

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

**APPEAL NO. 14/2020
(I.A. No. 219/2020, I.A. No. 126/2022,
I.A. No. 205/2022 and I.A. No. 206/2022)**

IN THE MATTER OF:

Chandni Chemicals Pvt. Ltd.

Having its registered office at 24-Y-1
Deoki Nagar Yashoda Nagar Kanpur, Uttar Pradesh,
through its Director and Authorized
Representative Anil Kumar Tiwari

...Appellant

Versus

Uttar Pradesh Pollution Control Board

Through its Secretary,
Building No. TC-12V, Vibhuti Khand, Gomti Nagar,
Lucknow, Uttar Pradesh-226010

...Respondents

Counsel for Appellant:

Mr. Santhosh Krishnan and Mr. Aniruddha Deshmukh, Advocates

Counsel for Respondent(s):

Mr. Pradeep Mishra and Mr. Daleep Dhyani, Advocates for UPPCB

For Applicant in I.A. Nos. 205-206/2022:

Mr. Abhishek Yadav, Advocate

PRESENT:

**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

**Reserved on: September 23, 2022
Pronounced on: December 05, 2022**

SYNOPSIS

Documents	Para No.	Page No.
Facts as stated in Memo of Appeal	2-17	2-13
Tribunal's order dated 10.07.2020	18	13
Reply dated 02.12.2020 filed by UPPCB	19-25	13-23
Tribunal's order dated 04.01.2021	26-27	23-24
Tribunal's order dated 24.08.2021	28	24-25
Report dated 30.09.2021 filed by UPPCB	29-30	25-26
IA 201/2021 with objections filed by appellant to report dated 30.09.2021	31-35	26-29

Tribunal's order dated 12.11.2021	36	29
Compliance report dated 28.07.2022 filed on 01.08.2022	37-39	30-35
Documents appended to the report dated 28.07.2022	40-43	35-37
Objections of appellant filed on 18.08.2022 to the report dated 28.07.2022/01.08.2022	44	37-43
Documents appended with objections of appellant dated 18.08.2022	45-48	44-47
Arguments	50-54	47-49
Issues	55	49-50
Issue I	56-77	50-58
Issue II	78-95	58-65
Issue III	96-98	66-67
Issue IV	99-138	67-85
Issue V	139-177	86-119
Issues VI and VIII	178-179	119
Issue VII	180-209	119-130
Offence under Prevention of Money Laundering Act, 2002	181-207	120-130
Operative part	210-212	130-131

JUDGMENT

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

1. This is an Appeal under Section 18(1) read with Section 16(c) of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') filed by M/s. Chandni Chemicals Pvt. Ltd. (hereinafter referred to as '**Appellant**') assailing order dated 28.05.2020 issued by Regional Officer, Uttar Pradesh Pollution Control Board, Kanpur Dehat (hereinafter referred to as '**RO UPPCB**') demanding a sum of Rs. 39,98,57,850/- towards environmental compensation. Appellant is charged for causing contamination of groundwater and soil by dumping industrial waste containing chromium which is highly hazardous and cause serious damage to environment affecting health of the people residing in nearby area.

Facts as stated in Memo of Appeal:

2. Appellant is a private limited company incorporated on 22.03.1994 with the Registrar of Companies, Kanpur. Company was engaged in operation of Chromium based chemical factory, for manufacturing Basic Chrome Sulphate (hereinafter referred to as '**BCS**'), and Sodium

Dichromate. No Objection Certificate (hereinafter referred to as '**NOC**') (in fact, it is a Consent To Establish) under Water (Prevention and Control of Pollution) Act 1974 (hereinafter referred to as '**Water Act 1974**') was issued by UP Pollution Control Board (hereinafter referred to as '**UPPCB**') vide certificate dated 12.08.1999, wherein details of the products and raw materials were given as under:

- Basic Chrome Sulphate-50 MT/Month
- Sodium Dichromate-25 MT/Month

➤ **Basic Raw Material**

- Chromite Ore- 2.0 MT/Day
- Soda Ash/Caustic-0.8 MT/Day
- Sulphuric Acid-0.8 MT/Day
- Molasis-0.2 MT/Day

3. The fuel, to be used in the process, mentioned in NOC issued by UPPCB, were as under:

- (i) Coal-2.0 MT/Day
- (ii) Rice Husk-2.0 MT/Day
- (iii) Diesel- 250 Liters/Day (for Generator)

4. Various conditions were imposed by UPPCB in the aforesaid NOC i.e., Consent to Establish (hereinafter referred to as '**CTE**') which we may refer later as and when the occasion would arise.

5. Appellant claimed of dumping Chromium waste, generated in the factory premises under RCC proof dumpsite, within the factory premises. Proceedings under Section 133, Code of Criminal Procedure (hereinafter referred to as '**Cr.P.C.**') were initiated alleging that appellant was dumping hazardous waste and discharging effluent on a public land. The proceedings were conducted before Sub Divisional Magistrate, Fatehpur,

Kanpur Dehat registered as case No. 27. The said proceedings were closed vide order dated 15.06.2002 wherein a finding was recorded that appellant was dumping hazardous waste inside the factory premises; industrial effluent was also being treated at the treatment plant installed in the factory and treated water was being reused in the factory premises.

6. UPPCB, on its own, handed over infrastructural facility constructed by a society comprising various industries, to M/s. Bharat Oil and Waste Management, for lifting and disposal of chrome waste stored/dumped at village Khanchadrapur, Rania, Kanpur Dehat, but no such disposal actually took place. Appellant unit seized operations of industrial unit on 07.02.2005, pursuant to closure notice dated 07.02.2005, issued by a Committee comprising officials of UPPCB and Sub Division Magistrate, Kanpur Dehat, in purported exercise of power under Hazardous Wastes (Management & Handling) Rules, 1989 (hereinafter referred to as '**HWMH Rules, 1989**'). It was alleged in closure notice that appellant had violated provisions of HWMH Rules, 1989 read with Section 5 of Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act, 1986**').

7. There was a matter pending before Tribunal regarding Pollution of River Ganga, i.e., **OA No. 200/2014 M.C. Mehta vs. Union of India & Others**, wherein, on 22.08.2019, Tribunal passed a detailed order on the subject of prevention and remediation of pollution in river Ganga. The extract of order relevant for the purpose of the present appeal, as quoted in Para 4(viii) of the memo of appeal, reads as under:

“Chromium dump has been stored since 1976 which is required to be shifted to TSDF. The State of Uttar Pradesh may undertake health survey of the area and ensure shifting of the Chromium dumps within three months failing which it would be liable to pay environmental compensation of Rs. 10 lakhs per month to CPCB besides furnishing performance guarantee of Rs. 1 Crore to CPCB.”

8. Appellant was not a party to the proceedings in the **OA No. 200/2014 (supra)**.

9. Two *suo- moto* cases were registered by this Tribunal on 27.09.2019 being **OA No. 985/2019, In Re: Water Pollution by Tanneries at Jajmau, Kanpur, Uttar Pradesh** and **OA No. 986/2019, In Re: Water Pollution at Rania, Kanpur Dehat & Rakhi Mandi, Kanpur Nagar, Uttar Pradesh**. Order dated 27.09.2019 passed in **OA No. 985/2019, (supra)** and **OA No. 986/2019, (supra)** shows that the cases were registered in view of reports dated 25.09.2019 and 26.09.2019 submitted by a Committee headed by Justice Arun Tandon (Former Judge of Allahabad High Court). The above Committee was constituted vide order dated 06.08.2018 passed in **OA No. 200/2014 (supra)** to oversee compliance of Tribunal's orders for control of pollution in River Ganga. UPPCB issued notice dated 24.10.2019, alleging that appellant has illegally dumped Chromium waste at village Khanchadrapur, Rania, Kanpur Dehat causing ground water contamination, hence liable for imposition of environmental compensation. It proposed compensation of Rs. 39,98,57,850/-. The relevant extract of notice dated 24.10.2019 is as under:

“कृपया मा० एन०जी०टी० में विचाराधीन ओ०ए० सं०-200/2014 एम०सी० मेहता बनाम यूनियन ऑफ इण्डिया व अन्य में पारित आदेश दिनांक 07.08.2019 के संसुगत अंश निम्नवत हैं –

“... vii) Other directions including displaying water quality data in public domain and at prominent places, development of bio-diversity parks, prohibition of river bed mining, remediation of chromium dumpsites in Uttar Pradesh, collection of compensation from violators and involvement of society including religious, charitable, social and educational institutions for preventing and remedying pollution of River Ganga.....”

मा० न्यायमूर्ति श्री अरुण टण्डन अध्यक्ष मॉनीटरिंग कमेटी द्वारा दिनांक 08.08.2019 को ओ०ए० सं० 200/2014 में पारित आदेश के अनुपालन की समीक्षा बैठक में निम्न निर्देश दिये गये हैं –

“It was directed that progress of removal of chromium from dump site at Rania be reported in the next meeting. The committee directed CPCB to issue notice for levy of Environmental Compensation

to the industries which have caused and are causing damage to the environment.”

मा0 राष्ट्रीय हरित अधिकरण, नई दिल्ली द्वारा ओ0ए0 सं0-985/2019 एवं ओ0ए0 संख्या 986/2019 में दिनांक 27.09.2019 को पारित आदेश के अनुपालन में शासन स्तर पर सम्पन्न बैठक दिनांक 17.10.2019 को समीक्षा के दौरान दिये गये निर्देश के अनुसार “जिन उद्योगों द्वारा अपना क्रोमियम वेस्ट उमरन, प्रसिद्धपुर एवं ग्राम खानचन्द्रपुर, जनपद कानपुर देहात में अवैद्य रूप से डम्प किया गया है, के विरुद्ध Polluter Pays Principle के आधार पर पर्यावरणीय क्षतिपूर्ति अधिरोपित कर वसूली की कार्यवाही की जाये।”

उक्त निर्देश के अनुक्रम में क्षेत्रीय कार्यालय, कानपुर देहात के पत्रांक 1515/आर-130/2019 दिनांक 22.10.2019 द्वारा प्राप्त आख्यानुसार रनियाँ, कानपुर देहात के अन्तर्गत ग्राम-खानचन्द्रपुर, उमरन, फतेहपुर रोशनाई के आर्यनगर, राजेन्द्र नगर चौराहा एवं ग्राम-चिरौरा का भूगर्भीय जल अवैद्य रूप से डम्प हैक्सावैलेन्ट क्रोमियम से प्रदूषित हुआ है। मैसर्स चॉदनी केमिकल्स प्रा0 लि0, खानचन्द्रपुर रनिया, कानपुर देहात जिसकी उत्पादन क्षमता 3 एमटीडी थी, के द्वारा उत्पादन अवधि के दौरान उद्योग से जनित हेक्सावैलेन्ट क्रोमियम युक्त परिसंकटमय अपशिष्ट का असुरक्षित ढंग से भण्डारण/डम्प किया गया है। अवैद्य रूप से भण्डारित कुल परिसंकटमय अपशिष्ट 62225 एमटी में आपके उद्योग का 14.28 प्रतिशत योगदान है।

केन्द्रीय प्रदूषण नियंत्रण बोर्ड, दिल्ली द्वारा परिसंकटमय एवं अन्य अपशिष्ट (प्रबंधन एवं सीमापार संचालन) नियम, 2016 के प्राविधानों का उल्लंघन किये जाने के परिप्रेक्ष्य में पर्यावरणीय क्षतिपूर्ति आंकलित किये जाने के संबंध में गाईडलाइन जारी की गयी है, जिसमें निम्न प्राविधान है :

$$\text{Environmental Compensation (EC)} = Q \times \text{ERF} \times R$$

Where
Q is noticed or observed quantity (in tonne) of hazardous or other wastes which have not been managed in compliance with various provisions of the Acts/Rules/Guidelines/conditions of the authorisation/directions issued by CPCB/SPCB/PCC/MoEF&CC (barring procedural violations which have not caused environmental damage)

ERF = Environmental Risk Factor which is a number (as given in Table 1 below) denoting the increasing degree of risk to the environmental and human health due to the scenarios as given in the table:

S. No.	Violation	ERF	
		For Hazardous Waste	For Other Waste*
1.	When hazardous and other wastes is disposed at unauthorised place or handed over or sold to unauthorised party	1.5	0.3
2.	When treatment has not been imparted, as required, but only partial treatment has been given (TSDF/Actual user)	1.0	0.2
3.	When product (derived from hazardous or other waste is not confirming to prescribed specification or is specified for restricted used but sold in open market against (in case of actual user)	1.0	0.2
4.	Wastes found stored beyond the stipulated period (refer Rule 8 of the HOWM Rules, 2008)	0.1	0.05

R = Environmental Compensation factor, which may be taken as Rs.30,000.

उक्त के अनुसार की गई गणना के आधार पर आपके उद्योग के विरुद्ध रुपये 39,98,57,850/— की पर्यावरणीय क्षतिपूर्ति आंकलित की गई है।

अतः उपरोक्त परिप्रेक्ष्य में आपको निर्देशित किया जाता है कि 15 दिन के अंदर उपरोक्त के संबंध में स्थिति स्पष्ट करते हुए अपना प्रतिउत्तर क्षेत्रीय कार्यालय एवं बोर्ड मुख्यालय, लखनऊ में प्रेषित किया जाना सुनिश्चित करें। कृपया नोट करें कि उक्त नोटिस में प्रदत्त 15 दिन की समयावधि में प्रतिउत्तर न प्राप्त होने अथवा संतोषजनक प्रतिउत्तर न होने की स्थिति में Polluter Pays Principle के आधार पर इकाई द्वारा संचालन के दौरान जनित वेस्ट को उक्त स्थल पर डम्प किये जाने के दृष्टिगत इकाई पर एवं इकाई के उत्तरदायी व्यक्तियों पर आंकलित की गई रुपये 39,98,57,850/— की पर्यावरणीय क्षतिपूर्ति अधिरोपित कर दी जायेगी, जिसका सम्पूर्ण उत्तरदायित्व उद्योग के उत्तरदायी व्यक्तियों का होगा।”

“That the relevant portion of the Order dated 07.08.2019 passed in O.A. No.200/2014 passed by the Hon’ble N.G.T. in the matter of M.C. Mehta Versus Union of India and others, is as follows:

“.... vii) Other directions including displaying water quality data in public domain and at prominent places, development of bio-diversity parks, prohibition of river bed mining, remediation of chromium dumpsites in Uttar Pradesh, collection of compensation from violators and involvement of society including religious, charitable, social and educational institutions for preventing and remedying pollution of River Ganga.....”

That the following directions were issued during the Review Meeting in compliance of order dated 08.08.2019 passed in O.A. No. 200/2014 by the Monitoring Committee lead by Hon’ble Justice Mr. Arun Tandon:-

“It was directed that progress of removal of chromium from dump site at Rania be reported in the next meeting. The committee directed CPCB to issue notice for levy of Environmental Compensation to the industries which have caused and are causing damage to the environment.”

That in compliance of Order dated 27.09.2019 passed in O.A. No.985/2019 and O.A. No.986/2019 by the Hon’ble National Green Tribunal, New Delhi, the directions were issued by the Review Committee in its meeting held on 17.10.2019 at state level that the Industries who have illegally dumped their Chromium Waste in Umran, Prasadhpur and Village Khanchandpur, District Kanpur Dehat, on them the fine for environmental compensation loss shall be imposed and its recovery shall be made from them on the basis of Polluter Pays Principle.

That in compliance of the aforesaid directions, in accordance with the report received from the Regional Office, Kanpur Dehat vide its Letter No.1515/R-130/2019 dated 22.10.2019, the Ground Water have been polluted in Village Kanchander Pur, Umran, which falls under Rania, Kanpur Dehat and Village Arya Nangar, Rajender Nagar Chauraha and Village Chirora under Fatehpur Roshnai due to illegal dumping of Hexavalent Chromium. M/s Hilger Chemi Pvt. Ltd. Village Chirora Raipur, Khanchandpur Rania, Kanpur Dehat, whose production capacity was 4.0 MTD which have done illegal storage/dumping of Hazardous Waste containing Hexavalent Chromium during the period of their production in a unsecured

manner. That out of total 62225 MT illegally stored Hazardous Waste, the contribution of your factory is 19.05 percent.

That the Central Pollution Control Board, Delhi have issued the guidelines for calculation of environmental compensation in accordance with the provisions of the Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016, wherein the following provisions have been laid down: -]

$$\text{Environmental Compensation (EC)} = Q \times \text{ERF} \times R$$

Where

Q is noticed or observed quantity (in tonne) of hazardous or other wastes which have not been managed in compliance with various provisions of the Acts/Rules/Guidelines/conditions of the authorisation/directions issued by CPCB/SPCB/PCC/MoEF&CC (barring procedural violations which have not caused environmental damage)

ERF = Environmental Risk Factor which is a number (as given in Table 1 below) denoting the increasing degree of risk to the environmental and human health due to the scenarios as given in the table:

S. No.	Violation	ERF	
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2.	When treatment has not been imparted, as required, but only partial treatment has been given (TSDF/Actual user)	1.0	0.2
3.	When product (derived from hazardous or other waste is not confirming to prescribed specification or is specified for restricted used but sold in open market against (in case of actual user)	1.0	0.2
4.	Wastes found stored beyond the stipulated period (refer Rule 8 of the HOWM Rules, 2008)	0.1	0.05

R = Environmental Compensation factor, which may be taken as **Rs.30,000**.

That **after doing calculation in the abovementioned manner the total environmental loss of Rs.39,98,57,850/- has been calculated against your factory.**

Therefore, in view of the abovementioned circumstances, you are hereby directed to clarify the above situation within 15 days and submit your reply before the Regional Office and Board Headquarters, Lucknow. Kindly note, in the event of not receiving any reply or satisfactory reply in this regard within a period of 15 days, then the

fine of Rs.39,98,57,850/- will be imposed as environmental compensation on the basis of Polluter Pays Principle against the factory and the employees of the factory for dumping the waste produced during the operation of factory at the abovementioned place.”

(English translation by Tribunal)

10. No reply was filed by appellant. Representatives of some other units met with Chief Environmental Officer, UPPCB on 01.11.2019 and they were given impression that the matter is under consideration and personal hearing will be accorded before taking any final decision. However, final order was passed on 19.11.2019 (Annexure A/11, page 128 of paper book) reiterating demand of Rs. 39,98,57,850/- as environmental compensation. Appellant was directed to pay the aforesaid amount of compensation within 15 days.

11. Thereafter, appellant filed a protest letter (Annexure A/12, page 135 of paper book) dated 09.12.2019 to Member Secretary, UPPCB. It was stated that total quantity of alleged Chromium dump, said to have occurred between 1976 to 2019; only 6 companies were held responsible for the same which is a misleading report of UPPCB; appellant company commenced its operation in 1999 and stopped operation in February 2005; appellant had in-house pucca dump site within factory premises for storing its waste products which contained only 0.1% to 0.5% Chromium; about more than 24 Chromium based factories had operated between 1976 to 2019 which were producing BCS waste in the area under Regional Office of Kanpur Dehat and Kanpur Nagar; an alternative site for dumping of waste was requested to be assigned by UPPCB which it failed, therefore, on a private site several Chromium factories (about 24), both from Kanpur Nagar and Kanpur Dehat, were dumping Chromium waste and **appellant company also dumped its waste on the said site.**

12. A list of such industries containing only 23 names is given along with the said representation naming the following units.

- i.) Cerulean Chemicals Pvt. Ltd., Rania, Kanpur Dehat
- ii.) Waris Chemicals Pvt. Ltd., Rania, Kanpur Dehat
- iii.) Hielger Chemicals Pvt. Ltd., Rania, Kanpur Dehat
- iv.) Rukmini Chemicals Pvt. Ltd., Rania, Kanpur Dehat
- v.) Chandni Chemicals Pvt. Ltd., Rania, Kanpur Dehat
- vi.) Amelia Textiles & Chemicals Pvt. Ltd., Rania, Kanpur Dehat
- vii.) Unichem (India), Chaubepur, **Kanpur**
- viii.) Khanna Vivek Chemicals Pvt. Ltd., Panki, **Kanpur**
- ix.) Kalina Chemicals Pvt. Ltd., Chaubepur , **Kanpur**
- x.) Supreme Chemicals, **Unnao**
- xi.) Wood Burn Chemicals Ltd., **Unnao**
- xii.) Indian Chemical Corp., Jajmau, **Kanpur**
- xiii.) Kanpur Chemical Works, Anwarganj, **Kanpur**
- xiv.) Prahlad Rai Chemicals, Near Juhi, Rakhi Mandi **Kanpur**
- xv.) Dinkar Chemicals Pvt. Ltd., Fazal Ganj, **Kanpur**
- xvi.) Solar Chemicals Pvt. Ltd., Fazal Ganj, **Kanpur**
- xvii.) Madhuchandra Techno Chem Pvt. Ltd, Chaudagra, **Fatehpur**
- xviii.) KU Chemicals, Fatehpur Roshnai, Rania, Kanpur Dehat
- xix.) Bharat Chemicals, Akrapur, **Unnao**
- xx.) RC Chemicals, Akrapur, **Unnao**
- xxi.) Shimco Chemicals Pvt. Ltd., **Unnao**
- xxii.) Prime Chemicals, **Unnao**
- xxiii.) SC Manufacturers, **Unnao**

13. In the above list, **8 industries of KANPUR, 8 industries of UNNAO and 1 industry of FATEHPUR** are mentioned. Only **6 industries of KANPUR DEHAT** including appellant are mentioned.

14. Appellant further said that State of UP had allotted 10.5 hectares of land to UPPCB at village Kumbhi, Kanpur Dehat for developing Common Secured Landfill Facility (hereinafter referred to as '**CSLF**') in the year 1994 and it was responsibility of UPPCB to develop the said landfill site for the industries situated at Kanpur Dehat and Kanpur Nagar but it failed to do so; in 2003, a society was formed on the advice of UPPCB by various Chromium based factories and other factories of Kanpur Nagar and Kanpur Dehat, including appellant in the name of 'Kanpur Pradooshan Niyantaran Samiti' (hereinafter referred to as '**KPNS**') to develop and construct CSLF for the purposes of providing secured location to dump chromium waste for various manufacturing units operating in the two districts; vide lease deed dated 11.03.2003, 3 hectares of land was allotted to the said society i.e., KPNS, for the purposes of developing CSLF; with the contribution of members of the society as well as the amount received from National Highway Authority of India as aid, CSLF was completed by KPNS in 2005 and intimation was given to UPPCB vide letter dated 30.09.2005; however, permission for its operation was not granted and instead, a closure notice was issued UPPCB on 07.02.2005; appellant unit did not operate thereafter; CSLF site, constructed by society, was also taken over by UPPCB and as per information to appellant, the same was handed over to M/s. Bharat Oil & Waste Management, Kumbhi, Kanpur Dehat for its operation; **neither the dump including Chromium lying in the private local site was shifted by UPPCB nor it permitted appellant company or any other member of KPNS to shift the said dump to constructed CSLF; leachate percolation, seepage and contamination of Chromium from the aforesaid private site dump is solely due to inaction on the part of UPPCB** and delay in construction of the said CSLF which was allotted in 1994 is also attributable to UPPCB; appellant also

came to know that an oil refinery named Laxmi Oils is putting its water effluent underground by reverse boring as such there is not only Chromium in the underground contamination but also oil waste and other chemicals; singling out only 6 factories including appellant's is non-understandable and arbitrary; a letter dated 01.04.2009 was written by Member Secretary, UPPCB to Member Secretary CPCB, informing that as per study report of IITR, total BCS waste lying on the questioned site was around 45,000 MT while in the notice dated 19.11.2019 issued by UPPCB, quantity of BCS waste lying on the questioned site was mentioned as 62225 MT; not only the appellant but other 5 companies have also closed their operations in February 2005; appellant's factory itself has been dismantled and there is no question of any additional dumping of BCS waste at questioned site by appellant; the entire exercise on the part of UPPCB shows its mala fide and malice; it is also not clear as to how only 6 factories have been singled out by UPPCB for responsibility and liability; total assets of the company, as per returns, is only to the tune of only Rs. 50 lakhs as such the huge amount of compensation is beyond its capacity of payment; and entire exercise is wrongful and illegal, in violation of the principles of natural justice and against law.

15. Protest petition was not paid any heed and instead, it appears that recovery proceedings were initiated and citation dated 08.01.2020 was issued by RO UPPCB to Tehsildar under provisions of UP Revenue Code, 2006 for recovery of Rs. 39,98,57,850/- as arrears of land revenue from appellant. Consequently, appellant challenged order dated 19.11.2019 before this Tribunal in **OA 18/2020, Chandni Chemicals Pvt. Ltd. vs. UPPCB & Others** which was disposed of vide order dated 28.01.2020, passing following order:

"Grievance in these applications is against orders of the Uttar Pradesh State PCB assessing compensation on Polluter Pays' principle for

violation of law. Though these applications under Section 14 of the NGT Act, 2010 are not maintainable, we have treated the same to be appeal under Section 16 of the NGT Act, 2010.

According to the applicants, their units were not in operation at the relevant time and did not dump the hazardous waste for which they are held liable. This fact could not be pointed out as opportunity of hearing was not given.

*Without expressing any opinion on merits, we direct that the impugned orders may be treated as a proposal with reference to which the applicants may furnish their response to the UP State PCB within two weeks. The **UP State PCB may consider the objections of the applicants and pass an appropriate order within four weeks thereafter dealing with the matter on merits, in accordance with law.***

The application is disposed of.”

16. Pursuant to the liberty granted by this Tribunal vide order dated 28.01.2020, appellant filed representation dated 10.02.2020 (Annexure A/17 at page 176 to Memo of Appeal). In the said representation, besides legal arguments, the facts as stated in the protest letter, were reiterated.

17. Without giving any further opportunity or without making any query etc., RO UPPCB, Kanpur Dehat passed impugned order dated 28.05.2020, reiterating its demand of environmental compensation of Rs. 39,98,57,850/-. Therefore, appellant preferred present Appeal. Grounds taken in Appeal are similar as taken before the authorities which we have already referred to above.

Tribunal's order dated 10.07.2020

18. The appeal was taken up by Tribunal for admission/hearing on 10.07.2020. After noticing contentions advanced in support of Appeal, notice was issued to UPPCB to submit its response.

