-I Town
<b>Sewage Generation (MLD) (as per the latest data available with CPCB)</b>	4195	381	486	37
<b>Installed Treatment Capacity (MLD) (as per the latest data available with CPCB)</b>	2500	220	404	45.5
<b>Operational Capacity (MLD) (as per the latest data available with CPCB)</b>	1900	140	300	24.5
<b>Treatment Capacity Gap (MLD)</b>	2295	241	186	12.5
<b>Calculated EC (capital cost component for STPs) in Lacs Rs.</b>	29662.50	2817.50	1435.00	0.00
<b>Calculated EC (capital cost component for Conveyance System) in Lacs. Rs.</b>	127372.50	13375.50	10323.00	693.75
<b>Calculated EC (Total capital cost component) in Lacs Rs.</b>	157035.00	16193.00	11758.00	693.75
<b>Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)</b>	Min. 2000 Max. 20000	Min. 1000 Max. 10000	Min. 100 Max. 1000	Min. 100 Max. 1000
<b>Final EC (Total Capital Cost Component) in Lacs Rs.</b>	<b>20000.00</b>	<b>10000.00</b>	<b>1000.00</b>	<b>693.75</b>
<b>Calculated EC (O&amp;M Component in Lacs Rs./day)</b>	459.00	48.20	37.20	2.50
<b>Minimum and Maximum values of EC (O&amp;M Cost Component) recommended by the Committee (Lacs Rs./day)</b>	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5	Min. 0.5 Max. 5
<b>Final EC (O&amp;M Component) in Lacs. Rs./Day</b>	<b>20.00</b>	<b>10.00</b>	<b>5.00</b>	<b>2.50</b>
<b>Calculated Environmental Externality (Lacs Rs .Per Day)</b>	2.0655	0.2049	0.1395	0.0094
<b>Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)</b>	Min. 0.60 Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.05 Max. 0.10	Min. 0.05 Max. 0.10
<b>Final Environmental Externality (Lacs Rs. Per day)</b>	<b>0.80</b>	<b>0.25</b>	<b>0.10</b>	<b>0.05</b>

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

It is known that estimated MSW generation is approximately 1.5 lakh MT/Day in India (MoHUA Report-2016). As per the principles of SWM Rules, 2016 and PWM Rules 2016, as amended in 2018, the total cost of Municipal Solid Waste management in a city/town includes cost for door to door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of MSW and disposal through facility like composting, biomethanation, recycling, co-processing in cement kilns etc.

In view of above, it is estimated that the total cost of processing and treatment of MSW for a city having population size of 1 lakh and generating approximately 50 tons/day of MSW is Rs.15.5 Crores, including capital cost (one time) and O & M cost for one year. The expenditure for subsequent years would be only Rs. 3.5 crores/annum.

CPCB sponsored a survey to ascertain the status of municipal solid waste disposal in 59 cities/towns of India. The survey was conducted by the Environment Protection Training Research Institute (EPTRI), Hyderabad. As per the survey, it is estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes. Based on these assumptions, Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

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

Where;

Waste Quantity in tons per day (TPD)

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

Simplifying;

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

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

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Waste Generation (kg. per person per day)	0.6	0.5	0.4	0.4
Waste Generation (TPD)	9809.90	880.14	350.79	200.31
Waste Disposal as per Rules (TPD) ( <i>assumed as 25% of waste generation for sample calculation</i> )	2452.47	220.04	87.70	50.08
Waste Management Capacity Gap (TPD)	7357.42	660.11	263.09	150.23
Calculated EC (capital cost component) in Lacs. Rs.	17657.82	1584.26	631.42	360.56
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000	Min. 100 Max. 1000
Final EC (capital cost component) in Lacs. Rs.	<b>10000.00</b>	<b>1584.26</b>	<b>631.42</b>	<b>360.56</b>
Calculated EC (O&M Component) in Lacs. Rs./Day	147.15	13.20	5.26	3.00
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./Day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0	Min. 0.1 Max. 1.0
Final EC (O&M Component) in Lacs. Rs./Day	<b>10.00</b>	<b>5.00</b>	<b>1.00</b>	<b>1.00</b>
Calculated Environmental Externality (Lacs Rs. Per Day)	2.58	0.18	0.03	0.02
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)	Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.01 Max. 0.05	Min. 0.01 Max. 0.05
Final Environmental Externality (Lacs Rs. per day)	<b>0.80</b>	<b>0.25</b>	<b>0.03</b>	<b>0.02</b>

