

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

Original Application No. 593/2017
(W.P.)(Civil) No. 375/2012)

Paryavaran Suraksha Samiti & Anr.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 19.02.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

For Respondent (s): Mr. Shlok Chandra, Advocate for CPCB

ORDER

1. The issue for consideration is establishment and functioning of ETPs/CETPs/STPs. The Hon'ble Supreme Court vide order dated 22.02.2017 in *Paryavaran Suraksha Samiti Vs. Union of India*¹ directed that the said matter be monitored by this Tribunal.
2. Accordingly, on 25.05.2017, notice was issued to the Central Pollution Control Board (CPCB), all the State Pollution Control Boards (SPCBs)/ Pollution Control Committees(PCCs) and the Ministry of Environment, Forest and Climate Change (MoEF&CC). They filed their status reports

¹ (2017) 5 SCC 326

and found serious deficiencies. Actions were initiated to remedy the situation. After considering the status report, the Tribunal, vide orders dated 04.07.2017, 18.09.2017 and 11.10.2017, sought information about the steps taken by the SPCBs/PCCs.

3. Vide order dated 03.08.2018, the matter was reviewed and it was noted that having regard to the fact that in absence of functional ETPs/CETPs/STPs, untreated effluents are discharged in water bodies leading to contamination of water. Such contamination is cause of various diseases and also adverse consequence on aquatic organism due to decreased level of oxygen.
4. The Tribunal directed the CPCB to prepare an action plan. Direction was also given for monitoring by a Committee of two officers – one each representing MoEF&CC and CPCB at least once in every month. CPCB was required to place the progress report every three months on the website and take penal action for failure by way of recovery of compensation for damage to the environment, apart from other steps.
5. CPCB has filed its reports dated 04.09.2018, 28.11.2018 and 12.12.2018. In the report dated 04.09.2018, an action plan has been proposed which includes monitoring by the SPCBs/PCCs and a mechanism for penal action. In the report dated 28.11.2018, the compliance status of different States has been summed up as follows:

“5.0 Compliance Status of ETPs/CETPs/STPs reported by SPCBs/PCCs

As on 26.11.2018, the compliance status reports for ETPs/CETPs/STPs were received from 25 SPCBs/PCCs namely- Andhra Pradesh, Chandigarh, Meghalaya, Puducherry, Tamil Nadu, Jammu and Kashmir, Tripura,

Telangana, Punjab, Bihar, Nagaland, Sikkim, Chhattisgarh, Daman & Diu, Dadra Nagar Haveli, Goa, Arunachal Pradesh, West Bengal Madhya Pradesh, Kerala, Odisha, Himachal Pradesh, Mizoram, Karnataka and Maharashtra. However, no such compliance status reports were received from 11 SPCBs/PCCs, namely, Andaman and Nicobar Islands, Assam, Delhi, Gujarat, Haryana, Jharkhand, Lakshadweep, Manipur, Rajasthan, Uttar Pradesh and Uttarakhand. The information received from the 25 SPCBs/PCCs were analysed and the shortcomings observed were communicated to concerned SPCBs/PCCs for rectification. Subsequently, updated/corrected information, after rectifying the shortcomings, were received from 8 SPCBs/PCCs, namely- Tamil Nadu, Jammu and Kashmir, Meghalaya, Tripura, Puducherry, Maharashtra, Goa and Daman Diu.

The State-wise summary of the compliance status, including the updated status based on the information received from SPCBs/PCCs is given at Annexure-IX.

- i. As per the data received from 25 SPCBs/PCCs, out of total 44838 number of industries requiring ETPs, 44100 industries are operating with functional ETPs and 439 industries are operating without ETPs. Show-cause notices and closure directions have been issued to 164 and 284 industries respectively for operating without ETPs. Legal cases have been filed against 5 industries and action is under process for 259 industries. Out of 44100 operational industries, 42035 industries are complying with environmental standards and 701 industries are non-complying. Show-cause notices and closure directions have been issued to 388 and 138 industries respectively for non-compliance. Legal cases have been filed against 4 industries and action is under process for 179 industries.
- ii. As per the data received from 25 SPCBs/PCCs, there are total 97 CETPs, out of which 84 CETPs are complying with environmental standards and 11 CETPs are non-complying. Show-cause notices and closure directions have been issued to 7 and 4 CETPs respectively for noncompliance. Legal cases have been filed against 6 CETPs and action is under process for 2 CETPs.
- iii. As per the data received from 25 SPCBs/PCCs, there are total 3956 STPs, out of which, 3713

