

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

APPEAL NO. 5 OF 2024

IN THE MATTER OF:

Haryana State Pollution Control Board & Anr. ...Appellant (s)

-Versus-

M/s Malibu Estate Pvt. Ltd. & Anr. ...Respondent (s)

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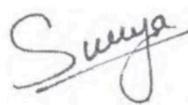
NDOH-17.03.2026

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DATE: 16.03.2026

PLACE: NEW DELHI

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BEFORE THE NATIONAL GREEN TRIBUNAL**AT PRINCIPAL BENCH, NEW DELHI****APPEAL NO. 5 OF 2024****IN THE MATTER OF:**

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-Versus-

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WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1 M/s MALIBU ESTATE PRIVATE LIMITED

1. M/s Malibu Estate Private Limited (MEPL) (hereinafter referred to as **“Respondent No. 1”**) is a duly incorporated company engaged in the development of a residential township project in Gurugram, Haryana, which was developed pursuant to valid licenses issued from time to time between 1992-97 and thereafter in 2008 by the Department of Town and Country Planning, Haryana ‘DTCP’, Haryana. The Project of the Respondent No. 1 was developed over several years with various Government approvals as prevalent at that point in time.
2. The present Appeal has been filed by the Haryana State Pollution Control Board (HSPCB), (hereinafter referred to as, **“Appellant”**), under Section 16 (a), (f) read with Section 18 of the National Green Tribunal Act, 2010, read with Section 33-B of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31-B Air (Prevention and Control of Pollution) Act, 1981, assailing the Order dated 21.09.2023 (hereinafter referred to as **“Impugned Order”**) passed by the Appellate Authority, Haryana State Pollution Control Board, Panchkula in Appeal No. 20 of 2023, whereby the Closure Order

dated 22/23.12.2022 issued against the Respondent No. 1, along with Clarification Orders dated 02.03.2023 and 19.04.2023, were set aside by the Ld. Appellate Authority.

3. The Appellant issued a Show Cause Notice (SCN) dated 16.10.2020 under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter "Water Act, 1974") and for initiating legal action under Section 43/44 of the Water Act, 1974. Based on inspection dated 08.09.2020 and Analysis Report dated 05.10.2020 of water samples collected from 3 Nos of STP, 1 Nos of Rain Water Harvesting Pit, Sewage Line going directly to HUDA/GMDA Sewer, underground water tank, among other ancillary issues, the above-mentioned SCN was issued. However, the said SCN did not raise any allegations regarding the absence of Environmental Clearance (EC), Consent to Establish (CTE), or Consent to Operate (CTO). A Reply dated 02.11.2020 was duly submitted by the Respondent No. 1 to the SCN dated 16.10.2020 **(Para 4 (m), Pg 30 read with Annexure-15, Pg 125-126 of the Appeal)**. Thereafter, without granting a proper opportunity of hearing and without considering the Reply dated 02.11.2020, the Appellant issued a Closure Order dated 22/23.12.2022 **(Para 4 (r), Pg 35 read with Annexure-2, Pg. 58-59 of the Appeal)** merely on the basis of SCN dated 16.10.2020. However, it is pertinent to submit here that the said Closure Order was also based on additional grounds, including alleged non-obtainment of EC and absence of CTE/ CTO, pendency of cases in the district court, Gurugram, among others, which were never part of the original SCN dated 16.10.2020.

4. A prosecution case was also filed by Ministry of Environment and Forest, through Mr. Kuldeep Singh on 03.01.2023 before the Hon'ble Special Environment Court, Faridabad, for violation of the provisions of the EIA Notification 14.09.2006, amended till date, for not obtaining mandatory EC (although it is not within their jurisdiction).
5. Thereafter, a Representation dated 17.02.2023 was submitted on behalf of the Federation of Malibu Town Resident Welfare Association against the Closure Order dated 22/23.12.2022. **(Para 4(t), Pg 35 of the Appeal)**. In response to the said representation, a personal hearing was granted to the RWA's Federation, a Clarification Order dated 02.03.2023 **(Annexure-3, Pg 60 of the Appeal)** was issued with the clarification that the directions were issued vide Order dated 22/23.12.2022 to save the environment and activities like road repairs, sewage system, STPs could be carried out.
6. Further, this Hon'ble Tribunal passed an Order dated 28.03.2023 in OA No. 68 of 2022, Raman Sharma vs State of Haryana & Ors. wherein HSPCB was asked to revisit the Closure Order dated 22/23.12.2022, in terms that the Bonafide third party investor should not be made to suffer due to inaction/negligence/connivance of the concerned administrative officers. **(Para 4 (u), Pg 36 read with Annexure-18, Pg 131-155 of the Appeal)**. In compliance with the NGT Order, the Closure Order dated 22/23.12.2022 was further modified, vide Clarification Order dated 19.04.2023, to the effect that the directions in the Closure Order dated 22/23.12.2022 would be applicable only to the property of the project proponent. **(Para 4 (v), Pg 37-38 read with Annexure-4, Pg 61-63 of the Appeal)**.

7. Being aggrieved by the Closure Order, the Respondent No. 1 preferred a Writ before Hon'ble High Court of Punjab & Haryana in CWP-6584-2023 and thereafter approached the Appellate Authority under the Water Act, 1974 and the Air Act, 1981 by way of Appeal which was registered as Appeal No. 20 of 2023. The said Appeal was allowed vide the Impugned Order dated 21.09.2023, while setting aside the Closure Order dated 22/23.12.2022 and the Clarification Orders dated 02.03.2023 and 19.04.2023 on various grounds including lack of jurisdiction with HSPCB to pass the said Closure Order and violation of the Principles of Natural Justice. The present Appeal has been filed by the Appellant challenging the said Impugned Order dated 21.09.2023 (**Para 4(w), Pg 37-38 read with Annexure-1, Pg 45-57 of the Appeal**), which is misconceived, not maintainable in law, and is liable to be dismissed.
8. That in order to properly assist this Hon'ble Tribunal, the findings of the Appellate Authority Order are reproduced below:

“13. The Impugned Order dated 22.12.2022 (this Order was endorsed on 23/12/2022 and has been referred as order dated 23/12/2022 in subsequent clarifications by HSPCB) is based on show cause notice dated 16.10.2020 issued by Regional Officer, Gurugram Region (N).....

14. From this Show Cause Notice, it is evident that action against appellant was proposed on 3 grounds, Firstly that the result of the samples taken on the day of inspection dated 08.09.2020 were found exceeding prescribed limit. Secondly the Appellant was discharging the untreated effluent on land and public sewer and thereby causing water pollution etc. Thirdly, no record was produced regarding source of water supply, water consumption, treatment, mechanism of disposal. All these issues are covered under Section 25/27 of Water Act, 1974 and the Order dated 22/23.12.2022 is virtually under these provisions, conferring jurisdiction to this authority- which has

not been disputed by Respondent and no plea to this effect has been taken in reply.

15. The Appellant had submitted reply to the SCN, raising objections regarding mode of taking samples.

....

17. As per the Order of the DTCP, Haryana the handing over and taking over took place on 15.06.2022 whereby the roads, water supply, sewerage system, storm water drains, streetlights, Control Panel for streetlights, electricity meter for street light, parks and green belts were handed over to Municipal Corporation, Gurugram meaning thereby that the Appellant was not in control of the services/infrastructure handed over to the Municipal Corporation, Gurugram after 15.06.2022. The copy of the Order dated 09.05.2022(annexure A-22) was also endorsed to HSPCB. The inspection by an official of HSPCB was conducted on 08.09.2020 i.e. much prior to the handing over of project of STP to Municipal Corporation, Gurugram but the impugned Order dated 22/23.12.2022 was passed after the STP's had been taken over by Municipal Corporation, Gurugram.

18. After the passing of the Impugned Order dated 22/23.12.2022, the deficiencies, as mentioned therein are to be complied by Municipal Corporation, Gurugram and not by then Appellant. It appears that the order of the DTCP, Haryana dated 09.05.2022, and handing over of the services as per the Order of DTCP, Haryana, by Appellant to the Corporation was not brought to the notice of the authorities of HSPCB, while passing the order dated 22/23.12.2022.

19. The Appellant has alleged that the samples of STP were got tested from government approved laboratories and the results were found within parameters. Even if the above plea of the appellants is given no weight, the question for consideration in this appeal is as to who had to remove the deficiencies pointed out in the impugned order. Once, the appellant is not in control of STP etc., it does not fall within its domain to initiate any action to rectify the deficiencies in impugned order. The control of STP is with the Municipal

Corporation, Gurugram and the appellant cannot take steps to improve the quality of effluent. Ld. counsel for the respondent was requested to clarify as to how the appellant can be bound to do the needful regarding the deficiency in the STP and other services which have been handed over to Municipal Corporation, Gurugram, and his attention was drawn towards handing over/taking over proformas which are filed but he could not come up with any submission in this regard. The Municipal Corporation, Gurugram, which is in control of STP and other public health services is not party to this order and is not supposed to take any steps to rectify the deficiencies in the impugned order.

20. The closure order has been passed on the ground of not obtaining CTE/CTO and environmental clearance under the provisions of EIA notification but these issues were not raised in the show cause notice dated 16/10/2020 and the appellant was not given any opportunity to explain in this regard. The point No. 4 to 6 in the order relating to registration of FIR, filing of a complaint by Raman Sharma and investigation by Special Investigation Team are in no way relevant facts for consideration while passing order on the basis of show cause notice dated 16/10/2020. (Annexure R-6).

