BEFORE THE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE, PUNE BENCH

APPEAL NO. 160 OF 2025
(WITH CONNECTED APPEALS)

IN THE MATTER OF :

M/S VICTORY FLOOR TILES PVT. LTD. … APPELLANTS

VERSUS

GUJARAT POLLUTION CONTROL BOARD …RESPONDENT

INDEX

Date: 05.02.2026
Place: New Delhi

FILED BY:

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VICTORY TILES PTV. LTD. ….APPELLANT

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Written Submission on behalf of the Appellant

The Appellant herein has challenged the direction issued by the Respondent u/s 33A and 31A of the Water Act and Air Act dated 01.05.2025 imposing an environment compensation upon the Appellants **(page 35-38).**

At the outset it is submitted that the earlier a similar direction dated 11.09.2019 was issued by the Respondent imposing interim environment compensation at Rs. 5000 per day for the no. of days the coal gasifier was in possession of the unit. **(page 95-96).**

The said direction was challenged before the High Court in batch of WPs. The High Court by order dated 08.01.2025 finally heard the matter and by its order at **page 363 to 413** disposed of the entire batch directing the parties to approach this Tribunal and granted liberty for the same, while observing that all issues have been left open to be raised before the Tribunal. Relevant para 15- 23 **(page 409 to 413)** are reproduced :

> "15. Taking note of the above, we may record the submissions of the learned Senior Counsels appearing for the petitioners that many of the petitioners have closed their industries; stopped use of coal gasifiers much earlier and were not operating their industries for a sufficient long time. According to them, some of the petitioners had established their industries using coal gasifiers as per the permission granted by the GPCB and they have followed the norms laid down by the GPCB in the permission letter. Some of the learned counsels for the petitioners had argued that the petitioners to whom they represent cannot be made liable to damages and it cannot be levied from them as they cannot be said to have violated any of the environment laws.
>
> 16. It was argued that the categorization of the industries in three categories by the Oversight Committee is unfair, inasmuch as, there cannot be any formula for distribution of environment damages, inasmuch as, the damages were required to be computed depending upon the size of the industry, period and quantity of production. It was sought to be argued by

Mr. K. K. Sharma, learned advocate appearing for some of the petitioners in the connected writ petitions (seven in number) that the petitioners therein were not using coal gasifiers at all. Even this is the case of many of the learned advocates appearing for petitioners in the connected writ petitions (total 550 matters in number). The petitioners, thus, seek to dispute their liability for damage compensation as computed by the Oversight Committee. Essentially, the challenge is sought to be raised to the report of the Oversight Committee on the premise that the Oversight Committee was required to grant opportunity of hearing to each of the petitioners herein and the report is in ignorance of factual data.

17. Be that as it may, we may record that the Oversight Committee has been constituted pursuant to the order dated 06.03.2019 of the National Green Tribunal (NGT), which reads as under:-

> *"21. In view of the above, it is clear that coal gasifiers are no longer viable. Inspection by GPCB shows high level of air pollution which is dangerous for health and environment. 'Sustainable Development' and 'Precautionary' principles are to be upheld.*
>
> *22. Purpose of economic development in any region is to provide opportunities for improved living by removing poverty and unemployment. While industrial development invariably creates more jobs in any region, such development has to be sustainable and compliant with the norms of environment. In absence of this awakening or tendency for monitoring, industrialization has led to environmental degradation on account of industrial pollution. It is imperative to ensure that steps are taken to check such pollution to uphold statutory norms. Adequate and effective pollution control methods are necessary.*
>
> *23. We may also note that as per data compiled by the CPCB MorbiWankaner is one of the polluted industrial clusters. Vide order dated 13.12.2018 in Original Application No. 1038/2018, this Tribunal considered the subject matter of critically polluted industrial clusters and directed preparation of action plans by the respective States for remedying the situation.*
>
> *24. Even though, this area is polluted but not 'critically polluted', the same may not be covered by the said order, but the fact remains that there is high amount of pollution as shown by the latest report of the GPCB quoted above in para no. 13. PM10 is equal to 552.66 and PM2.5 is equal to 289.61. Stringent measures are, thus, required in the interest of protection of environment and public health.*
>
> *25. Accordingly, we allow the applications and direct the GPCB to close all coal gasifiers industries and units operating with the help of coal gasifiers without prejudice to such units switching over to non-coal gasifiers or PNG or technology consistent with the above report. The GPCB must initiate immediate steps for prosecution of*

the industries which have operated in violation of law and recover compensation for causing damage to the environment and public health. This amount may be assessed by a Committee with representatives of CPCB, GPCB and NEERI. The CPCB will be the nodal agency for coordination and compliance. The Committee may suggest restoration plan.