STPs are complying with environmental standards and 243 STPs are non-complying. Show cause notices and closure directions have been issued to 101 and 11 STPs respectively for noncompliance. Legal cases have been filed against 9 STPs and action is under process for 75 STPs.

iv. As per the data received from 25 SPCBs/PCCs, there are 20 CETPs in construction stage and 12 CETPs is in proposal stage. Whereas, for STPs, 139 projects are under construction stage and 177 projects are under proposal stage.

v. As per the data received from 25 SPCBs/PCCs, 5 SPCBs/PCCs namely- Andhra Pradesh, Goa, Himachal Pradesh, Meghalaya and Telangana are displaying OCEMS data in public domain. The links provided by Bihar, Kerala and Maharashtra are password protected and not available in public domain. Jammu and Kashmir, Madhya Pradesh, Punjab and Tamil Nadu have not provided appropriate web links. Daman and Diu, Dadra and Nagar Haveli and Karnataka have clarified that they are in the process of providing the web-links in this regard.”

6. The report dated 12.12.2018 annexes an amended Annexure 7 which relates to methodology for assessing environmental compensation and action plan to utilize the fund.

“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:

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

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 PCB/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:

| Sl. No. | Population* (million) | Location Factor# (LF) |
|---------|-----------------------|-----------------------|
| 1. | Less than 1 | 1.0 |
| 2. | 1 to <5 | 1.25 |
| 3. | 5 to <10 | 1.5 |
| 4. | 10 and above | 2.0 |

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

For critically polluted areas / Ecologically Sensitive areas, the scope of LF may be examined further.

- f. In any case, minimum Environmental Compensation shall be R 5000/day.

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.

3.3 As Committee also discussed that the EC shall also be levied on all violations of Graded Response Action Plan (GRAP) in Delhi NCR. The implementing agencies for each activity have been identified and the EC will be levied on these agencies. These violations attract graded amounts of EC depending on the state of ambient air quality, which are given in Annexure-III.”

7. The recommendations in this regard are as follows:-

“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 5 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.

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

5.3 In case of violations of GRAP, as enforced in Delhi-NCR, Environmental Compensation commended in Annexure-III may be levied to defaulting agencies.

