Anil Kanti Prasad Poddar vs Rajasthan State Pollution Control ... on 8 May, 2026

Item Nos.01 to 23

BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)

Appeal No.16/2024 (CZ)
(I.A.No.117/2024)

M/s Kapil Agrawal — Appellant (s)

Vs.

Union of India & Ors. — Respondent(s)

WITH

Appeal No.17/2024 (CZ)
(I.A.No.118/2024)

M/s Deepraj Singh — Appellant (s)

Vs.

Union of India & Ors. — Respondent(s)

WITH

Appeal No.18/2024 (CZ)
(I.A.No.119/2024)

M/s Devdashrath Royalties Pvt. Ltd — Appellant (s)

Vs.

Union of India & Ors. — Respondent(s)

WITH

Appeal No.19/2024 (CZ)
(I.A.No.120/2024)

M/s Devdashrath Royalties Pvt. Ltd. — Appellant (s)

Vs.

Union of India & Ors. — Respondent(s)

WITH

Appeal No.20/2024 (CZ)
(I.A.No.121/2024)

M/s Devdashrath Royalties Pvt. Ltd. — Appellant (s)

Vs.

Union of India & Ors. — Respondent(s)

WITH

Appeal No.21/2024 (CZ)
(I.A.No.122/2024)

1

M/s Deepraj Singh — Appellant (s)

Vs.

Union of India & Ors. — Respondent(s)

WITH

Appeal No.22/2024 (CZ)
(I.A.No.123/2024)

M/s Devdashrath Royalties Pvt. Ltd. — Appellant (s)

Vs.

Union of India & Ors. — Respondent(s)

WITH

Appeal No.23/2024 (CZ)
(I.A.No.124/2024)

M/s Shiv Shankar Stones Suppliers — Appellant (s)

Vs.

Union of India & Ors. — Respondent(s)

WITH

Appeal No.24/2024 (CZ)

Anil Kanti Prasad Poddar — Appellant (s)

Vs.

Rajasthan Pollution Control Board — Respondent(s)

WITH

Appeal No.25/2024 (CZ)

Anil Kanti Prasad Poddar — Appellant (s)

Vs.

Rajasthan Pollution Control Board — Respondent(s)

WITH

Appeal No.26/2024 (CZ)

Anil Kanti Prasad Poddar — Appellant (s)

Vs.

Rajasthan Pollution Control Board — Respondent(s)

WITH

Appeal No.27/2024 (CZ)

Anil Kanti Prasad Poddar Appellant (s)

Vs.

Rajasthan Pollution Control Board Respondent(s)

WITH

Appeal No.29/2024 (CZ)
(I.A.No.134/2024)

2

M/s Krishna Associates Appellant(s)

Vs.

Union of India & Ors. Respondent(s)

WITH

Appeal No.30/2024 (CZ)
(I.A.No.135/2024)

Pankaj Tiwari Appellant(s)

Vs.

Union of India & Ors. Respondent(s)

WITH

Appeal No.31/2024 (CZ)
(I.A.No.136/2024)

M/s Faujdar Constructions Pvt. Ltd. Appellant(s)

Vs.

Union of India & Ors. Respondent(s)

WITH

Appeal No.32/2024 (CZ)
(I.A.No.137/2024)

Jagat Choudhary Appellant(s)

Vs.

Union of India & Ors. Respondent(s)

WITH

Appeal No.33/2024 (CZ)
(I.A.No.141/2024)

M/s R.B. Distributors Pvt. Ltd. Appellant(s)

Vs.

Union of India & Ors. Respondent(s)

WITH

Appeal No.34/2024 (CZ)
(I.A.No.138/2024)

Pankaj Tiwari Appellant(s)

Vs.

Union of India & Ors. Respondent(s)

WITH

Appeal No.35/2024 (CZ)
(I.A.No.139/2024)

3

M/s K. K. Gupta Constructions Pvt. Ltd. Appellant(s)

Vs.

Union of India & Ors. Respondent(s)

WITH

Appeal No.36/2024(CZ)
(I.A.No.140/2024)

M/s R.B. Distributors Pvt. Ltd. Appellant(s)

Vs.

Union of India & Ors. Respondent(s)

With

Appeal No.38/2024(CZ)

Madhukar Malviya Appellant(s)

Vs.

Rajasthan Pollution Control Board & Ors. Respondent(s)

WITH

Appeal No.39/2024(CZ)

M/s Sunlight Minerals Appellant (s)

Vs.

Rajasthan Pollution Control Board & Ors. Respondent(s)

WITH

Appeal No.02/2025(CZ)
(I.A. No.27/2025)

M/s Jai Girraj Stones Appellant(s)

Vs.

Union of India & Ors. Respondent(s)

COUNSELS FOR APPLICANT(S):

Mr. Sandeep Singh Shekhawat, Adv. (in Item Nos.1 to 8, 13 to 20 & 23
Mr. Yadvendra Yadav, Adv. (in Item Nos.9 to 12)
Mr. Lokendra Singh Kachhawa, Adv. (in Item Nos.21 to 22)

4

COUNSELS FOR RESPONDENT(S):
Mr. Rohit Sharma, Adv. for RSPCB
Mr. Om Shankar Shrivastava, Adv. for MoEF&CC (in Item Nos.1 to 8)
Mr. Dharamvir Sharma, Adv. for MoEF&CC (in Item Nos.13 to 20)

CORAM:

HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR CHATURVEDI, EXPERT MEMBER

Date of completion of hearing and reserving of order : 05.05.2026
Date of uploading of order on website : 08.05.2026

JUDGMENT

1. Aggrieved by the orders passed by the Rajasthan State PCB whereby and whereunder show cause notices were issued for revocation of Consent to Operate under the provisions of the Air (Prevention and Control of Pollution) Act, 1981, and for non-compliance of the environmental conditions and environmental rules to all the Appellants by different orders and later on for non-compliance of the environmental rules, environmental damage have been assessed and notices were issued for realization on the Appellants by different orders, these appeals have been filed.

2. The learned Counsel for the Appellants and the learned Counsel for the Respondents have submitted that common question of law and fact has arisen in these Appeals, thus, all the Appeals may be decided by a common order.

3. Heard the learned Counsel for the Appellants and the Respondents.

4. The main issue on the basis of which the notices were issued to the Appellants is the report of the Joint Committee dated 26.09.2023 while inspection and following deficiencies were observed:-

> "a. That the plantation provided by the mining lessee at site is inadequate.
>
> b. That the mining lessee has not provided metaled road approached to mining site.
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> c. That the mining lessee has not provided Continuous ambient air quality monitoring station at site which is required to install to analyze the air quality.
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> d. Over Burdon was found actively dumped in un-scientific manner, no activity for stabilization of OB was observed at site.
>
> e. Unit is required to improve practice of water sprinkling with permanent arrangement."

5. Notices were issued to the Appellants for compliance of the order and for non-compliances, the Environmental Compensation has been assessed according to the parameters laid down by the CPCB.

6. It is argued that in response to the notices, the reply by some of the Appellants have been filed with the following facts:-

> "(a). We have already taken steps to develop greenbelt all along the mining lease boundary and nearby office area. The development of greenbelt is carrying out as per the EC granted/approved mine plan. We have already purchased plants and planted them. The receipt of the same is attached herewith.
>
> (b). Our lease no 3 is very close to the metaled road. It is less than 200 meters from our lease no 3. We have made an approach road from metaled road to lease no 3. we are preparing to start construction of a metaled road to the mining site within the next 7 to 8 months.
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> (c). Our mining lease area is small and we are not able to installed continuous ambient air quality monitoring station. The cost of continuous ambient air quality monitoring instrument is very high. We have conducted ambient air quality monitoring by NABL/MoEF approved lab.
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> (d). We have started the mine from October-2022. We have not created a lot of dump in our mining site. The little dumps are created by earlier mine operators. Whatever little we have done, we have dumped at the location as per the mining plan. And as the quantity of Over-burden is less, it seems quite stable.

(e). Water sprinklings are carried out regularly in the mining lease area in both time in a day which will improve the mine site air quality."

Brief Facts:

7. For violation of environmental terms and conditions, an application (O.A.No.96/2023(CZ) was filed before this Tribunal in which all the Respondents (more than 47) were party in the case and were given opportunity of hearing. The petition/application contains following facts:-

"2. The grievance of the applicant is the permissions to carry out sand stone mining in the Bharatpur District of Rajasthan of approx. 4 crore tons per annum of sand stone, by specifically de-notifying protected area of the Band-Baretha Wildlife Sanctuary. Currently, about 42 leases granted for 50 years, operate in contiguous mining blocks to mine sandstone is in violation of the specific conditions stipulated in the Environmental Clearance dt 24.03.2022 and generate enormous amounts of inhalable dust pollution.

3. Two blocks namely Bansi Pahadpur-A and Bansi Pahadpur-B were notified and declared as Sanctuary under Section 18 of the Wildlife Protection Act, 1972 and falls under the Taj Trapezium Zone. Main ground for challenge in the application is that the Expert Appraisal Committee (EAC) did not determine the question whether the project could be allowed in Taj Trapezium Zone (TTZ) area where adhoc moratorium on expansion and setting up of the new industries is in operation, as per decision of the MoEF&CC dated 08.09.2016. The project will affect Taj Mahal, which is a World Heritage site. Even though the applicant has raised certain other objections, which are not necessary to be referred.

4. The contention of the applicant is that Hon'ble the Supreme Court of India vide order dated 17.11.2004 in W.P. (C) No. 653 of 1994 Waseem Ahmed Saeed Vs. Union of India & Anr. has ordered that no blasting operations are allowed within 10 Km. from Shrine of Darga Saleem Chisti, Fatehpur Sikri.

7. Submission and contention of the learned counsel for the applicant are that on 26.12.2018 vide a Gazette Notification, the ministry of Environment, Forest and Climate Change, declared the Bandh- Baretha Wildlife Sanctuary situated in Bharatpur district, spread over an area of 204.16 square kilometers as an Eco-sensitive Zone.

8. On 01.04.2021 and 02.04.2021 a part of this Eco-sensitive Zone of the Bandh-Baretha Wildlife Sanctuary was de-notified pursuant to the State Government of Rajasthan's request letters. On 18.05.2021 pursuant to the letters dt. 01.04.2021 and 02.04.2021 by the State Government of Rajasthan two standalone blocks namely Bansi Pahadpur-A admeasuring 221.75 hectares and Bansi Pahadpur-B admeasuring 424.81 hectares (combined area of 0.5387 square kilometers) were de-notified by the

Gazette Notification, of the ministry of Environment, Forest and Climate Change.

9. On 11.06.2021 a letter was sent by the ministry of Environment, Forest and Climate Change to the Principal Secretary (Forests), Government of Rajasthan for the diversion of forest land for mining and generation of employment and earning of revenue. On 12.10.2021 a State Level Impact Assessment Authority was constituted by the Gazette Notification, of the ministry of Environment, Forest and Climate Change in the State of Rajasthan.

10. On 21.10.2021 and 27.10.2021, auctions notices were published by the State for Rajasthan for Sandstone mining leases in district Bharatpur. Pursuant to which leases were granted and mining activities started. In 2021 Numerous detailed representations have been sent by the local villagers who are residents of the same area where large scale mining has been taking place to the DM of Bharatpur District and to various other statutory authorities. On 24.03.2022, an Environment Clearance was granted to the Pharpur Sandstone mining Project.

11. The applicant has challenged the notifications and EC granted by the respondent on the following grounds:-

i. "The forest land which was taken out of the Sanctuary cannot be diverted in favour of the Department of Mines & Geology, Rajasthan, for the purpose of sandstone mining, which is a highly polluting industry.

ii. Protected area which has been declared as a sanctuary under Section 18 of the Wildlife Protection, Act 1972 comprises of adequate ecological, floral, and faunal significance for the purpose of protecting it de-notifying such a highly sensitive area cannot be done in a such a casual manner.

iii. Such an Eco-sensitive zone which should have ideally been given the highest protection, on the contrary, permitting one of the most polluting industries shall cause irreparable loss to the biodiversity of the area. iv. The whole de-notification exercise and granting permission for mining has been deliberately carried out in a casual manner with no compliance, approved plans or any kind of remedial measures.

v. A single EC was issued for all these mining leases and further the EC itself records that the mining leases are located in close proximity to abadi area (i.e. Village Paharpur is only 300 meters away as per EC) and to the remaining Sanctuary area.

vi. The de-notified area of the Bandh-Baretha Wildlife Sanctuary where the Paharpur Sandstone Cluster Mining Project is being carried out admittedly falls under the Taj Trapezium Zone which comprises monuments including three World Heritage Sites the Taj Mahal, Agra Fort and Fatehpur Sikri.