Preliminary Objection to the maintainability of the Appeal

9. The present Appeal is not maintainable in law under Section 16 (a), (f) and Section 18 of the NGT Act, 2010 read with Section 33B of the Water Act, 1974 and Section 31B of the Air Act, 1981, as the scope of the Appeal is limited to the Orders passed under specific provisions, and the Appellant has failed to demonstrate how the Impugned Order falls within the scope of the Appeal under the said Section 16. It is submitted that the Appellant has invoked the jurisdiction of this Hon'ble Tribunal without satisfying the statutory requirements and without demonstrating any jurisdictional error in the Impugned Order.

10. SUBMISSION ON MERITS

A. Appellant lacks jurisdiction to determine the requirement of Environmental Clearance

- a.** It is submitted that the Appellant has exceeded its statutory jurisdiction by adjudicating upon the requirement of Environmental Clearance and thereby passing the Closure Order, making it one of the primary grounds. The statutory framework clearly distinguishes between the consent requirements under the Water Act, 1974, and the Air Act, 1981 and the Environmental Clearance requirement under the EIA Notification, 2006, and MoEF&CC or SEIAA are competent to comment upon the requirement of EC. **(Para 9-10, Pg 365 of the Reply on behalf of Respondent No. 1 dated 24.05.2025). Also See Office Memorandum dated 21.11.2006. True copy of the OM dated 21.11.2006 is annexed and marked herewith as ANNEXURE R/1.**
- b.** The Impugned Order records that part completion certificates for the original licenses (1992-1997) were granted prior to the EIA Notification dated 14.09.2006. The Appellate Authority had also recorded that the issue of requirement of Environment Clearance is pending before SEIAA. It further considered the factual position that prior to 2006, part completion granted, and that the requirement of EC could not be retrospectively imposed on completed portions of the project. It is also pertinent to add here that the issue of applicability of EC was raised by this Hon'ble Tribunal in Raman Sharma Versus State of Haryana & Ors. in OA No. 68/2022 and arguments have been completed

and it awaits final adjudicatory Orders by this Hon'ble Tribunal. It is pertinent to add that the said lis was reserved for Judgment on 19.03.2025 (**ANNEXURE R/1, Pg. 384-385 of Reply of R1 dated 24.05.2025**) and was thereafter listed for certain clarifications and is now ripe for Adjudicatory Orders.

- c. The Competent Authority to determine the requirement of Environmental Clearance is the SEIAA or MoEF&CC, and not the State Pollution Control Board. The Appellate Authority rightly held that the Appellant was not the competent authority to adjudicate upon the requirement of Environmental Clearance. **(Para 24 of the Impugned Order at Page 57 / Para 12, Pg 366 of the Reply on behalf of Respondent No. 1 dated 24.05.2025)**

B. Closure Order dated 22.12.2022 issued in violation of the Principles of Natural Justice

- a. The Show Cause Notice dated 16.10.2020 did not contain any allegation regarding the absence of Environmental Clearance or absence of CTE/ CTO. However, the Closure order dated 22.12.2022 was passed on grounds including such grounds which were not mentioned in the Show Cause Notice, nor were there any opportunity granted to rebut the same prior to the Closure Order.
- b. The Appellate Authority therefore also categorically observed that while the Closure Order has been passed on the ground of not obtaining CTE/CTO and Environmental Clearance, these issues were not raised in the SCN dated 16.10.2020, and the

Appellant was not given any opportunity to explain in this regard. **(Para 15, Pg. 367of Reply on behalf of Respondent No. 1 dated 24.05.2025 along with Annexure 1, Pg. 45, Relevant Page. 55 of the Appeal)**

- c. It is pertinent to note that no adverse order can be passed on grounds not contained in the Show Cause Notice, as the same violates the principles of natural justice. The Appellate Authority rightly set aside the closure order on this ground. And this Hon'ble Tribunal may dismiss this Appeal on this ground alone (Refer Ravi Oraon vs State of Jharkhand & Ors. 2025 INSC 1212; Anup Sharva vs Avato Ward W.P. (C) 10984/2024). **(Para 13-17, Pg 367-368, of the Reply on behalf of Respondent No. 1 dated 24.05.2025).**

C. Sample Collection procedure was illegal and contrary to the Statutory provisions

- a. That the Show Cause Notice was only based on the failure of Water Sampling collected from 3 Nos of STP, 1 Nos of Rain Water Harvesting Pit, Sewage Line going directly to HUDA/GMDA Sewer, underground water tank, in furtherance to the inspection conducted by them dated 08.09.2020 and analysis report dated 05.10.2020.
- b. It is pertinent to note that the Appellant, collected samples during the inspection dated 08.09.2020 in complete violation of Section 21 of the Water Act, 1974 and the applicable Rules. The following procedural violations occurred: no prior notice was issued to Respondent No.1 before the collection of samples, and

no authorised representative of Respondent No. 1 was present during sampling. Samples were collected in unclean and used containers, and samples were not sealed at the site. That such procedural violations render the samples inadmissible in evidence under Section 21 of the Water Act, 1974. This is also confirmed in the recent Judgment of M/s Triveni Engineering and Industries vs State of Uttar Pradesh & Ors. 2025 INSC 1060 (See paras 10.5 – 10.7, 19, 30, and 33) which now holds the field. **True copy of the Judgment is annexed and marked herewith as ANNEXURE R/2**

- c. The Respondent No. 1 independently conducted laboratory testing, which confirmed compliance with prescribed standards. Despite requests, the Appellants failed to conduct re-sampling in accordance with the law. **(Para 18-28, Pg 368-372 of the Reply on behalf of Respondent No. 1 dated 24.05.2025)**

D. Non-Obtainment of CTE and CTO under Air Act 1981 and the Water Act, 1974

- a. Section 21(1) of the Air Act, consent is required for establishing or operating an industrial plant in an air pollution control area and cannot automatically extend to residential complexes. (Refer Splendor Landbase Ltd. vs Delhi Pollution Control Committee 2010 SCC OnLine Del 3466” and Delhi Pollution Committee vs Splendor Landbase Ltd. (LPA 895/2010).
- b. Delhi HC in “*Splendor Landbase Ltd. Vs Delhi Pollution Control Committee 2010 SCC OnLine Del 3466*” has held

that Section 21 (1) Air Act, 1981 will be applicable to the commercial shopping complex or a shopping mall but not to a residential complex. Delhi HC also observed that in cases where a project is operating without CTE/CTO under Section 25 of the Water Act, 1974, then the remedy in such a situation is in Section 25 of the Water Act, 1974.

(Para 33, Pg 374 of the Reply on behalf of Respondent No. 1 dated 24.05.2025)

- c. HSPCB granted CTO to Respondent No. 1 under the Water Act, 1974, and the Air Act, 1981, which was renewed periodically till 2020. Also authorisation under Hazardous Waste Management Rules, 2008, had also been granted from time to time. The Appellant itself had granted Consent to Operate under the Water Act and the Air Act from time to time and had permitted the project to operate for several years. The Appellant could not have issued a closure order based on grounds which were never raised earlier.
- d. Closure Order dated 22/23.12.2022 was issued after a lapse of two years and that too when the Township as well as the STPs were handed over to MCG, so it is without application of mind. **(Para 34-36, Pg 374-375 read with Annexure-9, Pg 429-443 of the Reply on behalf of Respondent No. 1 dated 24.05.2025)**

E. Closure Order was arbitrary, unjustified and disproportionate

- a. The Closure Order dated 22.12.2022 was issued without proper consideration of relevant facts, without jurisdiction and in violation of the statutory provisions. The Appellate Authority, after examining all relevant facts and statutory provisions, rightly set aside the Closure Order. The Impugned Order does not suffer from any legal infirmities warranting interference by this Hon'ble Tribunal. The Respondent No.1 has maintained environmental compliance and regularly monitored effluent discharge. Laboratory reports confirmed that effluent discharge was within permissible limits.

F. Closure Order was passed after the Handing Over of the Township and other services to the MCG.

- a. The Impugned Order records that vide Orders dated 09.05.2022/07.06.2022, the Town & Country Planning Department directed the transfer of roads, public parks, public health services, and STPs to Municipal Corporation Gurugram and the same was complied with.
- b. It has also been categorically recorded by the Appellate Authority that the Copy of the said Handover Letter was also endorsed to HSPCB. Therefore, HSPCB was clearly aware that the Township and the services handed over to MCG were no longer in control of the Respondent No.1. **(Copy of the Hand Over letter is annexed at ANNEXURE R/7, Pg. 426 of Reply of R1 dated 24.05.2025)**
- c. On the day when the Closure Order was issued, i.e. 22/23.12.2022, substantial infrastructure, including the STPs, was

no longer under the control of the Respondent No.1. The Appellate Authority rightly considered this aspect while setting aside the said Closure Order.

d. That once the public utilities including STPs and sewerage systems stood handed over to Municipal Corporation Gurugram pursuant to the orders of the Department of Town and Country Planning, the Respondent No.1 ceased to have operational control over the said infrastructure. The directions contained in the Closure Order therefore, required the Respondent No.1 to undertake actions which were legally and factually impossible. It is a settled principle that the law does not compel performance of an impossible act (*lex non cogit ad impossibilia*). Hence, the Closure Order was unenforceable against the Respondent No.1.