### 3.3 Action Plan for Utilization of Environmental Compensation Fund

EC levied in case of failure of preventing the pollutants being discharged in water bodies and failure to implement waste management rules will be deposited in the same fund and will be utilized in the same manner as mentioned in para 1.4.1 of Chapter-I of this report.

### 3.4 Recommendations

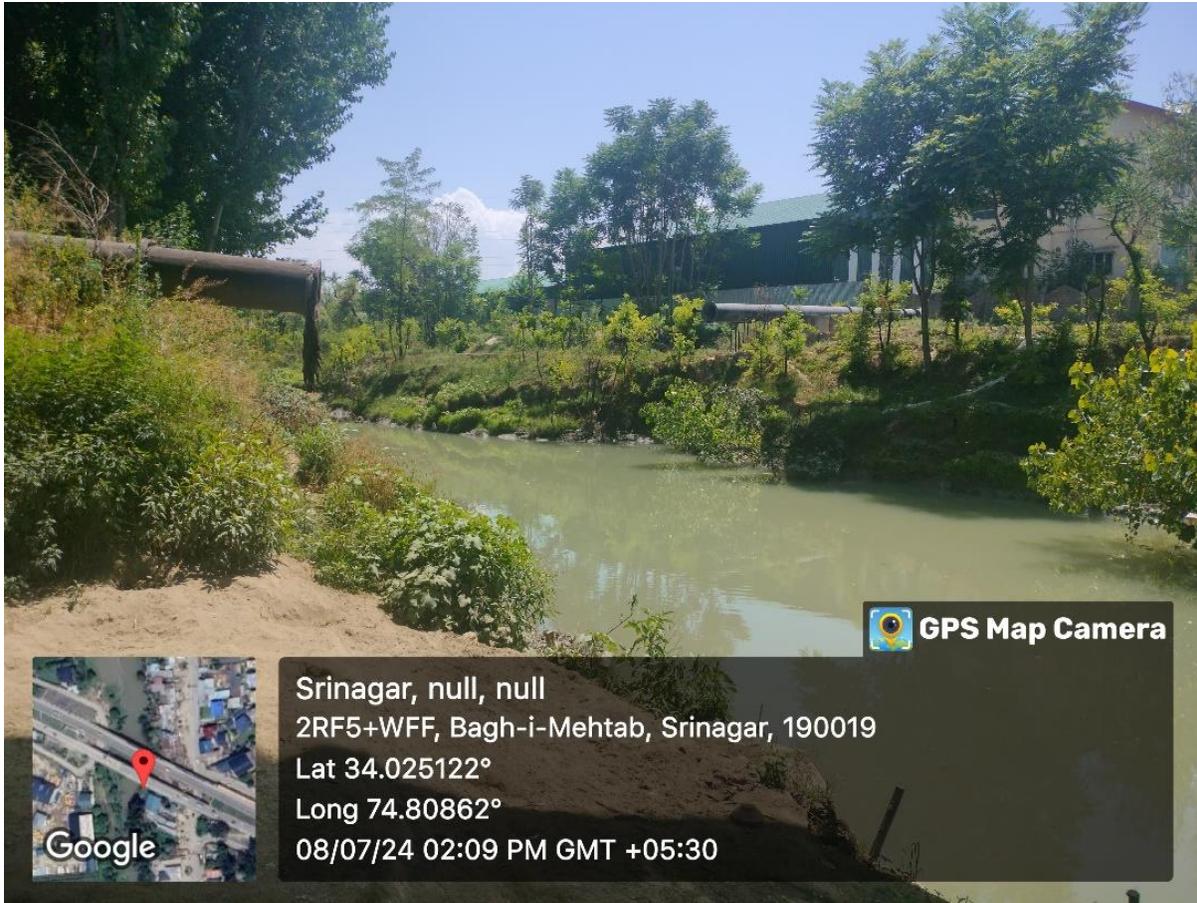
1. The Committee recommended that to begin with, Environmental Compensation to be recovered from individuals/authorities in case of failure of preventing the pollutants being discharged in water bodies and failure to implement solid waste management rules may be calculated with the methodology described in the report.
2. If mixing of Bio-medical Waste or Hazardous Waste is found in Municipal Solid Waste than capital cost component of EC may be increased by a multiplication factor of 1.5.