Reply dated 02.12.2020 filed by UPPCB

19. UPPCB has referred to the background facts stating that Monitoring Committee under Chairmanship of Hon'ble Justice Arun Tandon, was

constituted to ensure compliance of Tribunal's order passed in **OA No. 200/2014 (supra)**. The said Committee, held its meeting on 08.08.2019 and its directions issued to UPPCB, as reported in the order dated 28.05.2020, are as under:

*"It was directed that progress of removal of chromium from dump site at Rania be reported in the next meeting. The **Committee directed CPCB to issue notice for levy of Environmental compensation to the industries which have caused and are causing damage to the environment.**"*

20. Two reports dated 25.09.2019 and 26.09.2019 were submitted by the Committee which were considered by Tribunal on 27.09.2019 while considering **OA No. 985-986/2019 (supra)**. After considering the report, Tribunal issued certain directions. We may reproduce relevant extract of order dated 27.09.2019 as under:

*2. The order of this Tribunal dealt with the matter on transfer by the Hon'ble Supreme Court of proceedings pending before it in W.P. 2 (Civil) No. 3727/1985 on the subject of control of pollution of River Ganga. The Tribunal dealt with the matter vide two orders 10.12.2015 and 13.07.2017 with respect to different segments. Execution of the said orders is pending. **The last order on the subject was passed on 22.08.2019, dealing with prevention of discharge of untreated industrial waste and sewage in Ganga and its tributaries, installation, maintenance and upgradation of STPs, CETPs and ETPs, control of dumping of waste, regulating the flood plains, maintaining e-flow and taking other steps.** An extract from the order to the extent relevant for dealing with the present issue is as follows:*

*"16. As already observed by this Tribunal including in the order dated 14.05.2019 that **River Ganga being National River with distinct significance for the country, even a drop of pollution therein is a matter of concern.** All the authorities have to be stringent and depict zero tolerance to the pollution of River Ganga. Wherever STPs are not operating, immediate bioremediation and/or phytoremediation may be undertaken if feasible. **To avoid procedural delay of tender processes, etc. specifications and norms for undertaking such activities may be specified in consultation with the CPCB as was earlier directed in our order dated 29.11.2018.** Performance guarantees may be required to be furnished for ensuring timely performance. It needs to be ensured that setting up of STPs and sewerage network to be completed and carried out so as to avoid any idle capacities being created. Performance guarantees may be taken for preventing such defaults.*

17. **Wherever the work has not commenced, it is necessary that no untreated sewage is discharged into the River Ganga.** Bioremediation and/or phytoremediation or any other remediation measures may start as an interim measure positively from 01.11.2019, **failing which the State may be liable to pay compensation of Rs. 5 Lakhs per month per drain to be deposited with the CPCB.** This however, is not to be taken as an excuse to delay the installation of STPs. **For delay of the work, the Chief Secretary must identify the officers responsible and assign specific responsibilities.** Wherever there are violations, adverse entries in the ACRs must be made in respect of such identified officers. **For delay in setting up of STPs and sewerage network beyond prescribed timelines, State may be liable to pay Rs. 10 Lakhs per month per STP and its network.** It will be open to the State to recover the said amount from the erring officers/contractors.

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

23. It was stated that though the tanneries were closed for violating the norms of discharge, the dues have not been collected from the members of the CETPs and the industries are clandestinely operating as shown from the **data of water samples which contained high Chromium.**

24. **Chromium dump has been stored since 1976 which is required to be shifted to TSDF.** The State of Uttar Pradesh may undertake health survey of the area and ensure shifting of the Chromium dumps within three months **failing which it would be liable to pay environmental compensation of Rs. 10 lakhs per month to CPCB besides furnishing performance guarantee of Rs. 1 Crore to CPCB.**

25. Let the remedial measures be taken by the SPCB for effective monitoring by installing CCTV cameras or undertaking surveillance in any other manner with the help of local police.”

3. **Though the matter relating to all aspects of pollution of River Ganga is being separately dealt with as above, present reports highlight an emergent issue threatening the life and health of citizens in a particular area requiring intervention by this Tribunal.** We thus proceed to deal with the said reports.

Ms. Katyani, Advocate present in court is appointed as Amicus to assist in the matter. Mr. Rajkumar, Advocate for the CPCB present before the Tribunal enters appearance.

- 4. We first take up the report filed in O.A No. 986/2019 relating to Kanpur Nagar, Uttar Pradesh around the area of Chromium dump at Rania, Kanpur Dehat and Rakhi Mandi, Kanpur Nagar Water Pollution at Rania, Kanpur Dehat and Rakhi Mandi, Kanpur. As already noted, the said dump of hazardous Waste has been in existence since 1976 and inspite of repeated orders, the authorities have failed to ensure its shifting. This gross failure of responsibility by the State of U.P. has resulted in situation depicted in the report which we will presently refer.**
- 5. Justice Arun Tandon along with the representatives of the NMCG, CPCB, UPPCB, UP Jal Nigam and the local residents of the area visited the sites and noticed the status of the Rania and Rakhi Mandi, Kanpur as follows:*

“Status at Rania

The Committee found that huge dump of chromium was stacked about 500 meter away on the right side of the Kanpur-Jhansi Highway in village Khanchandpur falling in district Kanpur Dehat. Photographs of the dump were taken and are enclosed along with the report. The Committee was informed that the land over which the chromium dump is lying is either private land or the land belonging to Gram Sabha. The rain water collected near the dump was green in colour.

The Committee was informed by the residents of the area that the water which comes out from hand pump/bore well was coloured. It was unfit for drinking. The Committee accordingly collected samples from various places within the radius of around 150 meter both towards the highway from the dump as well as from the opposite direction. At all places the Committee found that colour of the water, sample thereof has been taken was greenish. Even the water from the bore well situate within a factory and was more than 150 meter deep had the same colour.

The Committee was taken across the highway by the local residents and the Committee could notice that the water from the hand pumps which was being used by the inhabitants of the locality was green in colour. Photographs of the same have been taken, samples have been drawn for analysis. Water from the hand pump at roadside dhaba was also provided to the Committee which was more green in colour. The sample of the water so provided along with analysis report of the same as carried out by CPCB is filed before the Hon'ble National Green Tribunal for its perusal.

The residents of the area informed that there was no source of fresh water except the underground water. It

was stated that earlier a tube well was constructed on the left side of the highway but had to be closed as the underground water received from the tube well was green in colour.

*The total population of village Khanchandpur is reported to be around 1500. The Committee also specifically noted that the **surface area of the land of village Khanchandpur on both sides of the highway was more or less similar to the surface area of the dump of the chromium.** The underground water which is used and which lies collected in small puddles is used for drinking by animals.*

*Those who have resources purchase drinking water in 20/50 litre cans everyday. The residents of the area made serious complaints. They stated that the **drinking water or underground in the village was contaminated due to leachet from the chromium dump. An old man specifically showed the physical infirmity in his leg to the Committee.** He has been photographed. Copy whereof is filed along with the report.*

The presence of chromium in the underground water in village Khanchandpur many times the permissible limit is established from the analysis report of CPCB of the samples drawn. Use of such quality of water by human being and animals is dangerous not only to the existing residents but also for the future generations to come. Remedial steps are required to be taken to ensure safe drinking water for the residents of the area as well as for animals.

The Committee was provided a copy of the letter of the State Government dated 02.08.2019 requiring the compliance of the order of the Hon. National Green Tribunal dated 13.07.2017 addressed to the Chief Executing Officer, U.P.S.I.D.A. with reference to DPR which was for removal of chromium dump at Rania. Copy of the said letter is enclosed along with this report.

On behalf of the U.P.S.I.D.A. vide letter dated 20.08.2019 serious objections with regard to the implementation of the proposed temporary measures/remedial measures in respect of the chromium dump at Raniaas suggested in the DPR of M/s ERM India Pvt. Ltd., were raised. The Committee was also shown a copy of the temporary remedial measure as suggested by M/s ERM India Pvt. Ltd., referred to as addendum to DPR letter dated 20.08.2019 along with addendum are enclosed along with the report.

It is surprising that in the temporary measures so suggested there is no mention of the measures to be taken for improving the quality of the underground water and/or the measures required to be taken for ensuring safe drinking water for human beings and animals of the concerned village as well as of the surrounding area of the village concerned.

*In the opinion of the Committee the **situation at Rania is alarming and needs immediate intervention of Hon. National Green Tribunal.***

Status at Rakhi Mandi

*Rakhi Mandi, Kanpur Nagar the **Committee found that the water received from a bore well more than 150 feet deep, constructed inside a petrol pump was green in colour. The Committee was informed that the water received from hand pumps which were earlier used in the area was not portable and was green in colour. All such hand pumps have been closed.***

*Samples of the underground water have been drawn. Analysis report is awaited. The Committee has no hesitation to record that the **water at Rakhi Mandi, Kanpur Nagar is also completely unfit for drinking purposes for human being and animals.***

6. The following measures have been suggested:

“(a) All hand pumps along with tube wells/borewells installed in the area be sealed and there should be complete prohibition on extraction of underground water for drinking purposes both at village Khan Chandpur, Kanpur Dehat and Rakhi Mandi, Kanpur Dehat.

(b) State Government through its Chief Secretary must be directed to ensure supply of drinking water through tankers on day-to-day basis to the residents of the village Khan Chandpur and also to surrounding areas till measures as below are not taken.

(c) Drinking water Sintex tanks be installed in appropriate number at appropriate places in village Khan Chandpur for providing potable water within a period of 15 days for the use of the residents of the area. These tanks must be connected to a supply pipe line from a source of potable water within another 7 days and till then the tanks be filled everyday with drinking water through tankers.

(d) The materials which had been purchased for the purpose of Maha Kumbh Mela at Allahabad can be safely used for the above.

(e) Under the Addendum of DPR has to be made available for the purpose transshipment of the dump of the chromium by the State Government.”

7. A bottle of water of sample collected on 17/18.09.2019 from Khan Chandpur handpump duly signed by Justice Arun Tandon has also been received which is handed over to Sh. Rajkumar, Advocate for the CPCB. The CPCB may have the same analyzed and furnish its report to this Tribunal with all relevant details before the next date.

8. The **above report is self-speaking and paints a grim picture of failure of the authorities in taking remedial measures,**

forcing the inhabitants to drink polluted water which is a serious hazard to the health. Needless to say that access to potable drinking water is a guaranteed fundamental right and inalienable duty of the State. The State has clearly failed in doing so in the present case. As suggested in the report, it is necessary to require remedial measures to be taken especially with regard to supply of drinking water to the affected inhabitants in the area.

9. The **second report relates to Water Pollution by Tanneries at Jajmau, Kanpur.** Apart from the fact that incorrect information was given to the Committee appointed by the Tribunal as mentioned in the report, the report shows that **vide order dated 08.08.2019, Shri Manoj Kumar Singh, Principal Secretary, Urban Development, UP allowed the Jal Nigam, Kanpur to discharge effluents into River Ganga, pending cleaning of the trunk sewer. Such discharge is still continuing.** 43 MLD STP was non-functional and may require one year to be functional. Industrial effluent to the extent of 10-12 MLD received in CETP was being pumped into irrigation canal untreated.
10. Any discharge of pollutants into a water body is prohibited under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 and is punishable by imprisonment. **We are surprised that the Principal Secretary of the State has permitted such violation of law. The Uttar Pradesh State PCB was bound to initiate action for prosecuting such officer and all those discharging pollutants in River Ganga and failure to do appears to be against the mandate of law.**
11. The report refers to two charts furnished by the NMCG handed over to the Committee which are contradictory as follows:

“

Name of Drain	Status with reference to chart dt. 30.08.19 (A)		Status with reference to chart dt. 18.08.19 (B)		
1. Ranighat 1.89 MLD	Tapped	Completed	Partially tapped	(.89 MLD)	To be completed by Aug 2020
2. Sheetla Bazar 5.75 MLD	-do-	-do-	Partially tapped	(4.25 MLD)	-do-
3. Dhudhia Ghat 2.34 MLD	-do-	-do-	-do-	(5.66 MLD)	-do-
4. Wazidpur 7.66 MLD	-do-	-do-	-do-	(20 MLD)	
5. Ganda Nala 55 MLD	-do-	-do-	-do-		
6. Hatwa Khand 11.44 MLD	-do-	-do-	-do-	(5.44 MLD)	

12. The report mentions that while on 17.07.2019, information was given that STPs and CETP at Jajmau and Kanpur were not functional, on 02.09.2019, it was stated that the same were functional. We also note that from the minutes of meeting held on 02.09.2019 in the conference room of the NMCG under the Chairmanship of Justice Arun Tandon:

“Non-compliance to Faecal Coliform standards is unacceptable and Committee advised NMCG and UP Jal Nigam to take immediate steps to achieve the compliance.”

It becomes necessary for this Tribunal to intervene for remedial action.

13. Accordingly, we direct:

- i. The Chief Secretary, UP, may forthwith ensure steps for supply of drinking water to the residents in the affected area, apart from taking other remedial measures in the light of report of Justice Tandon in respect of Rania, Kanpur Dehat and Rakhi Mandi, Kanpur Nagar, around the area of Chromium dump and earlier orders of this Tribunal.*
- ii. The Chief Secretary, UP, may ensure that untreated sewage is not discharged in River Ganga and pending a permanent solution, at least temporary arrangement by way of phytoremediation, bio-remediation or any other technology is done to disinfect/treat water before the same is discharged into the River Ganga.*
- iii. The **Chief Secretary, UP, may initiate necessary action against the Principal Secretary, Urban Development, UP , UP Jal Nigam, State PCB for their illegal action in permitting discharge of untreated sewage and effluents directly into River Ganga.***
- iv. A compliance report may be filed in the matter within one month by email at judicial-ngt@gov.in.*
- v. The CPCB may furnish its report to this Tribunal with all relevant details before the next date.”*

21. Pursuant to order dated 27.09.2019, UPPCB examined the matter and issued show cause notice dated 24.10.2019 to appellant industry, requiring it to show cause as to why environmental compensation of **Rs. 39,98,57,850/-** be not imposed against it for illegal dumping of chromium waste in village Khan Chandpur, Rania, Kanpur Dehat. 15 days' time was allowed to submit its reply but no reply was submitted hence on 19.11.2019 final order was passed, imposing environmental compensation of **Rs. 39,98,57,850/-**. Since industry failed to deposit the said amount, Recovery Certificate dated 18.12.2019 was issued for recovering the amount of environmental compensation as arrears of land revenue. Thereafter, appellant industry approached this Tribunal in **OA 18/2020**

(supra), contending that no opportunity was granted before imposing environmental compensation though this was an incorrect statement since show cause notice was already issued but appellant industry failed to reply to the said show cause notice and did not disclose this fact to Tribunal; OA was disposed of vide order dated 28.01.2020.

22. UPPCB filed **Review Application No. 12/2020, Uttar Pradesh Pollution Control Board vs. Chandni Chemicals Ltd.**, stating that appellant has not informed this Tribunal that a show cause notice was issued to it.

23. While review petition was pending, appellant was given an opportunity of hearing by RO UPPCB and, thereafter, order dated 28.05.2020 was passed.

24. Later on, review petition filed by UPPCB came up for hearing on 31.07.2020 before Tribunal when it was disposed of as infructuous.

25. Para-wise reply given by UPPCB in para 4 of reply is as under:

“4(i) That the contents of Para 4(i) need no reply.

*4(ii) That in reply to the contents of Para 4(ii) it is submitted that **consent to establish was granted to Appellant vide order dated 12.08.1999 wherein it was specifically mentioned that Appellant will not start operation without obtaining the consent under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. It will comply with the norms prescribed under Air and Water Act. It has to ensure to obtain authorization under Hazardous Waste Management and Handling Rule, 1989 and to comply with those Rules. It has to ensure the compliance of the provisions of Public Responsibility Insurance Act, 1991 and to prepare and get approved Disaster Management Plan from Director of Industries.***

*4(iii) That in reply to the contents of Para 4(iii) it is submitted that the **Appellant did not obtain consent to operate and under Air and Water Act nor obtained authorization under Hazardous Waste (Management and Handling) Rules, 1989. Several notices i.e. letter No. 2288/H-1/99, 342/H-1/2000, 1085/Gen-21/2000 and 1209/C-6/04 dated 29.10.1999, 14.02.2000, 16.06.2000 and 14.10.2004 respectively have been issued to the Appellant for compliance of the conditions of NOC and environmental law***

including proper disposal of hazardous waste. Besides this, Appellant was also informed to comply with the environmental norms to obtain consent and authorization under Hazardous Waste (Management and Handling) Rules, 1989 and to obtain authorization but in vain. The order dated 15.06.2002 is not relevant for the purpose of the present case.

4(iv) & (v) That the contents of Paras 4(iv) and 4(v) are wrong hence denied. It is submitted that **it is the obligation of the industry to treat and dispose of the hazardous waste.** Common Treatment Plant and Secure landfill can be developed by the industries and for this purpose the Appellant with other units has formed a society titled as Kanpur Pradooshan Niyanttran Samiti to which lease was granted by the Board of his land for five years. However, **no plant was commissioned or completed which is admitted by Appellant in Para 4(v) Page 21 of the Appeal as no environmental clearance was granted.**

4(vi) That the contents of Para 4(vi) are wrong hence denied. **There is nothing on the record that the then Member Secretary of the replying Respondent ever assured the Appellant that entire chrome waste will be listed by Bharat Oil and Waste Management (Common Hazardous Waste Treatment and Disposal Facility).**

4(vii) That in reply to the contents of Para 4(vii) it is submitted that the industry of the **Appellant was closed w.e.f. 07.02.2005 due to non-compliance Hazardous Waste (Management and Handling) Rules, 1989. It is further submitted that as the closure order was never lifted the Appellant again started operation of the unit and it was resealed.**

4(viii) & 4(ix) That the contents of Paras 4(viii) and 4(ix) are matter of record and nothing contrary to record is admitted.

4(x) That the contents of Para 4(x) are not correct. As stated herein above the report submitted by the monitoring committee presided over by Justice Arun Tandon submitted his report which are registered as O.A. No. 985-986 of 2019.

4(xi) That the contents of Para 4(xi) are matter of record. However, it is submitted that the **chromium waste dump is because of Appellant and other basic chromium manufacturing units. Hence, showcause notice was issued by the replying Respondent as to why environmental compensation be not imposed on the Appellant for degradation of the environment caused by it.**

4(xii) That the contents of Para 4(xii) are irrelevant for the purpose of present case. It is submitted that showcause notice itself was clear that the Appellant had to submit their explanation as to why environmental compensation be not imposed on it.

4(xiii) That the contents of Para 4(xiii) are wrong hence denied. It is submitted that **as no reply to the showcause notice was received the replying Respondent has imposed the Environmental Compensation of Rs. 39,98,57,850/-**

4(xiv) That the contents of Para 4 (xiv) are matter of record, however, it is submitted that the **said letter dated 19.11.2019 was duly replied by the replying Respondent vide letter dated 01.02.2020.**

4(xv) That in reply to the contents of Para 4(xv) **it is submitted that as per the list submitted by Appellant there are only 23 units mentioned in Annexure A-13, out of which 7 industries are shown in Kanpur Dehat, however, industry at Serial No. 19 K.U. Chemicals, Fatehpur Roshnai, Rania, Kanpur Dehat is neither in existence nor the replying Respondent has any record in respect of the said industry. Since the chromium dump has been found in Kanpur Dehat land only 6 units were operating in that area, hence action has been taken against the 6.** It is submitted that 8 industries are shown in Kanpur, 7 in Unnao and 1 in Prayagraj. **Out of 8 industries shown in Kanpur only 3 were basic chromium sulphate producing industries and were having proper hazardous waste disposal facilities and the rest 5 were not producing basic chromium sulphate as per the record.** Out of 7 industries in Unnao only 3 are producing basic chromium sulphate and have proper hazardous waste disposal facilities. **Rest 4 industries are not in existence as per the record. There is no proof of disposal of any waste by these units to Khandchandpur, Rania Kanpur Dehat.** These units are 50 kilometers away from the concerned site. One unit shown in Prayagraj is 50 kilometers away and having proper waste disposal facility.

4(xvi) That in reply to the contents of Para 4(xvi) it is submitted that as no reply was filed to the showcause notice and the imposing of environmental compensation was done, further action was issued for recovery of the same.

4(xvii). That in reply to the contents of Para 4(xvii) it is submitted that **the Appellant did not inform to this Hon'ble Tribunal that it has not submitted any reply to the showcause notice.**

4(xviii)&4(xix). That contents of Para 4(xviii)&4(xix) are matter of record and nothing contrary to record is admitted.

4(xx) That in reply to the contents of Para 4(xx) it is submitted that **after considering the reply submitted by Appellant order dated 28.05.2020 was passed by imposing environmental compensation.**

4(xxi) That the contents of Para 4(xxi) need no reply.”

Tribunal's order dated 04.01.2021:

26. Reply filed by UPPCB was considered by Tribunal on 04.01.2021. Tribunal observed that the request for interim relief by appellant is not acceptable as no case is made out for absolute interim relief. On the question of limitation also, Tribunal observed that Section 15(3) of NGT

Act, 2010 is applicable to Tribunal and does not apply to UPPCB. Further, when there is no limitation prescribed, an action must be taken within reasonable time but reasonableness of period would have to be determined from case to case depending on facts and circumstances and public interest in the matter. There is no absolute bar to delayed action in every situation. Inaction by Statutory Regulator like UPPCB should not result in irreversible damage to affected victims. Absolute liability for continuing damage to environment and public health, cannot be ignored and 'Polluter Pays' principle has to be applied even if delay has been caused. Having said so, Tribunal, further in para 4 of the order dated 04.01.2021, said as under:

*"4.The chromium dump in question at Kanpur Dehat is continuing to cause damage to the environment and the public health. **The persons responsible for dumping such hazardous waste, which has contaminated the ground water to the detriment of the inhabitants, cannot disown responsibility for liability for such damage on the ground of inaction of the authorities or closing of the companies.** Corporate veil may not be a defence to absolute liability for damage to environment. Of course, the **liability of appellants has to be limited to the violations clearly attributable to them. The State PCB must determine such liability specifically,** after due opportunity to the appellants, preferably within a period of three months and till this is done, further coercive measures may not be taken. It is made clear that any further proceedings will be subject to further orders.*

5. The above observations are for interim relief and are subject to final order after further consideration. Applications for interim relief will stand disposed of accordingly."

27. Hence, vide order 04.01.2021, Tribunal directed UPPCB **to determine liability of environmental compensation specifically in respect to this appellant as also other similarly placed before us**, after giving due opportunity, preferably within a period of 3 months and till then, no coercive action would be taken.

Tribunal's order dated 24.08.2021:

28. The matter was again taken up by Tribunal on 24.08.2021 wherein

contention of appellant was reiterated that order of **UPPCB did not indicate specific liability by determining the extent of waste caused by appellant.** Tribunal also referred to its earlier order wherein it had directed UPPCB to determine specific liability after due opportunity to appellant within 3 months but unfortunately, despite lapse of 6 months, UPPCB neither passed any order nor submitted any report. Condemning the attitude and approach of UPPCB, Tribunal directed it to finalize the matter on or before 30.09.2021 and file its report. Appellant was also permitted to file objections, if any, to the final order passed by UPPCB in compliance of Tribunal's order dated 04.01.2021.

Report dated 30.09.2021 filed by UPPCB:

29. In purported compliance of Tribunal's order dated 04.01.2021, Member Secretary, UPPCB has filed a compliance report dated 30.09.2021. The report has said that in order to give opportunity to the concerned proponents, UPPCB constituted a Committee; RO UPPCB, Kanpur Dehat sent a site inspection report of six industries to Committee on 13.07.2021 stating that during inspection, **Chromium waste 1475 MT and 3177 MT was found stored in M/s. Waris Chemicals Pvt. Ltd. Khanchandpur, Rania, Kanpur Dehat and M/s. Hilger Chem Pvt. Ltd., Village-Chiraura Raipur, Kanpur Dehat;** on the basis of information supplied by proponents, during course of hearing, further investigations were conducted and **5 more proponents engaged in production of Basic Chrome Sulphate were identified who were also responsible for dumping of Chromium waste over questioned site;** consequently, amount of compensation was reviewed and revised in respect of 11 proponents/units including the present appellant as under:

Sr. No.	Name & Address of industry	Waste Quantity (MT)	Revised Environmental Compensation (in Rs.)

1	M/s Amelia Textiles & Chemicals Pvt Ltd, 23, Khanchadpur, Rania, Kanpur dehat.	2545.921	114566431
2	M/s Cerulean Chemicals Pvt Ltd, Khanchadpur, Rania, Kanpur dehat.	15275.524	687398586
3	M/s Chandni chemicals Pvt Ltd, Khanchandpur rania, Kanpur dehat.	4773.601	214812058
4	M/s Heilger chem pvt ltd, vilichiraura raipur, rania, kanpur dehat.	6334.125	285035616
5	M/s Rukmani Chemicals Pvt Ltd. Rania, Kanpur dehat	8168.162	367567299
6	M/s Waris Chemicals Pvt Ltd. Khanchandpur, Rania, Kanpur dehat	7518.382	338327196
7	M/s Khanna Vivek Chemicals Pvt. Ltd. C30D, Sitel, Panki, Kanpur Nagar	1230.528	55373775
8	M/s Unicame India, Village Malo, GT Road, Chaubepur, Kanpur Nagar	7637.762	343699293
9	M/s IGS Chemical Pvt Ltd, Plot No. 211, Bhawanipur Mandhana, Kanpur Nagar	1782.144	80196502
10	M/s Kaleena Chemicals, Pvt. Village Malo, GT Road, Chaubepur, Kanpur Nagar	3139.969	141298598
11	M/s Rahman Industries Ltd, (Old Name Bharat Chemical Udhog) 1002, 1003, Akrapur, Chakarpur, Unnao	3818.881	171849646
	TOTAL	62225 MT	280,01,25,000

30. The above chart shows that the revised compensation determined in respect of the present appellant was reduced to **Rs. 21,48,12,058/-** for Chromium waste, **quantified as 4773.601 MT**. The above amount and quantity was computed taking total quantity as 62225 MT waste and cost of remediation as Rs. 280,01,25,000/-.

IA 201/2021 with objections filed by appellant to Report dated 30.09.2021:

31. Appellant filed objections along with delay condonation application i.e., IA No. 201/2021 dated 08.11.2021 to the report dated 30.09.2021. It objected report on the ground of delay i.e., the proceedings have been launched after 15 years of closure of the unit, Chromium waste dump

existed since 1976 at the questioned site and such long delay cannot be treated as a reasonable time. Appellant placed reliance on Supreme Court's judgment in ***Shalimar Works Ltd. vs. Their Workmen*, AIR 1959 SC 1217 and *Chhedi Lal Yadav vs. Hari Kishore Yadav*, (2018) 12 SCC 527**. Absence of any period of limitation or action taken by UPPCB was contested on the ground that when no time is prescribed, reasonable time should be taken to take action particularly, when the action causes pre judice which is pleaded by the aggrieved person. It is said that after 15 years of closure of unit, the record is not available and, therefore, reliance on hypothetical production by RO UPPCB, to compute compensation is wholly arbitrary and illegal. It was also pointed out that appellant sold the unit to M/s. Trident Infra Estate Pvt. Ltd. on 06.05.2012 and, therefore, at such a lapse of time, it cannot be held responsible for alleged dumping of Chromium waste between 1999 to 2005, particularly, when UPPCB failed to prove dumping by appellant at all. In this regard, reliance was placed on Supreme Court's judgment in ***State of Punjab & Others vs Chaman Lal Goyal* (1995) 2 SCC 570**. It is also said that Regulator has proceeded on assumption of '**deemed attribution**' which is impermissible in law particularly, when appellant had pleaded that it had not dumped its waste outside factory premises and operated only during 1999 to 2005.

