

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

**APPEAL NO. 30/2023
(I.A. No. 767/2023, I.A. No. 791/2023 and I.A. No. 792/2023)**

IN THE MATTER OF:

M/S SHIV INDUSTRIES

Plot No. 136-140/71, Industrial Area,
Phase-I, Chandigarh

...Appellant(s)

Versus

CHANDIGARH POLLUTION CONTROL COMMITTEE

Through its Member Secretary,
Ground Floor, Paryavaran Bhawan,
Madhya Marg, Sector 19-B, Chandigarh,

...Respondent(s)

COUNSELS FOR APPELLANT(S):

Ms. Sweta Rani and Ms. Ritika Khanna, Advocates

COUNSELS FOR RESPONDENT(S):

Mr. Shubham Bhalla, Advocate for Chandigarh Pollution Control Committee

CORAM:

**HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

**RESERVED ON: OCTOBER 19, 2023
PRONOUNCED ON: DECEMBER 07, 2023**

JUDGMENT

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

1. This is an Appeal under Section 16 (c) and (g) of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act 2010**') whereby order dated 27.09.2023 passed by Chandigarh Pollution Control

Committee (hereinafter referred to as '**CPCC**'), issuing certain directions under 33A of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act 1974**') and under Section 5 of Environment (Protection) Act, 1986 (hereinafter referred to as '**EP Act 1986**') to the appellant, has been challenged.

2. **Facts in brief** giving rise to the present Appeal, as evident from the memo of appeal, are that appellant's unit i.e., M/s. Shiv Industries is engaged in manufacturing and phosphating/pickling of tractor parts i.e., Silencers, Elbow and Clamps. It is carrying out its industrial activities at its factory situated at Plot no. 136-140/71, Industrial Area, Phase-I, Chandigarh.

3. Appellant was granted Consent to Operate (hereinafter referred to as '**CTO**') under Section 25/26 of Water Act, 1974 and 21 of Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act 1981**') which was valid upto 31.03.2018. It was renewed upto 31.03.2023 vide order dated 11.07.2018 passed by CPCC. Appellant was also granted Authorisation under Rule 6 of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (hereinafter referred to as '**HOWMTM Rules 2016**') framed under EP Act 1986 to operate a facility for storage and disposal of hazardous waste vide Authorisation letter dated 31.03.2018 valid upto 31.03.2023.

4. Pursuant to the aforesaid Authorisation, appellant was disposing its waste through Authorized Re-cycler i.e., M/s. Re Sustainability Ltd., village Nimbua, P.O. Rampur Sainia, Tehsil Dera Bassi, Mohali, State of Punjab.

5. Appellant received a show cause notice dated 11.07.2023 issued by CPCC under Section 33A of Water Act 1974 read with Section 5 of EP Act

1986 which stated that CTO issued to appellant under Water Act 1974 and Air Act 1981 as also Authorisation under HOWMTM Rules 2016 had expired on 31.03.2023. Further, appellant's industrial unit was inspected by CPCC on 27.05.2023 and during inspection, following violations were found:

- "1) You are manufacturing tractor parts i.e., silencer along with phosphating.*
- 2) ETP is found non-operational even it is not approachable. It seems that it is not being operated since long.*
- 3) You were unable to show logbook.*
- 4) No record of disposal of hazardous waste."*

6. Show cause notice further said that appellant has violated following conditions of Consent/Authorisation:

- "1) As per conditions No. 11, you have to apply for renewal of consent to operate atleast 91 days before the date of expiry of this consent order, but you failed to apply for the same and running your unit without prior permission from CPCC.*
- 2) As per condition No. 9 of consent order, you have to submit the test report of waste water/emissions analysed on quarterly basis from the laboratory recognized by CPCC/CPCB/MOEF&CC, but you have not submitted the same.*
- 3) As per condition No. 7(b)(ii) of authorisation, unit has to submit the white copy of manifest to CPCC immediately after lifting of hazardous waste but you failed to submit the same."*

7. It was further stated in the show cause notice that appellant has violated provisions of Water Act 1974 and EP Act 1986 and failed to comply with the conditions of Consent/Authorization. Consequently, CPCC proposed to issue following directions under Section 33A of Water Act 1974 and Section 5 of EP Act 1986:

- "1. An environment compensation of Rs. 10,50,000/- (01.04.2023 to 23.06.2023) [84 days] will be imposed upon you as per the order of Hon'ble NGT in the matter of Paryavaran Suraksha Samiti.*

2. *You will close your unit forthwith and you will not run your unit before the permission is granted by the CPCC.*
3. *That concerned authorities shall disconnect the Water/Electric supply to your unit and seal your unit.”*

8. Appellant was granted 15 days' time to reply the said show cause notice, failing which appropriate decision shall be taken in accordance with law.

9. Appellant replied the said show cause notice to Member Secretary, CPCC vide its letter dated 26.07.2023, wherein appellant said that it is not running phosphating section since January 2021 and hence, has not submitted test reports. Appellant further stated that it has come to know from the office of CPCC that manufacturing of tractor parts without phosphating is a 'White Category' industrial activity, hence, appellant was not required to obtain consent from CPCC.

10. Member Secretary, CPCC passed impugned order dated 27.09.2023 observing that the reply submitted by appellant is not satisfactory, instead misleading and gives false information, hence, appellant has failed to comply with the conditions of Consent/Authorisation and violated the provisions of Environment Acts and Rules. Exercising powers under Section 33A of Water Act 1974 read with EP Act 1986, Member Secretary, CPCC issued following directions for compliance vide impugned order (annexure A-1 to memo of Appeal):

- “i) An **environment compensation amounting to Rs. 10,50,000/-** (Rupees Ten Lakhs Fifty Thousands Only) **has been imposed** upon the unit i.e. M/s Shiv Industries, Plot No. 136-140/71, Industrial Area, Phase-I, Chandigarh as per order of Hon'ble NGT and unit has to deposit the same within 15 days from the date of issue of these directions.*
- ii) That Superintending Engineer, Electricity Operation Circle, U.T., Chandigarh shall **disconnect power supply of the abovesaid***

unit with immediate effect and send report of compliance within 07 days.

iii) That Superintending Engineer, Public Health Circle, Municipal Corporation, U.T. Chandigarh shall ***disconnect the water supply of the abovesaid unit with immediate effect*** and send report of compliance within 07 days.

iv) That the ***concerned authorities shall seal the unit with immediate effect*** and send report of compliance within 07 days.”

11. The impugned order further said that the same has been issued with the approval of Competent Authority.

12. Appellant has challenged order dated 27.09.2023 on the ground that Competent Authority has failed to consider reply of appellant; appellant was not running phosphating section hence, was justified in not submitting any test report and white copy of manifest; there was no test report or evidence to suggest that appellant’s unit was causing any pollution beyond permissible limits; CPCC has not considered that appellant was disposing waste through Authorized Re-cycler i.e., M/s. Re Sustainability Ltd. and no waste was being disposed in open area; the direction for sealing of appellant’s unit is excessive and likely to cause irreparable loss to appellant; penalty of Rs. 10,50,000/- is without any basis and cogent reason and in any case, is highly excessive; and lastly, disconnection of electricity/water supply would cause immediate closure of appellant’s unit resulting in irreparable damage to business and loss of livelihood/employment of many persons employed with appellant’s industrial unit.

Tribunal’s order dated 11.10.2023:

13. Appeal came up for admission on 11.10.2023 when Tribunal, after considering initial submissions of Learned Counsel for appellant, found it

appropriate to direct CPCC to produce photocopy of original record resulting in passing of impugned order and fixed the matter for 19.10.2023.

14. On 19.10.2023, CPCC along with IA 791/2023 has placed before us copy of entire original record which has resulted in passing the impugned order dated 27.09.2023. The original record was also allowed to be perused by appellant's Counsel. With the consent of parties, we heard the matter finally.

15. CPCC has informed us that electricity and water supply to the appellant's unit has been disconnected and premises was sealed after passing of the order dated 27.09.2023.

