

BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH AT NEW DELHI

ORIGINAL APPLICATION NO. 1328 of 2024

IN THE MATTER OF:
ALEEM.

.....APPLICANT

VERSUS

MoEF & CC & OTHERSRESPONDENTS

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NEW DELHI

DATED: 14.10.2025



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RESPONSE ON BEHALF OF THE RESPONDENT NO. 4,
UTTAR PRADESH POLLUTION CONTROL BOARD IN
COMPLIANCE OF ORDER DATED 22.07.2025 PASSED BY
THIS HON'BLE TRIBUNAL

I, Dr. Yogendra Kumar, aged about 49 years S/o Pyare Lal, presently posted as Regional Officer, Uttar Pradesh Pollution Control Board (hereinafter referred to as UPPCB), Saharanpur, do hereby solemnly affirm and state on oath as under:

1. That I the deponent in official capacity mentioned above, am acquainted with the facts and circumstances of the case and as such I am competent and authorized to swear this affidavit.



2. That the present matter has been taken up by this Hon'ble Tribunal on 22.07.2025. Upon considering the reply filed by the UPPCN, this Hon'ble Tribunal was pleased to pass the following direction:

"...Therefore, now the issue of imposition of environmental compensation for the past violation arises. Though the UP PCB in its report has referred to certain orders passed by it imposing environmental compensation but Tribunal is of the view that the full details relating to the period and extent of violation needs to be placed on record by the UP PCB to arrive at an appropriate amount of environmental compensation. Learned counsel for the UP PCB seeks four weeks' time to place on record these details..."



3. That in compliance of the above direction it is most respectfully submitted that the environmental compensation has been calculated against the defaulter brick kiln as per the guidelines prescribed by the Central Pollution Control Board i.e. $(EC = PI \times N \times R \times S \times LF)$

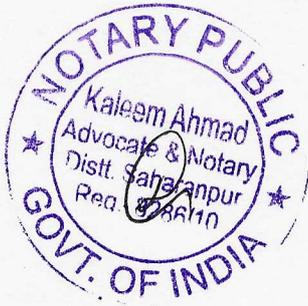
Thus, taking the value $P1=50$, $N=1$ day, $R=250$, $S=0.5$ and $LF=1$, the Environmental Compensation for one day comes to Rs. 6250/- $(EC = PI \times N \times R \times S \times LF = 50 \times 1 \times 250 \times 0.5 \times 1 = \text{Rs. } 6250)$.

The compensation was imposed w.e.f. 29.11.2023 (date of earlier inspection) to 30.06.2024 (seasonal end date) and w.e.f. 06.11.2024 (date of starting operation of kiln at present) till the closure order was passed, considering the no. of days of violation which comes to 246 days. **However, the total no. of days till the brick kiln was actually closed comes to 128 days.**

Thus, U.P. Pollution Control Board has imposed a compensation of Rs. 15,37,500/-, out of which the District Administration, Saharanpur has recovered an amount of Rs. 6,00,000/-.

4.

That further it is most respectfully submitted that Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition (C) No. 4816 of 2024, vide its Judgement dated 17.07.2025, directed as under:



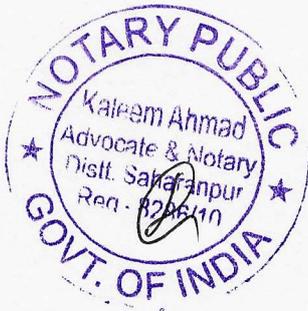
...“(82) *In view of the foregoing discussion, we hold that the State Pollution Control Board has no power to impose environmental compensation upon any person or Industry and it can merely file an application before the NGT under Section 15 read with Section 18 of the NGT Act for issuance of a direction to the person concerned for payment of compensation.*

(83) *Accordingly, all the Writ Petitions are allowed. All the orders passed by the State Pollution Control Board imposing environmental compensation upon the*

petitioners, which are under challenge in the Writ Petitions, are quashed. The State Pollution Control Board will be at liberty to file applications before the NGT for award of compensation. Costs made easy."

5. That in view of the above judgment, the Hon'ble High Court of Allahabad has categorically held that UPPCB has no authority to impose environmental compensation directly. The Board may only approach the NGT under Sections 15 and 18 of the NGT Act for such relief. Accordingly, no EC has been further imposed by UPPCB in the present matter.

6. That it is also worthwhile to mention here that Hon'ble Supreme Court of India vide its order dated 04.08.2025 passed in Civil Appeal No(s). 757-760 of 2013, D.P.P.C. Versus Lodhi Property Co. Ltd. Etc., regarding the power of Pollution Control Board to levy Environmental Compensation under Section 33A of Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of Air (Prevention and Control of Pollution) Act, 1981, has upheld the power of the State Pollution Control Board to levy Environmental Compensation for degradation of environment in Paras 28, 29 and 30 of the judgment which reads as under:



...28. Having considered the principles that govern our environmental laws and on interpretation of Sections 33A and 31A of the Water and Air Acts, we are of the opinion that that the Division Bench of the

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

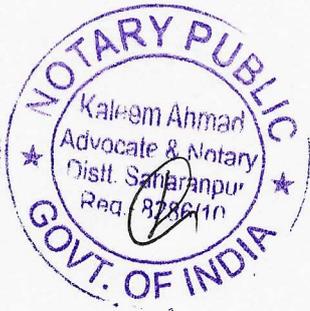
29. *There is no doubt that Section 33A of the Water Act and Section 31A of the Air Act give the State Boards powers to issue necessary directions for environmental restoration, remediation and compensation and for the payment of costs for the same. The National Green Tribunal's judgment in Swastik Ispat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

30. *The Board's powers under Section 33A of the Water Act and Section 31A of the Air Act have to be read in light of the legal position on the application of Polluter Pays principle as formulated and explained. This means that State Board cannot impose environmental damages in case of every*



contravention or offence under the Water Act and Air Act. It is only when the State Board has made a determination that some form of environmental damage or harm has been caused by the erring entity, or the same is so imminent, that the State Board must initiate action under Section 33A of the Water Act and Section 31A of the Air Act.