26. The Committee may give its report within one month by e-mail at ngt._ling@gmail.com.

27. The Committee may take into account the cost of reversing the damage caused and also the amount to be recovered which will operate as deterrent and render any polluting activity non-pro_table.

28. To oversee the execution of this order by the GPCB, we appoint an Oversight Committee headed by Justice B.C. Patel, former Chief Justice of Delhi High Court and former Judge of Gujarat High Court who is already heading an Oversight Committee constituted by this Tribunal vide order dated 16.01.2019 in O.A. 606/2018. He will also be assisted by a representative of CPCB. The GPCB will provide all logistics to Justice Patel. Any person concerned with execution of this order will be at liberty to represent to the said Oversight Committee.

29. Learned Counsel for the GPCB states that expenses incurred by the NEERI will be paid as per direction of this Tribunal within one month from today.

30. Industries have filed applications which have no merit and are not maintainable under Sections 14 and 15 of the National Green Tribunal Act, 2010. Same is the position with regard to the applications of the manufacturers.

All the applications stand disposed of accordingly."

18. Taking note of the directions issued by the NGT in the above noted paragraphs of the order dated 06.03.2019, we find that all the issues sought to be raised before us regarding the correctness of the report of the Oversight Committee can only be raised by the petitioners before the NGT. However, it is open for the petitioners to avail any other alternative remedy if available in law, inasmuch as, it is not permissible for this Court to sit over the report of the Oversight Committee as a Court of appeal, which has been constituted by the NGT while directing the GPCB to close all coal gasifier industries and units operating with the help of coal gasifiers and to initiate fresh steps for prosecution of the industries, which have operated in violation of law and recover compensation for causing damages to the environment and public health.

19. The three expert bodies have submitted their reports in compliance of the order passed by the NGT, wherein direction was issued to assess the damages compensation amount by a committee with representatives of

Central Pollution Control Board (CPCB), Gujarat Pollution Control Board (GPCB) and National Environmental Engineering Research Institute (CSIR – NEERI).

20. The Oversight Committee headed by Justice B. C. Patel, Former Chief Justice of the Delhi High Court and Former Judge of the Gujarat High Court has been constituted vide order dated 16.01.2019 by the NGT and direction was issued that the Oversight Committee shall be assisted by the representative of the CPCB and the reports of the expert bodies shall be assessed by the Oversight Committee to ascertain the damages.

21. **In view of the above, we dispose of all the writ petitions with the observations and directions that we have not entered into the merits of the claim of any of the petitioners herein about their liability towards compensation or the issues pertaining to the quantum of damages computed by the Oversight Committee. It is open for the petitioners to avail appropriate remedy available in law.**

22. Consequently, in view of the disposal of the said writ petitions, all the civil applications pending in the connected writ petitions, if any, stand disposed of.

23. **All the issues agitated before us are left open, to be raised before the NGT or any other competent authority, as maybe advised.** "

After the disposal of the WPs, while the Appellant was in process of approaching this Tribunal by filling apporpriate Application, impugned directions were passed by Respondents. Hence, the present Appeal is filed.

A. Impugned directions were passed contrary to the direction of the Tribunal dated 06.03.2019.

1. The Tribunal by oder dated 06.03.2019 directed for prosecution and recovery of compensation from violating industries. The Tribunal did not directed the Respondent to impose damages upon units which were operating coal gasifier in accordance with law. At **page 39 Pr. 25** of the Tribunal specifically directed against the violating industries.

2. The joint committee formed was only to make assessment as may be recovered by the Respondent. Tribunal by its order delegated its power u/s 15 of the NGT to the Respondent and joint committee.

3. In **Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat**, **2023 (12) SCC 525** Supreme Court has held in **para 16** of the said judgement that the power to provide for restitution of environment is an adjudicatory function and cannot be abdicated to adminsitrative agencies.