3. In order to include deterrent effect for continuous violations, component of O&M and Environmental Externality in EC formula may be increased on exponential basis by 2, 4, and 8 times after every six-months, beyond the time prescribed by authority for ensuring complete treatment of sewage/waste of the city/town.

\*\*\*\*\*

**ANNEXURE A/4**

**Copy of the images taken by the Applicant on 08.07.2024 showing pumping stations are dewatering sewage directly into River Doodh Ganga at various places like Bagh-e-Mehtab, Chanpora across Doodh Ganga.**



**Copy of the images taken by the Applicant on 08.07.2024 showing wastes are scattered at Chadoora and Chanapoor Bypass Bridge.**





 GPS Map Camera



**Budgam,--,--**

Zuhom Kandipur Kralwari Road, Chadoora,  
Budgam,

Lat 33.918753, Long 74.750869

07/08/2024 03:09 PM GMT+05:30

Note : Captured by GPS Map Camera



Srinagar, null, null  
2RG5+4HC, Channapora Bridge, Chanpora, Srinagar, 190019  
Lat 34.025104°  
Long 74.808923°  
08/07/24 02:11 PM GMT +05:30



**ANNEXURE A/6**

**Copy of the images taken by the Applicant on 08.07.2024 of the River Doodh Ganga showing the irrevocable damages and its impact upon River Doodh Ganga as a result of illegal and unscientific mining.**



GPS Map Camera



**Budgam, --, --**  
Chadoora, Budgam,  
Lat 33.938514, Long 74.787819  
07/08/2024 01:54 PM GMT+05:30  
Note : Captured by GPS Map Camera

Maps



GPS Map Camera



Chadoora, --, --  
Chadoora, Chadoora,  
Lat 33.946181, Long 74.801808  
07/08/2024 01:11 PM GMT+05:30  
Note : Captured by GPS Map Camera



532

DC Law Chambers &lt;dclaw160@gmail.com&gt;

---

**Submission on behalf of the Applicant in OA No. 241 of 2021 Raja Muzaffer Bhat Vs. Union of India & Ors.**

1 message

**DC Law Chambers** <dclaw160@gmail.com>

Tue, Jul 9, 2024 at 11:15 AM

To: secy-moef@nic.in, cs-jandk@nic.in, membersecretaryjkspcb@gmail.com, ajayaggarwal.cpcb@nic.in, dcsgr-jk@nic.in, "dpobudgam@gmail.com" <dpobudgam@gmail.com>, commissioner-smc@jk.gov.in, eorncbudgam@gmail.com, EXECUTIVE OFFICIER MC CHADOORA <eomcchadoora@gmail.com>, "dcbudgam@gmail.com" <dcbudgam@gmail.com>, "dphudd2018@gmail.com" <dphudd2018@gmail.com>, Balendu Shekhar <balendushekhar@gmail.com>, "gmkawoosa@yahoo.com" <gmkawoosa@yahoo.com>  
Bcc: Kaustav Dhar <kaustav11feb@proton.me>

Dear All,

Please find attached- Submission on behalf of the Applicant in OA No. 241 of 2021 Raja Muzaffer Bhat Vs. Union of India & Ors.

Thanks &amp; Regards

Counsel for the Applicant

**Submission on behalf of the Applicant.pdf**

14371K