

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

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**ORIGINAL APPLICATION NO. 69/2020**

**IN THE MATTER OF:**

**Sushil Bhatt**

S/o Sukhdev Prasad,  
Add: Shop No. 1, Sector-3, Vaishali,  
District-Ghaziabad,  
Uttar Pradesh-201002

... Applicant

Verses

**1. Moon Beverages Ltd.**

Through its Director B/1, Ecotech-III, Udyog  
Kendra, Greater NOIDA,  
District-Gautam Buddha Nagar,  
Uttar Pradesh-201306

**2. Moon Beverages Ltd.**

Through its Director, A-32, Site IV Sahibabad  
Industrial Area, Sahibabad,  
District-Ghaziabad,  
Uttar Pradesh-201009

**3. Varun Beverages Ltd.**

Through its Director, Plot No. 2E, Udyog Kendra,  
Ecotech-III, Greater NOIDA,  
Uttar Pradesh-201306

**4. District Magistrate**

Collectorate  
District-Gautam Buddha Nagar,  
Uttar Pradesh-201301

**5. District Magistrate**

Collectorate  
District-Ghaziabad,  
Uttar Pradesh-201009

**6. Uttar Pradesh Pollution Control Board**

Through its Member Secretary  
Building No.-TC-12-V, Vibhuti Khand,  
Gomti Magar, District-Lucknow,  
Uttar Pradesh-226001

**7. Central Pollution Control Board**

Through its Chairman,  
"Parivesh Bhawan" East Arjun Nagar,  
Near- Karkarduma Court, Shahdara,  
New Delhi-110092

**8. Central Ground Water Authority**

Through its Chairman,  
Wing-3, West Block-2, Sector-1,  
R.K. Puram, New Delhi-110066

... Respondent(s)

WITH

**Appeal No. 45/2020**  
**(EARLIER ORIGINAL APPLICATION NO. 218/2020)**

**IN THE MATTER OF:**

**Devidas Khatri**

S/o Shri Nand Kishore Khatri,  
R/o 239, Laxmi Nagar,  
Behind Mangori Walon Ki Bagichi,  
Brahmpuri, Jaipur-302002

... Appellant

Verses

**1. Union of India**

Through Secretary, Ministry of Environment,  
Forest & Climate Change,  
Indira Paryavaran Bhawan, Jorbagh,  
New Delhi-110 003

**2. Secretary**

Ministry of Jal Shakti,  
Department of Water Resources,  
River Development and Ganga Rejuvenation,  
Rafi Marg, New Delhi- 110001

**3. Central Ground Water Authority**

Through Chairman,  
18/11, Jamnagar House, Man Singh Road,  
New Delhi-110011

**4. Central Ground Water Authority**

Through Member Secretary,  
18/11, Jamnagar House,  
Man Singh Road,  
New Delhi-110011

... Respondent(s)

**Counsel for Appellant(s)/Applicant(s):**

Mr. Rohit Kumar Tuteja, Advocate for appellant in Appeal No. 45/2020

**Counsel for Respondent(s):**

Mr. A.K. Prasad, Advocate for CGWA

Mr. Pradeep Misra & Mr. Daleep Dhyani, Advocates for UPPCB

Mr. Balendu Shekhar, Advocate for DPCC

Mr. Raj Kumar, Advocate for CPCB

Ms. Puja Kalra, Advocate for NDMC

Mr. Sanjay Upadhyay, Advocate for R-1 & 2 in OA 69/2020

Mr. R. Jawharlal, Advocate for R-3 in OA 69/2020

**PRESENT:**

**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE BRIJESH SETHI, JUDICIAL MEMBER  
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

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**Reserved on: 19<sup>th</sup> January, 2022  
Pronounced and uploaded on: 25<sup>th</sup> February, 2022**

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**JUDGMENT**

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

**SYNOPSIS**

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1. In these matters, a common issue involved is with respect of notification dated 24.09.2020 laying down guidelines to regulate and control ground water abstraction in India. In Original Application 69/2020 (hereinafter referred to as 'OA'), applicant Sushil Bhatt has also raised issue of exploitation of ground water in stressed areas by respondents 1 to 3. Since legal issues are overlapping, therefore, both these matters have been heard together, and are being decided by this

common order. However, before dealing with the issues raised, it would be appropriate to have a brief factual matrix from the pleadings:

**OA No. 69/2020:**

2. This Tribunal is frequently receiving complaints and applications raising issue of extraction of ground water in an indiscreet and arbitrary manner, even in areas, where availability of ground water is in extreme scarcity or has reached an alarming level, classified by Authorities/Regulators as over-exploited or critically exploited or semi critical.

3. A similar complaint has been raised in this OA filed under Sections 14 and 15 read with Section 18(1) of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act 2010**') by **Sushil Bhatt**, for protection of fundamental rights under Article 21 of Constitution of India with regard to pollution free environment, fresh water and air etc.

**Pleadings in OA:**

4. Sushil Bhatt, (Applicant) has made complaint against respondent-1, M/s. Moon Beverages Ltd. (hereinafter referred to as '**PP-1**') unit at 2B/1, Ecotech-III, Udyog Kendra, Greater NOIDA, Distt. Gautam Buddha Nagar; respondent-2, Moon Beverage Ltd., (hereinafter referred to as '**PP-2**') unit at A-32, Site IV Sahibabad Industrial Area, Sahibabad district Ghaziabad, Uttar Pradesh-201009 and respondent-3, M/s. Varun Beverages Ltd. (hereinafter referred to '**PP-3**') unit at Plot No. 2E, Udyog Kendra, Ecotech-III, Greater NOIDA, Uttar Pradesh-201306, engaged in manufacturing of beverages, soft drinks, bottled water, bottling and other ancillary activities.

5. **PP-1** was issued consent under Section 25/26 of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act**

**1974**) for discharging effluent, from Uttar Pollution Control Board (hereinafter referred to as '**UPPCB**') vide order dated 14.05.2018 valid for the period of 01.01.2018 to 31.12.2019. The consent was granted for effluent discharge of 18 KLD/day for domestic, and 496 KLD/day for industrial effluent. Domestic effluent has to be treated through Sewage Treatment Plant (hereinafter referred to as '**STP**') and industrial effluent through Effluent Treatment Plant (hereinafter referred to as '**ETP**'). The conditions of consent further provide that arrangement shall be made for collection of water used in the process of domestic effluent, separately, in closed water supply system. Treated domestic and industrial effluent, discharged outside the premises, if meets at the end of final discharge point, arrangement should be made for measurement of effluent and collection of samples. Except effluent, mentioned in the application for consent, no other effluent shall enter the said arrangements for collection of effluent. PP-1 was also required to ensure that domestic effluent shall not be discharged in Storm Water Drain. There are some other conditions, general and specific, contained in the said consent order, which, if necessary, may be referred, at a later stage.

6. PP-3 also received consent orders dated 26.03.2018 under Section 25/26, Water Act 1974 and 21/22 of Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as '**Air Act, 1981**').

7. These consent orders are on record, filed collectively as annexure A2 to the application.

8. It is alleged that PPs- 1, 2 and 3 have not obtained any 'No Objection Certificate' (hereinafter referred to as '**NOC**') from Central Ground Water Authority (hereinafter referred to as '**CGWA**') for extraction of ground water, though their units are situated in notified "over-

exploited” areas where abstraction of ground water cannot be permitted. Further, Section 28 of Uttar Pradesh Ground Water (Management and Regulation) Act, 2019 (hereinafter referred to as ‘**UPGWMR Act, 2019**’) prohibits direct recharge from rain water, falling on open land, grounds, roads (paved/unpaved), agricultural farms but PP-1 is indulged in direct recharge, contrary to Section 28(1) of UPGW Act, 2019. PP-1 is abstracting ground water illegally and that too without any NOC from CGWA, hence liable for payment of compensation in accordance with the guidelines issued by Authorities concerned but in collusion with Authorities, it has not been saddled with any such liability and continuing with such illegal act.

### **Proceedings in Tribunal**

#### **Committee’s Report dated 01.10.2020 :**

9. The matter came up for consideration before Bench on 01.07.2020, and noticing grievance of the applicant, raised in this OA, Tribunal found it necessary to obtain a factual and action taken report from a Joint Committee comprising of Central Pollution Control Board (hereinafter referred to as ‘**CPCB**’), UPPCB, CGWA and District Magistrate, Gautam Buddha Nagar, within two months. UPPCB was made nodal agency for coordination and compliance. **Joint Committee** submitted **Report** on **01.10.2020** through UPPCB and in the meantime, an affidavit/reply dated 26.08.2020 was also filed by CGWA on 02.09.2020.

10. In the **affidavit/reply of CGWA**, it is stated that all three Project Proponents were issued NOC initially on **28.09.2015**, **03.10.2016** and **31.01.2018**, respectively, valid for a period of 3 years in respect of PP-1, and, 2 years in respect of PP-2 and 3. Aforesaid **NOCs expired on 28.09.2018**, **02.10.2018** and **02.01.2020**, respectively. The unit of PP-1 is situated in Dadri Block which is in “**semi-critical**” category with

regard to ground water level while PP-2 is situated in Sahibabad (Rajapur Block) which is in “**over-exploited**” category and PP-3 situated in Bisrakh Block which is also in “**over-exploited**” category. Further, NOCs in respect of all above cases, were not renewed in the light of judgment dated 03.01.2019 passed by Tribunal in **OA No. 176/2015, Shailesh Singh vs. Hotel Holiday Regency, Moradabad & Others** with other connected matters.

11. NOCs were issued at the relevant point of time, in accordance with existing guidelines, in force at that point of time. Subsequently, same were not renewed in the light of directions issued by Tribunal vide order dated 03.01.2019 in **OA No. 176/2015 (supra)**. With regard to further action to be taken for continued extraction of ground water, CGWA said that a Joint Committee has already been constituted by Tribunal, wherein an officer of CGWA is also a member, hence further action would be taken as per Report of the said Committee.

12. Joint Committee made inspection at the unit of PP-1 on 26.08.2020 and its report dated 01.10.2020 contains following conclusions and recommendations:

**“14. Conclusion and Recommendations**

*The Unit manufactures soft drink, juice & package drinking water and wherein the groundwater is main raw material. The Unit is located in **Bisrakh block** of Gautambudhanagar which falls under **over-exploited category** as per the Grounder Water Resource Assessment, 2017 of CGWB. **Since September 2018**, the unit is **extracting groundwater without any NOC from the CGWA**. The Unit during the visit found partially operational and not at its optimum capacity. The ETP was found operational during the visit and found conforming the discharge norms. **The Unit also manufactures PET bottles for packaging of its drinking water/mineral water, however, the unit has not registered for the EPR Certification with CPCB/SPCB, as applicable, which is a violation under Rules 13 (2) of the Plastic Waste Management Rules 2016 as amended 2018.**  
**Based on the above observations, following is recommended for compliance:***

- 1) *The Unit shall obtain **NOC from the CGWA** for the abstraction of Ground water which has been expired on September 28, 2018.*
- 2) *The Unit shall **provide Environmental Display Board** at the main entrance gate instead of ETP area and shall update the environmental data regularly.*
- 3) *The Unit shall **obtain EPR certification** under the PWM Rules, 2016, as amended 2018. The Unit shall renew the Agreement with the Plastic Waste Recycler for the collection and recycling of plastic waste.*
- 4) *The Unit shall **install water-meters** at the source i.e. on the borewells and **maintain logbook record** for the same.*
- 5) *The Unit shall **install OCEMS at ETP** and provide its connectivity to CPCB server and ensure continuous and uninterrupted data supply as per the specific condition of the Consent to Operate (CTO) issued by UPPCB.”*

13. The report is also accompanied by a copy of consent order dated 09.02.2020 issued by UPPCB to PP-1 under Section 25/26 of Water Act 1974, valid for the period of 01.01.2020 to 31.12.2021. Similarly, consent order dated 09.02.2020, issued by UPPCB under Section 21/22 of Air Act 1981, to PP-1, valid for the period of 01.01.2020 to 31.12.2021, is also appended to the Report. With regard to disposal of hazardous waste, Committee has placed on record a copy of agreement dated 05.02.2017 entered by PP-1 with Uttar Pradesh Waste Management Project (a Division of RAMKY Enviro Engineers Ltd.) which is supposed to provide service for transport, treatment, store and disposal of hazardous waste to PP-1 unit. For collection and recycling of plastic waste, PP-1 has entered into an agreement with M/s. IFP Petro Products Pvt. Ltd. 16/2, C Industrial Area, Site IV, Sahibabad, Ghaziabad on 01.07.2020 and tenure of service was one year i.e., valid up to 30.06.2021. Earlier PP-1 had a similar agreement dated 01.07.2019, with M/s. GEM Enviro Management Pvt. Ltd. which was valid for a period of 12 months. Copy of NOC issued by CGWA, dated 28.09.2015, to PP-1, is also placed on record and it shows that in fact, it was a renewal of NOC which was earlier granted vide letter dated 05.07.2013. The aforesaid NOC letter dated 28.09.2015 shows that PP-1 was allowed to abstract **1693 m<sup>3</sup>/day**



(and **not exceeding 507300 m<sup>3</sup>/year**) of ground water through existing three tube-wells. PP-1 was also required to implement **ground water recharge** measures to the tune of **204042 m<sup>3</sup>/year** for augmenting ground water resources in consultation with Regional Director, Central Ground Water Board, Northern Region, Lucknow (hereinafter referred to as 'RD,CGWB,NR,Lucknow').

14. In the report, location of PP-1 unit is mentioned as Bisrakh Block but parties agreed that it is a mistake and **PP-1 unit is at Dadri Block.**

15. In respect of PP-3, Inspection Report (at page 93), shows that inspection was made on 26.08.2020 and conclusions and recommendations made by Joint Committee, read as under:

**“14. Conclusion and Recommendations**

*The unit manufactures soft-drink wherein the groundwater is main raw material. The Unit is located in Bisrakh block of Gautam Budhanagar which falls under over-exploited category as per the Groundwater Resource Assessment, 2017 of CGWA. **Since January 2020, the unit is extracting found water without any NOC from the CGWA.***

*The Unit, during the visit, was found partially operational and not at its optimum capacity. The ETP has EPR registration certificate issued by CPCB vide letter dated 14.08.2020 under PWM Rules, 2016 as amended 2018.*

**Based on the above observations, following is recommended for compliance:**

1. The Unit shall **obtain NOC from the CGWA** for the abstraction of Groundwater which has been expired on January 02, 2020.
2. The Unit shall **remove the floating sludge from the secondary clarifier.**
3. The Unit shall **renew the Agreement with the Plastic Waste Recycler for the collection and recycling of plastic waste.”**

16. The report also has an appendix containing copy of consent order dated 04.02.2019 issued to PP-3 under Section 25/26 of Water Act 1974 by UPPCB, valid for 01.01.2019 to 31.12.2020, and consent order dated 04.02.2019 issued under Section 21/22 of Air Act 1981 valid for the

period, 01.01.2019 to 31.12.2020. UPPCB also issued an authorization letter dated 19.06.2018 under the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (hereinafter referred to as **HWMTM Rules 2016**) for generation, collection, utilization, storage and disposal of hazardous or other wastes, in its unit.