> *"16. Section 15 empowers the NGT to award compensation to the victims of pollution and for environmental damage, to provide for restitution of property which has been damaged and for the restitution of the environment. **The NGT cannot abdicate its jurisdiction by entrusting these core adjudicatory functions to administrative expert committees**. Expert committees may be appointed to assist the NGT in the performance of its task and as an adjunct to its fact-finding role. **But adjudication under the statute is entrusted to the NGT and cannot be delegated to administrative authorities**. Adjudicatory functions assigned to courts and tribunals cannot be hived off to administrative committees…."*

4. NGT having directed the Respondent to recover compensation from violating units by delegating the exercise of assessment to joint committee, the further sub delegation of the assessment by the joint committee to the three institute is not legally sustainable and beyond the order of the Tribunal dated 06.03.2019. Joint committee itself modified the order of the Tribunal dated 06.03.2019 in **para 7 at page 109 to 111.**

5. Further, the oversight committee was never directed by this Tribunal to make any assessment. The Tribunal has directed at **pr. 28 pg 240** that the oversight committee shall oversee the execution of the order by Respondent. The equitable distribution formula and calculation as done by the oversight committee is per se illegal and beyond any authority of law.

6. Impugned order at **page 37 para 16** records that the quantification is done by the oversight committee, however, the said committee has no jurisdiction or authority or even any direction to make the quantification.

> *"16. Accordingly, based on expert study reports submitted in December 2024, the Oversight committee has quantified the recoverable amounts for damage to environment and public health. The compensation has been equitably distributed based on the scale of the industry and capacity of gasifier as per the scaling formula developed by the Expert Committee……"*

7. The impugned order passed at instance of oversight committee is beyond the direction of this Tribunal.

B. The impugned order passed under direction of oversight committee is illegal.

1. That it has been held by the Principal Bench of this Tribunal in Appeal No. 37 of 2024, **Sumit Knit Fab. v. Punjab Pollution Control Board**

that the order passed by the Board in exercise of powers u/s 33A and 31A of the Water and Air Act are *quasi judicial* in nature.

> *"29. Therefore, we have no manner of doubt that an order passed by Statutory Regulator imposing environmental compensation and requiring the person to pay the same by applying principle of 'Polluter Pays' is a 'quasi-judicial' order as it imposes financial liability upon it and without giving an opportunity of hearing and complying with the principle of natural justice, such liability cannot be fastened upon it."*

2. Respondent being a statutory regulator and impugned direction is a quasi judicial order passed in exercise of quasi judicial power. Respondent cannot have acted on the direction of the joint committee or the oversight committee which were merely expert committees and have no statutory authority.

3. In **para 14 & 15 at page 37** of the impugned order it is observed that the impugned direction is passed under the direction of oversight committee. No person having any authority of law can direct the a bodu to exercise quasi judicial power in a particular manner. The order passed under direction of a non-statutory body or even an administrative body is illegal.

> *"14. WHEREAS, Based on the final reports of expert institutes,* ***oversight committee (Constituted by Hon'ble NGT vide order dt. 06/03/2019) vide letter dt. 26/02/2025 has directed GPCB to levy final Damage compensation decided as per the equitable scaling formula from each of the identified industry****; and*
>
> *15. WHEREAS,* ***this Board is liable for the execution of directions issued by the Oversight Committee*** *formed by Hon'ble NGT headed by Justice B. C. Patel, Former Chief Justice of Delhi High Court and former Judge of Gujarat High Court for the compliance of the order of Hon'ble NGT in O.A. 20/2017 & 42/2017 (In the matter regarding pollution caused by ceramic industries in Morbi-Wankaner area due to employment of Coal gasifiers) dated 06/03/2019; and"*

4. Right through out the beginning the Respondent instead of acting in accordance with law have followed the directions of the joint committee and thereafter oversight committee in passing directions u/s 33A and 31A of the Water and Air Act. In **para 7 at page 205** of the reply Respondent has admitted that it imposed the interim environment damages in compliance of the recommendation of three member committee. In **para 21 at page 218**, the Respondent has further admitted that impugned direction were in compliance of oversight committee direction :

21. ……. the notice for direction dated 01.05.2025 is the implementation of the recommendations of the Oversight Committee."

C. Impugned direction passed in violation of of principles of natural justice.

1. No show cause issued by Respondent before issuing impugned direction

   i. In impugned direction the Respondent has mentioned at **para 16 at page 37** that on basis of the expert study report of December 2024 the oversight committee has quantified the amount of damages on equitable distribution formula. Thereafter, in **para 17-18** a direction for payment of the remainnder of the amount is made. Evidently, no sow cause is being issued nor mentioned in the impugned order.

   ii. In this respect in para 16 at page 215 of reply of Respondent they have stated that :