11.The Appellant has failed to demonstrate any jurisdictional error, perversity, or illegality in the Impugned Order dated 21.09.2023, which is well reasoned and has been passed by the Appellate Authority after having carefully examined the license and completion certificate, the scope of the Show Cause Notice and the other material placed on record. It is respectfully submitted that the present Appeal deserved to be dismissed as being devoid of merits.

12.It is submitted that Section 16 provides a limited appellate jurisdiction, and the Appellant must demonstrate a specific statutory error arising from the impugned order. The present Appeal merely seeks to re-agitate factual issues which have already been examined by the Appellate Authority and therefore falls outside the permissible scope of appellate scrutiny.

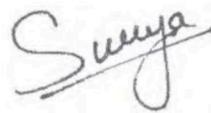
13. In view of the above facts and submissions, it is respectfully submitted that the present Appeal is misconceived, devoid of merit, and liable to be dismissed at the threshold, as the Impugned Order dated 21.09.2023 does not suffer from any jurisdictional error or legal infirmity warranting interference by this Hon'ble Tribunal.

14. Further, it is clarified that the issue regarding the requirement of Environmental Clearance is still pending for adjudication before this Hon'ble Tribunal in OA No. 68/2022 "*Raman Sharma vs. State of Haryana*".

DATE: 16.03.2026

PLACE: NEW DELHI

FILED BY:



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F.No.J-11013/41/2006-IA-II (I)
 Government of India
 Ministry of Environment and Forest
 IA Division

Paryavaran Bhawan, CGO Complex
 Lodi Road, New Delhi-110 003

Dated the November 21, 2006

CIRCULAR

Subject: EIA Notification dated 14th September, 2006 - Interim Operational Guidelines till 13th September, 2007 in respect of Categories of Projects which were not in EIA Notification, 1994.

Pursuant to the new Environment Impact Assessment Notification of 14th September 2006 (EIA 2006) replacing the EIA Notification of 27th January 1994 and its various amendments (EIA 1994) and in terms of the provisions of Para 12 of EIA 2006, the Ministry had earlier issued Interim Operational Guidelines on 13th October 2006. Further to these guidelines, the following guidelines are issued for the Categories of Projects, which did not require EIA Clearance under EIA Notification, 1994 and now require the same under EIA Notification, 2006:

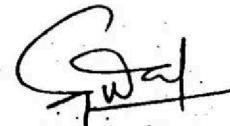
- i. No NOC from the State Government/SPCB is required for Environmental Clearance Process. Consent to Establish (NOC) and prior Environmental Clearance are separate legal requirements, any project proponent has to fulfill. NOCs required under Water and Air Acts are mandatory requirement under those Acts and will have to be taken as required and do not require to be linked to environmental clearance.
- ii. Such projects for which NOCs issued before 14th September, 2006 will not be required to take Environmental Clearance under the EIA Notification, 2006.

Contd....

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- iii. Applications received for NOC by the State Pollution Control Boards before 14th September 2006 may be considered as per provisions of the said Acts. However, they will have to obtain the environmental clearance from the relevant Authority by 30th June 2007, if the category requires EIA Clearance as per the new Notification. In such cases, the unit can meanwhile carry on with the commencement of their project activities. Projects not seeking clearance under EIA Notification, 2006 by 30th June 2007 will be treated as violation cases under Section 15 of Environment (Protection) Act, 1986.
- iv. Applications received for NOC after 14th September 2006 will have to obtain EIA Clearance from the relevant Authority before starting the project activities. Application for EC (TORs / Scoping) may be submitted simultaneously to the relevant Authority/ies.



(Sanchita Jindal)
Additional Director

To:

1. All State Environment Departments
2. All State Pollution Control Boards
3. All Officers of IA Division, MoEF
4. UT Administrations

Copy to:

1. PPS to Secretary (E&F)
2. PPS to AS (CC)
3. PPS to JS (CC-II)

-True Copy-



2025 INSC 1060

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ANNEXURE R/2

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 8119-8120 OF 2022

**M/S. TRIVENI ENGINEERING
AND INDUSTRIES LTD.**

APPELLANT(S)

VERSUS

**STATE OF UTTAR PRADESH
& ORS.**

RESPONDENT(S)

J U D G M E N T

UJJAL BHUYAN, J.

These two civil appeals filed under Section 22 of the National Green Tribunal Act, 2010 are directed against orders dated 15.02.2022 and 16.09.2022 passed by the National Green Tribunal, Principal Bench, New Delhi ('NGT' for short) in Original Application No. 71/2021 (*Chandra Shekhar Vs. State of Uttar Pradesh*).

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2. By the order dated 15.02.2022, NGT held that the project proponent (appellant herein) had violated the environmental norms which included illegal disposal of untreated effluent, dilution at outlet with fresh water to conceal real status, absence of flow meter at boiler/mill house to avoid monitoring, absence of record of oil and grease stored and absence of Effluent Treatment Plant (ETP) logbook. Thereafter, NGT observed that the joint committee needed to assess the past violations and recover compensation in accordance with law having regard to the nature of the violation, period of violation, cost of remediation and turnover of the project proponent (appellant). The joint committee was directed to submit a supplementary report in this regard.

2.1. By the second order dated 16.09.2022, NGT considered the supplementary report filed by the joint committee on 10.08.2022 and held that compensation of Rs. 18 crores at the rate of 2 percent of annual turnover would be justified. It was directed that the amount may be deposited by the project proponent (appellant) with the District

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Magistrate, Muzaffarnagar, within one month to be utilized for restoration of the environment.

3. At the outset, a brief recital of facts is considered necessary.

4. Appellant i.e. M/s. Triveni Engineering and Industries Limited is a public limited company incorporated under the Companies Act, 1956. It is engaged in diverse business activities including manufacture of sugar. It is stated that appellant has seven sugar manufacturing units across the State of Uttar Pradesh.

4.1. In the year 1952, appellant under its earlier name, Ganga Sugar Corporation Limited, which was incorporated under the Companies Act, 1913, had acquired the sugar manufacturing unit at village Sheikhpura, Khatauli, Muzaffarnagar District in the State of Uttar Pradesh (sugar mill). It is stated that the sugar mill is a functional unit, having all the necessary permissions as required under the applicable statutes.

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4.2. It appears from the record that in the month of March, 2021, respondent No. 2 filed a complaint before the NGT which was registered as Original Application No. 71/2021 (O.A. No. 71/2021) alleging that the sugar mill of the appellant was discharging untreated waste in a particular drain resulting in contamination of ground water in an area of about one and a half kilometer around the sugar mill having depth upto 50 metres.

4.3. By order dated 22.03.2021, NGT constituted a joint committee of Central Pollution Control Board (CPCB), Uttar Pradesh Pollution Control Board (UPPCB) and District Magistrate (DM), Muzaffarnagar. The joint committee was directed to conduct inspection and thereafter to file status report within two months.

4.4. It appears that the sugarcane crushing season for the year 2020-21 came to an end on 22.05.2021. Joint committee in its report dated 02.07.2021 stated that because of various reasons including conclusion of the sugarcane crushing season and the sugar mill remaining closed on

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account of the covid pandemic, inspection could not be carried out and prayed for further time to carry out fresh inspection.

4.5. Thereafter, regional office of UPPCB, Muzaffarnagar carried out inspection of the sugar mill and the area around it on 13.09.2021 and observed that no contamination was found in the ground water samples. However, it was observed that further investigation could be carried out when the industry become operational during the next crushing season.

4.6. O.A. No. 71/2021 was heard on 21.09.2021. NGT on perusal of the report declared that it was not satisfied with the stand of the State PCB. NGT was of the view that there was no justification for carrying out inspection when the sugar mill was not functional due to off season. NGT, therefore, directed the joint committee to conduct inspection when the unit was functional and thereafter to furnish a report to it on or before 15.12.2021. It was clarified that the report should indicate status of compliance with the

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standards as prior to the season, quality of treated effluence and utilization as per protocol/agreement with the users/farmers, further indicating that it should be mentioned whether effluents were reaching any drain leading to river/waterbody with direction to check the quality of ground water as per parameters relevant to the industry in question, particularly fluoride etc. Reference was made to an order dated 01.09.2021 passed by the NGT in O.A. No. 539/2019 (*Adil Ansari Vs. M/s. Dhampur Sugar Mills Limited*) wherein it was directed that ETPs must continue to run for maintenance of bio-mass even during the off season.

4.7. Pursuant to the aforesaid order dated 21.09.2021, the joint committee conducted inspection on 08.12.2021 and submitted report dated 11.01.2022. After extensively referring to the observations, conclusions and recommendations of the joint committee, NGT passed the first impugned order dated 15.02.2022 observing that the report showed violation of the environmental norms by the project proponent (appellant), such as, illegal disposal of untreated

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effluents etc. while stating that such violation was required to be remedied in terms of the recommendations made in the report. For the past violations, the joint committee was directed to assess the compensation in accordance with law, having regard to the nature of violation, period of violation, cost of remediation and turn over of the project proponent. Joint committee was further directed to submit a supplementary report with copy to the project proponent (appellant) for its response.

