

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

**ORIGINAL APPLICATION NO.151/2023
(I.A. NO.244/2024 and I.A. NO.243/2024)**

IN THE MATTER OF:

1. HASSINA WAJID (SARPANCH)

W/o Mohd. Rashid
R/o Chaktroo, Tehsil-Haveli
District-Poonch-185101

...Applicant(s)

Verses

1. STATE OF J&K (UT)

Through Chief Secretary
Government of Jammu & Kashmir,
R. No. 2/7, 2nd,
Floor Main Building,
Civil Secretariat,
Jammu-180001

2. MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

Through its Secretary,
Indira Paryavaran Bhawan, Jor Bagh,
New Delhi-110003

3. CENTRAL POLLUTION CONTROL BOARD

Through its Chairman
Parivesh Bhawan,
East Arjun Nagar, New Delhi-110032

4. DIRECTOR

Department of Geology and Mining
J.L. Nehru Udhyog Bhawan,
4th Floor, Rail Head Complex,
Jammu-180006

- 5. CHAIRMAN**
J&K Pollution Control Board
Parivesh Bhawan, Forest Complex Gladni,
Narwal, Transport Nagar,
Jammu (J&K)-180004
- 6. M/S DEWAN STONE CRUSHER**
Chaktroo, Tehsil Haveli,
District Poonch,
Jammu & Kashmir-185101
- 7. M/S SHAHZAD SHUBNUM CONTRACTOR HOT MIXPLANT**
Chakteoo, Tehsil Haveli,
District Poonch, Jammu & Kashmir-185101
- 8. SHAHZAD SHABNAM**
S/o Abdul Rashid
R/o Village Chaktroo,
Tehsil Haveli, District Poonch,
Jammu & Kashmir-185101

...Respondent(s)

COUNSELS FOR APPLICANT(S):

None

COUNSELS FOR RESPONDENT(S):

Mr. Gagan Basotra, Senior Advocate with Mr. Ajit Sharma, Mr. Kanchan Kumar, Mr. A. Renganath and Mr. M. Zulkarnain Chowdhary, Advocates for Respondents No. 6 to 8
Mr. Ghansham Singh, MS, JKPCC and Mr. Yaseen Mohd., DM, Pooch (through VC)

CORAM:

HON’BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON’BLE DR. AFROZ AHMAD, EXPERT MEMBER

RESERVED ON: MAY 24, 2024
PRONOUNCED ON: SEPTEMBER 04, 2024

ORDER

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

1. Hassina Wajid w/o Mohd. Rashid has brought this complaint before Tribunal primarily against respondent 6 (**M/s. Dewan Stone Crusher**), respondent 7 (**M/s. Shahzad Shubnum Contractor Hot Mix Plant**) and respondent 8 (**Shahzad Shabnam**) under Sections 14, 15 read with 18 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act, 2010**') stating that they are operating stone crusher/hot mix plant, carrying on illegal mining and thereby causing damage to environment in violation of environmental laws and norms.

2. The facts in brief stated in Original Application (hereinafter referred to as '**OA**') are that applicant is Sarpanch of Gram Panchayat Chaktroo, Tehsil Haveli, District Poonch, Union Territory of Jammu and Kashmir. Respondents 6, 7 and 8 are engaged in blatant illegal mining activity including extraction of raw material illegally from river for stone crusher/hot mix plant. The action of respondents 6, 7 and 8 is against the 'principle of sustainable development' and 'precautionary principle'. Respondents 6, 7 and 8 have established stone crushers at a distance of just 100-200 meters away from residential area and adjoining to agriculture land which is main source of livelihood of villagers of Chaktroo village Panchayat. This is against the rules since no stone crusher can be established upto 500 meters from the nearest residential area. Violation of the above provision on the part of respondents 6, 7 and 8 is a matter of serious concern for the residents of village.

3. For setting up stone crusher/hot mix plant and wet mixing plants, No Objection Certificate (hereinafter referred to as '**NOC**') from Deputy Commissioner concerned regarding title verification of land and its usage is required under Jammu and Kashmir (Stone Crushers/Hot and Wet Mixing Plants Regulation) Rules, 2021 (hereinafter referred to as JK SC/HMP Rules 2021) but no such NOC has been by respondents 6, 7 and 8. There is no wind breaking brick wall/GI Sheet constructed surrounding stone crushers; no dust containment cum suppression system has been set up; no metal road has been constructed for transportation of the product; no green belt area has been developed in the periphery of stone crushers and stone crushers are operating continuously for 24 × 7 in utter violation of Statutory Rules; Respondents-proponents are dumping waste from the unit in water body of Mandi Nalla (river) though it is prohibited; discharging fugitive emission from stone crushers causing respiratory and skin diseases like Asthma, skin irritation, diarrhea and ling aliments; operation of heavy vehicles like trucks, dumpers, tippers particularly, in night time, are causing heavy noise pollution; sand grinding chakkies have been installed illegally which are operating day and night causing huge noise pollution; Respondents-proponents have illegally encroached/destroyed the adjoining agriculture/private land; and, encroached upon and destroyed irrigation canal and also damaged entire common traditional crossing points used by villagers to reach their fields due to excessive mining activities. Complaint has been made by applicant and residents of village to Jammu and Kashmir Pollution Control Committee (hereinafter referred to as '**JKPCC**') (annexure-A3 of paper book) but no effective action has been taken by the authority concerned.

4. In these circumstances, applicant has prayed to declare the establishment of stone crushers and hot mix plant of respondents 6, 7 and 8 illegal and unauthorised, to direct stoppage of mining activities by them, to assess adequate environmental compensation and recover the same from respondents 6, 7 and 8 by application of principle of 'Polluter Pays'.

5. **Tribunal's Order dated 20.03.2023:** Tribunal took cognizance of the complaint on 20.03.2023 and after being prima-facie satisfied that a substantial question relating to environment has arisen out of implementation of enactments specified in Schedule I to NGT Act, 2010, it found appropriate to obtain a factual Report for which Joint Committee comprising Central Pollution Control Board (hereinafter referred to as '**CPCB**'), JKPCB and District Magistrate, Poonch was constituted.

6. Notices were issued to respondents enabling them to file their responses.

Joint Committee Report dated 17.07.2023:

7. Pursuant to order dated 20.03.2023, Joint Committee through Member Secretary, JKPCB, Jammu submitted Report dated 17.07.2023. Annexure A to Action Taken Report dated 17.07.2023 is the report which shows that Joint Committee visited the site on 26.04.2023. The observations, recommendations/ conclusions and additional comments made by it in respect of siting criteria, compliance of environmental norms, examination of records etc. in respect to respondents 6, 7 and 8 are as under:

"3.1. M/s Dewan Stone Crusher, Chaktroo, Tehsil Haveli, District Poonch:

3.1.1. Compliance of the Siting Criteria:

Since **M/s Diwan Stone Crusher**, was established in the year **2016**, the siting criteria approved in the 19th Board meeting of J&K Pollution Control Board held on 20th December, 2004 was applicable (Annexure-2) at the time of establishment of the unit. Therefore, compliance of the siting criteria approved on 20th December, 2004 was verified w.r.t M/s Diwan Stone Crusher as under:

S.No	Siting Parameter	Siting Criteria (Distance) No stone Crusher can be allowed to operate within the limits of :	Actual Distance of Stone Crusher, as per Distance Certificate issued by Office of Deputy Commissioner, Poonch Vide Distance Certificate No. DMP/J/2383-86 dated 03/09/2016	Compliance Status as on 3/9/2016
1	a. National Highway in plain area b. National Highway in sub mountainous area	100 m 50 m	Not applicable	
2	a. State Highway and other District Roads in Plain areas b. State Highway and other District Roads in sub mountainous areas	50 m 50 m	500 mtr	
3	Jammu and Srinagar Municipal Limits	1 Km	Not applicable	
4	Major District Head Quarters	1 Km	15 Km	
5	Nearest Residential Area/ Abadi	1/2 Km (500 mtr)	500 mtr	Compliant as per Distance Certificate No. DMP/J/2383-86 dated 03/09/2016 already mentioned in this table
6	Near Tourist Complex/ Resorts	1 Km	Not applicable	

7	Forest Land	1 Km	1 Km	As per DFO certificate attached herewith as Annexure-3, the proposed site of this Stone
8	Hospital Nursing Home/Health Centre	2 Km	Not applicable	
9	Approved Water Supply of 20 Kilo Liter	1 Km	Not applicable	
10	Notified Bird or other Sanctuaries/National Park	1 Km	Not applicable	
11	Nearest educational institution or other similar Institution	1 Km	1 Km	Compliant as per Distance Certificate No. DMP/J/2383-86 dated 03/09/2016 already mentioned in this table

(As per distance certificate vide No. DMP/J/2383-86 dated 03/09/2016 issued by the Office of Deputy Commissioner, Poonch & Tehsildar Haveli vide No. OQ/806 dated 03-09-2016 and attached herewith as Annexure-4&5, the Unit namely M/s Diwan Stone Crusher was compliant w.r.t siting Criteria of Distance from nearest residential area/abadi. And Nearest Educational Institution as the distance of proposed site of the said Stone Crusher from the Residential Area/Abadi is mentioned as 500 mtr. and the distance of proposed site of the said Stone Crusher from the Education Institution is mentioned as 01 km. in these Distance Certificates).

Further, as per J&K PCC Order No. 30-JK PCB of 2020 dated 11/2/2020 on the subject **“Addendum to guidelines of J&K PCB dtd. 9/2/2004 for the existing old and consented stone crushing units and integrated hot mix plants in the UT of J&K”** (Annexure-6) , all the existing /old and consented stone crushing Units, which do not meet the siting criteria/guidelines dtd. 9/2/2004 due to change in demography and the developmental activities in the area **shall follow the additional pollution mitigation measures with augmentation in PCDs for compliance of environmental standards.**

It was observed that even after more than 2 years of release of the above order of J&K PCC dtd 11/2/2020 , **the points of the above order of J&K PCC are not fully complied with, with regard to the stone crusher under reference in this matter.** However, the Point No. iv) of the order with regard to operational hours could not be verified due to non-availability of the log books.

It was informed by the member representing, J&KPCC that “JKPCC has already initiated the Legal Action against the said Stone Crusher immediately from the period the Stone Crusher became operational after descaling of said Stone Crusher by District Administration on 16-01-2023 (as mentioned in below paras), by issuing directions through a letter followed by Notice-1 and Final Notice for operating the Stone Crusher in violation to Environmental Laws, specific conditions laid down in Consent Order and operating the unit without valid Consent from JKPCC (Copies of letter and Notices attached herewith in Annexure - 7, 8 & 9)”. But **the unit holder has not made compliance till date as reported by D.O. PCC Poonch** vide letter No. JKPCC/DIV/P/2023/372 dated 13-06-2023 (Copy enclosed) as Annexure -10.”