17. PP-3 was also issued a Registration Certificate for “Brand Owner” by CPCB under Rule 13(2) of Plastic Waste Management Rules, 2016 (hereinafter referred as **PWM Rules 2016**), as amended from time to time.

18. PP-3 entered into an agreement dated 18.07.2019 with M/s. GEM Enviro Management Private Limited for providing service of plastic waste collection and recycling. The agreement was valid for 12 months commencing from 01.08.2019.

19. PP-3 was also issued NOC dated 31.01.2018 by CGWA, permitting abstraction of **1163 m<sup>3</sup>/day, for 261 days, (not exceeding 303543 m<sup>3</sup>/year)**, of ground water, through existing tube-well. It was already required to implement **ground water recharge measures**, at least to the tune of **608000 m<sup>3</sup>/year**, for augmenting ground water resources of the area within 6 months from the date of issue of the letter, i.e., 31.01.2018.

20. As per report, both, **PP-1 and PP-3** are **red category industries** as per CPCB categorization. In fact, even **PP-2** is in same category i.e., **red**.

21. Joint Committee’s Report in respect of PP-1 and 3 as also reply of CGWA was considered by Tribunal on 02.12.2020. After noticing

conclusions and recommendations, in respect of PP-1 and 3, Tribunal in order dated 02.12.2020, said:

*“5. In view of above, action by way of stopping the illegal activities and recovering compensation for the violation as per laid down norms needs to be expeditiously taken, following the process of law. **Since the CGWA has not initiated any action, the CPCB and the State PCB may take further action.** The State PCB will be the nodal agency for coordination and compliance.*

*6. A **factual and action taken report may be furnished** to this Tribunal before the next date by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.”*

(Emphasis added)

**Joint Committee’s Report dated 08.04.2021:**

22. Pursuant to above order, another report was submitted by Joint Committee through Regional Officer, UPPCB, Greater NOIDA along with its letter dated 08.04.2021, after making inspection of PP-1 and PP-3 units on 31.3.2021. In respect of extraction of ground water after expiry of period of NOC, granted by CGWA, it has been stated by PP-1 and 3 as also CGWB and Uttar Pradesh Ground Water Department (hereinafter referred to as ‘**UPGWD**’) that both the units, after expiry of NOC granted by CGWA, on 28.09.2018 and 02.01.2020, respectively, submitted applications, for NOC renewal, within time and before expiry of NOC. The applications could not be proceeded due to order of Tribunal and procedural delay. In the meantime, UPGWMR Act 2019 was promulgated. Both the units, thereafter, applied for online registration of their borewells under the provisions of UPGWMR Act 2019. The registration of applications was accorded by District Ground Water Management Council (hereinafter referred to as ‘**DGWMC**’). Both the units then applied, online, for issue of NOC from UPGWD. Since units are in notified area, in compliance of order dated 03.02.2021 of Member Secretary, State Ground Water Management and Regulatory Authority) (hereinafter referred to as ‘**SGWM&RA**’), applications were forwarded to UPGWD,

Lucknow for approval of NOC. **UPGWD has approved NOC to both the units from the date of expiry of last NOC up to 5 years onwards,** though actual NOC, as such, has not been issued to the said units.

23. Further considering other aspects pursuant to the inspection of the above units of PP-1 and 3, joint Committee recorded its conclusions and recommendations, as under:

**“5. CONCLUSIONS AND RECOMMENDATIONS OF JOINT TEAM**

*As per the last joint inspection team recommendations, the Unit has complied with all the recommendations except obtaining No Objection Certificate (NOC) from CGWA for groundwater abstraction. It is observed that the Unit has applied for the renewal of its NOC before the expiry of last NOC from CGWA. The **Unit falls under “over exploited category”** and CGWA forwarded the application of the Unit for NOC to State Ground Water Department i.e. UPGWD for further necessary action.*

*UPPCB asked CGWA & UPGWD for providing their comments regarding action taken report regarding withdrawal of groundwater without valid NOC. It is observed from the reply received from the UPGWD that the Unit has applied for renewal of its NOC before the expiry of NOC and UPGWD has **registered the borewells and NOC has been approved for 05 years from the last date of its expiry** and shall be issued to the Unit by the UPGWD shortly with certain conditions and abstraction charges.*

*It is to submit that the guideline issued by Ministry of Jal Shakti, Govt. of India says “if the application for renewal is submitted in time and the CGWA/the respective State/UT Authority is unable to process the application in time; **No Objection Certificate shall be deemed to be extended** till the date of renewal of No Objection Certificate” and “if the proponent fails to apply for renewal within 3 months from the date of expiry of No Objection Certificate, the proponent shall be liable to pay Environmental Compensation for the period starting from the date of expiry of NOC till NOC is renewed by the competent authority”.*

*Finally, it is to submit that both the Units has applied to CGWA before the expiry of last NOC issued by CGWA & also applied to the UPGWD/State Authority for registration of borewell & NOC for withdrawal of groundwater and borewells has been registered by the UPGWD, **however the NOC is yet to be issued by UPGWD. The is observed the both the Unit is abstracting groundwater without paying any abstraction fees/withdrawal charges.** Therefore, both the Unit may be levied groundwater abstraction charges and charges may be calculated since expiry date of their NOC by UPGWD as per Overexploited areas “charges and NOC conditions may be fixed in accordance to over-exploited areas” category and as per the notified Ground Water Act/Rules.”*

24. It is evident from Joint Committee's Report that UPPCB issued notices dated 21.12.2020 and 22.02.2021, respectively, to PP-1 and 2. Pursuant there to, replies dated 09.02.2021 and 24.3.2021, respectively, were submitted by them. Same have been considered by Committee and, thereafter, report has been submitted.

25. Similarly, UPPCB issued notice dated 21.12.2020 to PP-3, who submitted replies dated 11.01.2021 and 13.03.2021.

26. UPPCB also sent letters dated 22.01.2021, 22.02.2021 to CGWB, Lucknow and enquired about the action taken in respect of PP-1 and 3. Letters dated 25.02.2021, 09.03.2021 and 26.03.2021 were issued by UPPCB to UPGWD, Gautam Buddha Nagar enquiring about the action taken report. Pursuant to letters of UPPCB as above, UPGWD replied by letter dated 16.03.2021, which is reported in the Joint Inspection Report, as under:

*“Both the said Unit has submitted their NOC renewal application within time before the expiry of the NOC. However due to the Hon'ble NGT order and procedural delay etc. the Ground Water department could not process the application in time and NOC to the said industries could not be issued. After promulgation of State Ground Water Act, 2019, both the said units applied online for the registration of their borewells and the same has been accorded by the District Ground Water Council. After the registration of the borewells, the unit have applied online for the issuance of NOC from UPGWD. The unit being under notified area and in compliance of the order dated 03.02.2021 of Member Secretary, State Ground Water Management & Regulatory Authority, the application was forwarded to UPGWD, Lucknow for approval of NOC.”*

27. Thereafter, **UPGWD, Lucknow issued letter dated 01.04.2021** to DM, Gautam Buddha Nagar/Chairman, DGWMC **informing that UPGWD has approved NOC of both the units, from date of expiry of last NOC up to 5 years, onwards.**

28. The matter was heard by Tribunal on 01.07.2021 wherein UPPCB report dated 08.04.2021 was also considered. It was stated by UPPCB

that NOC for extraction of ground water stood granted retrospectively to PPs by UPGWD under the provisions of UPGWMR Act, 2019. We however, found that power to grant NOC with retrospective effect, that too when even Regulatory Authority under UPGWMR Act 2019 was not constituted, and also against the directions issued under Section 5 of EP Act, 1986, could not have been exercised by UPGWD. Moreover, no contrary action, inconsistent with guidelines issued by CGWA could have been taken by State authorities and the alleged NOCs, said to have been granted to PPs retrospectively are, prima facie, against regulatory regime envisaged in Supreme Court's judgment in **MC Mehta vs. UOI (1997)11SCC312** and Tribunal's order dated 20.07.2020 passed in **OA 176/2015 (supra)**. The learned counsels at the bar also brought to the notice of Tribunal that revised guidelines were issued on 24.09.2020 by Ministry of Jal Shakti but validity thereof is subject matter of challenge in OA 218/2020 (later converted to **Appeal No. 45/2020, Devi Das Khatri vs. Union of India & Others**). Tribunal, after considering Joint Committee's report observed that Statutory Regulators are obliged to revise regulatory regime so as to bring in line with 'sustainable development principle' enshrined by Supreme Court and Tribunal in various judgements, some are referred above, and should take remedial action. However, no such action was taken by Regulators.

29. Considering above circumstances, reports as also all other aspects, we found that the proponents i.e., PPs need be issued notices so that Tribunal may have the benefit of their stand also before adjudication of issues raised in this matter, particularly since they are the likely affected parties.

30. Further, one of the issues with regard to validity of notification dated 24.09.2020 was pending for consideration in another matter, we

directed this application to be listed along with other matters and to issue notice to concerned parties including UPGWA, CPCB and Ministry of Jal Shakti. Accordingly, we passed order on 31.08.2021 issuing notices to above parties. Relevant extract of the order reads as under:

*“4. Accordingly, the matter was heard on 1.7.2021 in the light of further report of the State PCB dated 8.4.2021 to the effect that NOC for extraction of ground water stands granted retrospectively to the PPs by the UP groundwater Deptt. The applicant has pressed action for violations on the ground that such NOC is against the regulatory regime envisaged in the judgement of the Hon’ble Supreme Court in MC Mehta vs. UOI, (1997) 11 SCC 312 and order of this Tribunal dated 20.7.2020 in OA 176/2015, Shailesh Singh vs. Hotel Holiday Regency. It is pointed out that notification of the Ministry of Jalshakti dated 24.9.2020 on the subject of ground water extraction is subject matter of challenge before this Tribunal in OA 218/2020 (later converted to Appeal No.45/2020) Devi Das Khatri vs. UOI. Thus, the PP is liable to be held accountable for illegal extraction of ground water and the authorities are required to revise the regulatory regime so as to be brought in line with the sustainable development principle, as laid down by the Hon’ble Supreme Court and this Tribunal in the said judgments. To consider the matter, we had reserved order on 1.7.2021.*

*5. On due consideration, we find that it will be appropriate to hear the matter on 8.11.2021 alongwith other connected matter referred to above. It will also be appropriate that the registry of this Tribunal sends notice of these proceedings by email to the concerned PPs, UP Groundwater Department, CPCB, Ministry of Jalshakti by email. The State PCB may also serve such notice to them. This course is being adopted by way of abundant caution though the PPs are aware of the proceedings as shown by the reports of the joint Committee and so are other authorities. They may file their response, if any, within one month. The State PCB may also make available paper book of the matter to them by email.”*

31. Consequently, notices have been served and received by PPs as well the authorities whom notices were directed to be served by order dated 31.08.2021. PPs i.e., respondents 1 & 2 have filed their reply dated 22.11.2021 and respondent 3 has separately filed reply dated 29.10.2021.

**Reply dated 22.11.2021 by R-1 & 2:**

32. Respondents 1 and 2, in general have denied allegations made by applicant in OA. Even photographs appended with OA, said to have been

taken on 14.03.2020, are disputed. It is also said that industrial unit at Ghaziabad i.e., PP-2 has been permanently closed for industrial operations from 09.08.2020; all industrial equipment including ETP have been dismantled; and premises has been converted into a corporate office with no industrial discharge taking place thereat; till industrial unit was functioning at Ghaziabad, ETP installed was sufficient to meet the requirement of treating polluted effluent; PP-2 never discharged any untreated effluent into drain which was verified by statutory authorities during various inspections made from time to time; photographs placed on record by applicant appears to be of some other site and are being falsely claimed as belong to R-1 and 2 premises; and PPs 1 and 2 belong to a company working for the last 34 years maintaining highest standards of professional and business ethics and functioning in conformity with environmental norms. Respondents 1 and 2, in their reply have placed on record copies of various consent orders issued from time to time as under:

<b>Details of industry</b>	<b>Date</b>	<b>Provisions under which consent order issued</b>	<b>Validity/ Period</b>
a) In regard to PP-2 (unit at Ghaziabad)	10.02.2020	Under Section 25/26 of Water Act 1974	01.01.2020 to 31.12.2021
	10.02.2020	Under Section 21/22 of Air Act 1981	01.01.2020 to 31.12.2021
b) In regard to PP-1 (unit at Greater NOIDA), District Gautam Buddha Nagar)	09.02.2020	Under Section 25/26 of Water Act 1974	01.01.2020 to 31.12.2021
	09.02.2020	Under Section 21/22 of Air Act 1981	01.01.2020 to 31.12.2021
	20.07.2021	Under Section 25/26 of Water Act 1974	06.07.2021 to 31.12.2022
	20.07.2021	Under Section 21/22 of Air Act 1981	06.07.2021 to 31.12.2022



33. The conditions of consent issued in respect of PP-2 show that it was allowed **effluent discharge (domestic) up to 25 KLD** and discharge point was STP while for **industrial** purposes, it was **350 KLD from ETP**. In respect of PP-1, permitted discharge for domestic was 18 KLD from STP and 496 KLD for industrial purpose from ETP. In the renewal order, discharge quantity remained unaltered. It is pleaded that PP-1 had ETP with the capacity of 560 KLD while maximum discharge permitted was only 496 KLD hence there was no occasion of discharge of untreated effluent by PP-1. In para 14 of reply, Respondents-1 and 2 have admitted that the premises at Greater NOIDA was visited by a joint Committee comprising CPCB, UPPCB, UPGWD on 26.08.2020 and made recommendations which we have already referred. Recommendations included directions to PP-1 to obtain NOC from CGWA for extraction of ground water which had expired on 28.09.2018; to install water meters at the source i.e., on bore wells and maintain log book record for the same. PP-1 claimed to have complied with the recommendations by installing Environmental Display Board at the main entrance gate of the unit and to ensure that data is regularly displayed, daily updated. PP-1 is also handling its plastic waste in proper manner having executed an agreement with M/s. GEM Enviro Management Pvt. Ltd. vide agreement dated 01.07.2019. Based on the recommendations of joint Committee, PP-1 applied for certification under PWM Rules, 2016 and the certificate was issued by CPCB on 12.02.2021. Respondent 1 (PP-1) has further said that it had installed water meters on the pipelines of bore wells at the process section, which were operational at the time of inspection but later, on the recommendations of joint Committee, water meters have been installed on bore wells and are being maintained diligently with entries in log books. PP-1 had installed Online Continuous Emission Monitoring System at ETP. The said compliances were completed by

March 2021 and a compliance letter sent to Regional Officer, UPPCB, Greater NOIDA on 24.03.2021. Another letter dated 09.10.2021 giving reply with regard to compliance is also placed on record by respondent 1.