16. Documents placed on record by CPCC include certain photographs taken on 27.05.2023 when appellant's unit was inspected by the authorities of CPCC and the said photographs at page 44 show process of phosphating also. At page 43, photograph shows position of ETP which is evidently inaccessible. At page 45, there are photographs of painted silencers of tractors.

17. From the documents placed by CPCC before us, we find following facts/information:

- a) Industrial Shed no. 136-140/71 area 400 meter was allotted by Chandigarh Small Industries Development Corporation Ltd to Shiv Saran Dass Sharma, i.e., owner of appellant unit, vide letter dated 24.07.1979.
- b) Appellant's unit is registered as a small scale industrial unit with Directorate of Industries, Chandigarh vide registration no. 53/53/01964/PMT/SSI dated 07.04.1980.
- c) Initially, it was registered for manufacturing/processing activities, like job work of tractor parts. Subsequently, by

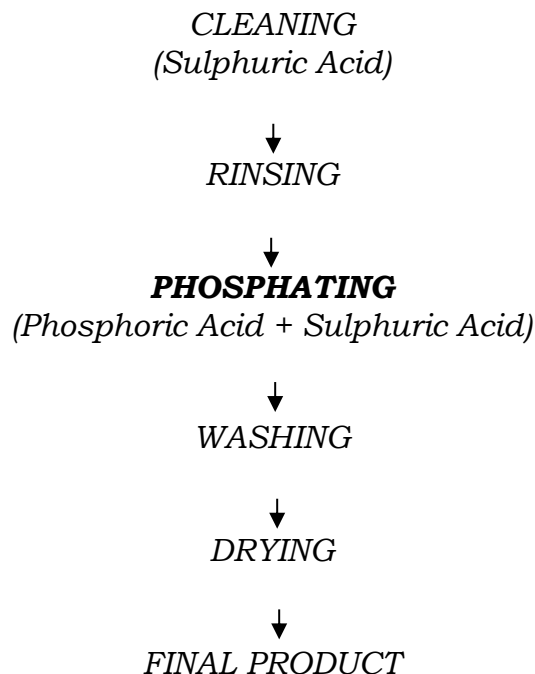
endorsement dated 27.12.1984, items of tractor's parts i.e., silencer and phosphating were added. Vide endorsement dated 22.08.1990, fabrication work was also added.

- d) By consent order dated 09.04.2002, consent under Section 25/26 of Water Act, 1974 was granted to appellant's unit for manufacture of tractor parts.

18. In the application filed by appellant (p/243) for Authorisation under Hazardous Wastes (Management and Handling) Rules, 1989 (hereinafter referred to as '**HWMH Rules 1989**'), year of commencement of production was shown as 1979, capital investment on the project was 775850 and products and by-products mentioned were tractor parts.

19. A feasibility report to control pollution was also filed by appellant wherein lay out of manufacturing process was shown as under:

LAYOUT OF MANUFACTURING PROCESS



20. It is also mentioned in the said report that the main source of effluent is pickling and phosphating. '**Pickling**' is a pre passivation process of treating steel parts with an acid solution, typically hydrochloric or sulphuric acid, which can remove oxide scale and heat tint while dissolving

steel flecks embedded in the part. In other words, 'Pickling' is metal surface treatment used to remove impurities such as stains, inorganic contaminants and rust or scale from ferrous metals, copper, precious metals and aluminium alloys. **'Phosphating'** is a chemical method of surface treatment in which a metallic surface reacts with an aqueous phosphate solution. This creates a hardly soluble conversion layer made of metal phosphates. For this purpose, the material is first cleaned with acid and then the phosphate layer is formed. In other words, 'Phosphating' is conversion coating that is applied to steel or iron components and is mostly used as a pre-treatment method in conjunction with another method of corrosion protection. Phosphating is a surface preparation method of ferrous metals before coating or painting. It increases corrosion prevention and also helps improve anti-friction properties. Iron phosphating protects against oxidation and increases paint adherence and resistance.

21. Since appellant was using raw material comprising iron, sulphuric acid and phosphoric acid, the main constituents in the effluent are residue of iron, and acids. Total discharge of trade effluent is 0.5 m³/day i.e., about 5000 liter per day.

22. In the application filed for grant of consent dated 25.06.2004, product and by-product have been mentioned at item 13 as Tractor parts, Silencers, Elbows and Clamps. Item 14 gives details of raw materials and process chemicals comprising C R Sheet, Pipes, flat casting, frits, electrodes, N.S.Wires, etc. At page 195/234, raw materials details are given which included 100 kg sulphuric acid i.e., H₂SO₄, per month.

23. Pursuant to the said application, consent letter dated 25.08.2004, granting CTO under Section 25/26 of Water Act 1974 and Section 21 of Air Act 1981 and Authorisation under Rule 5 of HWMH Rules 1989 was

granted which is on page 219 of paper book. CTO and Authorisation were valid upto 31.03.2008. CTO and Authorisation were renewed from time to time and ultimately expired on 31.03.2023. The application also shows that appellant was to generate 100 kg per year chemical sludge from Effluent Treatment Plant.

24. At page 188 of the paper book, appellant's certificate issued by Chartered Accountant is on record, showing that on 20.03.2008, gross fixed investment of appellant's unit was Rs.981006.01. At page 170, there is affirmation of appellant about its Gross Capital Investment of Rs. 9.81 Lakhs as on 20.06.2013.

25. Appellant was issued show cause notice dated 23.05.2017 by CPCC (p/128), alleging violation of conditions of Consent and Authorisation and thereby, violating the provisions of Water Act 1974 and HoWMTM Rules 2016. CPCC proposed to issue directions for closure of industry and stoppage of electricity or water supply or any other service to the appellant's unit. The reasons mentioned in the show cause notice demonstrating violations are as under:

*"In this connection, you are informed that as per **condition no. 8** of consent issued to you vide dated 22.08.2013, you have to submit the test report of waste water quarterly from the laboratory approved by State Board/Committee/Central Board/Central Government in the Ministry of Environment Forests & Climate Change, but you failed to do so. As per **condition no. (v)** of authorization issued to you vide letter dated 22.08.2013, you shall maintain records of hazardous waste generated and their disposal in form 3 and shall send return to committee in form no.4 by 30th June of every year for the preceding period April to March, but you failed to do so. You are not complying with the conditions of consent/authorization issued to you vide dated 22.08.2013.*

Chandigarh Pollution Control Committee is empowered to give direction u/s 33 A of the Water (Prevention and Control of Pollution) Act, 1974 and u/s 5 of Environment (Protection) Act, 1986 to any person, officer, or authority and such person, officer or authority shall

be bound to comply with such directions. Power to issue directions under this section includes the power to direct:

- a) The closure, prohibition or regulation of any industry, operation or process; or*
- b) Stoppage or regulation of the supply of electricity or water or any other service.”*

26. However no final order is on record. It is not clear as to what ultimately happened to show cause notice dated 23.05.2017.

27. Record also shows that Consent/Authorisation has been renewed from time to time but not beyond 31.03.2023.

28. Inspection dated 27.05.2023 (p/61) is also on record which shows that category of industry is 'Red'. The industry was found in operation at the time of inspection. The inspection was made in the presence of Rishi Sharma, the contact person of the industry and in the column of details of products 'Tractor silencer' is mentioned. The inspection report contains following observations of the concerned Inspecting Official i.e., Shri Vivek Pandey, Scientist-E:

*“Unit is manufacturing tractor parts i.e. silencer along with phosphating. **ETP is found non-operational** even it is **not approachable**. It seems that it is **not being operated since long**. **Unable to show logbook. No record of disposal of haz. Waste. Consent/Auth. Already expired and unit is operational without running ETP and without Consent/Auth.**”*

ARGUMENTS:

29. Learned Counsel for appellant contended that it had not been using phosphating process since January 2021 and hence, there was no discharge of any polluting material since excluding phosphating process the appellant's unit comes in White Category, therefore, the entire action taken against appellant is illegal and shows non-application of mind on the part of CPCC. She further contended that there is no material to show that

any pollution has been caused by appellant damaging environment and further the closure order and amount of compensation is without any basis.