8. Annexure 3 is as Follows:-

“Annexure-III

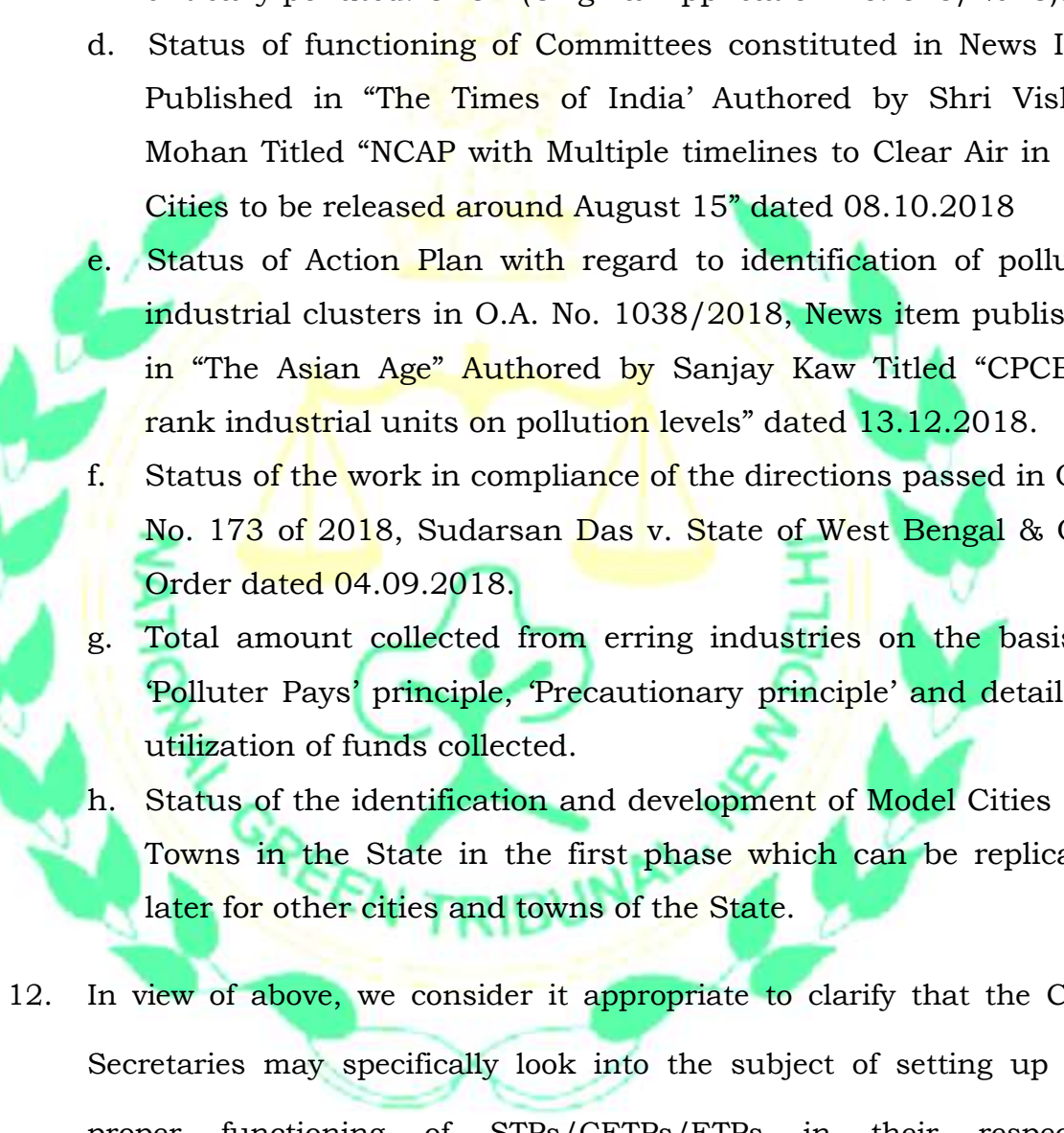
Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi NCR

| ACTIVITY | STATE OF AIR QUALITY | ENVIRONMENTAL COMPENSATION |
|--|-----------------------|----------------------------|
| Industrial Emissions | Severe+/Emergency | Rs. 1.0 Crore |
| | Severe | Rs. 50 Lakh |
| | Very Poor | Rs. 25 Lakh |
| | Moderate to Poor | Rs. 10 Lakh |
| <i>Vapour Recovery Systems (VRS) at Outlets of Oil Companies</i> | | |
| a) Not installed | Target Date | Rs. 1.0 Crore |
| b) Non-Functional | Very poor to Severe + | Rs. 50.0 Lakh |
| | Moderate to poor | Rs. 25.0 Lakh |
| Construction sites (Offending plot more than 20,000 Sq.m.) | Severe +/Emergency | Rs. 1.0 Crore |
| | Severe | Rs. 50 Lakh |
| | Very Poor | Rs. 25 Lakh |
| | Moderate to Poor | Rs. 10 Lakh |
| Solid waste/garbage dumping in Industrial Estates | Very poor to severe + | Rs. 25.0 Lakh |
| | Moderate to Poor | Rs. 10.0 Lakh |
| <i>Failure to water sprinkling on unpaved roads</i> | | |
| a) Hot-spots | Very poor to Severe + | Rs. 25.0 Lakh |
| b) Other than Hot-spots | Very poor to Severe + | Rs. 10.0 Lakh |

9. We are informed that a separate report is being prepared for municipal solid waste and sewage. The CPCB may also include the subject of loss

to ecological services due to illegal mining, due to deforestation or any other damage to the environment, even though the same may not be directly on account of discharge of effluents or sewage. The CPCB may also take inputs from other expert bodies such as Institute of Economic Growth, Centre for Science and Environment (CSE), The Energy and Resources Institute (TERI) and Indian Institute of Forest Management, Bhopal.