4.8. Pursuant to the aforesaid directions, supplementary report was filed by the joint committee on 10.08.2022 whereafter the matter was taken up for hearing on 16.09.2022. NGT recorded that no response was filed by the project proponent (appellant). NGT referred to the report which mentioned that compensation amounts to Rs. 34,20,000.00 for 114 days of violation at the rate of Rs. 30,000.00 per day which works out to Rs. 18 crores at the rate of 2 percent of the annual turnover of Rs. 900 crores. After hearing the learned counsel for the UPPCB, NGT was of the view that having regard to the

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established illegal discharge of untreated effluents, dilution at the outlet to conceal the real status, absence of monitoring, absence of record of oil and grease stored and ETP logbook, compensation of Rs. 18 crores at the rate of 2 percent of annual turnover would be justified. It was ordered *vide* the second impugned order dated 16.09.2022 that the compensation recovered may be utilized for restoration of the environment. Project proponent (appellant) was directed to deposit the aforesaid amount with the District Magistrate, Muzaffarnagar within one month. The compensation amount was directed to be utilized within six months in terms of the action plan to be prepared by the joint committee, clarifying that UPPCB would be the nodal agency for coordination and compliance.

5. Aggrieved by the aforesaid orders dated 15.02.2022 and 16.09.2022, appellant has preferred the related appeals. By order dated 02.11.2022, permission to file appeal was granted and delay was condoned. Thereafter, notice was issued. This Court also passed an interim order staying the operation

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of the impugned orders dated 15.02.2022 and 16.09.2022 so far as imposing compensation on the appellant.

6. Learned senior counsel for the appellant submits that the impugned orders dated 15.02.2022 and 16.09.2022 are *non est* in the eye of law in as much as those orders were passed by the NGT in complete violation of the principles of natural justice. Though the entire allegations in O.A. No. 71/2021 were directed against the appellant and though the impugned orders have adversely affected the appellant yet appellant was not made a party to the proceedings in O.A. No. 71/2021. NGT failed to appreciate that the appellant was a necessary party and without issuing notice and giving opportunity of hearing to the appellant, no adverse order against the appellant such as the ones dated 15.02.2022 and 16.09.2022 could have been passed. That being the position, not only the impugned orders but also the entire proceedings in O.A. No. 71/2021 being in absolute violation of the principle of *audi alteram partem* are liable to be set aside and quashed on this ground alone.

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6.1. Learned senior counsel asserts that no opportunity of hearing, not to speak of any fair opportunity of hearing, was afforded to the appellant before rendering the findings *vide* the impugned orders dated 15.02.2022 and 16.09.2022.

6.2. Adverting to the reports of the joint committee dated 11.01.2022 and 10.08.2022, learned senior counsel submits that findings recorded in the reports are scientifically not possible. Those are materially different from the readings shown by the data retrieved and recorded by the inspection team during the inspection on 08.12.2021. The joint committee relied upon the reports prepared by third party laboratories which were based on erroneous data. As a result, there are glaring contradictions in the above reports.

6.3. Learned senior counsel also questioned the methodologies adopted by the joint committee in carrying out the inspection and thereafter in submitting the reports. According to him, NGT and the joint committee gave a complete go-bye to the procedure laid down under Sections 21 and 22 of the Water (Prevention and Control of Pollution)

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Act, 1974. That apart, the reports of the joint committee suffered from factual mistakes in as much as appellant has been maintaining ETP logbook at all times which were provided to the joint committee officials when they had visited the sugar mill for inspection. Likewise, boiler ash records were also maintained. Had an opportunity of hearing being given to the appellant, it could have explained its position *qua* the joint committee reports. NGT accepted the erroneous reports of the joint committee without subjecting the same to further scrutiny by permitting the appellant to have its say in the matter.

6.4. Learned senior counsel also referred to the provisions of Section 19(1) of the National Green Tribunal Act, 2010 which states that though the NGT shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, it shall be guided by the principles of natural justice. There is clear infraction of Section 19(1) of the National Green Tribunal Act, 2010 in the present case which has vitiated the impugned orders.

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6.5. Summing up his arguments, learned senior counsel submitted that the impugned orders are wholly untenable in law as well as on facts and those are as such liable to be set aside.

7. Learned senior counsel for the respondents on the other hand has supported the impugned orders passed by the NGT. It is submitted that without treatment of the effluent, water was being discharged from the sugar mill of the appellant; the same was being released into the drain which has contaminated the ground water of the area in and around the sugar mill where about 10 to 15 thousand people reside. The entire population is thus exposed to the polluted water and resultant health hazards.

7.1. Learned senior counsel submits that NGT took cognizance of this alarming situation and constituted the joint committee to carry out necessary inspection. Joint committee carried out inspection in a scientific manner and thereafter submitted reports to the NGT. The reports being prepared by a committee of experts was rightly accepted by

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the NGT. Based on the observations and conclusions reached by the joint committee, NGT passed the impugned orders which calls for no interference.

7.2. Learned senior counsel submits that principles of natural justice cannot be applied as a straight jacket formula. NGT was careful enough to direct the joint committee to furnish copies of its reports to the project proponent (appellant). Appellant was, therefore, very much aware of the contents of the two reports, yet it did not contest the same before the NGT. That being the position, the contentions advanced on behalf of the appellant are without any substance.

7.3. He finally submits that the civil appeals being devoid of merit are, therefore, liable to be dismissed.

8. Submissions made by learned counsel for the parties have received the due consideration of the Court.

9. At the outset, it would be apposite to refer to some of the relevant statutory provisions.

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10. The Water (Prevention and Control of Pollution) Act, 1974 (briefly 'the Water Act' hereinafter) is an act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment with a view to carrying out the purposes aforesaid, of pollution control boards for the prevention and control of water pollution, for conferring on and assigning to such boards, powers and functions relating thereto and for matters connected therewith. Section 2 is the definition clause. Section 2(dd) defines 'outlet' to include any conduit, pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes, or is likely to cause, pollution.

10.1. The expression 'pollution' is also defined. As per Section 2(e), 'pollution' means contamination of water. Section 2(e) reads thus:

“pollution” means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as

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may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

10.2. 'Sewage effluent' has been defined in Section 2(g) and means effluent from any sewerage system or sewage disposal works and includes sullage from open drains. Section 2(gg) defines 'sewer' to mean any conduit pipe or channel, open or closed, carrying sewage or trade effluent.

10.3. 'Stream' has been defined in Section 2(j) and as per the said definition, stream includes:

- (i) river;
- (ii) water course (whether flowing or for the time being dry);
- (iii) inland water (whether natural or artificial);
- (iv) sub-terranean waters;
- (v) sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf.

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10.4. 'Trade effluent' has been defined in Section 2(k) in the following manner:

“trade effluent” includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process or treatment and disposal system, other than domestic sewage.

10.5. Section 21 of the Water Act is included in Chapter V which deals with prevention and control of water pollution. Sub-section (1) of Section 21 empowers the State Pollution Control Board or any officer authorized by it to take samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into such stream or well for the purposes of analysis. Sub-section (2) however clarifies that the result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall not be admissible as an evidence in any legal proceedings unless the provisions of sub-sections (3), (4) and (5) are complied with. Sub-sections (1) and (2) of Section 21 are as follows:

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21. Power to take samples of effluents and procedure to be followed in connection therewith. —

(1) A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any such stream or well.

(2) The result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3), (4) and (5) are complied with.

10.6. As noticed above, analysis of any sample of any sewage or trade effluent taken under sub-section (1) would not be admissible as a piece of evidence in any legal proceedings unless the procedure contemplated under sub-sections (3), (4) and (5) are complied with. Let us therefore take note of the provisions contained in sub-sections (3), (4) and (5) of Section 21 which are extracted as under:

* * * * *

(3) Subject to the provisions of sub-sections (4) and (5), when a sample (composite or otherwise as may be warranted by the process used) of any sewage or

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trade effluent is taken for analysis under sub-section (1), the person taking the sample shall—

(a) serve on the person in charge of, or having control over, the plant or vessel or in occupation of the place (which person is hereinafter referred to as the occupier) or any agent of such occupier, a notice, then and there in such form as may be prescribed of his intention to have it so analysed;

(b) in the presence of the occupier or his agent, divide the sample into two parts;

(c) cause each part to be placed in a container which shall be marked and sealed and shall also be signed both by the persons taking the sample and the occupier or his agent;

(d) send one container forthwith,—

(i) in a case where such sample is taken from any area situated in a Union Territory, to the laboratory established or recognised by the Central Board under Section 16; and

(ii) in any other case, to the laboratory established or recognised by the State Board under Section 17;

(e) on the request of the occupier or his agent, send the second container,—

(i) in a case where such sample is taken from any area situated in a Union Territory, to the laboratory established or specified under sub-section (1) of Section 51; and

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(*ii*) in any other case, to the laboratory established or specified under sub-section (1) of Section 52.

(4) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (*a*) of sub-section (3) and the occupier or his agent wilfully absents himself, then,—

(*a*) the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (*i*) or sub-clause (*ii*), as the case may be, of clause (*e*) of sub-section (3) and such person shall inform the Government analyst appointed under sub-section (1) or sub-section (2), as the case may be, of Section 53, in writing about the wilful absence of the occupier or his agent; and

(*b*) the cost incurred in getting such sample analysed shall be payable by the occupier or his agent and in case of default of such payment, the same shall be recoverable from the occupier or his agent, as the case may be, as an arrear of land revenue or of public demand:

Provided that no such recovery shall be made unless the occupier or, as the case may be, his agent has been given a reasonable opportunity of being heard in the matter.

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(5) When a sample of any sewage or trade effluent is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent a notice under clause (a) of sub-section (3) and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in clause (b) of sub-section (3), then, the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (d) of sub-section (3).