   16. ……. In this regard, it is submitted that the appellant and other similalry situated units were canvassing their grievances before the Hon'ble High Court and they were heard by the Hon'ble High Court prior to disposal of group of petitions. Moreover, the appellant and other similarly situated units were also aware about the reports prepared by the expert bodies and the executive summary prepared by the Oversight Committee that was placed on record before the Hon'ble High Court. Therefore, the ground that the appellant was not heard before the initiation of the impugned proceediings is without any basis."

   iii. The impugned direction is a fresh exercise of imposing the damages upon Appellant. Neither the Respondent before passing impugned direction nor the joint committee or oversight committee before making quatification of damages granted any opportunity of hearing.

   iv. In **Delhi Pollution Control Committee v. Lodhi Proprty Co. Ltd., 2025 INSC 923** it is held by Supreme Court that power under section 33A and 31A of Water and Air Act can only be exercised complying with principles of natrual justice.

   *"33. **While we hold that the Boards have the power to direct the payment of environmental damages, we make it clear that this power must always be guided by two overarching principles. First, that the power cannot be exercised in an arbitrary manner; and second, the process of exercising this power must be infused with transparency.***

35. To ensure that the Boards impose restitutionary and the compensatory environmental damages in a fair transparent, non-arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of rules and regulations must be notified. ***This shall include methods by which environmental damage is determined, and the consequent quantum of damages are assessed. They may also incorporate certain basic principles of natural justice for fairness in action.***

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."***

v. Similalry, in **Sumit Knit Fab. v. Punjab Pollution Control Board Appeal No. 37 of 2024 the Principal Bench** of this Tribunal has been held even case of polluter pays opportunity of hearing is must. It has been held that :

"19. ***For demanding environmental compensation by applying principle of 'Polluter Pays', the principle of natural justice must be followed. The polluter should be given opportunity****.*

20. Power to demand environmental compensation by issuing directions is quasi-judicial power. Explaining the meaning of the term 'quasi- judicial', Supreme Court in ***Namit Sharma vs. Union of India, (2013) 1 SCC 745*** *has observed that it involves deciding a dispute and ascertaining the facts and any relevant law, but differs in that it depends ultimately on the exercise of an executive discretion rather than the application of law. When law commits to an officer, the duty of looking into certain facts not in a way which it specially directs, but after a discretion in its nature judicial, the function is quasi-judicial.*

25. It cannot be doubted that whenever a pecuniary liability is thrown on a person, it results in evil consequences and such person cannot be saddled with such monetary liability, without giving any opportunity of hearing and complying with the principle of natural justice.

28. Applying the above principles, we are clearly of the view that whenever any direction is issued by Statutory Regulator for imposition of environmental compensation, it must observe, comply and follow strictly the principles of natural justice. Due opportunity of hearing must be accorded to the affected party. The disclosure of adverse material on which Statutory Regulator intends to form opinion of violation of environmental laws on the part of the defaulter or violator and the manner in which it proposes to impose

environmental compensation, all the relevant material in this regard must be disclosed to the person concerned so as to give him adequate opportunity to submit its defence. If any material is relied to form an opinion against the person concerned without disclosing it but will vitiate the principle of natural justice.

29. *Therefore, we have no manner of doubt that an order passed by Statutory Regulator imposing environmental compensation and requiring the person to pay the same by applying principle of 'Polluter Pays' is a 'quasi-judicial' order as it imposes financial liability upon it and without giving an opportunity of hearing and complying with the principle of natural justice, such liability cannot be fastened upon it."*

vi. In another case of **Piramal Enterprises Ltd. v. Telangana Pollution Control board, Appeal No. 09 of 2020 (SZ)** the Tribunal has held against the imposition of environment damages without issuance of show cause notice. The Tribunal has held that :

"20. It is seen from the impugned order that there was no prior show cause notice issued by the Pollution Control Board to the erring unit as to why the amount of compensation fixed by the joint committee should not be imposed against them, so that they would have got an opportunity to explain their objection regarding the quantum of compensation to be payable.

21. On the other hand, the Pollution Control Board had reiterated all the sequences of events that happened pursuance of the orders of the Principal Bench of National Green Tribunal in Original Application No.688 of 2018 in ***K. Lakshma Reddy Vs. M/s. Siddhi Vinayaka Oil Mill & Ors.,*** *and the directions issued by the Principal Bench to take action on the basis of the report and issued this impugned order.*