32. Further objections are regarding non-furnishing of adverse material and arbitrary and irrational assessment; appellant stored Chromium waste generated in lined tanks within factory premises and filed an application for disposal of waste likely to be generated in terms of HWMH Rules, 1989 but the said application was not disposed of; appellant has not contributed to Chromium waste dump, of size 62225 MT; basis for such total volumetric assessment of waste of 62225 MT was not provided

or disclosed; earlier quantity was assessed as 45000 MT which was increased subsequently to 62225 MT without giving any foundation or basis for such increase; and on assumption basis, appellant cannot be held responsible for dumping of the said waste.

33. It is also said that order dated 15.11.2019 passed in **OAs 985-986/2019** talked of Chromium dumps and water pollution at two sites i.e., Rania, village Khan Chandpur, Kanpur Dehat and Rakhi Mandi Kanpur Nagar which were in existence since 1976. The aforesaid order also referred to CPCB report dated 30.09.2019 stating that both the contaminated sites located at Khan Chandpur and Rakhi Mandi required remediation of ground water and the damage of Rs. 280 Crores collectively assessed as cost for remediation was in respect of both the areas. Applying the said cost only to the dump found at village Khan Chandpur, is clearly erroneous and shows that some selected units have been singled out and met arbitrary treatment. Appellant has given its details of quantity of chromite ore purchased and production as under:

- “(a) **Total chromite ore purchased between 1999-2005: 8330.675 MT**
- (b) **Total chromite ore utilised between 1999-2005: 7891.957 MT.**
- (c) **Unused quantity between 1999-2005: 438.718 MT.**
- (d) **Total waste generated between 1999-2005: 986.495 MT (stored in RCC pit built inside premises).**
- (e) **Unit and land in question sold in 2012.”**

34. It is said that the details furnished by appellant have been ignored by UPPCB officials without any reason and the assessment of **4773.601 MT** of waste, attributing to appellant is without any factual basis.

35. Summarizing objections in para 33, appellant has said as under:

- A. Appellant had not dumped chromium waste from its operations in any dump; the waste generated was kept within the factory premises.**
- B. Appellant has transferred the premises in 2012. It had operated only for a brief period between 1999-2005. It**

is being unfairly proceeded against for alleged dumping activity since 1976.

- C. ***Entire exercise*** of determination and apportionment of liability ***is hit by delay and laches***. Appellant is irreparably prejudiced by the delay as it has not been able to fully marshal contemporaneous evidence in defence of its innocence.
- D. Appellant has been ***deemed responsible*** for the pollution caused and held liable for the compensation payable pursuant to an adjudication to which it was not a party (i.e. OA Nos.985-986/2019).
- E. The underlying ***materials relying*** on which there was attribution to Appellant have ***not been furnished to the Appellant***.
- F. The ***assessment*** and apportionment of liability has been ***irrational and arbitrary***.”

Tribunal’s order dated 12.11.2021:

36. Report dated 30.09.2021 submitted by UPPCB and objections by appellant were taken into consideration by Tribunal on 12.11.2021. After referring to the revised compensation determined by Statutory Regulator, **Tribunal observed that UPPCB has not taken action in terms of earlier order of Tribunal. It was necessary that a specific finding is recorded about attributability of default to particular unit but report does not show such scientific exercise for determining liability. The conclusion fixing liability must be backed by scientific data and record including Form No. 1 and Form No. 13 submitted by concerned units at the time of seeking consent.** Stand of the concerned units needed to be duly analysed to ascertain veracity. Delay in filing objections by appellant was condoned and objections were taken on record. Tribunal also said that to the extent liability is admitted in the objections, if any, the same ought to be straightaway enforced, pending further consideration. Consequently, Tribunal directed that let such an exercise be undertaken.

Compliance Report dated 28.07.2022 filed on 01.08.2022:

37. Pursuant to the above order dated 12.11.2021, RO (Incharge), Kanpur Dehat submitted a further compliance report dated 28.07.2022 vide e-mail dated 01.08.2022. It is pointed out in the report that 5 additional units were issued show cause notices whereof four had submitted their reply and the fifth one i.e., M/s. Kaleena Chemicals Pvt. Ltd. did not submit any reply. **In respect of 2 units namely, M/s. Khanna Vivek Chemicals Pvt. Ltd. and M/s. Unichem India, it was found that they have properly disposed of all generated hazardous waste into common TSDF and no waste was dumped at Khanchandpur Rania, Kanpur Dehat site by the said units.** The said units also modified their manufacturing process so that no BCS waste is generated. On the basis of the report and recommendations of RO UPPCB Kanpur Dehat, **show cause notices issued to the aforesaid two units were revoked with the approval of Competent Authority, on 14.01.2022.** Further, in respect of **M/s. IGS Chemicals Pvt. Ltd., Kanpur Nagar**, show cause notice dated 29.09.2021 was revoked on 14.04.2022 recording following findings:

*“9. ... production was done only from 2003 to 2005 and during that period about 440.695 MT chromium purchased and 881.30 BCS produced and 111.80 MT waste was generated. **The waste 111.80 MT has been sent to its sister unit M/s Waris Chemicals Pvt Ltd, Umran, Rania, Kanpur Dehat and safely stored under covered shed.** Regional Officer, Kanpur Dehat and Regional Officer, Kanpur Nagar has jointly inspected the unit M/s Wails Chemicals Pvt Ltd, Umran, Rania, Kanpur Dehat for verification of stored waste quantity. Waste about 110 to 115 MT in plastic bags was found stored under covered shed. Regional Officer, Kanpur has recommended for revocation of show cause notice to M/s IGS Chemicals Pvt Ltd. Accordingly, the **show cause notice dated 29.09.2021 issued to M/s IGS Chemicals Pvt Ltd has been revoked on 14.04.2022.**”*

38. Compensation was also revised in the light of further facts came to the notice of Committee comprising Mr. Radhey Shyam, Mr. J.P. Maurya, Dr. Anil Kumar Mathur, Environmental Engineers, Lucknow and Mr.

Ashutosh Pandey, A.E.E./RO (Incharge), Kanpur Dehat who had submitted report dated 28.07.2022. The findings from para 10 and onwards and revised assessment chart given in the report read as under:

- “10. That **M/s Rahman Industries Ltd**, (Old Name Bharat Chemical Udhyog) 1002, 1003, Akrapur, Chakrapur, Unnao has also submitted its reply with respect to issued show cause notice. The main content of the reply was that they have purchased the closed unit M/s Bharat Chemical Udhyog, 1002, 1003, Akrapur, Chakrapur, Unnao in Year 2004. They have taken membership of common TSDF for disposal of hazardous waste since start of production in their unit and have obtained relevant authorization under HWM Rule and relevant consent to operate under Air and Water Act. Their unit is law abiding unit and the **actual defaulter was the old unit M/s Bharat Chemical Udhyog, 1002, 1003, Akrapur, Chakrapur, Unnao** which was closed by UPPCB and has also provided the name and address of the owners of the old unit. U.P. Pollution Control Board has directed Regional Officer, Unnao to go through the representation and submit the report, taking into cognizance the direction of Hon'ble NGT while deciding the representation. Regional Officer, Unnao has submitted the report and has confirmed that M/s Rahman Industries Ltd. has purchased the above unit in Year 2004 when the unit was lying closed as per direction of Board. Regional Officer, Unnao has also informed that the unit M/s Rahman Industries Ltd, 1002, 1003, Akrapur, Chakrapur, Unnao is complying unit. On the basis of recommendation of Regional Officer, Unnao and reply of industry, **show cause notice issued against M/s Rahman Industries Ltd, 1002, 1003, Akrapur, Chakrapur, Unnao has been revoked on 17.01.2022 and fresh show cause notice has been issued against the owners of actual defaulter unit M/s Bharat Chemical Udhyog vide letter dated 17.01.2022.**
11. That Regional Officer, Unnao has sent the report dated 13.04.2022 informing that M/s Bharat Chemical Udhyog has submitted representation on 13.04.2022. Applicant has informed that the land has been given on lease to M/s Bharat Chemical Udhyog by Smt. Tarannum Fatima in 1997. As per representation **unit was operated for total 567 days and due to infelicitous, industry had stopped production.** Thereafter Smt. Tarannum Fatima has sold the industry along with office and Tin Shed **to M/s Rahman Export Pvt Ltd, Wajidpur, Jajmau, Kanpur on 28.06.2004.** Applicant has submitted the details showing that during production since 01 July 1999 to 31 December 2003, the industry was operated for 567 days and 226.80 MT hazardous waste was generated.
12. That the records available in the Regional Office has been scrutinized and as per office records during January 2001 to March 2001, industry has been operated for total 33 days, which **matches with the details submitted by the industry.** For rest period, the detail is not available in the office records. **As per the inspection report dated 28.08.1999, the hazardous waste generated from the industry is 15 Ton per month. Thus, on the basis of 25 days per month operational period and**

hazardous waste generation 15 Ton per month, 311.27 MT hazardous waste is generated in 567 days.

13. As per the information submitted by unit, the waste generated in 567 days has been stored in 03 pucca tanks of size 11x7x5 ft-02 Nos. and 13x7x5 ft. The size of first two tanks has been verified through the inspection report dated 15.02.2001 and 07.04.2001. But **when the unit was sold to M/s Rahman Exports Pvt. Ltd., neither such storage was found as per the statement of M/s Rahman Exports Pvt Ltd., nor any proof was provided regarding disposal of stored hazardous waste to Common TSDF.** So as per recommendations of Regional Officer, Unnao, **Environmental Compensation was imposed against the unit for disposal of 311.27 MT chromium waste.**
14. **All the 05 units, who had gone to Hon'ble Tribunal for filing the appeal, have not given any record regarding Form-1 and Form-13.** The inspection report of Regional Officer, Kanpur Dehat/ Kanpur Nagar of relevant period shows that the **concerned industries have time and again, thrown their generated hazardous waste unscientifically outside their industry premises. The relevant reports are attached as Annexure-1**
15. **This shows that the concerned industries were definitely responsible for disposal of generated hazardous waste to the chromium dump site.** Moreover, this is also a fact that this dumped hazardous waste has **impacted the soil due to leachate, which has inturn increased the size of dumped hazardous waste.** Finally, the Environmental Compensation against total 08 units responsible for dumping of chromium waste have been imposed on dated 14.04.2022 **in the ratio of their production and operation period and details of existing storage of chromium waste inside the industrial premises, which is still not disposed in some units.**

Industries could not object on the imposition amount because Environmental Compensation imposed is on true basis and industry did not submit any proof against facts. Imposition of Environmental Compensation is based upon the true facts and on official records in the light of natural justice. On the basis of above facts it is recommended to reject industry representation letter Dated 23/05/2022.

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Sr . N o.	Name & Address of Industry	Production capacity (MTD)	Operational Period	Assessed quantity of dumped Chromium waste as per percentage of production. (MT)	Revised Assessed quantity of dumped Chromium waste after assessment of stored quantity in the premises. (MT)	Revised Environmental Compensation (in Rs.)
1	M/s Cerulean Chemicals Pvt Ltd, Khanchadpur, Rania, Kanpur dehat.	4	1990 to Oct 2005 (180 month)	उत्पादन क्षमता के आधार पर कुल वेस्ट का लगभग 28.092 प्रतिशत (क्रोमियम वेस्ट 17.392.854 एम.टी.)	17392.854 +[28.092*4652/28.092+8.779+4.682+15.021+5.774]= 19488.874	87,69,99,345

2.	M/s Waris Chemicals Pvt Ltd. Khanchandpur, Rania, Kanpur dehat	3.5	1994 to Oct 2005 NOC dated 5-9-94 (134 month)	उत्पादन क्षमता के आधार पर कुल वेस्ट का 18.299 प्रतिशत (क्रोमियम वेस्ट) लगभग 11329.512 एम.टी.) उद्योग परिसर में लगभग 1475 एम.टी क्रोमियम वेस्ट निरीक्षण के समय भण्डारित पाया गया। जिसमे 111.8 एम. टी . मेसर्स आई. जी . एस. केमिकल प्रो० लि० से जनित वेस्ट है। उक्त तथ्य से स्पष्ट है कि उद्योग द्वारा लगभग 9854.512 एम .टी. क्रोमियम वेस्ट को अवैध रूप से फेका गया है।	11329.512-1475=9854.512	44,34,53,042
3.	M/s Chandni chemicals Pvt Ltd, Khanchandpur rania, Kanpur dehat.	3	1999 to Oct 2005 NOC dated 12-8-99 (75 month)	उत्पादन क्षमता के आधार पर कुल वेस्ट का लगभग 8.779 प्रतिशत (क्रोमियम वेस्ट लगभग 5435.267 एम.टी.)	5435.267+[8.779*4652/(28.092+8.779+4.682+15.021+5.774)]=6090.273	27,40,62,295
4.	M/s Amelia Textiles & Chemicals Pvt Ltd, 23, Khanchandpur, Rania, Kanpur dehat.	3	2001 to Oct 2005 NOC dated 11-09-2001 (40 month)	उत्पादन क्षमता के आधार पर कुल वेस्ट का लगभग 4.682 प्रतिशत (क्रोमियम वेस्ट लगभग 2898.809 एम.टी.)	2898.809+[4.682*4652/(28.092+8.779+4.682+15.021+5.774)]=3248.146	14,61,66,557
5.	M/s Heilger chem pvt ltd, vilichiraura raipur, rania, kanpur dehat.	4	1995 to Oct 2005 (124 months)	उत्पादन क्षमता के आधार पर जनित कुल वेस्ट का 19.325 प्रतिशत लगभग 11981.744 एम.टी क्रोमियम वेस्ट उद्योग परिसर में लगभग 3177 एम .टी. क्रोमियम वेस्ट निरीक्षण के समय भण्डारित पाया गया। उक्त तथ्य से स्पष्ट है कि उद्योग द्वारा लगभग 8804.744 एम .टी. क्रोमियम वेस्ट को अवैध रूप से फेका गया है।	11981.744-3177=8804.744	39,62,13,484
6.	M/s Rukmani Chemicals Pvt Ltd. Rania, Kanpur dehat	3.5	31-08-96 to Oct 2005 NOC dated 31-08-96 (110 month)	उत्पादन क्षमता के आधार पर कुल वेस्ट का 15.021 प्रतिशत (क्रोमियम वेस्ट लगभग 9300.346 एम.टी.)	9300.346+[15.021*4652/(28.092+8.779+4.682+15.021+5.774)]=10421.134	46,89,51,039
7.	M/s Kaleena Chemicals, Pvt. Village Malo, GT Road, Chaubepur,	2	24-09-1999 to 21-10-2005 (74 months)	उत्पादन क्षमता के आधार पर कुल वेस्ट का 5.774 प्रतिशत (क्रोमियम वेस्ट लगभग 3575.198 एम.टी.)	3575.198+[5.774*4652/(28.092+8.779+4.682+15.021+5.774)]=4006.046	18,02,72,088

	Malo, GT Road, Chaubepur, Kanpur Nagar		(74 months)	लगभग 3575.198 एम.टी.)	4006.046	
8.	M/s Bharat Chemical Udhog by Smt. Tarannum Fatima	-	567 days	उत्पादन के आधार पर जनित क्रोमियम वेस्ट लगभग 311.270 एम.टी.	311.270	14,00,71,50
Total					62,225 MT	280,01,25000

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	Name & Address of Industry	Production capacity (MTD)	Operational Period	Assessed quantity of dumped Chromium waste as per percentage of production. (MT)	Revised Assessed quantity of dumped Chromium waste after assessment of stored quantity in the premises. (MT)	Revised Environmental Compensation (in Rs.)
1	M/s Cerulean Chemicals Pvt Ltd, Khanchadpur, Rania, Kanpur dehat.	4	1990 to Oct 2005 (180 month)	On the basis of production capacity 28.092 percent of total waste (Chromium waste 17392.854 MT)	17392.854 +[28.092*4652/28.092+8.779+4.682+15.021+5.774)]= 19488.874	87,69,99,345
2.	M/s Waris Chemicals Pvt Ltd. Khanchandpur, Rania, Kanpur dehat	3.5	1994 to Oct 2005 NOC dated 5-9-94 (134 month)	On the basis of production capacity 18.299 percent of total waste (Chromium waste 11329.512 Metric Ton) In the campus of industry approx 1475 MT chromium waste storage has been found during the inspection. Out of which 111.8 MT was generated by Masers I.G.s. Chemcial Pvt. Ltd. From the above fact it is clear that almost 9854.512 MT Chromium waste has been thrown illegally.	11329.512-1475= 9854.512	44,34,53,042
3.	M/s Chandni chemicals Pvt Ltd, Khanchan dpur rania, Kanpur dehat.	3	1999 to Oct 2005 NOC dated 12-8-99 (75 month)	On the basis of production capacity 8.779 percent of total waste (Chromium waste 5435.267 MT)	5435.267+[8.779*4652/(28.092 +8.779+4.682+15.021+5.774)] = 6090.273	27,40,62,295
4.	M/s Amelia Textiles & Chemicals Pvt Ltd, 23, Khanchadpur, Rania, Kanpur dehat.	3	2001 to Oct 2005 NOC dated 11-09-2001 (40 month)	On the basis of production capacity 4.682 percent of total waste (Chromium waste 2898.809 MT).	2898.809+[4.682*4652/(28.092 +8.779+4.682+15.021+5.774)] = 3248.146	14,61,66,557
5.	M/s Heilger chem pvt ltd,	4	1995 to Oct 2005	On the basis of production capacity 19.325 percent of total	11981.744-3177= 8804.744	39,62,13,484

	vilichiraura raipur, rania, kanpur dehat.		(124 months)	waste produced out of which approx 11981.744 MT Chromium waste. In the campus of industry approx 3177 MT chromium waste storage has been found during the inspection. From the above fact, it is clear that almost 8804.744 MT Chromium waste has been thrown illegally.		
6.	M/s Rukmani Chemicals Pvt Ltd. Rania, Kanpur dehat	3.5	31-08-96 to Oct 2005 NOC dated 31- 08-96 (110 month)	On the basis of production capacity 15.021 percent of total waste (Chromium waste 9300.346 MT).	9300.346+[15.0 21*4652/(28.09 2+8.779+4.682 +15.021+5.774)]= 10421.134	46,89,51,039
7.	M/s Kaleena Chemicals, Pvt. Village Malo, GT Road, Chaubepur, Kanpur Nagar	2	24-09- 1999 21- 10-2005 (74 months)	On the basis of production capacity 5.774 percent of total waste (Chromium waste 3575.198 MT).	3575.198+[5.77 4*4652/(28.092 +8.779+4.682+ 15.021+5.774)] = 4006.046	18,02,72,088
8.	M/s Bharat Chemical Udhyog by Smt. Tarannum Fatima	-	567 days	On the basis of production Chromium waste produced 311.270 MT).	311.270	14,00,71,50
Total					62,225 MT	280,01,25000

(English translation by Tribunal)

39. The above chart shows that environmental compensation in respect to appellant was re-revised to **Rs. 27,40,62,295/-** on the assessed quantity of waste as **6090.273 MT**. This assessment was again made on total quantity of dumped waste taken as 62225 MT and remediation cost as Rs. 280,01,25,000/-.

Documents Appended to Report dated 28.07.2022:

40. **Letter dated 14.02.2000** (p/502 of paper book): It was issued by RO UPPCB, Kanpur Dehat to appellant stating that during visit of the site, it was found that the unit was dumping hazardous waste comprising Chromium on road side and other open places which is not in public interest. Appellant was directed to strictly comply with the provisions of hazardous waste disposal laws else strict action shall be taken against

appellant.

41. **Inspection dated 28.06.2000** (p/504 of paper book): An inspection was made at the appellant's premises on 28.06.2000 by a joint Committee comprising Assistant Environment Engineer and Junior Engineer and the observations in the inspection report are as under:

“ उपरोक्त उद्योग का निरीक्षण अध्येहस्ताक्षरी द्वारा अवर अभियन्ता के साथ दिनांक २८.०६.२००० किया गया। निरीक्षण के समय उद्योग प्रतिनिधि: श्री डी.एन.झा (वयर्स मैनेजर) उपस्थित थे। आख्या निम्नयत्

१. उद्योग द्वारा क्रोम ओर का प्रयोग कर बेसिक क्रोम सल्फेट का उत्पादन किया जाता है।
२. उद्योग में उत्पादन प्रक्रिया के दौरान क्रोमयुक्त हैज़ार्डस वेस्ट निकलता है जिसके निस्तारण हेतु बोर्ड के निर्देशों के उपरान्त उद्योग द्वारा अस्थायी भण्डारण की व्यवस्था उद्योग परिसर में की गयी है।
३. निरीक्षण के समय उद्योग द्वारा वेस्ट को अस्थायी भण्डारण हेतु बनाये गये टैंक में क्रोम युक्त वेस्ट को न डाल कर उसे परिसर से बाहर एवं कालपी रोड के किनारे डाला पाया गया, जिससे भूमिगत जल प्रदूषित होने की सम्भावना है। इस हेतु उद्योग को कई बार लिखित एवं मौखिक रूप से भी निदेशित किया जा चुका है परन्तु उद्योग द्वारा वेस्ट को उद्योग परिसर में बने अस्थायी भण्डारण व्यवस्था में न डाल कर बाहर डाल दिया जाता है। निरीक्षण के समय अस्थायी भण्डारण हेतु बनाया गया टैंक पूरा खाली पाया गया।
४. उद्योग द्वारा वर्ष २००० हेतु बोर्ड से जल एवं वायु अधिनियम के अन्तर्गत सहमति प्राप्त करने हेतु आवेदन भी नहीं किया गया है।
५. उद्योग द्वारा बोर्ड से हैज़ार्डस वेस्ट के डिस्पोजल हेतु प्राधिकार प्राप्त नहीं किया गया है।
६. उद्योग द्वारा बोर्ड से निर्गत अनापत्ति प्रमाण पत्र की शर्तों का अनुपालन नहीं किया जा रहा है। उद्योग को ५० टन प्रति माह उत्पादन क्षमता हेतु अनापत्ति प्रमाण पत्र निर्गत किया गया था। परन्तु उद्योग द्वारा एक टन प्रतिदिन क्षमता का अतिरिक्त फर्नेश बिना बोर्ड से अनापत्ति प्रमाण पत्र प्राप्त किये ही स्थापित कर लिया गया”

“The inspection of the above industry was done by the undersigned along with the Junior Engineer on 28.06.2000. Industry representative Shri D.N. Jha (Works Manager) was present at the time of inspection. Report is as follows:

1. Basic chrome sulphate is produced by the industry using chrome ore.
2. During the production process in the industry, hazardous chrome waste is generated, for which temporary storage has been arranged by the industry after the instructions of the Board.
3. At the time of inspection, the industry did not put the chromed waste in the tank made for temporary storage of the waste and it was found outside the premises and on the side of Kalpi road, which is likely to pollute the ground water. For this, the industry has been directed many times in writing and orally, but the waste is thrown out by the industry instead of putting it in the temporary storage system built in the industry premises. At the time of inspection, the tank made for temporary storage was found to be completely empty.
4. The industry has not even applied for obtaining consent from the Board under the Water and Air Act for the year 2000.
5. The industry has not obtained authorization from the Board for disposal of hazards waste.
6. The conditions of No Objection Certificate issued by the Board are not being complied with by the industry. No Objection Certificate was issued to the industry for production capacity of 50 tons per month. But the industry had installed additional furnaces of one tone per day capacity without obtaining NOC from the Board.”

42. **Notice dated 21.07.2000** (p/503 of paper book): Another notice was issued to appellant on 21.07.2000 by RO UPPCB, Kanpur Dehat. Recommendation was made by RO to Chief Environment Engineer recommending action under Section 5 of EP Act, 1986 appending inspection report.

43. **Inspection dated 13.08.2004** (p/473 of paper book): Appellant's unit was inspected jointly by Dr. P.C. Sharma, Scientific Officer and Shri K.K. Sharma, Chief Environment Engineer (Circle-II) on 12.08.2004 and they found that the unit is engaged in production of BCS by using Chromite Ore, Chrome Ash, Caustic and Sulfuric Acid. Though for storage of hazardous solid waste comprising chrome, a temporary *pucca* tank was constructed in the unit premises but only partial quantity was dumped therein. **The industry, in fact, was dumping hazardous waste in the nearby open areas.** It was liable to cause contamination of ground water due to percolation of leachate.

Objections of appellant filed on 18.08.2022 to the report dated 28.07.2022/01.08.2022:

44. Since these objections have been pressed and argued before Tribunal, we find it appropriate to reproduce the same as under:

*"2. It is relevant to note that even before preparation/filing of the Report dt.28.07.2022, the **UPPCB had issued a Demand Notice dt.14.04.2022, assessing Appellant's liability as Rs. 27,40,62,295 on the basis of a deemed contribution of chromium waste of 6090.273 MT.** Appellant has already filed IA No.126/2022 on 23.05.2022 in the captioned appeal before this Hon'ble Tribunal, challenging the said notice.*

*3. The **Report dt.28.07.2022 filed by the UPPCB appears to be by way of afterthought considering that they had already issued Demand Notice dt.14.04.2022 without any scientific basis and in blatant violation of this Hon'ble Tribunal's Order dt.12.11.2021.** The Report deserves to be rejected on this preliminary ground. Without prejudice, and for the sake of completeness, the **Appellant has however furnished the present***

objections, dealing with the merits of the Report dt.28.07.2022.

4. The UPPCB's Report dated 28.07.2022 contains the following factual assertions:

- A. **Assessment of contribution of chromium waste is based on the "production capacity of the industry".**
- B. Pursuant to this Hon'ble Tribunal's Order dt.12.11.2021, the replies of four of the noticees, i.e., Khanna Vivek Chemical Pvt. Ltd. Unichem India, IGS Chemicals Pvt Ltd., Rahman Industries Ltd., were found satisfactory and accordingly, the proceedings against these units were revoked.
- C. **None of the appellants before the Hon'ble NGT have furnished record of Form-1 and Form 13.** The inspection report of Regional Officer, Kanpur Dehat/Kanpur Nagar of relevant period shows that the concerned industries have time and again, thrown their generated hazardous waste unscientifically outside their industry premises.
- D. Therefore, the concerned industries were responsible for the dumping of hazardous waste and their liability is to be apportioned as per production and operation period.

5. On this basis, the UPPCB has entered the following conclusion against the Appellant herein:

Name & address of industry:	M/s Chandni Chemicals Pvt. Ltd., Khanchandpur Rania, Kanpur Dehat
Production capacity (MTD):	3
Operational Period:	1999 to Oct. 2005 NOC dated 12.08.99 (75 months).
Assessed quantity of dumped Chromium waste as per percentage of production (MT):	About 8.779 percent of total waste based on production capacity (Chromium Waste 5435.267 MT).
Revised Assessed quantity of dumped Chromium waste after assessment of stored quantity in the premises (M.T.):	$5435.267 + [8.779 * 4652 / (28.092 + 8.779 + 4.682 + 15.021 + 5.774)] = 6090.273$ MT.
Revised Environmental Compensation	Rs. 27,40,62,295/-

6. The **aforesaid findings and conclusions contained in UPPCB's Report dt.28.07.2022, are incorrect, whimsical, capricious, and arbitrary.** In the succeeding paragraphs, Appellant sets out its objections to the report.