34. With regard to NOC from CGWA, it is said that an online application for renewal of NOC, going to expire on 28.09.2018, was submitted to CGWA on 12.09.2018 and hard copy was submitted on 13.09.2018. The said application is still pending. Similar application on behalf of PP-2 was submitted on 22.09.2018. On 24.09.2018, Ministry of Jal Shakti issued notification in super-session of earlier notification dated 12.12.2018 laying guidelines to regulate and control ground water abstraction in India. Para 11(vi) of the said guidelines provides, if application for renewal is submitted in time and Competent Authority is unable to process in time, NOC shall be deemed extended till the date of renewal of NOC and hence, PPs 1 and 2 cannot be said to have extracted ground water unauthorizedly. In joint Committee's inspection report dated 31.03.2021, above facts are mentioned as also that subsequently NOC was granted by UPGWA for 5 years. **UPGWD issued NOC** (No. NOC040006) under Section 14 of UPGW Act, 2019, **valid from 28.09.2018 to 27.09.2023** and copy of the said certificate, issued in respect of PP-1, has been placed on record as annexure R-15 to the response submitted by respondents 1 and 2. The said certificate permits abstraction of **75 m<sup>3</sup>/hour** ground water and bore well is allowed to run for maximum **8 hr/day**. PP-1 has paid Rs. 24,30,000/- as ground water abstraction charges to UPGWD before issue of NOC. Respondents 1 and 2 have also placed on record NOCs nos. NOC044168 and NOC043702, registering sinking of new/existing wells for industrial bulk user of ground water, issued under Section 14 of UPGWMR Act 2019, collectively as annexure R-15. Both these documents show that PP-1 submitted applications to UPGWD on 09.02.2021 and 11.02.2021, respectively.

35. Respondents 1 and 2 have claimed that water is critical to their business and also integral to community needs, therefore, PPs 1 and 2 have shared interest in the sustainability of water resources. They strive to use water judiciously and responsibly and have been organizing various workshops and seminars etc. for spreading awareness with regard to preservation of water among public in general.

**Reply dated 29.10.2021 by respondent 3 i.e., Varun Beverages Ltd.**

36. Respondent-3 stated to have been incorporated in 1995 and presently second largest franchisee owner and distributor of carbonated soft drinks and non-carbonated beverages sold under trade mark owned by Pepsico, Pepsico CSD brands manufactured and distributed by respondent 3 which includes Pepsi, Diet Pepsi, Seven Up, Mirinda Orange, Mirinda Lemon, Mountain Dew, Nimbooz Masala Soda, Evervess Soda etc. Unit of respondent 3 is at plot no. 2E, Ecotech III, Udyog Kendra, Greater NOIDA (**Village Tusyana, Block Bisrakh**) District Gautam Buddha, UP. **Respondent 3 set up** a state of art, highly automated manufacturing **unit in 2013** after obtaining requisites permissions/approvals from concerned local authorities and has also earned several certificates of recognitions/appreciation. With regard to environmental laws, it is said that consent order under Section 25/26 of Water Act 1974, issued recently is dated 01.03.2021 for the period of 01.01.2021 to 31.12.2022. The permitted effluent discharge details are as under:

<b><i>Effluent Discharge Details</i></b>			
<i>S. No.</i>	<i>Kind of Effluent</i>	<i>Maximum daily discharge, KL/day</i>	<i>Treatment facility and discharge point</i>
<i>1</i>	<i>Domestic</i>	<i>10 KLD</i>	<i>Septic Tank</i>
<i>2</i>	<i>Industrial</i>	<i>568 KLD</i>	<i>ETP</i>

37. Similarly, recent consent order issued under Section 21/22 of Air Act, 1981 is dated 02.03.2021, valid for the period of 01.01.2021 to 31.12.2022. PP 3 (respondent 3) is complying with all environmental norms and compliance report submitted to UPPCB on 19.04.2021 is filed as annexure R3/4 to the reply. PP 3 has also obtained authorization under HWMTM Rules 2016 and the latest one issued on 19.06.2018 is valid up to 18.06.2023 (annexure R3/5, P/325). With regard to ground water extraction, respondent 3 has stated that it is **abstracting ground water from 3 bore wells**, installed at the site, for which **NOC was issued** by CGWA **on 31.01.2018** (annexure R3/6, P/329) permitting abstraction of **1163 m<sup>3</sup>/day for 261 days but not exceeding 303543 m<sup>3</sup>/year**. The validity period of NOC was 2 years i.e., 03.01.2018 to 02.01.2020. Respondent 3 also submitted compliance report dated 17.11.2018 (annexure R3/9, P/335). It has also complied with the condition of recharge measures and reference is made to report on page 352 showing that **rain water harvesting system is capable of providing 13833.26 m<sup>3</sup> water per year**. Besides, respondent 3 has **adopted 13 ponds** in nearby places. Details of khasra numbers and area in respective villages are given on page 353 as under:

<b>Village</b>	<b>Khasra No.</b>	<b>Area (in hectare)</b>
<i>Chithera (3 Ponds)</i>	393	0.696
	669	1.518
	750	0.62
<i>Bhola Rawal</i>	31K	0.177
	32K	0.152
	33	4.654
	34	1.707
	44	0.847
<i>Rajatpur (3 Ponds)</i>	184	1.783
	186	2.314
	201	0.999
<i>Ajayabpur (1 Pond)</i>	155	1.143
<i>Maycha (1 Pond)</i>	914	4.11
<i>Total Area Covered</i>		20.72

38. It is said that **potential recharge of ground water from the above ponds is 6,22,680 m<sup>3</sup>/year**. Respondent 3 submitted online application dated 19.11.2019 for renewal of NOC for extraction of ground water. Since no action was taken by CGWA, respondent 3 sent reminder on 21.07.2020. Ministry of Jal Shakti issued notification dated 24.09.2020 notifying guidelines to control and regulate ground water abstraction in India and para 11(vi) thereof said that application for renewal, submitted before expiry, if not processed in time will result in deemed extension till renewal is granted by CGWA. Further in the meantime, UPGWMR Act 2019 was enacted w.e.f. 02.10.2019 and rules were framed which came into effect on 25.02.2020. Around November 2020, CGWA notified through its website that it has stopped processing applications for renewal of NOC for abstraction of ground water since UP Government has started its own online portal for such purposes and, therefore, CGWA advised Proponents from UP to visit website of UP Government and submit application for renewal. The website of UPGWD however became functional in January 2021 and it published guidelines for processing of applications under UPGWMR Act 2019 on its website on 02.03.2021. **Respondent 3 thereafter, submitted application for registration of wells 1, 2 and 3 on 09.01.2021, 19.01.2021 and 19.01.2021**, respectively. Similarly, seeking NOC for wells 1, 2 and 3, applications were submitted on 09.01.2021, 10.02.2021 and 10.02.2021, respectively. UPGWD issued registration certificates dated 31.03.2021 (page 419). Respondent 3 received a notice dated 21.12.2020 from UPPCB (annexure R3/24, P/423) seeking point wise compliance which was responded by respondent 3 vide letter dated 11.01.2021 (annexure R3/25, P/426) stating that it had already applied for renewal to the concerned authorities and has removed floating sludge from secondary clarifier. Another notice dated 22.02.2021 (annexure R3/26, P/458) was

issued by UPPCB to respondent 3 stating, since it has not received any NOC for extraction of ground water, the same should immediately be stopped and PP 3 should also show cause as to why compensation may not be determined. PP 3 submitted reply dated 13.03.2021 stating that application for NOC has already been submitted and pending for processing before Competent Authorities and since it has applied for renewal of NOC before expiry, it cannot be said to have violated environmental norms by continuing abstraction of ground water. Director, UPGWD issued letter dated 01.04.2021 addressed to DGWMC through its Chairman i.e., District Magistrate, Gautam Buddha Nagar, supplying a list of about 40 applications recommending for grant of renewal of NOC which included respondent 3 also at Sl. no. 26, 27 and 28. Ground water abstraction charges/withdrawal charges were computed and, thereafter, NOCs nos. NOC034614, NOC039693 and NOC035952 were issued. Respondent 3 also got prepared Water Audit Report (hereinafter referred to as '**WAR**') and Impact Assessment Reports (hereinafter referred to as '**IAR**'). The water audit shows that abstraction of ground water has periodically reduced as under:

<b>Permitted quantity</b>	<b>Extraction in 2018</b>	<b>Extraction in 2019</b>	<b>Extraction in 2020</b>
303543 <i>m<sup>3</sup>/year</i>	262610 <i>m<sup>3</sup>/year</i>	233374 <i>m<sup>3</sup>/year</i>	159898 <i>m<sup>3</sup>/year</i>

39. WAR also suggest 9 additional water saving techniques which have been implemented by respondent 3. The IAR (on page 66), records conclusions as under:

- “1. Varun bevearages recharges the tune of 65647.3 m3 of annually collected rainfall.*
- 2. Effectiveness of the recharge system has been visible in the plant premises.*
- 3. Result of the recharge is that the ground water level in in rising trend in our and around the project location.”*

40. On P/67 of impact assessment report, it has stated as under:

*“Present status and extraction of ground water in the project premises would not affect the potential and depletion of water level in surrounding areas due to Industries as industrial area is not available in the 5 km Buffer area of the project and Rainwater harvesting measures has been taken for groundwater recharge.”*

41. With regard to compliance of the recommendations made by Joint Committee, respondent 3 said that it has complied those directions, as detailed in paras 17 to 21 of the reply. Thereafter, giving parawise reply virtually the facts stated above are reiterated and repeated and allegations made against respondent 3 by applicant are denied. Respondent 3 has also placed on record copies of the challans dated 07.06.2021 depositing Rs. 391500, 861300 and 365400 towards ground water extraction charges and copies of NOCs as annexure R3/31 (collectively) **issued on 18.06.2021, and valid for the period of 03.01.2020 to 02.01.2025.**

42. Thus, substantial issue in OA is that units of PPs 1, 2 and 3 are situated in over-exploited area/notified area and/or severely critical area/notified area, hence they could not have been allowed to abstract ground water; permission, if any, granted by Regulators is wholly illegal; it has contaminated ground water and caused severe irreparable damage to environment; once NOC issued by CGWA expired, renewal could not have been allowed from back date and, therefore, PPs are liable to pay environment compensation for abstraction of ground water illegally and respondent Authorities in justifying non-imposition of compensation upon PPs, have acted illegally; continued operation of PPs in extraction of ground water, in areas where it has gone to the extent of over-exploited or critical or semi critical condition, amounts to denial of availability of potable drinking fresh water to the inhabitants and it denies them the fundamental right of water which is necessary for exercise of right to life under Article 21 of the Constitution.

**Appeal No. 45/2020, Devidas Khatri vs. Union of India & Others  
(earlier OA No. 218/2020)**

**Pleadings in OA:**

43. Devidas Khatri filed application under Section 14, 15 and 18(1) of NGT Act 2010 claiming that the notification dated 24.09.2020 is in violation of the mandate of Supreme Court whereby CGWA was constituted under EP Act, 1986 and also does not comply with the directions issued by this Tribunal on 20.07.2020 in **OA 176/2015 (supra)**, therefore, it should be quashed and respondents be directed to re-consider guidelines dated 24.04.2020 and frame a proper recharge mechanism policy to be adopted by industries for restitution of ground water, impose strict penalty for default and prevent depletion and unauthorised extraction of ground water. Appellant has impleaded MoEF&CC; Secretary, Ministry of Jal Shakti; CGWA through its Chairman as also Member Secretary as respondents. Appellant has pleaded that CGWA is permitting abstraction of ground water in areas where ground water has seriously depleted, by permitting constant exploitation by industries without any proper recharge mechanism and, therefore, the substantial questions relating to environment, arising out of implementation of the Acts in Schedule 1 of NGT Act 2010, in this application, are:

*“(1) Whether Respondents are under an obligation to protect and improve quality of environment and prevent illegal, unsustainable and unscientific extraction of ground water resource, in accordance with the laws and regulations laid down in the Acts specified in Schedule I of NGT Act, 2010?”*

*“(2) Whether proper safeguards/steps have been undertaken by concerned authorities as per the policy dated 24.9.2020 to recharge, control and prevent illegal and unsustainable extraction of ground water by way of guidelines of CGWA published in Gazette Notification dated 24.9.2020?”*

*“(3) Whether an effective recharge mechanism has been put in place to restore unabated and uncontrolled extraction of ground water?”*



*(4) Whether without any recharge mechanism of ground water, any extraction and exploitation of the ground water must be allowed without undertaking any cumulative impact assessment study and carrying capacity study in the concerned region?”*

44. CGWA was constituted by notification dated 14.01.1997 and its main objective was to regulate and control, development and management of ground water resources in the country, however, steps taken by CGWA for conservation of ground water were only cosmetic and on paper; no concrete steps were taken for conservation of ground water; it laid down certain guidelines by notification dated 15.11.2012 which were substituted by guidelines published on 16.11.2015; the revised guidelines in 2013 were issued pursuant to Tribunal's order dated 15.04.2015 passed in **OA 204/2015, Krishan Kant Singh vs. M/s. Deoria Paper Ltd.**; the guidelines extended requirement of prior permission for extraction of ground water to existing units as also the new units; however, later, to facilitate various industries, earlier policy was modified by another policy published on 12.12.2018; the said policy was considered by Tribunal in **OA 176/2015 (supra)** wherein an order was passed on 03.01.2019, directing authorities not to give effect to the notification of 2018; Tribunal directed MoEF&CC to constitute an Expert Committee and issue fresh guidelines; since the order was not complied, Tribunal issued directions again on 20.07.2020; without taking effective steps as directed by Tribunal and without complying directions, again almost similar guidelines were issued by notification dated 24.09.2020 showing that CGWA is adamant to implement its old policy of 2018; notification of 2020 has permitted micro and small enterprises (hereinafter referred to as '**MSME**') drawing ground water less than 10m<sup>3</sup>/day as well as for bulk water supply; all private tankers are also allowed to abstract ground water; CGWA has not calculated carrying capacity of the area till date; with regard to extraction charges, Tribunal

had made adverse comments but the same has also not been given due regard; respondents have failed to frame a proper and valid policy for ground water recharge mechanism and to check depletion of ground water level in the country; and policy is in violation of EP Act, 1986 as also the law lay down by Supreme Court in **MC Mehta (supra)** and observation and directions given by this Tribunal.

45. **OA CONVERTED IN APPEAL:** This application was taken up by Tribunal on 09.10.2020 and after noticing contentions in brief and also the fact that **the order in question was appealable under Section 16(g)**, Tribunal directed to register this application as an appeal under Section 16(g) of NGT Act, 2010 and issued notices to respondent-Ministry of Jal Shakti. CPCB was also added as a party, *suo-moto* by Tribunal, and notice was also issued to CPCB.