Further, now the revised siting criteria/guidelines for establishment of **new stone crushers/hot mix plants have been notified/issued by J&K PCC vide Order No. 37-JKPCC of 2023 dated 27/02/2023** (Annexure-11). In view of this, **Tehsildar Haveli was requested to provide the distance certificate of various parameters as on date w.r.t. M/s Dewan Stone Crusher** and as per feedback received from the Office of Tehsildar, Haveli (Poonch) vide No.TH/OO/143 dtd. 02/05/2023 (Annexure-12), **the unit does not meet the siting criteria w.r.t. Distance from Residential Area and Educational Institution at present, which come under critical criteria.**

Further, as per **rule 3(3) of Jammu and Kashmir Stone Crusher/Hot and Wet Mixing Plants Regulation Rules, 2021 notified vide SO-60 of 2021** dated 23-02-2021 issued by the Mining Department, Government of Jammu and Kashmir, the **stone crusher/Hot Mix Plant shall establish/operator only on securing:**

- i) Consent to establish/operate from the Jammu and Kashmir Pollution Control Board issued as per the procedure/ guidelines and siting criteria prescribed by the Jammu and Kashmir Pollution Control Board ;
- ii) No Objection Certificate from Deputy Commissioner concerned regarding title verification of land and its usage ; and

- iii) Registration with the District Industries Centre (DIC) if the unit holder intends to avail any incentives available in the Industrial Policy.

As per rule 3(3)(ii), the NOC from Deputy Commissioner concerned regarding title verification of land and its usage is prerequisite for operating the unit. The unit existing prior to the commencement of the *ibid* rules having valid consent to operate from the J&K Pollution Control Board have been allowed to operate in pursuance of rule 10 of *ibid* rules. But after expiry of CTO, the unit holder has to obtain afresh permission as per rule 3(3)(ii) as one time requirement regarding title verification.

In this regard, it was informed by member representing J&K PCC that "Scrutiny of records reveals that Jammu & Kashmir Pollution Control Committee vide No. PCC/digital/ 22061834784 of 2022 dated 27-04-2022 (copy attached as Annexure-13) issued the Consent to Operate Renewal with the insertion of Specific Condition at S.No. 6 that **"This Consent is issued with condition that the site papers from the Revenue Department with geo references as per Rule 10 of SO 60 dt. 23-2-2021 to be submitted by the unit holder within a period six months without fail"**). Moreover, in the Condition inserted at S.No. 1 of the said Consent, it is reflected that "The Consent granted by the Committee is restricted to Prevention and Control of Pollution only and shall not be treated as substitute of permission required under other laws of the land" It has been informed by the member (ADM Poonch) that **the condition has not been fulfilled by the unit holder within stipulated period of six month as mentioned in the Consent to Operate**. The unit holder continues to operate without having mandatory NOC from Deputy Commissioner after the expiry of stipulated period of six months as mentioned in the Consent to Operate issued by JKPCC.

Also it was informed by the member representing JKPCC that, as already mentioned below, on behalf of the member (ADM Poonch) that the Stone **Crusher was sealed on 26-03-2022 and desealed on 16-01-2023**. So, it is clear that the unit was not operational in the said period. Further he submitted that, it is already mentioned above that "JKPCC has already initiated the Legal Action against the said Stone Crusher immediately from the period the Stone Crusher became operational after desealing of said Stone Crusher by District Administration on 16-01-2023 (as mentioned in below paras), by issuing directions through a letter followed by Notice-I and Final Notice for operating the Stone Crusher in violation to Environmental Laws, specific conditions laid down in Consent Order and operating the unit without valid Consent from JKPCC." It is also informed by

*the said member representing JKPCC that the unit holder had applied for renewal of Consent to operate through Online Consent Management & Monitoring System on 26-04-2023 Vide Application ID 3752815. As the unit holder had failed to submit Land Title Certificate from concerned Deputy Commissioner, Poonch under SO 60 and also failed to make compliance to Environmental Laws, specific conditions laid down in Consent Order, the said **Consent to Operate Renewal case was not processed and Final Notice (copy already attached at Annexure-9 above) has been served to the unit holder.***

The unit holder has got NOC issued in his favour by Office of the Deputy Commissioner, Poonch vide No.DMP/J/2328-30 dated 27-08-2016 (copy attached at Annexure-14) that was issued at the time of establishment of unit. The Schedule-II (inspection report) submitted by the Divisional Officer, PCC Poonch at the time of processing of Consent to Establish case of the unit also reflects the site satisfied siting criteria w.r.t residential area/abadi and nearest Educational Institution (copy of Schedule-II dated 21-09-2016 is attached as Annexure-15).

Therefore, it may be concluded that the unit namely M/s Dewan Stone Crusher has not been fully compliant with regard to : i) Compliance of the applicable siting criteria at present; ii) environmental guidelines and specific conditions laid down in the consent order issued by J&K Pollution Control Committee and Mandatory requirement of obtaining NOC from the Deputy Commissioner.

In addition to the above, earlier the Unit was also found be involved in encroachment of Government land.

In this regard as per details received from the member (ADM, Poonch) representing DM, Poonch “A Commission was constituted for demarcation of state land adjoining the unit in view of the complaints received regarding encroachment of the state land by the unit holder.

The Commission submitted its report which clearly indicated that the unit holder encroached upon the state land in Khasra No. 218 of Village Chaktroo. The encroached State land was being used for running Stone Crusher with the name as M/S Dewan Stone Crusher established by Mr. Shazad Shabnam.

Despite repeated notices and opportunities given to the unit holder to vacate the state land, the same had not been vacated by the unit holder. It was the responsibility of the District Administration/ Revenue Authority to protect and safeguard its land. As a sequel to

that the **stone crusher operating on the encroached state land was duly sealed on 26-03-2022 by adopting and following the due procedure and legal process.** The authorities are well within their domain, jurisdiction and powers to safeguard the state land by any means.

Pertinent to mention here that later on the unit holder approached the Hon'ble High Court. The Hon'ble High Court in WP(C) No.2712/2022 in case titled Shazad Shabnam Vs UT of J&K and Ors. dated 16-12-2022 **directed Deputy Commissioner Poonch to de-seal the stone crusher of the petitioner in case the petitioner has removed the encroachment from the state land and has made the same encumbrance free** and in case if there is no other legal impediment in doing so. Respondent No. 2 (DC) was directed to take a decision in this regard within four weeks from that day by passing a detailed speaking order.

Based on the report of Tehsildar Haveli that the unit holder had removed the encroachment, the written directions were passed by the District Magistrate vide order No. DMP/J/2637 dated 12-01-2023, to Tehsildar **Haveli to de-seal the Diwan Stone Crusher at Village Chaktroo Tehsil Haveli, District Poonch. Accordingly, the stone crusher was de-sealed on 16.01.2023."**

According to Member representing J&K PCC, J&KPCC has nothing to do with the above reflected sealing and de-sealing procedure of District Administration.

3.1.2. Compliance w.r.t. Environmental Guidelines/ Conditions of Consent to Operate granted by J&KPCC:

The Unit was not in operation at the time of visit of the Joint Committee. **It was informed by the representative of the unit that the stone crusher has not been in operational for the last two years.** However, it was apprehended **from the physical condition of the plant (quantum of raw material and finished products stored at site), that the stone crusher is being operated regularly.** Also, in light of contents of the above two paras related to JKPCC, **it is confirmed that the said Stone Crusher is operational in the recent past.**

During inspection, it was observed that the Unit has provided dust containment cum suppression system/washing system at the Vibrator/screening point and water sprinkling system at the Primary and Secondary Jaw crushers. However, the **adequacy of the dust suppression system and the Interlocking of conveyors and water spray system with the crusher could not be verified, as**

the unit of was not in operation.

The following violations/shortcomings were observed during inspection, by the Joint Committee:

- i. *The sprinkling system installed at Primary and Secondary Jaw Crushers were temporary of PVC pipes instead of Permanent fitted Sprinklers of GI pipes. However, **complete washing system found installed and operational at the screening point** (Photograph 1 & 2 of Annexure-16).*
- ii. *The **Jaw Crusher and Screeners, the main dust emitting structures were not found properly covered/enclosed** (Photograph 3 of Annexure-16).*
- iii. *The **Wind breaking wall all along the Periphery of the unit was not found to be Installed/constructed during inspection**, which is a violation of the condition of the Consent to Operate. The Unit has provided 15 ft. wind breaking wall with CGU Sheets, on one side only (Photograph 4 of Annexure-16).*
- iv. *The **Unit has not provided a green belt of broad leave trees in three rows along the periphery**, in compliance of the conditions of Consent to Operate (Photograph 5 of Annexure-16).*
- v. *The **road with the premises of the stone crusher is not metaled** as prescribed in in the conditions of the Consent to Operate (Photograph 6 of Annexure-16).*
- vi. *The unit has required to get the suspended particulate matter (SPM) measured at least twice a month for all the 12 months in a year. **No such details/copies of Analysis reports done either by MOEF, GOI/CPCB/JKPCC approved labs or JKPCC lab were provided by the representative of the unit during visit.** The unit is submitting Self Monitoring Report (SMR) only at the time of renewal of consent to Operate. **J&K PCC has conducted monitoring in the year of 2018, wherein Unit was found to be compliant with the emission norms.***
- vii. *The unit is involved in **unscientific disposal of solid waste (silt/fines) into the nearby river in violations to the granted CTO condition.** The unit holder has **not provided settling tanks and water recycling system for treatment and recycling of washing effluent containing silt/fines. It***

was observed that the washing effluent is discharged in an earthen pit, leading to nearby river, with no arrangement of removals of silt and recycling of treated waste water (Photograph 7 of Annexure-16).

- viii. The unit is using both river water and ground water in the process.** Neither river water nor ground water is metered by the unit, to assess the exact quantity of water used from these two sources. **The representative of the unit failed to produce NOC for abstraction of ground water and surface water.**

3.2. M/s Shahzad Shabnam Contractor Hot Mix Plant, Chaktroo, Tehsil Haveli, District Poonch:

M/s Shazad Shabnam Contactor Hot Mix Plant is **an integrated hot mix plant owned by the same owner and located in the same premises (at 100 mtr distance from the stone crusher),** where stone crusher under reference is established.