> vii. Taj Trapezium Zone Pollution (Prevention and Control) Authority is the concerned authority which was constituted by the ministry of Environment and forests in the year 1998, and has been specifically given the power to deal with any environmental issue which may be referred to it by the Central Government or the State Governments of Uttar Pradesh and Rajasthan relating to the Taj Trapezium Zone and in the present no such reference was ever made."

12. The applicant had relied on the Hon'ble Supreme Court of India in M.C. Mehta Vs. Union of India (reported as 1987 AIR 1086) held as follows:-

> "The atmospheric pollution TTZ has to be eliminated at any cost. Not even one percent chance can be taken when- human life apart the preservation of a prestigious monument like Taj is involved. In any case, in view of the precautionary principle as defined by this Court, the environmental measures must anticipate, prevent and attack the causes of environmental degradation."

13. It is further argued that, the Hon'ble Supreme Court in MC Mehta Vs. Union of India [(2009) 6 SCC 142] interfered and suspended all mining activities in the whole Aravali hills region in Haryana. However, it is true that in an earlier decision reported as [(2004) 12 SCC 118] a balancing approach between development and mining was adopted by the Supreme court. Therefore, the Apex court rightly held that balancing of mining activities with environment protection, and banning such activities, if they affect the environment are two sides of the same principle of sustainable development.

14. The matter of mine and minerals of District Bharatpur, Rajasthan was taken up by this Tribunal in Appeal No. 48/2018 and vide order dated 03.02.2021, the Tribunal observed as follows :-

> 1. "Apart from the above, we are informed that the Hon'ble Supreme Court disposed of W.P. (C) No. 13381 of 1984, M.C. Mehta v. UOI & Ors. on the subject of activities in the TTZ area vide order dated 16.12.2019 with the following observations:-
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> "1 to7....xxx.....xxx.....xxx
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> 8.. As regards permission for establishing nonpolluting industrial units, it appears to us that only those small, micro and macro level industries which are both nonpolluting and eco-friendly and which have necessary clearances from all statutory authorities as well as concurrence of the Central Empowerment Committee and NEERI, can be setup within the notified industrial area.
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> 9. We, thus, clarify that since the interim order dated 22nd March 2018 directing maintenance of status quo was passed to ensure timely submission of the Vision Plan by the State of U.P. and the said direction already stands complied with, there shall be no impediment for the authorities to consider pending environmental clearances which are necessary to secure essential amenities within TTZ. Simultaneously, the

State and other statutory authorities are free to consider requests for relocating eco-friendly nonpolluting industrial units, subject to them meticulously complying with environmental laws and all norms/conditions laid down by this Court (including those in the main judgment of 30th December 1996).

Concurrence with the Central Empowerment Committee and opinion of NEERI shall also be necessary before according such permission.

10. There shall, however, be an embargo on granting clearances to and/or shifting of any heavy industry until a final decision is taken on the vision document. The interlocutory application is accordingly disposed in above terms."

15. And the Tribunal directed as follows :-

"In view of order of the Hon'ble Supreme Court dated

16.12.2019, only small, micro and macro level industries which are both non- polluting and eco-friendly or which are necessary to secure essential amenities within TTZ can be allowed in TTZ. The project in question is a Red Category project involving blasting within 10 kms of TTZ which is not permissible. Thus, the impugned EC is liable to be set aside. However, in absence of any representation by the MoEF&CC and the project proponent, we direct that the MoEF&CC to pass an appropriate further order in the matter within two months from today and till such a decision is taken, the impugned EC may not be given effect and no mining in terms of the project may be carried out."

8. The Members of the Committee also examined the air quality and compiled data. In view of the data of air quality sampling results parameters as PM10 and PM2.5 were found exceeding the prescribed limit, due to dust emission, during vehicular movements, approach roads are not metaled to control fugitive dust emissions and water sprinkling practice is not in proper manner to efficiently capture the road dust. A separate report was also called from the Department of Forest, Bharatpur and vide communication dated 9-07-2024, the Deputy Conservator of Forest has communicated that in between March to July, 2024, approximately 30 illegal minings have been reported in which, necessary action has been taken by the Forest Department including the seizure of the machine used for the illegal mining and imposition of penalty/compensation/damage. It is further reported that:-

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9. This Tribunal directed as follows:-

"i. In view of the sensitive regions we direct the respondent that the orders and directions issued by the Hon'ble Supreme Court of India in TTZ matters must be strictly complied with and Sustainable Sand Mining Management Guidelines, 2016 & The Enforcement and Monitoring Guidelines for Sand Mining, 2020 and its conditions must be observed. The recommendations suggested by the joint committee must be monitored by the Collector concerned.

ii. The Department of Mines and Geology is directed that the quality and extent of the plantation must be improved in the entire cluster and there be an appropriate plantation planning for entire cluster zone and the dense plantation with effective protection through barbed wire fencing to be carried out using Miyawaki Plantation Technique. There must be adequate maintenance of road network, demarcation of mining lease through pillars and planning for replenishment.

iii. Mandatory six (06) monthly compliance report must be examined and in case of non-compliance of the conditions, the data should be uploaded on the website and necessary action must be taken for compliance of various conditions. Revenue Department, Forest Department and Department of Geology and Mining to ensure that mining is done within allotted lease area and within permissible quantity and strict action to be taken against the concerned violation is observed during visit to be carried out on regular basis. iv. The State PCB is directed to monitor ambient air quality at the locations where the air quality has deteriorated beyond permissible limits and air emissions are reported to be high due to vehicular movement in the cluster as well as in adjacent road network periodically. There must be permanent and regular water sprinkler installed on the main hallways, roads on the cluster and must be installed a Wheel washing facility at the individual mines and the road network in the cluster must be metalled so as to avoid any fugitive emissions.

v. The respondent/state is directed that the transportation route must be improved from the District Mineral Foundation Trust from the DMF Fund, subject to audit by the concerned department. vi. The prayer for quashing the notification dated

> 26.12.2018 and 18.05.2021 issued by the MoEF&CC is time barred and not maintainable before this Tribunal. The efficacious and alternate remedy for filing the appeal was available before the appellant/applicant, the same has not been adopted. If the applicant is aggrieved by any order of the competent authority the appropriate remedy under Section 16 of NGT Act, 2010 or any other law for challenging the notification is available. Thus, present original application as filed is not maintainable for the above relief. vii. The prayer for quashing the environmental clearance dated 24.03.2022 and recommendation of SEAC dated 22.03.2022 with MoEF&CC permission dated 11.06.2021 is not within the limitation and barred by time. Further the applicant has efficacious remedy to file an appeal before the appropriate forum."

10. Submissions of the learned Counsel for the Appellants are that the relief for quashing the notification issued by the MoEF&CC and the relief for setting aside or quashing the Environmental Clearance was rejected or not granted by the Tribunal and, thus, the proceedings initiated by the State PCB is against the final order of this Tribunal.

11. The perusal of the directions discloses violation of environmental rules and the necessary directions were issued to the department concerned for plantation and dust suppression to comply the orders of the Hon'ble Supreme Court of India in Taj Trapezium Zone matter. Thus, the contention of the learned Counsel for the Appellants that the order is not applicable has no merit. The Appellants are required to follow the guidelines of the Sand Mining Management Guidelines, 2016, and the Enforcement and Monitoring Guidelines for Sand Mining, 2020, in addition to the conditions of the Environmental Clearance.

Response/Reply by the Rajasthan State PCB:

12. Learned Counsel for the State PCB Mr. Rohit Sharma has argued that an Original Application bearing No. 96/2023 (Yadram Vs. State of Rajasthan) was filed before this Tribunal. Upon taking cognizance of the matter, the Tribunal, in its order dated 01.09.2023, made the following observation:-

> "In case mining leases are found to be in violation of environmental rules, EC conditions, and the orders of the Hon'ble Supreme Court of India concerning the designated representation zone, necessary actions must be initiated immediately, and a compliance report must be submitted before this Tribunal."'

13. It is further submitted that pursuant to the order of the Tribunal, an inspection of the mining leases was conducted. Notwithstanding the fact that these leaseholders possessed compliance valid Consent to Operate, their compliance with the Consent conditions was scrutinized. Based on the findings, individual notices were issued to the project proponents and that following the inspection, show cause notices were issued 29.09.2023, to all mining lease holders on specifically identifying the discrepancies observed during the inspection. It is stated that in response to these show cause notices, only six (6) mining leaseholders submitted replies, which were found to be inadequate and

incomplete and that during the intervening period, the Tribunal, in OA 96/2023, further observed in its order dated 21.03.2024 that in case of violations, strict action must be taken against the mining leaseholders, including the assessment and recovery of environmental compensation.

Accordingly, on 05.04.2024, 27 show cause notices were issued to 27 mining leaseholders, explicitly outlining the deficiencies. It is further stated that in compliance with the show cause notices issued by the Rajasthan State Pollution Control Board (RSPCB), verification of these mining leases was conducted in May 2024. It is pertinent to mention that none of the leaseholders furnished within the stipulated time frame and consequently, the RSPCB issued a final order on 05.07.2024, directing the deposition of environmental compensation by these 27 mining leaseholders. Upon the failure of the leaseholders to deposit the environmental compensation, the Rajasthan State Pollution Control Board issued reminder on 30.08.2024 and notices/letters 18.10.2024.

It is significant to highlight that the total environmental compensation imposed on these 27 mining leaseholders amounts to approximately ‡ 4.6 crores, yet not a single payment has been made.

14. It is further argued that the Appellants' contention that no prior notice was issued by the Board before the imposition of environmental compensation is incorrect. It is clarified that the respondent authority had duly issued prior notices 06.06.2024, both via email and registered post. Thereafter, following due process and in compliance with the Tribunal's order dated 21.03.2024, the State Board issued a final order on 05.07.2024, directing the deposition of environmental compensation.

Further, that after the environmental compensation assessment conducted by the RSPCB, the RSPCB also issued notices of intended revocation of Consent to Operate under the Air Act to these 27 mining leaseholders on 20.12.2024 and that notably, only 11 leaseholders have submitted replies to these show cause notices regarding the intended revocation of consent to operate. A tabular chart is provided below, summarizing the details of the mining leases, including lease area, name of the leaseholder, date of issuance of show cause notice for intended revocation of consent to operate, whether a reply was submitted, and whether environmental compensation has been deposited:-

15. A description of mines and amount of environmental compensation imposed on 05.07.2024 is also given in a tabular chart for the convenience of the Tribunal:-

Details of Mines and EC Paharpur Block-B Compliance of the Natural Justice:

16. Contentions of the learned Counsel for the Appellants Mr. Sandeep Singh Sekhawat, Mr. Yadvendra Yadav and Mr. Yogendra Singh Kachhawa are that the procedure and guidelines have not been followed and that the opportunity of hearing was not given to the Appellants.

They have relied on Mewar Mavels Ltd. Vs. State of Rajasthan, D.B. SW 398/2001 Rajasthan High Court, and the Hon'ble Supreme Court in Triveni Engineering and Industries Vs. State of Uttar Pradesh: (2026) 2 SCC 729. These matters relate to the Water Act while taking the samples for analysis.

17. Submissions of the learned Counsel for the State PCB are with regard to the violations of environmental conditions and these are - inadequate or no plantation, bad condition of the road, not providing the Continuous Ambient Air Quality Monitoring Station which is required to install to analyze the air quality, overburden dumped in an unscientific manner and no water sprinkling for dust suppressions. Thus, for these violations, the provisions of taking sampling with regard to the Water Act is not applicable.

18. Submissions of the learned Counsel for the Respondent/State PCB are that show cause notices were issued to the Appellants and some of the members have received it and submitted the reply and reply was heard and decided according to rules. It is further argued that there are proper service on the Appellants and if they choose not to reply, it is their discretion and it cannot be said that the State PCB failed to provide any opportunity of hearing. The authorities can only issue show cause notice with direction to submit the reply and it is the suitability of the person concerned to submit the reply and attend the proceedings. It is their own failure and, thus, the fault cannot be shifted to the statutory authority. Opportunity of hearing means to provide the opportunity not to compel and force to attend the proceedings. Nothing has been shown as to what prejudice has been caused to the Appellants. The rule of natural justice can be taken only on the ground where there is some injustice with the Appellants. Unless and until there is a proof that the Respondent failed to provide an opportunity is proved, the point of natural justice is taken as a shelter. These matters have been discussed in the various judgments as follows:-

> 1. In Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr. Vs. Ramjee, AIR 1977 SC 965 the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference of the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.
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> 2. In Union of India Vs. Tulsiram Patel, AIR 1985 SC 1416 the Hon'ble Supreme Court held:-
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> "Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a

legal straitjacket. They are not immutable but flexible."