23. Since, compensation being a monitory liability, before fixing the same, an opportunity ought to have been given by the Pollution Control Board to the appellant unit which is the basic principle of following the principles of natural justice of being heard before final orders are being passed. But, that has not been done in this case. When similar issues have come before this Tribunal in Appeal No. 01 of 2020 ***(M/s. Indo shell Cast Private Limited Vs. Tamil Nadu Pollution Control Board & Ors.)*** *this Tribunal had set aside the order of compensation imposed straight away without giving an opportunity to the appellant in that case and directed to treat that order as regards imposition of compensation as show cause notice and after giving an opportunity to the appellant in that case to pass appropriate orders in accordance with law.*

24. Even the order of the Principal Bench in Original Application No.688 of 2018 relied on by the 1st respondent also gives an indication that the final orders will have to be passed on the basis

of the observations and findings of the joint committee appointed by the Tribunal only after complying with the procedure laid down in accordance with law and the units were directed to challenge that order before the appropriate forum and their objections regarding the committee's report has not been considered by the Principal Bench as well. That also indicates that before passing the final order, opportunity has to be given to the erring unit regarding the reasons for future order to be passed including imposition of environmental compensation.

25. Since, the principal of natural justice has been violated in this case before passing the final order to the extent of imposing environmental compensation merely relying on the direction issued by the Tribunal, it is as against law and the same is liable to be set-aside. So, we set aside the impugned order dated 29.01.2020 by Order No. MDK-07/TSPCB/TF/HO/2016- dated 29.01.2020 issued by the 1st respondent only to be extent of imposing environmental compensation alone as that alone was challenged before this Tribunal"

2. Impugned direction based on Joint committee prepared report prepared without following principle of natural justice.

i. Even assuming that the Appellant were aware and of the reports and hence were not required to be issued show cause or granted any opportunity of hearing, the same is no opportunity of hearing was granted even by the joint committee or the oversight committee to the Appellant.

ii. Impugned order being passed in violation of natural justice and on basis of the report which too prepared in violation of the principle of natural justice, is illegal.

iii. In **Grasim Industries Ltd. v. State of M.P., 2024 INSC 926** the Supreme Court while considering legality of a judgement of this Tribunal passed on basis of joint committee report without any opportunity of hearing at any stage has held :

*"8. **Neither was any notice given by the Joint Committee before giving an adverse report against the appellant nor the NGT permitted impleadment of the appellant as a party respondent.** As a matter of fact, the NGT could not have proceeded further with the matter even at the initial stage without impleading the appellant herein as a party respondent. The approach adopted by the NGT clearly smacks of condemning a person unheard. A reliance in this respect should be placed on the judgment of this Court in the case of Municipal Corporation of Greater Mumbai v. Ankita Sinha and Others (2022) 13 SCC 401 : 2021 INSC 624."*

iv. This Tribunal has itself held in a **Review Application No. 3of 2024 in OA No. 169 of 2020, Kuldeep Singh v. State of Haryana,** that while finalizing the compensation natural justice shall be followed by the joint committee. Here in this case neither joint committee nor even the Respondent has followed the principle of natural justice on totally erroneous assumption of Appellant canvassing their dispute before Courts. This Tribunal has held that :

> *"10.* ***Needless to say that while deciding the issue of finalisation of compensation, joint committee is required to follow the Principles of Natural Justice and ascertain the extent of violation by review applicant, thereafter, take a decision relating to finalisation of compensation for damage to the environment as well as for illegal mining."***

3. Even NGT is required to comply natural justice while imposing damages on basis of expert report, Respondent exercising quasi judicial power cannot ignore the same.

i. In **Kantha Vibhag Yuva Koli Samaj Parivartan Trust v. State of Gujarat 2023 (12) SCC 525** it has been held that :

> *"14. On the other hand, courts/tribunals themselves set up expert committees on occasion. These committees are 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 concerned parties. Allowing for objections to be raised and considered makes the process fair and participatory for all stakeholders.*

ii. Similarly in another very recent case in **Messrs. Triveni Engineering and Industries v. State of U.P., 2025 INSC 1060,** Supreme Court again reiterated and held against basing the decision on recommendation report of administrative committee in absence of principles of natural justice :it was held that :

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

iii. Further, in **Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey, 2023 (8) SCC 35** it has been held :

"15. A reading of the above, clearly indicates that the NGT is a judicial body and therefore exercises adjudicatory function. The very nature of an adjudicatory function would carry with it the requirement that principles of natural justice are complied with, particularly when there is an adversarial system of hearing of the cases before the Tribunal or for that matter before the Courts in India. The NGT though is a special adjudicatory body constituted by an Act of Parliament, nevertheless, the discharge of its function must be in accordance with law which would also include compliance with the principles of natural justice as envisaged in Section 19(1) of the Act.