Whimsical fluctuating assessments

7. As per the Order dt.28.05.2020 (originally impugned in appeal), the UPPCB declared that that the Appellant was responsible for dumping **8885.73 MT** and assessed liability thereon as **Rs.39,98,57,850**. The said assessment was stayed by this Hon'ble Tribunal on 04.01.2021 and the UPPCB thereafter gave Report dt.30.09.2021 stating that the Appellant had dumped **4773.601 MT** of chromium waste and must pay **Rs.21,48,12,058**. Even this assessment was found faulty, as evident from this Hon'ble Tribunal's Order dt.12.11.2021. Now, in the third instance, the UPPCB's Report

dt.28.07.2022 has come out with the story that the Appellant is responsible for dumping **6090.273 MT** of chromium waste and liable to pay **Rs. 27,40,62,295**. For ease of reference, the figures are tabulated below:

Order dt.28.05.2020	Report dt.30.09.2021	Report dt.28.07.2022
8885.73 MT	4773.601 MT	6090.273 MT
Rs.39,98,57,850	Rs.21,48,12,058	Rs. 27,40,62,295

8. In all three instances, there is no scientific or rational basis for calculation. The chromium dumps in question are in existence since 1976 (as recorded by the Hon'ble Tribunal in various judicial orders). Yet, **the dump of 62225 metric ton has been sought to be divided only among a few units, including Appellant that operated only between 1999-2005 on the basis of "production capacity"**.

9. It is relevant that the Order dated 15.11.2019 as passed in OA Nos.985-986/2019 speaks of chromium dumps and water pollution at two sites: (i) Rania, Village Khan Chandpur, District Kanpur Dehat (ii) Rakhi Mandi, Kanpur Nagar, which have been in existence since 1976. The said order records that the CPCB had filed a report on 30.10.2019 stating that both the contaminated sites located at Khan Chandpur and Rakhi Mandi require remediation of groundwater. The damages of Rs.280 crores (approx.) was apparently assessed as estimated cost for remediation of both areas. However, **UPPCB has apportioned the waste only among the units in Kanpur Dehat in each instance.**

10. UPPCB has failed to comply with the Order dt.12.11.2021 of this Hon'ble Tribunal. **No scientific reasons have been furnished for the determination of quantum of waste and consequent liability.** The Report dt.28.07.2022 has made an estimate on the basis of "production capacity", which methodology has not been approved hitherto. The same methodology was hitherto followed by the UPPCB in its Notice dt.28.05.2020, Reply to Appeal dt. NIL November 2020, Report dt.30.09.2021 filed in the captioned appeal. However, the said methodology was not approved by this Hon'ble Tribunal, as would be apparent from the Orders dt.10.07.2020, 04.01.2021 and 12.11.2021.

Unexplained escalation in quantity

11. The total quantity of waste as assessed in the UPPCB Impugned Order dated 28.05.2020, Report dated 30.09.2021 and Report dt.28.07.2022 is 62225 MT. On the contrary, in 2009, as per the intimation of UPPCB itself, the total waste was assessed as 45000 MT. True and Typed Copy of the UPPCB Letter dated 01.04.2009 is annexed herewith as Annexure 'A'. Appellant had objected to the said communication categorically raising the plea that the dump was pre-existing Appellant's operations. True Copy of the Letter dt.10.07.2009 is annexed herewith as Annexure 'B'. The matter was not further actioned. It appears that between 2009 and 2019, the 45000 MT has gone up to 62225 MT as per UPPCB's own inspection. Indisputably, Appellant had shut down in 2005. Therefore, assuming but not conceding Appellant bore any responsibility, it could not be responsible for the escalation in quantity.

12. UPPCB has not disclosed the waste quantity as it stood in 2005. It appears that UPPCB has permitted other establishments/operators to continue with dumping activity beyond 2009 but affixed responsibility thereto to the appellants in the present batch of cases.

Arbitrary exclusions of favoured units

13. There were various other entities operating chromium-based units in the concerned area but the UPPCB has found some or the other reason to exempt or absolve such units of liability and conveniently accepted whatever explanation has been provided by other units which were issued show cause notices.

14. In the Report dt.28.07.2022, the UPPCB has given a clean chit to Khanna Vivek Chemical Pvt. Ltd. Unichem India, IGS Chemicals Pvt Ltd., Rahman Industries Ltd., accepting the explanation was furnished by them. However, none of the objections nor explanations of the appellants before this Hon'ble Tribunal have found favour with the UPPCB. The UPPCB's slanted and biased approach speaks for itself. The estimated figures (of waste and liability) are for mere convenience of the UPPCB whose only objective appears to be that the total Environmental Compensation of Rs.280.01 Crores has to be divided up among some pre-determined target units (i.e., the Appellants before this Hon'ble Tribunal).

Failure to consider relevant facts pertaining to production

15. The **Appellant had consumed limited quantity of chromium ore and generated only limited chromium waste which is nowhere close to the quantity alleged to be dumped.** The details of consumption were provided along with the Objections dt.08.11.2021 served on UPPCB and filed before this Hon'ble Tribunal in this captioned appeal. The details were as follows:

- a) **Total chromite ore purchased between 1999-2005: 8330.675 MT**
- b) **Total chromite ore utilised between 1999-2005: 7891.957 MT.**
- c) Unused quantity between 1999-2005: 438.718 MT.
- d) **Total waste generated between 1999-2005: 986.495 MT (stored in RCC pit built inside premises).**
- e) Unit and land in question sold in 2012.

True Copy of the Table of Production Details and Year-wise Purchase Chart of Chromite Ore of Chandni Chemicals is annexed herewith as Annexure 'C'.

16. It is relevant that this Hon'ble Tribunal had itself taken cognizance of the objections filed, in the Order dt.12.11.2021. However, the Objections dt.08.11.2021 filed before this Hon'ble Tribunal have not been noticed, let alone considered by the UPPCB. Once again, this approach points to the biased and pre-determined mindset of the UPPCB.

Irrelevant documents furnished as "basis"

17. None of the documents filed with the Report dt.28.07.2022 indicate the quantum of waste alleged to be dumped by the Appellant to be anywhere close to 6090.273 MT. The barely legible documents filed (in Hindi) by UPPCB appear to pertain to a period prior to closure

of Appellant's unit in 2005. As such, these documents nowhere support the UPPCB's conclusion as to responsibility of the Appellant in dumping to the extent of 6090.273 MT.

18. It is also pertinent to note that vide Order dt.15.06.2002, the magistrate found that no waste was dumped by Appellant outside its premises. True and Translated Copy of the Order dt.15.06.2002 is annexed herewith as Annexure 'D'.

19. The **basis (i.e., adverse materials) on which the UPPCB has purported to arrive at the quantum of waste and liability have thus not been furnished.** The documents furnished bear little or no nexus to the exercise required to be carried out pursuant to this Hon'ble Tribunal's Order dt.12.11.2021.

Permission for storage / transport of waste

20. It is relevant that Appellant had applied for disposal of the waste likely to be generated, in terms of the Hazardous Waste (Management & Handling) Rules, 1989. **True and Typed Copy of Form I Application dt.22.01.2002 of Appellant is annexed herewith as Annexure 'E'.** True and Typed Copy of the Cover Letter dt.17.11.2004 is annexed herewith as Annexure 'F'. During pendency of such applications, in accordance with the NOC dt.12.08.1999 issued by UPPCB, the Appellant stored the chromium waste generated in lined tanks within the factory premises. However, Appellant's **application under Hazardous Waste (Management & Handling) Rules, 1989 remained unprocessed and the Appellant was not given permission to remove the chromium waste generated at its unit. The waste was however not dumped outside the premises.** Appellant complied with the conditions contained in the NOC dt.12.08.1999 which had specified that production has to cease if the storage capacity within the factory premises is exhausted.

21. Appellant submits that it has not contributed to the chromium waste dumps of size 62225 MT. During the limited time that it was operational, the waste generated was confined to the premises of the Appellant and not dumped elsewhere.

Improper legal basis for calculation of damages

22. The **Report dated 28.07.2022 has relied upon a formula prepared by the CPCP under the Hazardous and other Waste (Management and Transboundary Movement) Rules, 2016 being,**

"Environmental Compensation (EC) = Q X ERF X R where 'Q' is observed quantity of waste; ERF is environmental risk factor and R is environmental compensation factor @ Rs.30000."

23. This **formula, as issued under the 2016 Rules, cannot retrospectively apply qua an alleged violation ending in 2005.** Reliance is placed on Rule 1(2) of the 2016 which states that the Rules come into force on the date of their publication in the gazette (which is 04.04.2016). The 2016 Rules or guidelines issued thereunder, being subordinate legislation/executive instructions cannot carry retrospective effect for calculation of damages in respect of alleged dumping upto 2005. **Of particular relevance is the 'R' factor**

taken @ Rs.30000, which benchmark of 2016 would have likely been different if the formulation was to apply for 2005.

24. Assuming but not conceding that the 2016 formula can be applied, the 'Q' factor (quantity of waste) has been incorrectly assessed, as a matter of fact, for the reasons already mentioned above. **Going by UPPCB's own Letter of 01.04.2009, the maximum applicable penalty was only Rs.1.125 crores on the basis total quantity being 45000 MT and the disposal charge being Rs.1500 per tonne.**

Laches

25. The **entire exercise is highly belated and hit by laches.** The Appellant is non-functional for a very long time and neither the resources nor materials to defend itself. The very process of requiring the Appellant to defend itself against alleged acts/omissions which relate back to two decades is untenable, hit by delay and laches.

26. The exercise undertaken by the UPPCB was quasi-judicial in nature. It has resulted in a serious civil liability. Even if there is no express provision of limitation for initiation of proceedings of compensation for environmental damage, the proceedings cannot be launched after 15 years of closure of the unit and in respect of dumps in existence since 1976 (well before the incorporation/existence of Appellant). Such proceedings, being quasi-judicial in nature, ought to have been initiated within a reasonable time as held by the Hon'ble Supreme Court in the following cases:

(a) *Shalimar Works Ltd. v. Workmen*, AIR 1959 SC 1217, which holds that though the Industrial Disputes Act, 1947, does not prescribe limitation for reference of disputes, nonetheless disputes ought to be referred to the tribunal within a reasonable time-frame. Such interpretation was given thought Section 10 of the Industrial Disputes Act in fact permits reference of industrial dispute "at any time". This position reiterated in *Prabhakar v. Sericulture Department*, (2015) 15 SCC 1.

(b) *Chhedi Lal Yadav v. Hari Kishore Yadav*, (2018) 12 SCC 527. A prayer for repossession of land was filed by farmers after a lapse of 24 years in terms of Bihar Kosi Area (Restoration of Lands to Raiyats) Act, 1951. It was contended that the statute a welfare legislation and ought to be read so as to benefit the Raiyat farmers, in matters of delay. It was contended that there was no provision of limitation regarding suo moto exercise of power by the authority for restoration of land. The Supreme Court rejected the contention on the ground that even if there is no limitation against suo moto exercise of power, there cannot be any exercise of power after a long lapse of time. Similar position has been enunciated in *Collector v. D. Narsing Rao*, (2015) 3 SCC 695.

27. Though the Interim Order dated 04.01.2021 of this Hon'ble Tribunal has expressed a prima facie view against the plea of limitation (on the ground that there is absolute liability under the "polluter pays" principle), it is respectfully submitted that **even the doctrine of "absolute liability" premised on the "polluter pays" principle does not enable the Pollution Control Board to initiate proceedings for imposition of penalty beyond a reasonable time-frame.**

28. For example, Section 15(3) of the NGT Act permits the apex authority in the field of environmental law enforcement - i.e., this Hon'ble Tribunal, to entertain applications for compensation within 5 years of the date of cause of action, as first accrued. This shows that there is no legislative intent to permit an open-ended and indefinite period for assessment/demand of compensation on the doctrine of absolute liability. When such is the case for the apex body, it ought not to be implied that the State Pollution Control Board enjoys unlimited power to impose and assess damages for any length of time.

29. In the interim order dated 04.01.2021, the Hon'ble Tribunal relied on the judgement in *Hindustan Times v. UOI*, (1998) 2 SCC 242 to observe that limitation is not applicable to the case. However, the aforementioned precedent also takes note of the principle that the defence of delay can be availed where prejudice is pleaded and proved.

30. In the present case, prejudice has been consistently pleaded both before the authority (UPPCB) and this Hon'ble Tribunal. The Appellant's unit was shut in 2005. There was no production for 15+ years. The impugned proceedings of the UPPCB seeks to penalise Appellant for alleged dumping of waste from 1976 for which the UPPCB is not able to produce any record other than rely on hypothetical "production capacity". Petitioner was not even in existence from 1976. The dumps in question admittedly existed since 1976 while the Appellant operated only between 1999-2005. **UPPCB has failed to disclose as to the quantity and extent of the dumps as they existed, prior to the operation of the Appellant.** Appellant had never dumped any waste outside its premises during the brief period that it was in operation. As the matter is very stale and production has long ceased, Appellant has found it extremely difficult to make its defence on facts. **Appellant has been unable to marshal contemporaneous evidence of wrongdoing of other persons/third parties who may have been the actually entities responsible for the dumping in the areas concerned. Such prejudice is irreversible.** Appellant submits that it has even sold the land/unit on 6.05.2012 to Trident Infra Estate Pvt Ltd. Appellant ought not to be visited with adverse civil consequences in respect of the land/unit in 2022 in respect of alleged dumping between 1999-2005 which dumping is unproven by UPPCB. Appellant relies on the principle enunciated in *State of Punjab v. Chaman Lal Goyal*, (1995) 2 SCC 570.

31. Furthermore, **if any reliance is to be placed on the documents furnished with Report dt.28.07.2022, UPPCB was fully aware more than 15 years ago, of the alleged dumping, if any. It was thus capable of taking appropriate measures against the erring units at the relevant time that the alleged dumping was detected. It is unlawful and belated for UPPCB to levy environmental compensation 15 years after discovery of alleged violation.**

32. Appellant reiterates all other grounds and submissions hitherto made in the appeal, Objections dt.08.11.2021 filed before this Hon'ble Tribunal to UPPCB Report dt.30.09.2021 and IA No.126/2022 filed in the captioned appeal respect of UPPCB's Demand Notice dt.14.04.2022."

Documents appended with objections of appellant dated 18.08.2022:

45. The above objection submitted by appellant is appended with a **letter dated 01.04.2009 sent by Member Secretary, UPPCB to Member Secretary, CPCB** stating that six industries including appellant were operating at Kanpur Dehat for last 15 years and dumped their hazardous waste containing Chromium in open ground, size approximately 200 × 100 meter; closure orders were issued to these industries under HWMH Rules, 1989, the units have neither agreed to dispose hazardous waste nor ready to share the expenditure; total hazardous waste as per ITR study report was around 45,000 tones and taking transportation, stabilization and disposal charges in secured land, the total expenditure is worked out to Rs. 6.75 Crores, therefore, a fine of Rs. 1.125 Crores be imposed upon each of the 6 units. The said recommendation was made with request to grant approval under Rule 16(3) of HWMH Rules, 1989.

46. The said notice was opposed and protested by 5 units collectively i.e., M/s. Cerulean Chemicals Pvt. Ltd., M/s. Waris Chemicals Pvt. Ltd., M/s. Hilgers Chemicals Pvt. Ltd., **M/s. Chandni Chemicals Pvt. Ltd.** and M/s. Amelia Textiles & Chemicals Pvt. Ltd. vide their objections dated 10.07.2019 wherein they said as under:

- “1. That before writing to you for imposing fine on 6 units of Rania Kanpur Dehat, UPPCB did not give any opportunity to clarify our positions. The quantity and total fined amount stipulated in that letter are fictitious and mala fide.*
- 2. That the fine stipulated unit wise is incorrect in total as the said companies ran their units for different span of time. Further the capacity installed & utilized of each plant is different so the quantity of waste generation of individual unit will not be the same.*
- 3. That at the said solid waste dump, the lot of waste was lying there before operation of these 6 units. The **many BCS units were in operation before/during the operation of our units in Kanpur Nagar, Kanpur Dehat, Unnao & Fatehpur. That some waste dumped there may be of units other than BCS factories.***
- 4. That UPPCB was allotted 10.5 Hectares of land by Government free of cost in year 1994 at village Kumbhi, Kanpur Dehat for developing common secured land fill (CSLF) facility. It was the primary*

responsibility of UPPCB to arrange for CSLF at least for small scale industries like us in UP, but they did not nothing until 2003.

5. That after 10 years in the year 2003 3 Hectares land was leased to KANPUR PRADOOSHAN NIYANTRAN SAMTI (KPNS) to develop and construct CSLF facility. We are also member of KPNS and contributed a lot towards the construction of CSLF facility. KPNS completed the CSLF in the month of Oct 2005, which was intimated to UPPCB vide their letter dated 30/09/2005 (copy attached)

The construction of CSLF was carried out as per technical specification of National Productivity Council, guide lines of local administration and UPPCB. The Chairman of UPPCB also visited the site in May 2005 and appreciated the quality of work being done by KPNS.

That the KPNS also applied for authorization of the operation of the CSLF facility vide their letter dt 07/03/2005 (copy of application attached).

That the UPPCB had neither responded to the request of KPNS for operation of CSLF facility nor intimated to them in regard to deficiency, if any in the work done by them.

6. That without pointing out any shortcoming in the construction work of CSLF the factories were closed/ sealed in 2005, causing us severe financial crisis and unemployment to the workers.
7. That the **lease of land to KPNS was terminated by UPPCB unilaterally on 4/10/2006 without giving any opportunity.**
8. That if the CSLF was not up to the mark why the said CSLF was given to Bharat Oil & Waste Management Ltd. (BOWML) free, of cost, who have no experience of such type of activities. The KPNS has not been compensated for handing over the CSLF facility to BOWML. The present cost of CSLF will be about Rs. 2 Crores.
9. That the authorization for disposal of solid waste in CSLF constructed by KPNS was not given, whereas authorization for the same CSLF has been granted to BOWML.
10. That this discriminatory action of the UPPCB heavily damaged the environment, industrial production & social cause.
11. That our units are SSI Sick Units and are unable to bear any fine. Moreover, the financial position worsened due to long closure of the units.
12. That howsoever, **if the said CSLF Facility is handed over to KPNS we will clear the said site (dump). If CSLF is not handed over to KPNS then Bharat Oil & Waste Management Ltd. should clear the site (dump) on their cost.**
13. That before taking any action against us, we may please be given a chance of personal hearing also.”

47. Appellant has also filed various documents including annexure C to the objections giving details of **production, sales, net profit and year**

wise purchase chart of Chromium ore as per audited Financial Statements, as under:

1 “Production as per audited Financial Statements”

year	SD	BCS	SS	SC	Total
1999-2000	2.000	233.950	15.000	0.000	250.950
2000-01	77.950	962.000	294.760	--	1334.710
2001-02	10.650	1532.900	368.586	8.650	1920.786
2002-03	4.400	1955.000	356.100	0.200	2315.700
2003-04	0.000	1825.900	284.070	--	2109.970
2004-05	1.000	1514.650	227.500	--	1743.150
2005-06	4.350	545.350	38.650	---	588.350
TOTAL	100.350	8569.750	1584.666	8.850	10263.616

SD= Sodium Dichromate, BCS= Basic Chrome Sulphate, SS= Sodium Sulphate (Bye Product), SC= Sodium Chromate.

2 Sales & Net Profit as per Audited Financial Statements

Year	SALES	Net Profit
1999-2000	8165,875.00	108,152.52
2000-2001	18,012,512.00	109,855.12
2001-2002	21,916,809.00	106,660.26
2002-2003	27,857,153.00	135,655.71
2003-2004	23,785,056.00	138,563.79
2004-2005	18,717,573.00	71,242.80
2005-2006	10,877,259.00	(201,660.71)
TOTAL	129,332,237.00	468,469.49

YEAR WISE PURCHASE CHART OF CHROMITE ORE FROM F.Y. 1999-2000 TO 2005-2006

YEAR	Qty. Recd. in MT	Qty. Used in MT
1999-2000	304.070	179.120
2000-2001	1516.905	1305.830
2001-2002	1188.350	1289.755
2002-2003	1796.245	1773.389
2003-2004	1715.095	1634.338
2004-2005	1167.290	1072.105
2005-2006	642,720	637.420
TOTAL	8330.675	7891.957

48. The information furnished by appellant along with his objections in the form of 3 charts, as referred above, is apparently self-contradictory and shows patent falsity therein. First two charts giving production and sales & net profit are as per audited financial statements while year wise purchase chart of chromite ore is not so authenticated meaning thereby it has been prepared by appellant on his own information. The falsity which

we are talking about is in respect of the production of BCS *vis-a-vis* quantity of Chromite Ore purchased from 1999 to 2005-2006. Appellant has stated that total production of BCS in the above period of 1999 to 2005-2006 was 8569.750 MT while the quantity of Chromite Ore, he purchased during this period, is only 8330.675 MT. It is improbable to obtain more quantity of BCS from the lesser quantity of Chromite Ore, the basic raw material. Further, there is production of other compounds also like Sodium Dichromate, Sodium Sulphate and Sodium Chromate and total quantity of production of various compounds during above period is 10263.616 MT while quantity of Chromite Ore purchased by appellant is only 8330.675 MT. He has further said that actual used quantity of Chromite Ore is even much lesser i.e., 7891.957 MT. This is wholly impossible and shows falsity in the figures submitted by appellant, at least with regard to quantity of Chromite Ore purchased by it. We will discuss this aspect further while considering the matter on merits particularly, at the time of quantification of compensation.

49. Other documents appended to the objections, necessary for adjudication of the issue would be referred to, as and when required.

ARGUMENTS:

50. Learned Counsel for appellant contended that the unit was closed long back, i.e., since 2005 and after almost 15 years, imposition of liability on the alleged dumping of Chromium waste and assessment of environmental compensation is wholly illegal and barred by limitation. Further, the computation of compensation is arbitrary, imaginary, based on presumption, deemed attribution and is not substantiated by any material.

51. It is vehemently argued that RO UPPCB has computed

compensation on the basis of proportional quantity of waste lying at the questioned site since 1976, ignoring the fact that appellant unit commenced its production only in 1999 and stopped functioning in 2005. Therefore, the apportionment/proportional liability passing upon appellant is patently illegal. Compensation has also been determined on the basis of formula prescribed in Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 Rules, 2016 (hereinafter referred to as '**HOWMTM Rules, 2016**') though the aforesaid Rules having been published in Gazette of India, Extraordinary, dated 04.04.2016 and enforced from the date of publication in official Gazette, would not apply to something which transpired between 1999 to 2005. In other words, HOWMTM Rules, 2016 could not have been applied retrospectively in order to determine environmental compensation, liable to be paid by appellant as no retrospective application has been permitted or provided to the said Rules. Further it is said that appellant applied for authorisation under HWMH Rules, 1989 vide application dated 19/22.01.2002 and the same remained pending before the Competent Authority, hence, it cannot be said that appellant violated the provisions of HWMH Rules, 1989 by storing Chromium waste generated in the process of manufacture of BCS within the factory premises. Learned Counsel for appellant said that appellant did not store or dumped hazardous waste containing Chromium at the questioned site, therefore, no liability could not have been imposed upon it and implication of appellant to hold guilty of violating environmental norms and the provisions of HWMH Rules, 1989 read with EP Act, 1986 is clearly misconceived and incorrect.

52. On the contrary, Learned Counsel for UPPCB said that the ultimate environmental compensation determined vide report dated 28.07.2022 is

based on the production capacity, operational period and assessed quantity of dumped Chromium waste as per percentage of production, therefore, actually based on true facts where against appellant could not produce any material to contradict, hence, no interference is called for.

53. Shri Pradeep Mishra, Learned Counsel appearing for UPPCB strongly supported environmental compensation and liability imposed upon appellant and contended that admittedly appellant was engaged in manufacturing of BCS which resulted in generating hazardous waste containing Chromium and the same having not being disposed of scientifically as required by HWMH Rules, 1989, appellant is liable for payment of compensation by applying the principle of 'Polluter Pays' and since no otherwise material has been placed by appellant before Tribunal, the assessment of compensation by UPPCB is just valid and in accordance with law, hence warrants no interference.

54. It is also argued by Shri Pardeep Mishra that in the impugned order, reference has been made to HOWMTM Rules, 2016 which is apparently incorrect but that by itself will not vitiate the order in as much as mere mention of wrong provision will not vitiate the order if otherwise the power is vested in the authority concerned. He argued that in place of HOWMTM Rules, 2016, the reference may be made to and read as HWMH Rules, 1989.

ISSUES:

55. From the arguments advanced by Learned Counsel for the parties as also from material on record and the rival submissions, in our view, following issues have arisen for adjudication by this Tribunal:

- (I) Whether appellant commenced production in its unit in violation of the provisions of Water Act 1974, Air Act 1981 and HWMH Rules, 1989?
- (II) Whether appellant has dumped hazardous waste comprising Chromium on road side or other open place without any lawful authority and thus violated provisions of HWMH Rules, 1989 and also Water Act 1974 and Air Act 1981 by contaminating ground water, soil and air?
- (III) Whether dumping of waste containing chromium inside the factory premises, if correct, as claimed by appellant, was lawful and valid in the light of HWMH Rules 1989.
- (IV) If question I and/or II are/is answered against appellant, what is the quantity of hazardous waste comprising Chromium which has been dumped by appellant illegally and what amount of environmental compensation, appellant is liable to pay, applying principle of 'Polluter Pays'?
- (V) Whether imposition or demand of environmental compensation by UPPCB is within limitation or is otherwise not chargeable, by application of principle of laches or unreasonable delay?
- (VI) Whether determination of environmental compensation by UPPCB against appellant is just valid or liable to be revoked or modified and if so, to what extent?
- (VII) Whether appellant has violated any other law and if so, further action required to be taken?
- (VIII) Whether appellant is entitled for any relief?

ISSUE I:

56. We proceed to consider, first, issue I in the light of relevant law, the facts available on record and also the arguments advanced by Learned

Counsel for the parties.

57. It is admitted case of appellant that it was engaged in manufacturing of BCS. CTE by UPPCB was granted to appellant on 12.08.1999. It is also admitted by appellant that it functioned its unit from 1999 to February 2005. Appellant has also placed on record documents to show that for manufacturing BCS, it purchased chromite ore. Between 1999 to 2005-2006, total quantity of chromite ore purchased by appellant was 8330.675 MT out of which it actually used only 7891.957 MT and 438.713 MT remained unused and left at the production site. These figures have been given by appellant himself, therefore binding upon appellant though we have reasons not to rely on these figures to reach our conclusions.