3.2.1. Compliance of the Siting Criteria:

As per J&K PCC Order No. 30-JK PCB of 2020 dated 11/2/2020 on the subject **“Addendum to guidelines of J&K PCB dtd. 9/2/2004 for the existing old and consented stone crushing units and integrated hot mix plants in the UT of J&K” (Annexure-17), the guidelines/siting criteria for the stone crushers shall be applicable to the integrated hot mix plants, as well.**

Since both the **stone crusher and hot mix plant are established in the same premises, the Hot Mix plant is also not meeting the siting criteria notified by J&K PCC.** However, it was informed by the Member representing J&K PCC that “In the 26th Board meeting of J&K SPCB held on 25-06-2012 in Item No. 2 (Annexure-18), the Board in reference to the proposed guidelines/comprehensive document for Stone Crushers and Hot Mix Plants, had **authorized the JKPCC Chairman for relaxation of Criteria for grant of consent** to Stone Crushers and Hot Mix plants in respect of Habitation, Educational institution, Health Care Establishment etc. **in exceptional cases.** Keeping in view the Government Allotted Works and Development of the area, **CTO (F) was granted to this hot mix plant on Project specific basis by JKPCC with the insertion of Specific condition at S.No. 4 stating that “Being project specific, the unit holder shall dismantle the Hot Mix Plant after completion of work” (Annexure-19).**

3.2.2. Compliance w.r.t. Environmental Guidelines/ Conditions of Consent to Operate granted by J&KPCC:

The Unit was not in operation at the time of visit of the Joint Committee. It was observed that the unit has provided i) inbuilt dry dust collector as primary dust collection system, for removal of dust from the dryer; ii) wet dust collector with water sprinklers in the drum as secondary dust collection system for hot air; iii) Stack and iv) settling tank for waste water from wet dust collector, as Pollution Control Devices.

The following violations/shortcomings were observed during inspection, by the Joint Committee:

- i. During the inspection, it was observed that the **wind breaking wall**, which is a requirement stated in the Consent to Operate, **was not installed or constructed all along the periphery of the unit** (Photograph 8 of Annexure-16) .*
- ii. In accordance with the Consent to Operate conditions, the **unit was supposed to establish a green belt consisting of broad-leaf trees in three rows all along the periphery. However, this requirement was not met**, as observed during the inspection (Photograph 9 of Annexure-16).*
- iii. The **road within the premises of the stone crusher does not meet the specified standards for metallization**, as outlined in the Consent to Operate conditions.*
- iv. The unit failed to provide the necessary analysis report confirming the effectiveness of the pollution control devices/measures in place. Additionally, **they did not submit the required half-yearly Self Monitoring Report (SMR) regarding emissions**. This failure to comply violates the conditions specified in the Consent to Operate. It has also come to light that the unit holder has not submitted Self Monitoring Report (SMR) in compliance to specific condition No. 4 laid down in the consent order No. PCC/Digital/22043101380 of 2022 dated 3-09-2022. However, the Regional Director, JKPCC, Jammu had issued a letter to the said Hot Mix Plant immediately after coming in operation of the said hot mix plant in October 2022 to submit SMR from MoEF&CC, GoI approved Laboratory so that the Adequacy of installed PCDs can be assessed (copy attached herewith in Annexure-20). It was observed by the member representing CPCB that the **Unit has not been monitored w.r.t. emissions since its***

establishment. In this regard, it was informed by the member representing J&K PCC that Since the unit holder has failed to submit the SMR despite issuance of Letter by Regional Director, JKPCC, Jammu, as mentioned above, So the J&KPCC has deputed the team of Scientific Staff/Lab Staff to carry out Air & Water Monitoring of the unit to check the efficacy of devices installed (Letter Attached at Annexure 21).

- v. The **unit did not provide details regarding the disposal of solid waste generated during the processing.** The project proponent is obligated to adhere to the Solid Waste Management Rules 42016, as stated in the conditions of the Consent to Operate granted by the J&K PCC. It was informed by the member representing J&K PCC that J&KPCC has issued and served upon legal notice dated 12-06-2023 to the unit holder on account of non-compliance of the rules referred above. (copy attached herewith in Annexure-22).

Therefore, it may be concluded that the Unit namely M/s Shahzad Shabnam Contractor Hot Mix Plant has not been fully complying with the environmental guidelines specified by J&K Pollution Control Committee in the Consent to operate (CTO) granted to the Unit.

4. Conclusion and Recommendations:

The following conclusion is drawn from the finding of the Joint Committee:

- i. The Unit namely M/s **Dewan Stone Crusher is not presently complying with the applicable siting criteria w. r. t. distance from Residential area and Educational Institution.**
- ii. The Unit namely **M/s Dewan Stone Crusher is not fully complying with the environmental guidelines specified by J&K Pollution Control Committee in the Consent to Operate (CTO)** granted to the Unit and Mandatory requirement of obtaining NOC from the Deputy Commissioner.
- iii. M/s Dewan Stone Crusher has not complied with Final Notice for operating the Stone Crusher in violation to Environmental Laws and specific conditions laid down in Consent Order.
- iv. The Unit namely M/s **Shahzad Shabnam Contractor Hot Mix Plant has been partially complying with the environmental guidelines specified by J&K Pollution**

Control Committee in the Consent to operate (CTO) granted to the Unit.

It is therefore recommended that an appropriate action may be taken by J&K Pollution Control Committee as per applicable Environmental Law, to ensure that:

- i. The Units under reference are operated only after complying with the conditions of the Consent to Operate granted by J&K PCC.
- ii. Environmental Compensation is levied for the entire period of non-compliance and also for not complying with various orders of J&K PCC.

In addition to the above, the member representing CPCB has also submitted additional comments with regard to the compliance of siting criteria by M/s Dewan Stone Crusher, as under:

Additional Comments of CPCB Member:

The member representing CPCB is not in agreement with the conclusion drawn in Section 3.1.1; Page No. 2 & 3 of the above report, that M/s Dewan Stone Crusher was complying with the siting Criteria applicable at that point of time, for the following reasons:

- i. The distance (Siting) parameters applicable at the time of establishment of the **stone crusher** under reference, in 2016 and the revised distance (siting) parameters as per revised siting parameters in 2023 are the same **(even more stringent in 2016, with regard to nearest residential area)**, with regard to residential area/abadi and Educational Institutions, as tabulated below:

S. No.	Parameter	Siting Criteria applicable in 2016	Siting Criteria applicable in 2023
1.	Nearest Residential Area/Abadi.	No stone crusher will be allowed to operate within the limits of 1/2 Km (500 mtr.). (20 or more houses within the radius of 1 km shall constitute the area for	500 mtr. (20 or more house within a radius of 500 mtr. shall constitute the residential area

		<i>the purpose of this siting criteria.).</i>	<i>as per orders of Hon'ble Supreme Court of India in Civil Appeal No. 10732/1995 dated 25/4/1990. It shall be a critical siting criteria.</i>
2.	<i>Nearest Educational Institution or Other similar institution.</i>	<i>No stone crusher will be allowed to operate within the limits of 1 Km.</i>	<i>No stone crusher will be allowed to operate within the limits of 1 Km.</i>

The distance certificates with regard to applicable siting criteria issued by concerned deptt. at the time of establishment of stone crusher in 2016 and now in 2023 on the request of Joint Committee, are as under:

S. No.	Parameter	Distance Certificate issued by Revenue Deptt. in 2016	Distance Certificate issued by Revenue Deptt. in 2023
1.	<i>Nearest Residential Area/ Abadi.</i>	<i>500 mtr.</i>	<i>Within 500 mtr: 70 houses, 114 families</i>
2.	<i>Nearest Educational Institution or Other similar institution.</i>	1 Km	Govt. Middle School, Chaktroo is situated within 500 mtr. (428 mtr)

It is unclear how the same school that is currently located 428 meters away from the stone crusher could have been situated more than 1 kilometer away in 2016. The same inconsistency applies to the residential area, as well.

- ii. *As per letter received from DO, Poonch, J&K PCC (Annexure-23), “The distance parameters reflected in Para 22 are in contradiction with the Distance certificates issued by Assistant Commissioner Revenue Poonch and Tehsildar Haveli in 2016.*

(Distance Certificates issued by Assistant Commissioner Revenue Poonch & Tehsildar Haveli in 2016, Tehsildar Haveli distance certificates vide No. TH/OQ/125 Dated 27-04-2023 & No. TH/OQ/143 Dated 02-05-2023)

- iii. *In its response to the above letter of DO, Poonch, ADM, Poonch (Annexure-24) mentioned **“It is a fact that there are contradictions in the distance certificate issued by the then ACR on the basis of report of the then Tehsildar in the year 2016 and the latest distance reported by the Tehsildar Haveli.** There may be difference in some error of assessment in view of different method of measurement adopted by the then Tehsildar. It is not known whether the certificate issued in the year 2016 was used by the JKPCC and is admissible for issuance of CTE/CTO”. The latest distance parameter has been mentioned based on the report of Tehsildar Haveli using modern method of measurement.”* (**It was confirmed by Member representing J&KPCC that distance certificate issued by Deptt. of revenue in 2016 was considered for issuing Consent*).

*Based on the above facts, **CPCB member is of the view that “M/s Dewan Stone Crusher was neither complying with the siting criteria applicable at the time of establishment in 2016 nor it is complying with the revised siting criteria applicable in 2023”.***

Reply dated 15.02.2024 filed by respondents 6 to 8:

8. Respondents 6 to 8 have filed reply dated 15.02.2024 stating that respondents have established a stone crusher and hot mix plants in 2016 in District Poonch, State of Jammu and Kashmir. Raising an objection with regard to conduct of applicant, it is said that application has been filed maliciously since applicant was demanding money which was not tendered by respondents 6 to 8, therefore, various complaints have been filed against proponents. The first complaint was filed with Deputy Commissioners, Poonch in 2020 with regard to roads. Second complaint was filed alleging that proponents have encroached upon Government land on the basis whereof the unit of proponents was sealed on 26.03.2022.

The said order was challenged in J&K High Court in ***Writ Petition (Civil) No. 742/2022, M/s Dewan Stone Crusher vs. Mr. Inderjeet (JKAS) & Anr.*** and High Court on 01.04.2022 passed an order directing Deputy Commissioner, Poonch to reconsider the matter subject to fulfilment of certain conditions. Thirdly, ***Writ Petition (Civil) No. 2522/2022, Inhabitants of Village Chaktroo Through Husinna Wajid vs. U.T. of J&K & Ors.*** was filed in the High Court of J&K by inhabitants of village Chaktroo through Hussina Wajid claiming similar relief as claimed in this OA, which is pending. Applicant has not disclosed the factum of pendency of ***Writ Petition (Civil) No. 2522/2022 (supra)*** in the High Court of J&K. JKPCC has filed its reply dated February 2023 in High Court stating that Consent has been granted to project proponents only after being satisfied with the siting criteria for establishment of stone crushers/hot mixed plants. Reliance is placed on Supreme Court's judgment in ***Vijay Syal vs. State of Punjab, (2003) 9 SCC 401*** and ***K. Jayaram vs. Bangalore Development Authority, 2021 SCC OnLine SC 1194*** that parties must disclose all the legal proceedings and litigations initiated in past or present concerning the subject matter of dispute which is within their knowledge. It is thus prayed that since applicant has not approached this Tribunal with clean hands but suppressed material facts, therefore, OA should be dismissed.

