

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

.....

ORIGINAL APPLICATION NO. 337 OF 2016

IN THE MATTER OF:

Shailesh Singh,
S/o Mr. Babu Singh
G-109, Preet Vihar
Delhi-110092

..... Applicant

Versus

1. State of Uttar Pradesh
Through its Chief Secretary
Lal Bahadur Sastri Bhawan,
Lucknow, Uttar Pradesh-226001
2. M/S Balrampur Chini Mills Ltd.
Unit – Balrampur, Distt.-Balrampur
Uttar Pradesh-271201
3. M/S Balrampur Chini Mills Ltd.
Unit – Babhnan, Distt.-Gonda,
Uttar Pradesh-271313
4. M/S Manakpur Chini Mills
A Unit of Balrampur Chini Mill Ltd.
P.O. Datauli, Tehsil – Mankapur, Distt-Gonda,
Uttar Pradesh-271306
5. M/S Rauzagaon Chini Mills
A Unit of Balrampur Chini Mill Ltd.
P.O. Rauzagaon, Distt- Barabanki,
Uttar Pradesh-225402
6. Uttar Pradesh Pollution Control Board
Through its Chairman/ Secretary
Building No. TC-12V, Vibhuti Khand,
Gomti Nagar, Lucknow, Uttar Pradesh-226010
7. Central Pollution Control Board
Through its Chairman/ Secretary
Parivesh Bhawan, East Arjun Nagar,
Near Karkarduma Court,
Shahdara, Delhi
8. Central Ground Water Authority
West Block-2, Wing-3, R.K. Puram,
Sector-1, New Delhi-110066

.....Respondents

COUNSEL FOR APPLICANT:

Mr. Sudeep Dey, Advocate

COUNSEL FOR RESPONDENTS :

Mr. Abhishek Yadav, Adv. for Respondent Nos. 1&4
Mr. B.V. Niren with Mr. Varun Bhati, Adv. for Respondent No. 8
Mr. Daleep Kr. Dhyani, Adv. for Respondent No. 3
Mr. Rajkumar, Adv. & Mr. Bhupendra Kr., LA. For Respondent No. 7
Mr. Attin Shankar Rastogi Adv. for MoEF Mr. A.R. Takkar, Mr. Ankur Sharma and Mr. Narinder K. Verma, Adv.

JUDGMENT

PRESENT:

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)

Hon'ble Mr. Bikram Singh Sajwan (Expert Member)

Hon'ble Dr. Ajay A. Deshpande (Expert Member)

Reserved on: 21st April, 2017

Pronounced on: 27th April, 2017

1. Whether the judgment is allowed to be published on the net?
2. Whether the judgment is allowed to be published in the NGT Reporter?

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

The Applicant has filed the present application under Section 14 and 15 (b) & (c) r/w Section 18(1) & (2) of the National Green Tribunal Act, 2010 (for short, "Act of 2010") claiming that Respondents no. 2 to 5 respectively, are illegally operating without obtaining requisite permission from the Central Ground Water Authority (for short, "CGWA") and the Uttar Pradesh Pollution Control Board (for short, "UPPCB"). They should be directed to stop unlimited withdrawal of groundwater. The Applicant in the present application has prayed to direct the State Administration to conduct comprehensive study with regard to impact of water and air pollution caused by these respondents as well as a study with regard to lowering of the

groundwater table in the area. The Applicant claims to be an aggrieved person, a journalist by profession and a public spirited person, realising the adverse effects of environmental degradation and pollution committed by Respondents no. 2 to 5, who are operating their distilleries or sugar plants in collusion with the official of other respondents, the Applicant has moved the present application. It is the case of the Applicant that the private respondents are illegally and unauthorisedly extracting groundwater to a large extent. The Respondents no. 2 to 5 have been allowed to extract groundwater to the extent of 18,000 KLD, 1,430 KLD, 2,395 KLD and 8,100 KLD, respectively. The respondents are causing pollution to water bodies by extracting groundwater and simultaneously discharging large quantity of effluent/waste water without treatment into river Ganga through river Rapti and Ghaghra. These private Respondents are producing nearly 60 to 160 KL of alcohol per day. These distilleries have been established during the period from 1990 to 2006. They produce huge quantity of alcohol from molasses and are operating the turbine generators of 24.55 MW to 37 MW. The primary source of water of all these distilleries is underground water and these distilleries have not even obtained NOC/permission from the CGWA. The CGWA has issued guidelines for the use of groundwater and it is primarily to be used for drinking purpose. The depletion in the groundwater is causing environmental and ecological impacts and is a source of serious pollution. These distilleries are causing pollution including air pollution. The processing of molasses results in release of the gases like ammonia, carbon dioxide, nitrogen dioxide, sulphur dioxide, etc. They also do not handle their municipal solid waste in accordance