3. It is equally well settled that the principles of natural justice must not be stretched too far and in this connection, reference may be made to the decisions of the Supreme Court in Sohan Lal Gupta & Ors. Vs. Asha Devi Gupta & Ors., (2003) 7 SCC 492; Mardia Chemicals Ltd. Vs. Union of India, AIR 2004 SC 2371 and Canara Bank Vs. Debasis Das, AIR 2003 SC 2041.

4. It is further to be noted that the Court is to proceed as to whether no observance of any of the principles enshrined in statutory rules or principles of natural justice have resulted in deflecting the course of justice. Even, if in a given case, like the fact of the present case there may be some deviation but it has not resulted in grave injustice or has not prejudiced the cause of the petitioner because the decision taken by the respondent was based on the scientific report. This Court does not function as a Court of appeal on the finding of scientific report submitted by the experts. On examining the facts and circumstances of the present case, it cannot be held that the process adopted or decision made by the respondents is in anyway arbitrary or irrational or in any way in violation of the principles of natural justice. The conclusion is that the petition is devoid of merit and deserves to be dismissed.

5. Natural justice is at least as old as the first man created on earth - the biblical 'Adam'. J.R. Lucas in his book 'On Justice' states (at page

86):

> "Hence, when we are judging deeds, and may find that a man did wrong, there is a requirement of logic that we should allow the putative agent to correct misinterpretations or disavow the intention imputed to him or otherwise disown the action. God needed to ask Adam 'Hast thou eaten of the tree whereof I commanded thee that thou shouldest not eat?' Because it was essential that Adam should not be blamed or punished unless he had done exactly that deed. If the serpent had planted the evidence, or if he had beguiled Adam into eating it under the misapprehension that it came from another, non- forbidden tree, then Adam had not sinned and should not have been expelled from Eden. Only if the accused admits the charge, or, faced with the accusation, cannot explain his behaviour convincingly in any other way, are we logically entitled to conclude that he did indeed do it."

6. In some of the early judgments of this Court, the non-observance of natural justice was said to be prejudice in itself to the person affected, and proof of prejudice, independent of proof of denial of natural justice, was held to be unnecessary. The only exception to this rule is where, on "admitted or indisputable" facts only one conclusion is possible, and under the law only one penalty is permissible. In such cases, a Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice, but because Courts do not issue writs which are "futile" - see S.L. Kapoor v. Jagmohan and Ors. (1980) 4 SCC 379 at paragraph 24. In P.D. Agrawal v. State Bank of India and Ors. (2006) 8 SCC 776, however, the Court observed that this statement of the law has undergone a "sea change", as follows:

> "39. Decision of this Court in S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379] whereupon Mr Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court in State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364] and Rajendra Singh v. State of M.P. [(1996) 5 SCC 460] the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of audi alteram partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula."

(emphasis supplied)

7. Equally, the prejudice that is caused, apart from natural justice itself being denied, cannot be said to be present in a case in which there are admitted facts. Thus, in K.L. Tripathi v. State Bank of India and Ors. (1984) 1 SCC 43, the Court held:

> "29. We are of the opinion that Mr. Garg is right that the rules of natural justice as we have set out hereinbefore implied an opportunity to the delinquent officer to give evidence in respect of the charges or to deny the charges against him. Secondly, he submitted that even if the rules had no statutory force and even if the party had bound himself by the contract, as he had accepted the Staff Rule, there cannot be any contract with a Statutory Corporation which is violative of the principles of natural justice in matters of domestic enquiry involving termination of service of an employee. We are in agreement with the basic submission of Mr. Garg in this respect, but we find that the relevant rules which we have set out hereinbefore have been complied with even if the rules are read that requirements of natural justice were implied in the said rules or even if such basic principles of natural justice were implied, there has been no violation of the principles of natural justice in respect of the order passed in this case. In respect of an order involving adverse or penal consequences against an officer or an employee of Statutory Corporations like the State Bank of India, there must be an investigation into the charges consistent with the requirements of the situation in accordance with the principles of natural justice as far as these were applicable to a particular situation. So whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries. Here the infraction of the natural justice complained of was that he was not given an

> opportunity to rebut the materials gathered in his absence. As has been observed in On Justice by J.R. Lucas, the principles of natural justice basically, if we may say so, emanate from the actual phrase "audi alteram partem" which was first formulated by St. Augustine (De Duabus Animabus, XIV, 22 J.P. Migne, PL. 42, 110).
>
> xxx.....xxx.....xxx
>
> 32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross- examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross- examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.
>
> 33. The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross examination does not create any prejudice in such cases."

(emphasis supplied)

8. In State Bank of Patiala and Ors. v. S.K. Sharma (1996) 3 SCC 364, a Division Bench of this Court distinguished between "adequate opportunity" and "no opportunity at all", and held that the "prejudice" exception operates more especially in the latter case. This judgment also speaks of procedural and substantive provisions of law which embody the principles of natural justice which, when infracted, must lead to prejudice being caused to the litigant in order to afford him relief, as follows:

> "32. Now, coming back to the illustration given by us in the preceding para, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub- clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are

not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise.

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under -- "no notice", "no opportunity" and "no hearing"

categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar [(1993) 4 SCC 727]. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only

obligation is to observe the principles of natural justice -- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action

-- the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.] (6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

19. It is an admitted fact that out of two notices of the same nature, one notice has been received by all the Appellants and some of the Appellants have submitted reply which was duly considered.

Accordingly, there is no violation of principle of natural justice and show cause notices were issued to the Respondents and after giving an opportunity of hearing, the Respondent/State PCB has proceeded finally according to rules.

20. Though the learned Counsel have vehemently argued about denial of natural justice, the same has not been demonstrated sufficiently to meet the basic standards of judicial conscience so as to warrant our interference. Indeed, principle of natural justice infused life and blood into legal processes both judicial and administrative. However, the occasion of their application not uniform and it cannot be stated as a proposition of blanket application that all administrative exercises are subject to unalterable and absolute standard of natural justice. Even in those cases where procedural requirements have not been complied with, the action has not been held ipso facto illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant. The expression natural justice and legal justice do not present a water type classification. It is a substance of justice to which is to be secured by both, and whenever legal justice fails to achieve, this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality grammatically pedantry or logical prevarication. It supplies the omission of a formulated of law.

21. Justice means justice between both the parties. The interest of justice equally demands that the guilty should be and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the end of justice. Principles of natural justice are but the means to achieve the end of justice. They cannot be perverted to achieve the very opposite end. That would be counter-productive exercise. The principle of natural justice cannot be applied in vacuum. They cannot be put in straight jacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality.

22. Learned Counsel for the Appellants have further argued the non-

application of mind by the Respondent/State PCB while issuing the order. The question has been discussed in the case of Rajeev Soori Vs. Delhi Development Authority: (2021) SCC Online SC 7, as follows:-

> "289. It is noticed that the argument of non-application of mind has been invoked by the petitioners, irrespective of the nature of body whose decision has come to be assailed. The requirement of due application of mind is one of the shades of jurisprudential doctrine that justice should not only be done but seen to be done. It requires a decision-making body, judicial or quasi-judicial, to abide by certain basic tenets of natural justice, including but not limited to the grant of hearing to the affected persons. Rules of natural justice are not embodied rules. They are means to an end and not end in themselves. The goal of these principles is to prevent prejudice. It is from the same source that the requirement of application of mind emerges in

decision making processes as it ensures objectivity in decision making. In order to ascertain that due application of mind has taken place in a decision, the presence of reasons on record plays a crucial role. The presence of reasons would fulfil twin objectives of revealing objective application of mind and assisting the adjudicatory body in reviewing the decision. The question that arises here is, whether the statement in the recorded minutes of the CVC meeting ("the features of the proposed Parliament building should be in sync with the existing Parliament building") is or is not indicative of application of mind.

290. In cases when the statute itself provides for an express requirement of a reasoned order, it is understandable that absence of reasons would be a violation of a legal requirement and thus, illegal. However, in cases when there is no express requirement of reasons, the ulterior effect of absence of reasons on the final decision cannot be sealed in a straightjacketed manner. Such cases need to be examined from a broad perspective in the light of overall circumstances. The Court would look at the nature of decision-making body, nature of rights involved, stakeholders, form and substance of the decision etc. The list is not exhaustive for the simple reason that drawing a conclusion of non-application of mind from mere absence of reasons is a matter of pure inference and the same cannot be drawn until and unless other circumstances too point in the same direction. The aforesaid factor of nature of rights has been considered by this Court in E.G. Nambudiri thus:-

"8. The question is whether principles of natural justice require an administrative authority to record reasons. Generally, principles of natural justice require that opportunity of hearing should be given to the person against whom an administrative order is passed. The application of principles of natural justice, and its sweep depend upon the nature of the rights involved, having regard to the setting and context of the statutory provisions. Where a vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the statutory provisions do not make any express provision for the same, and the person concerned must be afforded opportunity of hearing before the order is passed. But principles of natural justice do not require the administrative authority to record reasons for its decision as there is no general rule that reasons must be given for administrative decision.

Order of an administrative authority which has no statutory or implied duty to state reasons or the grounds of its decision is not rendered illegal merely on account of absence of reasons. It has never been a principle of natural justice that reasons should be given for decisions. See: Regina v. Gaming Board for Great Britain, ex p. Benaim and Khaida, (1990) 2 QB 417 at 431.

(emphasis supplied)

291. It is settled that in cases where individual rights are affected by the decision, an opportunity of being heard and application of mind couched in the form of reasons form part of the jurisprudential doctrine. Such cases need to be distinguished from cases which do not impinge upon individual rights and involve ordinary administrative processes. For, similar standards cannot be deployed to decide both these cases. When petitioners allege illegality on a ground such as absence of reasons in a pure administrative process, they must bear the burden to demonstrate the requirement of reasons in the first place. It is not as if reasons are mandatory in all decisions. What we are dealing with is the opinion of an advisory (administrative) body which is appointed by the same Government which calls for its advice and not to adjudicate upon rights of individuals. Even if we assume that the no objection by an advisory body would have the effect of affecting the objectivity of the final decision, the fact remains that it does not take the final decision. It is meant to invoke its expertise in light of the subject proposal placed before it and advise the Government as regards the feasibility of the proposed development in connection with the existing central vista region. The final decision would be that of the competent authority of the concerned department. Furthermore, what purpose would it serve to entangle an advisory body into rigidity of recording elaborate reasons when its advice is not going to affect any stakeholder whatsoever nor can be made the basis to challenge the final decision of the competent authority. Not being a statutory body, its opinion has no finality attached to it nor could be appealed against to superior forum. Undeniably, in the process of decision-making, the Government may choose to consult as many bodies and agencies as it desires and opinion of every such advisory body cannot be assailed by supplying fictional standards without keeping in view the nature of body and context of advice.

292. In E.G. Nambudiri, this Court noted as to how mere absence of reasons may not render the decision to be illegal thus:

"6.... Ordinarily, courts and tribunals, adjudicating rights of parties, are required to act judicially and to record reasons.

Where an administrative authority is required to act judicially it is also under an obligation to record reasons. But every administrative authority is not under any legal obligation to record reasons for its decision, although, it is always desirable to record reasons to avoid any suspicion. Where a statute requires an authority though acting administratively to record reasons, it is mandatory for the authority to pass speaking orders and in the absence of reasons the order would be rendered illegal.

But in the absence of any statutory or administrative requirement to record reasons, the order of the administrative authority is not rendered illegal for absence of reasons. If any challenge is made to the validity of an order on the ground of it being arbitrary or mala fide, it is always open to the authority concerned to place reasons before the court which may have persuaded it to pass the orders...."

(emphasis supplied)

293. Had it been a case of any other administrative committee required to adjudicate upon the rights of individuals, merely because it is not mandatory to record reasons would not absolve it of the requirement of objective consideration of the proposal. The ultimate enquiry is of application of mind and a reasoned order is merely one element in this enquiry. In a given case, the Court can still advert to other elements of the decision-making process to weigh the factum of application of mind. The test to be applied in such a case would be of a reasonable link between the material placed before the decision- making body and the conclusion reached in consideration thereof. The Court may decide in the context of overall circumstances of the case and a sole element (of no reasons or lack of elaborate reasons) cannot be enough to make or break the decision as long as judicial mind is convinced of substantial application of mind from other circumstances. Even in common law jurisprudence, there is no absolute requirement of reasoned order in all decisions. In Lonrho plc v. Secretary of State for Trade and Industry & Anr., it was contended that the decision is not based on convincing reasons and therefore, must be declared as illegal. The House of Lords refused to entertain this contention and noted that mere absence of reasons would not render the decision as irrational. Lord Keith, in his opinion, noted that the only significance of absence of reasons would be that if circumstances overwhelmingly point towards conclusion that the one reached by the body, it would be fatal. He noted thus:

> "The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker who has given no reasons cannot complain if the court draws the inference that he had no rational reason for his decision."