9. Coming to Joint Committee Report dated 17.07.2023, respondents 6 to 8 have stated that the Report contains factual inaccuracies. The deponent of the affidavit i.e., Shahzad Shabnam holds a valid Land Title Certificate dated 08.07.2023 issued by the office of Deputy Commissioner, Poonch. Committee's Report that the plants of respondents 6 to 8 violate certain norms criteria, is denied. Reliance is placed on JKPCC Reports

dated 30.01.2024, 22.01.2024 and 08.02.2024. Proponents have got the air standards tested in a private lab vide analysis Report dated 11.09.2023, which certify the emission norms to be below permissible limits. With regard to other deficiencies pointed out by Joint Committee Report, it is stated that steps have been taken by the proponent to remove all defects/deficiencies which include the following:

- a. Installation of complete shed of CGI sheets shed and enclosed the unit in the shed, complete washing system as additional PCM's to mitigate the impact of unit of critical criteria.
- b. Land Title Certificate under SO 60 from the office of Deputy Commissioner, Poonch.
- c. About 15 feet wind breaking walls consisting of CGI sheets around the unit towards the habitation.
- d. Done three rows of plantation of Eucalyptus Saplings.
- e. Installation of complete washing system and crushing/screening points enclosed in CGI sheets shed.

Report dated 20.03.2024 filed by Directorate of Geology and Mining:

10. Directorate of Geology and Mining has submitted report vide e-mail dated 20.03.2024 stating that stone crusher was operating before issuance of SO 60 when requisite NOC was completed by Proprietor of M/s Dewan Stone Crusher for running of the crusher. The stone crusher did not operate from 25.03.2022 to 16.01.2023 due to seizure order issued by the Administration which was re-called and de-sealing order was passed on 16.01.2023. Further, staff visited the site and found that no fresh

mining was being carried out on the spot and unit was non-operational due to closure order issued by JKPCC on 31.07.2023.

11. **Tribunal's Order dated 01.04.2024:** The matter was considered by Tribunal on 01.04.2024 and after considering Joint Committee Report dated 17.07.2023 and the response of Directorate of Geology and Mining, Tribunal observed that the facts stated in Joint Committee Report and the action taken in the Report of JKPCC before Tribunal and reply filed before High Court of J&K are contradictory. On the one hand, JKPCC issued closure order on the ground of non-compliance whereas on the other hand, in the High Court, it submitted that stone crusher and hot mixed plant were complying with environmental norms.

12. Since none had appeared before Tribunal on behalf of UT of J&K and JKPCC, Tribunal imposed cost of Rs. One Lakh on each.

13. Directorate of Geology and Mining also sought time to file a further reply.

14. Tribunal also prohibited stone crusher and hot mix plant from operating due to non-compliance with the siting criteria relying on Joint Committee's Report and granted time to the parties to file their responses. However, it was observed that in case, any otherwise order is passed by High Court, Tribunal's order shall not operate to the extent of such conflict.

Report dated 03.05.2024 filed by Directorate of Geology and Mining:

15. Pursuant to above order dated 01.04.2024 of this Tribunal, Directorate of Geology and Mining submitted Report dated 03.05.2024

stating that NOC from the office of Deputy Commissioner, Poonch was issued in the favour of proponent for establishment of stone crusher cum hot-wet mixing plant vide letter dated 27.08.2016. Further, a Distance Certificate was issued by the office of Deputy Commissioner, Poonch in favour of M/s. Dewan Stone Crusher vide letter dated 03.09.2016. Thereafter, JKPCC issued Consent to Establish (hereinafter referred to as '**CTE**') vide letter dated 03.12.2016 in favour of M/s. Dewan Stone Crusher. On the basis of the aforesaid NOCs, M/s. Dewan Stone Crusher applied for grant of NOC with the Department of Geology and Mining, which was issued in its favour by the Directorate of Geology and Mining vide letter dated 10.01.2017.

16. In 2017, Government of J&K issued SRO-302 dated 19.07.2017 i.e., Jammu and Kashmir Minor Mineral Exploitation and Processing Rules, 2017 (hereinafter referred to as '**J&K Minor Mineral Rules, 2017**') in exercise of powers conferred under Sections 15 and 23C of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as '**MMDR Act, 1957**'). Rule 3 of J&K Minor Mineral Rules, 2017 imposes general restrictions and Rule 4 imposes restriction with regard to siting criteria which read as under:

*"3. General restrictions.—(1) **No License to operate** a minor mineral exploitation unit/plant/crusher/hot and wet mixing plant shall be granted by the Licensing Authority to a processor **unless the unit/plant/crusher possesses**,—*

- a. **NOC** to establish and operate the minor mineral processing unit/plant/crusher **from the concerned Deputy Commissioner after verifying land records etc.**;*
- b. **Consent to establish**/operate the unit/plant **from the J&K State Pollution Control Board** relating to a particular site only as indicated in the revenue*

document issued by the Deputy Commissioner concerned;

- c. **NOCs from Fisheries and Irrigation and Flood Control Departments;***
- d. **Consent from minor mineral leasee/licensee or a permit holder** for feeding raw supplies of minor minerals to run minor mineral processing and exploitation unit/plant/crusher of the applicant;*
- e. **Registration from District Industries Centre** concerned which shall be done only after completion of the above said formalities.*

4. Negative/Restricted Zones.— (1) No minor mineral based unit/plant/crusher shall be established—

- (a) On Agricultural, Grazing, Shamlat/Kacharayee and Forest land;*
- (b) Within the prohibited wildlife area/protected/reserved forest area limits;*
- (c) National Highway in plain areas up to = 100 meters;*
- (d) National Highway in sub-mountain areas up to= 50 meters;*
- (e) State Highway and other district roads in plain areas up to = 50 meter;*
- (f) Highway and other roads in sub-mountainous areas up to = 50 meters;*
- (g) Jammu/Srinagar Municipal Limits up to = 01 km.;*
- (h) Major District Headquarter up to = 01 km.;*
- (i) **Nearest residential area/abadi up to = 500 meters;***
- (j) Controlled (cantonment area) up to = 01 km.;*
- (k) Hospital/Nursing Home/Health Centre up to = 02 km.;*
- (l) Approved water supply of 20 Kilo liter up to = 01 km.;*

(m) Notified birds or other sanctuaries/National Park/Forest land up to = 01 km.;

(n) Nearest Tourist Complex/Resorts up to =01 km.;

*(o) **Nearest educational institution or other similar institution up to = 01 km.***

(2) Besides while granting consent to/for establishment/clearance by the District Industries Centre, Deputy Commissioner and State Pollution Control Board, it shall make and/or shall cause to make a full and complete investigation in the prescribed manner in respect of the application received having due regard to the following, namely :—

(a) the suitability of the locality/location where the proposed minor mineral exploitation unit/plant/crusher is to be established;

(b) the number of units/plant/crusher operating in the area;

(c) whether such unit/plant/crusher is not detrimental to the health of general public, habitation, water resources, fauna and flora in the close proximity;

(d) the setting of such unit/plant/crusher should be allowed on areas suitable for the purpose without any detrimental effect to the agriculture/productive land ; and such other conditions as may be prescribed from time to time.”

17. In terms of J&K Minor Mineral Rules, 2017, license dated 27.04.2018 was granted to M/s. Dewan Stone Crusher by Department of Geology and Mining to operate its stone crushing unit in village Chaktroo. Tehsil Haveli, District Poonch.

18. Thereafter, J&K Government issued SO 60 dated 23.02.2021 titled as 'The Jammu and Kashmir Stone Crushers/Hot and Wet Mixing Plants Regulation Rules, 2021 (hereinafter referred to as '**J&K SC/HMP Rules, 2021**'). The said Rules were published in J&K Official Gazette dated

23.02.2021 and came into force on the said date in view of Rule 1(3) of J&K SC/HMP Rules, 2021. Rule 3 of J&K SC/HMP Rules, 2021 provides general requirements and reads as under:

“3. General Requirements.—(1) *A Stone Crusher/Hot and Wet Mixing Plant is not a mining unit but a processor of minerals obtained from a source with a valid mineral concession. Such units shall be regulated by laws, rules and other provisions applicable to industrial units.*

(2) *No permission/license would be needed by a Stone Crusher/Hot and Wet Mixing Plant from the Mining Department except where it also engages in mining, which activity shall be regulated by laws/rules applicable to mining.*

(3) *Stone Crusher/Hot and Wet Mixing Plant shall establish/operate only on securing,—*

(i) *Consent to establish/operate from the Jammu and Kashmir Pollution Control Board issued as per the procedure/ guidelines and siting criteria prescribed by the Jammu and Kashmir Pollution Control Board ;*

(ii) **No Objection Certificate from Deputy Commissioner concerned regarding title verification of land and its usage ; and**

(iii) *Registration with the District Industries Centre (DIC) if the unit holder intends to avail any incentives available in the Industrial Policy.”*

19. Rule 10 of J&K SC/HMP Rules, 2021 made provision with regard to units/plants existing before commencement of J&K Minor Mineral Rules, 2017 and reads as under:

“10. Units existing prior to the commencement of the Jammu and Kashmir Minor Mineral Exploitation and Processing Rules, 2017.—Notwithstanding anything contained in these rules, **an unlicensed Crusher Unit/Hot and Wet Mixing Plant existing before the commencement of the Jammu and Kashmir Minor Mineral Exploitation and Processing Rules, 2017** having valid consent to operate from the Jammu and Kashmir

*Pollution Control Board shall be allowed to operate. **However, after expiry of consent to operate, it shall have to obtain fresh permission as per Rule 3(3)(ii) as one time requirement.***

20. Stone crusher unit of project proponent was sealed/ceased by Naib Teshildar, Chandak, and other officials pursuant to order dated 25.03.2022/ 26.03.2022 of Deputy Commissioner, Poonch. Owner of the unit i.e., Shahzad Shabnam filed a **Writ Petition (Civil) No. 724/2022, M/s. Dewan Stone Crusher vs. UT of J&K & Ors.** in High Court of J&K which was disposed of vide judgment dated 01.04.2022 to consider whether the petitioner Shahzad Shabnam has removed its encumbrance on the encroached Government land and re-consider the matter of de-sealing.