with the Solid Waste Management Rules, 2016. The Tribunal in the case of *Krishan Kant Singh vs. M/S Deoria paper Ltd.* (OA No. 317/14) had passed an order dated 15th April, 2015 directing the CGWA to deal with such defaulters and consider the remedies that are required to be taken for this purpose. It is on these premises that the Applicant has made the above prayers.

2. The Respondents have filed their respective replies to the application. Respondents no. 2 to 5 have denied the allegations made in the application and have stated that they are carrying on their distilleries in accordance with law. They have obtained Consent to Operate from UPPCB. However, they did not have permission from CGWA for which Respondents no. 2-4 have already submitted applications but the said applications are stated to be pending with the authority. Respondent no. 5 has not even made an application for obtaining NOC. These private respondents have also denied that they are causing any air pollution or are polluting river Ganga directly or indirectly. The Central Pollution Control Board (for short, "CPCB") has filed a separate reply where it is stated that these are seriously polluting industries and were required to install anti pollution devices and achieve the prescribed norms. However, according to the inspection report, CPCB had inspected one of the private respondents i.e. Respondent no. 2 (M/S Balrampur Chini Mills Ltd.) and based upon the observations made in the inspection report, show cause notice under Section 5 of the Environment (Protection) Act, 1986 (for short, "Act of 1986") was issued and follow up action in that behalf was being taken. In the inspection report, it was noticed that the unit is not complying with the consent conditions for achieving zero liquid

discharge and is discharging effluent without conforming to the standards notified under the Act of 1986 and a time of 15 days was granted to the distilleries to submit their objections, if any, for which the observations were recorded in the notice dated 22nd June, 2016.

3. According to the Respondent no. 6 i.e. UPPCB, it is stated that the industries had applied for permissions to CGWA and the Regional Director of the CGWA has recommended for grant of NOC to Respondent no. 2 vide its letter dated 26nd August, 2016. New guidelines were issued in the year 2015 by the Respondent no. 7 i.e. CGWA. Respondents no. 2 to 4 are zero liquid discharge units and Respondent no. 5 has been granted permission for discharging its treated waste water in accordance with the norms. It is also averred by the Respondent no. 6 that the leakage of ammonia gas by the applicant would show that it was from the Mankapur Sugar Mill and not Mankapur Distillery. The Electromagnetic flow meters have been installed by the private respondents on the bore-wells.

4. The Respondent no. 2 has stated that its unit had obtained prior Environmental Clearance (for short, "EC") for expansion in the year 2006 vide letter dated 20th June, 2006 which was subsequently amended on 21st December, 2015 for installation of incineration system. Pursuant to the guidelines issued by the CGWA in respect of existing units for drawal of groundwater in November 2015, the unit applied for NOC on 14th July, 2016, as such, as per the criteria of CGWA, the area falls in a safe zone. The industry does not fall in buffer zone or eco-sensitive zone or flood plains or forest area. Respondent no. 2 also claims that it does not discharge effluent into

river Rapti or Ghaghra which ultimately meets river Ganga. It is a zero liquid discharge unit and no hazardous wastes or solid wastes are being discharged into the river system through drains. Respondent no. 3 also states that it had obtained the EC on 27th February, 2004. It had followed the guidelines and applied for obtaining permission from CGWA on 14th July, 2016. The area falls in a safe zone for ground water extraction. The industry is not producing any substance, oil, lubricants etc. which can be termed as hazardous. Respondent no. 3 in its reply filed on 19th September, 2016 has stated that the industry practices biometanation, bio-composting and has a system of zero liquid discharge. The consent is valid for operation for 270 days in the non monsoon period. The unit is in the process of installing a system of concentration and incineration in order to facilitate the industry to work in the rainy season which will ensure continuity of operation, being a zero liquid discharge industry. The same is likely to be made operative very soon. The sludge generated is being used for bio-composting as per the conditions of the consent order granted by the pollution control board. There is no source of emission of ammonia and no use of the same in the process. Respondent no. 4 submits that it has applied for obtaining permission from the CGWA for extraction of groundwater on 14th July, 2016. The industry is practising zero liquid discharge as per the directions of the Board and the consent has been granted for its operation. According to this unit, there is no possibility of ammonia, which is a reduced gas, coming out of the chimney due to combustion of fuel which is an oxidation process. There is no use of ammonia in the plant. There is no detriment to the quality of ground water in the area. Bag filter