10.7. As can be seen from the above, the person who is taking the sample is required to serve on the person in charge of or having control over the plant or vessel etc. a notice of his intention to have the sample analyzed; take and divide the sample into two parts in the presence of the occupier or his agent. One container after being sealed and signed by both the persons taking the sample and the occupier or his agent is taken to the laboratory established or recognized by the pollution control board (whether central or state) and send the other container in the same manner to the laboratory

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established under Section 51(1) in case of a union territory and Section 52(1) in any other case. In case the occupier or his agent willfully absents himself from the aforesaid process, then the person taking the sample shall inform the government analyst in writing about the willful absence of the occupier or his agent.

10.8. Section 22 of the Water Act is concerned with reports of the result of analysis on samples taken under Section 21. Section 22 reads thus:

22. Reports of the result of analysis on samples taken under section 21.—(1) Where a sample of any sewage or trade effluent has been sent for analysis to the laboratory established or recognised by the Central Board or, as the case may be, the State Board, the concerned Board analyst appointed under sub-section (3) of Section 53 shall analyse the sample and submit a report in the prescribed form of the result of such analysis in triplicate to the Central Board or the State Board, as the case may be.

(2) On receipt of the report under sub-section (1), one copy of the report shall be sent by the Central Board or the State Board, as the case may be, to the occupier or his agent referred to in Section 21, another copy shall

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be preserved for production before the court in case any legal proceedings are taken against him and the other copy shall be kept by the concerned Board.

(3) Where a sample has been sent for analysis under clause (e) of sub-section (3) or sub-section (4) of Section 21, to any laboratory mentioned therein, the Government analyst referred to in that sub-section shall analyse the sample and submit a report in the prescribed form of the result of the analysis in triplicate to the Central Board or, as the case may be, the State Board which shall comply with the provisions of sub-section (2).

(4) If there is any inconsistency or discrepancy between, or variation in the results of, the analysis carried out by the laboratory established or recognised by the Central Board or the State Board, as the case may be, and that of the laboratory established or specified under Section 51 or Section 52, as the case may be, the report of the latter shall prevail.

(5) Any cost incurred in getting any sample analysed at the request of the occupier or his agent shall be payable by such occupier or his agent and in case of default the same shall be recoverable from him as arrears of land revenue or of public demand.

10.9. As is evident from the above, after a sample of any sewage or trade effluent is sent to the concerned laboratory,

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the competent analyst shall analyse the samples and submit a report in the prescribed form of the result of such analysis to the pollution control board. A copy of such report shall also be forwarded to the occupier or his agent.

10.10. Section 24 prohibits release or disposal of polluting matter into any stream or well or sewer or on land. Sub-section (1) of Section 24 is relevant and reads as under:

24. Prohibition on use of stream or well for disposal of polluting matter, etc.—(1) Subject to the provisions

of this section,—

(a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well or sewer or on land;
or

(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

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10.11. As per Section 43 of the Water Act, whoever contravenes the provisions of Section 24 shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.

11. We now come to the Environment (Protection) Act, 1986 (briefly 'the Environment Act' hereinafter). It is an act to provide for the protection and improvement of environment and for matters connected therewith. Section 2(a) defines 'environment' in the following manner:

“environment” includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.

11.1. 'Environmental pollutant' has been defined in Section 2(b) to mean any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment. 'Environmental pollution' is defined under Section 2(c) and means the presence in the environment of any environmental pollutant. Section 2(f)

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defines 'occupier' in relation to any factory or premises, to mean a person who has control over the affairs of the factory or the premises and includes, in relation to any substance, the person in possession of the substance.

11.2. Sections 7, 8, 14A, 15 and 15A are included in Chapter III which deals with prevention, control and abatement of environmental pollution. Section 7 says that no person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed. Similarly, Section 8 says that no person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed.

11.3. Section 14A has been introduced by way of an amendment in the year 2023 with effect from 01.04.2024. It provides for penalty in the event of contravention of Sections 7 and 8. Section 14A is extracted hereunder:

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14A. Penalty for contravention of section 7 or section 8.—(1) If any person, contravenes provisions of Section 7 or Section 8 or the rules made thereunder, he shall be liable to penalty in respect of each such contravention, which shall not be less than one lakh rupees but which may extend to fifteen lakh rupees.

(2) Where any person continues contravention under sub-section (1), he shall be liable to additional penalty of fifty thousand rupees for every day during which such contravention continues.

11.4. Be it stated that Section 15 was also introduced in the Environment Act by way of the 2023 amendment with effect from 01.04.2024. Section 15 deals with penalty for contravention of the provisions of the Environment Act, rules, orders and directions. Section 15 reads thus:

15. Penalty for contravention of provisions of Act, rules, orders and directions.—(1) Where any person contravenes or does not comply with any of the provisions of this Act or the rules made or orders or directions issued thereunder for which no penalty is provided, he shall be liable to penalty in respect of each such contravention which shall not be less than ten thousand rupees but which may extend to fifteen lakh rupees.

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(2) Where any person continues contravention under sub-section (1), he shall be liable to additional penalty of ten thousand rupees for every day during which such contravention continues.

11.5. Similarly, Section 15A provides for penalty for contravention by companies. Section 15A is as follows:

15A. Penalty for contravention by companies.—(1) Where any company contravenes any of the provisions of this Act, the company shall be liable to penalty for each such contravention which shall not be less than one lakh rupees but which may extend to fifteen lakh rupees.

(2) Where any company continues contravention under sub-section (1), the company shall be liable to additional penalty of one lakh rupees for every day during which such contravention continues.

12. To provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to person and property and for matters connected therewith or incidental thereto, the

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National Green Tribunal Act, 2010 has been enacted. Section 2(1)(c) defines the word 'environment'. It says 'environment' includes water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property.

12.1. Section 2(1)(m) defines 'substantial question relating to environment' and is as follows:

2(m) "substantial question relating to environment" shall include an instance where,—

(i) there is a direct violation of a specific statutory environmental obligation by a person by which,—

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

(B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution.

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12.2. As per Section 14, National Green Tribunal (NGT) has the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved.

12.3. Section 15 deals with the relief, compensation and restitution that NGT may provide. Sub-section (1) of Section 15 reads as under:

15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—

- (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
- (b) for restitution of property damaged;
- (c) for restitution of the environment for such area or areas,

as the Tribunal may think fit.

12.4. Section 17 deals with liability to pay relief or compensation in certain cases. As per sub-section (1), where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or

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process under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage. Sub-section (2) says that if the death, injury or damage cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operations and processes, NGT may apportion the liability for relief compensation amongst those responsible for such activities, operations and processes on an equitable basis. In case of an accident, NGT shall apply the principle of no fault.

12.5. We now come to Section 19 which deals with the procedure and powers of NGT. Sub-section (1) says that NGT shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. For the purposes of discharging its functions, NGT shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the matters mentioned in sub-section (4) and as per Clause (i), it has the mandate to pass an interim order

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(including granting an injunction or stay) after providing the parties concerned an opportunity to be heard on any application made or appeal filed under the said Act. Sub-section (5) makes it abundantly clear that all proceedings before NGT shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Indian Penal Code, 1860 and the NGT shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

13. Having adverted to the relevant statutory provisions, let us examine as to how the NGT proceeded in this matter. We have already noticed that a joint committee was constituted by NGT comprising of CPCB, UPPCB and District Magistrate, Muzaffarnagar to conduct inspection of the sugar mill of the appellant when it was functional and thereafter to file status report with regard to handling of the effluents. Pursuant thereto, inspection was carried out on 08.12.2021 whereafter report was submitted on 11.01.2022. General observations of

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the joint committee as extracted in the impugned order dated 15.02.2022 are as follows:

3.0 OBSERVATIONS

1. The unit M/s Triveni Engineering and Industries Limited, Sugar Unit, Village Sheikhpura, Khatauli, Dist.- Muzaffarnagar is engaged in production of refined sugar by Defco melt Phosphatation followed by Ion Exchange Process (IER) with consented capacity of 16000 TCD.
2. The unit has started its crushing season 2021-22 on 07th November, 2021 and the unit was operational on the date of visit i.e. 08th December 2021.
3. As informed by the unit ETP was started on 27/09/2021 for stabilization purpose in compliance to notified standards in MoEF&CC Notification G.S.R. 35(E) dated 14th January, 2016
4. The unit has valid Consent to Operate under section 21/22 of the Air (Prevention & Control of Pollution) Act, 1981 (as amended) for 65 TPH boiler, which is valid up to 31.12.2023 and for two boilers of 120 TPH, which is valid up to 31.12.2024.
5. The unit has valid Consent to Operate under section 25/26 of Water (Prevention & Control of Pollution) Act, 1974 (as amended) for discharge of effluent, which is valid up to 31.12.2023.
6. The unit has valid Authorization issued under the provisions of Hazardous and Other Wastes (Management and Trans-Boundary Movement) Rules, 2016 for storage and

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disposal of hazardous wastes valid up to 13.01.2023.

7. As per Daily Manufacturing Reports (DMRs) provided by the unit, the average actual crush rate (TCD) is 11975.56 TCD (for duration of 20th November 07th December, 2021), against the consented capacity of 16000 TCD.

8. The unit is an integrated backend refinery sugar unit with 45 MW cogeneration power plant for in-house activity in sugar manufacturing process and the unit has valid Consent to Operate under section 25/26 of Water (Prevention & Control of Pollution) Act, 1974 (as amended) for discharge of effluent, which is valid up to 31.12.2024.

9. Being a Sugar Refinery SO₂ gas is not used in sugar manufacturing process, hence provision of separate Sulphur Recovery System (SRS) is not required.