21. Deputy Commissioner, Poonch relying on Naib Teshildar/Executive Magistrate's Report dated 30.04.2022 that the unit has not removed encroachment from the State land, rejected the request for de-sealing vide order dated 12.05.2022. Owner of the project proponent i.e., Shahzad Shabnam filed another **Writ Petition (Civil) No. 2712/2022, Shahzad Shabnam vs. UT of J&K & Ors.** in the High Court of J&K and Ladakh at Jammu and contended before High Court that petitioner (Shahzad Shabnam) has already removed encroachment from the State land, therefore, its stone crusher unit should be de-sealed. High Court issued notices to respondents and passed following interim order on 16.12.2022:

"09. In the meanwhile, subject to the objections from the other side and till next date of hearing before the Bench, respondent No. 2-Deputy Commissioner Poonch is directed to de-seal the stone crusher of the petitioner in case the petitioner has removed the encroachments from the State land and has made the same encumbrance free and in case if there is no other legal impediment doing so. Respondent no.2 is directed to take a decision in this regard within four weeks from today by passing a detailed speaking order."

22. Pursuant to High Court's order, Deputy Commissioner, Poonch required Tehsildar to personally visit the site and submit report regarding removal of encroachment by Shahzad Shabnam from State land. Tehsildar Haveli submitted report on 04.01.2023 confirming that encroachment has been removed and the stone crusher unit has said that it will not encroach upon the retrieved land nor obstruct path leading to river. In view of Tehsildar's Report dated 04.01.2023, Deputy Commissioner, Poonch/District Magistrate. Poonch vide order dated 12.01.2023 directed to de-seal M/s. Dewan Stone Crusher and complying with the said order, unit was de-sealed on 16.01.2023.

23. With regard to the allegation of illegal extraction of river bed material, report said that District Mineral Officer, Poonch along with his field staff visited the site and found **illegally acquired river bed material at the site** of M/s. Dewan Stone Crusher. Accordingly, fine was imposed and realised on account of the said violations as per the following details:

- “i) **A fine of Rs.16500/- was imposed** on the unit on 22-12-2021 **for 60 MTs of illegally accumulated RBM dump at site;**
- ii) **A fine of Rs.19250/- as imposed** on the unit on 29-01-2022 **for 70 MTs of RBM illegally accumulated RBM dump at site;**
- iii) **A fine of Rs.19250/- was imposed** on the unit on 23-02-2022 **for 70 MTs of illegally accumulated RBM dump at site;**

- iv) **A fine of Rs.16400/- was imposed** upon Mr. Shahzad Shabnam, the unit owner on 24-07-2023 **for illegal transportation (without e-challan) of 10 MTs of Crushed Bajri (aggregate) in vehicle No. JK12B-0054.”**

24. District Mineral Officer, Poonch again visited the site of M/s. Dewan Stone Crusher on 13.11.2023 and found that no fresh mining was being done on the spot. The unit was presently found non-functional in view of the closure order dated 31.07.2023 passed by JKPCC as the unit was found operating without adequate pollution control devices/measures and without valid Consent to Operate (hereinafter referred to as ‘**CTO**’).

25. Respondent 8 Shahzad Shabnam, in the meantime, preferred **Civil Appeal No. 5022/2024, Shahzad Shabnam vs. State of Jammu and Kashmir & Others** in Supreme Court challenging Tribunal’s order dated 01.04.2024 whereby functioning of stone crusher and hot mix plant was stopped. Supreme Court dismissed appeal vide judgment dated 26.04.2024 and the order reads as under:

“We do not find any good ground and reason to interfere with the impugned judgment and hence, the present appeal is dismissed.

However, it will be open to the appellant – Shahzad Shabnam to produce documents and papers before the National Green Tribunal, to show that he is fully compliant and not in breach of law.

Pending application(s), if any, shall stand disposed of.”

26. Respondents 6 to 8 filed written submissions dated 15.05.2024 raising objections with regard to maintainability of OA on the ground of pendency of **Writ Petition (Civil) No. 2552/2022 (supra)** before High

Court of J&K and Ladakh. Further they stated that minor deficiencies have been rectified and the plant is well within siting norms. The submissions advanced by respondents 6 to 8 in written submissions dated 15.05.2024 are reproduced as under:

“1. Proceeding before this Hon’ble Tribunal cannot proceed to adjudicate matter when the Hon’ble High Court is seisin of a Writ Petition filed by the very same Original Applicant prior in time and for the same cause of action.

- a. The Hon’ble Supreme Court in Raghu Ramakrishna Raju Kanumuru (supra) had quashed the NGT proceedings on the ground that parallel proceedings were already pending before the High Court regarding the same issue.*
- b. As continuation of proceedings before two different forums on the same issue would lead to passing of conflicting orders and would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow.*

2. Concealment of material fact by the Original Applicant that they had also preferred a Writ Petition before the High Court, which in itself is a ground for quashing of proceedings.

- a. The Applicant herein filed a writ petition before the Hon’ble High Court in November, 2022, pending as on date. Since no interim orders were passed by the High Court, the Applicant as an afterthought, filed the present Original Application by concealing the pendency of the writ petition.*
- b. It is a settled law that a party is required to approach the Court with clean hands and after making full disclosure of all essential facts. As such, this concealment by the Applicant is in itself a ground for quashing the present Original Application.*

3. Minor deficiencies pointed out by the Joint Committee no longer exist and have been complied with by the Respondent.

- a. That the Respondent has taken the following steps to cure the deficiencies pointed out by the Joint Committee. The*

same has also been recorded by the latest report of the Pollution Control Committee dt. 05.03.2024.

b. *The Respondent now fulfills all the conditions laid down in the CTO which includes:*

- *Installation of complete shed of CGI sheets shed and enclosed the unit in the shed, complete washing system as additional PCM's to mitigate the impact of unit of critical criteria.*
- *Land Title Certificate under SO 60 from the office of Deputy Commissioner, Poonch.*
- *About 15 feet wind breaking walls consisting of CGI sheets around the unit towards the habitation.*
- *Done three rows of plantation of Eucalyptus Saplings. e. Installation of complete washing system and crushing/screening points enclosed in CGI sheets shed.*

4. Respondent's plant is well within siting norms, and not near any Abadi area.

- a. *That the Respondent had started its operation in only after obtaining a distance certificate from the office of the District Commissioner, Poonch. **(Refer to distance certificate dt. 03.09.2016 annexed herewith as Annexure-1)***
- b. *The latest reports of the J&K PCC dt. 22.01.2024 & 30.01.2024, also establish the fact that the Respondent's plant is situated at about 550 meters from the Government School, Narhad which is behind the hillock and the same is not visible from the plant.*
- c. *The same J&K PCC report also records the fact there are about 25 houses including both commercial as well as residential area within 500 meters in scattered form at different elevations and intercepted by regular traffic on road in between the stone crusher and residential area. Therefore, the same cannot be called an Abadi area."*

27. On 16.05.2024 when the matter was taken up by Tribunal, we enquired from the applicant that she has already approached J&K High

Court in **Writ Petition (Civil) No. 2522/2022 (supra)** hence, why the matter should be heard by Tribunal, she informed that an application to withdraw Writ Petition has already been filed in High Court which is likely to be taken up on 20.05.2024, therefore, requested that OA to be taken up after 20.05.2024 whereupon the matter was fixed for 24.05.2024.

28. On 24.05.2024, none appeared for the applicant but Learned Counsel for JKPCC informed that pending **Writ Petition (Civil) No. 2552/2022 (supra)** has been dismissed as withdrawn on 20.05.2024 by High Court.

29. In the circumstances, we proceeded to hear the matter finally and it is being decided by this judgment.

30. As per the applicant, there are two issues; (i) the stone crusher and hot mix plants do not comply with the siting criteria as per the extent rules applicable in this regard; (ii) the project proponents are violating various environmental norms and conducting illegal mining.

31. JKPCC, relying on Joint Committee's Report has supported application on both the aspects though it is said that initially on the basis on the Distance Certificate issued by the office of Deputy Commissioner, Poonch, CTE was granted but subsequent report shows that later on the distance from restricted/prohibited sites has been found within impermissible limits and therefore respondents units are not in compliance with the siting criteria. Further violation of various environmental norms was found on the part of respondents-proponents, therefore appropriate action is required to be taken. Learned Counsel for JKPCC also relied on the report of Directorate, Geology and Mining

wherein for illegal mining river bed minerals, penalties were imposed upon respondent 6 owned by respondent 8 and it is urged that non-compliance with the environmental laws and norms is duly fortified from the material on record.

32. Per-contra, Learned Counsel appearing for respondents 6 to 8 vehemently argued that on the basis of Distance Certificate issued in 2016, the siting criteria was duly complied by proponent. On the basis of subsequent report, the proponents cannot be penalised. Further that the minor deficiencies/violation of environmental norms noted by Joint Committee and JKPCC have now been rectified and therefore, there is no justification for closure of respondents-project proponents unit at this stage.

ISSUES:

33. In view of the rival submissions, we find that following questions relating to environment have arisen in this application which require adjudication by Tribunal:

- (I) Whether site of stone crusher and hot mix plant complies with the requirement of Rules relating to siting criteria?
- (II) Whether Joint Committee Report in respect of Distance Certificate of stone crusher unit and hot mix plant from prohibited/restricted placed and other findings deserves to be accepted or there is some factual error as claimed by respondent 6 to 8 and to that extent it should be rejected?

- (III) Whether respondents-project proponents in operating its stone crusher unit and hot mix plant have violated environmental norms?
- (IV) Whether respondents 6 to 8 have now allegedly rectified non-compliances recorded by Joint Committee as also JKPCC and if not, what order is required to be passed in this matter?
- (V) Whether project proponent is liable for removal of the unit for alleged non-compliance of siting criteria and/or assessment of environmental compensation and other punitive action for violation of environmental laws?

34. We find that **issues I and II** are interconnected and can be dealt with together.

35. It is evident from record that for stone crusher, mining license (annexure 6 at page 172/173) under J&K Minor Mineral Rules, 2017 was granted by Director, Geology and Mining Department, J&K Government on 27.04.2018. Period of license was from 27.04.2018 to 26.04.2023 and it was subject to consent from JKPCC and permanent registration from District Industry Centre. Licence further said that licensee shall procure raw material from legal source and observe the provisions of MMDR Act, 1957, Forest (Conservations) Act, 1980 (hereinafter referred to as '**FC Act, 1980**'), Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act, 1986**'), J&K Water Resources (Regulation and Management) Act, 2010 (hereinafter referred to as '**J&K WRRM Act, 2010**'), J&K State Fisheries Act, 1960 and the Rules framed thereunder, besides compliance with any other law applicable to the unit/plant of the area from time to

time whether made by Central Government or State Government or any other Competent Authority.