30. Learned Counsel appearing for CPCC on the contrary, disputed these contentions and submitted that as a matter of fact, during inspection, it was found that appellant's unit was engaged in manufacturing of tractor parts i.e., silencer using phosphating process. There is other material also on record to show that even after January 2021, appellant himself admitted that it was carrying on phosphating activity for manufacturing of silencer. He further contended that as per own discloser of appellant, phosphating is an intermediary stage of manufacturing process of appellant and once it is admitted that appellant was manufacturing tractor parts i.e., silencer, the process would not have completed without undergoing phosphating. Our attention is drawn to the lay out of the manufacturing process disclosed by appellant himself which shows that manufacturing process commenced with cleaning with Sulphuric acid and next stage is rinsing, then the stage is phosphating wherein Phosphoric acid and Sulphuric acid are used and thereafter, the product is taken for washing, then drying and then it leaves the final product. It is said that there is no document to show that appellant ever informed CPCC that appellant has stopped phosphating process since January 2021. Appellant filed annual return dated 26.06.2021 in which also it has mentioned its product name as tractor part along with phosphating and it is on record at page 67/68 of the paper book. The said return was submitted along with appellant's letter dated 28.06.2021 which is on record at page 66.

ISSUES:

31. The rival submissions advanced by the parties have given rise to the following issues:

- (I) Whether appellant stopped phosphating processing in January 2023, as claimed?
- (II) Whether appellant was committing violations as noticed during inspection dated 27.05.2023, mentioned in the show cause notice dated 11.07.2023 and finally in the impugned order dated 27.09.2023?
- (III) Whether the impugned order is bad having not considered the reply submitted by appellant?
- (IV) Whether the quantum of environmental compensation imposed by respondent CPCC is justified and based on legal principles applicable for computation/assessment of environmental compensation?
- (V) Whether closure order dated 27.09.2023 passed by CPCC directed for closure of appellant's unit is justified in the facts and circumstances of the present Appeal?

ISSUES I, II and III:

32. We propose to consider issues I, II and III together since they are inter-connected and to some extent, over-lapping.

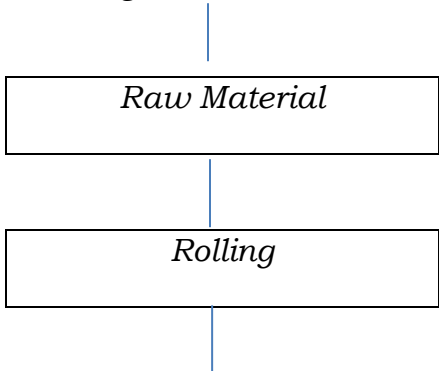
33. It is not disputed before us that an inspection was made at appellant's industrial unit on 27.05.2023. The inspection note shows that a representative of appellant was present at the time of inspection. The presence of such representative has neither been denied nor disputed nor contradicted by appellant during the course of the arguments or by placing any otherwise material on record. The name of the contact person of the industry mentioned in the inspection note is Mr. Rishi Sharma. It is thus evident that the observations made during inspection by the inspecting

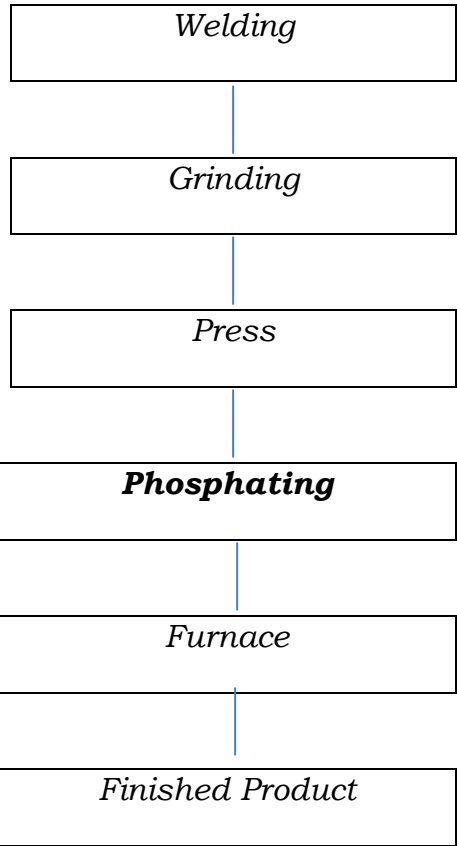
official of CPCC were in the knowledge of the representative of appellant. It has not been stated anywhere and even in the reply submitted by appellant to show cause notice that facts mentioned in the inspection note are not correct. The record produced by CPCC shows that several photographs were also taken at the time of inspection which included a photograph of phosphating process going on in the industrial unit at the time of inspection. During the course of arguments, genuineness or correctness of these photographs has neither been doubted nor challenged.

34. Even otherwise, contention of appellant that it has stopped phosphating process is not acceptable for the simple reason that appellant admits that manufacturing of tractor parts i.e., silencer etc. was continuing till unit was sealed pursuant the impugned order dated 27.09.2023. The record produced by CPCC clearly shows that phosphating is an intermediary manufacturing process in the manufacturing of tractor parts i.e., Elbow and Silencer. The manufacturing process shown in the feasibility report submitted by appellant to CPCC shows that after cleaning with Sulphuric acid and rinsing, the next stage is phosphating wherein Phosphoric acid and Sulphuric acid are used. Thereafter, there are three steps i.e., washing, drying and final product. This clearly shows that without phosphating, the final produce stage cannot be arrived at.

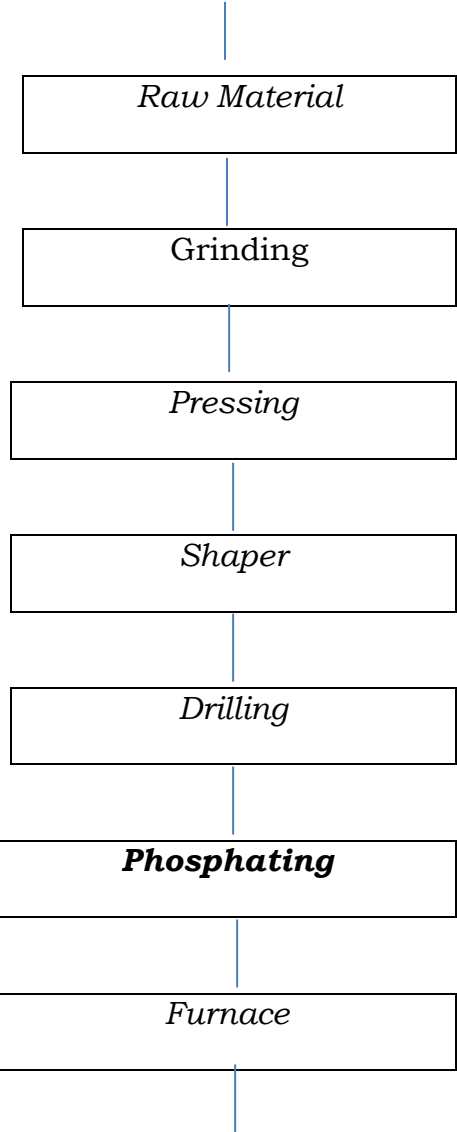
35. Copy of original record further shows two flow diagrams with the titles 'Flow Diagram Silencer/Elbow' and 'Flow Diagram Elbow Silencer' at page 265 and 266 of the paper book and the same are as under:

“Flow Diagram Silencer/Elbow





“Flow Diagram Elbow Silencer



<i>Finished Product</i>

36. The above flow diagrams show that two processes are followed by appellant for finished product and in one process, the stages include rolling, welding, grinding, press, phosphating, furnace and finished product while second flow diagram includes grinding, pressing, shaping, drilling, phosphating, furnace and then it results in finished product. In both the flow diagrams for manufacture of silencer, we find that phosphating is a necessary and integral part of manufacturing process. That being so and further in absence of any material on record to show that the appellant stopped phosphating process in January 2023, we find no merit in the submission that appellant had stopped phosphating process in January 2023. Appellant had also never informed respondent CPCC that in the course of its manufacturing process, it had stopped phosphating since January 2023. It is a self-claimed denial on the part of appellant without any material on record. On the contrary, otherwise material on record is available to show that phosphating activities were found by the inspecting officials of CPCC at the time of inspection i.e., 27.05.2023 and in the absence of any reason to doubt the said finding, we have no reason but to accept the findings recorded in the inspection note dated 27.05.2023.