system is installed as the air pollution control equipment. Respondent no. 5 has installed pollution control devices for water to achieve zero liquid discharge. This involves activated sludge process and pollution control device for air including air scrubbers which is achieving the Discharge norms of the Board. The unit is operating with valid consent. It has implemented latest technology and complies with all pollution control laws. Respondent no. 5 has sugar plant and no distillery. It falls in safe area for extraction of groundwater. The private respondents have taken up the objection that these areas are not notified areas and being existing units they are not required to obtain NOC. However, they have applied for obtaining NOC. Further, they have stated that the industry, particularly of Respondent no. 2 is zero liquid discharge and not discharging the effluent outside the premises of the industry. They have installed anti-pollution devices and are not causing any pollution either of water or air. Certain documents have been annexed where they have shown compliance of the conditions imposed upon the industry by the Board. The consent is stated to be operative upto December, 2017.

5. The Respondent no. 8 i.e. CGWA in its reply affidavit stated that the stage of development of ground water resources in Balrampur is at 50% while it is 64% in Barabanki and 71% in Gonda respectively. Respondents no. 2 to 4 had submitted their applications for grant of NOC on 14th July, 2016 but the supporting documents as required particularly in relation to Rain Water Harvesting proposal for matching recharge, are yet to be submitted by the Respondents. The said applications are stated to be under process. Though, Respondent

no. 5 has not even submitted the said application. These Respondents are supposed to satisfy the legal requirements for obtaining NOC.

6. To all these replies, the Applicant has filed rejoinder. In the rejoinders, the Applicant has disputed that these industries are zero liquid discharge units. Prior to 1st January, 2016, the private respondents were discharging effluent waste water treated or untreated directly into the surface water meeting into rivers. The CPCB in its inspection dated 22nd June, 2016 found that Respondent no. 2 was discharging effluent waste water into pakka nallah leading to river Rapti through Seowan Nallah and Chande Taal. The obnoxious gases with foul smell were observed around a kilometre of the unit. The distillery was extracting the huge quantity of ground water without permission of CGWA. A specific averment is made in relation to Respondent no. 4 that they are still discharging their trade effluents into the drains and surface water. The unit of Respondents no. 2-5 have been placed under grossly polluting industry by CPCB. Use of sugarcane and chemicals, result into release of hazardous effluents, waste water, sludge and refused chemicals which pollute the surface water leading to rivers through nallahs, which are said to be released by the said respondent. The UPPCB i.e. Respondent no. 6 had issued notices for non-compliance. The Applicant also averred in its rejoinder that the routine inspections by Respondent no. 7 are not sufficient to the problem of pollution and environmental degradation. Respondents no. 6 and 7 should exercise better control, conduct inspections more frequently and impose stringent and appropriate conditions for grant of consent to operate so as to ensure prevention and control of pollution.

7. From the above pleadings of the parties, it is evident that there are serious disputes with regard to working of the private respondents, i.e. Respondents no. 2 to 5 who are causing serious pollution of the water bodies and groundwater by discharging the effluent upon the land.