46. Response has been filed by CPCB as well as Ministry of Jal Shakti, Department of Water Resources and CGWA.

**Reply dated 17.11.2020 by CPCB in Appeal:**

47. CPCB has said that questions raised by appellant were examined and comments were prepared. Further, draft National Water Policy 2020 was also debated and comments thereon were provided by CPCB to Ministry of Jal Shakti vide letter dated 13.10.2020. Thereafter, Model Ground Water (Sustainable Management) Bill 2020 was circulated by CGWA to CPCB which was also reviewed and comments were submitted and now matter is under active consideration. Short reply of CPCB reads as under:

**“1. BACKGROUND**

*Hon’ble National Green Tribunal (Principal Bench) issued order vide dated 9.10.2020 in the matter of OA No 218/2020 in the matter of Devi Das khatri Vs Union of India & Ors and directed in Para 7 that: “We are of the view that there are arguable points which are raised in the appeal which will require reconsideration. The Appeal is*

admitted. Issue notice to the Ministry of Jal Shakti. We are of the opinion that the CPCB may need to be heard in the matter though it has not been included in the respondents list. The CPCB is accordingly added as a party suo motto. Notice be issued to the CPCB also. The appellant may serve notices with complete set of papers and file an affidavit of service within one week. The response may be filed within six weeks from today by email at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in)

## **2. ACTION TAKEN BY CENTRAL POLLUTION CONTROL BOARD**

In compliance to Hon'ble NGT order issued vide dated 9.10.2020, **Guidelines** notified by Ministry of Jal Shakti (MoJS) vide **dated 24.9.2020 to Regulate and Control Ground Water Extraction in India was reviewed in CPCB.** Questions raised in the petition by the applicant relating to the Groundwater protection & Conservation from point (1) to (5) are also examined. A comparative analysis of the guidelines notified vide dated 24.9.2020 and questions raised by the applicant is done. Views/comments of CPCB are prepared based on the comparative analysis. The detailed comments/views on Guidelines of 24.9.2020 are given at **Annexure I.**

CPCB has reviewed the Draft National Water Policy, 2020 (NWP, 2020) circulated by the Department of Water Resources, Ministry of Jal Shakti. A presentation was given by CPCB before the drafting committee through Video Conference meeting held on 30.9.2020 wherein relevant points were also debated. Comments on draft National Water Policy, 2020 were provided by CPCB to MoJS vide letter dated 13.10.2020.

The Model Groundwater (Sustainable Management) Bill, 2020 circulated by Central Ground Water Authority, Ministry of Jal Shakti to CPCB was also reviewed and comments were provided on concerns related to Groundwater use.

The **draft policy on safe reuse of Used Water is under review.** The policy document was debated amongst stakeholder organisations on November 11, 2020 and is under the process of finalisation by MoJS.

**The issue of groundwater is being addressed by Union Government through the actions cited above.** It is anticipated that the actions proposed will yield positive results and the goals set for sustainable management of ground water will be met.”

### **Reply dated 01.02.2021 filed by Ministry of Jal Shakti and CGWA i.e., respondents 2, 3 and 4 in Appeal:**

48. It is said that CGWA was constituted to carry out function of regulation and control ground water, management and development in terms of mandate of Supreme Court. On the issues raised with regard to Guidelines 2020, respondents 2, 3 and 4 have stated:

- a) Water Management Plans prepared by all the State Ground Water Authorities/Organizations for all Over-exploited, Critical and Semi-critical (hereinafter referred to as 'OCS') assessment units are to be considered while granting NOC to the users. Since rainfall and type of aquifers vary widely all across the country, a uniform implementable recharge mechanism is difficult to frame. However, Government of India had constituted a Committee that came up with a Master Plan for Artificial Recharge to Ground Water-2013 which envisages construction of about 1.11 crore recharge structures in urban and rural areas. It is placed on the website of CGWB and also circulated to the State Governments and all Members of Parliament,
- b) for its implementation in States/their respective constituencies. CGWB has prepared a Manual and subsequently a Guide on Artificial Recharge to Ground Water which provides guidelines on investigation techniques for selection of sites, planning & design of artificial recharge structures, economic evaluation & monitoring of recharge facility. These are of immense use to States/U.T.s in planning and implementation of recharge schemes for augmentation of ground water in various parts of the country. To check depleting water levels & augmentation of Water resources, CGWB has implemented demonstrative artificial recharge project during VIII, IX, X & XI plans which has resulted in annual replenishment of ground water resources of about 4.0, 45.0, 2.14 & 55.20 (anticipated) MCM respectively. A **Master Recharge Plan (2020) has also been finalized by CGWA which envisages construction of 1.41 Cr recharge structures in urban and rural areas.** The Master plan is envisaged to be implemented through various Central/State Government schemes.

- c) All safeguards for protection of environment by carrying on the activity of ground water, have been taken into account in the new guidelines. Petitioner through this application is targeting industries, but ignoring the fact that **livelihood of millions of workers is dependent on these industries and economic development of country needs to be balanced, especially in these times of Covid-19 pandemic.** It has been held in *Vellore Citizen's Welfare Forum vs. UOI 1996(5)SCC647* that "Sustainable Development" as a balancing concept between ecology and development has been accepted as a part of the customary international law. The principles of Sustainable Development i.e., "The Precautionary Principle" and "The Polluter Pays Principle" have already been taken into consideration while framing new guidelines.
- d) The obligation to protect and improve quality of environment is a collective responsibility of State and the citizens. Violations if any, under the enactments Schedule-I are to be monitored, checked and controlled by concerned statutory bodies like Pollution Control Boards, Pollution Control Committees, District Administration, Civic/Municipal Bodies, concerned State Government Departments and Central Government Departments. **Policy of Central Government to regulate ground water development and management has been notified under the orders of this Tribunal.**
- e) Policy notified in September 2020 is being challenged in October 2020 by appellant indicates that he does not want any policy on ground water to remain in force. New guidelines have been formulated after much deliberations and consultations with various stakeholders to provide an effective regulation and sustainable management of ground water. The effective recharge mechanisms with directions to industries and projects, Government Departments

and citizens at large, are in place. As and when compliance failure is reported or brought to the notice of public authorities and courts, corrective measures are being taken. New guidelines have also incorporated recommendations of Committee constituted by Tribunal in ***Shailesh Singh (supra)*** vide order dated 11.09.2019.

- f) The **notified guidelines dated 24.09.2020 were formulated by Ministry of Jal Shakti with due regard to Tribunal's orders dated 20.07.2020. Notification dated 12.12.2018 of CGWA, report of Expert Committee filed by MoEF&CC on 18.07.2019 and report dated 26.06.2019 of CPCB were filed before Tribunal.** After a series of meetings and consultations with various stakeholders like Ministries, competent Senior Scientists, States and UTs and other stakeholders, the guidelines were further re-framed and notified with the approval of Competent Authority to have sustainable management of water resources in the country. Policy has been placed on the website for wider compliance in the country. New guidelines have placed high focus on reducing dependence on ground water and promote sustainable use of ground water.
- g) Guidelines provide that all new/existing industries, industries seeking expansion, infrastructure projects and mining projects abstracting ground water, unless specifically exempted, will be required to seek NOC from CGWA or the concerned State/UT Ground Water Authority as the case may be. It is also provided that **availability of ground water resources shall be given due regard while considering applications for grant of NOC for commercial use to avoid over-extraction of ground water.**
- h) Duration of NOC for each type of user has been specified in the guidelines.

- i) In the new guidelines, for agricultural sector, a participatory approach for sustainable ground water management is encouraged. States/UTs are advised to review their free/subsidized electricity policy to farmers, bring suitable water pricing policy and to work further towards crop rotation/diversification/other initiatives to reduce overdependence on ground water.
- j) Guidelines 2020 provide for drinking & domestic use for residential apartments/group housing societies/government supply agency in urban areas, NOC for new/existing wells shall be granted only in such cases where local Government water supply agency is unable to supply requisite amount of water in the area. NOC shall be granted subject to mandatory installation of STPs by all new residential apartments/Group Housing Societies where ground water requirement is more than 20 m<sup>3</sup>/day. Water from STPs shall be utilized for toilet flushing, car washing, gardening etc.
- k) Section 4 of guidelines provide that **no new major industries shall be granted NOC in over-exploited assessment areas except as per the policy guidelines**. All industries shall be required to adopt latest water efficient technologies so as reduce dependence on ground water resources. NOC shall be granted only in such cases where local Government water supply agencies are not able to supply desired water. Injection of treated/untreated waste water into aquifer system is strictly prohibited. **Expansion of existing industries involving increase in quantum of ground water abstraction in over-exploited assessment units shall not be permitted. NOC shall not be granted to new packaged water industries in over-exploited areas, even if they belong to MSME category**. Annexure III provides for detailed measures to be adopted to ensure prevention from pollution in the plant premises of polluting industries/projects.

- l) For mining projects, new guidelines provide that all existing as well as new mining projects will be required to obtain NOC for ground water abstraction. It shall be mandatory for all the mining industries to ensure that water available from de-watering operations is properly treated and should be gainfully utilized for supply for irrigation, dust suppression, mining process, recharge in downstream and for maintaining e-flows in the river system and shall also ensure construction of observation well(s) along the periphery in the premises. Also, all mining units shall monitor water quality of mine seepage and mine discharge through NABL accredited/Govt. approved laboratories and the same shall be submitted at the time of self-compliance.
- m) In the new guidelines no NOC shall be granted for extraction of ground water for Water Parks, Theme Parks and Amusement Parks in over-exploited assessment units. New as well as existing infrastructure projects shall also be required to seek NOC for abstraction of ground water. **In over-exploited assessment units, use of ground water for construction activity shall be permitted only if no treated sewage water is available within 10 km radius of the site.**
- n) Section 6 of new guidelines provides that all private tankers abstracting ground water and use it for supply as bulk water suppliers will now mandatorily seek NOC for ground water abstraction.
- o) **Guidelines have been improved and the categories of consumers exempted from seeking NOC for ground water extraction have been re-framed keeping in mind livelihood/employment opportunities and ensuring water to fulfill the basic needs of**



**rural population, national security and economic development**, to include only the following:

- i. Individual domestic consumers in both rural and urban areas for drinking water and domestic uses.
  - ii. Rural drinking water supply schemes.
  - iii. Armed Forces Establishments and Central Armed Police Forces establishments in both rural and urban areas.
  - iv. Agricultural activities.
  - v. Micro and small Enterprises drawing ground water less than 10 m<sup>3</sup>/day.
- p) Micro and small enterprises drawing nominal ground water less than 10 m<sup>3</sup>/day have been exempted, to promote and motivate small businesses for boosting economic development of the country. Small quantity fixed (i.e., less than 10 KLD) will not affect overall ground water scenario in a particular area. Central Government has also been emphasizing the need to encourage such businesses, **especially in ongoing Covid-19 crisis**.
- q) In pursuance to the recommendations by the Committee constituted by Tribunal and to strengthen the institutional mechanism, various provisions have been incorporated in the new guidelines. In over-exploited assessment units, NOC shall not be granted for ground water abstraction to any new industry. Also, according to Sections 10 and 13, various functions have been assigned to authorities such as District Collectors/Deputy Commissioners (DCs)/District Magistrates (DMs) and CGWBs against illegal ground water withdrawal. District Collectors/Deputy Commissioners (DCs)/ District Magistrates (DMs) are authorized to take enforcement measures like sealing of unauthorized ground water abstraction structures,

disconnection of electricity, launching of prosecution against those violating NOC conditions and taking action for imposition of environmental compensation. Technical officers of CGWB/CGWA and State ground water organizations are authorized to take actions with respect to monitoring and periodic inspections with the approval of Competent Authority. In order to further decentralize and strengthen the monitoring and compliance mechanism as per the guidelines, officials of concerned Departments of Revenue and Industries of States/UTs shall be appointed as authorised officers in consultation with State/UT Governments. A copy of NOC issued by CGWA in NOC Application Portal (NOCAP) will be forwarded to the respective District Magistrate/District Collector. **In case of any violation of the directions of CGWA and non-fulfillment of the conditions laid down in NOC, the authorised officers will file appropriate Petition/Original Application etc. under Sections 15 to 21 of EP Act 1986 in appropriate Courts.**

- r) Section 15 provides for environmental compensation in case of illegal abstraction of ground water. Extraction of ground water for commercial use by industries, infrastructure units and mining projects without a valid NOC from appropriate authority shall be considered illegal and **such entities shall be liable to pay environmental compensation for the quantum of ground water so extracted.** Moreover, under Section 16, stricter provisions of penalty for non-compliance of NOC conditions have also been incorporated in the revised guidelines.
- s) Provision for **environment impact assessment** as directed by Tribunal have been incorporated in the new guidelines for all projects extracting/proposing to extract ground water in excess of 100 m<sup>3</sup>/day in over-exploited, critical and semi-critical areas. Such project

proponents shall have to mandatorily submit IAR of existing/proposed ground water withdrawal on the ground water regime and also socio-economic impacts report prepared by accredited consultants. Also, mandatory submission of comprehensive reports for mining projects prepared by accredited consultant and IAR for infrastructure projects where dewatering is allowed is also included in the new guidelines.

- t) As directed by Tribunal, **proposal for constitution of Expert Appraisal Committee to evaluate Environment Impact Assessment of project activity on individual Assessment units has been approved by the Ministry. NOC applications shall be approved based on the recommendations of the Committee constituted under the Chairmanship of Chairperson, CGWA and other Members of reputed organizations. Impact Assessment Reports in NOC applications with regard to ground water withdrawal of more than 100 KLD in OCS areas shall be put up before the Committee for evaluation as per the guidelines. Further, Expert Committee may also review the impact evaluation in respect of extraction of ground water, less than 100 KLD, in over-exploited areas, on case to case basis.**
- u) According to new guidelines, commercial entities extracting ground water shall be required to submit online **annual WAR** which shall be published on the website to ensure transparency. It shall be mandatory for industries using more than 100 m<sup>3</sup>/day of ground water to undertake annual water audit through CII, FICCI, NPC, PHDCCI etc. for accurate information and submit the same within three months of completion of the same. Such industries shall be required to reduce their ground water use by at least 20% over next 3 years through appropriate means. The guidelines have provision for

installation of telemetry by the users for online monitoring of ground water levels. All efforts have been made to ensure that **renewal applications shall not be approved without a valid WAR.**

- v) Section 9 lays down compliance conditions for the grant of NOC and provides that **proponents shall install roof top rain water harvesting and recharge systems in the project area** as per the prevailing building bye-laws. Also, installation of digital water flow meter (conforming to BIS/IS standards) having telemetry system in the abstraction structure(s) shall be mandatory for all users seeking NOC. The users will have to get their flow meters calibrated on annual basis.
- w) Section 14 provides for ground water level monitoring, according to which all the project proponents (drawing ground water more than 10 m<sup>3</sup>/day) have to mandatorily construct Piezometers (observation wells) within their premises of monitoring of the ground water levels.
- x) Ground water extraction charges vary according to the type of industry and criticality of the area in which it is located, and such **charges are intended to be used by the State Implementing Agencies for the purposes of restoration/augmentation of ground water and water conservation measures to ensure sustainability.** The optimal requirement of ground water by users is taken into consideration. The intention is to ensure that the users realize the economic value and extract only the required quantity of ground water, thereby preventing over-extraction of ground water. **Charges have been kept hefty to act as deterrent for the users to draw ground water particularly in critical and over-exploited assessment units.** Existing industries, infrastructure units and mining projects which have installed/constructed artificial recharge structures in compliance of the conditions prescribed in the

groundwater guidelines prevailing at the time of grant of NOC or its renewal shall be eligible for a rebate of 50% in the ground water abstraction charges/ground water restoration charges, subject to their satisfactory performance and verification. This provision has been incorporated in the guidelines to promote the recharge of ground water and encourage the project proponents to maintain their existing structures in good/serviceable conditions.