36. The minimum distances from residential area/abadi and educational institutions, applicable to respondents 6 to 8, at the relevant time i.e., in 2016 and also at the time when license was granted in 2018, were half km/500 meters and one km, respectively. The distance applicability of the siting criteria with regard to the above aspects have not been disputed before us by Learned Counsel for respondents 6 to 8.

37. Proponents, however, have relied on Distance Certificate no. DMP/J/2383-86 dated 03.09.2016 issued by Deputy Commissioner, Poonch. The said document is on record as annexure 2 to the Report of Director, Geology and Mining at page 150 and reads as under:

“Sh. Shahzad Shabnam S/O Sh. Abdul Rashid R/O Village Chaktroo, Tehsil Haveli, District Poonch has applied for distance certificate for installation of stone Crusher under name and style of M/S Diwan Stone Crusher in the land being khasra No: 256 situated at village Chaktroo, Tehsil Haveli, District Poonch.

As per the distance certificate submitted by Tehsildar Haveli vide his No: OQ/806 dated: 03-09-2016, the proposed site of Diwan Stone Crusher at Chaktroo under Khasra No: 256 to various parameters is as under: -

<i>a) National Highway</i>	<i>Not applicant</i>
<i>b) State Highway/District Road</i>	<i>500 Mtr.</i>
<i>c) Jammu/Srinagar City Municipal Limits</i>	<i>Not applicant</i>
<i>d) Major Distt. Head Quarter</i>	<i>15 Km</i>
<i>e) Residence Area/Abadi</i>	<i>500 Mtr.</i>
<i>f) Forest Complex Resort</i>	<i>Not applicant</i>
<i>g) Forest Land</i>	<i>01 Km</i>
<i>h) Any Controlled area</i>	<i>Not applicant</i>
<i>i) Approve water supply 20 kilo liter</i>	<i>Not applicant</i>
<i>j) Any Hospital/Nursing Home/Health Centre</i>	<i>Not applicant</i>
<i>k) Notified Birds or Sanctuaries/Nation Park</i>	<i>Not applicant</i>
<i>l) Agriculture Orchards except/Dry Banjar Kadeem</i>	<i>Ghair Mumkin Road</i>
	<i>01 km</i>
<i>m) Education Institution or other similar institute</i>	<i>01 km”</i>

38. The above document shows that it has relied on Tehsildar Haveli's Distance Certificate dated 03.09.2016 and reproduced the contents thereof with respect to the distance parameters as applicable at the relevant time for permitting establishment of stone crusher as per criteria laid down by JKPCC in its 19th meeting held on 20.12.2004.

39. We find that distance of residential/abadi is mentioned as 500 meters and educational institutions is one km. Whether the distance was actually measured and in what manner it was measured by Tehsildar while submitting Distance Certificate dated 03.09.2016 is not clear from the record. Before grant of license, J&K Minor Mineral Rules, 2017 came into force on 19.07.2017 and in respect to residential/abadi area and educational institutions, the required distance was same as per the criteria with regard to distance laid down by JKPCC vide its resolution dated 20.12.2004. It is thus not disputed that proponents had to follow the said distance requirement in respect of stone crushers and also hot mix plants.

40. It is also an admitted position that respondent 6 i.e., stone crusher and respondent 7 i.e., hot mix plant owned by respondent 8 are established on the same branches i.e., khasra no. 256 at village Chaktroo, Tehsil Haveli and District Poonch.

41. The comments of CPCB members noticed in Joint Committee Report dated 19.06.2023 submitted through Member Secretary, JKPCC, Jammu's letter dated 17.07.2023 shows that Revenue Department certified that within 500 meters from stone crusher/hot mix plant, there were 70 houses and 114 families residing. It is also stated that at a distance of 428 meters from the site of stone crusher/hot mix plant, there was a Government Middle School, Chaktroo situated. Serious question has been raised by

CPCB member as to how the proponent can be said to comply with the siting criteria of 500 meters from residential/abadi area and one km from educational institutions when within 500 meters, 70 houses and 114 families were found and a Government school was at a distance of 428 meters. The other members of Joint Committee in the Committee's Report have also referred to Tehsildar Haveli's letter dated 02.05.2023 and verify that the unit in question does not meet the siting criteria in respect of residential area and educational institutions.

42. Respondents 6 to 8 have filed their reply dated 15.02.2024 and relied on JKPCC reports dated 22.01.2024, 30.01.2024 and 08.02.2024 to claim that the siting criteria is being well complied by the proponents. In para 20 of reply, respondents 6 to 8 have said as under:

*"20. It is respectfully submitted that the **deponent's is well within the siting norms. The same can be seen from the reports of the Pollution Control Committee dt. 30.01.2024 and 22.01.2024. Further reliance is also placed on the report dt. 08.02.2024 of J&K Pollution Control Committee which unequivocally establishes the fact that the deponent's plant is situated at about 550 meters from the Government School Narhad.** Further, the School is behind a hillock therefore, the same is not visible from the plant hence, no disturbance is being caused. A true copy of the inspection report of the J&K Pollution Control Committee dt. 08.02.2024 is annexed herewith as Annexure-R8."*

43. Copy of the inspection Report dated 08.02.2024 has been placed on record at page 121/126. Item 7 thereof provides information of distances from various features and reads as under:

"7. Location

Distance of proposed site from following features (as per sitting criteria)

(a) National Highway/ State Highway More than 100 mts.

<i>(b) Distt/ Other/ Road</i>	<i>More than 30 mts.</i>
<i>(c) Municipal Limits</i>	<i>More than 30 mts.</i>
<i>(d) Distt. Headquarters</i>	<i>More than 30 mts.</i>
<i>(e) Residential Area/Abadi</i>	<i>More than 20 houses exist within 500 mts. approx.</i>
<i>(f) Tourist Complex/ Resort</i>	<i>More than 01 km.</i>
<i>(g) Forest Land</i>	<i>More than 300 mts.</i>
<i>(h) Controlled Area</i>	<i>More than 200 mts.</i>
<i>(i) Approved water supply of 20 KL</i>	<i>More than 01 Km.</i>
<i>(j) Hospital/ Nursing Home/ Health Centre</i>	<i>About 02km. (10 bedded)</i>
<i>(k) Notified Bird Sancturay/ National Park/ Wildlife Area</i>	<i>More than 01 km.</i>
<i>(l) Agricultural Land/ Orchard except Dry/ Banjar Kadeem</i>	<i>About 100 mts.</i>
<i>(m) Nearest Educational Institution or other similar Institution</i>	<i>About 500 mts”</i>

44. The above Report, we find is clearly inconsistent to what has been claimed by respondents 6 to 8 that they comply with the distance criteria/siting criteria as per prescribed norms. This Report which has been relied by respondents 6 to 8 filed as annexure R8 to their reply dated 15.02.2024 clearly shows that within 500 meters, more than 20 houses are in existence and distance from educational institutions is about 500 meters.

45. In this view of the matter, it cannot be doubted that both the projects of respondents 6 to 8 i.e., stone crusher and hot mix plant do not comply with siting norms and could not have been allowed to be established and operate at the site where they are presently situated. Deputy Commissioner's Certificate dated 03.09.2016 is very vague and nowhere shows that the siting criteria was satisfied. Thus, by allowing the projects in question to be established at khasra no. 256 at village Chaktroo, Tehsil Haveli, District Poonch, rules pertaining to siting criteria have been violated.

46. In the written submissions also, respondents 6 to 8 have relied on Distance Certificate dated 03.09.2016 and inspection Reports of JKPCCL dated 22.01.2024 and 30.01.2024 but we have already referred to annexure R8 relied by respondents 6 to 8 filed along with their reply dated 15.02.2024 which shows that siting criteria was not satisfied by respondents 6 to 8.

47. Moreover, we enquired during the course of the arguments as to when the houses and educational institutions were established, whether new establishments or established prior to the establishment of units of project proponents to which no explanation has come forward that these construction of residential/*abadi* area and education institutions are subsequent to the establishments of units of respondents 6 to 8. On the contrary, Learned Counsel for JKPCCL informed that Government School is quite old. It is also pointed out during the course of the arguments that distance mentioned in the citing norms is half km and one km respectively and in Distance Certificate dated 03.09.2016, the same distance as parameters has been mentioned without specifying whether the site of stone crusher was outside the said distance or within the said distance. When 500 meter/half km distance was to be maintained from residential area meaning thereby at this distance, no project could have been allowed to be established as per the siting norms. The same is with respect to the educational institutions.

48. We may also mention at this stage that Joint Committee Report dated 17.07.2023 in so far as it has relied on Tehsildar Haveli's letter dated 02.05.2023 and observed that the siting criteria is not being complied with, has not been challenged on the ground that it is an incorrect

observation or finding. No claim has been put before us either in the pleadings or during the course of the arguments that if there is any discrepancy, Tribunal may appoint another Committee to verify the distance. In fact, a lame reliance has been placed on Distance Certificate dated 03.09.2016 without doubting the correctness of Tehsildar's subsequent letter dated 02.05.2023 showing that siting criteria was not being matched by the project proponent. This is fortified by the own document relied by respondent 6 to 8 i.e., annexure 8 which is JKPCC inspection Report showing that within 500 meters, approximately more than 20 houses are existing and education institutions also existed at a distance of about 500 meters. This is their own document relied by respondents 6 to 8 and when this very document shows that proponents have not complied with the siting criteria, in the absence of any explanation on this aspect, we find no reason but to draw conclusion that respondents 6 to 8 units were established in violation of siting norms and therefore, cannot be allowed to continue at the site in question i.e., khasra no. 256 at village Chaktroo, Tehsil Haveli and District Poonch. Joint Committee Report therefore to this extent, deserves to be accepted.

49. We accordingly answer issues I and II in favour of the applicant and against respondents 6 to 8.

ISSUE III:

50. Earlier Regional officials of JKPCC issued directions to respondent 6 vide letter dated 14.02.2023 pointing out several violations and for rectification thereof. The directions provided for impairment of CGI covering, construction of metalled road, wind breaking wall, compliance with daily water sprinkling on roads, plantation in three roads of broad

leaves trees around the unit. Respondent 6 was required to comply the said directions within one month. However, the said directions were not complied with by respondent 6 instead Divisional Officer, JKPCC, Poonch found functioning of unit in night hours in violations of one of the Consent conditions.