37. Coming to the aspect that impugned order has been passed without application of mind and without considering reply of appellant, we find that appellant's reply dated 26.07.2023 contains only one defence that it has stopped phosphating activity in January 2023 and this fact was contrary to the findings recorded in the inspection note and has neither been accepted by the authority passing impugned order nor on close examination, we have found this defense of appellant to be correct, hence

it cannot be said that impugned order has been passed without considering reply submitted by appellant.

38. Appellant has admitted that its Consent and Authorization expired on 31.03.2023 and for non-renewal, it has taken the defense that it was not undergoing with any polluting activities though record shows that it was using highly hazardous substance i.e., Sulphuric and phosphoric acids in the process of its manufacturing.

39. Sulphuric acid is one of the raw material necessary for the manufacturing process of appellant and it is not only used in phosphating but also in the cleaning. Sulphuric acid is a hazardous substance.

40. The term “Hazardous substance” has been defined in Section 2(e) as under:

“(e) “hazardous substance” means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plant, micro-organism, property or the environment;”

41. Section 3 of EP Act, 1986 confers power upon Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving quality of environment and preventing, controlling and abating environmental pollution. The same includes laying down procedure and safeguards for handling of hazardous substances as is referred to in sub-section 2 (vii) of Section 3. Section 6 of EP Act, 1986 confers power upon Central Government to frame rules to regulate environmental pollution and the rules may cover, besides other aspects, the procedure and safeguards for handling of hazardous substance as evident from Section 6(2)(c). Section 8 imposes an obligation upon a person who is handling hazardous substance to do so in accordance with such procedure and after complying with such safeguards as may be

prescribed. Section 25 also confers powers upon Central Government to make rules for carrying out the purposes of EP Act, 1986. Sub-section 2 of Section 25 says that in particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters which are enumerated in clauses (a) to (j) and clause (b) provides the following matter:

(b) the procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or cause to be handled under Section 8.

42. In exercise of powers and with reference to Section 6, 8 and 25, Central Government has made HOWMTM Rules, 2016.

43. Applicability of HOWMTM Rules 2016 is not disputed by appellant. In fact, it had obtained Authorisation thereunder which was renewed from time to time but ultimately expired on 31.03.2023 and thereafter, there is no renewal. The industrial effluent of appellant obviously included residue of Sulphuric and Phosphoric acids and when the plant installed by appellant for treatment of industrial effluent was not functioning, meaning thereby, untreated industrial effluent which contained residue of Sulphuric and Phosphoric acids was being discharged in utter violation of the provisions of Water Act, 1974.

44. We may refer, at this stage, HOWMTM Rules 2016 which defines 'hazardous waste' as under:

*“17. “**hazardous waste**” means any waste which by reason of characteristics such as physical, chemical, biological, reactive, toxic, flammable, explosive or corrosive, causes danger or is likely to cause danger to health or environment, whether alone or in contact with other wastes or substances, and shall include –*

*(i) **waste specified under column (3) of Schedule I;***

(ii) waste having equal to or more than the concentration limits specified for the constituents in class A and class B of Schedule II or any of the characteristics as specified in class C of Schedule II; and

(iii) wastes specified in Part A of Schedule III in respect of import or export of such wastes or the wastes not specified in Part A but exhibit hazardous characteristics specified in Part C of Schedule III;”

45. In Schedule I, item 12, there is entry “**Metal surface treatment**, such as etching, staining, polishing, galvanizing, **cleaning**, degreasing, plating, etc.” and column 3 thereof gives the list of hazardous waste to the above process and the said list is as under:

“SCHEDULE I
[See rule 3 (1) (17) (i)]
List of processes generating hazardous wastes

S.No.	Processes	Hazardous Waste*
(1)	(2)	(3)
12.	Metal surface treatment, such as etching, staining, polishing, galvanizing, cleaning, degreasing, plating, etc.	12.1 Acidic and alkaline residues 12.2 Spent acid and alkali 12.3 Spent bath and sludge containing sulphide, cyanide and toxic metals 12.4 Sludge from bath containing organic solvents 12.5 Phosphate sludge 12.6 Sludge from staining bath 12.7 Copper etching residues 12.8 Plating metal sludge

46. It is also admitted by appellant that it had not obtained any Consent/Authorisation on and after 01.04.2023 though it was continuously operating its industrial unit till it was sealed pursuant to impugned order and thereby violating the provisions contained in Section 24 of Water Act 1974 and various provisions of HOWMTM Rules 2016.

47. **Issues I, II and III are answered accordingly against appellant.**

ISSUE IV:

48. The above discussion and material on record clearly show that appellant was handling hazardous substance as well as hazardous waste. Discharge of industrial effluent containing hazardous waste without appropriate treatment and meeting the standards prescribed for such treated effluent, amounts to engagement in a hazardous or inherently dangerous kind of industrial activity causing potential threat to health and safety of the people in general and since the said effluent is discharged on the land and stream, it is also per se dangerous for environment as it is a potential threat to the safety of environment. In such case, nothing further is required to be shown by Regulators under Water Act 1974 and other Statutes relating to environment since principle of absolute liability is applicable and the person discharging such hazardous or inherently dangerous nature of substance is liable to compensate for damage to environment.

49. In ***M.C. Mehta vs. Union of India, AIR1987SC1086***, there was a leakage of gas in chemical factory and its repercussions came to be considered before Supreme Court. The doctrine of 'strict liability' enshrined in *Rylands v. Fletcher* was expanded by Supreme Court to the doctrine of 'absolute liability'. Court said, "*enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and residing in the surrounding areas, poses an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken-the enterprise must be absolutely liable to compensate for such harm and it should be not answer to the enterprise to say that it has taken all reasonable care....*".

50. On the Quantum of environmental compensation, Supreme Court said that the size of the industry and its capacity to pay may be a relevant factor for computing/assessing environmental compensation.

51. Sulphuric acid i.e., H_2SO_4 is a strong acid with hygroscopic and oxidizing properties. It is a mineral acid. It has a strong acidic nature and is corrosive. It is used as a cleaning agent in industries to remove the rust from steel and iron. Appellant has also disclosed that for cleaning purposes, it was using Sulphuric acid for phosphating process also. Its requirement of Sulphuric acid, as disclosed by appellant is 100 kg/annum.

52. Sulphuric acid mixes with water can lead to serious water pollution. It can contaminate water sources, making them unfit for human consumption and harmful to aquatic life. Sulphuric acid can react with water to form Sulphuric acid solution which is highly acidic and can lower pH of water bodies making them acidic and harmful to aquatic life. This may lead to killing fishes, algal blooms, and other negative impacts on aquatic eco-systems. It may also impact human health in as much as if people drink or swim in water contaminated with Sulfuric acid, it can cause skin irritation, burns and respiratory problems. Long-term exposure to sulfuric acid in drinking water can also increase the risk of cancer.

53. Another hazardous substance being handled by appellant is phosphoric acid which is used in phosphating. It is a corrosive chemical and contact can irritate and burn eyes. It has moderate acute and chronic toxicity to aquatic life in waters of low alkalinity.