In Administrative Law, P.P. Craig notes that it is relevant to consider the context in which decision operates thus:

> "The court will consider the nature of the decision maker, the context in which it operates and whether the provision of reasons is required on grounds of fairness, "

Mr. Craig also refers to R. v. Ministry of Defence, Ex p. Murray wherein certain principles relating to duty of reasons were elaborated. Lord Chief Justice Bingham, in his opinion, observed that the requirement of giving reasons may be outweighed by concerns of public interest in certain cases, for instance, when it would unduly burden the decision maker. We are not importing any rider of public interest to negate the requirement of reasons; however, the above exposition is useful to understand the effect of absence of reasons on an otherwise legal, rational and just decision.

294. Notably, this Court in Maharashtra State Board and in Mahabir Jute Mills noted that if the function/decision of the Government is administrative, in law, ordinarily there is no requirement to be accompanied by a statement of reasons unless there is an express statutory requirement in that regard. Again, in Sarat Kumar Dash, the Court observed that in the field of administrative action,

the reasons are link between maker of the order or the author of the decision and the order itself. The record can be called to consider whether the author had given due consideration to the facts placed before him before he arrives at the decision.

295. Therefore, the requirement of reasons in cases which do not demand it in an express manner is based on desirability and the same is advised to the extent possible without impinging upon the character of the decision-making body and needs of administrative efficiency."

23. On the point of any scientific calculation or scientific report, in case of (1) Rajeev Soori Vs. Delhi Development Authority: (2021) SCC Online SC 7, (2) N. D. Jayal & Ors. Vs. Union of India: (2004) 9 SCC 362, (3) Sam Built Well (P) Ltd. Vs. Deepak Builders: (2018) 2 SCC 176, (4) Bombay Environmental Action Group Vs. State of Maharashtra: (1990) SCC Online Bombay 357, it was held that the expert opinion or the scientific calculation are not subject to the review unless and until irregularity has not been shown by the person concerned challenging the order.

Nothing has been shown by the learned Counsel challenging the order as to on what point of calculation, it was wrong. The calculation of environmental damage is very hard to calculate and a parameter has been laid down by a Technical Expert Committee as constituted by the CPCB on the directions of the Tribunal to frame the rules and guidelines and these rules and guidelines have been present before the Tribunal which were approved and find finality and it was published. It was framed after due consultation and after taking opinion from the State PCBs and all of the States/UTs. Thus, the same cannot be further challenged unless and until any better option of calculation is provided by the persons challenging it or any bias or illegality while calculating the environmental damage.

Lack of Jurisdiction and Power to impose Environmental Compensation:

24. Learned Counsel for the Appellants have relied Suez India Pvt. Ltd. Vs. Uttar Pradesh Pollution Control Board, Writ (C) No.4816/2024, Allahabad High Court, in which it has been held that the State PCB has no jurisdiction to impose the penalty or the compensation. Second ground has been taken by the Appellants on the basis of Kantha Vibhag Yuva Koli Samaj Parivartan Trust & Ors. Vs. State of Gujarat & Ors.:

> (2023) 13 SCC 525, and contend that adjudicatory functions cannot be delegated and must be exercised by the Tribunal itself. Third ground is based on the DPCC Vs. Lodhi Property Co. Ltd.: (2026) 2 SCC 670, and it is contended that the power to impose Environmental Compensation is conditional and subject to strict procedural safeguards. These matters are discussed as follows:-
>
> Environmental Damage or Restitutionary and Compensation Damages by the State PCB under the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981:

25. The State Pollution Control Board is authorized to act in accordance with the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981, and can realize and collect the restitutionary and compensatory damages for the measures towards potential environmental damage in exercise of powers under Section 33A and 31A of the Water and Air Acts.

26. The power to realize the above environmental compensation has been examined by the Hon'ble Supreme Court of India in Civil Appeal Nos.757-760 of 2013: (DPCC Vs. Lodhi Property Co. Ltd. ETC. & Ors.), vide order dated 04.08.2025. Relevant portion of the order is quoted below to clarify the position:-

> ".....x.....x.....x.....x.....
>
> 6. Issue:
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> 8. The core question in these appeals is whether the regulatory boards can, in exercise of powers under Section 33A of the Water Act and Section 31A of the Air Act, impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an ex-ante measure towards potential environmental damage?'
>
> 7. Existing Legal Regime for Pollution Control in India.
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> 9. Under the Water Act and the Air Act, the State Boards have a broad statutory mandate to prevent, control and abate water pollution and air pollution. Under Section 17 of the Water Act, the State Boards are to shoulder enormous responsibilities and their functions are reproduced herein for ready reference -
>
> "Section 17. Functions of State Board (1) Subject to the provisions of this Act, the functions of a State Board shall be-
>
> (a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof,
>
> (b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;
>
> (c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;
>
> (d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

(e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;

(f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;

(g) to lay doum, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;

(h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution; (1) to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;

(j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;

(k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;

(l) to make, vary or revoke any order-

(i) for the prevention, control or abatement of discharges of waste into streams or wells;

(ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or adopt such remedial measures as are necessary to prevent, control or abate water pollution;

(m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;

> (n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well; (o) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government. (2) The Board may establish or recognize a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents."

10. Section 17 of the Air Act9, substantially similar to its equivalent under the Water Act, also indicates the crucial responsibilities of the State Boards in discharge of their mandate. Chapter V of the Water Act and Chapter IV of the Air Act include provisions that prescribe the regulatory powers of the State Boards. These powers include the power to issue, modify or withdraw consent10, power to obtain information 11, power of entry and inspection 12 and power to take samples13.

8. Insertion of Sections 33A & 31A in Water and Air Acts.

11. In 1988, both Acts were amended. Notably, through amendments the State Boards were further empowered to give directions under Section 33A of the Water Act and Section 31A14 of the Air Act. These two provisions are identically worded. Section 33A of the Water Act is as under;

> "Section 33A. Power to give directions. Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions. Explanation. For the avoidance of doubts, it is hereby declared that the 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) the stoppage or regulation of supply of electricity, water or any other service."

12. The directions contemplated under Sections 33A and 31A of the Water and Air Acts must be in furtherance of the powers and functions of the Boards and they must be in writing. These provisions, declares that the power to issue directions will include the power to direct closure, prohibition or regulation of any industry, operation or process. Further, this power extends to directing the stoppage or regulation of supply of electricity, water or any other service. The power to give directions has been worded broadly, and it allows the Boards significant flexibility in deciding the nature of directions. The legislative intention of granting these powers through the 1988 amendment can be inferred from the Statement of Objects and Reasons of the Water Act, which reads as follows -

> "2. The Water Act is implemented by the Central and State Governments and the Central and State Pollution Control Boards. Over the past few years, the implementing agencies have experienced some more administrative and practical difficulties in effectively implementing the provisions of the Act. The ways and means to remove these difficulties have been thoroughly examined in consultation with the implementing agencies. Taking into account the views expressed, it is proposed to amend certain provisions of the Act in order to remove such difficulties..... 3. The Bill, inter alia, seeks to make the following amendments in the Act, namely:- (iv) in order to effectively prevent water pollution, the penal provisions of the Act are proposed to be made stricter and bring them at par with the punishments prescribed in the Air (Prevention and Control of Pollution) Act, 1981 as amended by Act 47 of 1987; (vi) it is proposed to empower the Boards to give directions to any person, officer or authority including the power to direct closure or regulation of offending industry, operation or process or stoppage or regulation of supply of services such as water and electricity;"

13. Similar objective is expressed for the amendment introduced in the Air Act.

14. An appeal against directions issued under Section 33A of the Water Act by the State Board can be filed before the National Green Tribunal under Section 33B, introduced in 201016. Unlike the Water Act there is no specific Appeal provision against directions issued under Section 31A of the Air Act. This asymmetry must be addressed legislatively.

15. Offences and penalties under the two Acts, and the related procedures, are covered in Chapter VII of the Water Act and Chapter VI of the Air Act. These chapters have undergone significant and substantial amendments. Prior to the amendments, the two Acts stipulated penalties in the form of imprisonment, monetary fine or both for offences under the statute. Courts could only take cognizance of an offence if a complaint was filed by a Board or any officer authorized by it, or by any person who had given notice of the alleged offence and of his intention to make a complaint. No court inferior to that of a Metropolitan Magistrate or a Judicial magistrate of the first class can try an offence punishable under the two Acts. Be that as it may, for the present purpose we have to examine and interpret Sections 33A and 31A of the Water and Air Acts.

9. Interpretation of and for Environmental Institutions.

16. Our constitutionalism bears the hallmark of an expansive interpretation of fundamental rights. But such creative expansion is only a job half done if the depth of the remedies, consequent upon infringement, remain shallow. In other words, remedial jurisprudence must keep pace with expanding rights and regulatory challenges. It is not sufficient that courts adopt injunctory, mandatory and compensatory remedies, but our regulators also must be empowered in that regard. However, the legislative grammar must be elastic for us to infuse the regulators with power to fashion different remedies. This infusion must also be tampered with the necessary guidelines and parameters of exercise of remedial powers, failing which such infusion would aid arbitrary use. Our firm view is that remedial powers or restitutionary directives are a necessary concomitant of both

the fundamental rights of citizens who suffer environmental wrongs and an equal concomitant of the duties of a statutory regulator, which are informed by Part IV A of the constitution. To that extent, the functions and powers of a regulator must be inspired by the obligation in Part IV A and Article 48 A. The State's 'endeavour to protect and improve the environment' will be partial, if it does not encompass a duty to restitute.

17. Of all the duties imposed under Article 51A, the obligation to conserve and protect water and air, is perhaps the most significant, amidst our climate change crisis. The Water Act and the Air Act institutionalised all efforts and actions that need to be taken to protect air that we breathe and water that we consume by creating the Pollution Control Boards. These Boards functioning as our environment regulators are expected to act with institutional foresight by evolving necessary policy perspectives and action plans. Working with perpetual seal and succession, they are to develop and retain institutional memory so that they can act on the basis of the experience, data and information that they would have gathered and processed. Institutional expertise is critical, and these bodies are to employ human resource which have domain expertise and talent. These bodies are intended to maintain institutional integrity by taking independent and objective decisions without governmental or industrial control. These values flow naturally if there is institutional transparency and accountability. It is in this perspective that we need to interpret Section 33A of the Water Act and 31A of the Air Act.

10. Duty to Restitute v. Power to Punish and Penalise.

18. There is a distinction between an action for environment damages for restitution or remediation and imposition of penalties fines levied at the culmination of a punitive action. This Court in M.C Mehta Vs. Kamal Nath (2006) 6 SCC 213, while referring to the provisions of the Water Act, Air Act and the Environment Protection Act observed-

> "17. All the three Acts, referred to above, also contemplate the taking of the cognizance of the offences by the court. Thus, a person guilty of contravention of provisions of any of the three Acts which constitutes an offence has to be prosecuted for such offence and in case the offence is found proved then alone can he be punished with imprisonment and fine or both. The sine qua non for punishment of imprisonment and fine is a fair trial in a competent court. The punishment of imprisonment or fine can be imposed only after the person is found guilty."
>
> "24. Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology. He has also to pay damages to those who have suffered loss on account of the act of the offender...."

.....x.....x.....x.....x.....

11. Principles.

27. Based on a review of precedents on this issue, the following legal position emerges -

I. There is a distinction between a direction for payment of restitutionary and compensatory damages as a remedial measure for environmental damage or as an ex-ante measure towards potential environmental damage on the one hand; and a punitive action of fine or imprisonment for violations under Chapters VII of the Water Act and VI of the Air Act on the other hand.

II. If directions in furtherance of restitutionary and compensatory measures are issued, these are not to be considered as punitive in nature. Punitive action can only be taken through the procedure prescribed in the statute for example under chapters VII and VI of the Water and Air Acts respectively.

III. Indian environmental law has assimilated23 the principle of Polluter Pays and there is also a statutory incorporation of this principle in our laws.24 The invocation of this principle is triggered in the situations25; i) when an established threshold or prescribed requirement is exceeded or breached, and it does result in environmental damage, ii) when an established threshold or prescribed requirement is not exceeded breached, nevertheless the act in question results in environmental damage and also iii) when a potential risk or a likely adverse impact to the environment is anticipated, irrespective of whether or not prescribed thresholds or requirements are exceeded or breached.