- y) According to the new guidelines, **water management plans** shall be prepared by all State Ground Water Authorities/Organizations for all over-exploited, critical and semi-critical assessment units starting with over-exploited units. Water management plans shall be reviewed and updated periodically. Water management plans, data on water availability and scarcity and policy framed in this regard shall be placed on the websites of CGWA/State Ground Water Authority. Availability of ground water is assessed periodically in the entire country in consultation with States and UTs. Data on water availability (Ground Water Resource Assessment-2017) is available on the website. Assessment as on March 2020 is under progress and will be shared publically once it is finalized.
- z) Detailed guidelines for abstraction of ground water in saline assessment units and partially saline assessment units have been framed separately with certain relaxations in respect of sustainable use of ground water in the saline areas. This has been done to promote the use of saline ground water and utilizing it as an additional resource, since the salinity makes the water unusable and worthless. The natural recharge taking place after the use of saline ground water further helps in the dilution of salinity.
- aa) As per last Dynamic Ground Water Resource Assessment report of CGWB, **depletion of ground water by and large is due to the**

**irrigation draft.** Out of estimated total annual ground water extraction of 248 BCM, the estimated irrigation draft (extraction) is around 219 BCM. The estimated Industrial draft is around 12 BCM, which constitutes approx. 5% of the total draft. The estimated Drinking and Domestic draft is around 17 BCM. In view of this, **controlling extraction of ground water from only industries may not affect the overall ground water scenario in the area.** The best course of action shall be **participatory Ground Water management, involving all the stakeholders, which is being promoted by the Government.** In the CGWA guidelines, States/UTs have been advised to review their free/subsidized electricity policy to farmers, bring suitable water pricing policy and work further towards crop rotation/diversification/other initiatives to reduce over-dependence on ground water.

bb) Ground Water usage in agriculture sector is significant but the same is considered to be necessary to ensure food security for the people and to promote public interest in the country. The rain water as nature's gift enables the aquifers to recharge. Such stored water resources in the aquifers are intended for usage of people during non-monsoon days. The **carrying capacity of aquifers varies based on rain water availability, hydro-geological environment and other climatic conditions.** Anthropogenic interventions at times may or may not give measurable remedies. While Lion's share of these ground water resources is utilized for ensuring food security in the country, some parts of these resources are for the benefit of people dependent on industries and for domestic needs. Thus, industries constitute a small percentage of ground water usage and, therefore, by focusing on water conservation efficiency, they are being allowed to extract ground water subject to checks against over-extraction with

provision for penalties for violation of provisions in the new guidelines.

- cc) Drinking water needs in the country by and large are met out of supplies through civic bodies. In few cases wherever the citizens are unable to get drinking water through water supply network, ground water is being tapped for meeting various needs. Even today the ground water is considered to be a dependable source for drinking purposes due to rising pollution levels in surface water in some parts of the country. Delhi Jal Board in National Capital Territory is tapping ground water in Palla area to meet drinking water needs of people of NCT of Delhi, which can be taken as a classic example.
- dd) Country is primarily an agro based nation for the past several decades, despite ups and downs in the agriculture productivity. Global track record will indicate that the **countries with industrial development are progressing with higher GDP growth rate. The country realized that prosperity of the nation lies in rapid industrial development and growth.** The focus, thus, shifted towards globalization and economic liberalization. The incentives are part of economic liberalization. Such incentives are intended to promote and encourage small and marginal industries for balanced regional development, elimination of concentration of wealth in the hands of few and also to relieve the Small and Micro industries from the burden of investments on water, which is considered to be a precious and priced commodity. The incentives however, were considered under CGWA guidelines only to users in small quantity and adverse effects are not noted to be significant when compared with larger interest of the nation.
- ee) As observed by the Committee constituted in the matter of **Shailesh Singh (supra)**, CGWA has appointed officers under Section 4 of EP

Act 1986. At District level, concerned Deputy Commissioner/District Magistrate/District Collectors were appointed as authorized officers under Section 4 of EP Act 1986, vide Public Notice No. 8/2017 dated 23.10.2017 and intimated concerned States/UTs for checking violations, sealing of illegal/unauthorized bore wells and for launching prosecution against offenders. At State/Regional level, CGWA has appointed concerned Regional Directors/Heads of Offices of CGWB, as authorized officers. These Regional Directors/HOOs are further assisted by a team of scientists/officers in the regions for effective regulation in accordance with the provisions under established law. CGWA has also engaged young professionals for assisting in secretariat functions. To ensure effective functioning of CGWA, currently, there are more than 100 employees exclusively engaged in the regulation and management of ground water including scrutinizing of NOC applications submitted by project proponents. The functions of CGWA are being discharged with responsibility, sharing constant coordination with regional offices.

ff) Hence, robust mechanism is in place and CGWA is empowered by Central Government to consider more such appointments under Section 4 of EP Act 1986 as and when considered necessary. In addition, State Ground Water Authorities also are operational in several states under State/UT enactments. These authorities also are actively contributing towards accomplishment of goals envisaged for sustainable development and management of ground water resources in the country. **A proposal for establishment of separate CGWA delinked from CGWB and creation of suitable posts is under active consideration of the Government.**

gg) A web based online system NOCAP is completely functional for receipt and processing of applications and issuance of NOC to make it less



time consuming and more transparent. NOCAP portal is in public domain and data can be accessed by private persons/individuals. NOCAP helps in effective monitoring of processes and tracking of applications by the users and also facilitates better coordination between 12 Regional Offices of CGWB in the States and CGWA Headquarters at New Delhi.

hh) Respondents 2, 3 and 4 have further said that CGWA has issued directions under Section 5 of EP Act 1986 through various public notices, details of which are as under:

<b>Sl. No.</b>	<b>Notice No.</b>	<b>Date</b>
1	2/2011	-
2	26-1/CGWA/D1/09/743/783	08.10.2009
3	26-1/CGWA/D1/09/744	08.10.2009
4	28-7/CGWA/2011-1302	06.09.2011
5	01/2010	-
6	-	08.10.2020
7	-	26.10.2020
8	-	08.01.2021
9	-	08.01.2021
10	T-39011/6/2019-GW Section	21.08.2019
11	1-5/CGWB/M(HQ)/Rev.M.P/2019	17.08.2020
12	T-63012/1/2020-GW	04.01.2021

ii) States/UTs have been advised from time to time to enact ground water legislations in similar lines to the Ground Water Model Bill circulated to them for sustainability of precious ground water resources. States have been advised to work towards improving water use efficiency, awareness generation, formulating water pricing policies etc. In para 32, reference is made to other schemes launched by Government of India in respect to water which are:

- (i) Atal Bhujal Yojana (ATAL JAL)
- (ii) National Aquifer Mapping and Management Programme (NAQUIM)
- (iii) Mission Water Conservation

- (iv) Mahatma Gandhi National Rural Employment Guarantee Scheme
- (v) Pradhan Mantri Krishi Sinchayi Yojna (PMKSY)
- (vi) Integrated Watershed Management Programme (IWMP)
- (vii) Command Area Development and Water Management (CAD&WM)
- (viii) Deendayal Upadhyay Gram Jyoti Yojana
- (ix) Mukhyamantri Jal Swavlamban Abhiyan in Rajasthan
- (x) Jalyukt Shibar in Maharashtra
- (xi) Sujalam Sufalam Abhiyan in Gujarat
- (xii) Mission Kakatiya in Telengana
- (xiii) Neeru Chettu in Andhra Pradesh
- (xiv) Jal Jeevan Hariyalli in Bihar
- (xv) Jal hi Jeevan in Haryana.

jj) In parawise reply whatever has been said earlier is virtually reiterated and it is said that policy, in fact, is in compliance of Tribunal's order dated 20.07.2020.

49. **ARGUMENTS:** Learned Counsel for appellant urged that guidelines 2020 do not conform to the directions issued by Tribunal and in substance, it is a copy of guidelines 2018 which was disapproved by Tribunal. CGWA has adopted a very soft attitude for permitting NOC to industries even in OCS areas without caring to consider issue of availability of drinking water to people residing in such areas. Even water extensive units are allowed NOC in OCS areas without regulating indiscreet abstraction of ground water in such areas. So called charges are very nominal and allow profiteering to industries by violations. There is no impact assessment, no study by any Expert body but in a mechanical manner, on presumptions, provisions permitting abstraction

of ground water in stressed areas has been allowed in the name of industrial development. He also reiterates all grounds taken in appeal.

50. **Per contra**, Shri Pradeep Mishra, learned counsel for UPPCB contended that the action of respondents is strictly in accordance with the Guidelines and Statutory provisions made in this regard, dealing with the issue of abstraction of underground water and whatever has been done, since consistent with law as stands today, it cannot be said that Statutory Authorities have not acted in accordance with law. The application, therefore, is, liable to be dismissed.

51. No other counsel has advanced any argument on behalf of the Statutory Authorities/Regulators namely CPCB, CGWA etc. and PPs but submit that their stand taken in replies be taken into consideration.

**ISSUES:**

52. In the backdrop of the above pleadings, reports, statutes and relevant provisions, we find that following substantial questions relating to environment arising out of the implementation of the enactments specified in Schedule I, have arisen in this matter:

- (i) Whether regulation of ground water in India is within exclusive domain of CGWA by virtue of EP Act 1986 or wherever Provincial enactments have been made, CGWA would lose its authority and sub-serve to Provincial legislation?
- (ii) Whether EP Act 1986 and orders and directions issued thereunder shall regulate and control matters relating to ground water or Provincial enactments dealing with ground water shall prevail?

- (iii) If answer of issues (i) and (ii) is in favour of CGWA and Central law, whether regulation of ground water by CGWA has been as per the directions of Supreme Court in ***M.C. Mehta vs. Union of India & Others (1997) (supra)*** or it has failed in its statutory functions to protect and preserve ground water and itself has aided depletion of ground water further, causing damage to environment?
- (iv) Whether directions/orders/guidelines including Guidelines 2020 issued by CGWA for regulation of ground water in India are consistent with the provisions of EP Act 1986 and orders of Supreme Court and this Tribunal?
- (v) Whether NOC issued by CGWA or UPGWA conformed the statutory norms relating to environment emanating from EP ACT 1986, judgment of Supreme Court and also various orders of NGT?
- (vi) Whether PP-1 to 3 illegally extracted ground water or flouted any other condition of NOC and/or committed any other violation of environmental norms?
- (vii) Whether there is any damage to environment and if so, in what manner it has been caused and who is liable for such degradation?
- (viii) What remedial/punitive order would be appropriate in the present case, which may be passed by this Tribunal?

### **GROUND WATER- CONCEPT- PAST AND PRESENT**

53. It is evident that abstraction of ground water in areas of extreme scarcity is the core issue in these cases. Before dealing with the issues formulated above, on merits, it would be appropriate to have a glance on the concept of ground water, since ancient times.

54. Water is one of the five elements which constitute human body. It is needed for very sustenance of civilization. Considering importance of the issue, we have to examine interest of society, in general, and common man's need of water for drinking purposes, domestic uses etc., in particular. In many areas, people find it difficult to get potable water easily, due to scarcity. Almost every second day we find crises of water, reported in media, in one or the other city. Simultaneously, there is commercial interest of individuals who contribute to the economy of the country and they require water for commercial purposes. The scarcity of water is well known. Search of solution of this problem is Global. Scarcity of water is being faced almost by all countries. Attempts have been made at different levels, including national and international, to take steps for making potable water available to the common man but simultaneously there cannot be a complete denial or prohibition for use of water in commercial and industrial activities which is the backbone of development and economy. A balance has to be maintained but when situation comes in a given case, to select any one of them, obviously saving of life will have to be preferred.

**Life cannot be imagined without water (बिन पानी सब सून):**

55. No one can dispute about the importance of water. It is essential for life on earth. It is available on the planet in all the three phases namely solid, liquid and gas. Water ties together, major parts of earth climatic system, in the form of air, clouds, ocean, lakes, vegetation, snowpack and glaciers. Conversion and reconversion of one form of water to any other, is commonly known as water cycle which shows continuous movement of water within earth and atmosphere. In the form of liquid and solid, it is available on earth, on the surface and beneath the surface. Snowpack and glaciers are solid forms on the surface while in

liquid form, it is available in the running condition as oceans, rivers, streams, waterfalls etc. and sometimes as water body or wetland in the form of lakes, ponds and other wetlands. Inside/beneath the surface, it percolates the sand and rocks and is available as ground water. Existence of ground water is necessary and integral part of water cycle in as much as it contributes to the surface water which is involved in the process of conversion as vapour/cloud due to heat or in cold areas solidify as snow. In the areas where large quantity of water evaporates, and results in scarcity of water on the surface, it is ground water which helps to maintain surface water and also contributes to fill water in wells. Water influences intensity of climate variability and change. It is key part of extreme events like drought and floods. If surface water exceeds the limit of carrying capacity, it will flood the plains and if evaporation of surface water is very high and recharge is not as per the requirement, it may result in causing drought. Not only for human sustenance, but, for every activity or in other words, in every walk of life, mankind needs water.

56. Water has its role as an intimate part of the human existence, as an individual, or, in group or society, for personal life or social life, for household needs or commercial or industrial needs, etc. Everywhere water is required. It is fundamental and basic need of life cycle, whether it is animals kingdom or plants kingdom. It is, therefore, extremely important that water resources are protected, both, for human uses and eco-system.

57. Our forefathers at a very early stage, had recognized importance of water and educated people to respect nature, giving it spiritual and religious stature. Mountains, rivers, waterfalls, streams, ponds, wells, trees etc., all were treated as divine objects, and worshipped. The idea

was that the people would be obliged not only morally but socially and religiously to protect nature including water sources, resources and, practice its reasonable utilization. Unfortunately, in the last few centuries, above learnings and teachings, handed down to us, by our learned, wise and farsighted esteemed forefathers/ancestors, have been ignored under a misconception of a materialistic kind of development. We have compromised with water resources, exploited indiscreetly, misused gift of nature i.e., free availability of minerals, wood, clean air and water, in all possible manner. That is how rivers, streams, and water bodies are drying, ground water table is depleting, glaciers are melting and world is facing a severe crisis of water supplies. True, the developmental activities cannot be made solely responsible in as much as population explosion, our negligence towards environmental pollution, etc. are some other root causes which have also contributed to this problem.

58. Sometimes, it is said that scientifically, water is never lost but only changes form, therefore, alleged crisis is artificial and a hollow cry. But this is not true. When we consider in the context of need of water for human activities, it is true that earth water is always in movement and there is a natural water cycle known as '**hydrologic cycle**'. There is continuous movement of water on, above, and below the surface of the earth. But the cardinal fact is, if water, available on surface and under the surface, is used in an unplanned manner, irrespective of the quantum of water available at a particular place, there will be a scarcity and this will reflect not only on the hydrologic cycle but adversely affect water availability at other places also. If surface water for one or the other reason, goes down, recharge of ground water will also get reduced and it will create scarcity of ground water, reflect when it is sought to be

extracted through wells and this will ultimately reflect upon the quantum of surface water also.

59. Water is important for the very sustenance, not only for Homo Sapiens but the entire animal kingdom. With water regime, civilizations have developed and disappeared. Interestingly, everybody knows that mankind cannot survive without fresh, healthy and sustained air, water and clean atmosphere, still ground level efforts for its protection are not so serious. Though globally, every country talks seriously about environment and its protection, shows concern about its depletion, but in practice, their action is not true to the words spoken in global meetings. Developed countries find themselves free to damage environment in the manner they like but blame underdeveloped or developing countries and so is the reverse. The developing and underdeveloped countries lack resources to take care and leave climate at its fate, making it free to its inhabitants to use and consume natural resources in whatever manner they like. Extensive exploitation of water, either unregulated or with superficial or shallow regulation becomes destiny of water.