10. The unit has installed Ion Exchange Resin Technology for decoloring of sugar syrups. The Ion Exchange resin gets saturated/ exhausted after repeated usage and has to be regenerated. The unit regenerates exhausted resin using caustic brine solutions.

11. The unit has submitted the details about the Brine recovery system, which is as follows:

Overall Operating Parameters	
Feed capacity	7500 LPH
Operating hr	20 hr
Overall permeate	6775 LPH
Final Reject	725 LPH
Overall Recovery	90 % ± 2%

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12. The unit has 03 boilers with capacity of 120 TPH (02 nos.) for co-gen and one boiler with capacity of 65 TPH for sugar manufacturing process with valid consent. 65 TPH boiler has stack height of 40m from ground level and two boilers of 120 TPH has stack height of 74 meter from ground level.

13. The unit has 02 DG sets having capacity of 1010 KVA each with acoustic enclosure.

14. As informed, the unit transfers used oil to third party (Ramky Enviro Engineers Ltd.) for its disposal on quarterly basis. The unit has provided membership certificate (UPWMP – KNP – HzW – CHW – TSDF - 2174) with Ramky Group, valid up to 23.02.2022.

15. The unit has Permitted Quantity (kg/day) of 10.0 kg/day of Used Oil under Schedule I (Category 5.1) and Wastes or residues containing oil under Schedule I (Category 5.2) of Hazardous and Other Wastes (Management and Trans-Boundary Movement) Rules, 2016 as per consent issued by UPPCB. The unit has not provided the details of quantity provided to Ramky Enviro Engineers Ltd.

16. The unit has not installed flow meter at mill house and boiling house to quantify the effluent generation separately. The effluent generated from the mill house and boiling house is being collected in a collection tank and further it goes to ETP inlet by gravity for further treatment.

17. The unit has setup environmental

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laboratory; however, the unit has not maintained the ETP log book for daily analysis of sugar effluent parameter.

18. As informed by the unit representative, the boiler ash is used to fill low laying area, however, the unit has not provided record of generated boiler ash.

19. It was observed that the unit has not maintained the record of Press mud generation, however, it was informed that press mud was provided to local farmers as organic manure.

20. The unit has two underground reservoirs (UGR) for hot water and cold-water recirculation system having capacities of 300 m³ and 400 m³ each.

14. The joint committee also observed that there were two ponds filled with waste water at the backside of the sugar mill. It is stated that the inspecting team collected the samples from the ponds for physio-chemical analysis. Thereafter, the observations of the joint committee alongwith the analysis results were extracted by the NGT in the impugned order dated 15.02.2022 which reads as follows:

21. The Joint Team has observed two ponding (Pond 1- large in size and Pond 2- small in size) filled with waste water at the back side of the press mud storage area. The team has collected the sample from pond for

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physico-chemical analysis. The analysis results of the collected samples are mentioned as below:

Table-1: Analysis results of Ponding behind press mud storage area

Sample Analysis	pH	COD	BOD	TSS	TDS	Cl ⁻	Col or	SO ₄ ²⁻	NO ₃ ⁻	NO ₂ ⁻	PO ₄ ⁻
Pond-1 (Large)	5.8	750	420	43	592	190	65	39	6.89	0.04	2.11
Pond-2 (Small)	5.1	1267	587	94	472	260	57	419	7.69	BDL	2.70

22. Analysis result of sample collected from pond-1 shows acidic pH-5.8, Color-65, high BOD-420 mg/l and COD- 750 mg/l, which indicate the characteristics of untreated effluent.
23. Analysis result of sample collected from pond-2 shows acidic pH-5.1, Color-57, high BOD-587 mg/l and COD-1267 mg/l, which reflect the characteristics of Refined Sugar effluent (pH-5.5- 6.5, Color- Light brown, BOD- 600-1000 mg/l, COD- 1500-2500 mg/l).

15. The joint committee also collected water samples from the sugar mill drain. The findings of the joint committee *qua* the samples collected from the sugar mill drain reads as under:

24. The team has also collected water samples from Sugar mill drain (name of the drain is Sugar mill drain), river Kali East i.e.

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upstream and downstream of the Sugar mill drain & Canal near sugar mill (Lat-29.269901, Long-77.743243). The analysis results are mentioned as below:

Table-2: Analysis results of Sugar mill Drain, River Kali East i.e. upstream and downstream of the Sugar mill drain & Canal near sugar mill

Sample Analysis	River Kali East u/s Sugar Mill drain	Sugar Mill drain	River Kali East d/s Sugar Mill drain	Canal near Sugar mill (29.269901 77.743243)
pH	6.5	6.8	6.6	7.9
COD (mg/l)	198	402	529	7.0
BOD (mg/l)	68	98	166	-
TSS (mg/l)	79	567	901	33
TDS (mg/l)	196	120	328	122
Cl ⁻ (mg/l)	47	64	66	46
Color	30	46	43	BDL
SO ₄ ²⁻ (mg/l)	451	57	52	44
NO ₃ ^{-N} (mg/l)	1.95	2.62	1.87	1.3
NO ₂ ^{-N} (mg/l)	BDL	BDL	BDL	-
PO ₄ ^{-P} (mg/l)	0.64	0.75	0.73	0.07
Conductivity (µmho/cm)	-	-	-	216
Total hardness as CaCO ₃ (mg/l)	-	-	-	303
Total Alkalinity as CaCO ₃ (mg/l)	-	-	-	322
Fluoride (mg/l)	-	-	-	0.3

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25. Analysis result of sample collected from River Kali East u/s Sugar Mill drain shows pH- 6.5, COD- 198 mg/l, BOD-68 mg/l, TSS-79 mg/l, TDS- 196 mg/l, Chloride-47 mg/l, SO₄²⁻-451 mg/l, NO₃-N-1.96 mg/l, NO₂-N-BDL, PO₄-P-0.64 mg/l.
26. Analysis result of sample collected from River Kali East d/s Sugar Mill drain shows pH- 6.6, COD- 529 mg/l, BOD-166 mg/l, TSS-901 mg/l, TDS- 328 mg/l, Chloride-66 mg/l, SO₄²⁻-52 mg/l, NO₃-N-1.87 mg/l, NO₂-N-BDL, PO₄-P-0.73 mg/l indicate the effect of effluent carried by sugar mill drain i.e. pH- 6.8, COD- 402 mg/l, BOD-98 mg/l, TSS-567 mg/l, TDS-120 mg/l, Chloride-64 mg/l, SO₄²⁻-46 mg/l, NO₃-N-2.67 mg/l, NO₂-N-BDL, PO₄-P-0.75 mg/l.
27. The increase in BOD, COD and TSS in River Kali East at downstream of Sugar mill drain is due to turbulent flow conditions contributing in higher TSS, thereby BOD & COD increased. The entire flow in drain was sewage. Direct discharge or outlet into the Sugar mill drain was not evident during inspection.
28. Analysis result of samples collected from Canal near Sugar mill shows pH- 7.9, COD- 7.0 mg/l, TSS-33 mg/l, TDS- 122 mg/l, Chloride-46 mg/l, SO₄²⁻-44 mg/l, NO₃-N- 1.3 mg/l, PO₄-P-0.07 mg/l.
16. Similar analysis of water samples collected from borewells and handpumps of the sugar mill and nearby areas were made and results have been recorded. Likewise, analysis results of samples collected from the Sewage Treatment Plant

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and Effluent Treatment Plant have been recorded. Thereafter, the joint committee concluded in the following manner:

5.0 CONCLUSION

A. Compliance with the Standards:

1. The analysis results of sample collected from ETP outlet after filtration show pH - 7.5, COD- 15 mg/l, BOD - 05 mg/l, TSS - BDL, TDS - 272 mg/l, Oil & Grease - BDL & from lagoon show pH-7.6, COD- 04 mg/l, BOD - 01 mg/l, TSS - BDL, TDS - 532 mg/l, which are complying w.r.t. the Notified standards in MoEF&CC Notification G.S.R. 35 (E) dated 14th January, 2016.
2. However, it seems from the percentage reduction by two Aeration Tank (in series) in BOD-99.27%, COD- 97.73% & TSS- 100% as compared from Primary Clarifier outlet to Secondary Clarifier-1, indicate dilution with fresh water by the unit.
3. MLSS value of 1674 mg/l in Aeration Tank-I of ETP indicates presence of less biomass against desired level (2500-3000 mg/l).
4. Also, Secondary Clarifier-2 outlet characteristics TSS - BDL and TDS - 136 mg/l (compared to Secondary Clarifier -1 outlet TDS 680 mg/l with same influent) indicate provisions of dilutions using fresh water in the outlet.
5. The effluent stored (Pond 1 & Pond 2) behind press mud is an illegal disposal of untreated press effluent and the characteristics i.e. BOD (420 mg/l and 587 mg/l) and COD (750 mg/l and 1267 mg/l) confirm stored/disposed effluent was untreated

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which is a violation of consent conditions issued by UPPCB.

B. Quality of treated effluents and utilisation as per protocol/agreement with the users /farmers:

1. The unit has stored treated effluent in lagoon after ETP filtration units, which was in semi filled condition. The analysis results of sample collected from lagoon are complying w.r.t. the Notified standards in MoEF&CC Notification G.S.R. 35(E) dated 14th January, 2016.
2. The unit has not provided any agreement for providing treated effluent for irrigation to users/farmers, however as informed by the unit representative, treated effluent used in the plant.