IV. Environmental regulators have a compelling duty to adopt and apply preventive measures irrespective of actual environmental damage. Ex-ante action shall be taken by these regulators and for this purpose a certain measure in exercise of powers under Sections 33A and 31A of the Water and Air Acts is necessary.

V. The powers of the Boards under Sections 33A and 31A of the Water and Air Acts are identical to that of Section 5 of the Environment Protection Act. Under Section 5, the Central Government or its delegate has the power to issue directions to the polluting industry to pay certain amounts and utilize the said fund for carrying out remedial measures. The Boards are empowered to take similar actions under Sections 33A and 31A of the Acts.

28. Having considered the principles that govern our environmental laws and on interpretation of Sections 33A and 31A of the Water and Air Acts, we are of the opinion that that the Division Bench of the High Court was not correct in restrictively reading powers of the Boards. We are of the opinion that these regulators in exercise of these powers can impose and collect, as restitutionary or compensatory damages fixed sum of monies or require furnishing bank guarantees as an ex-ante measure towards potential or actual environmental damage.

29. There is no doubt that Section 33A of the Water Act and Section 31A of the Air Act give the State Boards powers to issue necessary directions for environmental restoration, remediation and compensation and for the payment of costs for the same. The National Green Tribunal's judgment in Swastik Ispat correctly identified the Boards powers to issue directions for payment of environmental damages under Section 33A of the Water Act and the Section 31A of the Air Act. A

restrictive interpretation which fails to differentiate between environmental damages and punitive action significantly encumbers the Boards ability to discharge its duties.

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

31. At this stage, we must also take note of the recent 2024 amendments26 to the Water and Air Acts. Two major changes relevant for our consideration are that of decriminalisation and introduction of the office of "Adjudicatory Officer. Even after the amendments, in our opinion, there is no conflict between the powers of the State Boards to direct payment of environmental damages under Sections 33A and 31A of the Water and Air Acts and the powers of the Adjudicating Officer to impose penalties under Chapter VII of the Water Act and Chapter VI of the Air Act. The decriminalization of offences under these Chapters has not removed the punitive nature of actions that can be taken under them. There remains a clear distinction between the nature of directions that the State Boards can issue under Sections 33A and 31A of the Water and Air Acts for payment of environmental damage and the determination by Adjudicating Officers. The former is compensatory in nature and will be resorted to when remedial measures are being undertaken to restore the degraded environment or pollution caused. The latter is a penalty for an offence under the law and is imposed with the objective of punishing the offender. This penalty collected here will not be specifically directed towards the restoration of the degraded erusironment (for instance, to decantaminate a pond that has been polluted due to discharge of untreated sewage). It will be deposited in the Environmental Protection Fund that is to be set up under Section 16 of the Environment (Protection) Act. According to Section 16(3) of the EP Act, the Fund shall be used for, (a) the promotion of awareness, education and research for the protection of environment,

(b) the expenses for achieving the objects and for purposes of the Air (Prevention and Control of Pollution) Act, 1981(14 of 1981) and under this Act; and (c) such other purposes, as may be prescribed.

A. Board's Responsibility to Choose Appropriate Course of Action.

32. Given their broad statutory mandate and the significant duty towards public health and environmental protection the Boards must have the power and distinction to decide the appropriate action against a polluting entity. It is essential that the Boards function effectively and efficiently by adopting such measures as is necessary in a given situation. The Boards can decide whether a polluting entity needs to be punished by imposition of penalty or if the situation demands immediate restoration of the environmental damage by the polluter or both.

B. Powers Must Be Guided by Transparency and Non-

Arbitrariness.

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

34. This Court has underscored the importance of strong institutional frameworks in environmental governance that are effective, accountable and transparent. in Bengaluru Development Authority Vs. Sudhakar Hegde, (2020) 15 SCC 63, it was held:-

> "95. The protection of the instrument is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision- making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognised value under Article 21 of the Constitution, proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place."

35. To ensure that the Boards impose restitutionary and the compensatory environmental damages in a fair transparent, non arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of rules and regulations must be notified. This shall include methods by which environmental damage is determined, and the consequent quantum of damages are assessed. They may also incorporate certain basic principles of natural justice for fairness in action. At present environmental damages are being levied by the Boards on the basis of certain guidelines issued by the Central Pollution Control Board in its document "General framework for imposing environmental damage compensation issue in December, 2022. These guidelines seem to have been issued pursuant to the directions of the NGT. It is important that these guidelines are reviewed thoroughly and issued in the form of Rules and Regulations. This will enable declaration of a law that applies and ensures its recognition and easy implementation. (O.A. No. 606/2018 dtd.24.04.2019)

36. These Rules must also create enabling framework for citizens to file complaints about environmental damage. Public participation in environmental protection has assumed great importance with climate change threatening to drastically disrupt our way of living. Boards, being the first line of defence against polluting activities, must provide easy accessibility and encourage public participation in their function and decision making.

37. While we have reversed the decision of the High Court on the principle of law and hold that the environmental regulators, the Pollution Control Boards, can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an ex-ante measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts, use issue the following consequential directions.

27. For the reasons narrated above, the Hon'ble Supreme Court directed as follows:-

> ".....x.....x.....x.....x.....
>
> (b) we direct that the Pollution Control Boards can impose and collect as restitutionary and compensatory damages fixed smus of monies or require furnishing bank guarantees as an ex-ante measure towards potential environmental damage in exercise of powers under Sections 33A und 31A of the Water and Air Acts."

28. The matter was examined by the Hon'ble Supreme Court of India in Civil Appeal No.5231-32 of 2016 (Himachal Pradesh Bus Stand Management and Development Authority (HPBSM&DA) Vs. Central Empowered Committee Etc. & Ors.): (LL 2021 SC 14). In this case it was discussed and held that in case of violation of environmental rule of law, the damage is required to be paid on principles of Polluters to Pay in light of Hanuman Laxman Aroskar Vs. Union of India: (2019) 15 SCC 401, and observed as follows:-

> "51. However, even while using the framework of an environmental rule of law, the difficulty we face is this when adjudicating bodies are called on to adjudicate on environmental infractions, the precise harm that has taken place is often not susceptible to concrete quantification. While the framework provides valuable guidance in relation to the principles to be kept in mind while adjudicating upon environmental disputes, it does not provide clear pathways to determine the harm caused in multifarious factual situations that fall for judicial consideration. The determination of such harm requires access to scientific data which is often times difficult to come by in individual situations." (Forward Indian Council for Enviro Legal Action Vs. Union of India & Ors. (1996) 3 SCC 212)

29. It was found that it is not generally possible for the Courts or Tribunal to determine quantifiable terms the exact effect of the damage to the environment and the ecology of the area and necessary scientific data based on the expert report or the persons in the field of environment are required.

30. In Lal Bahadur Vs. State of Uttar Pradesh, (2018) 15 SCC 407, the Court underscored the principles that are the cornerstone of our environmental jurisprudence, as emerging from a settled line of precedent: the precautionary principle, the polluter pays principle and sustainable development. The Court further noted the importance of judicial intervention for ensuring environmental protection. In a recent decision in State of Meghalaya & others Vs All Dimasa Students Union, (2019) 8 SCC 177, the Court reiterated the key principles of environmental jurisprudence in India, while awarding costs of Rs.100 crores on the State of Meghalaya for

engaging in illegal coal mining.

31. We are not traversing unexplored territory. In the past, the Court has clamped down on illegal activities on reserved forest land specifically, and in violation of environmental laws more generally, and taken to task those responsible for it. In a recent three-judge bench decision of this Court in the case of (Hospitality Association of Mudumalai Vs. In Defence of Environment and Animals), 2020 SCC OnLine SC 838, this Court was confronted with a situation involving illegal commercial activities taking place in an elephant corridor. Justice S. Abdul Nazeer, speaking for the Court, held as follows:-

> "42... the "Precautionary Principle" has been accepted as a part of the law of our land. Articles 21, 47, 48A and 51A(g) of the Constitution of India give a clear mandate to the State to protect and improve the environment and to safeguard the forests and wild life of the country. It is the duty of every citizen of India to protect and improve the natural environment including forests and wild life and to have compassion for living creatures. The Precautionary Principle makes it mandatory for the State Government to anticipate, prevent and attack the causes of environmental degradation."

32. In Goel Ganga Developers India Pvt. Ltd. Vs Union of India, (2018) 18 SCC 257, the Court dealt with a situation in which the project proponent had engaged in construction that was contrary to the environmental clearance granted to it. Coming down on the project proponent, a two-judge bench, speaking through Justice Deepak Gupta, held as follows:-

> "64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more."

33. The matter of damage to environment and a reasonable environmental damage for restitution was discussed in Civil Appeal 7178 of 2022, (M/s. Rhythm County Vs. Satish Sanjay Hegde & Ors): (2026) INSC 102, decided on 30.01.2026. On the point of the formula which was prepared by the CPCB for determination of environmental compensation and damage on the principles of Polluters

to Pay, the Court observed:-

> "12.6. Sequentially, our attention was invited to the CPCB report on determination of environmental compensation, which delineates different categories of cases in which compensation may be computed. It was pointed out that paragraph 1.5.1 of the report recommends application of the formula only to categories (a), (b) and (c), (wherein, (a), (b) and (c) are schemes for utilization of environmental compensation funds), whereas paragraph 1.5.2 contemplates that in respect of other categories, compensation, if any, should be determined on the basis of a detailed investigation by expert institutions. Notwithstanding this, the Joint Committee, without assigning any reasons, applied the formula to the present case. It was urged that the NGT, in turn, accepted the report without independent scrutiny and enhanced the compensation to Rs. 5,00,00,000."

34. It is argued that the report of the Committee is simply a technical assistance and adjudicatory decision must be taken by the competent authority in light of Kantha Vibhag Yuva Kohli Samaj Parivartan Trust & Ors. v. State of Gujarat & Ors.: (2013) 23 SCC 525, it is to be noted that the methodology formulated by the CPCB in its report dated 31.05.2019 for determination of environmental damage, was prepared in accordance with the order of the Court dated 03.08.2018 passed in Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. in O.A. No.593 of 2017. The CPCB formula is intended to apply exclusively to industrial units and where there are violations of environmental rules.

35. In compliance of the order of the Hon'ble Supreme Court of India in Paryavaran Suraksha Samiti Vs. Union of India & Ors. (2017) 5 SCC 326, the National Green Tribunal was monitoring the requirement of the establishment and functioning of STP/ETP to control of industrial pollution and giving the responsibility in accordance with the Article 243(w) of the Constitution of India wherein the obligation pointed out the public health, sanitation, conservation and solid waste management and on the principles of Polluters Pay in O.A. 593/2017 directed the CPCB to formulate the guidelines for calculation of Environmental Compensation in different parameters for industrial and non-industrial units discharging the untreated water, non-compliance of the solid waste management and non-compliance of the environmental conditions and violation of environmental rules.

36. In compliance of the above order, the CPCB constituted a Committee to submit the report. It is to be noted that Environmental Compensation is a policy instrument for the protection of the environment which works on the Polluters Pay principle. The CPCB guidelines discussed the matter and submitted the report as follows:-

> "The Hon'ble National Green Tribunal through its various judgments has empowered the Central Pollution Control Board to lay down the methodology to assess and recover compensation for damage to the environment and utilize such amount in terms of an action plan for protection of the environment.

An attempt has been made by the CPCB in-house Committee to develop a methodology for assessing environmental compensation to be levied on concerned industry, authority, individual etc. for the protection of environment. Expert institutions/ NGOs like The Energy and Resources Institute, Centre for Science and Environment-India, Institute of Economic Growth etc. were also consulted to finalize the report. Overall objective is to develop self-sense of responsibility towards the environment and to make defaulters realize their mistake by imposing compensation, which will be utilized for the protection/restoration of the environment.

Although, this is the first attempt in India towards development of methodology for assessing environmental compensation, however, efforts have been made to simplifying the process so that regulatory institutions can easily adopt the methodology for implementation. .....x.....x.....x.....x.....

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. directed Central Pollution Control Board (CPCB) that:

"The CPCB may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs. 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. Such action plan may be prepared by the CPCB within three months" (Annexure-1).

1.2 Constitution of the Committee In this context, Chairman, CPCB constituted a Committee under the Chairmanship of Shri A. Sudhakar, I/c WQM-I with Shri A. K. Vidyarthi, I/c WQM-II, Shri P. K. Gupta, I/c IPC-VI, Shri Nazimuddin I/c IPC-II and Dr. S. K. Paliwal, Scientist 'D' as members. The Committee was asked to deliberate on this issue and come up with a draft formulation before 15.9.2018.