16. In this context, it would be useful to refer to what is known as the `official notice' doctrine, which is a device used in administrative procedure. Although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence, nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. ***The data on which an authority is acting must be apprised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies****. This has been explained by Schwartz in his work on Administrative Law. The aforesaid doctrine applies with greater force to a judicial / adjudicatory body.*

Therefore, applying the aforesaid principle to the cases that come up before the NGT, if the NGT intends to rely upon an expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and rebuttal. ***Thus, factual information which comes to the knowledge of NGT on the basis of the report of the Committee constituted by it, if to be relied upon by the NGT, then, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to the Tribunal****.*

17. ***It is needless to observe that the experts' opinion is only by way of assistance in arriving at a final conclusion. But we find that in the instant case the report of the expert Committee as well as the recommendations have been made the basis of the directions and such an approach is improper.***

18. We have perused the impugned order of the NGT and particularly paragraph `16' which has been extracted above. It is apparent that the appellant(s) herein who were respondents before the NGT were not given an opportunity to file their objections to the recommendations made by the Committee constituted by the NGT which is apparent by the fact that the recommendations were uploaded on 15.01.2022 and the final order of the NGT was passed three days later on, i.e. 18.01.2022. Thus, this is a clear case of there being non compliance with the principles of natural justice……"

D. Impugned direction passed by Respondent in absence of any Rules are illegal.

1. The impugned directions are passed by the Respondent in exercise of power u/s 33A of Water Act and 31A of Air Act. There is no power with the Respondent to pass any order of penalty imposing environment compensation upon Appellants. However, Respondent do have power to impose restitutionary and compensatory damages.

2. In **Delhi Pollution Control Committee v. Lodhi Proprty Co. Ltd., 2025 INSC 923** the Supreme Court has upheld the power to impose compensatory damages. But the said power can only be exercised in accordance with sub-ordinate legislation as framed. As held in para 33-35 and 39(c) [quoted above in C(1)(iv)]. The operative part of the judgement held:

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."

3. Thus, the impugned order being passed in absence of any sub-ordinate legislation specifying the mode, manner and methodology of imposing and collecting the compensation is illegal.

E. <u>Imposition of environment damage upon appellant not final. High Court order dated 06.08.2021 and Supreme Court order dated does not confirms the imposition of penalty upon the Appellants.</u>

1. Subsequent to the report of joint committee dated 12.04.2019 the Respondent issued direction dated 11.09.2019 **(page 95-96)** to deposit interim environment compensation to 606 ceramic units.

2. The said order was challenged before the High Court in batch of WPs by units. By order dated 30.01.2020 **(page 281 -303)** high Court granted ad interim stay.

3. Thereafter, on 06.08.2021 batch was listed for consideration on deposit of interim environment compensation. The order dated 06.08.2021 **(page 304- 353)** is an interim order whereby High Court allowed the Respondent to recover 25% of the interim environment damages and the batch was kept for final hearing. The order dated 06.08.2021 in effect modified the order dated 30.01.2020 granting ad interim stay of entire amount.

4. The order dated 06.08.2021 were challenged before the Supreme Court by some units. By order dated 29.10.2021 (page 354-355) the SLPs were dismissed observing that :

"***The order impugned, is an <u>interim order</u> passed by the High Court*** *pending disposal of the writ petitions. In view of the recommendations made by the committee stating that there is a need for immediate action for site remediation for short term plan, the High Court has ordered depositing of only 25% of the amount stipulated in the notices. <u>If the appellant/petitioner(s) have any objection to the notices issued, they can as well raise their objections before the High Court. As such, we do not find any good ground to interfere with the impugned order, which is passed as an interim measure pending disposal of the petitions, based on the recommendations of the committee.</u>"*

It is needless to observe that if any of the appellant(s)/petitioner(s) dispute their liability, it is open for them to raise objection by way of counter affidavits before the High Court."

5. By order dated 29.10.2021 the Supreme Court did not confirm the directions issued imposign interim environment damages. On the contrary the Petitioner-units before the Supreme Court were granted opportunity to raise grievances in pending writ before High Court including right to raise objection to the liability.