It is undisputed that the industries of Respondents no. 2 to 5 are highly polluting and they are required to comply with the stringent conditions for prevention and control of pollution as may be imposed upon by the UPPCB (Respondent no. 6) and the CPCB (Respondent no. 7). The record before the Tribunal show that these industries were found to be violating the prescribed norms for discharge of trade effluents from their respective industries and they were issued notices for default, as well as directions for compliance in terms of Section 5 of the Act of 1986. It is in compliance of these directions that these industries had installed Effluent Treatment Plant (for short, "ETP") and taken other steps for becoming zero liquid discharge units. However, certain deficiencies still have been noticed and pointed out by the inspection teams. A joint inspection with regard to incident of 25.05.2016 was conducted and a report was submitted to the District Magistrate on 10th January, 2017. It was stated in the report that there was leakage of ammonia gas from Mankapur distillery which resulted in the death of certain animals and birds. According to the reports of the UPPCB, there was no possibility of death resulting from such pollution. However, the Forest Department has compounded the case departmentally by having a compounding fee of Rs. 50,000/- deposited. In the report it was indicated that the death of the animals and birds could be due to sudden anoxia caused by methane gas or

carbon monoxide (probably) present in the site. It will be useful to refer to the relevant part of the joint inspection report as follows:

“On the incident in question, Shri Shyam Niwas Rai, Sub-Inspector/ investigating officer has recorded in his report dated 22.12.2016 that team of Veterinary officers of veterinary Hospital, Manakpur Conducted Postmortem of dead animals, birds on the spot and prepared report, wherein, correct reasons of death of animal/birds could not be established and probability of death due to carbon monoxide was expressed and for finding out the correct cause of death piece of liver, spleen and intestine from dead bodies (pigs) were preserved and was sent to Forensic Science Laboratory, Lucknow, in which-1. Cause of death of pig, 2. Whether death occurred due to any poisonous gas or poison, then name & nature of gas, 3. And name of poison/poisonous substance was to be examined and report was to be submitted. Availability of any chemical poison has not established in the viscera report received. According to the reports of the U.P. Pollution Control Board and Forest Departments, there is no probability of occurrence of death due to any pollution. Forest Department has compounded this case at departmental level getting deposited compounding fee of Rs. 50,000/-. Mill officers/employees were not found guilty in the said incident and on account of not getting any reason of death, Final Report has been submitted in the case.

Shri Pramod Kumar Tomar, General Manager (Distillery) Mankapur Chini Mills Ltd., Datouli has deposed in his statement that our distillery has capacity of 10 K.L. per day, in which co-product of Sugar Mill i.e. Molasses is used in the form of raw-material. In this process industrial alcohol is produced through fermentation & distillation.

That Effluent Treatment Plant had been established in Distillery according to the parameters of the Uttar Pradesh & Central Pollution Control Board so that it may not affect environment in any manner. Industrial effluent (spent-wash) had been purified through bio mechanization process in the said treatment plant. In this process itself, reverse osmosis plant had also been established, wherein, effluent was filtered through membrane, thereafter, the residue concentrated effluent was collected in pucca constructed lagoons, getting it absorbed on the press mud in bio compost plant, it was used for manufacturing organic fertilizer, which had been distributed amongst sugarcane farmers in this sugar Mill Complex being useful in increasing fertility of land.

This process was based on a scientific method and had been established according to the directions of the Uttar Pradesh and Central Pollution Control Board. No any kind of chemical reaction takes place in it and nor there is any

probability of leakage of any kind of gas in open atmosphere. The said arrangement continued till Mill started Multi-effect Evaporator i.e. upto 30.05.2016.

That the Mill has closed the above-said purifying plant since dated 01.06.2016, getting concentrated effluent through multi-effect evaporator based on the latest technology, it has been burnt in incineration boiler from which electricity has been produced through 6.6 Megawatt turbine through the steam generated out of it. Thus, since dated 01.06.2016 storage work of purified effluent (spent wash) in Lagoon is lying closed absolutely.

That the distance of above-said pucca Lagoon and distillery plant of place of occurrence is 600 meter.

That security guards remain employed day & night continuously in the area of Bio-compost & Lagoon, they keep on taking rounds. Our colony is established at a distance of about 500-600 meter from Lagoon & place of occurrence. Guards Shri Raj Kumar Singh and Ram Kumar Yadav were also present on the day of incident. Neither those guards nor any dweller of colony mentioned about any kind of offensive gas. Had such thing happened then they would have also got affected.

The said bio compost plant had been run for the last about more than 10 years. But no any such incident ever occurred and since the establishment of plant in the year 2007 till today no there is no information about any polluted water/gas leakage from the plant.

Therefore, keeping in view the above-mentioned scientific facts and distance of place of occurrence from distillery, there seems to be no any connection between Mill and this incident.