1.3 Methodology for Assessing Environmental Compensation The Committee discussed the issue on 4.9.2018, 13.9.2018, 17.9.2018 and 09.10.2018. A meeting was also held with Senior Officers of CPCB Head Office and Regional Directorates through video conferencing on 28.09.2018 to discuss the draft report and to seek comments/feedbacks. The comments/feedbacks received and deliberations of the Committee on the same are given in Annexure-II. As per the Hon'ble NGT suggestion, CPCB has invited comments of 3 expert institution, namely, Centre for Science and Environment (CSE), Institute of Economic Growth (IEG) and The Energy Research Institute (TERI). A meeting to incorporate the comments of the expert institutions and to finalize the report, was held on 27/03/2019. The CPCB in-house committee on Environmental Compensation has deliberated on the comments and finalized the report accordingly. The Committee's deliberations are

attached as Annexure-III.

It was deliberated for developing a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies and this is the first attempt made. The committee discussed that environmental compensation should be based on "Polluter Pay Principle". The Committee decided to list the instances for taking cognizance of cases fit for violation and levy environmental compensation.

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.

1.3.1 In the instances as mentioned at a, b and c above, Pollution Index may be used as a basis to levy the Environmental Compensation. CPCB has published guidelines for categorization of industries into Red, Orange, Green and White based on concept of Pollution Index (PI). The Pollution Index is arrived after considering quantity & quality of emissions/ effluents generated, types of hazardous wastes generated and consumption of resources. Pollution Index of an industrial sector is a numerical number in the range of 0 to 100 and can be represented as follows:

PI = f (Water Pollution Score, Air Pollution Score & HW Generation Score) Pollution Index is a number from 0 to 100 and increasing value of PI denotes the increasing degree of pollution hazard from the industrial sector.

CPCB has issued directions to all SPCBs/PCCs on 07.03.2016 to adopt the methodology and follow guidelines prepared by CPCB for categorization of industrial sectors into Red, Orange, Green and White.

The concept of Pollution Index, which was deliberated widely with all stakeholders and agreed, shall be used for calculating Environmental Compensation. This may help in implementation of such

provision throughout the country, a successful initiative in vital field of industrial pollution control.

After considering various factors including the policy implementation issues, Committee has come up with following formula for levying the Environmental Compensation in instances as mentioned at a, b and c including non-compliance of the environmental standards / violation of directions.

The Environmental Compensation shall be based on the following formula:

> EC=PI x N x R x S x LF Where, EC is Environmental Compensation in 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 The formula incorporates the anticipated severity of environmental pollution in terms of Pollution Index, duration of violation in terms of number of days, scale of operation in terms of micro & small/medium/large industry and location in terms of proximity to the large habitations.
>
> 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:

> 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, l.e. by 2 times on 1 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.

1.3.2 In other instances i.e. d, e and f, the environmental compensation may contain two parts one requires providing immediate relief and other long-term measures such as remediation. In all these cases, detailed investigations are required from expert institutions/organizations based on which environmental compensation will be decided. CPCB shall list the expert institutions for this purpose.

In such cases, comprehensive plan for remediation of environmental pollution may be prepared and executed under the supervision of a committee with representatives of SPCB, CPCB and expert institutions/organizations.

1.4 Action Plan for Utilization of Environmental Compensation Fund The Committee discussed about the utilization of funds, which will be received by imposing Environmental Compensation. The following Action Plan is proposed to utilize the fund for protection of the environment.' 1.4.1. When Environmental Compensation is calculated through the Pollution Index:

The amount received by imposing the Environmental Compensation to the industries /organization non-complying with the environmental standards/violating any CPCB's directions shall be deposited in a separate bank account. The amount accumulated will be utilized for Protection of Environment. The following schemes were identified, which may be considered for utilization of Environmental Compensation Fund:

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 The above proposed list may include other

schemes also, depending upon the requirement.

Considering the availability of accumulated funds, CPCB will finalize the scheme, keeping in mind the priority, to utilize the funds of Environmental Compensation.

1.4.2. When Environmental Compensation is assessed based on actual damage to the environment by Expert Organization/Agency:

The amount of Environmental Compensation under this case will be remediation costs, measures requiring immediate and short-term actions, compensation towards loss of ecology, etc., and will be utilized exclusively for the purpose at specific site, based on the detailed investigations by the Expert Organizations/agencies.

1.5 Recommendations The Committee made following recommendations:

1.5.1 To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, b and c, Environmental Compensation may be calculated based on the formula "EC = PI x N x R x S x LF", wherein, PI may be taken as 80, 50 and 30 for red, orange and green category of industries, respectively, and R may be taken as 250. S and LF may be taken as prescribed in the preceding paragraphs.

1.5.2 In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.

1.5.3 The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.

1.5.4 EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules."

37. Another part relates to the Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in the NCR which is not required to be discussed. This report was accepted by the National Green Tribunal in above O.A. and was directed to be published and informed to all the State PCBs for implementation according to rules.

38. Learned Counsel for the Appellant has argued the DPCC Vs. Lodhi Property Co. Ltd. & Ors: (2025 SCC Online SC 1601), where the CPCB formula was criticised holding that it lacks legal sanctity and requires serious re-examination and must be

incorporated into statutory rules or regulation before being applied. It was argued that the ratio of the said decision squarely governs the present case. It is further argued that until a legally binding procedure is incorporated in subordinate legislations, one that duly incorporates the basic principle of natural justice, no compensation can be recovered on the basis of such an adhoc formulation. It is further argued that in light of Mantri Techzone Pvt. Ltd. Vs. Forward Foundation & Ors.: (2019) 18 SCC 494, the Appellant must be informed by the Principle of Sustainable Development, the Precautionary Principle and the Polluter Pays Principle.

39. Drawing support from Deepak Nitrite Ltd. Vs. State of Gujarat & Ors.:

(2004) 6 SCC 402, it was urged that environmental compensation can be justified only upon a specific finding of actual environmental damage. Mere violation of statutory provisions, in the absence of demonstrable-harm, does not ipso facto warrant compensation.

Reliance was also placed on Grasim Industries Ltd. v. State of Madhya Pradesh: (C.A. No.7004-7005/2021), to emphasise the necessity of affording a meaningful opportunity of hearing prior to the imposition of any penalty.

40. It was further argued that the jurisprudence of this Court does not recognise any uniform or straitjacket formula for the levy of environmental compensation. While in certain cases reference has been made to turnover-based computation, such methodology has been expressly disapproved in others.

41. On the strength of Benzo Chem Industrial Pvt. Ltd. Vs. Arvind Manohar Mahajan & Ors.: (C.A. No.9202-9203/2022), it was contended that turnover or income of a project proponent bears no rational nexus to the quantum of environmental compensation, and any mechanical linkage between the two cannot be sustained.

42. Relying again on Deepak Nitrite Ltd. (supra), it was argued that while it may be open for the Court to consider whether 1% of the turnover could constitute a fair basis for computation, such an approach must be necessarily linked to the demonstrable environmental damage and not to be applied in a routine or mechanical manner.

43. It was argued that in Vellore District Environment Monitoring Committee Vs. District Collector, Vellore,: (2025 SCC OnLine SC 207), the Court while passing a detailed order concerning implementation of the award passed by the Loss of Ecology (Prevention & Compensation) Authority, recorded the submission that the CPCB has devised a formula for determining environmental compensation and further noted that the NGT, in practice, has primarily adopted only two methodologies, namely: imposing compensation as 5-10% of the project cost or as a certain percentage of the turnover. It was, however, argued that the Court has consciously refrained from laying down any binding principle on this aspect.

44. Submissions of the learned Counsel for the State PCB are that violations recorded against the Appellant are technical in nature and constitutes substantive departure from the mandatory environmental safeguards thereby justifying the invocation of the Polluter Pays Principle in its full amplitude. On the point of absence of legislative prescribed framework for quantification of environmental compensation and power of the National Green Tribunal under Sections 15, 17 and 20 of the National Green Tribunal Act, 2010, the Hon'ble Supreme Court observed as follows:-

> "19. The contours of the controversy relating to the computation of environmental compensation are no longer res integra. The answer to the aforesaid question is to be found within the four corners of the statute itself. The NGT Act is a special enactment intended to provide effective and expeditious adjudication of environmental disputes and to ensure restitution of the environment. The powers conferred upon the NGT are, by legislative design, wide, flexible, and principle- oriented.
>
> 20. Section 15 of the NGT Act delineates the relief and remedy which the NGT is empowered to grant. Sub-section (1) thereof provides that:
>
> 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 Schedule I;
>
> (b) restitution of property damaged; and
>
> (c) restitution of the environment for such area or areas, as the Tribunal may think fit.

21. The language employed by the Parliament is of considerable amplitude. The expression "as the Tribunal may think fit" is indicative of a conscious legislative choice to repose discretion in the NGT to mould relief in a manner commensurate with the nature and gravity of environmental harm.

22. Furthermore, the guiding normative framework within which these powers are to be exercised, is set out in Section 20 of the NGT Act, which provides that:

> The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.

23. In light of the above, the appellants' arguments that the NGT is denuded of authority to quantify compensation in the absence of a legislatively prescribed or delegated formula, although attractively canvassed, falters when tested against the plain statutory text.

24. The law on this score being well-crystallised, the core of the dispute, as projected before us, centres around the appellants' contention that turnover or project cost cannot be taken as a metric

for the determination of environmental compensation.

25. We are unable to accede to such a submission. Neither the NGT Act nor the jurisprudence of this Court calls for the adoption of a uniform formula for the quantification of environmental compensation; on the contrary, the statutory scheme as discussed in the previous paragraphs, vests the NGT with the discretion to mould the relief guided by the 'polluter pays' principle, having due regard to the scale of the offending activity and the capacity of the violator.

26. In cases relating to protection of environment, linking a company's scale of operations (like turnover, production volume, or revenue generation) to the environmental harm can be a powerful factor for determining compensation. Bigger operations signify a bigger footprint. Larger scale often means more resource use, more emissions, more waste leading to more environmental stress. If a company profits more from its scale, it is logical that it bears more responsibility for the environmental costs. Linking scale to impact sends a message that bigger players need to play by greener rules.

27. If a company has a high turnover, it reflects the sheer scale of its operations. Such a company, if found to contribute generously to environmental damage, its turnover can have a direct co-relation with the extent of damage that is caused. Thus, in our considered opinion, to contend that turnover can never form a relevant factor in quantifying compensation to match the magnitude of harm is fallacious.

28. It would be apposite, at this juncture, to advert to the decision of this Court in Goel Ganga Developers (supra). There, this Court, while dealing with cases of flagrant environmental violations, has laid down that the outer limit of damages could extend up to 5% of the total project cost, in general. Since the aforesaid principle has a direct bearing on the controversy at hand, the relevant paragraph is extracted hereunder:

> "64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year

> 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of transfer of development rights (for short "TDR") with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws."

.....x.....x.....x.....x.....

31. Furthermore, in our opinion, the jurisprudence of this Court, in fact, lends credence to this statutory understanding. Apart from Goel Ganga Developers (supra), this Court in Deepak Nitrite Ltd. (supra) while reiterating the 'polluter pays' principle cautioned that compensation must bear a broad and rational correlation with both the magnitude and capacity of the enterprise as well as the harm caused. What the decision holds is evident from the following paragraph:

> "6. The fact that the industrial units in question have not conformed with the standards prescribed by CPCB, cannot be seriously disputed in these cases. But the question is whether that circumstance by itself can lead to the conclusion that such lapse has caused damage to environment. No finding is given on that aspect which is necessary to be ascertained because compensation to be awarded must have some broad correlation not only with the magnitude and capacity of the enterprise but also with the harm caused by it. Maybe, in a given case the percentage of the turnover itself may be a proper measure because the method to be adopted in awarding damages on the basis of "polluter-to-pay" principle has got to be practical, simple and easy in application. The appellants also do not contest the legal position that if there is a finding that there has been degradation of environment or any damage caused to any of the victims by the activities of the industrial units certainly damages have to be paid. However, to say that mere violation of the law in not observing the norms would result in degradation of environment would not be correct.

32. At this juncture, we also find it apposite to note that the aforesaid exposition does not elevate turnover into an inflexible or universal metric for the calculation of environmental compensation by giving a ruling in emphatic terms. Rather, it recognises turnover as a permissible indicium conditioned by the facts of a given case and the necessity of ensuring that the compensation imposed is neither illusory nor disproportionate. Where the scale of operations itself bears upon the extent of environmental stress and the violator's economic capacity, turnover may legitimately inform the quantum, provided the NGT applies its mind to the surrounding circumstances.