54. It is in this backdrop, we may refer to the observations of Supreme Court made in ***Indian Council for Enviro-Legal Action vs. Union of India, (1996) 3 SCC 212*** where Court said that once activity carried on is hazardous or inherently dangerous, a person carrying on such activity is

liable to make good, the loss, caused to any other person, by his activity, irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on. It was held that **polluting industries are absolutely liable to compensate for the harm caused by them to the people in the affected area, to the soil and to the underground water.**

55. Purity of environment is a part of fundamental right enshrined under Article 21 of Constitution of India in as much as right to life includes right to live in a clean and healthy atmosphere and no person has a legal or fundamental right to damage environment or pollute it. If anybody causes pollution, the principles of 'Polluter Pays' has to be applied to held the person, causing pollution, to pay cost of restoration of environmental degradation since remediation of damage environment is part of the process of 'Sustainable Development' and State is under an obligation to ensure that environment is not damaged or degraded by anyone and if there is any damage, apply the principle of 'Polluter Pays' upon the person causing damage, collect environmental compensation and use such amount for rejuvenation/remediation/restoration of damaged environment.

56. In ***Virendra Gaur vs. State of Haryana, (1995) 2 SCC 577***, Court said that the word 'environment' is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is duty of State and every individual to maintain hygienic environment. State, in particular has duty to shed its extravagant unguided sovereign power and to forge in its policy to maintain ecological balance in hygienic environment. Court observed:

*"Enjoyment of life and its attainment including their **right to life** with human dignity encompasses within its ambit, **the protection and preservation of environment, ecological***

balance free from pollution of air and water, sanitation without which life cannot be enjoyed, any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution etc. should be regarded as amounting to violation of Article 21.

57. Court also held that hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment. Court further said,

“Therefore, there is a constitutional imperative on the State Government and the Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the manmade and the natural environment.”

58. Now the question is how environmental compensation should be computed/assessed and what methodology should be applied for the said purpose.

59. 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), (6) 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.

60. 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.

61. 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.

62. 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 item (a) to (f), (l), (m) and (n) relates to loss, damage etc. sustained to the person or individual or their property. Item (i) to (k) relates 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;”

63. 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.

64. 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’.

65. Section 20 of NGT Act, 2010 requires Tribunal to apply principles of sustainable development, the precautionary principle and the polluter pays principle.

66. Environmental compensation has to be computed by applying ‘Polluter Pays’ Principle. 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 citizen says to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creature. **Proponent has established 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.** 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. Court also referred to its earlier decision in ***Indian Council for Enviro Legal action vs. Union of India (1995) 3 SCC 77***, wherein PCB identified about 22 industries responsible for causing pollution by discharge of their

effluent and a direction was issued by Court observing that they were responsible to compensate 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."

67. 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.”

68. 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.*

69. 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.

70. In **Research Foundation for Science vs. Union of India & Others (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.”

71. 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)***.

72. Thus, broad principles of environmental laws are given but the methodology for assessing/determining compensation is not provided in the statute. 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 consideration as it saddles financial liability upon the violator.

73. 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, EC under EIA 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.

74. 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.

75. 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.

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

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

78. 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.

79. Similarly, ecological risk assessment is an approach to determine risk of environmental harm by human activities. Here also we can find

answer following three major steps, i.e., problem codification; analysis of exposure and risk characterization. First part encompasses identification of risk and what needs to be protected. Second step insists upon crystallization of factors that are exposed, degree to exposure and whether comprised of two components, i.e., risk assessment and risk description.

80. 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 caprisious.

81. 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.

82. Nature is extremely precious. It is difficult to price elements of nature like light, Oxygen (air), water in different forms like rain, snow, vapour etc. When nature is exploited beyond its carrying capacity, results are harmful and dangerous. People do not understand the value of what nature has given free. Recently, in COVID-19 Wave-II, scarcity of Oxygen proved its worth. In dreadful second phase of the above pandemic, any amount offered, in some cases, could not save life for want of Oxygen. Further,

damage to environment, sometimes do not reflect in individuals immediately and may take time but injury is there. In such cases, process of determination of compensation may be different.

83. In an article, '*the cost of pollution-Environmental Economics*' by Linas Cekanavicius, 2011, it has been suggested, where commercial activities have been carried out without consent etc., and pollution standards have been violated, Total Pollution Cost (hereinafter referred to as '**TPC**') can be applied. It combines the cost of abatement of environment pollution and cost of pollution induced environmental damage. The formula comes to **TPC(z)=AC(z)+ED(z)**, where **z** denotes the pollution level. Further, clean-up cost/remediation cost of pollution estimated to be incurred by authorities can also be used to determine environmental compensation.

84. 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 it has also to be taken care. 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.

85. 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.

86. **CPCB Guidelines:** This Tribunal, vide order dated 31.08.2018 passed in ***Paryavaran Suraksha Samiti and another vs Union of India and others OA 593/2017*** 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*". CPCB, accordingly, 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. It does not encompass individuals, statutory institutions and Government etc. Report is titled as "*Report of the CPCB In-house Committee on Methodology for Assessing Environmental compensation and Action Plan to Utilize the Fund*" which was finalized in the meeting held on 27.03.2019. It shortlisted the incidents

requiring an occasion for determining environmental compensation. Six such incidents, shortlisted, are:

“Cases considered for levying Environmental Compensation (EC):

- a) *Discharges in violation of consent conditions, mainly prescribed standards/consent limits.*
- b) *Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.*
- c) *Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.*
- d) *Accidental discharges lasting for short durations resulting into damage to the environment.*
- e) *Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.*
- f) *Injection of treated/partially treated/ untreated effluents to ground water.”*

87. For the instances at item (a), (b) and (c), report says that ‘Pollution Index’ (hereinafter referred to as ‘**PI**’) would be used as a basis to levy environmental compensation. CPCB had already published Guidelines categorizing industries into Red, Orange, Green and White, based on the concept of **PI**. The **PI** is arrived after considering quantity and quality of emissions/effluents generated, types of hazardous waste generated and consumption of resources. **PI** of an industrial sector is a numerical number in the range of 0 to 100 and is represented as follows:

PI=f (Water Pollution Score, Air Pollution Score and HW Generation Score).

88. Since range of PI is 0 to 100, increase in value of PI denotes increasing degree of pollution hazard from industrial sector. Accordingly, report says, for determining environmental compensation in respect of cases covered by item (a), (b) and (c), it will apply following formula:

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC is Environmental Compensation in Rs.
*PI = **Pollution Index of industrial sector***
N = Number of days of violation took place

R = A factor in Rupees (₹) for EC
S= Factor for scale of operation
LF = Location factor”

89. The formula incorporates anticipated severity of environmental pollution in terms of PI, duration of violation in terms of number of days, scale of operation in terms of micro and small/medium/large industry and location in terms of proximity to the large habitations. A note is also given under the aforesaid formula and it reads as under:

“Note:

- a. The **industrial sectors** have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.*
- b. N, number of days for which violation took place is the period between the day of violation observed/due date of direction’s compliance and the day of compliance verified by CPCB/SPCB/PCC.*
- c. R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.*
- d. S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.*
- e. LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/ town, following factors (LF) may be used:*

Table No. 1.1: Location Factor Values

S. No	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

**Population of the city/ town as per the latest Census of India*
#LF will be 1.0 in case unit is located >10km from municipal boundary

LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. **However, for critically Polluted Areas, LF may be explored in future.**

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.
- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.
- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange, and Green category of industries varies from 3,750 to 60,000 ₹/day.