51. In the circumstances, show cause notice dated 28.04.2023 (page 58) was issued to respondent 6 by Regional Director, JKPCC, Jammu stating that it is operating stone crusher in flagrant violation of the provisions of EP Act, 1968 which is punishable under Section 5 thereof read with 15 and accordingly respondent 6 was required to show cause as to why following action be not taken including closure of the unit:

- “i. Operating the unit in violation to Environmental Laws & specific condition lay down in Consent Order.*
- ii. Causing environmental pollution especially water pollution in the area adversely affecting the health of general public.*

This notice is therefore, issued and served upon you to show cause within 15 days from its issuance as to why legal action including closure is not taken against your unit for the violation of various environmental laws.

52. It appears that despite receipt of the said show cause notice dated 28.04.2023, respondent 6 failed to respond whereafter another show cause notice for closure of the unit was issued by Regional Director, Jammu requiring respondent 6 to show cause as to why its unit be not closed for operating in violation of environmental norms.

53. The record shows that members of Joint Committee visited the site of respondents 6 to 8 on 26.04.2023. At the time of inspection, unit was not found functional. Joint Committee found that though unit has

provided dust containment-cum-suppression system/washing system at the vibrator/screening point and water sprinkling system at primary and secondary jaw crusher but efficacy and adequacy of the said system i.e., dust suppression, inter-locking of conveyers and water spray system with the crusher could not be verified since the unit was not found operating on the date of inspection. Despite this, in the systems found provided by respondents 6 to 8 and in other aspects also, Joint Committee found violations/shortcomings, as under:

- (i) Sprinkling system at primary and secondary jaw crusher were temporary, being of PVC pipes instead of permanent fitted sprinklers of GI pipes.
- (ii) Jaw crushers and screeners, main dust emitting structures were not found properly covered/enclosed.
- (iii) Wind breaking wall all along the periphery of the unit was not found installed/constructed and instead the unit had provided only 15 feet wind breaking wall with CGI sheets on one side only.
- (iv) No green belt of broad leave trees in three rows along the periphery was provided.
- (v) Road with the premises of stone crusher was not metalled.
- (vi) The unit was supposed to measure Suspended Particulate Matter (hereinafter referred to as '**SPM**') twice a month throughout the year. No such details/copies of analysis reports conducted by Statutory Regulators or approved labs

or JKPCC labs were provided by the representatives of the units during inspection.

- (vii) **It was found involved in unscientific disposal of solid waste (silt/fines) into nearby river.**
- (viii) Settling tanks and water re-cycling systems for treatment and re-cycling of washing effluents containing silt/fines were not provided.
- (ix) **Washing effluents were being discharged in an earthen pit leading to nearby river with no arrangement of removal of silt and re-cycling of treated waste water.**
- (x) River water as well as ground water both were being used by the unit but no metering system was installed to assess the exact quantity of water use from these two sources.
- (xi) Unit did not produce any NOC for abstraction of ground water or use of surface water.

54. Further, Officers of JKPCC, Poonch also visited the site on 24.06.2023 and in the light of the observations made by them, Divisional Officer, JKPCC, Poonch submitted inspection Report dated 15.07.2023 (at page 53 of the paper book) to Regional Director, JKPCC, Jammu and therein also, following violations were noticed:

- “1. The sprinkling system installed at Primary and Secondary Jaw Crushers were temporary of PVC pipes instead of Permanent fitted Sprinklers of GI pipes and found inadequate.*
- 2. The dust emitting points viz. Jaw Crusher and Screeners found not properly covered during inspection.*

3. *About 15 ft. high wind breaking wall consisting of CGI sheets installed on concrete wall of length about 50 ft. found installed along on one side only. However the required 15 ft. permanent Wind breaking wall all along the Periphery of the unit not found installed or constructed during inspection.*
4. *A green belt comprising broad leave trees in three rows along the periphery not found planted during inspection.*
5. *The roads in the Stone Crusher premises not found metalled during Inspection.*
6. *The unit holder has not provided a concrete settling tanks and water recycling system for treatment and recycling of washing effluent containing silt/fines.”*

55. In respect to the above violations noticed by Joint Committee, there is no denial by respondents 6 to 8 and instead it is said that deficiencies pointed out by Joint Committee no longer exist and the same have been rectified. Rectification of the deficiencies stated in para 18, we have already noted above in para 8 of this judgment.

56. We find that all the deficiencies/violations noticed by Joint Committee Report which include extraction of ground water and surface water unauthorisedly, have not been rectified by obtaining requisite permissions from concerned authorities. It is not disputed before us that for extraction of ground water permission from Central Ground Water Authority (hereinafter referred to as ‘**CGWA**’) is necessary. Similarly, from stream water or surface water, no withdrawal is permissible for commercial purposes since the water resources are the public property and State is the custodian for its maintenance and regulation. Without permission of the State, surface water (river water) cannot be withdrawn for commercial purposes.

57. We may notice hereat consent order dated 27.04.2022 (at page 258 of the paper book) which has been brought on record by respondents 6 to 8 themselves wherein specific condition no. 3 said as under:

“The unit holder shall use authorised source of water and shall ensure that waste water is not discharged in to water Body.”

58. This condition has obviously been violated by respondents 6 and 8.

59. Similarly, with regard to unscientific disposal of solid waste in the nearby river, nothing has been said that the same has been stopped by respondents 6 to 8 while stating that they have removed deficiencies noticed by Joint Committee. Since violations/shortcomings noticed by Joint Committee have not been disputed by respondents 6 to 8 in their reply dated 15.02.2024, we find no reason but to accept the same and hold that respondent's project units have violated environmental laws on various aspects as noticed above.

60. Not only this, respondent 6 has also illegally extracted mineral from river bed and repeatedly fined for such illegal extraction of mineral from river bed by mining authorities as is evident from the report/response dated 03.05.2024 filed by Director, Geology and Mining, J&K. Respondent 6 was imposed fine on four occasions for recovery of river bed mineral found illegally accumulated at the project site. The first such fine was imposed on 22.12.2021 when 60 MT of river bed mineral was found accumulated at the site and the fine of Rs.16,500/- was imposed. The second fine of Rs.19,250/- was imposed on 29.01.2022 when 70 MT of river bed mineral was found accumulated at the site. The third fine of Rs.19,250/- was imposed on 23.02.2022 when 70 MT of river bed mineral was found illegally accumulated at the site. The fourth fine of Rs.16,400/-

was imposed on 24.07.2023 when respondent 8 was found transporting 10 MT (without e-challan). These facts have not been disputed by respondents 6 to 8 either by placing any otherwise material on record or even in written submissions during the course of the arguments.

61. The above facts prove beyond doubt that respondents 6 and 8 were indulged in illegal mining also.

62. With regard to hot mix plant, however, nothing has come on record regarding violation of environmental laws, therefore, on the question of violation of environmental laws, it cannot be said that it has also violated the same.

63. In view of our observations, **we answer issue III holding that respondents 6 and 8 have violated environmental laws** in operating stone crusher unit and also by indulging in illegal river bed mining or by procuring river bed mineral in an illegal and unauthorised manner.

ISSUES IV and V:

64. Both these issues in our view, can be discussed and returned together.

65. As already stated, some of the violations noticed in Joint Committee Report, as discussed above, it is claimed by respondents-project proponents that the same have been rectified but we do not find from record any verification of the alleged rectification since no such Report is on record from JKPCC. Moreover, all the violations noticed in Joint Committee Report are clearly not rectified or removed since only few aspects are said to have been rectified. Therefore, it cannot be said that

respondent 6 is now complying with all the conditions of Consent and following environmental laws in words and spirit. Moreover, there has been a consistent violation on the part of respondents 6 and 8 in respect of the environmental laws and norms as discussed above. Operation of stone crusher in violation of environmental norms caused huge damage to clean air by causing air pollution and water pollution by discharging polluted effluent therein. It has deteriorated and degraded environment in larger way. For such violations on the part of project proponents i.e., respondents 6 and 8, in our view, by application of principle of 'Polluter Pays' as held by Supreme Court in various authorities and also in view of the mandate under Section 20 of NGT Act, 2010 where this Tribunal has to comply principle of 'Polluter Pays', the violators-project proponents i.e., respondents 6 and 8 are liable to pay environmental compensation for damage caused to environment by violating environmental laws and norms.

66. When environment is damaged on account of act of anyone, on account of illegal activities which are in violation of environmental laws and norms, such violator is liable to share the cost which may be incurred for remediation and rejuvenation of damaged environment. Supreme Court on this aspect has categorically said that the violator is liable to share cost which may be required for remediation of environment which is damaged on account of illegal activity of such violator. For this purpose, Supreme Court has recognized the principle of 'Polluter Pays'.

67. This Principle was recognized as part of environmental law in India in ***Indian Council for Enviro-Legal Action vs. Union of India, (1996) 3 SCC 212***. Certain industries producing assets were dumping their waste.

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 Directive Principles of State Policy and 51-A in the Fundamental duties of citizens, Supreme Court observed that said provisions say that State shall endeavour to protect and improve environment and to safeguard the forest and wildlife of the country. One of the fundamental duties of citizens is to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creature. Where a **Proponent has established its commercial unit and operate 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.**

68. Referring to Oleum Gas leak case, i.e., ***M.C. Mehta vs. Union of India, (1987) 1 SCC 395***, 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.

69. Court also referred to its earlier decision in ***Indian Council for Enviro Legal action vs. Union of India, (1995) 3 SCC 77***, wherein concerned Pollution Control Board 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 the 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.”

70. 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. Court further said:

*“...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.”*

71. The above principle has been followed in **Vellore Citizen Welfare Forum vs. Union of India, 1996 (5) SCC 647.** 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.

72. In ***Bittu Sehgal and Another vs. Union of India & Others, (2001) 9 SCC 181***, 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.

73. In ***Research Foundation for Science vs. Union of India & Ors., (2005) 13 SCC 186***, 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.”

74. In ***Karnataka Industrial Areas Development Board vs. C. Kenchappa & Others, (2006) 6 SCC 371***, 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)***.

75. Even this Tribunal under Section 20 of NGT Act, 2010 has been empowered to decide matters by applying the principle of ‘sustainable development’, ‘precautionary principle’ and principle of ‘Polluter Pays’.