33. We are conscious that this Court in Research Foundation for Science (18) v. Union of India ((2005) 13 SCC 186, had the occasion to consider Deepak Nitrite (supra). What was observed reads thus:

> "30. The observations in Deepak Nitrite Ltd. v. State of Gujarat that "mere violation of the law in not observing the norms would result in degradation of environment would not be correct" (SCC p. 408, para 6) is evidently confined to the facts of that case. In the said case the fact that the industrial units had not conformed with the standards prescribed by the Pollution Control Board was not in dispute but there was no finding that the said circumstance had caused damage to the environment. The decision also cannot be said to have laid down a proposition that in the absence of actual degradation of environment by the offending activities, the payment for repair on application of the polluter-pays principle cannot be ordered. The said case is not relevant for considering cases like the present one where offending activities have the potential of degrading the environment. In any case, in the present case, the point simply is about the payments to be made for the expenditure to be incurred for the destruction of imported hazardous waste and amount spent for conducting tests for determining whether it is such a waste or not. The law prescribes that on the detection of PCBs in the furnace or lubricating oil, the same would come within the definition of hazardous waste. Apart from polluter-pays principle, support can also be had from Principle 16 of the Rio Declaration, which provides that national authorities should endeavour to promote the internalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interests and without distorting international trade and investment."

34. Deepak Nitrite (supra) and Research Foundation for Science (18) (supra) are decisions of coordinate Benches. Technically, both decisions would bind us. However, the latter decision cannot be read as if it overrules the former decision. Reading paragraph 30 of Research Foundation for Science (18) (supra) on its own terms referring to Deepak Nitrite (supra), it appears that "facts of that case"

> and "said case is not relevant for considering cases like the present one" are sufficient to draw the conclusion that Research Foundation for Science (18) (supra) merely distinguished Deepak Nitrite (supra) and did not overrule it.

35. Reliance placed by KEYSTONE on Benzo Chem Industrial (P) Ltd. (supra) is misplaced. That decision turned on the NGT's adoption of conjectural revenue figures, absence of notice, and lack of nexus between the amount imposed and environmental harm. It does not lay down any proposition that the NGT lacks jurisdiction to award compensation in the absence of subordinate legislation or a codified formula, or even interdicted the employment of turnover or project cost as a yardstick for environmental compensation. Relevant paragraphs from the said decision read as hereinunder:

> "10. We could have allowed the appeal on this short ground, however, the further part of the order i.e. paragraph 15 makes an interesting reading. The learned NGT held that the appellant is liable to pay environmental damages. However, while computing the said damages, the only methodology that has been adopted by the learned NGT is that as per the information which is available in the public domain the revenue range of the appellant is between 100 Crore to 500 Crore. It is therefore found that the penalty of Rs. 25 Crore would be commensurated (sic, commensurate) with the revenue. Firstly, there is a vast difference between 100 Crore and 500 Crore. Secondly, if the learned NGT had relied on the information available in the public domain, then it would not be difficult for it to come out with the exact figure. In any case, the generation of revenue would have no nexus with the amount of penalty to be ascertained for environmental damages. It is further to be noted that the learned NGT found the appellant to be guilty of violations, the least that was expected from the NGT is to give a notice to the appellant before imposing such a heavy penalty.
>
> 11. With deep anguish we have to say that the methodology adopted by the learned NGT for imposing penalty is totally unknown to the principles of law.
>
> 12. We are, therefore, inclined to quash and set aside the impugned judgments and orders and allow these appeals. Ordered accordingly."

36. The observations made by this Court speak for themselves. Gauged on the aforesaid anvil, the present case stands on a materially different footing. The impugned determination does not rest on conjectural figures sourced vaguely from the public domain, nor does it proceed without notice or opportunity to the project proponent. Here, the NGT has returned concurrent findings, based on Joint Committee reports and contemporaneous material, that the appellants carried out construction activities without requisite permissions, continued construction despite a stop-work direction, and deviated from the sanctioned plan. These findings have not been demonstrated to be perverse or unsupported by evidence.

37. We are also not oblivious of the decision in C.L. Gupta Export Ltd. v. Adil Ansari 2025 SCC OnLine SC 1812, where Benzo Chem Industrial (P) Ltd. (supra) was followed and the compensation amount was set aside on the anvil of lack of rational nexus with the pollution alleged. Apart from Benzo Chem Industrial (P) Ltd. (supra), this decision too did not have the occasion to either consider the earlier decisions or to delve deep into the issue as to whether turnover of a polluting unit can at all be taken as a factor for determining environmental compensation.

38. In any event, neither Benzo Chem Industrial (P) Ltd. (supra) nor C.L. Gupta Export Ltd. (supra) is to be read as having laid down any law that environment compensation can never be worked out based on the project cost or the turnover of the defaulting unit.

39. Read harmoniously, Deepak Nitrite Ltd. (supra), Benzo Chem Industrial (P) Ltd. (supra) and C.L. Gupta Export Ltd. (supra) underscore a common principle that environmental compensation must be rational, proportionate and reasoned. While turnover cannot be a blunt instrument, at the

same time, it cannot be excluded as a relevant factor where the facts so warrant. The present determination falls within the permissible zone delineated by this Court in Deepak Nitrite Ltd. (supra), Goel Ganga Developers (supra) and Vellore District Environment Monitoring Committee (supra) and it does not suffer from the infirmities which weighed with the Court in Benzo Chem Industrial (P) Ltd. (supra) and C.L. Gupta Export Ltd. (supra).

40. Much emphasis was laid on the methodology formulated by the CPCB for computation of environmental compensation. A close reading of the CPCB guidelines, however, reveals that they are neither of universal application nor intended to operate as a rigid formula across all categories of violations. The guidelines postulate an illustrative computation, expressed as EC PI x Nx R x S x LF, where the variables are designed to capture the pollution potential of an industrial sector (Pollution Index), duration of violation, scale of operation, locational sensitivity and a deterrent monetary factor. Significantly, the very architecture of the formula is premised on categorisation of industrial units into red, orange and green sectors, with assumed pollution indices and minimum daily compensation thresholds, thereby underscoring its sector-specific orientation. The relevant clauses of the CPCB Guidelines read as follows:

> "1.5.1. To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, b and c, Environmental Compensation may be calculated based on the formula "EC PI x Nx R x S x LF", wherein, PI may be taken as 80, 50 and 30 for red, orange and green category of industries, respectively, and R may be taken as 250. S and LF may be taken as prescribed in the preceding paragraphs.
>
> 1.5.2. In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations. 1.5.3. The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.

1.5.4. EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules."

41. Clearly, Clause 1.5.1 limits the application of the formula to cases where directions are issued by the CPCB under the Environment Protection Act, 1986 and only in respect of specified categories of violations. In contradistinction, clause 1.5.2 expressly contemplates that in other classes of cases, environmental compensation is to be determined only after detailed investigation by expert institutions, with a focus on remediation, restitution and site- specific measures. The guidelines. further clarify, in clause 1.5.4, that environmental compensation is not a substitute for statutory action under the Air Act, Water Act or the Environment Act. The cumulative reading of these provisions leaves no manner of doubt that the CPCB framework is facilitative and indicative, not

prescriptive or exhaustive. It furnishes a structured reference to inform regulatory and adjudicatory discretion, but does not fetter the NGT's authority to mould compensation in a manner commensurate with the nature of the project, the gravity and duration of non-compliance, and the overarching objective of environmental restitution under the polluter pays principle. This conclusion stands further fortified by the fact that the NGT itself applied the said methodology to determine while determining environmental compensation, KEYSTONE had to bear."

45. The quantification of the environmental compensation which is based on the CPCB methodology prepared by the CPCB on the direction of the Courts in Paryavaran Suraksha matter, the Hon'ble Supreme Court in Municipal Corporation of Greater Mumbai Vs. Ankita Sinha: (2022) 13 SCC 401, held as follows:-

> "36. The laudatory objectives for creation of NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfils the object of the Act. [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62, New India Assurance Co. Ltd. v. Nusli Neville Wadia, (2008) 3 SCC 279]. The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects. .....x.....x.....x.....x.....
>
> 47. We have earlier discussed that NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active "dispute", but the formulation of decisions.
>
> .....x.....x.....x.....x.....
>
> 72. As earlier seen, Section 20 of the NGT Act which includes the term "decision", in addition to "order" and "award", also require the Tribunal to apply the "precautionary principle" and the statutory mandate being relevant is extracted:
>
> .....x.....x.....x.....x.....
>
> 73. The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other "decisions" or

> "orders" to governmental authorities or polluters, when they fail to "to anticipate, prevent and attack the causes of environmental degradation" [Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647, S. Jagannath v. Union of India, (1997) 2 SCC 87, Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371]. Two aspects must therefore be emphasised i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain."

46. Accordingly, the State PCB is regulatory body to calculate the environmental compensation in accordance with the expert opinion with aid of the CPCB methodology and statute mandates for restitution, corrective intervention and fact finding even in situations where a conventional lis may not arise and it cannot be said that the methodology adopted by the State PCB on the basis of the parameter laid down by the CPCB is impermissible. The Hon'ble Supreme Court in the above noted case in Civil Appeal No.7187 of 2022 decided on 30th January, 2026, has noted as follows:-

> "46.2. This Court has consistently underscored that environmental compensation must rest on a foundation of rationality, proportionality and reasoned assessment. While project turnover or cost cannot be applied mechanically as a blunt instrument, it nevertheless remains a relevant and permissible factor where the factual matrix so warrants. The determination of compensation, when undertaken within this calibrated framework and guided by the parameters delineated in Deepak Nitrite Ltd. (supra), Goel Ganga Developers (supra) and Vellore District Environment Monitoring Committee (supra) does not attract the infirmities noticed in Benzo Chem Industrial (P) Ltd. (supra) and C.L. Gupta Export Ltd. (supra), and must, therefore, be sustained as falling within the permissible zone of judicially recognised discretion.
>
> .....x.....x.....x.....x.....
>
> 46.4. The CPCB framework, on a conjoint reading of Clauses 1.5.1, 1.5.2 and 1.5.4, makes it abundantly clear that the formula-based methodology is confined to limited categories of violations arising from directions issued under the Environment (Protection) Act, 1986, and that in other classes of cases, the determination of environmental compensation must be preceded by a detailed, site-specific and expert-driven assessment with emphasis on remediation and restitution. The guidelines, at the same time, expressly recognise that such compensation is not a substitute for independent statutory action under the Air Act, Water Act or the Environment Act. The CPCB framework, therefore, operates as a facilitative and indicative tool, and not as a rigid or exhaustive code.

47. The various pronouncements of the Courts and the Hon'ble Supreme Court are summarised as follows:-

> "1. M.C. Mehta Vs. Union of India, (1987) 1 SCC 395: 1987 SCC (L&S) 37 Brief & Rulings: Once the activity carried is on is hazardous or inherently dangerous, the 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.
>
> 2. M.C. Mehta vs Union Of India & Others, 1988 SCR (2) 530 (Kanpur Tanneries) Brief & Rulings: Despite the Court's order, it was revealed that the tanneries in Kanpur were operating illegally for all 30 days instead of the Government-mandated 15 days per month. These tanneries have also been discharging contaminated water into the river Ganga, continuing their harmful practices despite legal orders.
>
> 3. Vellore Citizens Welfare Forum vs Union Of India & Ors, AIR 1996 SUPREME COURT 2715, Polluter Pays Principle- The Polluter Pays Principle has been held to be a sound principle by the Court in Indian Council for Enviro-Legal Action Vs. Union of India [(1996) SCC 212 : JT (1996) 2 SC 196]. The "Polluter Pays Principle" interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.
>
> 4. Indian Council for Enviro-Legal Action vs Union Of India & Ors. 1999 SCC (3) 212 (Bicchri Industrial Cluster 1999) Brief & Ruling: The Court ordered the company to pay Rs. 37.4 crore for remediation, however after the delay of payment, in 2011, the Court further directed the Company to pay fine along with the compound interest at 12% per annum from November 1997 until the amount was fully paid.
>
> 5. A.P. Pollution Control Board v. M.V. Nayadu (1999) 2 SCC The Court held that it is the duty of the State under the Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter- generational equity.
>
> 6. M.C. Mehta Vs. Kamal Nath (2000) 6 SCC 213: 2000 SCC OnLine SC 963 Brief & Ruling: The industries are liable to not only compensate but also bear the costs for restoring the river. The Court while awarding damages also enforce the "Polluter Pays Principle".

7. Paryavaran Suraksha Samiti & another v. Union Of India & The Principal Bench of the NGT observed that CPCB may assess and recover compensation for the environmental damage and the funds will be utilized for future action plan by CPCB within three months with a separate account. The Tribunal also accepted the formula for computing environmental compensation: EC = PI x N x R x S x LF.