Table No. 1.2: A sample calculation for Environmental Compensation

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	10,000-60,000	6,250-37,500	5,000-22,500

90. We find that **R** which is a factor in Rupees (₹) is taken to be 100 minimum and 500 maximum. It has suggested that R value be taken as average i.e., Rs.250/-. On what basis this minimum and maximum has been determined and why average is suggested, beyond any comprehension. We do not find any material in the above report which may throw light for taking value of R as above. Similarly, for determining value

of S i.e., Factor for Scale of Operation from 0.5 to 1.5, we find no Guidelines as to on what basis, it has been determined and only on the size of the industry, divided in small, medium and large, the said factor has been prescribed. The note further says that minimum environmental compensation would be Rs.5000/- per day. From table 1.2, we find that in the highest case i.e., large industry, depending on the level of PI, maximum environmental compensation would be Rs.60,000/- per day and minimum Rs.10,000/- per day. The above determination excludes the actual loss to the environment and cost of remediation including damage to *flora-fauna* and human beings. Moreover, classification of industries for industrial policy, or for some licensing purpose, banking purpose etc. would be wholly irrelevant for environment. A small industry may be capable of causing much more pollution than medium or even large industry. For example, pollution caused by a brick kiln using coal as fuel may be much more than many medium category industries.

91. In respect of items (d), (e) and (f), report says that for determining environmental compensation, one has to consider the matters in two parts, one for providing immediate relief and another long-term relief, such as remediation. In such cases, detailed investigations are required from Expert Institutions or Organizations, based on which environmental compensation will be decided. Second part of report is with regard to utilization of environmental compensation fund. For this purpose, report says that CPCB will finalize a scheme for utilization of fund for protection of environment. Certain schemes identified by CPCB for utilization of the said fund are mentioned in para 1.4.1, as under:

“a. Industrial Inspections for compliance verification

b. Installation of Continuous water quality monitoring stations/Continuous ambient air quality monitoring stations for strengthening of existing monitoring network

- c. *Preparation of Comprehensive Industry Documents on Industrial Sectors/clean technology*
- d. *Investigations of environmental damages, preparation of DPRs*
- e. *Remediation of contaminated sites*
- f. *Infrastructure augmentation of Urban Local Bodies (ULBs)/capacity building of SPCBs/PCCs.”*

92. All the above, except item (e), relate to establishment/infrastructure for monitoring/prevention of pollution which in fact is the statutory duty and function of officials of State PCB and CPCB. It appears that CPCB has attempted to utilize environment fund to meet expenses which is the responsibility of Government.

93. Chapter III considers determination of environmental compensation where a proponent has discharged pollutants in water bodies or failed to prevent discharge of pollutants in water bodies and also failed to implement Waste Management Rules. Laying down Guidelines for determination of environmental compensation in this category, report has referred to Tribunal’s order dated 06.12.2018 in **OA No. 125/2017 and MA No. 1337/2018, Court on its own motion vs. State of Karnataka**, stating, as under:

*“Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the **CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.**”*

94. It is suggested that determination of environmental compensation in this category would have two components, (i) Cost saved/benefits achieved

by the concerned individual/authority by not having proper waste/sewage managing system; and (ii) Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because insufficient capacity of waste/sewage management facility. It further says that Cost saved/benefits achieved would also include interest on capital cost of waste/sewage management facility, daily operation and maintenance (O & M) cost associated with the facility. The determination of environmental compensation, therefore, is suggested, applying following formula:

“Therefore, generalized formula for Environmental Compensation may be described as:

EC= Capital Cost Factor × Marginal Average Capital Cost for Establishment of Waste or Sewage Management or Treatment Facility × (Waste or Sewage Management or Treatment Capacity Gap) + O&M Cost Factor × Marginal Average O&M Cost × (Waste or Sewage Management or Treatment Capacity Gap) × No. of Days for which facility was not available + Environmental Externality”

95. Environmental externality has been placed in two categories (i) untreated/partially treated sewage discharge and (ii) improper municipal solid waste management and detailed in table 3.1 and 3.2, as under:

“Table No. 3.1: Environmental externality for untreated/partially treated sewage discharge

<i>Sewage Treatment Capacity Gap (MLD)</i>	<i>Marginal Cost of Environmental Externality (Rs. per MLD/day)</i>	<i>Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)</i>
<i>Up to 200</i>	<i>75</i>	<i>Min. 0.05, Max. 0.10</i>
<i>201-500</i>	<i>85</i>	<i>Min. 0.25, Max. 0.35</i>
<i>501 and above</i>	<i>90</i>	<i>Min. 0.60, Max. 0.80</i>

Table No. 3.2: Environmental externality for improper municipal solid waste management

<i>Municipal Solid Waste Management Capacity</i>	<i>Marginal Cost of Environmental Externality (Rs. per ton per day)</i>	<i>Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs</i>
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Gap (TPD)		Rs. Per Day)
<i>Up to 200</i>	<i>15</i>	<i>Min. 0.01, Max. 0.05</i>
<i>201-500</i>	<i>30</i>	<i>Min. 0.10, Max. 0.15</i>
<i>501-1000</i>	<i>35</i>	<i>Min. 0.25, Max. 0.3</i>
<i>1001-2000</i>	<i>40</i>	<i>Min. 0.50, Max. 0.60</i>
<i>Above 2000</i>	<i>Max. 0.80</i>	

96. CPCB has further recommended a fixed cap for minimum and maximum cost for capital and O & M component for environmental compensation in table 3.3 and 3.4, as under:

“Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	<i>Min. 2000 Max. 20000</i>	<i>Min. 1000 Max. 10000</i>	<i>Min. 100 Max. 1000</i>
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	<i>Min. 2 Max. 20</i>	<i>Min. 1 Max. 10</i>	<i>Min. 0.5 Max. 5</i>

Table No. 3.4: Minimum and Maximum EC to be levied for improper municipal solid waste management

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	<i>Min. 1000 Max. 10000</i>	<i>Min. 500 Max. 5000</i>	<i>Min. 100 Max. 1000</i>
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	<i>Min. 1.0 Max. 10.0</i>	<i>Min. 0.5 Max. 5.0</i>	<i>Min. 0.1 Max. 1.0</i>

97. Para 3.3 deals with the method of determining environmental compensation for damage/untreated/partially treated sewage by

concerned individual/authority. Under this head, CPCB has considered that for population above 1 Lakh, requirement of water supply, would be minimum 150 to 200 lpcd and 85% whereof would result in sewage generation. It takes capital cost for 1 MLD STP ranges from 0.63 Crores to 3 Crores and O & M cost around Rs. 30,000 per month. Consequently, it suggested to assume capital cost for STPs as Rs. 1.75 Crores/MLD (marginal average cost). Expected cost for conveyance system is assumed as Rs. 5.55 Crore/MLD and annual O& M as 10% of combined capital cost. Based on the above assumptions, Committee has recommended/suggested environmental compensation, to be levied on urban local bodies, by applying formula and here CPCB has suggested two formulas and any of them may be adopted:

“EC= Capital Cost Factor × [Marginal Average Capital Cost for Treatment Facility × (Total Generation-Installed Capacity) + Marginal Average Capital Cost for Conveyance Facility × (Total Generation -Operational Capacity)] + O&M Cost Factor × Marginal Average O&M Cost × (Total Generation- Operational Capacity) × No. of Days for which facility was not available + Environmental Externality × No. of Days for which facility was not available

Alternatively;

EC (Lacs Rs.) = [17.5(Total Sewage Generation – Installed Treatment Capacity) + 55.5(Total Sewage Generation-Operational Capacity)] + 0.2(Sewage Generation-Operational Capacity) × N + Marginal Cost of Environmental Externality × (Total Sewage Generation-Operational Capacity) × N

Where; N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Quantity of Sewage is in MLD”

98. Para 3.4 deals with the method of environmental compensation to be levied on concerned individual/authority for improper solid waste management, chargeable from urban local body based on the following formula:

“EC = Capital Cost Factor × Marginal Average Cost for Waste Management × (Per day waste generation-Per day waste disposed as per the Rules) + O&M Cost Factor × Marginal Average O&M Cost × (Per day waste generation-Per day waste disposed as per the Rules) × Number of days violation took place + Environmental Externality × N

Where;

Waste Quantity in tons per day (TPD)

N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Simplifying;

EC (Lacs Rs.) = 2.4(Waste Generation - Waste Disposed as per the Rules) +0.02 (Waste Generation - Waste Disposed as per the Rules) × N + Marginal Cost of Environmental Externality × (Waste Generation-Waste Disposed as per the Rules) × N”

99. Here also certain assumed figures have been taken by CPCB. Report says that municipal solid waste generation is approximately 1.5 lakh MT/day in India as per MoHUA Report-2016. As per principles of Solid Waste Management Rules, 2016 and Plastic Waste Management Rules, 2016, total cost of municipal solid waste management in city/town includes cost for door to door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of municipal solid waste and disposal through facility like composting bio-methanation, recycling, co-processing in cement kilns etc. It is estimated that total cost of processing and treatment of municipal solid waste for a city of population of 1 lakh and generating approximately 50 tons/day of municipal solid waste is Rs. 15.5 Crores which includes capital cost (one time) and Operational and Management cost for one year. Expenditure for subsequent years would be only 3.5 Crores/annum. For arriving per day waste generation, CPCB has referred to a survey conducted by Environment Protection Training Research Institute (EPTRI) which estimated that solid waste generated in small, medium and large cities and

towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The Committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes.