QUANTUM OF ENVIRONMENTAL COMPENSATION:

76. The next question is what should be the quantum of environmental compensation.

Methodology for Computation of Environmental Compensation:

77. The question of **assessment of environmental compensation** includes the principles/factors/aspects, necessary to be considered for computing/assessing/determining environmental compensation. Besides judicial precedents, we find little assistance from Statute. Section 15 of NGT Act, 2010 talks of relief of compensation and restitution. It confers wide powers on this Tribunal to grant relief by awarding compensation for the loss suffered by individual(s) and/or for damage caused to environment. Section 15 reads as under:

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

a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

b) for restitution of property damaged;

c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and Compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section of (1) shall be in addition to the relief paid or payable under the

Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the' applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

*(4) The Tribunal may, **having regard to the damage to public health, property and environment**, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.*

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may, be, compensation or relief received from, any other Court or authority.

78. Sub-section 1 of Section 15 enables Tribunal to make an order providing relief and compensation to (i) the victims of pollution, (ii) other environmental damage arising under the enactments specified in the Schedule I.

79. Tribunal is also conferred power to pass an order providing relief for restitution of property damaged. Section 15(1)(c) enables Tribunal to pass an order providing relief for restitution of the environment for such area or areas, as Tribunal may think fit. Section 15 sub-section 4 says that Tribunal may divide compensation or relief payable under separate heads specified in Schedules II, having regard to the damage to public health, property and environment so as to provide compensation or relief, (i) to the claimants and (ii) for restitution of the damaged property or environment,

as it may think fit.

80. Schedule II of NGT Act, 2010 gives a list of heads under which compensation or relief for damage may be granted. It has 14 heads in total out of which items (a) to (f), (l), (m) and (n) relate to loss, damage etc. sustained to the person or individual or their property. Items (i) to (k) relate to harm, damage, destruction etc. of environment or environmental system including soil, air, water, land, and eco-system. Items (i) to (k) of Schedule II of NGT Act 2010 are as under:

“(i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;

(j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;

(k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;”

81. Items (g) and (h) relate to expense and cost incurred by State in providing relief to affected person; and loss caused in connection with activity causing damage.

82. The damage to environment covers a very wide variety of nature as is evident from definition of environment under Section 2(c) which is inclusive and says; ‘environment includes water, air, and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property’.

83. Even Rules framed under NGT Act, 2010 are silent on this aspect. Issue of determination of EC is significant in the sense that it should be

proportionate to or bears a reasonable nexus with the environmental damage and its remediation/restoration. Similarly in case of compensation to be determined for a victim, it needs to co-relate to injury caused or damage suffered by such person as also cost incurred for treatment/remediation. Computation of environmental compensation may involve some degree of subjectivity but broadly it must be based on objective considerations as it saddles financial liability upon the violator.

84. 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, Environmental Clearance under Environment Impact Assessment Notification dated 14.09.2006; Consent under Water Act, 1974 and Air Act, 1981; Authorisation under Solid Waste Management Rules, 2016 and other Rules; NOC for extraction and use of ground water, 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.

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

86. 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.

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

88. Determination/computation/assessment of environmental restoration/remediation/rejuvenation 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.

89. 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.

90. 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 further comprised of two components, i.e., risk assessment and risk description.

91. 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. As the term suggest, compensation means a return for loss or damage sustained. Therefore, it must always be just and not based on a whim or capricious.

92. In India, where commercial activities were carried out without

obtaining statutory permissions/consents/clearance/NOC, Courts have determined, in some matters, compensation by fixing certain percentage of cost of project. In some cases, volume of business transactions, turnover, magnitude of establishment of proponent have also been considered as guiding factors to determine environmental compensation. In some cases, a lump sum amount has been imposed.

93. 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 environmental 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.

94. 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, and this principle must also be given due consideration and be taken care.

95. 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. In such circumstances, it is the ultimate responsibility of Court's to assess and compute environmental compensation, rationally.

96. 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.

97. This Tribunal vide order dated 31.08.2018 passed in **OA 593/2017, Paryavaran Suraksha Samiti and another vs. Union of India and others** observed that *"CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the*

environment”.

98. Pursuant thereto, CPCB published a Report on 15.07.2019 suggesting methodology for assessment of environmental compensation which may be levied or imposed upon industrial establishments who are guilty of violation of environmental laws and have caused damage/degradation/loss to environment. The above Guidelines do not encompass individuals, statutory institutions and Government etc. Since in the present case, we are concerned with an individual stone crusher, therefore, we are not going into the details of the said Guidelines as the same have no application to the present case.

99. In some cases, compensation has been awarded by Tribunal on lump sum basis without referring to any methodology. For example: (i) ***in Ajay Kumar Negi vs Union of India, OA No. 183/2013***, Rs.5 Crores was imposed. (ii) In ***Naim Shariff vs M/s Das Offshore Application no. 15(THC) of 2016***, Rs.25 Crores was imposed (iii) ***Hazira Macchimar Samiti vs. Union of India***, Rs. 25 Crores was imposed.

100. In ***Goa Foundation vs. Union of India & Others (2014) 6 SCC 590***, Supreme Court relied on ***Samaj Parivartana Samudaya & Others vs. State of Karnataka & Others (2013) 8 SCC 209*** and held that **ten per cent of the sale price** of iron ore during e-auction should be taken as compensation. To arrive at the above view, Court observed that this was an appropriate compensation given that mining could not completely stopped due to its contribution towards employment and revenue generation for the State. Further, Court directed to create a special purpose vehicle, i.e., “Goan Iron Ore Permanent Fund” for depositing above directed compensation and utilization of above fund for remediation

of damage to environment.

101. In ***Goel Ganga Developers vs Union of India and Others, (2018) 18 SCC 257***, Tribunal imposed Rs.195 Crores compensation since construction project was executed without EC. Supreme Court made it **Rs.100 Crores or 10% of project cost whichever is higher**. Supreme Court also upheld Rs. 5 Crores imposed by Tribunal vide order dated 27.09.2016. Thus, total amount exceeded even 10% of project cost.

102. In ***Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019) 18 SCC 494***, Supreme Court affirmed imposition of environmental compensation by Tribunal, considering cost of the project, where there was violation regarding EC/consent and proponent proceeded with construction activities violating provisions relating to EC/Consent. Tribunal determined environmental compensation at 5% and 3% of project cost of two builders. 5% of project cost was imposed where PP had raised illegal constructions while 3% was imposed where actual construction activity was not undertaken by PP and only preparatory steps were taken including excavation and deposition of huge earth by creating a hillock. Besides, Tribunal also directed for demolition and removal of debris from natural drain at the cost of PP.

103. On the issue of assessment of compensation for damage to environment in the matter of illegal mining, recently Supreme Court in ***Bajri Lease LOI holders Welfare Society vs. State of Rajasthan and others, SLP (Civil) No. 10584 of 2019*** (order dated 11.11.2021) has said that compensation/penalty to be paid by those indulging in illegal sand mining cannot be restricted to be value of illegally mined minerals. The cost of restoration of environment as well as the cost of ecological services

should be part of compensation. 'Polluter Pays' principle as interpreted by this Court means that absolute liability for harm to the environment extends not only to compensate victims of pollution but also cost of restoring environmental degradation. Remediation of damaged environment is part of the process of "sustainable development" and as such the polluter is liable to pay the cost the individual sufferers as well as the cost of reversing the damaged ecology.

104. Recently, in respect of pollution of River Yamuna due to violations caused by Nagar Nigam, Agra and Nagar Nigam, Mathura-Vrindavan in **OA 840/2022, Sanjay Kulshresthra vs. Government of Uttar Pradesh & Ors.** and **OA 773/2022, Rajesh Pareek vs. Government of Uttar Pradesh & Ors.** passed on 24.04.2024, this Tribunal has computed environmental compensation by applying the rate of compensation at Rs. 0.01 per MLD since that was a case of discharge of untreated sewage in River Yamuna.

105. The project proponent, in the case in hand, which has violated environmental norms and caused damage to environment, is stone crusher. The cost of mineral would not provide a just criteria for determining quantum of environmental compensation hence it is the turnover of the project proponent which may determine the quantum of environmental compensation. Unfortunately, respondents 6 and 8 have not disclosed their turn over and there is no material on record to determine environmental compensation on the basis of turn over.

106. Consent order dated 27.04.2022 available at page 258 shows that maximum quantity of crushing of minerals and producing sand and bajri allowed to respondent 6 was 1440000 cubic feet per year. If the cost of

the product is taken to be on a very conservative side as Rs. 10/- per cubic feet, annual turn over will come to Rs.14400000/-. If we take even 5% thereof towards environmental compensation, it will come to Rs.7,20,000/-.

107. In our view as an interim measure, the respondents 6 and 8 be held liable to pay environmental compensation of Rs.7,20,000/- subject to final determination by JKPCC after examining relevant material in this regard.

108. Further in view of our findings on issues I and II, we have hold that project proponents are liable to remove their units from the site in question for non-compliance of siting criteria, forthwith.

109. **We answer issues IV and V accordingly.**

110. In view of the discussion made above, this OA deserves to be allowed with the following directions:

- (i) In view of the findings recorded in respect of issues I and II, respondents 6 and 7 units cannot be allowed to continue at the site in question as the same are violating siting criteria, therefore, respondents-project proponents are directed to remove their units from the site in question beyond the distance as per the siting norms within two months.
- (ii) Until removal of units, the operation thereof shall not be allowed at the present site.
- (iii) For violation of environmental laws, respondent 6 owned by respondent 8 are held liable to pay environmental

compensation as an interim measure of Rs.7,20,000/- which shall be deposited within one month from today with JKPCC.

- (iv) JKPCC shall collect relevant material, examine the same and determine final environmental compensation in the light of law and principles discussed above and pass final order within two months after giving opportunity of hearing to all concerned parties and stakeholders including project proponents.
- (v) Amount of interim environmental compensation recovered in terms of this order shall be subject to the final order which is passed by JKPCC in compliance of the directions given hereinabove and adjusted in the final amount appropriately.
- (vi) The amount of environmental compensation recovered from project proponents shall be utilised for restoration/ rejuvenation/ remediation of the environment in the area concerned in pursuance to the Environment Rejuvenation Plan which shall be prepared by a Joint Committee comprising District Magistrate, Poonch, JKPCC and CPCB wherein JKPCC shall be nodal agency.
- (vii) The above Plan shall be prepared within two months and executed within three months from the date of recovery/realisation of environmental compensation.
- (viii) JKPCC shall submit Compliance Report with Registrar General of this Tribunal by 15.02.2025 and if any further order is required, the matter may be placed before the Bench.

111. Pending I.A.s stand disposed of.

112. Copy be forwarded to District Magistrate, Poonch, JKPC, MoEF&CC, Director, Department of Geology and Mining and CPCB for information and compliance.

SUDHIR AGARWAL,
JUDICIAL MEMBER

DR. AFROZ AHMAD,
EXPERT MEMBER

September 04, 2024
Original Application No.151/2023
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