7. That the Hon'ble Supreme Court has further held that there is no conflict in the power of Board to direct payment of environmental damages under Section 33A and 31A of the Water and Air Act respectively and the powers of adjudicating officer to impose penalties under Chapter VII of the Water Act and Chapter VI of the Air Act. The said Para 31 is as under:



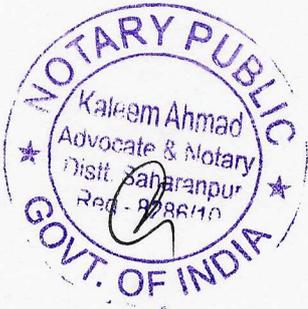
31. *At this stage, we must also take note of the recent 2024 amendments to the Water and Air Acts. Two major changes relevant for our consideration are that of decriminalization and introduction of the office of "Adjudicatory Officer". Even after the amendments, in our opinion, there is no conflict between the powers of the State Boards to direct payment of environmental damages under Sections 33A and 31A of the Water and Air Acts and the powers of the Adjudicating Officer to impose penalties under Chapter VII of the Water Act and Chapter VI of the Air Act. The decriminalization of offences under these Chapters has not removed the punitive*

nature of actions that can be taken under them. There remains a clear distinction between the nature of directions that the State Boards can issue under Sections 33A and 31A of the Water and Air Acts for payment of environmental damage and the determination by Adjudicating Officers. The former is compensatory in nature and will be resorted to when remedial measures are being undertaken to restore the degraded environment or pollution caused. The latter is a penalty for an offence under the law and is imposed with the objective of punishing the offender. This penalty collected here will not be specifically directed towards the restoration of the degraded environment (for instance, to decontaminate a pond that has been polluted due to discharge of untreated sewage). It will be deposited in the Environmental Protection Fund that is to be set up under Section 16 of the Environment (Protection) Act. According to Section 16(3) of the EP Act, the Fund shall be used for, (a) the promotion of awareness, education and research for the protection of environment; (b) the expenses for achieving the objects and for purposes of the Air (Prevention and Control of Pollution) Act, 1981(14 of 1981) and under this Act; and (c) such other purposes, as may be prescribed.



8. That further, Hon'ble Supreme Court has held that at present the Boards are levying Environmental Damages on the basis of guidelines issued by CPCB which requires that these guidelines are reviewed thoroughly and issued in the form of Rules and Regulations. The said Paras 35 and 36 are as follows:

"35. To ensure that the Boards impose restitutionary and the compensatory environmental damages in a fair transparent, nonarbitrary manner, with procedural certainty, necessary subordinate legislation in the form of rules and regulations must be notified. This shall include methods by which environmental damage is determined, and the consequent quantum of damages are assessed. They may also incorporate certain basic principles of natural justice for fairness in action. At present environmental damages are being levied by the Boards on the basis of certain guidelines issued by the Central Pollution Control Board in its document "General framework for imposing environmental damage compensation" issue in December, 2022. These guidelines seem to have been issued pursuant to the directions of the NGT.³⁰ It is important that these guidelines are reviewed thoroughly and issued in the form of Rules and Regulations. This will enable declaration of a law that applies and ensures its recognition and easy implementation.



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

9. That in view of the said judgment the Hon'ble Supreme Court in Para 39(b) and (c) directed as under:

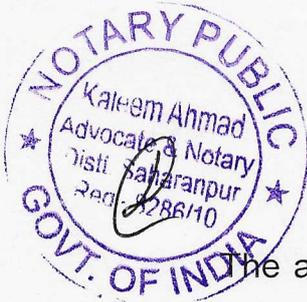
(b) *we direct that the Pollution Control Boards can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an ex-ante measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and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

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



10. That in view of the aforesaid observations of Hon'ble Supreme Court, though the concerned State Pollution Control Board has a power to impose Environmental Compensation, however, till the Rules are framed, it should not impose any environmental compensation as directed by Hon'ble Supreme Court. Hon'ble Supreme Court has directed that Union of India be impleaded in the above case and will inform the Hon'ble Court about the Rules and Regulations to be framed by it.

11. Thus it is very humbly submitted that this Hon'ble Tribunal may impose the Environmental Compensation on the brick kiln as per the days of default notified by the U.P. Pollution Control Board.



The above reply on behalf of the Uttar Pradesh Pollution Control Board is being submitted before this Hon'ble Tribunal for kind perusal and consideration.

DEPONENT

VERIFICATION

Verified at Saharanpur on this the 13th day of October, 2025 that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

IDENTIFIED BY

KALEEM AHMAD

Advocate
Reg. No. 10533/01
Ch.-63, Civil Court, SRE
Mob.-9359206239

DEPONENT

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