58. RO UPPCB, however, in its parawise reply to the memo of appeal, has said that CTE was granted to appellant vide order dated 12.08.1999 but appellant did not obtain any Consent to Operate (hereinafter referred to as '**CTO**') under Water Act, 1974 and Air Act, 1981, at any point of time and also did not obtain authorization under HWMH Rules, 1989. RO UPPCB issued several notices dated 29.10.1999, 14.02.2000, 10.06.2000 and 14.10.2004 whereby appellant was requested to comply with the conditions of CTE with regard to consent/clearance and authorization under environmental laws and scientific disposal of hazardous waste. Nothing has been placed on record by appellant to contradict/controvert the above facts disclosed by UPPCB in its reply given to averments made in para 4(ii) and (iii) of memo of appeal. The stand of UPPCB is thus clear that conditions of CTE issued on 12.08.1999 were also violated by appellant since the specific conditions mentioned therein that appellant will not start operation without obtaining consent under Water Act, 1974 and Air Act, 1981 and authorization under HWMH Rules, 1989 were violated and appellant proceeded with the operation of the unit without

complying with the said conditions.

59. Further, the appellant has claimed that it closed its unit on 07.02.2005 and thereafter, did not operate but this fact has also been denied by UPPCB while replying para 4 (vii) of memo of appeal and it has been stated that though closure order was never lifted, yet appellant again stated operation of the unit and it was re-sealed. It is for this reason the compensation has been calculated upto October 2005 and during the course of the argument, we have been informed by Learned Counsel for UPPCB that unit was re-sealed in October 2005.

60. We also find from record that vide clause 9 of CTE dated 12.08.1999 issued by UPPCB, appellant was under obligation to comply provisions of HWMH Rules, 1989. Clause 8 of CTE dated 12.08.1999 stated that the hazardous waste generated at the site shall be collected at the unit premises in the lined tank till it is properly disposed of at the authorized premises and in case, the capacity of the lined tank in the premises is achieved, unit shall immediately stop production. We may quote clauses 8 and 9 of CTE dated 12.08.1999 as under:

“8. स्लज ड्राईंग बेड्स से जन हित होने वाले हजार्डस स्लज को तब तक अपने ही प्रांगण में अपने लाईण्ड टैंक में एकत्र करें जब तक हेजार्डस बेस्ट डिस्पोजल हेतु प्रस्तावित स्थल पर कार्यवाही पूर्ण नहीं हो जाती है। तत्पश्चात अधिकृत स्थल पर निस्तारण सुनिश्चित करें। यदि उद्योग परिसर में हैजार्डस बेस्ट भण्डारण की क्षमता समाप्त हो जाती है तो तदनुसार उत्पादन बन्द करना होगा।

9. परिसंकटमय अपशिष्ट प्रबन्ध एवं हथालन नियम 1989 का समुचित अनुपालन सुनिश्चित करते हुए प्राधिकार प्राप्त करना सुनिश्चित करें।”

“8. Hazardous sludges which are of public interest from Sludge Drying Bays should be collected in their own land tanks in their own premises till the process is completed at the proposed site for Hedges Best Disposal. After that ensure disposal at the authorized site. If the capacity of storing thousands of wastes in the industry premises is exhausted, then production will have to be stopped accordingly.

9. Ensure to obtain authorization by ensuring proper compliance of Hazardous Waste Management and Handling Rules 1989.”

(English translation by Tribunal)

61. From the above, we are satisfied that since very beginning appellant has violated environmental laws and norms in as much as after obtaining CTE on 12.08.1999, it commenced operation of its unit without obtaining CTO and also without obtaining any authorisation for disposal of its hazardous waste under the provisions of HWMH Rules, 1989.

62. At this stage, we may also examine HWMH Rules, 1989 to demonstrate a few more apparent violations by the appellant.

63. HWMH Rules, 1989 were published in Gazette of India, Extraordinary dated 28.07.1989 and came into force on the date of publication in the official Gazette, vide Rule 1(2) of the said Rules.

64. Rule 2 talks of application of HWMH Rules, 1989 and says that Rules shall apply to handling of hazardous waste as specified in the Schedule.

65. Rule 3 contains definition of various terms used in HWMH Rules, 1989. For the present case, the definition of terms ‘authorisation’, ‘authorised person’, ‘hazardous wastes’, hazardous wastes site’ are relevant and reproduced below as under:

*“(c) **“authorisation”** means permission for collection, reception, treatment, transport, storage and disposal of hazardous wastes, granted by the competent authority in Form 2;*

*“(d) **“authorised person”** means a person or an organization authorised by the competent authority to collect, treat, transport, store or dispose of hazardous wastes in accordance with the guidelines to be issued by the competent authority from time to time;*

*“(i) **“hazardous wastes”** means categories of wastes specified in the Schedule;*

*“(j) **“hazardous wastes site”** means a place for collection, reception, treatment, **storage** and disposal of hazardous wastes which has been duly approved by the competent authority;”*

66. Rule 4 puts responsibility upon the occupier generating hazardous

waste in quantity equal to or exceeding the limits in column 3 of the Schedule to take all practical steps to ensure that such wastes are properly handled and disposed of without any adverse effects which may result from such wastes and the occupier shall also be responsible for proper collection, reception, treatment, storage and disposal of the wastes either himself or through the operator of facility.

67. Rule 5 talks of authorisation for handling hazardous wastes and also provided procedure for such authorization. Sub-rule 2 of Rule 5 says that every occupier generating hazardous wastes and having a facility for collection, reception, treatment, transport, storage and disposal of such wastes **shall make an application in Form 1** to the State PCB for the grant of authorization for any of the above activities.

68. Rule 7 talks of packaging, labelling and transport of hazardous wastes in a manner suitable for storage and transport.

69. Rule 9 talks of records and returns to be maintained by occupier and operator of a facility and reads as under:

“9. Records and returns

(1) The occupier generating hazardous waste and operator of a facility for collection, reception, treatment, transport, storage and disposal of hazardous waste shall maintain records of such operations in Form 3.

(2) The occupier and operator of a facility shall send annual returns to the 2 [State Pollution Control Board or Committee] in Form 4.”

70. It is not disputed before us that wastes comprising Chromium is covered by waste category 3 in Schedule of HWMH Rules, 1989 since chromium is a metal mentioned in the Schedule. The relevant entry reads as under:

*SCHEDULE: CATEGORIES OF HAZARDOUS WASTES
[Rule 3(i), 3(n) and 4]*

<i>Waste categories</i>	<i>Types of Wastes</i>	<i>Regulatory Quantities</i>
<i>Waste Category No. 3</i>	<i>Waste containing water soluble chemical compounds of lead, copper, Zinc, Chromium, nickel, selenium, Barium and antimony</i>	<i>10 kilogrammes per year the sum of the specified substance calculated as pure metal.</i>

71. Thus, from the above, it is evident that responsibility of occupier for handling of wastes is provided under Rule 4; duties of occupier are prescribed by Rule 4(A) (inserted vide amendment Rules notified vide notification dated **06.01.2000**); procedure for grant of authorisation for handling hazardous wastes is provided in Rule 5 and packaging, labelling and transport of hazardous wastes is dealt with vide Rule 7; procedure for identification of disposal sites for establishing facility for treatment, storage and disposal of hazardous waste is provided Rule 8; and Rule 9 talks of record and returns which are to be maintained by occupier generating hazardous wastes and operator of a facility for collection, reception, treatment, transport, storage and disposal of hazardous waste.

72. As per own admission of appellant, it commenced its production after obtaining CTE on 12.08.1999 and on that date or immediately thereafter, within the reasonable time, it had not obtained any authorization in the manner prescribed under Rule 5 of HWMH Rules, 1989. Appellant himself has also stated in his objections that it filed application seeking authorisation for disposal of waste in terms of HWMH Rules, 1989 vide application dated 19/22.01.2002 i.e., after more than 2 years and 5 months when it commenced production. Copy of the said application dated 19/22.01.2002 has been filed as annexure E (page 557 of paper book) to the objections. The application gives details of products, bye product and raw material, in part A-General, Item 6(a) and 6(b), as under:

6(a)	List and quantum of products and bye-products	:	Basic Chrome Sulphate 50.00 MT/Month Sodium Dichromate 25.00 MT/Month
(b)	List and quantum of raw Materials used	:	Chromite Ore 2.00 MT/ day Soda ash/Caustic 0.8 MT/ day Sulphuric Acid 0.8 MT / day Unit Molasses 0.2 MT/ day

73. The details of generation of solid waste has also been given in part A-General, Item 11, of application, as under:

6(a)	Solid Wastes	:	1.5MT/day
(a)	Total quantum of generation	:	0.5MT/ day
(b)	Quantum of hazardous waste generated and its nature, as defined under the Environment (Protection) Act, 1986. See the Hazardous Wastes (Management and Handling) Rules, 1989.	:	Sludge is stored in sludge storage pet
(c)	Mode of storage within the plant and method of disposal etc.		

74. It is not the case of the appellant that any authorisation was ever issued by Competent Authority. Appellant has also disclosed in the said application that it is storing waste in a lined tank inside the factory premises but as a matter of fact, officials of UPPCB found that waste was being dumped outside the factory premises and in this regard, copy of letter dated 14.02.2000, inspection report dated 28.06.2000 and notice dated 21.07.2000 have been placed on record along with joint Committee

report dated 28.07.2022. In this regard, appellant has relied on Sub-Divisional Magistrate, Fatehpur, Kanpur Dehat order dated 15.06.2002 whereby proceeding under Section 133 were dropped by the Magistrate observing that green colour waste was stored inside the factory premises as per Revenue Inspector's report dated 08.07.2001. UPPCB was not party in the said proceedings and had no occasion to place its stand as per the inspections made by its officials who are the experts of the subject and their inspection in regard to hazardous waste was in exercise of statutory powers under HWMH Rules, 1989 read with EP Act, 1986. The order dated 15.06.2002 passed by Sub-Divisional Magistrate in proceedings under Section 133 Cr.P.C cannot nullify the findings and observations of the officials of UPPCB as are evident from the documents filed along with joint Committee report dated 28.07.2022. With regard to notice dated 21.07.2000 issued by RO UPPCB, appellant has not submitted any explanation. Same is the position in respect of letter dated 12.04.2000 and inspection report dated 28.06.2000 conducted by a joint Committee comprising Assistant Environment Engineer and Junior Engineer of UPPCB. In any case, no authorisation was obtained by appellant under HWMH Rules, 1989.

75. Admittedly, no record as per Rule 9 of HWMH Rules, 1989 has been maintained by appellant and at least none has been placed either before UPPCB or us. It is another violation on the part of appellant.

76. Learned Counsel for appellant submitted that it had submitted application, may be belatedly i.e., on 19/22.01.2002 hence inaction of competent authority cannot result in punishing the appellant but law in this regard is very clear that mere submission of application does not mean grant of requisite permission/consent/clearance or authorisation. In the present case, it could not be disputed by Learned Counsel for appellant

that at no point of time, any authorisation was ever issued to appellant under HWMH Rules, 1989. This is a clear violation on the part of appellant of HWMH Rules, 1989. Moreover, appellant commenced production without obtaining CTO under Water Act 1974 and Air Act 1981 and authorisation under HWMH Rules 1989 and hence violated statutory provisions since beginning of its unit.

77. In view of above discussion, **Issue I is answered affirmatively i.e., against appellant.**

ISSUE II:

78. The most relevant issue raised by appellant is that it has not dumped any hazardous waste outside the factory premises as alleged and, therefore, this issue requires to be considered more seriously. Here, we find that there is admission on the part of appellant and subsequent contradictory stand is nothing but an afterthought.

79. In the memo of Appeal, appellant has said that waste comprising chromium was stored within the factory premises but this claim is self-contradicted to the stand taken by appellant as is evident from record, as under:

A) Annexure A/12 at page 135 of the paper book, is a letter dated 09.12.2019 sent by appellant (sent by Shri Anil Kuma Tiwari, Director of appellant company, addressed to Member Secretary, UPPCB, Lucknow) in reference to notice dated 19.11.2019 issued by RO, UPPCB demanding environmental compensation of Rs. 39,98,57,850/-. On page 138, appellant has said as under:

“...there was the private site at which several (about 24) chromium based factories (both from Kanpur Dehat and Kanpur Nagar) were dumping Chromium waste, the undersigned company also dumped its waste produce on the said site...”

B) Appellant has also admitted in his letter i.e., annexure A/12, at page 138 that the in-house pucca dump situated within factory premises was full and thereafter, company along with other chromium based factories approached UPPCB for arranging disposal site for dumping of the waste produced. This approach is said to have been made in 2001. Thus, it is also admitted by appellant that the dump inside factory was full long back, with waste stored therein and, thereafter, waste was dumped outside the factory premises.

C) It has also been stated at page 140 that ill effects of dumping of Chromium waste is on account of inaction and denial of permission by UPPCB for transfer of dump to the common Secured landfill which was completed in 2005. The relevant extract on page 140 on the appellant's own letter dated 09.12.2019 reads as under:

*“As such, neither the **dump (including chromium) lying in the impugned locality** was shifted by the UPPCB, nor the UPPCB permitted the undersigned company and of the society to shift the dump to the constructed landfill. As such, any ill effects that may have been caused due to the percolation and seepage of the chromium from the aforesaid dump was solely due to inaction and denial of permission by the UPPCB in the year 2005 and delay in the construction despite the transfer of land by the State Govt. to the UPPCB in the year 1994 for the said purposes.”*

80. It is only later, appellant has changed its stand but having seen the contradiction and initial stand of appellant, we are satisfied that appellant has dumped its hazardous waste comprising Chromium at the questioned site outside the premises of its factory.

81. There are documents to show that alleged dumping inside the factory premises was not found correct even by UPPCB and this violation was brought to the notice of appellant also. The inspection report dated 13.08.2004 appended to joint Committee's report dated 28.07.2022 mentions that only partial quantity was dumped therein and in fact,

appellant was dumping hazardous waste in the nearby open area which was liable to cause contamination of ground water due to percolation of leachate. To the same effect is earlier report which is evident from RO, UPPCB's letter dated 14.02.2000. In the inspection report dated 28.06.2000, which is also part of report dated 28.07.2022, it is clearly mentioned that there was an arrangement for temporary storage of hazardous waste inside the factory premises but at the time of inspection, it was found that the unit instead of dumping hazardous waste in the tank constructed at the factory premises, was dumping outside the factory premises and Kalpi road side. In fact, the said Committee, in the inspection report dated 28.06.2000 found entire storage tank empty. No satisfactory reply has been given by appellant to these documents.

82. From the above material and discussion, we are satisfied that appellant is guilty of dumping of hazardous waste comprising Chromium outside the factory premises and even in the inspection dated 28.06.2000, the tank constructed in the factory premises land for dumping hazardous waste was found completely vacant which shows that appellant was guilty of dumping of hazardous waste comprising Chromium outside the factory premises and its otherwise claim is false.

83. We may notice at this stage that dumping of waste containing chromium is a very serious violation since chromium is very toxic and its storage at unauthorized site is bound to cause serious damage to environment. To appreciate this aspect, we may examine the nature of Chromium with regard to toxicity and adverse effects, if any, it has on human health and environment.

84. **Toxicity of Chromium:** Waste containing Chromium is highly toxic liable to cause severe damage to environment in various ways and

ultimately health of people at large. This factum about toxicity of chromium metal has also not been disputed before us by Learned Counsel for appellant. It has also come on record that the type of Chromium waste found in the dumped hazardous waste at the questioned site is **'Hexavalent Chromium'** i.e., **Cr (VI)**. It is highly toxic and carcinogenic form of Chromium metal. It can enter environment through improper treatment of industrial waste water. Industrial waste lying on open land, by the process of percolation of leachate, contaminates ground water as also soil.

85. In an Article titled as "Toxic and genotoxic effects of hexavalent chromium in environment and its bio-remediation strategies" written by Sandhya Mishra and Ram Naresh Bhargawa, published in the Journal of Environmental Science and Health, Part C volume 34 (2016-Issue I), it is pointed out that Chromium is one of the major inorganic environmental pollutants, which is added in the environment through various natural and anthropogenic activities. It exists mainly in two forms; Cr (III) and Cr (VI). Cr (VI) is considered to be more toxic than Cr (III) due to its high solubility and mobility. It is a very reported occupational carcinogen associated with lung, nasal and sinus cancer.

86. In a review titled as 'Sources and Toxicity of Hexavalent Chromium' by Rumpa Saha, Rumki Nandi and Bidyut Saha, published in the journal of Coordination Chemistry, Volume 64, (2011-Issue 10), it is said that Chromium exists in oxidation states ranging from -IV to +VI, inclusively. The compounds exhibit a wide range of geometries including square planar, tetrahedral, octahedral and various distorted geometries. Ore refining, chemical and refractory processing, cement producing plants, automobile brake lining, catalytic converters for automobiles, leather tanneries, and chrome pigments contribute to the atmospheric burden of

chromium. Hexavalent chromium i.e., Cr (VI) is known to have 100-fold more toxicity than trivalent Chromium i.e., Cr (III), for both acute and chronic exposures because of its high water solubility and mobility, as well as easy reduction. The respiratory tract is the major target organ for hexavalent chromium following inhalation exposure in humans. Chronic inhalation exposure to hexavalent chromium results in effect on the respiratory tract, with perforations and ulcerations of the septum, bronchitis, decreased pulmonary function, pneumonia and nasal itching and soreness, as reported. Chronic human exposure to high levels of hexavalent chromium by inhalation or oral exposure may produce effects on the liver, kidney, gastrointestinal, and immune systems, and possibly the blood. Dermal exposure to hexavalent chromium may cause contact dermatitis, sensitivity, and ulceration of the skin.

87. Another research Article titled as ‘Chromium Toxicity and its Health Hazards’ by Kirti Shekhawat, Sreemoyee Chatterjee and Bhumika Joshi, published in International Journal of Advanced Research in July 2015, it is said that Chromium is one of the major industrial wastes produced from industries like textiles, tanneries, electroplating, metallurgical which causes health issues in humans and animals and also affects marine life. It is most abundant mineral in Earth’s crust. Chromium has an atomic number 24 in periodic table and relative atomic mass of 51.996. It occurs in almost all oxidation states ranging from -2 to +6. But in environment, Chromium is mostly stable in trivalent and hexavalent form i.e., Cr (III) and Cr (VI). Chromium which is present in 0 oxidation state is biologically inert and is not naturally present in Earth’s crust while Cr (III) and Cr (VI) are originated from industries. The available form of Chromium is as halides, oxides and sulphides. It is the +2 oxidation state of chromium which is unstable and can be easily oxidized to +3 forms in the presence

of air.

88. According to Indian Standards, maximum tolerance for total chromium in water supplies is 0.05 mg/L. Chromium and its compounds get absorbed in human body through the exposure to oral, dermal and inhalation routes. Cr (III) is less absorbed than Cr (VI) and this leads to a difference in their transport methods to cells. Cr (VI) i.e., Hexavalent Chromium enters into the cell via a non-specific anion channel by facilitated diffusion while Cr (III) enters by passive diffusion or phagocytosis. Human liver, kidney, spleen and bone have more concentration of Chromium in comparison to other organs. Cr (VI) has ability to easily penetrate in RBC. Because of its bio-availability, Cr (VI) enters into RBC and gets converted into Cr (III) which binds to the cellular components and then it is unable to leave RBC. The structure of cells somewhat resembles to the structure of RBC. Due to this, Cr (VI) can be easily uptaken by other cells. Also due to oral, intravenous and intra tracheal administration of Cr (VI), its level in tissues increase. Absorption of Cr depends on some factors which are particle's size, oxidation state and its solubility but majorly on the interaction with biomolecules in lungs. The main reduction of Cr (VI) to Cr (III) takes place in tissue of lungs. In respect of Cr (VI), the above research said that it is second stable form of chromium and has a strong oxidizing property. Cr (VI) binds to oxygen and form chromate and dichromate. Cr (VI) has the ability to cross biological membrane and reacts with proteins and nucleic acid. Through feacal test, it is concluded that 10% of the dose is absorbed in gastrointestinal tract. Cr (VI) gets reduced to Cr (III) in lower respiratory tract by pulmonary alveolar macrophages. Cr (VI) enters into blood stream and then taken up by RBC, gets reduced and bound to hemoglobin.

89. Cr (VI) compounds, due to their solubility and reactivity, cause

sensitization and allergic reaction. Cr (VI) is an extremely sensitized agent. It can be said in totality that Chromium is responsible for toxic effects in human and it causes allergenicity and carcinogenicity in humans and in animals also. Cr (VI) is mainly responsible for all carcinogenic activity in comparison to Cr (III). With all the toxic effects, there are clear evidence of asthmatic responses sometimes with respiratory exposures. It is responsible for dermatitis allergy; perforation in nasal septum and some cases of lung cancer is also evident. Due to exposure to Chromium, some genetic alteration also takes place which is harmful for human health. Excess of chromium cause patches on skin and lung cancer.

90. Cr (VI) is classified as known 'human carcinogen' by International Agency for Research on Cancer (hereinafter referred to as **IARC**). The conclusion of IARC is based on evidence in humans that Cr (VI) compound cause cancer of the lungs and positive associations observe with cancer of nose and nasal sinuses.

91. In the Article 'Ecological Risk Assessment of Hexavalent Chromium and Silicon Dioxide in Well Water in Maros Regency, Indonesia' published in Gaceta Sanitaria (Volume 35, Supplement 1, 2021), it is said that Cr (VI) has been classified as carcinogenic compound. Residents exposed to Cr (VI) are confirmed to have digestion, dermatological and hema-tological abnormalities. Heavy concentration of Cr (VI), therefore, is bound to affect health seriously. Heavy metals can pollute wells through movement of ground water and surface water. Leaching processes from top-soil and rock soils are natural sources and play an important role in flow of chromium to ground water.

92. From the above referred research papers and other relevant material available in the public domain, it is well-established that Cr (VI) is

considered to be a carcinogen and may cause various diseases to human being when its concentration exceeds permissible limit whether at the top soil or ground water including bore well water.

93. In the present case, toxic waste i.e., the waste comprising Chromium (Cr VI) was found spread about 5 meters on the right side of Kanpur, Jhansi Highway in village Khanchadrapur, District Kanpur Dehat. In the report of Justice Arun Tandon, photographs of dumps are appended. The report also said that the land over which Chromium dump was lying, is either a private land or a land belongs to Gram Sabha. The toxic effects caused due to the aforesaid dumping are also reported in the said report stating that the water coming out from hand pump/bore well was coloured and unfit for drinking; samples were collected from various places within radius of around 150 meters both towards the highway from the dump as well as from the opposite direction; at all places, Committee found that colour of water, sample whereof were taken, was greenish; even water from bore well situate within a factory and more than 150 meter deep was found greenish in colour; the water coming out from hand pumps being used by inhabitants of the locality was also found green in colour; and physical disability generated due to use of contaminated water, was also reported in the said report.

94. Thus, it can be concluded that dumping of waste comprising Chromium is highly toxic, dangerous to environment since due to percolation of leachate ground water gets contaminated and when used, it affects human health.

95. In view of the above discussion, **we answer Issue II in affirmation and against appellant.**

ISSUE III

96. Considering the findings recorded in respect of Issue II above, we are satisfied that the claim of the appellant that it was dumping hazardous waste containing chromium inside the factory premises, is not correct factually and even otherwise, is not borne out from record. On the contrary, the record available shows that it was brought to the notice of appellant repeatedly by officials of UPPCB that appellant's unit was dumping hazardous waste comprising chromium on road side and other places and not in the factory premises but appellant did not mend its ways. Letter dated 14.02.2000 which is placed along with the report dated 28.07.2022 shows that RO UPPCB, Kanpur Dehat informed appellant that during site visit, he found that unit was dumping hazardous waste comprising chromium outside the factory premises which is not in public interest. Appellant in the objections filed to the report has neither disputed existence of the said letter nor the contents thereof. It is also not the case of the appellant that above letter was never communicated to it.

97. Inspections dated 28.06.2000 and 13.08.2004 also reiterate the findings that appellant was dumping its hazardous solid waste comprising chromium outside the factory premises. Nowhere the above inspections and findings recorded therein were/are disputed by appellant. Therefore, the first thing that the appellant was dumping waste inside factory premises is not correct. Secondly, even otherwise no authorisation was obtained by appellant in respect of any site for dumping of waste inside factory premises. The definitions of 'hazardous waste site' under Rule 3(j) of HWMH Rules, 1989 clearly talks of a place for collection, storage, disposal etc. of hazardous waste which has been duly approved by Competent Authority. Under HWMH Rules, 1989, no site in the factory premises was approved by Competent Authority for storage, disposal etc.

of hazardous waste. Therefore, even otherwise, storage of hazardous waste inside factory would not have been lawful or valid and instead, it violated HWMH Rules, 1989.

98. **Issue III is answered accordingly and against appellant.**

ISSUE IV:

99. In the present appeal, environmental compensation computed by RO UPPCB has been assailed. The compensation has been determined holding appellant liable to pay such compensation applying principle of 'Polluter Pays'. This principle was recognized as part of environmental law in India in ***Indian Council for Enviro-Legal Action vs. Union of India, (1996)3SCC212***. Certain industries producing assets were dumping their waste and even untreated waste water was allowed to flow freely polluting atmosphere and sub-terrain supply of water which ultimately caused darkening and dirtiness of wells and the streams water rendering it unfit for human consumption. Certain environmentalists' organizations broadly alleging severe damage to villager's health, filed a Writ petition as PIL in 1989 before Supreme Court. By that time, some of the units were already closed. Referring to Article 48-A in Director Principle of State Policy and 51-A in the Fundamental duties of citizens, Supreme Court observed that said provisions say that State shall endeavor to protect and improve environment and to safeguard the forest and wildlife of the country. One of the fundamental duties of citizen says to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creature. **Proponent has established to operate its commercial unit contrary to law flouting norms provided by law, Statutory Regulator is bound to act and if it fails, a judicial forum can direct it to act in accordance with law.** Referring to Oleum Gas leak case, i.e., ***M.C. Mehta vs. Union of India, (1987)1SCC395***, Court

observed in para 58 that the constitution bench held that enterprise must be held strictly liable for causing such harm as a part of social cost of carrying on the hazardous or inherently dangerous activity. Hazardous or inherently harmful activities for private profits can be tolerated only on the condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of carrying on of such hazardous or inherently dangerous activity, regardless of whether it is carried on carefully or not. Court also referred to its earlier decision in ***Indian Council for Enviro Legal action vs. Union of India (1995)3SCC77***, wherein PCB identified about 22 industries responsible for causing pollution by discharge of their effluent and a direction was issued by Court observing that they were responsible to compensate to farmers. It was the duty of State Government to ensure that this amount was recovered from the industries and paid to the farmers. In para 67 of the judgment, Court said that the **question of liability of respondent units to defray the costs of remedial measures can also be looked into from another angle which has now come to be accepted universally as a sound principle, for example, ‘Polluter Pays’ principle**. On this aspect, Court further observed as under:

“67. ...The Polluter Pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution. Under the principle it is not the role of government to meet the costs involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. The ‘Polluter Pays’ principle was promoted by the Organization for Economic Co-operation and Development (OECD) during the 1970s when there was great public interest in environmental issues. During this time there were demands on government and other institutions to introduce policies and mechanisms for the protection of the environment and the public from the threats posed by pollution in a modern industrialized society. Since then there has been considerable discussion of the nature of the polluter pays principle, but the precise scope of the principle and its implications for those involved in past, or potentially polluting activities have never been satisfactory agreed.