6. By order dated 08.01.2025 the High Court finally heard and decided the batch of the petitions. The Petitioner units before the High Court, as per the direction and liberty granted by Supreme Court, raised a challenge to their liabilty to environment damage compensation as well as the quantification by oversight committee which is recorded by High Court in **para 15 & 16, page 409.**

7. The High Court disposed of the writ petitions observing in **para 18, 21 and 23, page 411-413** that the report being filed on order of NGT, it was not perimissible for High Court to sit over it, hence, the parties were direction to approach this Tribunal, leaving all the issues open to challege. The High Court held :

> 18. Taking note of the directions issued by the NGT in the above noted paragraphs of the order dated 06.03.2019, we find that all the issues sought to be raised before us regarding the correctness of the report of the Oversight Committee can only be raised by the petitioners before the NGT. However, it is open for the petitioners to avail any other alternative remedy if available in law, inasmuch as, it is not permissible for this Court to sit over the report of the Oversight Committee as a Court of appeal, which has been constituted by the NGT while directing the GPCB to close all coal gasifier industries and units operating with the help of coal gasifiers and to initiate fresh steps for prosecution of the industries, which have operated in violation of law and recover compensation for causing damages to the environment and public health.
>
> 21. **In view of the above, we dispose of all the writ petitions with the observations and directions that we have not entered into the merits of the claim of any of the petitioners herein about their liability towards compensation or the issues pertaining to the quantum of damages computed by the Oversight Committee. It is open for the petitioners to avail appropriate remedy available in law.**
>
> 23. **All the issues agitated before us are left open, to be raised before the NGT or any other competent authority, as maybe advised.** "

8. Pursuant to the order of the High Court the impugned directions were passed on 01.05.2025 without any opportunity of hearing or show cause notice, while the Appellants were in midst of taking legal opinion to proceed before the Tribunal. Hence, the Appeal is filed challenging

the report dated 12.04.2019, order dated 11.09.2019, oversignt committee report dated 20.12.2024 and impugned direction dated 01.05.2025.

9. This Tribunal, however, issued notice only in respect of impugned directions dated 01.05.2025 as the order order and report were beyond the statutory limitation period.

10. Hence, the argument on behalf of the Respondent that the issue of compensation has attained finality upto Supreme Court is false and misleading.

11. It is trite law that an interim order merges with the final order once it is passed. In this respect the Supreme Court has held in case of **State of Assam v. Barak Upatyaka D.U. Karmchari Snasthan, 2009 (5) SCC 694** that interim order is not final and reasons assigned there are only tentative.

> 9. We have carefully examined the said two decisions. The two decisions are interim orders made in a writ petition under Article 32 of the Constitution. The said orders have not finally decided the issues/questions raised, nor laid down by any principle of law….."
>
> 10. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either in fructuous or a fait accompli before the final hearing. ……"

12. In **Prem Chandra Agarwal v. U.P. Financial Corporation, 2009 (11) SCC 479** the Supreme Court has held that once final order is passed the interim order merges with the final order and cease to exist and the direction issued in interim order also cease to exist.

F. <u>Impugned directions issued contrary to record, arbitrary and patently illegal.</u>

1. The entire exercise of Respondent in issuing impugned directions is patently illegal being unilateral, arbitrary and perverse. The record itself shows that the joint committee report is not reliable as no actual site inspection or verification is carried out.

2. As per the three member committee report dated 12.04.2019 at **page 97 @ 104,** Respondent- GOCB Morbi Unit and GOCB HQ Gandhinagar Staff carried out inspection of 952 units between 13.03.2019 to 31.03.2019. Where allegedly it found 568 units having gasifier which were closed down. Arbitrariness in exercise is evident from fact that in **para 8 at page 206** of the reply it is admitted that notices for payment of interim environment damages were issued to 606 units located in Morbi. There is no explanation that when once it is stated in report that out of 952 units 568 ceramic units were using coal, then on what basis directions were issued to 606 units.

3. The report does not mention any notice or any information being given to the Appellants. No document in support that alleged inspection carried out in presence of the Appellants. Annexures 1 to 4 appended to the said report merely shows a few contaminated sites while as per report it visited 952 units while of which 568 ceramic were using coal. It may be necessary to point out that there were more than 1600 units functioning at the relevant time.

4. Page 260 of the report provides contaminated sites with wastewater, wherein only 9 places are shown. The said sites cannot be attributed to appellants alone in absence of any specific determination in this respect. Further, a few of the photographs does not substantiated the imposition of environment damages upon Appellant.

5. Again, falsity is evident from fact that in report dated 12.04.2019 it is mentioned that it was GPCB which visited the 952 units during the period from 13.03.2019 to 31.03.2019. However, in reply at **page 202, Pr. 6** it is mentioned that inspection and site visit was done by three member joint committee. Clearly, the actual site inspection was never carried out and, therefore, no notice was issued to the Appellants. The report of joint committee and consequential direction thereon are, therefore, patently illegal.