60. So far as India is concerned, historically, environment has been given a very pious place and regard, since pre-*vedic* as well as *vedic* era. “Water”, since pre-*vedic* era, has been recognized as a spiritual symbol. *Rigveda* identifies “water” as the first residence or ayana of nara, the Eternal Being. Therefore, water is said to be *pratishtha*, the underlying principle, or the very foundation of this universe. In Sataptha, it is said:

*“Water may pour from the heaven or run along the channels dug out by men; or flow clear and pure having the Ocean as their goal...In the midst of the Waters is moving the Lord, surveying men’s truth and men’s lies. How sweet are the Waters, crystal clear and*



*cleansing...From whom... all the Deities drink exhilarating strength, into whom the Universal Lord has entered..”.*

61. Early *Vedic* texts also identify “water” as a manifestation of the feminine principle, commonly as *Sakti*. *Rigveda* said:

*“I call the Waters, Goddesses, wherein our cattle quench their thirst; Oblations to the streams be given...”.*

62. It is said that the primordial cosmic man or Purusa was born of the Water. Later *Vedic* texts identify that, “*Water is female.*” (Satapatha). Philosophically, *vedas* bestows a sacred character on water, identified therein, a medium to attain spiritual enlightenment. *Vedas* identify water as the very essence of spiritual sacrifice, or as stated in *Atharvaveda* “*the first door to attain the divine order*”. The use of water in daily life as well as in ritualistic ceremony was referred to as spiritual sacrifice, a process of attaining eternity. *Rigveda* said:

*“...Whatever sin is found in me, whatever wrong I may have done, if I have lied or falsely sworn, Waters remove it far from me...”.*

63. Besides, philosophical and spiritual status given to environment including water, in ancient *vedic* scriptures, even on the issue of hydrology, we find a lot of material in *vedic* literature showing that since ancient time science of water was well developed in ancient India. Certain concepts of modern hydrology, we find, scattered, in various verses of *Vedas*, *Puranas*, *Meghmala*, *Mayurchitraka*, *Vrhat Sanhita* and other ancient scriptures. Our forefathers in *Vedic* age, had developed the concept that water gets divided into minute particles due to the effect of sun rays and wind. In *Puranas*, at various places, it is alluded that water cannot be created or destroyed, and that, only its state is changed through various phases of hydrological cycle. Evaporation, condensation, cloud formation, precipitation and its measurements were well understood in ancient India as we find from the study of *Vedic* and

*Puranic* scriptures. During the time of *Kautilya*, contrivances to measure rainfall were developed which had the same principle as that of modern hydrology, except that weight measures were adopted instead of modern linear measurement of rainfall.

64. Indians, in ancient times, had well developed concepts of groundwater occurrence, distribution and utilization. Ancient literature also reveals that hydrologic indicators such as physiographic features, termite mounds, soils, flora, fauna, rocks and minerals were used to detect presence of groundwater. In *Vrhat Sanhita*, chapter 54, we find a detailed description of variation in the height of water table with place, hot and cold springs, ground water utilization by means of wells, construction methods of well and requisite equipments. Chapter 54 of *Vrhat Sanhita* is named as '*Dakargala*'. As early as 550 A.D., *Varamihira* presented a simple method for obtaining potable water from a contaminated source of water. Efficient water use, lining of canals, construction of dams, tanks, essential requirements for the construction of good tanks, bank protection methods, spillways and other minor aspects were given due consideration in ancient times in India.

65. "National Institute of Hydrology", (Ministry of Water Resources, River Development & Ganga Rejuvenation) (hereinafter referred to as '**MOWRRD&GR**'), Jal Vigyan Bhawan, Roorkee, in a work, published in December 2018, has recognized that knowledge of hydrology was permissive in ancient India starting from pre and dusk valley civilization days and has been discussed in depth in Vedas, Puranas, Arthashastra, Astadhyayi, Brihat Samhita, Ramayana, Mahabharata, Meghamala, Mayurchitraka, Jainist and Buddhist and many other ancient literature. In the aforesaid work of MOWRRD&GR, ground water is the subject of discussion in chapter 6. It is stated that in

Rigveda, Samveda and Yajurveda, concept of hydrological cycle and water use through wells etc. was present which clearly imply use of ground water in chapter 54 of Vrhat Sanhita. Its author Varahamihira (AD 505-587) has dealt with ground water exploration and extraction with various surface features that are used as hydrologic indicators to look at sources from ground water at different depths in well, from 2.29 meters to 171.45 meters. In verses 54.1 and 54.61-62, chapter 54 of Vrhat Sanhita, two technical terms shira and shiravigyan have been used. The term shira implies arteries of water or streams. Shiravigyan exactly conveys the meaning of water table. Verse 54.2 says that the water which falls from the sky, originally, has the same colour and same taste, but assumes different colour and taste after coming down on the surface of the earth and after percolation. In a very scientific manner, ground water and its explanation were dealt with, keeping in mind the preservation of water and its availability for all times to come, without getting it polluted or contaminated by any external means or operations.

66. The science of water in India is ancient but unfortunately forgotten in the last few centuries. Indian sub-continent, was invaded and ruled by people from other areas having different concepts, convictions and religious culture. The ancient scientific knowledge went in dormancy. The invaders treated inhabitants in a very crude manner, did not hesitate in destroying treasure of knowledge given in this sub-continent by great Saints and Rishis, and compelled common folk to believe that their cultural wealth was a myth. Huge collection of research and knowledge stored in educational institutes of repute were set on fire or damaged otherwise. Volumes of ancient knowledge treasure was also taken away by later invaders and rulers. The resultant subsequent unscientific, unmindful and irrational massive excavation, extraction and

consumption, not only of surface water, but ground water, in the name of development of civilization, has created a situation where in some parts of country, even drinking water is not available or has become a serious scarcity.

67. Availability of water in all the areas is not uniform, whether it is surface water or ground water. Water covers about 71% of the earth surface. It comes to about 333 million cubic miles (1.386 billion km.) on the planet. In a U.S. Geological Survey's Water Science School, taking data source from Igor Shiklomanov's chapter "World freshwater resources" in Peter H. Gleick (editor), 1992, availability of earth water has been shown in three parts:

- i.) For total global water available, 96.5% is in oceans, 0.9% is other saline water and only 2.5% is fresh water.
- ii.) For 2.5% fresh water available, further division is that 68.7% thereof is in the form of glaciers and ice caps, 30.1% is ground water and only 1.2% is surface or other fresh water.
- iii.) For 1.2% surface/other fresh water available, again it is in different forms, i.e., 69.0% as ground ice and permafrost, 20.9% lakes, 3.8% soil moisture, 2.6% swamps and marshes, 0.49% rivers, 0.26% living things and 3% in atmosphere.
- iv.) Here the term fresh water means water with a salinity of less than 1% that of the ocean i.e., below around 0.35%.

68. In other words, as a rough estimate, out of total water supply of about 333 million cubic miles (1.386 billion km<sup>3</sup>), more than 97% is saline. Only a small percentage, i.e., 2.5% fresh water is available. There against also, substantial part, i.e., 68% is locked up in ice and glaciers. A very small amount is available as surface water for human uses, i.e., 1.2%, which comes around 22300 cubic miles (93100 km<sup>3</sup>) which is

about 0.007% of total water available on earth. These figures should not surprise us. Despite a very small fragment of water, available on surface, is consumable by human being, yet rivers are source of most of the water, the people use.

69. The quantum of ground water, comparing to the surface water, is definitely much more. However, comparing with global availability of water, it is a very small fraction thereof.

### **LAW ON USE OF GROUND WATER**

70. In the past, there was no control, regulation or supervision in respect of extraction of ground water. On the contrary, a recognition of owner's right to use ground water, we find in Section 7 of Indian Easement Act, 1882 wherein Illustration (g) provides that land owners have the right to collect and dispose of all water under the land within their own limits. Availability of water vis a vis population and activities, was enough. Hence owners right on water was given recognition without any restriction or regulation. Habitation was village centric. It is 20<sup>th</sup> century urbanization which made drastic change in the life of common man creating various scarcities, most important whereof is water including ground water.

71. In India, we had a persistent problem of acute and severe drought as also floods in various parts of the country, if not every year, then quite frequently. Some States are such which experience problem of flood and drought almost every year. A gigantic growth of infrastructure and industrial development in various forms also substantially consumed, not only surface water but also ground water. Almost at the end of 20<sup>th</sup> century, it was realized that a systematic water regime is the only option to protect human race, existence whereof was imperiled, and in

furtherance thereof, Government of India, though reluctantly, attempted to create common awareness. It sought cooperation of all the States when it prepared Model Bill 1970 and circulated to all the States with request for adoption. It did not result into immediate positive response though subsequent amendments and re-circulations were made in 1992, 1996 and 2005. However, some Provincial Governments responded by making Provincial enactments for regulation of ground water. These enactments may have the objective of regulation of ground water so as to protect and preserve water table but in effect the provisions showed identification of areas where ground water level was depleted, declaration of such hard areas as notified area, and thereafter, bringing in, the concept of permission, from a Ground Water Authority, allowed very leniently, without any scientific study, impact assessment, carrying capacity etc. It was like importing the idea of license-raj, in the field of consumption of water, in notified areas. The provisions necessary for recharge, restoration and replenishment and its effective monitoring to ensure that it is actually done, were lacking.

72. International community ultimately, more particularly in the last about fifty years, realized danger of scarcity of water, so much so, sometimes it is said that third world war will be fought for water. Consequently, some steps were sought to be taken to mitigate, restore and rejuvenate but positive effect is still a mirage.

73. In the context of environment, it has been held from time to time that a clean and healthy environment is part of Fundamental Right of life, conferred by Article 21 of Constitution. In **Subhash Kumar vs State of Bihar (1991)1SCC598**, Supreme Court said:

*“the right to live includes the right of enjoyment of pollution free water and air for full enjoyment of life.”*

74. In ***Narmada Bachao Andolan vs Union of India (2000)10SCC***

**664**, Court said:

*“ Article 21 of the Constitution of India provides for right to life and right to live with human dignity. The right to clean environment and further, pollution free water has been protected under the broad rubric of the right to life guaranteed under Article 21”.*

75. Reference is also made to Article 48A, inserted in Part 4, (Directive Principle of State Policy) by 42<sup>nd</sup> amendment of Constitution, w.e.f. 03.01.1977, which reads as under:

***“48A. Protection and improvement of environment and safeguarding of forests and wild life:*** *The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”*

76. Further, Part 4A, comprises of Article 51A, was also inserted in the Constitution by 42<sup>nd</sup> amendment w.e.f. 03.01.1977 and reads as under:

***“51A. Fundamental duties:*** *It shall be the duty of every citizen of India-*

*(a) to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;*

*(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;*

*(c) to uphold and protect the sovereignty, unity and integrity of India;*

*(d) to defend the country and render national service when called upon to do so;*

*(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;*

*(f) to value and preserve the rich heritage of our composite culture;*

***(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;***

*(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;*

*(i) to safeguard public property and to abjure violence;*

*(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.”*

77. Concern about pollution of rivers and streams, render water unsuitable for supporting aquatic and surface life, causing damage to irrigation/agriculture, untreated discharge of domestic and industrial effluents in rivers etc., were certain issues which drew attention of Government India resulting in constitution of a Committee in 1962 to prepare a draft enactment for Prevention of water pollution. The report submitted by Committee was forwarded to various State Governments. It was also considered by Central Council of local self-Government in September 1963. Council resolved that a comprehensive law dealing with the issue of water pollution and control, at Central and State level, may be enacted by Central legislature. Since subject matter of legislation was relatable to entry 17 list 2 of Seventh Schedule of the Constitution, Parliament lacked legislative competence to make law on the subject (except as provided in Article 249 and 250 of the Constitution), i.e., unless legislatures of 2 or more States pass resolution authorizing Central legislature to pass law on the concerned subject. Consequently, Provincial legislatures of Gujarat, Jammu and Kashmir, Kerala, Haryana and Mysore passed such resolution. Thereafter, Bill of Water Act, 1974 was prepared and passed by Parliament. It was also passed under 252(1) of the Constitution by Provincial legislatures of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal. Ultimately Water Act 1974 came into force on 23.03.1974.

78. At the first instance, it was made applicable to States which had passed resolution under Article 252 (1) adopting the said Act. Section 1 sub-section 3 said that it shall come into force at once in those States. Further it shall apply to the States which would adopt the said Act from the date of such adoption.



79. In the meantime, conference on human environment was held in Stockholm in June 1972 at the instance of United Nations in which India also participated.

80. In 1972 in Stockholm Convention, world leaders, showed global concern on depleting environment and endeavored to protect and preserve it by taking appropriate steps. Decisions were taken therein to take appropriate steps for preservation of natural resources. In furtherance to the said decision and in order to give effect to the International resolution passed at United Nations, Central Legislature enacted Air Act 1981 which came into force on 16.05.1981.

81. Subsequently, it was realized that the existing laws focused on specific types of pollution or on specific categories of hazardous substance and major areas of environmental hazards are not covered. There were several aspects untouched and several gaps existed, needing a comprehensive statute, for protection and improvement of environment and matters connected therein. It resulted in enactment of EP Act 1986 which came into force on 19.11.1986.

82. In fact, Stockholm declaration caused amendment of Constitution and insertion of Article 48A in Fundamental duties chapter and also part of fundamental duties. The concept was that it is fundamental human right to live in an unpolluted environment and it is fundamental duty of every individual to maintain purity of environment. The issue of environment assumed such an importance that Supreme Court in ***M.C. Mehta vs. Union of India A.I.R.1992S.C.382***, directed University Grants Commission to prescribe a course on environment.

83. Since Statues for protection of environment were enacted to implement decision reached at Stockholm conference, the same are

referable, to Article 253, to confer legislative competence upon Central Legislature, irrespective of subject in the list of legislation, under Schedule 7. Article 253 reads as under:

**“253. Legislation for giving effect to international agreements:** *Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”*

84. An enactment referable to Article 253 is further referable to entry 13 List 1 of Schedule 7 of the Constitution, which says:

*“13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.”*

85. Further, there was no specific penal legislation dealing with the matter of environment in India. In Indian Penal Code, 1860 (hereinafter referred to as “I.P.C.”), Section 268, defined “Public Nuisance” and abatement of public nuisance was covered by Sections 133 to 144 I.P.C. Section 269 to 278 I.P.C. made provisions which means that a person guilty of violation of any of the above provisions would be liable to prosecution and punishment.

86. University Grants Commission (India) in February 1997, launched its symposium on development of environmental studies in Indian universities. This symposium was organized in collaboration with some other organizations. The consensus arrived in this symposium was that ecology and environmental issues should form part of the courses of study at all levels. Government of India however treated environmental violations with more seriousness and in 2012, brought amendment in Prevention of Money Laundering Act, 2002 (hereinafter referred to as **‘PMLA 2002’**) by incorporating environmental laws i.e., Biological

Diversity Act, 2002; Water Act 1974; Air Act 1981 and EP Act 1986 in Part A of the Schedule of PMLA 2002.