*Despite the difficulties inherent in defining the principle, the European Community accepted it as a fundamental part of its strategy on environmental matters, and it has been one of the underlying principles of the four Community Action Programmes on the Environment. The current Fourth Action Programme ([1987] OJC 328/ 1) makes it clear that **'the cost of preventing and eliminating nuisances must in principle be borne by the polluter'**, and the polluter pays principle has now been incorporated into the European Community Treaty as part of the new Articles on the environment which were introduced by the Single European Act of 1986. Article 130-R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the Community, and that action is to be based on three principles: the need for preventative action; the need for environmental damage to be rectified at source; and that the polluter should pay."*

100. Court further said that **according to the above principle of 'Polluter Pays', responsibility for repairing the damage is that of the offending industry.** Sections 3 and 5 of EP Act, 1986 empower Central Government to give directions and take measures for giving effect to this principle. It further said as under:

*"...In all the circumstances of the case, **we think it appropriate that the task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government in the light of the provisions of the Environment [Protection] Act, 1986.** It is, of course, open to the Central Government to take the help and assistance of State Government, R.P.C.B. or such other agency or authority, as they think fit."*

101. The above principle has been followed in **Vellore Citizen Welfare Forum vs. Union of India, 1996(5)SCC647.** In para 25, direction no. 2 reads as under:

*2. The authority so constituted by the Central Government shall implement the "precautionary principle" and the "polluter pays" principle. **The authority shall, with the help of expert opinion and after giving opportunity to the concerned polluters assess the loss to the ecology/environment in the affected areas and shall also identify the individuals/families who have suffered because of the pollution and shall assess the compensation to be paid to the said individuals/families. The authority shall further determine the compensation to be recovered from the polluters as cost of reversing the damaged environment.** The authority shall lay down just and fair procedure for completing the exercise.*

102. In ***Bittu Sehgal and Another vs Union of India & Others (2001)9SCC181***, referring the earlier judgments, Supreme Court has said that precautionary principle and 'Polluter Pays' principle have been accepted as part of the law of the land.

103. In ***Research Foundation for Science vs. Union of India & Ors., (2005)13SCC186***, in para 26 and 29, Court, on 'Polluter Pays' Principle, has said as under:

26. The liability of the importers to pay the amounts to be spent for destroying the goods in question cannot be doubted on applicability of precautionary principle and polluter-pays principle. These principles are part of the environmental law of India. There is constitutional mandate to protect and improve the environment. In order to fulfill the constitutional mandate various legislations have been enacted with attempt to solve the problem of environmental degradation.

29. The polluter-pays principle basically means that the producer of goods or other items should be responsible for the cost of preventing or dealing with any pollution that the process causes. This includes environmental cost as well as direct cost to the people or property, it also covers cost incurred in avoiding pollution and not just those related to remedying any damage. It will include full environmental cost and not just those which are immediately tangible. The principle also does not mean that the polluter can pollute and pay for it. The nature and extent of cost and the circumstances in which the principle will apply may differ from case to case.

104. In ***Karnataka Industrial Areas Development Board vs. C. Kenchappa & Others (2006)6SCC371***, principle of 'Polluter Pays' has been explained in detail referring to the earlier judgments in ***Indian Council for Enviro-Legal Action vs. Union of India (supra)*** and ***Vellore Citizen Welfare Forum (supra)***.

105. Applying the above principle of 'Polluter Pays', it thus cannot be doubted that the appellant, having dumped hazardous waste containing chromium (Cr VI) at the questioned site and thereby causing damage to environment and also affecting local people's health, is liable for restoration of the damage caused to environment and to bear its cost.

Appellant thus has to pay environmental compensation.

106. Now the question is, what should be that cost or environmental compensation. In other words, how much environmental computation is payable by appellant. What are the norms to compute environmental compensation is the moot question.

107. Environmental compensation shall have the element of damage to environment, cost of remediation, deterrent factor and other relevant aspects. Issue of determination of environmental compensation is significant in the sense that it should be proportionate to or bears reasonable nexus with the environmental damage and its remediation/restoration.

108. Taking into consideration multifarious situations relating to violation of environmental laws vis-a-vis different proponents, nature of cases involving violation of environmental laws can be categorized as under:

- (i) Where Project/Activities are carried out without obtaining requisite statutory permissions/consents/clearances/NOC etc., affecting environment and ecology. For example, Forest clearance; NOC for extraction and use of ground water; Environment Impact Assessment Notification 2006; Consent under Water Act, 1974 and Air Act, 1981; Authorisation under Solid Waste Management Rules, wherever applicable, and similar requirements under other statutes.
- (ii) Where proponents have violated conditions imposed under statutory Permissions, Consents, Clearances, NOC etc. affecting environment and ecology.
- (iii) Where Proponents have carried out their activities causing damage to environment and ecology by not following standards/norms

regarding cleanliness/pollution of air, water etc.

109. The above categories are further sub-divided, i.e., where the polluters/violators are corporate bodies/organisations/associations and group of the people, in contradistinction, to individuals; and another category, the individuals themselves responsible for such pollution.

110. Further category among above classification is, where, besides pollution of environment, proponents/violators action also affect the community at large regarding its source of livelihood, health etc.

111. The next relevant aspect is, whether damage to environment is irreversible, permanent or is capable of wholly or partially restoration/remediation.

112. Determination/computation/assessment of environmental compensation must, not only conform the requirement of restoration/remediation but should also take care of damage caused to the environment, to the community, if any, and should also be preventive, deterrent and to some extent, must have an element of “being punitive”. The idea is not only for restoration/remediation or to mitigate damage/loss to environment, but also to discourage people/proponents from indulging in the activities or carrying out their affairs in such a manner so as to cause damage/loss to environment.

113. To impose appropriate ‘environmental compensation’ for causing harm to environment, besides other relevant factors as pointed out, one has to understand the kind and nature of ‘Harmness cost’. This includes risk assessment. The concept of risk assessment will include human health risk assessment and ecological risk assessment. U.S. Environmental Protection Agency has provided a guideline to understand

harm caused to environment as well as people. For the purpose of human-health risk assessment, it comprised of three broad steps, namely, planning and problem formulation; effects and exposure assessment and risk categorization. The first part involves participation of stakeholders and others to get input; in the second aspect health effect of hazardous substances as well as likelihood and level of exposure to the pollutant are examined and the third step involves integration of effects and exposure assessment to determine risk.

114. Similarly, ecological risk assessment is an approach to determine risk of environmental harm by human activities. Here also we can find answer following three major steps, i.e., problem codification; analysis of exposure and risk characterization. First part encompasses identification of risk and what needs to be protected. Second step insists upon crystallization of factors that are exposed, degree to exposure and whether exposure is likely or not to cause adverse ecological effects. Third step comprised of two components, i.e., risk assessment and risk description.

115. In totality, problem is multi-fold and multi-angular. Solution is not straight but involves various shades and nuances and vary from case to case. Even Internationally, there is no thumb-rule to make assessment of damage and loss caused to environment due to activities carried out individually or collectively by the people, and for remediation/restoration. Different considerations are applicable and have been applied.

116. Nature is extremely precious. It is difficult to price elements of nature like light, oxygen (air), water in different forms like rain, snow, vapour etc. When nature is exploited beyond its carrying capacity, results are harmful and dangerous. People do not understand the value of what nature has given free. Recently in Covid-19 wave II, scarcity of oxygen

proved its worth. In dreadful second phase of the above pandemic, any amount offered, in some cases, could not save life for want of oxygen. Further, damage to environment, sometimes do not reflect in individuals immediately and may take time but injury is there. In such cases, process of determination of compensation may be different. In an article, 'the cost of pollution-Environmental Economics' by Linas Cekanavicius, 2011, it has been suggested, where commercial activities have been carried out without consent etc., and pollution standards have been violated, Total Pollution Cost (hereinafter referred to as **TPC**) can be applied. It combines the cost of abatement of environment pollution and cost of pollution induced environmental damage. The formula comes to $TPC(z)=AC(z)+ED(z)$, where z denotes the pollution level. Further, clean-up cost/remediation cost of pollution estimated to be incurred by authorities can also be used to determine environmental compensation. When there is collective violation, sometimes the issue arose about apportionment of cost. Where more than one violator is indulged, apportionment may not be equal since user's respective capacity to produce waste, contribution of different categories to overall costs etc. would be relevant. The element of economic benefit to company resulting from violation is also an important aspect to be considered, otherwise observations of Supreme Court that the amount of environmental compensation must be deterrent, will become obliterated. Article 14 of the Constitution says that unequal cannot be treated equally.

117. Determination/assessment/computation of environmental compensation cannot be arbitrary. It must be founded on some objective and intelligible considerations and criteria. Simultaneously, Supreme Court also said that its calculations must be based on a principle which is simple and can be applied easily. In other words, it can be said that

wherever Court finds it appropriate, expert's assessment can be sought but sometimes experts also go by their own convictions and belief and fail to take into account judicial precedents which have advanced cause of environment by applying the principles of 'sustainable development', 'precautionary approach' and 'Polluter Pays' etc.

118. Clean-up cost or TPC, may be a relevant factor to evaluate damage, but in the diverse conditions as available in this Country, no single factor or formula may serve the purpose. Determination should be a quantitative estimation; the amount must be deterrent to polluter/violator and though there is some element of subjectivity but broadly assessment/computation must be founded on objective considerations. Appropriate compensation must be determined to cover not only the aspect of violation of law on the part of polluter/violator but also damage to the environment, its remediation/restoration, loss to the community at large and other relevant factors like deterrence, element of penalty etc.

119. Rules for handling, storage, management, etc. of hazardous waste were initially framed in 1989 which were superseded by Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 published vide MoEF notification dated 24.09.2008 in the Gazette of India, Extraordinary of the same date and again, Hazardous Waste Rules, 2008 were superseded by HOWMTM Rules, 2016. However, in the above Rules, there was no mechanism provided for determination/assessment of environmental compensation for violation of the aforesaid Rules. This was a serious gap and noticed by this Tribunal in **OA 804/2017 (Earlier OA 36/2012), Rajiv Narayan & Anr. vs. Union of India & Ors.** Vide order dated 12.04.2019, directions were issued to CPCB to determine, within one month, the scale of compensation to be recovered for violation of the

Rules. Pursuant thereto, CPCB in May 2019, issued guidelines titled as 'Determination of Environmental Compensation to be recovered for violation of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016'. Reference of HOWMTM Rules, 2016 was given in the guidelines of May 2019 since only those Rules were in operation at the time of issue of the guidelines but in effect, the guidelines provided mechanism of determination of environmental compensation for violation of the Rules pertaining to handling, storage, transport etc. of hazardous waste. In respect of the circumstances applicable in the present case, the formula prescribed therein is as under:

$$\text{Environmental Compensation} = \text{ERF} \times \text{Q} \times \text{R}$$

120. Here **Q** is Quantity of hazardous or other waste which has not been managed with the provisions of environmental laws and norms; **ERF** is Environmental Risk Factor and R is Environmental Compensation Factor of Rupees.

121. Value of ERF applicable in the present case is 1.5 and R is Rs. 30,000/- as is evident from notice dated 24.10.2019, issued by RO UPPCB to appellant. Value of Q i.e., quantity has to be determined after considering the relevant facts, applicable and available on record, in the present case.

122. Learned Counsel for appellant has said that the aforesaid formula was prescribed by HOWMTM Rules, 2016 and, therefore, would not apply to the transactions of the period between 1999 to 2005. However, we do not find that any such formula, for computation of environmental compensation, has been prescribed in HOWMTM Rules, 2016. The submission is not supported by documents. While we agree with the appellant's counsel's submission that HOWMTM Rules 2016 would not

apply in this case, we do not find anything in the said rules to show that the above formula is part of the said rules.

123. It is also contended that value of R is prescribed as Rs. 30000/- per ton, by CPCB very recently, hence it cannot be applied to appellant as such and instead value of R should be taken with corresponding reduction as it ought to be in 1999-2005. In our view, since damage is continuing, the present value of R can safely be applied in the present case. Appellant has committed a crime under EP Act 1986, Water Act 1974 by dumping hazardous waste at questioned site and took no steps for its removal. It has violated law. The dumped waste has continuously remained lied at the questioned site till date and causing damage to environment continuously. Now appellant cannot be allowed to take advantage of its own wrong. It is not open to appellant to contend that since UPPCB has failed to take remedial steps in time hence lapse of time should contribute to his advantage. Appellant has failed in observing its statutory obligations and such failure is continuing till date hence appellant has to bear cost which in present may be borne by Statutory Regulator. We, therefore, reject the otherwise submission advanced on behalf of appellant.

124. In fact, CPCB guidelines providing the above formula are not under challenge in the Appeal. Though, we find that the guidelines have been held in some other cases by this Tribunal as providing meagre amount as value of R but in the present case, since it is an Appeal and the order of RO UPPCB is under challenge, we will examine the validity of the formula applied by RO UPPCB based on guidelines of CPCB and would not go to examine correctness of the guidelines of the formula prescribed by CPCB since it is not under challenge by appellant before us.

125. **Determination of Quantity of Waste Dumped by Appellant:** Now,

coming to the record, we proceed to find out quantity of hazardous waste dumped by appellant at the questioned site. Appellant has stated that it purchased Chromite Ore in 1999 to 2005-2006 to a total quantity of 8330.675 MT, therefore, hazardous waste would have to be in proportion with the said quantity of raw material purchased by appellant particularly, in absence of any otherwise material found by RO UPPCB. We find that appellant himself has disclosed some important information like;

- a) Total production of BCS between 1999 to 2005-2006 = 8569.750 MT
- b) As per CTE dated 12.08.1999, daily production of BCS is 3 MT and hazardous waste is 1.5 MT.
- c) In the letter dated 09.12.2019 (annexure A/12, page 137), appellant has reiterated that its capacity of production of BCS (high grade) was 3 MT/day while average waste discharge from the factory unit was 1.5 MT/day.
- d) In the objections of appellant filed on 18.08.2022, appellant has disclosed total waste generated between 1999-2005 as 986.495 MT.
- e) In the above objections, appellant has also disclosed total purchased chromite ore for production of BCS between 1999-2005 as 8330.675 MT.
- f) Appellant in its above objections has also disclosed that quantity of chromite ore actually utilized between 1999-2005 was 7891.957 MT.

126. In the backdrop of above facts, which are self-admitted figures supplied by appellant, it is contended that the huge quantity of dumped waste computed by RO UPPCB, is illegal, being highly excessive, irrational and based on material. Learned Counsel for appellant pointed out that

initially when vide order dated 19.11.2019, compensation of Rs. 39,98,57,850/- was computed, quantity of waste was taken as 8885.73 MT. Again amount of compensation was re-visited vide report dated 30.09.2021 and quantum of compensation was computed as Rs. 21,48,12,058/-. The quantity of hazardous waste was computed as 4773.601 MT i.e., more than 4000 MT lesser than the earlier computation. Again, when the amount of compensation was re-visited as Rs. 27,40,62,295/-, the quantum of dumped waste has been computed as 6090.273 MT. Variation of the quantity of waste determined by RO UPPCB as also computation of environmental compensation thrice, shows that no substantive material was available with RO UPPCB and the entire computation is conjectural based on surmises and had not been determined objectively.

127. There is no doubt that Statutory Regulator i.e., RO UPPCB has determined environmental compensation in the present case while other circumstances remaining same, arriving at three different quantities of waste and amount of environmental compensation. Variation is not minor but substantial. In these facts and circumstances, Learned Counsel for appellant tried to stress upon us that the quantity of waste disclosed by appellant as 986.495 MT, should be taken as correct but we find no substance in the submission and we have reasons to say so.

128. Appellant himself has disclosed that it produced 8569.750 MT BCS. As per CTE as also appellant's application submitted in form 1 under Rule 5 of HWMH Rules, 1989, if 3 MT of BCS is produced waste containing chromium would be generated to the extent of 1.5 MT. That being so, if 8569.75 MT BCS is produced by appellant, the waste generation would be 4284.875 MT ($8569.75 \div 3 \times 1.5$). *Ex-facie*, the generation of waste claimed by appellant as 986.495 MT is improbable and incorrect.

129. In fact, we have no hesitation in stating and recording our disapproval to the manner in which different stand and figures have been given by appellant in the present case and we find that the figures supplied by appellant are also not reliable. Appellant himself has filed various documents along with the objections and annexure 7 thereto shows the quantity of total production of BCS by appellant between 1999 to 2005-06 and i.e., 8569.750 MT. It is inconceivable and improbable that appellant could have got production of 8569.750 MT BCS from the total chromite ore which he purchased i.e., 8330.675 MT. What appellant has disclosed that he purchased a lesser quantity of chromite ore which is raw material for extraction of chromium and, therefrom, he got extracted quantity of BCS more than the parent substance. In fact, scientific literature on the subject shows that normally percentage of chromium available in chromite ore is around 46% in metallurgical process and in other process, it is lesser. Hence to claim that appellant could produce more BCS from the lesser quantity of basic raw material i.e., chromite ore, is unacceptable particularly, in the absence of any material to show that it could have been possible or it could have been obtained by appellant. On the contrary, we have scientific material available in public domain to show otherwise.

130. **Chromite ore:** Chromite ore consists of varying percentages of Chromium, iron, aluminum and magnesium oxides as the major components. It has been classified into three grades associated with their use and chromic oxide content; metallurgical (greater than 46%), chemical (40-46%) and refractory (less than 40%) grades. Technological advances have allowed considerable interchangeability among the various grades, particularly the so-called chemical grade which can be utilized in all three industries. A more definitive classification is: (i) 'high-chromium' chromite (metallurgical-grade), containing a minimum of 46% chromic oxide and a

chromium : iron ratio greater than 2:1; (ii) 'high-iron' chromite (chemical-grade), with 40–46% chromic oxide and a chromium : iron ratio of 1.5:1 to 2:1; and (iii) 'high-aluminium' chromite (refractory-grade), containing more than 20% aluminium oxide and more than 60% aluminium oxide plus chromic oxide.

131. **Process of making BCS:** BCS also claimed as Chromium powder is a kind of crucial inorganic chemical product widely used in printing, dyeing, pottery, green ink and tannery industry etc. In tanning industry, it is a kind of extremely important chrome tanning agent. BCS is mainly a mixture of chrome sulfate and sodium sulfate, a green colored powder containing chromium tri-oxide [Cr_2O_3] (26%) and $\text{Na}_2(\text{SO}_4) < 26\%$ with basicity of 33%. BCS is produced by reaction of chromic oxide and sulfuric acid followed by reduction by sulfur-di-oxide (SO_2). There are various methods in details, whereof, it is not necessary for us to go and it is suffice to say that chromite ore is used to produce compounds of Chromium or its derivatives. Raw materials for most of the chrome auxiliaries or chemicals are sodium di-chromate or chromate which is produced from chromite ore. Normally, BCS is produced with basicity of 33%. Products with higher basicity for example 42% or 50% may be obtained by the addition of sodium carbonate.

132. There is a detailed research paper on the subject titled as “Advances towards a Clean Hydrometallurgical Process for Chromite” by Bo Zhang, Peiyang Shi and Maofa Jiang published on 28.01.2016 in Minerals 2016. The paper contains the detail of preparation technology of chromium salt. It is stated therein that acute capacity of Cr (VI) has caused a serious concern and pollution problem by chromite process residue at a global level. Researches were going on to resolve pollution problem and various methods were subjected. Appellant used sulphuric acid and caustic soda

besides chromite ore in the technology adopted by it and this is called alkali treatment technology. The above paper has said, *“the technologies based on the alkali treatment cannot fundamentally resolve the pollution problem, because the oxidation of Cr (III) to Cr (VI) is unavoidable during chromite decomposition”*. According to the aforesaid study, recovery of chromium is usually in the range of 75% to 81%. It is also said that the toxic residue of industrial chromium salts is mainly linked to sodium dichromate production and preparation of one ton of sodium dichromate can generate about 2.5 tons of residue in which Cr (VI) content is $\geq 0.4\%$, present in the carcinogenic calcium chromate phase. There is another process of non-calcium roasting process wherein recovery of chromium may reach to $>90\%$ but recovery of chromium salt from chromite ore $>100\%$ is not provided in any scientific literature on the subject. therefore, the figures of purchase of chromite ore given by appellant is not reliable more so for the reason that the production figure the appellant is supported with the audited annual financial statement which is not the case with the quantity of chromite ore purchased by appellant. In order to avoid any uncertainty or complaint of unreliable information on the part of Statuary Regulator, we find it safe to compute quantity of waste on the basis of the information supplied by appellant and this can be calculated/computed in the following manner:

- (i) Appellant himself has disclosed total production of BCS as **8569.750 MT** and other bye products like Sodium Dichromate as 100.350 MT, Sodium Sulphate as 1584.666 MT and Sodium Chromate as 8.850 MT, total comes to **10263.616 MT**.
- (ii) He has also disclosed that when 3 MT BCS is manufactured per day, the average waste discharge is 1.5 MT/day. In the circumstances, when 8569.750 MT BCS is produced, the average waste generation would be **4284.875 MT**. The above computation excludes the

production of other products like Sodium Dichromate, Sodium Sulphate and Sodium Chromate which would not be proper.

- (iii) The total production, as discussed by appellant, of various compounds is, 10263.616 MT. The average waste discharge at the rate of 1.5 MT/day as against production of 3 MT/day of the compound, would be **5131.80 MT**.

133. There is another way of computation for the reason that appellant has given the figures of daily discharge of waste on the assumption that its actual production of BCS was confined to 3 MT/day. This assumption is apparently incorrect. If we go by the information and period disclosed by appellant himself that the function of the unit commenced after grant of CTE dated 19.08.1999, on the same day and it functioned till 07.02.2005, it means the unit actually functioned for about 65 months and 20 days. The number of working days, if taken to be 25 every month, would come to **1632 days**. The total production of BCS during the above period is disclosed by appellant was 8569.750 MT hence, daily production would come to **8569.750 MT ÷ 1632 days = 5.25 MT/day**. That being so, the average waste discharge would come to **2.62 MT/day**. Thus, daily waste of 2.62 MT/day, if we multiply it by 1632 days, it would come to 4275.84 MT ($2.62 \times 1632 = 4275.84$).

134. Among the above figures, we find no reason to consider lower one, since there is production of other materials also and, therefore, we find it safe to take the waste generation as **5131.80 MT**. That being so, environmental compensation, as per the above formula, would be Rs. 23,09,31,000/- ($5131.80 \times 1.5 \times 30000$). In view of the above, we hold and compute quantum of environmental compensation payable by appellant as **Rs. 23,09,31,000/-**.

135. In view of above computation, objections raised by appellant that total quantity of hazardous waste, lying at the questioned site, has been taken proportionately against appellant for computation of environmental compensation, becomes reductant, since we have computed above without taking into consideration any such information. On the contrary, we have computed on the basis of the information supplied by appellant himself which is binding upon him. Therefore, we have left with no scope of argument for appellant that computation of compensation is based on conjecture or surmises. We have also not taken into consideration any other facts except the figures disclosed by appellant himself and those figures have been taken into consideration in the ways available for purpose for computation as above.

136. We also express our disapproval to the manner in which environmental compensation has been determined by RO UPPCB, Kanpur Dehat. On the one hand, it has applied the formula of $EC = Q \times ERF \times R$ but for determining the value of Q, it has not considered the contribution of appellant as such but taking total quantity of dumped waste at questioned site as 62225 MT, it has divided the same by taking appellant's production capacity of 3 MT/ton in proportionate to other unit's production capacity and on that basis, has arrived at the quantity of waste differently on all the three occasions.

137. Learned Counsel for UPPCB did not dispute that the total quantity of waste collected at the questioned site reflected the period of 1976 and onwards but admittedly, appellant commenced its production only in August 1999, therefore, for the waste dumped at the questioned site prior to August 1999, no liability could have been fastened upon the appellant. In a mechanical manner, entire quantity of 62225 MT has been divided proportionately between six units initially and thereafter, eleven units and

then eight units respectively. We express our strongest disapproval to the manner in which RO UPPCB has acted in this case. Determination of environmental compensation is a serious matter and must be discharged impartially, objectively and on relevant material. Whimsical, capricious or arbitrary computation of environmental compensation is nothing but gross abuse of process of law and power. We have no hesitation in observing that in this particular case there is a complete failure on the part of Statutory Regulator and in particular, RO UPPCB in discharge of its duties for implementation of environmental laws. The units including appellant's commenced business operations by running their units without requisite clearances/consents but officials of UPPCB failed to check them and no action punitive or otherwise was taken to prevent such illegal functioning. Second, fact of dumping of hazardous waste comprising chromium came to the notice of concerned RO UPPCB long back and within short period of commencement of production by appellant's unit, still except of sending letters and notices, no effective, preventive, punitive and remedial action was taken. It is only when this Tribunal came across the information about such massive violation of environmental laws and norms and contamination of ground water affecting health of local people and issued directions for remedial action, the concerned Statutory Regulator has acted/reacted but that too in very perfunctory, casual and negligent manner. We condemn and disapprove such conduct and functioning of officials of UPPCB and direct Competent Authority to take appropriate action against erring officials in accordance with law.

138. **Issue IV is answered accordingly holding** that appellant dumped **5131.80 MT** hazardous waste containing chromium at the questioned site and liable to pay environmental compensation of **Rs. 23,09,31,000/-**.

Issue V:

139. The major objection taken by appellant against imposition and demand of environmental compensation is on the ground of limitation. It is contended that appellant's unit actually functioned between 1999 to 2005 but during that period, no compensation was imposed upon it. For the first time, demand of environmental compensation was raised by RO UPPCB vide order dated 19.11.2019 whereagainst appellant approached this Tribunal in OA 18/2020 (*supra*) which was disposed of on 28.01.2020. Pursuant to Tribunal's order dated 28.01.2020, appellant submitted a representation dated 10.02.2020 whereafter order dated 28.05.2020 was passed maintaining environmental compensation of Rs. 39,98,57,850/-. Against this order, the present Appeal was filed and during pendency of the Appeal, quantum of environmental compensation was re-visited by RO UPPCB and in the report dated 30.09.2021, the revised environmental compensation was computed as Rs. 21,48,12,058/-. Tribunal in its order dated 12.11.2021 found that the re-determined compensation as not in accordance with Tribunal's order in as much as no specific finding was recorded about attributability of default to particular unit and report did not show scientific exercise for determining liability. Pursuant to Tribunal's order dated 12.11.2021, another compliance report dated 28.07.2022 was filed and environmental compensation was re-revised to Rs. 27,40,62,295/-. On three occasions, three different amounts of environmental compensation have been determined which itself shows total non-application of mind on the part of the concerned authority i.e., RO UPPCB.