6. In view of the alleged environment damage to the region, joint committee in its report did not specifically pointed out any particular unit or industry for environmental damage but held every unit in region liable for compensation and recommended in **para 7.7 at page 111** that:

> *"(7) All polluting industrial units (**ceramic with or without having gasifier**, **sanitary wares, body clay manufacturing, textile, paper and other industries)**, in the area would be liable to pay compensation, which would be derived at once the cost of damage and restoration is available, based on the detailed study by expert agency. GPCB should identify all such industries and make them liable for compensation"*

7. In light of the recommendation of the joint committee as above quoted there is no reason or explanation given by Respondent on what basis it proceeded only against the ceramic units, singling out only 606 ceramic units. Respondent applying the principle of "polluter pays" cannot absolve some and hold liable some for the environmental damage.

8. In para 1-16 of the impugned order at page 35-36 the Respondent has given a misleading description of back history of the issue. From Para 14-18 of the impugned order at page 37 the Respondent only mentioned regarding the compliance of the direction of oversight committee. No reason to arrive at conclusion of liability of the Appellant has been given.

9. Going by the principle of polluter pays the observation of the High Court in interim order dated 06.08.2021 are relevant that :

> "21…..As noted above, each and every unit at Morbi is responsible for causing environmental damage…"

10. Therefore, the impugned direction issued by Respondent against a handful of units/ industries without any determination of violation of part of Appellant, while Respondent itself admitted as part of joint committee that all industries in region is responsible for environmental damage, is arbitrary and illegal.

11. In **Delhi Pollution Control Committee v. Lodhi Proprty Co. Ltd., 2025 INSC 923** the Supreme Court has held that even in case of polluter pays the board is required to make determination of environment damage by erring entiry the damages can be imposed:

> *"30. The Board's powers under Section 33A of the Water Act and Section 31A of the Air Act have to be read in light of the legal position on the application of Polluter Pays principle as formulated and explained. This means that State Board cannot impose environmental damages in case of every contravention or offence under the Water Act and Air Act. It is only when the State Board has made a determination that some form of environmental damage or harm has been caused by the erring entity, or the same is so imminent, that the State Board must initiate action under Section 33A of the Water Act and Section 31A of the Air Act."*

12. Impugned directions are further illegal as out of all Appellants before the Tribunal, 77 units are lying closed as per the own data of Respondent. One Suzuki Ceramic *(Appeal No. 464 of 2025)* is closed since 31.03.2015 and did not used coal gasifier, Atlas Ceramic *(Appeal*

No. 314 of 2025) closed since 01.12.2016, Sagway Ceramics *(Appeal No. 302)* closed since 1.07.2018 and Leo Ceramic *(Appeal No. 418 of 2025*) closed since 01.04.2018. While as many as 7 were closed in year 2019 only *(Appeals No. 315, 344, 382, 427, 454, 477 and 542 of 2025)*.

13. Apart from the above units which have closed down, there are 23 units which did not even used the coal gasifier and were running of fuel other than coal, i.e., PNG/LNG, still they have been issued directions u/s 33A and 31A imposing environmental compensation.

Sl. No.	Appellants	Appeal No. ____of 2025
1	Suzuki Ceramic	464
2	Amora Tiles Pvt Ltd	235
3	Senis Ceramic Pvt Ltd	241
4	New Royal Ceramic	245
5	Rotto Ceramic Llp	246
6	Itacon Granito Pvt Ltd	251
7	Siyaram Vitrified Pvt Ltd	254
8	Jaydeep Industries	265
9	Simpolo Vitrified Pvt Ltd	266
10	Sega Ceramics Private Limited	285
11	Acer Granito Pvt Ltd	329
12	Commander Vitrified Pvt Ltd	366
13	Theos Tiles Llp	424
14	Finomax Ceramic	445
15	Nobel Wall Tiles	473
16	Laxveer Ceramic Llp	485
17	Monarch Ceramic	498
18	Sunglare Vitrified Pvt Ltd	499
19	Renite Vitrified Pvt Ltd	501
21	Famous Vitrified Pvt Ltd	507
22	Irish Ceramic	565
23	Apple Tiles Pvt Ltd	579

14. Lastly, the many of the Appellants have operated on electricity or on gas, inspit oe having the CTE and CTO for coal gasifier. Thus, merely possession of gasifier on basis of CTE and CTO cannot form basis for impsing penalty on principles of “polluter pays”. The impugned order is, therefore, liable to be set aside.

Submitted by :

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