**Provincial Enactments for Regulation of Ground Water:**

87. Earlier the only available legislation was Indian Easement Act, 1882 which conferred certain rights upon the owner of a property to use water (groundwater) with ownership rights. There was no regulation governing abstraction of ground water. Government of India prepared a Model Bill in 1970 for ground water regulation and circulated to States for adoption. This version was revised in 1992, 1996 and 2005 but there was no substantial progress.

88. With the awareness of protection of environment, and international resolutions passed in United Nations, three enactments were made in India, Water Act 1974, Air Act 1981 and EP Act 1986 but specifically, problem of exploitation of groundwater was not dealt with. Lead was taken by some State Legislatures, and in brief, we refer to these Provincial enactments, to complete our stock of Statutory Provisions, available in India, to regulate ground water.

**a) Andhra Pradesh:**

- (i) The **Andhra Pradesh Ground Water (Regulation for Drinking Water Purposes) Act, 1996** received assent of Governor on 05.02.1996. Section 1(3) provided that

*“it shall come into force on such date and in such local area of the State as the State Government may, by notification appoint, and different dates may be appointed for different local areas”.*

- (ii) The terms ‘Ground Water’ and ‘Over-exploited Watershed’ are defined in Section 2(4) and (6) as under:

*“(4) ‘ground water’ means water existing in an aquifer below the surface of the found at any particular location of the local area regardless of the geological structure in which it is stationary or moving and include all ground water reservoirs;*

*(6) ‘Over exploited watershed’ means a watershed where the estimated annual ground water extraction is more than eighty five percent of the estimated average annual ground water recharge, calculated in the prescribed manner, and declared as such under section 6;”*

The term ‘water scarcity area’ is defined in Section 2(12) and “watershed” is also defined in Section 2(13) as under:

*“(12) ‘water scarcity area’ means an area declared as such by the Appropriate Authority under section 4;*

*(13) ‘watershed’ means an area confined within the topographic water divide line, as identified and notified by the Ground Water Department from time to time having regard to the purposes of this Act;”*

(iii) Section 3 imposes restriction upon sinking of any well for any purpose, in the vicinity of a public drinking water source within a distance of two hundred meters if it is a source with Hand Pump or open well, and within a distance of two hundred and fifty meters if the source is used with a Power-Driven Pump. Sub Section 2 directs that any person, so desiring, will have to seek permission of the appropriate authority in such manner and on payment of such fee as may be prescribed. Section 4 confers power upon appropriate authority on the advice of Technical Officer, having regard to the quantum and pattern of rainfall and any other relevant factor, to declare water scarcity area, if he is of the view that public drinking water sources in any area of the district are likely to be affected adversely. Such declaration would be for a period not exceeding one year at a time. Sub-section 2 of Section 4 empowers appropriate authority to regulate extraction of water from any well by restricting or prohibiting extraction in the area declared as “water scarcity area” under Sub-section (1). Sub-section (5), empowers appropriate authority to declare a watershed as over- exploited watershed on the advice of Technical Officer. When an “over-exploited watershed” is declared, Sub-section (2)

imposes restriction upon any person for sinking well within the said area without permission of appropriate authority. Sub-section (6) empowers appropriate authority to prohibit extraction of water from existing well in the area of over exploited watershed, if found to be adversely affecting any public drinking water source, having regard to the quantum and pattern of rainfall and other relevant factors. The provisions for penalty and compensation are also made therein and procedure for passing orders adverse to any person giving remedy of an appeal are also provided.

**b) Bihar**

- (i) **Bihar Groundwater (Regulation and Control of Development and Management) Act, 2006:** The Act was published in Bihar Gazette (Extraordinary), dated 29.01.2007. Section 1(3) stated that it shall come into force on such date as the State Government may appoint by notification in the Official Gazette. Here definitions of “Artificial Recharge to Ground Water” and “Ground Water” are given in Section 2(b) and (f) as under:

*“(b) “**Artificial Recharge to Ground Water**” means the process by which ground water reservoir is augmented at a rate exceeding that under natural condition of replenishment.*

*“(f) “**Ground Water**” means the water which exists below the ground surface in the zone of saturation and can be extracted through wells or any other means or emerges as springs and base flows in streams and rivers.”*

- (ii) It provided for establishment of an Authority, namely Bihar State Ground Water Authority, by State Government, by publication of a Notification in an Official Gazette. Section 3 contemplates an advice from the Authority after consulting expert bodies including CGWA, if it is necessary, to control and regulate extraction or use of ground water in any form in any area, to the State Government, to declare such area to be

notified area for the purpose of aforesaid Act. When an area is notified then for extraction and use of ground water, a permit would be necessary, as provided under Section 6.

**c) In National Capital Territory of Delhi**, Department of Environment, has issued an order dated 18.05.2010, purported to be a direction under Section 5 of EP Act, 1986 observing that continued extraction of ground water has led to severe depletion of ground water resources; has serious long term environmental implications and over extraction of ground water may result in drying up of ground water resources which may also affect water quality. CGWA by Notification in March, 2006 notified East New Delhi, North-East, North-West and West District of Delhi as “Over-exploited” areas, needing regulation and restriction of ground water extraction structures in those districts, mandatory. The directions issued by Lt. Governor, National Capital Territory of Delhi say that in the whole of NCT of Delhi, no one shall draw ground water through bore well/tube well (new as well as existing) for domestic, commercial, agricultural and/or industrial uses without prior permission of the Competent Authority, i.e., Delhi Jal Board (DJB) or New Delhi Municipal Council (NDMC), as the case may be. Then, procedure for regulation of the above directions is given. Detailed Guidelines as to the factors to be considered for grant of prior permission, we find, are not mentioned in the said directions except that in certain cases, requirement is that the provisions for Rain Water Harvesting System shall be made.

**d) Goa Ground Water Regulation Act, 2002:** Here also the concept of declaration of Scheduled area having regard to the potential of availability of ground water and other relevant factors, has been

propounded and restriction on existing well or new wells in the Scheduled area is provided.

**e) Kerala Ground Water (Control and Regulation) Act, 2002 (Act 19 of 2002):** Enacted for conservation of ground water and regulation of its extraction. Here also is a provision for constitution of State Ground Water Authority and declaration of an area as “Notified area” where Government is satisfied that it is in public interest to regulate extraction of use of ground water in that area. In the “Notified area”, any person desiring to use ground water, will have to seek a permit from the appropriate Authority.

**f) Karnataka Ground water (Regulation and Control of Development and Management) Act, 2011:** In State of Karnataka, pursuant to Government of India, Ministry of Water Resources’s circulation of a Model Bill for regulation and control of development and management of ground water in 1992 and 1996, initially, Karnataka Ground Water (Regulation for Protection of Sources of Drinking Water) Act, 1999, (Karnataka Act 44 of 2003) was passed in 2003. It was substituted by Act, 2011 to control indiscriminate exploitation of ground water, especially in “Notified areas” in the State. Above Act received assent of Governor on 05.04.2011.

**g) Lakshadweep Ground Water (Development and Control) Regulation, 2001,** published in Lakshadweep Gazette (Extraordinary), dated 14.09.2001, made for regulation of ground water. It contemplated a Ground Water Authority and declaration of any island as a “Notified Island” to control and regulate extraction or use of ground water.

- h) Maharashtra Groundwater (Development and Management) Act, 2009**, published in the Maharashtra Government Gazette (Extraordinary), dated 03.12.2013, was enacted to ensure and protect drinking water resources and regulate exploitation of ground water in State of Maharashtra. It contemplates constitution of Maharashtra Water Resources Regulatory Authority and empower State Government, on the recommendation of the authority, to declare any area as “Notified area” where it finds, in public interest, to regulate extraction or use of ground water in a watershed or aquifer area.
- i) Pondicherry Ground Water (Control and Regulation) Act, 2002 (Act No. 2 of 2013)** was enacted to regulate and control development of ground water and for matters connected therewith.
- j) Tamil Nadu Municipal Laws and the Chennai Metropolitan Area Groundwater (Regulation) Amendment Act, 2014 (Act No. 23 of 2014)**, was enacted to make amendment in Tamil Nadu District Municipalities Act, 1920, inserting provisions for permit for sinking any well in any area of third grade municipality, town panchayat or municipality etc. It also makes similar amendments in some Metro Cities enactments namely, Madurai City Municipal Corporation Act, 1971, Coimbatore City Municipal Corporation Act, 1981 and Chennai Metropolitan Area Groundwater (Regulation) Act, 1987.
- k) The West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 (Act XVIII of 2005)**, published in Kolkata Gazette, (Extraordinary), dated 31.08.2005, to manage, control and regulate indiscriminate extraction of ground water. It contemplates a State Level Authority, i.e., West Bengal State Level Groundwater Resources Development Authority, an Authority at



District level as well as Corporation level. The powers and duties of the Authority are given in different provisions, and basically, they have to take into consideration various aspects of managing groundwater resources in West Bengal, its Districts and Corporations.

**l)** Besides above, following enactments are also operating for control and regulation of ground water:

- (i) **Assam** Ground Water Control and Regulation Act, 2012.
- (ii) **Gujarat** Irrigation and Drainage Act, 2013.
- (iii) **Himachal Pradesh** Ground Water (Regulation and Control of Development and Management) Act, 2005.
- (iv) **Madhya Pradesh** Peya Jal Parirakshan Adhiniyam, 1986.
- (v) **Punjab** Preservation of Subsoil Water Act, 2009.
- (vi) **Rajasthan** Soil and Water Conservation Act, 1964.
- (vii) **Uttarakhand** Ground Water (Regulation and Control of Development and Management) Act, 2016.
- (viii) In **Jammu and Kashmir**, it is Water Resources (Regulation and Control of Development and Management) Act, 2010.
- (ix) **Union Territory of Chandigarh** Water Supply Byelaws, 2011 (Amendment 2018).
- (x) **Haryana** Water Resources (Conservation, Regulation and Management) Authority Act, 2020 published in the Gazette of Haryana dated 07.12.2020 (Extraordinary).

**m) Uttar Pradesh:**

- i. Lastly, we come to **Uttar Pradesh Ground Water (Management and Regulation) Act, 2019** (hereinafter referred to as '**UPGWMR ACT 2019**') which was published in UP Gazette (Extraordinary), dated 07.08.2019. It has come into force on **02.10.2019** vide Notification dated 11.09.2019 issued

under Section 1(3) of UPGWMR Act 2019. The terms ‘Aquifer’, ‘Bulk user’, ‘Commercial user’, ‘Ground Water’, ‘Infrastructural User’, ‘Notified area’, ‘Pollution’, ‘Rainwater harvesting’ and ‘Urban Area’ are defined in Sections 2(b), 2(e), 2(g), 2(q), 2(s), 2(u), 2(w), 2(x) and 2(aa) as under:

*“(b) ‘**Aquifer**’ means an underground layer of geological formation, group of formations or part of a formation, comprising fractured rocks, sand, gravel and like sediments, that is sufficiently porous, permeable and saturated with water and that transmits/accepts and yields significant quantity of water to a well or spring;*

*(e) ‘**Bulk User**’ means a person or a group of persons including any establishment such as hotels/lodges/private residential buildings /housing colonies/resorts/private hospitals/nursing homes/ business complexes/malls/ water parks, which extract and use ground water for the purpose of his or her or their operational water needs;*

*(g) ‘**Commercial user**’ means a person or a group of persons including any institution or any agency or any establishment who or which extract and use ground water for the purpose which directly or indirectly benefits his/her or their business or trade to make financial gain or profit;*

*(q) ‘**Ground Water**’ means the water occurring in its natural state below the ground surface in the zone of saturation and that can be extracted through wells or any other means or emerges as springs and base flows in streams and rivers;*

*(s) ‘**Infrastructural User**’ means a person era group of persons including a firm or any company, who or which extract and use ground water for the-purpose of carrying out such activities projects which are directly related to infrastructural development;*

*(u) ‘**Notified area**’ means the **area notified as such under section 9 which includes Over-exploited, Critical blocks and Stressed Urban Areas;***

*(w) ‘**Pollution**’ means such contamination of ground water or surface water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage, Plastic, Thermocol or trade effluent or of any other liquid, gaseous, or solid substance into ground water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such ground water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other: legitimate uses, or to the life and health of animals or plants or of aquatic organisms;*

(x) **‘Rainwater harvesting’** means the technique or system of collection and storage of rainwater, at micro watershed scale, including roof-top harvesting, for storage or for recharge of groundwater;

(aa) **‘Urban Areas’** means the areas notified by a development authority or a municipality or a regulatory body as the case may be, excluding such areas/lands as are classified for agriculture use in the master plan of a development authority or a municipality or a regulated area;”

- ii. Further, in exercise of powers under Section 7 of UPGWMR Act 2019, **UP State Ground Water Management and Regulatory Authority** (hereinafter referred to as **‘UPSGWMRA’**) was constituted vide Notification dated **13.11.20119**, published in UP Gazette (Extraordinary), of the same date. By another Notification dated **02.01.2020**, published in UP Gazette (Extraordinary) of the same date, Governor in exercise of powers under Section 6(1) of UPGWMR Act 2019 directed UPSGWMRA to constitute **District Ground Water Management Committee** (hereinafter referred to as **‘DGWMC’**) for each district of the State, consisting of Chairman and Members, in accordance with provisions of the said Section. Thereafter, by Notification dated **25.05.2020**, published in UP Gazette (Extraordinary), of the same date, in exercise of powers under Section 49, State framed “UP Ground Water (Management and Regulation) Rules, 2020” (hereinafter referred to as **‘UPGWMR Rules 2020’**). In exercise of powers under Section 9(1) of UPGW Act, 2019, Notification dated 17.06.2020 was published, notifying rural and urban areas of State of UP, mentioned in the schedule, as ‘Notified area’ for taking up appropriate measure for overall management and regulation of ground water **w.e.f. 02.10.2020**. The rural areas of UP, in respect of Gautam Buddha Nagar, included Blocks-

Dankaur, Bisrakh and Jewar. In part B, urban areas of UP are mentioned which included NOIDA and Greater NOIDA in respect of district Gautam Buddha Nagar. Vide Notification dated **03.07.2020**, published in UP Gazette (Extraordinary), of the same date, Governor, in exercise of powers under Section 3 of UPGWMR Act 2019, directed DGWMC to constitute **Gram Panchayat Ground Water Sub Committee** (hereinafter referred to as '**GPGWSC**') for each Gram Panchayat for each District.

- iii. Under the scheme of UPGWMR Act 2019, Section 3 contemplates constitution of a GPGWSC in every Gram Panchayat, being the lowest public unit in rural areas, within a block, to protect and manage ground water resources under UPGWMR Act 2019. Its functions include collection of information from all resources; prepare GPGW security plan and carryout such other functions as may be prescribed.
- iv. In Urban areas, Section 5 of UPGWMR Act 2019, contemplates constitution of a **Municipal Water Management Committee** (hereinafter referred to as "**MWMC**"), for managing water in an integrated manner. Its functions include work in coordination with water related institutions within the respective municipality; to determine the sources of water supply (surface water and ground water) and integrate them; to prepare an overall municipal ground water security plan; register all the wells within notified and non-notified areas other than those of existing commercial, industrial, infrastructural and bulk users; to monitor implementation of municipal ground water security plan and to carry out such other functions as may be prescribed.