10. We may also note that directly linked to the subject of contamination of water by discharge of untreated effluents and sewage is the issue of remedial action to be taken for 351 critically polluted river stretches identified by the CPCB which is subject matter of consideration before this Tribunal in *Original Application No. 673/2018, News item published in "The Hindu" authored by Shri Jacob Koshy titled "More river stretches are now critically polluted: CPCB.*
11. Vide orders dated 20.09.2018 and 19.12.2018, the Tribunal directed the concerned States to prepare action plans to bring the water quality as per prescribed standards. This direction implies taking of steps to set up STPs/ETPs/CEPTs and to monitor their proper functioning. Thereafter, on 16.01.2019, in *Original Application No. 606 of 2018 Compliance of Municipal Solid Waste Management Rules, 2016*, the Tribunal directed presence of Chief Secretaries of all the States on different dates with a view to review the progress in different States on vital issues affecting environment. Such vital issues specifically include:

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- a. Status of compliance of SWM Rule, 2016, Plastic Waste Management Rules, 2016 and Bio-Medical Waste Management Rules, 2016 in their respective areas.
 - c. Status of the Action Plan in compliance vide order dated 20.09.2018 in the News Item published in “The Hindu” authored by Shri Jacob Koshy Titled “More river stretches are now critically polluted: CPCB (Original Application No. 673/2018).
 - d. Status of functioning of Committees constituted in News Item Published in “The Times of India’ Authored by Shri Vishwa Mohan Titled “NCAP with Multiple timelines to Clear Air in 102 Cities to be released around August 15” dated 08.10.2018
 - e. Status of Action Plan with regard to identification of polluted industrial clusters in O.A. No. 1038/2018, News item published in “The Asian Age” Authored by Sanjay Kaw Titled “CPCB to rank industrial units on pollution levels” dated 13.12.2018.
 - f. Status of the work in compliance of the directions passed in O.A. No. 173 of 2018, Sudarsan Das v. State of West Bengal & Ors. Order dated 04.09.2018.
 - g. Total amount collected from erring industries on the basis of ‘Polluter Pays’ principle, ‘Precautionary principle’ and details of utilization of funds collected.
 - h. Status of the identification and development of Model Cities and Towns in the State in the first phase which can be replicated later for other cities and towns of the State.
12. In view of above, we consider it appropriate to clarify that the Chief Secretaries may specifically look into the subject of setting up and proper functioning of STPs/CETPs/ETPs in their respective jurisdiction. The directions of CPCB in the present case may have a bearing on the said proceedings. Accordingly, we direct the CPCB to forward a copy of its report to all the Chief Secretaries so that the same

can be looked into before the Chief Secretaries appear before this Tribunal with the progress report in the matter.

13. The CPCB may also compile its monitoring report with reference to 97 CETPs installed in different States after undertaking study about status of their efficient functioning and remedial steps required in the matter. This matter is directly linked to the remedial steps for 100 critically polluted industrial clusters being dealt with by this Tribunal in *Original Application No. 1038 of 2018*, News item published in "The Asian Age" Authored by Sanjay Kaw Titled "Central Pollution Control Board to rank industrial units on pollution levels" wherein certain directions have already been issued to the CPCB for coordination of the steps to be taken. The issue is also being considered in *Original Application No. 95/2018, Aryavrat Foundation Vs. M/s Vapi Green Enviro Ltd. & Ors.* and has been dealt with vide order dated 11.01.2019. The same is now listed on 19.03.2019. The CPCB may furnish its report in the matter in the said case. A copy of this order be placed in the files of *Original Application No. 606/2018*, *Original Application No. 673/2018* and *Original Application No. 1038/2018*.

14. We note the statement made by the learned Counsel for the CPCB that the following States have not furnished the relevant data to the CPCB:

- a) Assam
- b) Delhi
- c) Haryana
- d) Jharkhand
- e) Lakshadweep
- f) Manipur

g) Uttar Pradesh

h) Uttarakhand

15. This aspect may be looked into by the Chief Secretaries and progress on the subject may be furnished by the concerned Chief Secretaries at the time of their appearance before this Tribunal.

16. Further report received from the CPCB may also be placed for consideration on or before 31.05.2019.

17. The CPCB may send a copy of this order to the Chief Secretaries of all the States by e-mail for compliance.

List for further consideration on 19.08.2019 alongwith Original Application No. 95/2019.



Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

February 19, 2019
Original Application No. 593/2017
(W.P.)(Civil) No. 375/2012)
P & DV