100. Sample calculation of environmental compensation to be levied for improper management of municipal solid waste has been provided in table 3.6 which read as under:

“Table No. 3.6: Sample calculation for EC to be levied for improper management of Municipal Solid Waste

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Waste Generation (kg. per person per day)	0.6	0.5	0.4	0.4
Waste Generation (TPD)	9809.90	880.14	350.79	200.31
Waste Disposal as per Rules (TPD) (assumed as 25% of waste generation for sample calculation)	2452.47	220.04	87.70	50.08
Waste Management Capacity Gap (TPD)	7357.42	660.11	263.09	150.23
Calculated EC (capital cost component) in Lacs. Rs.	17657.82	1584.26	631.42	360.56
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000	Min. 100 Max. 1000
Final EC (capital cost component) in Lacs. Rs.	10000.00	1584.26	631.42	360.56
Calculated EC (O&M Component) in Lacs. Rs./Day	147.15	13.20	5.26	3.00
Minimum and Maximum values of EC (O&M Cost)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0	Min. 0.1 Max. 1.0

Component) recommended by the Committee (Lacs Rs./Day)				
Final EC (O&M Component) in Lacs. Rs./Day	10.00	5.00	1.00	1.00
Calculated Environmental Externality (Lacs Rs. Per Day)	2.58	0.18	0.03	0.02
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)	Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.01 Max. 0.05	Min. 0.01 Max. 0.05
Final Environmental Externality (Lacs Rs. per day)	0.80	0.25	0.03	0.02

”

101. These Guidelines have been considered by Tribunal in various cases and it has been found that these Guidelines have only broad suggestions. Several relevant aspects have been ignored in issuing the above Guidelines which have to be considered while determining environmental compensation in a given case and, therefore, the said Guidelines cannot be taken as readymade application to all situations for determination of environmental compensation. Statutory Regulators, in appropriate cases, may follow above guidelines for assessment/computation of environmental compensation

102. We also find that some crucial relevant aspects requiring application of ‘Polluter Pays’, have not been considered in the above suggestions. CPCB has failed to consider that the purpose of determination/computation/assessment of environmental compensation and levy thereof, involve various factors like (i) cost of damage to environment, (ii) cost needed for restoration/remediation of damage caused to environment, (iii) element of deterrent/provincial, (iv) liability arising for

violation of statutory mandatory law relating to environment namely requirement of consent, EC and NOC etc. It is not mere cost of item or subject but computation of something which situation has arisen by an act of PPs due to violation of environmental law causing damage to environment. The loss and its remedy involve complex of components.

103. The elements of nature like air, water, light and soil in materialistic manner may not be priced appropriately and adequately. Most of the time, whenever price is determined, it may be extremely low or highly exorbitant meaning thereby disproportionate. Still, since some of the assets of nature are marketable, on that basis price may be determined but when such elements are damaged or degraded, restoration thereof, in effect is priceless. Many a times, it may be almost impracticable and improbable to recover and remediate damaged environment to its position as it was. Moreover, its cost might be very high. It also cannot be doubted that once there is a pollution or damage to environment, it would affect adversely not only the environment but also inhabitants and all biological organisms. Damage is there, only degree may differ whether to the environment or to the inhabitants and other organisms. To find out simultaneously degree of damage and to ascertain the same in many cases may not be possible or practicable. For example, a polluted air causes respiratory diseases but the people do not get infected and starts reflection of the disease immediately but it takes some time. The time taken in reflection of injury on the person or body also differs from person to person depending upon his immunity and other health conditions. In some cases, damage to environment i.e., air pollution may be fatal to a person who already has respiratory problem. For some a minor inconvenience, minor injury to others, and some may not suffer to the extent of showing symptoms of any diseases at all. When we talk of environmental compensation for causing degradation to

environment and for its restoration or remediation, it is not a formal or casual or symbolic amount which is required to be levied upon the violator. It is substantive and adequate amount which must be levied for restoration of environment. CPCB in determining values of fixed quotients and rupees etc., has been very lenient as if only symbolically violator is to be held liable and it must pay a petty amount.

104. Statutory Regulators must realize that the amount is needed for remediation and restoration of damaged environment; enough to be deterrent, to provide adequate compensation where inhabitants are affected adversely and where violator has proceeded in violation of Environmental Laws relating to consents, clearances, permissions etc., to penalize him for such violation to prove to be a deterrent to him and others. Unfortunately, the above guidelines laid down by CPCB have not considered all these aspects and it appears that the same have been prepared in a very casual and formal manner.

105. Statutory Regulators have also failed to consider that environmental compensation is not a kind of fee which may result in profiteering to violators and after adjusting a nominal amount of environmental compensation, a violator may find it profitable to continue with such violations. The objective of environmental compensation is that not only the loss and damage already caused, is made to recover and restore but also in future, the said violator may not repeat the kind of violation already committed and others also have a fear of not doing the same else similar liability may be enforced upon them. Unless amount of compensation is more than maximum permissible profit arising from violation, the purpose of environmental compensation would always stand defeated.

106. Loss caused to surroundings of the environment, may also include *flora-fauna* and human beings. It is in this backdrop that in various matters when the issues were considered by Courts and Tribunal and found necessary to impose environmental compensation upon Proponent/Violator of environmental laws, they have followed different mechanisms. Sometimes, Committee's reports confirming violations have been referred but for quantum of compensation, directions have been issued in different ways. In some cases, CPCB guidelines have been applied while in many other, project cost has been made basis.

107. CPCB Guidelines have taken care of industries and municipal bodies. Its application in all cases irrespective of other relevant consideration may prove to be disastrous. Individuals, charitable, social or religious bodies, public sector and government establishments etc., may, in given circumstances justify a different approach. Further, there may be cases attracting aggravating factors or mitigating factors, for example in national emergency some activity got performed violating environmental norms or a proponent is resilient to any advice to adhere law to protect environment and so on. In fact, quantum of EC should have nexus with State's efforts for protection and preservation of environment and control of pollution. Compensation regime must be a deterrent to violators and incentivize eco-friendly proponents. No one should get profited by violating environmental laws and community should also not suffer for violation of environmental norms by defaulting proponents. There is no reason, if beside the aspects noticed above, the computation process also incorporates the elements of inflation, quality of life, and economic prosperity.

108. In the context of "violation of disposal of Bio-Medical Waste" and "Non-compliance of Bio-Medical Waste Management Rules, 2016" and

determination of environmental compensation for such violations, Tribunal in **OA No. 710/2017, Shailesh Singh vs. Sheela Hospital & Trauma Centre, Shahjahanpur & Others** and other connected matters, vide order dated 15.07.2019, accepted report of CPCB, and said:

*“10. The compensation regime suggested by the CPCB may be adopted. **It will be open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs.***

11. It is made clear that if even after two months the States/UTs are found to be non-compliant, the compensation will be liable to be recovered from the said States/UTs at the rate of Rs. 1 Crore per month till the non-compliance continues.”