8. United States v. BP Exploration & Production, Inc. 21 F. Supp. 3d 657 (E.D. La. 2014) Deepwater Horizon Oil Spill by British Petroleum case The BP Exploration and Production, other allied companies and individuals were held liable for the largest spill of oil and the death of 11 workers as a result of explosion and sinking of the oil drilling rig Deepwater Horizon. The Court placed liability on the basis of Polluter Pays Principle being an absolute and continuing liability extending to a pre-damage state of affairs against one-time payment of compensation.

9. Costa Rica v. Nicaragua (2018) ICJ Rep 15 The ICJ pointed out that damage to the environment and the consequent loss of ability to provide goods and services is compensable under international law. For the methodology of the same, the Court suggested for a "reasonable basis for valuation" to assess the value for restoration of the damaged environment and the loss of ability to produce goods and services.

10. Saloni Ailawadi v. Union of India 2019 SCC OnLine NGT 69 The NGT here, observed that both "Precautionary Principle" and "Sustainable Development" principle are part of Article 21 of the Constitution and Section 20 of the NGT Act, 2010. Also, 'Polluter Pays' principle does not mean polluter can pollute and pay for it, but would include environmental cost as well as direct cost to people.

11. Tata Housing Development Company Ltd. v. Aalok Jagga and others (2019) 14 SCALE 641 The Court pointed out the growing imbalance in ecological balance even when there are well-settled laws to protect the environment, further, it highlighted that the court needs to intervene in the lack of enforcement of those laws as a result of implementation gap.

12. Adil Ansari v. M/S Gupta Exports and Ors.

The NGT in this case, categorized various aspects of violation of environmental law such as any project carried out without requisite permission, violations of provisions under Statutes, polluters involving different bodies and individuals, irreversible environmental damage. The Tribunal highlighted to impose environmental compensation through assessments like risk assessment and ecological risk assessment. It further emphasized Article 14 for determining the apportionment of cost in matters involving collective violation and held that environmental compensation must be founded on some objective and intelligible considerations and criteria, and its calculations must be based on simple and easily applicable principle.

13. T.N. Godavarman Thirumulpad, In re v. Union Of India (2022) 10 SCC 544 : 2022 SCC OnLine SC 716 Brief & Ruling: Herein, the Court clarified the principle of "Sustainable Development". It was held that while applying this principle, "the development which meets the needs of the present without compromising the ability of the future generations to meet their own ends" should be kept in mind. The courts were directed to balance development needs with the protection of the environment and ecology.

14. Bajri Lease Lol Holders Welfare Society Vs. State of Rajasthan (2022) 16 SCC 581 Brief & Rulings: The CEC has recommended imposition of exemplary penalty of Rs. 10 lakh per vehicle and

Rs. 5 lakh per cubic metre of sand seized, which would be in addition to what has already been ordered/collected by the State agencies as compensation. The polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology as per "Polluter Pays Principle".

15. In People Health and Development Council represented by its Secretary, Erode-5 Vs. State of Tamil Nadu and Anr. 2005 SCC OnLine Mad 110 Brief & Rulings: The Madras High Court has pointed out measures and suggested that the parameters TDS in the effluent discharged from the existing primary and secondary treatment system could be contained less than 2100 mg/lit. under the individual Effluent Treatment Plans only by implementing suitable membrane technologies (Reverse Osmosis System) with suitable evaporation system as tertiary treatment.

16. In Gujarat Pollution Control Board Vs. M/s. Nicosulf Indst. & Exports Pvt Ltd 2009 (2) SCC 171 Brief & Rulings: This complaint was filed under various sections of the Water (Prevention and Control of Pollution) Act, 1974, for alleging discharging 10,800 litres of polluted water daily during nicotine sulphate production, where the Court held that under Sections 24 and 25 of the Act, every industry is compulsorily required to obtain prior permission or approval of the Board for discharging its polluted water either within or outside the industry as per Section 25(i) of the Act.

17. In MC Mehta Vs. Union of India, (2004) 12 SCC 118 Brief & Rulings: This Court held that in case of a doubt, protection or environment would have precedence over the economic interest. It was further held that precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion.

18. Court on its own Motion Vs. State of HP 2014 SCC Online NGT 1 Brief & Rulings: The persons who are causing pollution in the eco- sensitive areas resulting in environmental hazards must be required to compensate for the damages resulting from their activity as per the "Polluter Pays Principle".

19. Saloni Ailawadi Vs. Union of India 2019 SCC OnLine NGT Brief & Rulings: Environmental Cost is not restricted to those which is immediately tangible but full cost for restoration of environmental degradation.

20. People Health and Development Council vs. State of Tamil Nadu and Another, 2005 SCC Online Mad 110 Brief & Rulings: the Madras High Court held that all tanneries and dying factories have to adopt and implement suitable membrane technologies, reserve osmosis system to adhere the norms namely that the effluent discharge either on land or water course shall not contain constituents in excess of the tolerance limit laid down for TDS as 2100 mg/lit. Though tanneries bring more employment and revenue, but life, health and ecology have greater importance to the people.

21. Research Foundation for Science (18) v. Union Of India (2005) 13 SCC 186 Brief & Rulings: under polluter pay principal polluter is also liable to pay 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 damages it will include full environmental cost and not just those which are

immediately tangible.

22. Deepak nitrite Ltd. v. State of Gujarat (2004) 6 SCC 402 Brief & Rulings: The court clarified that the actual degradation of the environment is not a necessary condition for the application of pollution pays principle, as long as the offending activities have the potential of degrading the environment.

23. T.N. Godhavarman Thirumulpad Vs. Union of India,: In Re.:

> (2025) 2 SCC 641, Brief & Rulings: The principle of restoration of damaged ecosystem would require the respondent to promote the recovery of damaged or threated species or environment. Bringing the culprits to face the proceedings is a different matter and restoration of the damage already done is a different matter.

24. M/s Rhythm County Vs. Satish Sanjay Hegde & Ors.), (2026) INSC 102, Civil Appeal No.7187 of 2022 decided on 30.01.2026, Brief & Rulings: The methodology for determination of the environmental compensation on the basis of CPCB formula is permissible and in exercising the adjudicatory functions, for restitution, corrective interventions and fact finding, it is appropriate to compensation the environmental violations by the violator."

48. The perusal of the above pronouncements discloses that the principle of Polluters to Pay is a law which does not permit any violator to pollute and pay. Secondly, the amendment to the Air Act and Water Act and the provision contained in the Air Act and Water Act gives ample power to the State PCB to restitude the damages and recover the environmental compensation from the violator with regard to the any fault by the State PCB while calculating the environmental compensation. Though, the principle of natural justice has been challenged, but the Appellants have not able to show as to on what point of calculation the State PCB has wrongly calculated it.

49. We have also examined the amount of environmental compensation and it is in accordance with the guidelines issued by the CPCB which has mandate of law and procedure followed by the National Green Tribunal in several cases which have been discussed above. The parameter of some percentage at the project may be more harmful to the units for the reasons that for a little violation, the cost be recovered on the basis of the project cost. While the present methodology of calculation is dependent on the index of the violation and the days of the violations.

Nothing has been shown by the Appellants as to whether any more days have been calculated by the State PCB. The State PCB has argued that the calculation should be from the date of violation but it has been calculated from the date of inspection where it was found that the units are violating the law. In Goyal Ganga Developers case, the principle laid down by the Hon'ble Supreme Court was 5% of the project cost and in some of the cases it was on the basis of calculation on the above formula.

50. The Hon'ble Supreme Court in (2026) INSC 102, Civil Appeal No.7187 of 2022 (M/s Rhythm County Vs. Satish Sanjay Hegde & Ors.), decided on 30.01.2026, held that the methodology for determination of the environmental compensation on the basis of CPCB formula is permissible and

in exercising the adjudicatory functions, for restitution, corrective interventions and fact finding, it is appropriate to compensation the environmental violations by the violator. In light of Vellore Citizens' Welfare Forum Vs. Union of India: (1996) 5SCC 647, and in Karnataka Industrial Area Development Board Vs. Sri C. Kenchappa & Ors.: (2006) 6 SCC 371, it must be taken into account that Tribunal is required to carry out preventive and protective measures as well as to hold the authorities accountable for failing to uphold environmental interest. Challenging the power of the Authority or the Board does not mean that the unit has every right to violate it.

There must be a check and balance on the violators. The rule is made to prevent the violation and not to prevent the authority to take action.

The principle of Polluter to Pay and Precautionary Principle are laid down by the Hon'ble Supreme Court to decide the cases of environmental matters. The interpretation and provisions must be read with the intention for the protection of the right under Article 21 and also deal with the vital environmental policy and its regulatory aspects not to the deficiencies in the administration actions and to permit the violator to continue the violation and cause air and water pollution against the environmental rules.

51. If we examine in light of the order of the Hon'ble Supreme Court in Municipal Corporation of Greater Mumbai Vs. Ankita Sinha: (2022) 13 SCC 401, and M/s Rhythm County case noted above, we found that the calculation method which has been initiated by the CPCB methodology finds support and further action has been initiated in accordance with this method. The Hon'ble Supreme Court has clearly laid down that the adopting an applicability of the CPCB methodology does not depart the judicial function rather it evidences an exercise of informal discussion where expert finding were gauged, filtered and integrated into a reasoned adjudicatory outcome. Such exercise is a technical assistance.

52. In view of the above discussion, the contention as raised by the learned Counsel for the Appellants with regard to the non-compliance of the principle of natural justice or not providing the opportunity of hearing, have no legs to stand and have no merits and not acceptable. The methodology adopted by the State PCB have been duly recognised by the Hon'ble Supreme Court as discussed above and this methodology has not been challenged by the Appellants with regard to the calculation of any amount, thus, there is no fault in the calculation of the environmental damage. The State PCB has power to proceed to close the unit or industrial institution or direct the authorities to disconnect the electricity power and further to recover the environmental damages.

Out of these three options, the first and two options if adopted by the State PCB then it will be the national loss, social loss and loss of the unit also. The purpose of the law is to protect the environment and not to close the unit. Accordingly, the better option to compensate and remediate the damages which has been caused by the violator is main purpose of the law and the State PCB has adopted the above provisions to fulfil the goal of the environmental law. Accordingly, the State PCB has power to impose environmental damage and further calculated the amount of environmental compensation according to the parameters laid down by the CPCB and according to rules.

53. In the matter of DPCC quoted above, it was fully discussed that after amendment there is not conflict between the powers of the State Board to direct payment of environmental damage compensation under Sections 33A and 31A of the Water Act and the Air Act and the powers of the adjudicating officer to impose penalty under Chapter VII of the Water Act and Chapter VI of the Air Act, both are the different things, in addition to the environmental damage compensation for restitution of the environment, the proceedings may be initiated before the adjudicating officer for imposing the penalty according to rules.

54. In accordance with the T.N. Godhavarman Thirumulpad Vs. Union of India,: In Re.: (2025) 2 SCC 641, the principle of restoration of damaged ecosystem would require the respondent to promote the recovery of damaged or threatened species or environment. Bringing the culprits to face the proceedings is a different matter and restoration of the damage already done is a different matter.

55. In view of the above discussion, the Appeals have no merit and, thus, deserve to be dismissed and accordingly dismissed. A copy of the order be kept on other records. The amount of environmental damage compensation be deposited to the environmental fund and should be utilised for restoring the damaged environment taking remedial actions according to rules.

56. With these observations, the Appeals along with pending I.As. stand disposed of.

Sheo Kumar Singh, JM Sudhir Kumar Chaturvedi, EM 08th May, 2026, Appeal No. 16/2024 (CZ), Appeal No. 17/2024 (CZ), Appeal No. 18/2024 (CZ), Appeal No. 19/2024 (CZ), Appeal No. 20/2024 (CZ), Appeal No. 21/2024 (CZ), Appeal No. 22/2024 (CZ), Appeal No. 23/2024 (CZ), Appeal No. 24/2024(CZ), Appeal No. 25/2024 (CZ), Appeal No. 26/2024 (CZ), Appeal No. 27/2024 (CZ), Appeal No. 29/2024 (CZ), Appeal No. 30/2024 (CZ), Appeal No. 31/2024 (CZ), Appeal No. 32/2024 (CZ), Appeal No. 33/2024 (CZ), Appeal No. 34/2024 (CZ), Appeal No. 35/2024 (CZ), Appeal No. 36/2024 (CZ) Appeal No. 38/2024 (CZ), Appeal No. 39/2024 (CZ) & Appeal No. 02/2025 (CZ) AK