140. In any case, it is contended that after closure of the unit on 07.02.2005, environmental compensation determined in November 2019, i.e., after more than 14 years is *per se* barred by limitation and in any case,

it is impermissible having been demanded after lapse of extraordinary length of time. If no period of limitation is prescribed under Statute for computation of environmental compensation by application of 'Polluter Pays' principle by Statutory Regulator, the law provides that power should be exercised within reasonable time and such reasonable time cannot be stretched or expanded to more than 14 years. Due to lapse of long time, imposition of environmental compensation upon appellant is vitiated and liable to be set aside.

141. Learned Counsel on behalf of appellant did not dispute that for exercise of power of imposition of environmental compensation by RO UPPCB, no period of limitation is prescribed under any Statute. In the circumstances, it has to be examined whether lapse of almost one and a half decade in computation and demand of environmental compensation from appellant would vitiate the demand or not. In this regard, we may first examine the authorities relied by appellant in support of the above argument.

142. First judgment of Supreme Court relied in this regard is, ***Shalimar Works Ltd. vs. Workmen (supra)***. The matter has arisen before a three Judges' Bench of Supreme Court in the proceedings, arising under Industrial Disputes Act, 1947. There were certain disputes between the workmen and employer namely M/s. Shalimar Works Limited raising industrial dispute which was referred to Industrial Tribunal (Sixth) for adjudication by Govt. of West Bengal. On the matter of profit sharing bonus and reinstatement of 250 workmen, Industrial Tribunal gave its award where against both the parties filed appeal before Labour Appellate Tribunal. Appellate Tribunal did not interfere with the award of Industrial Tribunal and dismissed Appeal with one modification namely, by adding that, if in any year, it was found that bonus worked out according to award

of Industrial Tribunal was less than profit bonus, calculated according to Full Bench formula evolved in ***Miss-Owners' Association, Bombay vs. The Rashtriya Mill Mazdoor Sangh, Bombay 1950 L.L.J. 1247F***, workmen would be entitled to bonus under the formula; otherwise they would get bonus under the scheme as modified by Industrial Tribunal. Against order of Appellate Tribunal, the employer filed *Civil Appeals Nos. 317/1950* while the workmen filed *Civil Appeals Nos. 318/1950* before Supreme Court. On the question of bonus, parties agreed that revision made by Industrial Tribunal should be accepted and the condition laid down by Appellate Tribunal should be deleted. Accordingly on the issue of bonus, Supreme Court upheld Industrial Tribunal and modification made by Appellate Tribunal was set aside. The relevant part of judgment in para 8 reads as under:

“8. ...In view of this agreed statement, we delete the condition laid down by the Appellate Tribunal and order that bonus should be paid in accordance with the scheme as revised by the Industrial Tribunal. Learned counsel for the workmen, however, urged that the condition as to minimum attendance of 100 days for entitlement to any bonus at all and of minimum attendance of 275 days for entitlement to full bonus was arbitrary and should be set aside. This condition has been accepted by both the Tribunals and appears reasonable and we see no reason to interfere. It was further contended that bonus for the years 1951 and 1952 should have been ordered to be paid according to the revised scheme. This contention was also negatived by the two Tribunals and we see no reason to differ from them. The two appeals therefore with respect to bonus are dismissed subject to the modification given above.”

143. Now coming to the issue with respect to reinstatement of 250 old workmen, on this aspect, Supreme Court referred to the factual background of the issue stating that a Major Engineering Tribunal was set up by Government of West Bengal in October 1947 to decide disputes between major engineering firms and their workmen. Shalimar Works Ltd. as well as workmen were parties to the disputes which was pending before that Tribunal. The issues before Tribunal were of a very comprehensive

nature and included all kinds of disputes that could arise between employers and employees. While that adjudication was pending, workmen suddenly pressed certain demands upon the company for immediate solution without awaiting the award of Tribunal, even though the demands so put forward were under adjudication. The company naturally refused to meet the demands when they were under investigation by Tribunal. Consequently, the workmen who had come to work on 23.03.1948, started a sit-down strike after they had entered the company's premises. This strike continued from March 23 to 27 and it was on March 27 that workmen were ejected from the premises by the police according to the case of the company or were induced to leave the premises by the police according to the case of the workmen. Anyhow, after the workmen left the premises on 27th, the company gave notice on that day that the Works would be closed indefinitely. Another notice was given by the company on 06.04.1948, in which it was notified that all those who had resorted to illegal strike from 23.03.1948, would be deemed to have been discharged from that date. Thereafter, no work was done till 15.05.1948. On that date, the company gave a notice that if sufficient suitable men apply for employment on or before May 19, the works would be opened on a limited scale from May 20. It seems, however, that nothing came out of this notice. Eventually on July 5, the company gave another notice to the effect that the works would re-open on 06.07.1948 and all old employees could apply, and if re-engaged their past services would be counted and their conditions of service would be as awarded by Major Engineering Tribunal, which, it seems, had given its award in the meantime. It was also said in the notice that upto July 21, the company would only consider engagement of former employees and no fresh labour would be recruited till that date. Thereafter, the majority of old workmen applied for being retaken in service and everyone who applied upto July 21 was re-engaged. Thereafter, the

company refused to re-engage the old employees, a few of whom are said to have applied in November and December 1948, August 1951, February 1952 and January 1953.

144. Appellate Tribunal found that that a list was carelessly prepared in as much as some names were repeated; against some serial number, there were neither names nor ticket numbers. Industrial Tribunal ordered reinstatement without specifying who were to be reinstated; it really did not know who were the persons to be reinstated. In fact, what Tribunal did was to order the company that identity of the workmen to be reinstated might be established to give a general notice on its notice-board notifying the strikers to come and join their duties on a fixed date and to reinstate whichever striker applied within the time allowed.

145. Appellate Tribunal on the issue of reinstatement of 250 old workmen, criticized the award of Industrial Tribunal observing that direction of reinstatement was vague and highly objectionable. Appellate Tribunal also came to the conclusion that identity of 115 workmen had been established, 100 out of them had withdrawn their provident fund and these 100 accepted the order of discharge since they withdrew provident fund and hence no relief could be granted to them. With regard to remaining 15 workmen, Appellate Tribunal found that they had not withdrawn their provident fund, therefore, for their reinstatement also, Appellate Tribunal issued directions. However, Appellate Tribunal also ordered that no compensation could be allowed to the workmen for the period between their discharge and their reinstatement because of the delay on their part in asking for redressal. The company argued before Supreme Court that both Tribunal found the sit-down strike un-justified, hence company was entitled to discharge the workmen. Further, discharge took place in 1948 and company re-opened in July 1948 but the reference

of industrial dispute was made after four years without list of the workmen said to have been discharged, hence the reference was not proper. On behalf of the workmen, it was argued that since industrial dispute was pending between company and workmen, the workmen could not have been discharged without obtaining permission of Tribunal under Section 33 of Industrial Disputes Act, 1947. Since discharge notice dated 06.04.1948 was given without obtaining sanction of Tribunal, it was breach of Section 33 and, therefore, workmen were entitled to reinstatement. The above arguments were dealt with by Supreme Court and it observed that on 06.04.1948 when company discharged its workmen, a dispute was already pending and thus, there was breach of Section 33. However, remedy for such breach was provided under Section 33-A which could be availed by an individual workman but they did not avail the said remedy individually or collectively. Some letters were written to Assistant Labour Commissioner in November 1949 i.e., after almost one and a half year from the date of discharge. After writing those letters, again the workmen remained silent/inacted for almost further 3 years while the reference was made on 07.10.1952. In this backdrop, Supreme Court said:

“13. ...It is true that there is no limitation prescribed for reference of disputes to an industrial tribunal; even so it is only reasonable that disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale, as in this case. The industry has to carry on and if for any reason there has been a wholesale discharge of workmen and closure of the industry followed by its reopening and fresh recruitment of labour, it is necessary that a dispute regarding reinstatement of a large number of workmen should be referred for adjudication within a reasonable time. We are of opinion that in this particular case the dispute was not referred for adjudication within a reasonable time as it was sent to the Industrial Tribunal more than four years after even re-employment of most of the old workmen...”

146. Supreme Court, therefore, gave 3 reasons for denying relief of

reinstatement to workmen i.e.,

- (i) Remedy under Section 33-A was not availed by the workmen within a reasonable time after discharge on 06.04.1948;
- (ii) Order of discharge was passed after illegal and unjustified sit-down strike and this give precarious circumstance for passing order; and
- (iii) The reference was made after an unreasonable length of time and in a vague manner.

147. This is evident from the following extract of the judgment:

“13. ...In the circumstances there was no reason for ordering reinstatement of any one on such a vague reference after such an unreasonable length of time. The defect in the order of discharge of April 6, due to permission not having been obtained under s. 33 can in the circumstances of this case be ignored on the ground that the workmen who did not re-join in July 1948, were not interested in reinstatement : firstly, on account of the circumstances in which that order came to be made after an illegal and unjustified sit-down strike, secondly, because the workmen in their turn did not avail themselves of the remedy under s. 33-A which was open to them, and thirdly, because the reference was made after an unreasonable length of time and in a vague manner. We are therefore of opinion that the Appellate Tribunal should not have ordered the reinstatement of even the fifteen workmen in the circumstances as their case was exactly the same as the case of the hundred workmen, except in the matter of the withdrawal of the provident fund.”

148. It is thus, evident from the above judgment that lapse of four years’ time in making reference in the peculiar facts of the case, was taken as a ground to deny relief to the workmen and the above judgment has been rendered in the particular facts of the case before Supreme Court.

149. The next authority relied by appellant is ***Chhedi Lal Yadav vs. Hari Kishore Yadav (supra)***. In this case, suit land was sold in execution of rent decree on 13.08.1942. The land in execution was purchased by one Babu Md. Abdus Samad and, thereafter, changed hands four times. In 1951, State of Bihar enacted the Act i.e., Bihar Kosi Area (Restoration of Lands to Raiyats) Act, 1951 (hereinafter referred to as ‘**Bihar Act, 1951**’).

It provided for restoration of certain lands to farmers i.e., raiyats which were sold for arrears of rent or from which they were ejected for arrears of land between 1st day of January 1939 and 31st day of December 1950. This was operational due to floods in Kosi River which made agricultural operations impossible. Appellant Chhedi Lal Yadav did not take any steps for restoration of land till 04.05.1975 on which date one Gonar Yadav, son of Chanchal Yadav (recorded tenant) filed a petition for restoration of disputed land under Section 3 of Bihar Act, 1951. Eventually, after an earlier remand, when the matter was pending in appeal being Appeals No. 540/1978-1979, it was dismissed in default on 07.09.1980. It was again restored on 23.12.1980 but again dismissed for default on 23.03.1983. Application for restoration was moved after 16 years on 09.08.1999 and was allowed without notice to respondents. Ultimately, Additional Collector on 27.12.2000 allowed restoration of the disputed land in favour of appellant. Respondents filed a writ petition which was dismissed by Learned Single Judge of Patna High Court on 25.03.2004 whereagainst letter patent appeal was preferred by respondents which was allowed. This judgment was appeal before Supreme Court by the appellant who was denied restoration of land. Supreme Court observed that after passing of Bihar Act, 1951, the petition for restoration of disputed land was filed on 04.05.1975 i.e., after a period of 24 years. Thereafter, when appeal was dismissed on 23.08.1983, the appellant applied for restoration on 09.08.1999 i.e., after period of 16 years of such dismissal. Appellant, therefore, was found guilty of inordinate, unexplained and unjustified delay, firstly, in making application for restoration of land after a period of 24 years after such a right is said to have accrued to appellant and then in making an application for restoration after a period of 16 years when the matter was dismissed in default.

150. In this backdrop, Supreme Court considered the arguments advanced on behalf of appellant that delay must be over-looked since Bihar Act, 1951 was beneficial piece of legislation intended to bring relief to farmers who had been dispossessed during the proscribed period. It was observed by Supreme Court that it is a settled law where the Statute does not provide for a period of limitation, the provisions of the statute must be invoked within a reasonable time. Now what reasonable time would be was sought to be explained by referring to the term 'reasonable time', explained in Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition, where the term 'reasonable time' is explained as under:

“That is a reasonable time that preserves to each party the rights and advantages he possesses and protects each party from losses that he ought not to suffer.”

151. After referring the term 'reasonable time' as explained in Advanced Law Lexicon, Court said that the time must be reckoned reasonably, not only in order to preserve rights and advantages, a party possesses, but equally to protect each party from the losses he ought not to suffer. Whether an action has been taken within a reasonable time, must also be viewed from the point of the view of the party who might suffer losses. Applying the said reasonable time to the facts of the case before Supreme Court, it was observed that auction sale took place in 1942 and application for restoration of land was first made in 1975. The appeal was dismissed for default in 1983 and, thereafter, 16 years were taken in filing application. In the meantime, disputed land changed hand twice. The long-settled position thus, could only be upset for some very compelling reason and on making out an extremely strong case. Consequently, Supreme Court also negated the arguments advanced on behalf of appellant and in para 13 said:

“13. In our view, where no period of limitation is prescribed, the action must be taken, whether suo motu or on the application of the

*parties, within a reasonable time. Undoubtedly, **what is reasonable time would depend on the circumstances of each case and the purpose of the statute...***

152. Supreme Court also referred to the facts of the case before it and said that action is grossly delayed and taken beyond reasonable time, particularly, when the land was transferred several times during this period, obviously, in the faith that it is not encumbered by any rights. Court said that merely because legislation is beneficial and no limitation is prescribed, the rights acquired by persons cannot be ignored lightly and proceedings cannot be initiated after unreasonable delay.

153. The above judgment very categorically state that what reasonable time is, it has to be decided in the circumstances of each case and purpose of the statute and not to be applied mechanically.

154. In ***State of Punjab & Ors. vs. Chaman Lal Goyal (supra)***, which was a service matter. Chaman Lal Goyal (hereinafter referred to as '**writ petitioner**') was Superintendent of Nabha High Security Jail in 1986. On his transfer from the said post, he gave charge of his office on 26.12.1986. On the night intervening 1/2-January, 1987 certain inmates, said to be terrorists, made an attempt to escape. In that connection, two of the inmates attempted to escape and one jail official died in the shooting which took place. Six terrorists made good their escape. Inspector General of Prisons immediately inspected prison and submitted the report to State Government on 09.01.1987. He reported *inter-alia* that the incident was cumulative result of lax administration, indiscipline and lack of control over the prisoners. He also reported that the writ petitioner, Chaman Lal Goyal followed the policy of appeasement towards the extremists; he yielded to each and every illegal demand of the extremists as a result detenu Gurdev Singh assumed leadership of the prison population and

dictated terms to the administration; there was a total breakdown of the classification of the inmates in the different wards of the jail etc. Inspector General recommended that Deputy Superintendent Shri Surinder Singh and Superintendent Jail, Shri Chaman Lal Goyal responsible for the loose administration and laxity be placed under suspension. Another enquiry was ordered by District Magistrate which was conducted by Sub-Divisional Magistrate but in his report submitted to District Magistrate on 26.01.1987, Sub-Divisional Magistrate did not make any observations or comments for or against the writ petitioner. No action was taken against Chaman Lal Goyal until 1992 and he continued service. For the first time, he was called to the office of Secretary to Home Department on 25.03.1992 and, thereafter, served a memo of charges on 09.07.1992. Writ petitioner submitted explanation on 04.01.1993 denying charges. After obtaining comments of Inspector General of Prisons, Government appointed an enquiry officer on 20.07.1993. Immediately, thereafter, writ petitioner filed writ petition before High Court on 24.08.1993, seeking quashing of charges and orders appointing the enquiry officer. The writ petition was allowed vide judgment dated 25.08.1994 and High Court quashed memo of charges as well as order appointing enquiry officer. Court examined the judgment of the High Court which was based on two findings firstly that writ petition was exonerated by Sub-Divisional Magistrate and secondly, on the ground of delay. Supreme Court found that the findings with regard to exoneration by Sub-Divisional Magistrate was nothing but a factual error and so far as the delay is concerned, in para 9 of the judgment, Court observed that though there was a delay of 5 years and a half years in serving the charges but in every case, such delay is not fatal. It all depends on the facts of the given case. The Court said,

“9. ...The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the

*irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. **Such delay also makes the task of proving the charges difficult** and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. **If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the fact-, of the given case.** Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing...”*

155. Judgment of High Court was accordingly set aside by allowing Appeal by Supreme Court.

156. **Now, in the present case**, we have to examine the above law whether applicable to the facts, situation to present case and if so, to what extent. It is no doubt true that from 2000 and onwards, the official of UPPCB when visited appellant premises, found violation with regard to dumping of hazardous waste which appellant was dumping in the nearby open area outside the factory premises. A closure notice was also issued lastly on 07.02.2005 but no compensation was determined. The serious damage caused by hazardous waste dumped at the questioned site was reported in the report of Justice Arun Tandon, former Judge stating that ground water had got contaminated and health of the people in the area is also severely affected. The said reports dated 25.09.2019 and 26.09.2019 were submitted by the Committee comprising Justice Arun Tandon, former Judge and the said Committee was appointed by Tribunal's order dated 06.08.2018 passed in **OA 200/2014 (supra)**. Prior thereto, hazardous effects and consequences of actually founded in the area, were not detected and the evil effects came into light only by virtue of the aforesaid report. The above report also brought to the notice of this Tribunal that Statutory Regulators have not discharged their duties properly and

appropriate punitive and remedial action were not taken against the polluters, compelling this Tribunal to pass an order directing the authorities to take appropriate action in accordance with law. It is argued that under Sections 14 and 15, there is a limitation prescribed within which Tribunal can exercise its powers under NGT Act, 2010 and when something could not have been done by Tribunal under the aforesaid provision, it could not have directed the authorities to exercise their powers travelling for a period of limitation prescribed under Sections 14 and 15 of NGT Act, 2010. However, when confronted, Learned Counsel for appellant could not dispute that provisions of Sections 14 and 15 prescribed thereunder is not extended or applicable to the Statutory Regulators who exercise their powers under Water Act, 1974, Air Act, 1981 and EP Act, 1986.

157. Now the **question of limitation** or **reasonable time**, thus, has to be examined in light of nature of the Statue i.e., statues relating to environment right if any, possess by the appellant, with regard to dumping of hazardous waste in open land and causing pollution and affecting health of people at large and whether any right, if possess by appellant, has vested in itself which should not be divested after long time. Answer to the above question is that no one has any right to dump hazardous waste containing harmful metal or material causing damage to environment and similarly, no one has any right, constitutional, legal or otherwise, to cause pollution and thereby, damage not only to environment but also health the people at large.

158. Protection of environment has been held to be a pious duty of the mankind as propounded in our ancient scriptures going back to several thousand years.

159. Vedas are universally accepted to be a most precious Indian heritage. They have knowledge of all types. The main vedic views revolve around the concept of nature and life. There are several references on environmental conservation, ecological balance and weather cycle which indicates high level of awareness of the people of the ancient people in respect of environment and ecology. Vedas attach great importance to environmental protection and purity. They persist on safeguarding the habitation, proper afforestation and non-pollution. Man is forbidden from exploiting nature. He is taught to live in harmony with nature and recognize that divinity prevails in all elements, including plants and animals. A verse from Rig Veda says,

“Thousands and hundreds of years if you want to enjoy the fruits and happiness of life then take up systematic planting of trees.”

160. At that time, the term ‘pollution’ was not there but the learned ancestors and sages in ancient scriptures call it ‘poisoning of environment’. They believed that five elements (space, air, fire, water and earth) which constitute environment, are all derived from *prakriti*, the primal energy and our human body is composed of these and related to these five elements and connects each of the elements to one of five senses. Human nose is related to earth, tongue to water, eyes to fire, skin to air and ears to space. This bond between our senses and the elements is foundation of our human relationship with the natural world. Vedas stress the need for protection and development of forests. Human beings have to safeguard the trees. People in vedic times regarded nature and environment in a holistic manner and revered each of its constituents and entities by carefully preserving them. In Rig Veda, verse 6:48:17 says, “Do not harm the environment; do not harm the water and the flora; earth is my mother, I am her son; may the waters remain fresh, do not harm the waters; “do not cut trees, because they remove pollution.”. In Yajur Veda, verse

5:43 says, “*Do not disturb the sky and do not pollute the atmosphere.*”. Similar references, we find in Upnishads and other Purans as also the epic literature like Ramayana, Mahabharata and Bhagavad Gita. Kautilya’s Arthashastra disclosed lot of knowledge about environment and its conservation. For protection of trees, there was recommendation of Superintendent of Forest Produce and prohibition of certain kinds of trees, violation whereof was punishable. Certain forests were declared were protected calling ‘Abhayaranya’ and heavy penalties and capital punishment were prescribed for offenders in Arthashastra.

161. Presently, protection of environment is global issue and an isolated problem of an area or a nation. However, in India consciousness about protection of environment is so important that wide interpretation has been given to Article 21 of the Constitution by interpreting Right to Life to include right to live in a wholesome environment (***Subhash Kumar vs. State of Bihar and Ors, AIR 1991 SC 420***); pollution free environment (***Charan Lal Sahu vs. Union of India, (1991)SCC613***); the right to enjoyment of pollution free air and fresh water (***Narmada Bachao Andolan vs. Union of India, (2010)10SCC644***); a clean environment (***Vellore Citizen Welfare Forum vs. Union of India (1996)5SCC647***) and a decent environment (***Shantistar Builders vs. Narayan Khimalal Gotame & Ors. (1990)1SCC520***). In ***Rural Litigation and Entitlement Kendra vs. State of UP (1985)2SCC431***, it was held that right to live in pollution free and healthy environment also includes right to live in a healthy environment with minimal disturbance of ecological balance. In ***Virender Gaur & Ors. vs. State of Haryana & Ors., 1994 SUPPL. (6) SCR 78***, it was held that live in atmosphere congenial to human existence is a Fundamental right to life under Article 21. The extension of right to life to various spans by judicial interpretation by Supreme Court of India

has been appreciated recently by Irish Supreme Court in ***Friends of the Irish Environment vs. Ireland, 2017 JR 793 (IR)*** wherein Irish Supreme Court for the purpose of Ireland declined to acknowledge the constitutional right to environment but observed that India is the only exception in the common law family to interpret the constitutional right to environment without an expressed constitutional provision. Irish Court referred to David R Boyd's detailed study titled as "The Environmental Right Revolution: A Global Study of Constitutions, Human Rights, and the Environment" and observed that most of the States where constitutional right to environment was adopted has been achieved by including such wording in the Constitution and not too expensive and direct interpretation. However, in the environmental context, Indian Supreme Court, as long back in 1980 in ***Municipal Council Ratlam vs. Vardhichand, AIR 1980SC1622***, held that decency and dignity are non-negotiable facets of human rights and the contamination breach such human rights which were reflected as Fundamental Right under the Indian Constitution. Court directed Municipal Council to remedy the lack of sanitary facilities and issued 5 directions in this regard such as construction and management of drainage system, stopping polluted effluents, seeping on the street and to maintain a hygiene and clean environment. In ***Subhash Kumar vs. State of Bihar (supra)***, Court observed that right to a healthy environment existed within the right to life and breach of the right to a healthy environment could be litigated. In 19th decade, Supreme Court also recognize various principles applicable to environmental law like 'Polluter Pays' principle, public trust doctrine, precautionary principle, existence of inter-generational rights and sustainable development and also diluted the concept of *locus-standi* in environment matters in particular. In International environmental law, there is another document of non-regression which mandates the State or

its entities not to pursue action which has a net effect of diminishing the legal protection of the environment or access to environmental justice and this doctrine was applied and recognized by this Tribunal in **OA 677/2016, Society for Protection of Environment and Bio-diversity vs. Union of India, 2018 SCC OnLine NGT 190**. When NGT Act, 2010 was enacted vide Section 20, the principles of 'Polluter Pays' were recognized and this is the statutory recognition in the context of India. The law of environment has developed through judicial precedents. The reason being that environment is nobody's private property but each and every individual separately or collectively has interest in a clean and fresh environment. Therefore, the environmental litigation is initiated not for settling of private or personal rights but public rights and welfare. It is for this reason that the environmental litigation has as generated through Public Interest Litigation but looking through the importance of the issues and the subject matter, the interest of environment has been protected and given priority over other rights. It has been noted that development is antithesis to environment but for balancing the same, the principle of sustainable development has been propounded and convested so as to keep a balance of both but in a given situation, environment has to prevail over the development. The dispute relating to environment, therefore, has been given different dimensions and this is also evident from Supreme Court judgment wherein power of this Tribunal for taking *suo-moto* cognizance of dispute has been recognized, observing that environmental matters stand on a different footing and in brief, Court has said in **Municipal Corporation of Greater Mumbai vs. Ankita Sinha & Ors., (2021) SCC OnLine SC 897**, as under:

- i. NGT was conceived as a complimentary specialized forum to deal with all environmental multidisciplinary issues, both as original

and also as an appellate authority, which complex issues were hitherto dealt with by High Courts and Supreme Court.

- ii. NGT was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of Courts. It was explicitly noted that creation of NGT would allow Supreme Court and High Courts to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum.
- iii. The power of judicial review was omitted to ensure avoidance of High Courts' interference with Tribunal's orders by way of a mid-way scrutiny by High Courts, before the matter travels to Supreme Court where NGT's orders can be challenged.
- iv. The mandate and jurisdiction of NGT is conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.
- v. Unlike Civil Courts which cannot travel beyond the relief sought by the parties, NGT is conferred with power of moulding any relief. The provisions show that NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.
- vi. Myriad roles are to be discharged by NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons.
- vii. Parliament intended to confer wide jurisdiction on NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by High Courts under Article 226 of the Constitution or by Supreme Court under Article 32 of the Constitution.

- viii. The activities of NGT are not only geared towards the protection of environment but also to ensure that the developments do not cause serious and irreparable damage to ecology and the environment.
- ix. Concept of *lis*, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment.
- x. NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration.
- xi. In ***Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India, (2012)8SCC326***, Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo-moto* by the Courts.
- xii. As long as the sphere of action is not breached, NGT's powers must be understood to be of the widest amplitude.
- xiii. In ***Mantri Techzone (P) Ltd. vs. Forward Foundation, (2019)18SCC494***, Court recognized that NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context, Tribunal has special jurisdiction for enforcement of environmental rights.
- xiv. In ***Rajeev Suri vs. DDA, 2021 SCC Online SC 7***, Court said that in its own domain, as crystalized by the statute, the role of NGT is clearly discernible.