C. Effluents are reaching any drain leading to river/water body:

1. Provision of direct discharge or outlet point from unit into the sugar mill drain was not evident during inspection. The entire flow in Sugar mill drain was carrying sewage. The increase in BOD, COD and TSS in River Kali East at downstream of Sugar mill drain is due to turbulent flow conditions contributing in higher TSS, thereby BOD & COD increased.

D. Ground water quality be checked as per parameters relevant to the industry in question, particularly, fluoride etc.:

1. The analysis result of sample collected from 01 borewell located inside and 04 handpumps located outside the unit premises shows fluoride within permissible limit i.e. 1.5 mg/l as per BIS IS 10522:2012 Standards.

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2. However, analysis results of samples collected from borewells within unit premises and all 04 Handpumps outside the unit premises are within permissible limit as per drinking water standard BIS IS 10500:2012 except Fe- 0.62mg/l, 4.78 mg/l, 0.46 mg/l from Handpump Sugar Mill near canal, Handpump Sugar Mill near drain and Handpump near Main gate of sugar mill respectively. Selenium (Se)- 0.02 mg/l is also detected which is beyond the permissible limit i.e. 0.01 mg/l as per drinking water standard BIS IS 10500:2012 in the sample collected from Handpump near Main gate of sugar mill.

E. Others:

1. The unit M/s Triveni Engineering and Industries Limited, Sugar Unit, Village Sheikhpura, Khatauli, Distt Muzaffarnagar is an integrated refinery sugar unit with 45 MW cogen and having consented capacity of 16000 TCD. As per Daily Manufacturing Reports (DMRs) provided by the unit, the average actual crush rate (TCD) is 11975.56 TCD (for duration of 20th November 07th December, 2021).
2. The unit has valid Consent to Operate under section 21/22 of the Air (Prevention & Control of Pollution) Act, 1981 (as amended) for 65 TPH boiler, which is valid up to 31.12.2023 and for two boilers of 120 TPH, which is valid up to 31.12.2024.
3. The unit has valid Consent to Operate under section 25/26 of Water (Prevention & Control of Pollution) Act, 1974 (as amended) for discharge of effluent, which is valid up to 31.12.2023. The unit has valid Authorization issued under the provisions of Hazardous and Other Wastes (Management and Trans-

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Boundary Movement) Rules, 2016 for storage and disposal of hazardous wastes valid up to 13.01.2023.

4. The unit has a membership of TSDF with Ramky Enviro Engineers Ltd. as informed for disposal of used oil and wastes or residues containing oil on quarterly basis. Membership is valid up to 23.02.2022.
5. The unit has not installed flow meter at mill house and boiling house to quantify the effluent generation separately.
6. The unit has environmental laboratory for daily analysis of sugar effluent parameter, however, the unit has not maintained the ETP log book.
7. The unit has not provided record of generated Boiler ash.
8. The unit has not maintained the record of Press mud generation.
9. The unit has permission to abstract total 430 m³/hr of groundwater from four existing bore-wells as per No Objection Certificate (NOC) from Uttar Pradesh Ground Water Department (UPGWD), which is valid up to 13.01.2023.
10. The unit has Sewage Treatment Plant (STP) with capacity of 500 KLD for the treatment of domestic waste water generated from its residential colony/mill staff having population around 1000-1200 people. The analysis results (BOD-10 mg/l and COD-39 mg/l) of samples collected from STP inlet indicate dilution with fresh water by the unit.
11. The unit has installed flowmeters at the inlet & outlet of STP, however, flowmeters

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were found non-operational at the time of inspection.

17. On the aforesaid basis, the joint committee made the following recommendations:

6.0 RECOMMENDATIONS

1. The unit shall not discharge partially treated effluent into the drain and on land within or outside the unit premises.
2. The unit shall install flow meters at mill house and boiling house to quantify the effluent generation separately.
3. The unit shall maintain the proper records for quantity of used oil & grease as per valid Authorization issued under the provisions of Hazardous and Other Wastes (Management and Trans-Boundary Movement) Rules, 2016 for storage and disposal of hazardous wastes.
4. The unit shall maintain proper record of Press Mud which is provided to the local farmers.
5. The unit shall maintain the ETP log book for daily analysis of raw and treated effluent parameters.
6. The unit shall maintain the proper record of boiler ash generation, sludge and their disposal.
7. The unit shall maintain adequate MLSS & MLVSS concentration in Aeration Tank-I & II while operating the ETP to ensure proper stabilization of ETP.
8. The unit shall make proper color coding of pipelines for water distribution

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network w.r.t. the defined coding of color for particular pipe carrying sugar effluent, treated effluent and fresh water.

9. The unit shall dismantle the Pond-1 and Pond-2 which contains waste water having characteristics of partially treated industrial effluent.
10. The unit shall restrict the use of Handpump near Main gate of sugar mill as the sample analysis shows Selenium (Se)- 0.02 mg/l which is beyond the permissible limit i.e. 0.01 mg/l as per drinking water standard BIS IS 10500.
11. The unit shall make flow meters operational installed at STP inlet and outlet.

18. The impugned order dated 15.02.2022 indicates that the said report was accepted by the NGT and held that appellant had violated the environmental norms. On that basis and following further report of the joint committee dated 10.08.2022, compensation amount of Rs. 18 crores at the rate of 2 percent of annual turnover was worked out and imposed on the appellant by the NGT *vide* the second impugned order dated 16.09.2022, further directing that the same may be deposited by the appellant with the District Magistrate, Muzaffarnagar within one month.

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19. From a conjoint reading of the report of the joint committee and the impugned orders of the NGT, the following features are clearly discernable:

- (i) NGT constituted a joint committee to carry out inspection of the sugar mill of the appellant *vis a vis* maintenance of pollution control measures and discharge of effluents.
- (ii) This is an adhoc committee when the Water Act, more particularly Sections 21 and 22 thereof, clearly prescribe a statutory procedure to be followed while carrying out such inspection to examine pollution, if any, or the extent of pollution caused by the project proponent and to suggest remedial measures.
- (iii) The joint committee report dated 11.01.2022 as noticed above, is silent as to whether it has followed the procedure laid down in the aforesaid Act more particularly notice to the occupier or his agent and collection and sealing of samples in the presence of

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the occupier or his agent having his signature on the sealed containers.

- (iv) NGT did not deem it appropriate to get the appellant impleaded as a party respondent in O.A. No. 71/2021 though the entire proceedings were directed against it.
- (v) No opportunity was granted to the appellant to contest the report of the joint committee and to have its say. Thus, there is clear violation of the provisions contained in Section 19 of the National Green Tribunal Act, 2010.
- (vi) It is the categorical stand of the appellant that the joint committee did not issue any notice to it before carrying out the inspection and it was not served with a copy of the report of the joint committee either.
- (vii) NGT accepted the report of the joint committee without any adjudication on it.

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(viii) Environmental compensation was quantified without any adjudication and without granting any opportunity of hearing to the appellant.

(ix) Environmental compensation was imposed on the appellant without giving any opportunity to the appellant to contest the reports of the joint committee and without giving any opportunity of hearing to the appellant.

20. Let us now refer to and examine some of the relevant case laws on the subject.

21. In *A.K. Kraipak Vs. Union of India*¹, a Constitution Bench of this Court considered the question as to whether principles of natural justice applied to administrative proceedings, after observing that the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. This Court observed that horizon of natural justice is constantly expanding. Aim of the

¹ (1969) 2 SCC 262

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rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. Rules of natural justice operate in areas not covered by any law validly made. Natural justice do not supplant the law of the land but supplement it. This Court answered the above question in the following manner:

20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act

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judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. University of Kerala* [1968 SCC OnLine SC 9] the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

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22. As observed in *A.K. Kraipak* (supra), the rules of natural justice are constantly expanding. A Constitution Bench of this Court in *S.N. Mukherjee Vs. Union of India*² held that an administrative authority exercising quasi-judicial functions must record the reasons for its decision. An important consideration for holding so is that the reasons so recorded would enable the higher forum to effectively exercise appellate or supervisory powers. Further the requirement of recording reasons would guarantee consideration by the authority; introduce clarity in the decisions; and minimise chances of arbitrariness in decision making. Recording of reasons by an administrative authority serves a salutary purpose by excluding chances of arbitrariness and ensuring a degree of fairness in the decision making process. The Bench clarified that the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial

² (1990) 4 SCC 594

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review. The Bench conclusively held that except in cases where the requirement has been dispensed with, expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

23. If this is true for an administrative authority exercising quasi-judicial functions, it is all the more true for a judicial tribunal vested with adjudicatory powers.

24. In *Municipal Corporation of Greater Mumbai Vs. Ankita Sinha*³, this Court referred to its earlier decision involving the same parties whereby and whereunder the question as to whether National Green Tribunal (NGT) can exercise *suo motu* jurisdiction or initiate *suo motu* action was answered in the affirmative. Thereafter, this Court held that even if NGT intends to initiate *suo motu* action, it must provide an opportunity of hearing to persons likely to be affected before passing any adverse order against them. In that context, this Court held that the impugned *ex-parte*

³ 2021 SCC Online SC 1298

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preemptory order passed by the NGT without giving opportunity to the person likely to be affected by such order be treated as effaced from the record. This Court made it amply clear that NGT is obliged to hear the party before issuing any adverse directions which is likely to be directly affected by it, including an action initiated *suo motu*.