Thus on perusal of report of the U.P. Pollution Control Board, report of Veterinary Officer, viscera report with report of Sub-Inspector/investigating officer and statement of General Manager (Distillery), it becomes evident that in technical & chemical analysis too, it has not confirmed that cause of death of animals/birds would have been due to any chemical poison. Subsequently, investigating officer too has not got any solid reason/cause of death in his investigation. Consequently, Final Report has been submitted in first Information Report. Thus, it is not established that in the incident occurred on 26.06.2016 death of animals, birds and pigs would have taken place due to any chemical poison. Report is respectfully submitted.”

8. After submission of the said report, the Forest Department obviously compounded the case. The post mortem report prepared by

Dr. Paramhans Rai, Cattle Development Officer, Veterinary Hospital, Mankapur described the cause of death of the birds and animals as follows:

“The said animal (Pig) died due to sudden anoxia which was caused by Methane gas or carbon monoxide (Probably) present at the site of accident.”

9. All these documents alongwith a viscera report had been filed before the Tribunal *vide* affidavit dated 3rd March, 2017. The UPPCB had issued consent order to Private Respondents which is valid upto 31st December, 2017 and is subject to 29 conditions. The due diligence report of Respondents no. 2-4 submitted in July 2016 claimed that these industries had carried out the various directions that had been imposed by the Board. Certain observations and suggestions for improvement had been made even in this report. It was observed that under the consent granted, the units were required to be entirely zero liquid discharge and not to use fuel in the production process. However, the unit was found to be using fuel at boiler for steam generation. The unit was required to improve the environment by adequate plantations. Fly ash and bottom ash generated by the industry should not be disposed of, in any circumstances, on the road, etc. Online stack monitoring system was required to be linked with CPCB. For the violations committed from time to time, the UPPCB has issued notices to the industries. In the notice dated 10th September, 2016, it was stated that the brown colour effluent which is being thrown into the drains/naalas was causing pollution. Brown colour polluted effluent being discharged should be immediately stopped, failing which, action would be taken. This notice was one of the many, issued by the UPPCB and the

directions issued by CPCB. In this case, we are primarily concerned with the incident that occurred in May – June 2016 where, as a result of discharge of polluted effluents from these industries, large number of animals and birds had died. The details of the joint inspection report and the post mortem report have been referred to above by us. These reports clearly demonstrate that the death of the birds and animals were attributable to the air and water pollution caused by the processes of these industries. There cannot be any dispute that ammonia gas would be released in the process of distillery.

10. The SDM had also conducted enquiry, as number of complaints were made and the print media had also taken up the issue with regard to death of the birds and the animals. The SDM, Mankapur, Gonda with other nominated officers including Deputy Chief Veterinary Officer had inspected the site soon after the incident on 25th May, 2016, for the fact finding enquiry. The spot inspection report as already reproduced (supra) clearly indicated the negligence attributable to the industries, resulting in the death of the birds and animals.

11. Besides environmental pollution being caused by all these industries, Respondent no. 4 is directly responsible for causing death of these animals and birds. Animals and birds are part of the environment as it is clear from the definition of the term 'Environment' stated in Section 2(c) of the Act of 2010 and Section 2(a) of the Act of 1986. There is a clear evidence on record that these industries had been causing pollution and even dark brown colour was noticed in the drain. Prior to installation of ETP and anti pollution mechanism by

these industries, in very recent past, they have been operating for years and have been polluting the water bodies, environment and particularly the groundwater.

12. Thus, we have no hesitation in arriving at the conclusion that these industries caused pollution, including illegal and unauthorised discharge of ammonia gas, which resulted in the death of animals and birds.

13. At this stage, we may usefully refer to the precedents on the Principle of Strict Liability. A bench of this Tribunal in the case of *Krishan Kant v. Triveni O.A. No. 317/2014* decided on 10th December, 2015, the Tribunal while discussing the Precautionary Principles and its co-relation with the Principle of Strict Liability held as under:

“14. The Rule of ‘No Fault’ or ‘Strict Liability’ was enunciated by the House of Lords in the case of *Rylands v. Fletcher*, (1868) L.R. 3 H.L. 330, wherein it was stated that if the defendant was not negligent or rather, even if the defendant did not intentionally cause the harm, he could still be held liable under this Rule for the damage or adverse impact of his activity. To succeed in such an action in tort, the claimant was expected to show:

1. That the defendant brought something onto his land;
2. That the defendant made a "non-natural use" of his land (per Lord Cairns, LC);
3. The thing was something likely to do mischief if it escaped;
4. The thing did escape and cause damage.