- xv. Referring to ***Andhra Pradesh Pollution Control Board vs. Prof. M. V. Nayudu (Retd.) and Ors, (1999)2SCC718***, Court said that role of NGT was not simply adjudicatory in the nature of a *lis* but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.
- xvi. Statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.
- xvii. Referring to ***State of Meghalaya vs. All Dimasa Students Union, (2019)8SCC177***, Court said that reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising “*wide range of jurisdiction*” and the “*wide range of powers*”, given to it by the statute.
- xviii. NGT has been recognized as one of the most progressive Tribunals in the world.
- xix. NGT being one of its own kind of forum, commends us to consider the concept of a sui generis role, for the institution.
- xx. Referring to ***DG NHAI vs. Aam Aadmi Lokmanch, 2020 SCC Online SC 572***, Court repelled the argument for a restricted jurisdiction for NGT and observed in paragraph 76 that powers conferred on NGT are both reflexive and preventive and the role of NGT was recognized in paragraph 77 as “an expert regulatory

body”, which can issue general directions also albeit within the statutory framework.

- xxi. NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from High Courts and Supreme Court.
- xxii. Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take *suo-motu* cognizance of matters, for effective discharge of its mandate.
- xxiii. Section 14(1) of NGT Act, 2010 deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. On these material aspects, NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by NGT is not circumscribed by receipt of application.
- xxiv. Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub-Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub-Section (3) thereafter, refers to the

period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play.

- xxv. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.
- xxvi. The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. These crucial powers are expected to be exercised by NGT, would logically suggest that the action/orders of NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.
- xxvii. To be effective in its domain, we need to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application.
- xxviii. It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial.

- xxix. It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative.
- xxx. Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.
- xxxi. NGT is the institutionalization of the developments made by Supreme Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.
- xxxii. NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns.
- xxxiii. NGT must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal.

162. Therefore, the issue relating to 'environment' *vis-a-vis* 'reasonable time' or 'limitation' has to be considered in the backdrop of the fact that no one has any legal, constitutional or otherwise right to damage environment to dump hazardous waste in an unscientific manner at any place so as to damage to environment as also adverse impact on the health of the people at large. On the contrary, there is correspondent obligation upon proponent not to indulge commercial or otherwise activities so as to cause damage to environment and if it cause damage to environment, it will have to pay for the damages caused by it for remediation of damaged environment. The Statuary Regulators to supervise and regulate such

activities are there but if they fail to discharge their obligation in an effective manner, the Courts can intervene and if thereafter, appropriate action is taken by such regulators, it cannot be said that such action is vitiated on account of delay or laches for the very reason that such action even if taken belatedly does not affect anybody's rights related to environment.

163. Learned Counsel for appellant then contended that 'cause of action' arose when appellant allegedly dumped the hazardous waste in open area and if the action is not taken at the relevant time, the reasonableness of the period should be taken from that time. In our view, when a proponent has caused dumping of hazardous waste in an unscientific manner which has the effect of continuously damaging environment not only at the time of such dumping but so long as the dumping has continued and even thereafter, it is a continuous cause of action and any belated or delayed remedial or punitive action which is not otherwise barred by any specific statute, will not be vitiated in law.

164. 'Cause of action' as understood in legal parlance is a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed. It is the foundation of a suit or an action. 'Cause of Action' is stated to be entire set of facts that give rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In other words, it is a bundle of facts which when taken with the law applicable to them gives the plaintiff, the right to relief against defendants. It must contain facts or acts done by the defendants to prove 'cause of action'. While construing or understanding the cause of action, it must be kept in mind that the pleadings must be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or passage and to read it out of the context, in isolation.

Although, it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. Intention of the party concerned is to be gathered, from the pleading taken as a whole. [Ref. ***Shri Udhav Singh vs. Madhav Rao Scindia, (1977) 1 SCC 511*** and ***A.B.C Laminart Pvt Ltd. vs. A.P. Agencies, AIR 1989 SC 1239***].

165. The expression ‘cause of action’ as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act, 2010. Such ‘cause of action’ should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act, 2010. A ‘cause of action’ might arise during the chain of events, in establishment of a project but would not be construed as a ‘cause of action’ under provisions of Section 14 of NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of NGT Act, 2010 ‘being cause of action first arose’. A dispute giving rise to a ‘cause of action’ must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to NGT Act, 2010. If such dispute leading to ‘cause of action’ is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: ***Liverpool and London S.P. and I Asson. Ltd. vs. M.V. Sea Success I and Anr., (2004)9SCC512, J.***

Mehta vs. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi 106, Kehar Singh vs. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556 and Goa Foundation vs. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

166. Furthermore, 'cause of action' has to be completed. For a dispute to culminate into a cause of action, actionable under Section 14 of NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of NGT Act, 2010. It must satisfy all the legal requirements i.e., there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as aforestated would have to be considered as to when it first arose.

167. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by Supreme Court in the case of ***Bal Krishna Savalram Pujari & Others***

vs. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR1959SC798.

168. In the case of **State of Bihar vs. Deokaran Nenshi and Another (1972)2SCC890**, Supreme Court was dealing with the provisions of Section 66 and 79 of Mines Act, 1952. These provisions prescribed for a penalty to be imposed upon guilty, but provided that no Court shall take cognizance of an offence under Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. Explanation to the provision specifically provided that if the offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence continues. Supreme Court held as under:

“5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.”

169. Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of ‘continuing wrong or offence’. For instance, using the factory without registration and license was an offence committed every time the premises were used as a factory. Supreme Court in the case of **Maya Rani Punj vs. Commissioner of Income Tax, Delhi, (1986)1SCC445**, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing

wrong or not, Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assessee does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. High Court of Delhi in the case of ***Mahavir Spinning Mills Ltd. vs. Hb Leasing And Finances Co. Ltd., 199(2013)DLT227***, while explaining Section 22 of Limitation Act took the view that in the case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury which renders the doer of the act responsible and liable for consequence in law. Thus, the expressions 'cause of action first arose', 'continuing cause of action' and 'recurring cause of action' are well accepted canons of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case. It is not possible to lay down with absolute certainty or exactitude, their definitions or limitations. They would have to be construed with reference to the facts and circumstances of a given case. These are generic concepts of civil law which are to be applied with acceptable variations in law. In light of the above discussed position of law, we may revert to the facts of the case in hand.

170. The settled position of law is that in law of limitation, it is only the

injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will begin to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: ***Khatri Hotels Private Limited and Anr. vs. Union of India and Anr., (2011)9SCC126, Bal Krishna Savalram Pujari & Ors. vs. Sh. Dayaneshwar Maharaj Sansthan & Ors, AIR1959SC798, G.C. Sharma vs. Municipal Corporation of Delhi, (1979)ILR2Delhi771*** and ***Kuchibotha Kanakamma & Anr. vs Tadepalli Ptanga Rao & Ors., AIR1957AP419***].

171. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of National Green Tribunal (Practice and Procedure) Rules, 2011 (hereinafter referred to as '**NGT Rules, 2011**'), shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and, therefore, there is exclusion of the concept of the 'joinder of causes of action' under NGT Rules, 2011. Multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time. In first kind, cause of action

accrues at the time of completion of the wrong or injury. In later, it may give rise to cause of action or if the statutes so provide when 'cause of action first arose' even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may give rise to a fresh cause of action.

172. To this general rule, there could be exceptions. In particular, such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of action first arose' in contradistinction to 'cause of action' simpliciter. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing environmental clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting environmental clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the environmental clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation

computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

173. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of **M.R. Gupta v. Union of India and others, (1995)5SCC628**, Court held that:

"...The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by

his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. AIR (1950) F C1."

174. Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: **Ex. Sep. Roop Singh v. Union of India and Ors., 2006 (91) DRJ 324, M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99**].

175. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a

subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not de bar a composite and complete cause of action that has arisen subsequently.

176. **In the present case**, when the principles discussed above are applied, we find that though appellant is guilty of dumping hazardous waste containing chromium at the questioned site between 1999 to 2005 but the said dumped material has continued to lie there, leachate has percolated in the soil and has contaminated ground water. This contaminated ground water through bore wells and wells has been used by the local people and its adverse effect has been noticed on account of various infirmities suffered by local people as noticed in the reports dated 25.09.2019 and 26.09.2019 submitted by the Committee of Justice Arun Tandon, former Judge. Dumped material still is lying there and its

consequences of causing to environment as also to health of people are also continuous even till this date. That being so, it is a **continuous cause of action** hence, it cannot be said that environmental compensation determined by RO UPPCB, impugned in this Appeal, is vitiated in law on account of delay, laches or limitation.

177. **We answer issue V in negative and against appellant.**

ISSUE VI and VIII:

178. In view of the findings recorded in respect of issue IV, we have no hesitation in holding that neither the impugned order dated 28.05.2020, determining liability of environmental compensation of appellant as Rs. 39,98,57,850/- can be sustained nor reports dated 30.09.2021, computing liability of environmental compensation as Rs. 21,48,12,058/- and dated 28.07.2022, computing liability of environmental compensation as Rs. 27,40,62,295/- can be sustained. The above order as also the reports, to the extent the same have determined environmental compensation of appellant, are modified by holding that the **liability of appellant to pay environmental compensation is Rs. 23,09,31,000/-**. Order dated 28.05.2020 and reports dated 30.09.2021 and 28.07.2022 stand modified accordingly.

179. **Issues VI & VIII are answered accordingly.**

ISSUE VII:

180. We have held that appellant has violated the provisions of Water Act 1974, Air Act 1981, EP Act 1986 and HWMH Rules, 1989 claimed under EP Act, 1986. The violation of the provisions of Water Act 1974, Air Act 1981 and EP Act 1986 is an offence under Sections 41,43 and 44; Chapter 7 of Water Act 1974; Sections 37, 38 and 39 Chapter 6 of Air Act, 1981 and Section 15 of EP Act, 1986. Therefore, appellant is guilty of

committing crime by committing offences under the aforesaid Statutes and thereby, proceedings with its industrial unit for financial benefits. The money earned from the above commercial transactions having been used by appellant for its own benefit taking it as a lawfully earned money, therefore, it also amounts to an offence under Section 3 of Prevention of Money Laundering Act, 2002.

Offence under Prevention of Money Laundering Act, 2002:

181. When environmental norms are not observed and in violation thereof there is discharge and/or emission of pollutants causing pollution and thereby commercial activities for commercial gains continue, such activities also attract provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as '**PMLA 2002**' as amended from time to time).

182. PMLA 2002 was enacted pursuant to resolution no. S-17/2 adopted by General Assembly of United Nation at 17th Special Sessions held on 23.02.1990 on political declaration and global programme of action; and political declaration adopted by UNGA in the Special Session held on 8th to 10th June, 1998. It came into force however on 01.07.2005. The term "money laundering" and "proceeds of crime" are defined in Section-2(p) and (u) which read as under:

2(p). "Money Laundering" has the meaning assigned to it in Section-3.

*2(u). "**Proceeds of Crime**" means any property derived or obtained directly or indirectly, by any person as a result of **criminal activity** relating to a "**scheduled offence**" or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value within the country or abroad.*

[Explanation: for the removal of doubts, it is hereby clarified that proceeds of crime include property not only derived or obtained from the "scheduled offence" but also any property which may directly or indirectly be derived or obtained as result of criminal activity relatable to the "schedule offence";]

183. “Scheduled Offence” is defined in Section 2(y) and says;

“2(y). **“Scheduled Offence” means-**

- (i) The offences **specified under Part-A of the Schedule**; or
- (ii) The offences specified under Part-B of the Schedule, if the total value involved in such offences is one crore rupees or more; or
- (iii) The offences specified under Part-C of the schedule.”

184. Section 3 of PMLA 2002 talks of offence of money laundering and says:

“3. Offence of money laundering: *whosoever directly or indirectly attempts to indulge or knowingly assists or knowing is a party or is actually involve in any process or activity connected proceeds of crime including in concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering.”*

185. There is an explanation also inserted by Finance Act, 2019 w.e.f. 01.08.2019, but for the issue under consideration, it is not relevant, hence omitted.

186. Attachment of property involved in “money laundering” is governed by Section 5 of PMLA 2002 which permits attachment by Director or any other officer not below the rank of Deputy Director authorised by Director for the purpose of such attachment and he has reason to believe (to be recorded in writing) on the basis of material in his possession that **any person is in possession of any proceeds of crime** and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this chapter (by order in writing), may provisionally attach such property for a period not exceeding 180 days from the date of the order, in such manner as may be prescribed.

187. First proviso of Section 5(1) imposes a condition that no such order of attachment shall be made unless, in relation to the “Scheduled offence”, a report has been forwarded to a Magistrate under Section 173 Cr.P.C. or

a complaint has been filed by a person authorised to investigate the offence mentioned in that schedule, before a Magistrate or Court for taking cognizance of the “Scheduled offence”.

188. There is an exception in 2nd proviso of Section 5(1) authorising Director or the officers authorised by him to attach any property of any person referred to in Sub-Section 1, if he has reason to believe (to be recorded in writing), on the basis of material in his possession that if such property involved in money laundering is not attached immediately, it is likely to frustrate proceeding under PMLA 2002.

189. Section 5(5) requires the Director or the other officer, who has provisionally attached property under Sub-Section 1 to file a complaint within 30 days from such attachment stating facts of such attachment before Adjudicating Authority which is appointed under Section 6.

190. Section 8 provides the procedure to be observed by **Adjudicating Authority** to pass an order confirming attachment of property under Section 5(1). When such order of confirmation is passed, attached property would remain under attachment till trial completes and if Special Court under PMLA 2002 recorded finding of conviction of commission of offence of money laundering, such property shall stand confiscated to the Central Government but where Special Court finds that offence of money laundering has not taken place or properties not involved in money laundering, it shall release such property to the person entitled to receive it.

191. Section 5 shows that except the cases covered by second proviso, no attachment is permissible unless report under Section 173 Cr.P.C. submitted to the Magistrate or complaint has been filed before the Magistrate or concerned **to take cognizance of “Scheduled offence”**.

192. Schedule to PMLA 2002 as initially came into force on 01.07.2005, was having Part-A, divided in paragraph 1, dealing with Section 121 and 121(A) of IPC; paragraph-2 covering certain offences under Narcotic Drugs and Psychotropic Substances Act, 1985 and Part-B paragraph 1 offences under Sections 302, 304, 307, 308, 327, 329, 364(A), 384 to 389, 392 to 402, 467, 489A and 489B of IPC; paragraph 2 contains some offences of Arms Act, paragraph 3 referred to offences under Wild Life Protection Act 1972, Paragraph 4, offences under Immoral Traffic Prevention Act, 1956 and Paragraph 5, offences under Sections 7, 8, 9 and 10 of Prevention of Corruption Act, 1988 (hereinafter referred to as '**PCA 1988**').

193. Thus, PMLA 2002, at the time of enforcement in 2005, did not cover Sections 120-B, 468, 420 and 471 IPC and Section 13 of PCA, 1988 and environmental enactments. In other words, offences under these Sections/Statutes were not "Scheduled offences" for the purpose of Section 3 PMLA 2002.

194. The Schedule underwent amendment for the first time vide Prevention of Money Laundering (Amendment) Act, 2009 published in Gazette of India, Extraordinary dated 06.03.2009. In Part A paragraph 1, Sections 489A and 489B were inserted. We are not concerned with the offences referred under paragraph 2 of the Schedule, hence amendments made therein are omitted. After paragraph-2, paragraph-3 and paragraphs-4 were inserted relating to offences under Explosive Substance Act, 1908 and Offences Under Unlawful Activities (Prevention) Act, 1967. In Part-B, paragraph 1 was substituted and a number of offences of IPC were added and this included Section 120-B, 420, 467 and 471 IPC. Some amendments were made in paragraph 3 and 5 of Part-B and thereafter, paragraphs 6 to 25 were inserted covering offences under

several enactments which are not relevant for the purpose of issue before us. Part C was also inserted in the schedule to cover cross border offences and the same is also omitted. Even after this amendment, Sections 468 IPC and 13 PCA, 1988 were not “scheduled offence” so as to attract offence under Section 3 of PMLA 2002. The amendment was given effect from 01.06.2009.

195. Next amendment was made vide Prevention of Money Laundering (Amendment) Act, 2012 published in Gazette of India, Extraordinary dated 04.01.2013. Paragraph A part-1 of the Schedule was substituted adding some more offences of IPC. In fact, entire Part A was substituted by a new Part-A which had paragraphs 1 to 28 covering offences under various Statutes, some were earlier in Part A and also Part B and some newly added. Paragraph 8 Part 1 as substituted in 2012 covered offences under Sections 7, 8, 9, 10 and 13 of PCA, 1988. Thus, Section 13 was included therein only in 2013. In Part B, paragraph 1 to 25 were omitted and in Part C serial No. 2 and entries relating thereto, were omitted. This amendment came into force from 15.02.2013.

196. The offences under environmental norms have been included in the Schedule to PMLA 2002 inasmuch as paragraph 23, 25,26,27 have been inserted by Section 30 of PML (Amendment) Act, 2012 which came into force on 15.02.2013 and said insertion of paragraphs are as under:

“PARAGRAPH 23
OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002
(18 of 2003)

<i>Section</i>	<i>Description of offence</i>
<i>55 read with section 6.</i>	<i>Penalties for contravention of section 6, etc.</i>

PARAGRAPH 25
OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986
(29 OF 1986)

<i>Section</i>	<i>Description of offence</i>
<i>15 read with section 7.</i>	<i>Penalty for discharging environmental pollutants, etc., in section 7 excess of prescribed standards.</i>
<i>15 read with section 8.</i>	<i>Penalty for handling hazardous substances without section 8 complying with procedural safeguards.</i>

PARAGRAPH 26
OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF
POLLUTION) ACT, 1974
(6 OF 1974)

<i>Section</i>	<i>Description of offence</i>
<i>41(2)</i>	<i>Penalty for pollution of stream or well.</i>
<i>43</i>	<i>Penalty for contravention of provisions of section 24.</i>

PARAGRAPH 27
UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION)
ACT, 1981
(14 OF 1981)

<i>Section</i>	<i>Description of offence</i>
<i>37</i>	<i>Failure to comply with the provisions for operating industrial plant.”</i>

197. All these provisions relating to offences under various Environmental Statutes have been placed in part A of the Schedule. Application of PMLA 2002 in respect to the aforesaid offences has to be seen in the light of Section 3 read with schedule as amended vide Amendment Act, 2012.

198. In ***A.K. Samsuddin vs. Union of India, Writ Petition No. 15378/2016 decided on 19.07.2016***, Kerala High Court said that the time of commission of the “scheduled offence” is not relevant in the context of the prosecution under the Act. What is relevant in the context of the

prosecution is the time of commission of the Act of money laundering. It has to be established that the money involved are the proceeds of crime and having full knowledge of the same, the person concerned projects it as untainted property.

199. In ***Smt. Soodamani Dorai vs. Joint Director of Enforcement, Writ Petition No.8383 of 2013 decided on 04.10.2018***, a Single Judge of Madras High Court observed that substratal subject of the Act is to prevent money laundering and to confiscate proceeds of crime.

200. PMLA 2002 brings in a different kind of offence on the statute book. In ***Janta Jha vs. Assistant Director (2013) SCC Online (Odisha) 619***, High Court of Odisha held that even if an accused has been acquitted of the charges framed against him in Sessions Trial, a proceeding under PMLA 2002 cannot amount to double jeopardy where procedure and nature of proof are totally different from a criminal proceeding under IPC.

201. On the contrary in ***Rajeev Chanana vs. Deputy Director (2014) SCC Online (Delhi) 4889***, it was held by Delhi High Court that after acquittal of a person from a “Scheduled offence”, trial for an offence under Section 3 of PMLA 2002 will not survive. Court said it is hard to imagine as to how a trial for an offence of money laundering can continue where the fundamental basis, i.e., the commission of a Scheduled offence has been found to be unproved.

202. The question of simultaneous investigation by Police or CBI or any other Investigating Agencies in respect of schedule offences and Enforcement Directorate (hereinafter referred to as ‘ED’) under Section 3 of PMLA 2002 was considered by a Single Judge (Hon’ble S.P. Garg, J) of Delhi High Court in ***Rohit Tandon vs. Enforcement Directorate in Bail Application No. 119 of 2017 and Crl.M.B. 121 of 2017***. In the

judgment dated 05.05.2017, Court found that Delhi Police registered FIR under Section 420, 406, 409, 467, 468, 188 and 120-B on 25.12.2016 and very next date ED registered ECIR on 26.12.2016. Court said that presence of “Scheduled offence” is only a trigger point for initiating investigation under PMLA 2002. Act nowhere prescribes, if ED is debarred from conducting investigation under Sections 3 and 4 PMLA 2002 unless investigating agency concludes its investigation in the FIR or charge sheet is filed therein for commission of “Scheduled offence”. The proceedings under PMLA 2002 are distinct from the proceedings of the “Scheduled offence”. In the Investigation of FIR by Police, ED has no control. The proceedings under PMLA 2002 are not dependent on the outcome of the investigation conducted in the “Scheduled offences”. More over to avoid conflicting and multiple opinions of court, Section 44 PMLA 2002 provides trial by Special Court in case of “Scheduled Offence” and offence under PMLA 2002. Delhi High Court relied on a judgment of Allahabad High Court in **Sushil Kumar Katiyar vs. Union of India & Ors.** (MANU/UP/0777/2016) wherein Allahabad High Court said:

“A person can be prosecuted for the offence of money laundering even if he is not guilty of “Scheduled offences” and his property can also be provisionally attached irrespective of the fact as to whether he has been found guilty of the “Scheduled offences”. The prosecution is not required to wait for the result of the conviction for the “scheduled offences” in order to initiate proceedings U/s 3 of the PML Act. However, the person against whom, there is an allegation of the offence of money laundering, can approach appropriate forum, in order to show his bonafide and innocence that is not guilty of the offence of money laundering and has not acquired any proceeds of crime or any property out of the proceeds of crime.”

203. Against the judgment of Delhi High Court in **Rohit Tandon vs. The Enforcement Directorate**, Appeal was filed in Supreme Court and judgment is reported in **(2017) SCC Online SC 1304**. Supreme Court upheld, the order of High Court rejecting Bail. Then meeting further argument raised on behalf of Rohit Tandon that the incriminating material

recovered, would not take the colour of proceeds of crime as there is no allegation or the prosecution complaint that un-accounted cash deposited by appellant was result of criminal activity, it was observed that the expression “criminal activity” has not been defined but very nature of the alleged activities of the accused referred to in the predicate offence are criminal activities. Court observed:

“... however, the stated activity allegedly indulged into by the accused named in the commission of predicate offence is replete with mens-rea. In that the concealment, possession, acquisition or use of the property by projecting or claiming it as untainted property and converting the same by bank drafts, would certainly come within the sweep of criminal activity relating to a “scheduled offence”. That would come within the meaning of Section 3 and punishable under Section 4 of the Act, being a case of money laundering.”

204. Recently in ***P. Chidambaram vs. Directorate of Enforcement (2019) SCC Online SC 1143***, Court considered scheme of PMLA 2002, and observed that **money laundering is the process of concealing illicit sources of money and launderer transforming the money proceeds derived from criminal activity into funds and moved to other institution or transformed into legitimate asset**. It is realized world around that money laundering poses a serious threat not only to the financial system of the country but also to their integrity and sovereignty. **“Schedule offence” is a sine qua non for the offence of money laundering which would generate the money i.e., being laundered.**

205. In the present case, when environmental norms were not followed, by not operating ETP or by discharging partially or totally untreated pollutant or by causing other violations, this resulted in commissioning of Scheduled offence and revenue earned by committing such crime is proceeds of crime as defined in PMLA 2002 and by showing it part of business proceeds in accounts amounts to projecting or claiming it as untainted property. The entire activity is covered by Section 3 of PMLA

2002.

206. It appears that initially PMLA 2002 was enacted so as to cover activities of terrorist, illegal traffic in narcotics, enemies of the country etc., applying to a very limited number of statutes, Enforcement Directorate had been taking action under PMLA 2002 in a narrow sphere. It has forgot to take note of the fact that scope of PMLA 2002 has been enhanced or widened, a lot, at least after amendment Act of 2012 w.e.f. 15.02.2013. More than nine and half years have passed but not a single action has been taken by Enforcement Directorate, against violators committing offences under environmental Statutes which have been included in the Schedule, part A of PMLA 2002. The offences under Environmental Acts, as such are non-cognizable but under PMLA 2002, offences are cognizable. Since Competent Authority has never resorted to proceed against violators of environmental Statutes despite committing offences thereunder, which are included in PMLA 2002, this inaction has encouraged polluters to continue violation with impunity. Parliament's intention of treating environmental violations as very serious offences is writ large from the fact that, offences under environmental laws as noticed above, have been included in Schedule, Part A of PMLA 2002 yet enforcement machinery has frustrated entire attempt. It is incumbent upon the Competent Authorities regulating and enforcing PMLA 2002 to take action against such violators, if not against small violators, at least against substantial resourceful bigger proponents whose violations are liable to cause huge damage to environment as also the inhabitants. At least matters of large scale industries and medium scale industries should have been examined by Competent Authority under provisions of PMLA 2002.

207. We do not intend to delve more on the above aspect. Our endeavor was to highlight inapt attitude and apathy towards enforcement of laws

enacted to give teeth to environmental laws but responsible authorities find it convenient to put these laws in hibernation.

208. We accordingly, answer issue VII holding that appellant having violated the provisions of Water Act 1974, Air Act 1981 and EP Act 1986, therefore is also liable for action under PMLA 2002.

209. **Issue VII is answered in affirmative and against appellant.**

210. In view of the above discussion, we allow Appeal partly in the manner as under:

- I. Appellant shall pay environmental compensation of **Rs. 23,09,31,000/-** (Rupees twenty-three crore nine lakhs thirty-one thousand only) with UPPCB within three months, failing which, recovery proceedings in accordance with law, shall be initiated by the Competent Authority without any further delay. After recovery of the said amount, respondent shall utilize the same for recovery, restoration and remediation of the environment which has been deteriorated and damaged by dumping hazardous waste comprising Chromium at the questioned site.
- II. For the purpose of preparing an action plan for use of amount of environmental compensation for remediation of environment, we constitute a joint Committee comprising UPPCB, CPCB and District Magistrate, Kanpur Dehat who shall prepare the plan for remediation of environment and use of environmental compensation for the said purpose. The Action Plan may contain details activities planned, implementation schedule with specific timeline, budgetary provision for each activities, monitoring mechanism etc. The above plan shall be prepared within two months and executed within next six months from the date of this

order.

- III. An action taken report with regard to recovery and utilization of the amount recovered shall be submitted to the Registrar General, NGT, Principal Bench, New Delhi by August 2023 and if the Registrar General finds necessary, the matter shall be placed with action taken report for appropriate direction of this Tribunal.

211. All pending IAs shall stand disposed of.

212. A Copy of this order be forwarded to Chief Secretary, UP; Additional Chief Secretary, Industries, UP; Additional Chief Secretary, Environment, UP; CPCB; UPPCB; DM, Kanpur Dehat and Enforcement Directorate by e-mail for information and compliance.

Adarsh Kumar Goel,
Chairperson

Sudhir Agarwal,
Judicial Member

Prof. A. Senthil Vel,
Expert Member

Dr. Afroz Ahmad,
Expert Member

December 05, 2022
Appeal No. 14/2020
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