25. This Court in *T. Takano Vs. Securities and Exchange Board of India*⁴ examined the issue of disclosure of all relevant materials to the parties in the context of disclosure of investigative report submitted to the Securities and Exchange Board of India under Regulation 9 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 to the noticee to whom the show cause was issued and held that possession of information by both the parties can aid the courts in determining the truth of the contentions. The role of the court is not restricted to interpreting the provisions of law but also in determining the

⁴ (2022) 8 SCC 162

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veracity and truth of the allegations made before it. The court would be able to perform this function accurately only if both parties have access to information and possess the opportunity to address arguments and counter arguments related to the information.

25.1. Elaborating further, this Court held that principles of fairness and transparency of adjudicatory proceedings are the cornerstones of the principle of open justice. This is the reason why an adjudicatory authority is required to record its reasons for every judgment or order it passes. The purpose of disclosure of information is not merely individualistic that is to prevent errors in the verdict but is also towards fulfilling the larger institutional purpose of fair trial and transparency. Therefore, all relevant materials must be disclosed; otherwise it would be fundamentally contrary to the principles of natural justice. In the circumstances, this Court concluded as under:

50.1. A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication.

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50.2. An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is *relevant* to and has a *nexus* to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.

50.3. Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure.

26. *State Bank of India Vs. Rajesh Agarwal*⁵ is a case where this Court once again reiterated that principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. This Court held as under:

36. We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial,

⁵ (2023) 6 SCC 1

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and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence : (i) *nemo judex in causa sua*, which means that no person should be a Judge in their own cause; and (ii) *audi alteram partem*, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.

26.1. Further, this Court held in clear terms that every order or proceeding which involves civil consequences or adversely affects a citizen should be in accordance with the principles of natural justice.

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27. In *Kantha Vibhag Yuva Koli Samaj Parivartan Trust Vs. State of Gujarat*⁶, this Court dealt with an appeal arising out of an order passed by the NGT dismissing an original application alleging environmental degradation and seeking restitution of the environment. This Court observed that it is important to differentiate expert committees which are set up by the courts/tribunals from those set up by the government in exercise of executive powers or under a particular statute and held as follows:

17. It is first important to differentiate Expert Committees which are set up by the courts/tribunals from those set up by the Government in exercise of executive powers or under a particular statute. The latter are set up due to their technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before the courts when decisions are taken solely based upon them. The precedents of this Court unanimously note that courts should be circumspect in rejecting the opinion of these committees, unless they find their decision to be manifestly arbitrary or mala fide. On the other hand, the courts/tribunals themselves set up Expert Committees on occasion. These committees are

⁶ (2023) 13 SCC 525

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set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the committees to conduct field visits. These committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these committees submit their final reports to the court/tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these Expert Committees does not substitute the adjudicatory role of the court or tribunal. The role of an Expert Committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all the parties concerned. Allowing for objections to be raised and considered makes the process fair and participatory for all the stakeholders.

27.1. This Court also referred to an earlier decision in the case of *Sanghar Zuber Ismail Vs. Union of India*⁷ wherein it was held that constitution of an expert committee does not absolve NGT of its duty to adjudicate. The adjudicatory functions of NGT cannot be assigned to committees, even expert committees. The decisions have to be that of NGT. NGT

⁷ (2021) 17 SCC 827

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has been constituted as an expert adjudicatory authority under the statute. The discharge of its functions cannot be obviated by tasking committees to carry out a function which vests in the NGT. Adverting to the facts of that case, this Court held that NGT had abdicated its jurisdiction by entrusting judicial function to an administrative expert committee. An expert committee may be able to assist NGT, for instance, by carrying out a fact finding exercise but the adjudication has to be by NGT.

28. This Court in *Grasim Industries Limited Vs. State of Madhya Pradesh*⁸ noticed that NGT had followed a similar procedure as in the present case. The procedure followed by NGT has been summed up in the following manner:

4. After the NGT entertained the O.A. on the basis of the letter addressed by Respondent No. 1, it initially directed the plant of the appellant to be examined by the State Pollution Control Board. After the receipt of the report of the State Pollution Control Board, the Court appointed a Joint Committee to give its report. The said Joint Committee made certain

⁸ (2024) SCC Online SC 3538

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recommendations and the NGT passed the impugned order on the basis of the said recommendations.

5. The material placed on record would also reveal that the appellant herein was not made a party to the proceedings before the learned NGT or before the Joint Committee. Though an application for impleadment was filed by the appellant, the same was rejected by the learned NGT.

6. It further appears that even the Joint Committee appointed by the NGT neither gave any notice to the appellant nor an opportunity was given of being heard. Though, this objection was specifically taken by the appellant, the NGT observed “We asked the learned Counsel whether the stand of the unit is that the violations found never existed or whether they existed but have been remedied. His answer is later. It is patent that there were violations.

28.1. It was in the above context that this Court held that the procedure followed by NGT was totally unknown to the settled principles of natural justice. Neither was any notice given by the joint committee to the appellant before giving an adverse report against the appellant nor the NGT permitted impleadment of the appellant as a party respondent. NGT could not have proceeded further with the matter even at the

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initial stage without impleading the appellant as a party respondent. Approach adopted by the NGT clearly smacks of condemning a person unheard. NGT cannot outsource an opinion and base its decision on such opinion.

29. In *Delhi Pollution Control Committee Vs. Lodhi Property Company Limited*⁹, this Court examined the challenge of Delhi Pollution Control Board to a judgment of the Delhi High Court whereby it was held that Delhi Pollution Control Board is not empowered to levy compensatory damages in exercise of powers under Section 33A of the Water (Prevention and Control of Pollution) Act, 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 on the ground that such an action amounts to imposition of penalty provided for in Chapters VI and VII of the aforesaid Acts and, as such, the procedure contemplated thereunder will be the only method for imposing and collecting compensatory damage. The core question in that case was whether the regulatory boards in exercise of powers under

⁹ 2025 SCC OnLine SC 1601

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Section 33A of the Water Act and Section 31A of the Air Act 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? The above question was answered in the affirmative by holding that 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 the aforesaid powers. However, what is relevant for our present consideration is the following declaration:

39. * * * * *

(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.

30. Having surveyed the relevant case law on the subject, let us revert back to the present case. From the

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conspectus of facts and law, it is clearly evident that the impugned orders are in complete violation of the procedures laid down in the Water (Prevention and Control of Pollution) Act, 1974, the Environment (Protection) Act, 1986, more particularly Sections 21 and 22 of the Water Act and the National Green Tribunal Act, 2010, including Section 19 thereof. It is crystal clear that the impugned decisions which entail adverse civil consequences upon the appellant were passed without following the due procedure laid down under the statute as well as the elementary principles of natural justice. We, therefore, have no hesitation in declaring such orders to be illegal and null and void.

31. NGT exercises judicial functions. Therefore, it is all the more necessary for the NGT to adhere to a fair procedure which is statutorily laid down of which principles of natural justice are an inalienable part. Rigor of Section 19(1) of the National Green Tribunal Act, 2010 is *qua* the procedure to be adopted by the NGT in conducting its proceedings. It cannot be stretched to abandon the statutory procedure laid down

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under Sections 21 and 22 of the Water Act and by outsourcing investigation to administrative committees by overlooking the statutory provisions and basing its decisions on the recommendation of such administrative committee. This is not within the remit of NGT.

32. As we have noticed above, this is a classic case where in the quest for doing justice, NGT has ended up doing just the reverse.

33. Ordinarily, in a case where there is violation of the principles of natural justice, parties are relegated to the adjudicatory forum to re-do the exercise after following the due process. But in this case, the entire exercise has been vitiated because of non-conforming to the laid down procedure contemplated under Sections 21 and 22 of the Water (Prevention and Control of Pollution) Act, 1974. In such circumstances, relegating the parties back to the NGT in our considered opinion would serve no useful purpose. However, we clarify that it will always be open to the UPPCB to carry out inspection and take remedial measures *qua* the sugar mill

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of the appellant by following the procedure laid down under the Water Act and after complying with the due process statutorily laid down thereunder, including by adhering to the principles of natural justice.

34. Accordingly and in the light of the above, the impugned orders dated 15.02.2022 and 16.09.2022 passed by the NGT in O.A. No. 71/2021 are hereby set aside. Consequently, the civil appeals are allowed. However, there shall be no order as to cost.

.....J.
[MANOJ MISRA]

.....J.
[UJJAL BHUYAN]

**NEW DELHI;
SEPTEMBER 01, 2025.**

-True Copy-



ENVIRO LEGAL DEFENCE FIRM <eldflegal@gmail.com>

**Service in Haryana State Pollution Control Board Vs. M/s Malibu Estate Pvt. Ltd.
(Appeal. No. 05/2024/PB)**

1 message

ELDF <eldflegal@gmail.com>

Mon, Mar 16, 2026 at 10:50 AM

To: rkhuranalegal@gmail.com, cmc@mcg.gov.in

Cc: Shubham Upadhyay <upadhyayshubham5060@gmail.com>, Surya Gupta <surya@eldfindia.com>, Anivarth AO <anivarth@eldfindia.com>, Anukriti Bajpai <anukritibajpai.ab@gmail.com>

Dear Sir,

Please find attached copy of the Written Submissions on behalf of Respondent No. 1 M/s Malibu Estate Pvt. Ltd.

Thanks & Regards

Fahimul Hassan

Clerk

Enviro Legal Defence Firm

29, Presidential Estate LGF,

Nizamuddin East New Delhi – 110013

Ph. No. 011-40573181

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