The rationale behind the rule of Strict Liability is that the activity going within its fold are those entailing extraordinary risk to others, either in seriousness or the frequency of the harm threatened. Extending the basis of such liability, Blackburn, J. held as under:

“We think that the rule of law is, that the person who for his own purposes brings on his lands and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is prima facie answerable for all the damage which is

the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the plaintiff's default; or perhaps that the consequence was of vis major, or the act of god; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."

In the recent past, there has been a basic shift in the approach to environment protection. Earlier, the concept was based on the 'Assimilative Capacity' Rule as is evident from Principle 6 of the Stockholm Declaration of United Nations Conference on Human Environment in 1972. This principle assumed that science could provide policy makers with the information and means necessary to avoid encroaching upon the capacity of the environment to assimilative impacts and it also presumes that relevant technical expertise would be available when environmental harm was predicted and there would be sufficient time to avoid such harm. Under the 11th Principle of the United Nations General Assembly Resolution on World Charter for Nature, 1982, the emphasis shifted to the 'Precautionary Principle', which was then reiterated in the Rio Conference of 1992 in its Principle No. 15. The inadequacy of science is the real basis that has led to the 'Precautionary Principle'. It is based on the theory that it is better to err on the side of caution and prevent environmental harm which may indeed become irreversible.

The Precautionary Principle suggests that where there is identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution, in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or the entity proposing the activity that is potentially harmful to the environment. In the event of uncertainty, presumption should operate in favour of environmental protection and primary onus would shift in light of the presumption in favour of the environment and statutory obligation of the industry as afore referred. The test to be applied is that of a 'reasonable person'.

The 'Precautionary Principle' thus, demonstrates that an activity which poses danger and threat to the environment is to be prevented. Under this Principle, the State Government and the Local Authorities are supposed to first anticipate and then prevent the cause of environmental degradation by checking the activity. Lack of scientific knowledge as to whether particular activity is causing degradation should not stand in the way of government in analysing such harm. 'Onus of Proof' under this Principle is on the actor or the developer to show that the action is environmentally friendly. We must notice here that the provisions of the Act of 2010 under Section 20 mandates that the Tribunal has to apply the 'Precautionary Principle'

while adjudicating the cases under the environmental jurisprudence.”

14. Another aspect of Principle of Strict Liability is the onus of proof. The onus of proof has its direct relation with the application of Precautionary Principle. The Hon'ble Supreme Court of India dealt this Principle in the case of *Vellore Citizens Welfare Forum v. Union of India and others*, (1996) 5 SCC 647, as well as in the case of *A.P. Pollution Control Board v. Prof. M.V. Nayadu (Retd.) & Ors.*, (1999) 2 SCC 718 which reads as under:

“36. It is to be noticed that while the inadequacies of science have led to the 'precautionary principle', the said 'precautionary principle' in its turn, has led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed, is placed on those who want to change the status quo (Wynne, *Uncertainty and Environmental Learning*, 2 *Global Env'tl. Change* 111 (1992) at p. 123). This is often termed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the changes would be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less-polluted state should not carry the burden of proof and the party who wants to alter it, must bear this burden. (See James M. Olson, *Shifting the Burden of Proof*, 20 *Env'tl. Law* p.891 at 898 (1990). (Quoted in Vol. 22 (1998) *Harv. Env. Law Review* p. 509 at 519, 550).

37. The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment. (See Report of Dr. Sreenivasa Rao Pemmaraju, Special Rapporteur, International Law Commission, dated 3.4,1998, para 61).”

15. Thus, burden of proof would lie upon the person who is carrying on polluting activity. It will be for the industry to show that it has

taken all precautions, have installed anti pollution devices and that the effluents, being discharged by the industries are strictly in terms of the prescribed parameters. It is sufficient for an Applicant to state *prima facie* that the pollution is being caused from the activity carried on by the industry which is having an adverse impact on environment and human health.