109. The above recommendations i.e., in para 10, Tribunal said *“compensation regime suggested by the CPCB may be adopted. It will be **open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs**”*. It further says that if State Governments and UTs still remain non-complying for two months, compensation will be recovered at the rate of Rs. One Crore per month till non-compliance continues.

110. In respect of solid waste, sewage effluent, ground water extraction etc., Tribunal in **OA No. 593/2017, Paryavaran Suraksha Samiti and another vs. Union of India and others**, vide order dated 28.08.2019 has said in para 16, that as regards environmental compensation regime fixed vide CPCB guidelines for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. Tribunal further observed that recovery of compensation on ‘Polluter Pays’ principle is a part of enforcement strategy but not a substitute for compliance. It directed all States/UTs to enforce compensation regime latest w.e.f. 01.04.2020 and made it clear that it is not condoning any past violations. Tribunal directed to enforce recovery of compensation from 01.04.2020 from the defaulting

local bodies failing which the concerned States/UTs themselves must pay the requisite amount of compensation.

111. 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.

112. 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.

113. In ***Goel Ganga Developers vs Union of India and Others, (2018) 18 SCC 257***, Tribunal imposed Rs.195 Crores compensation since 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.

114. 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.

115. 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.

116. In ***Deepak Nitride Limited vs. State of Gujarat & others, (2004) 6 SCC 402***, Court said that compensation awarded must have broad correlation not only to the magnitude and capacity of the enterprises but also to the harm caused by it. In a given case, percentage of turnover itself may

be a proper measure because the method to be adopted for awarding damages and the basis of 'Polluter Pays' principle has got to be practical, simple and easy in application.

117. The above discussion shows that the objective of assessment and recovery of environmental compensation from the person who has violated environmental laws or norms and has caused damage to environment is found on the principle of 'Polluter Pays'. Quantum of environmental compensation depends on various factors like damage caused to environment, cost of remediation of the damage, quantum reflecting deterrent effect on the violator, penal impact on the violator etc.

118. When we consider the justification and validity of environmental compensation imposed upon the appellant in the case in hand, we find that violation of environmental laws and norms is evident from record and damage to environment due to very nature of the industrial effluent discharged by appellant is also evident and, therefore, imposition of environmental compensation upon the appellant by application of principle of 'Polluter Pays' is wholly justified and valid.

119. So far as the quantum of environmental compensation is concerned, we find that CPCC has applied CPCB Guidelines for computation of environmental compensation in the case in hand and it has been computed in the manner as demonstrated hereunder:

Environment Compensation has been calculated from 01.04.2023 and 23.06.2023 (84 days)

EC stands for Environment Compensation

PI (Pollution Index) = 80 (being a red category)

N (No. of Days) = 84 days (Days calculated after the expiry of the consent order)

R (A Factor in Rs.) = 250 (as it is case of violation)

S (Factor for Scale of Operation) = 0.5 (being a small industry)

categorisation)

LF (Location Factor) = 1.25 (as Chandigarh Population is more than 10 Lakhs)

Thus, $EC = PI \times N \times R \times S \times LF$ (for 01 day)

$EC = 80 \times 01 \times 250 \times 0.5 \times 1.25$

EC = Rs. 12,500/-

$EC = PI \times N \times R \times S \times LF$ (for 84 days)

$EC = PI \times N \times R \times S \times LF$

$EC = 80 \times 84 \times 250 \times 0.5 \times 1.25$

EC = Rs. 10,50,000/-

120. The number of days for which environmental compensation has been computed is 84 i.e., after expiry of the validity period of consent and authorization till 23.06.2023. Appellant industry using hazardous chemicals i.e., acids in the process of manufacturing, is admittedly 'Red industry' and, therefore, as per CPCB Guidelines the Pollution Index of 80 has been applied. The value of Rupee for each violation has been taken as only Rs. 250/- and since appellant is in small industry category, the value of the size of the industry i.e., '**S**' has been taken as 0.5. Local factor based on population has been taken as 1.25 since the population of Chandigarh is more than 10 lakhs. Due to size of the industry taken to be 'small industry' and the value of '**S**' becoming 0.5, the quantum of compensation per day obviously has reduced to half and that has come to only Rs. 12,500/- per day. For 84 days, compensation thus, has been computed to Rs. **10,50,000/-**. Principle of 10% of the turn over has not been followed by CPCC since appellant has neither disclosed its turn over nor the same in the absence of any material to substantiate, can be taken as a reliable information.

121. In our view, CPCC has shown very considerate approach in assessment of environmental compensation. Though violation has continued for long, even till the date when show cause notice was issued, yet it has been computed till 24.06.2023, i.e., for only 84 days.

122. Learned Counsel for appellant could not show any apparent glaring error in the application of CPCB Guidelines by CPCC, adopted for computation for environmental compensation and, therefore, it cannot be said that computation of environmental compensation is without any basis or illogical or based on no rational principle. In fact, CPCC has followed methodology which leans towards appellant.

123. It is next contended that the amount is excessive. In order to support this contention, appellant has not disclosed financial capacity/turn over. There is nothing on record to show that the amount is beyond financial/paying capacity of the appellant. Mere assertion that the quantum of environmental compensation is excessive, in absence of anything to support this contention, cannot be accepted. The statement is unsubstantiated. Therefore this contention of appellant is rejected.

124. In the result, **we answer issue IV against appellant** and hold that not only imposition of environmental compensation upon appellant is justified and valid but even the quantum of environmental compensation is just, valid and based on the Guidelines prescribed by Statutory Regulator i.e., CPCB.

Issue V:

125. It is argued that by means of impugned order, CPCC has directed for closure of appellant's unit which is causing irreparable loss. In view of our findings recorded in respect of issues I, II and III and considering the fact

that not only violation of environmental laws on the part of appellant has been proved and also that appellant has not valid explanation for such violation, it cannot be said that the direction for closure of appellant's unit is unjustified or illegal.

126. Learned Counsel for appellant could not dispute that under the provisions of Water Act 1974 and EP Act 1986, CPCC possesses power to issue directions which may include closure of the industry. An industry, which is running in violation of environmental laws and causing damage to environment, cannot be allowed to continue to cause such damage and continue to violate environmental laws. Discharge of industrial effluent in stream, well or land, causing water pollution, is violation of the prohibitions contained in Section 24 of Water Act 1974 and also an offence under Section 43 which provides that whoever contravenes the provisions of Section 24 shall be punishable with imprisonment for a term which shall not be less than 2 one year and six months but which may extend to six years and with fine. Obviously, when a person is violating environmental laws and particularly contravening Section 24, such person cannot be allowed to continue such violation. Therefore, CPCC having power to direct closure of industry under Section 33A of Water Act 1974 is justified to issue such direction.

127. Learned Counsel did not dispute that Section 33A of Water Act 1974 empowers SPCB/SPCC to issue any directions in exercise of its powers and performance of functions under Water Act 1974 and the person to whom such directions are issued, is bound to comply the same. Explanation clearly provides that the directions may include closure, prohibition or regulation of any industry, and operation or process or stoppage or regulation of supply of electricity, water or any other service. Therefore, power of CPCC to issue direction for closure of industry, conferred by

Section 33A is not in dispute. In the circumstances, we do not find that direction of closure issued by CPCC, in any manner, is illegal, unjustified or contrary to law.

128. **Issue V is also answered against appellant.**

129. In the result, we are clearly of the view that appellant is not entitled for any relief.

130. Appeal is devoid of merits, hence, dismissed.

131. All IAs stand dismissed.

132. Copy of the order be forwarded by e-mail to CPCC for information.

PRAKASH SHRIVASTAVA,
CHAIRPERSON

SUDHIR AGARWAL,
JUDICIAL MEMBER

DR. A. SENTHIL VEL,
EXPERT MEMBER

December 07, 2023
Appeal No. 30/2023(CZ)
R