16. The Polluter Pays Principle has to be invoked wherever and whenever an industry has failed to discharge the onus placed upon it. It is an over arching Principle that the polluter has to pay the cost for polluting the environment. This Principle has been discussed by the Tribunal in the judgment of *Ashwini Kumar Dhal vs. Odisha Pollution Control Board and Ors.* decided on 25th May, 2016 where the Tribunal held as under:

“Polluter Pays” principle, which is an overarching principle, mandates the polluter to bear the cost of pollution, prevention, control and reduction measures. This principle is an integral component of sustainable development. The Apex Court of India in *Indian Council for Enviro-Legal Action vs. Union of India* (1996) 3 SCC, *Karnataka Industrial Area Development Board vs. C. Kenchappa* : (2006) 6 SCC 371, *M.C. Mehta vs. Union of India*: (2006) 3 SCC 399, has held that the “remediation of the damaged environment is a part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual sufferer as well as the cost of reversing the damaged ecology.” Similarly in *Hindustan Coca Cola Beverages Pvt. Ltd. vs. West Bengal*, it has been held that “it is no more *res integra*, with regard to the legal proposition, that a polluter is bound to pay and eradicate the damage caused by him and restore the environment.”

17. Upon application of the above enunciated principles to the facts and circumstances of the present case, it is evident that the industries are responsible for causing pollution. It had been polluting the environment by discharging its trade effluent in violation of the

prescribed standards and without installing anti pollution devices in the past. It was only in furtherance to the notices served by the U.P. Pollution Control Board and the directions issued that the industries took measures to prevent and control pollution. These industries have failed to discharge its onus by placing any documentary or other evidences which would irresistibly lead to the conclusion that the industry is not responsible for the pollution, alleged to have been caused by its activity. Thus, the industries must bear the consequences of its default and the damage that has occurred due to the pollution caused by them, particularly Respondent no. 4, including the death of animals and birds.

18. Another aspect which remains undisputed on record is that the industries of Respondents no. 2 to 5 are operating without obtaining permission/NOC from the CGWA for extraction of groundwater. They claim that some of them have applied for obtaining permission in the year 2016 but the same has not been granted. This contention also does not speak well of these industrialists. It has also been stated by the CGWA that these applications are incomplete and have not furnished all the requisite documents. They were aware that in law they are obliged to obtain permission of the CGWA for extraction of groundwater. CGWA is a regulatory authority in this regard and obtaining its permission is mandatory. All these private respondents were not remediless and could have taken recourse under law for the purpose of obtaining permission from the said authority. Extraction of groundwater is a serious problem in the areas particularly in State of Uttar Pradesh. Various studies have shown that the groundwater is depleting by the day and in number of areas, it is already at

'critical level'. The availability of water is a paradox. India accounts for 2.45 per cent of the total land area and 4 per cent of the water resources of the world. If current trends continue, in 20 years, about 60% of all India's aquifers will be in a critical condition. This has been reported in the World Bank Report (*Deep Wells and Prudence*). India is the largest groundwater user in the world, with an estimated usage of around 230 cubic kilo meters per year. Groundwater is a national wealth and it is nectar sustaining life on earth. Therefore, there is absolute need to use the groundwater scarcely and with all possible precautions, in accordance with the guidelines issued under the national policy. It is clear that the CGWA should have dealt with the application filed by private respondents expeditiously. But even if the said authority failed to do so, the private respondents were not remediless, particularly, when they were using the groundwater for commercial purposes and for making profit. They were obliged to comply with the requirements of law without delay and default.

19. For the reasons afore-stated, we dispose of this application with the following order:

1. Respondents no. 2 to 5 are liable to pay environmental compensation of Rs. 5 lakh each, for polluting the environment, committing breach of terms and conditions of consent orders, failing to install appropriate anti pollution devices in the past and for causing environmental pollution particularly of river Rapti and river Ghaghra, groundwater and also for extracting groundwater without obtaining NOC/permission from CGWA for all these years.

2. The CGWA is directed to dispose of all the applications filed within 4 weeks from the date of pronouncement of this order.
3. Respondent no. 4 is further liable to pay an additional sum of Rs. 5 lakh as environmental compensation and damages, for causing death of animals and birds by release of ammonia gas and polluting the environment. The amount indicated shall be deposited with the UPPCB and shall be utilised by the said Board for prevention and control of pollution as well as for improving the conditions of environment, to ensure that such incident does not repeat in future.
4. The money shall be utilised in accordance with the action plan which the Board shall prepare and execute with approval of the Tribunal.
5. We also direct a joint inspection team of UPPCB and CPCB to conduct joint inspection of all these industries and submit a detailed and comprehensive report before the Tribunal within six weeks from the date of pronouncement of this order. The report shall also suggest, what remedial and restorative steps should be taken by these industries in the interest of environment.

On receipt of report the Registry shall prepare a separate file and place before the Tribunal.

20. The Original Application No. 337 of 2016 is disposed of. There shall be no order as to costs.

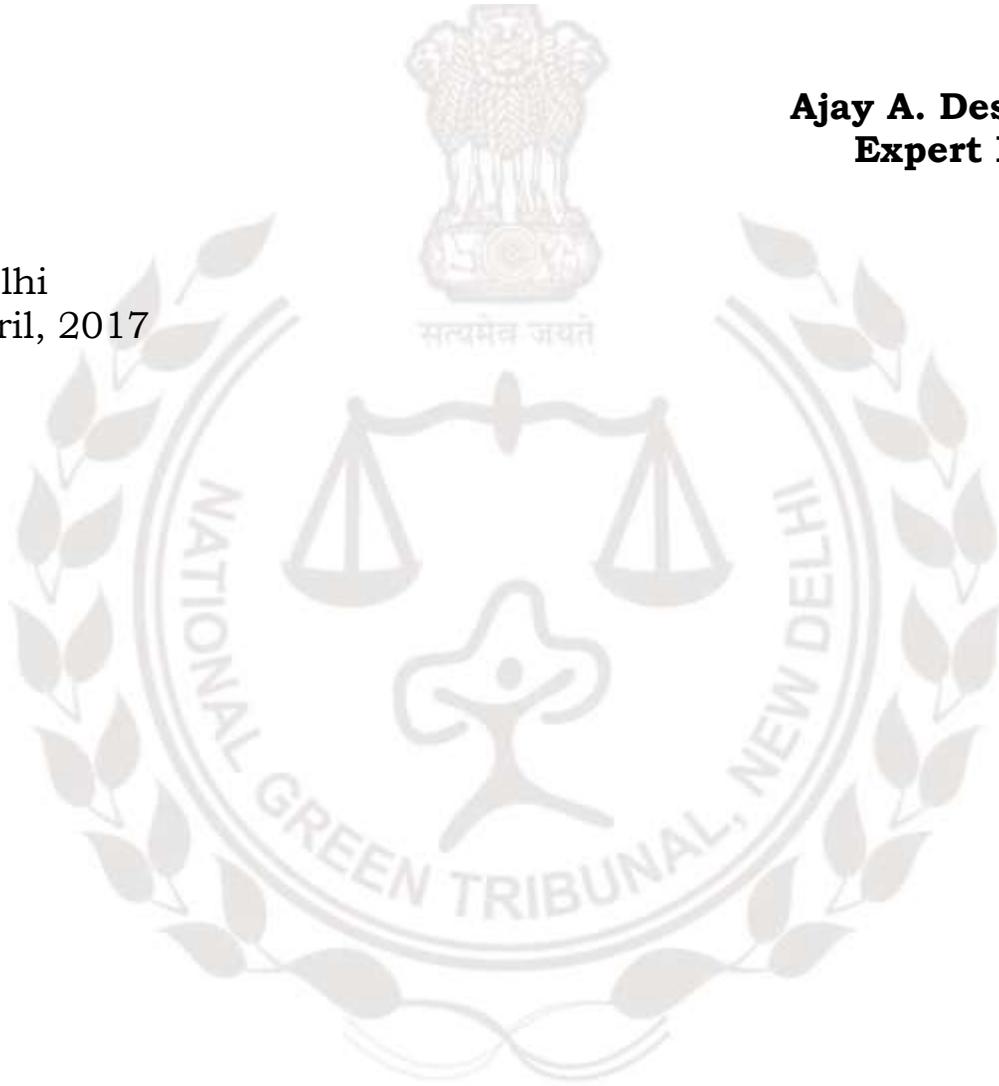
**Swatanter Kumar
Chairperson**

Raghuvendra S. Rathore
Judicial Member

Bikram Singh Sajwan
Expert Member

Ajay A. Deshpande
Expert Member

New Delhi
27th April, 2017



NGT