- v. Section 6 of UPGWMR Act 2019, contemplates constitution of a DGWMC being an overall unit for management of ground water resources at district level. Its function includes consolidation of Block Panchayat and Municipal Ground Water Security Plan into District Level Ground Water Security Plan, based on macro watershed approach and as per guidelines prescribed, implementation of District Ground Water Security Plan; monitor, implementation of District Ground Water Security Plan; conduct water awareness programs; register all existing commercial, industrial, infrastructural and bulk users in notified and non-notified areas and grant authorization certificate/NOC for ground water abstraction in non-notified areas and registration of drilling agencies; carry out such other functions, as may be prescribed or assigned by UPSWMRA and to coordinate with WPGW Sub-Committee, Block Panchayat Ground Water Management Committee and Municipal Water Management Committee as well as SGWMRA. Section 7 empowers State Government to constitute UPSGWMRA, which was constituted by Notification dated **13.11.2019**.
- vi. Chapter III comprises of a single Section, i.e., Section 8 and lays down duties of Ground Water Department. It says that Department shall develop a mechanism to coordinate with the appropriate body namely, MGWMC and BPGWMC for rural areas and DGWMC for urban areas. They shall work as Technical Secretariat for SGWMRA. Sub-section (3) requires Ground Water Department to identify and delineate the areas, such as over-exploited and critical blocks, categorized as per latest Ground Water Resource Estimation, carried out by Ground Water Department and CGWB, in consultation with

SGWMRA. It shall also identify and delineate stressed Municipal/Urban areas (where decline of ground water levels is significant, i.e., more than 20cm/year, recorded during the last five years), for taking up appropriate measures for overall management and regulation of ground water in such areas. The areas so identified, shall be designated as 'Notified areas' for the purpose of regulation through Notification.

- vii. Section 9 contemplates identification and delineation of 'Notified areas' for management and regulation of ground water resources and read as under:

*"9. (1) Where the State Ground Water Management and Regulatory Authority, after consultation with appropriate authorities (based on inputs from the Ground Water Department) is of the opinion **that it is necessary or expedient in the public interest to manage and regulate ground water for various purposes in any form in any area and to enforce rain water harvesting/ground water recharge and to implement various appropriate water conservation/water saving/water efficient practices mover-exploited/critical blocks and stressed urban areas** (as identified and delineated by the Ground Water Department) **where ground water levels have depleted to critical or alarming levels**, it shall advise the State Government in such manner as may be prescribed to declare by notification such areas as Notified Areas for the purposes of this Act with effect from such date as may be specified in the notification :*

*Provided that-*

*(a) the date specified in the notification under this sub-section shall not be earlier than three months from the date of publication of the notification;*

*(b) every notification in Hindi as well as in English languages under this section shall, in addition to its publication in the Gazette, be published in not less than three daily regional newspapers Waving wide circulation in that region and also be served in such other manner as may be prescribed.*

*(2) The Procedure for Demarcation and issuance of notification of the areas referred in sub-section (1) shall be such as may be prescribed.*

*(3) The notification issued under sub-section (1) shall be reviewed periodically under the new Ground Water*

*Assessment Report and according to the findings of the report, shall be in such manner as may be prescribed.”*

- viii. Section 10 talks of registration of existing commercial, industrial, infrastructural and bulk users of Ground Water in Notified Areas, and says:

*“10. (1) **Registration of existing commercial, industrial, infrastructural and bulk users of Ground Water:** Every existing well for commercial, industrial, infrastructural and bulk user located in Notified Areas (both urban and rural areas) shall apply to the respective District Ground Water Management Council for grant of a certificate of registration. The procedure, time limit, forms, fee etc. and other provisions for the grant of registration certificate shall be such as may be prescribed:*

*Provided that-*

*(a) **where any existing Commercial user or Bulk user is found extracting ground water without registration, he or she or a group of persons or an agency (as the case may be) shall be liable to be punished under Chapter-VIII;***

*(b) where a registered well becomes defunct, the fact shall immediately be brought to the notice of the respective District Ground Water Management Council by the user of ground water;*

*(c) where any such user of ground water, having' certificate of registration wants to carry-out any modification or alteration in a registered well, he or she or a group of persons or an agency (as the case may be) shall obtain clearance for the same from the State Ground Water Management and Regulatory Authority in such manner as may be prescribed.*

*(2) Every existing and future users of ground water, other than those mentioned in sub-section (1), including domestic and agriculture users of ground water shall register online, or directly to the respective Block Panchayat Ground Water Management Committee/Municipal Water Management Committee for ground water usages. The web-portal for online intimation shall be informed by the said committee.”*

- ix. Section 11 deals with similar registration of existing commercial, industrial, infrastructural and bulk users of Ground Water in Non-notified Areas.

*“11. (1) Every well (existing or to be sinked) for commercial, industrial, infrastructural and bulk use of ground water **in non-notified areas** shall apply to the respective District*

Ground Water Management Council for grant of a certificate of registration. The procedure, time limit, forms, fee etc. and other provisions for the grant of registration certificate shall be such as may be prescribed

Provided that-

**(a) if any Commercial, Industrial, Infrastructural or Bulk user of ground water is found extracting ground water without registration, he or she or a group of persons or an agency (as the case may be) shall be liable to be punished under Chapter-VIII;**

(b) if a registered well becomes defunct, this fact shall immediately be brought to the notice of the respective District Ground Water Management Council by the user of ground water;

(c) if any such user of ground water, having certificate of registration wants to carry-out any modification or alteration in a registered well, he or she or a group of persons or an agency (as the case may be) shall have to obtain clearance for the same from the respective District Ground Water Management Council in such manner as may be prescribed.

(2) Every existing and future user of ground water, other than those mentioned in sub-section (1), including a domestic or an agriculture user of ground water shall register online or directly to the respective Block Panchayat Ground Water Management Committee/Municipal Water Management Committee for ground water usages. The web-portal for online intimation shall be informed by the said committee.”

- x. Section 12 imposes restriction on new well constructions in

Notified areas and reads as under:

“12. (1) No person or group of persons or institution or agency or establishment shall construct/sink **any new well** for Commercial, Industrial, Infrastructural and Bulk use including construction of borings/tube-wells under Government Schemes **within the Notified areas**, except Government schemes for drinking water supplies and tree plantations. If anyone contravenes the provisions of this sub-section, he or she will be liable for punishment under Chapter-VIII. Such ban shall continue till the area is de-notified by the State Government on advice of Uttar Pradesh State Ground Water Management and Regulatory Authority on the basis of new Ground Water Recourse Estimation Report or significant improvement in declining trend of urban ground water levels after seeking approval from the State Government.

**(2) Extraction, sale and supply of raw/ unprocessed/ untreated ground water in Notified Areas by a person or class of persons or institution or agencies or any other establishment for the purpose of commercial/bulk uses**



***will not be allowed and such an act will be punishable under Chapter-VIII.***

- xi. Section 15 empowers SGWMRA, in consultation with Ground Water Department, to fix ground water abstraction limit for existing Commercial, Industrial, Infrastructural or Bulk users of ground water, while issuing registration for well in Notified as well as non-notified areas, on such terms and conditions as may be prescribed.
- xii. Section 24 deals with demarcation and protection of ground water quality sensitive zones for the purpose of prevention and control of ground water pollution in such areas and also to find safe quality zones for potable water supplies. Sub-section (2) says that the areas demarcated in sub-section (1) of Section 24 shall be declared as Ground Water Quality Sensitive Zones by Notification issued by State Government.
- xiii. Section 28 imposes ban on direct recharging from open areas into aquifers and says:

*“28. (1) In the process of Artificial Recharge to Ground Water from **rain water (except from rooftop) falling on open land, ground, roads (paved/unpaved), agricultural farms shall not be allowed for direct recharging into the aquifers through recharge well, bore well, recharge shaft, injection well etc.***

*(2) Any person who contravenes the provision of sub-section (1) shall be liable to be punished under sub-section (2) of section 39.”*
- xiv. Section 34 imposes an obligation on the appropriate authorities to work for revival and rejuvenation of rivers, ponds, wells, etc. in every village. The said Authority shall develop and execute efficient plans to conserve such rivers, ponds, wells etc.
- xv. Section 35 imposes a duty upon appropriate Authority to undertake impact assessment of both social and environment

aspects of such activities to be implemented in the area of their jurisdiction in accordance with the provisions of UPGWMR Act 2019. Sub-section 2 of Section 35 provides that the process of impact assessment, shall include short-term and cumulative impact assessment in the following fields and specifically-

- (a) Impact on right to water for life;
- (b) Impact on drinking water sources;
- (c) Impact on quality and quantity of groundwater;
- (d) Impact on agricultural production;
- (e) Impact on the ecosystem including rivers and water bodies;
- (f) Impact on land use.

xvi. Section 39 in Chapter VIII provides offences and penalties and by virtue of Section 49 offence punishable under Section 39(1)(b)(i) is compoundable. District Magistrate of each District in State of UP is to act as District Ground Water Grievance Redressal Officer, vide Section 43(1).

xvii. In UPGWMMR Rules 2020, Chapter III provides a procedure of registration of Wells in Notified and Non-notified areas and Rule 6 reads as under:

*“(1) Any existing Commercial or Industrial or Infrastructural or bulk user, who has sunk a well for extracting or using ground water **in notified area or non-notified area** before the date of coming into force of the Act, or any future Commercial or Industrial or Infrastructural or bulk user in Non-notified area shall make, in Form 1(A), an application referred to in sub-section (1) of section 10 or sub-section (1) of section I 1 of Act, within a period of ninety days from the date of coming into force of the Act, to the District Ground Water Management Council;*

*(2) Any existing Commercial or Industrial or Infrastructural or bulk user, **who has sunk a well for extracting or using ground water in notified area or non-notified area before the date of coming into force of the Act, and have valid No Objection Certificate issued by either Central Ground Water Authority or by Ground Water Department, Uttar Pradesh for extracting or using ground water,** shall make, in Form 1(B), an application*

*referred to in sub-section (1) of section 10 or sub-section (1) of section 11 of Act, within a period of ninety days from the date of coming into force of the Act, to the District Ground Water Management Council;*

*(3) Every existing users of ground water, other than those mentioned in sub-clause (1) of rule 6, including domestic and agriculture users of ground water, who have sunk well or boring in his or her premises or agricultural land holdings, shall make, in Form 1(C), an application referred to in sub-section (2) of section 10 or sub-section (2) of section 11 of Act, within a period of six months from the date of coming into force of these rules, to the Block Panchayat Ground Water Management Committee or Municipal Water Management Committee, as the case may be;*

*(4) Every future users of ground water, other than those mentioned in sub-clause (1) of rule 6, including domestic and agriculture users of ground water, who desires to sink well or boring in his or her premises or agricultural land holdings, shall make, in Form 1(D), an application referred to in sub-section (2) of section 10 or sub-section (2) of section 11 of Act to the Block Panchayat Ground Water Management Committee for Municipal Water Management Committee, as the case may be, prior to sinking of such well;*

***Provided that a user who has sunk more than one well for extracting or using ground water in the area shall be required to submit separate application Form for each well.***

*(5) Form I shall be downloaded free of cost from the online web portal [www.upgwdonline.in](http://www.upgwdonline.in).*

*(6) Improper filling up of Form, and failure to annex all necessary documents specified in, Form 1 shall make the application liable to be rejected.*

*(7) All applications as mentioned in above sub clauses shall be submitted online at web portal [www.upgwdonline.in](http://www.upgwdonline.in).”*

- xviii. Rule 13 says that any future or existing user, under Rule 6(1), who does not have NOC by CGWA or Ground Water Department, Uttar Pradesh shall make, in Form 8(A), an application to DGWMC for issue of grant of Authorization/NOC. Rule 14 talks of similar users who have NOC issued by CGWA or Ground Water Department before the date of commencement of UPGWMR Act 2019, desires to continue extraction of ground water, and says that they shall

also make an application but in Form 8(B). Rule 14(2) says that a user, having pre-existing right of ground water, shall apply for renewal of NOC after one year from the date of commencement of UPGWMR Act 2019 or on expiry of validity of existing NOC, whichever is earlier. Rule 15 empowers DGWMC to grant or reject Authorization/NOC when application is submitted under Rule 13. However, when an application is submitted under Rule 14, DGWMC is to forward the same to Ground Water Department for technical comments.

- xix. Chapter V comprised of Rules 18 and 19. It deals with identification and demarcation of Notified areas and read as under:

*“18. Identification and demarcation of areas to be declared as Notified Areas, - in the manner -*

*(1) Rural Areas: Under the provisions of the Act, **for the purpose of demarcation of the Notified Areas, the over-exploited and critical blocks shall be considered.** The Ground Water Department, therefore, **shall identify and prepare the district wise list of blocks categorized as over-exploited and critical blocks, based on the latest ground water resource assessment report.***

*(2) Urban Areas: In the Urban sector, as provided in the Act, the **stressed areas where ground water levels have depleted to critical/alarming levels shall be considered for the purpose of declaring such areas as Notified Areas.** The Ground Water Department **shall identify and delineate those urban areas as stressed, where ground water levels have recorded a significant decline of more than 20 cm per year during the last five years.***

*(3) The Ground Water Department shall submit the list of over-exploited and critical blocks and the stressed urban areas to the State Ground Water Management and Regulatory Authority for notifying the said areas, as provided in the Act.*

*19. Issuance of Notification, -*

*(1) The State Ground Water Management and Regulatory Authority shall have necessary consultations on the inputs provided by the Ground Water Department related to Over-exploited and Critical blocks categorized as per the latest Ground Water Resource Assessment and the Stressed Urban*

areas identified by the Department on the basis of analysis of ground water depletion.

(2) The Authority, thereafter, shall advise the State Government to declare by Notification such areas as Notified Areas for the purpose of implementation of different provisions of the Act. On the basis of recommendation of Ground Water Department, the State Ground Water Management and Regulatory Authority shall also advise State Government to discontinue or redesign such Government schemes which are directly dependent on ground water extraction.

(3) The State Government shall duly consider the recommendation and advice of the State Authority for declaration of such areas as Notified Areas by Notification. in the Gazette.

(4) The notification referred to in sub rule (3) shall be uploaded on the websites of all concerned departments and shall also be published in two widely circulated newspapers in the area.”

- xx. Chapter VI contains a solitary provision i.e., Rule 6 which deals with fixing limit of abstraction of ground water for commercial, industrial, infrastructural or bulk users and reads as under:

**“20. (1) For fixing ground water abstraction limit for all the existing Commercial, Industrial, Infrastructural or Bulk users of ground water, the Ground Water Department, in consultation with stake holders, shall, submit a proposal to the State Ground Water Management and Regulatory Authority within six months from the date of commencement of these rules.**

(2) On the basis of proposal submitted by Ground Water Department, State Ground Water Management and Regulatory Authority **shall fix ground water abstraction limits for all the Commercial, Industrial, Infrastructural or Bulk users of ground water.**

(3) **Ground water abstraction limits fixed under sub rule (2) shall be written in the registration or authorization certificate/ No-objection certificate for wells of existing Commercial, Industrial, Infrastructural or Bulk users of ground water in Notified as well as Non-notified areas and for all the new Commercial, Industrial, Infrastructural or Bulk users of ground water in Non-notified areas, as the case may be, for the purpose of Section 15.”**

- xxi. Demarcation and declaration of Ground Water Quality Sensitive Zones are governed by Chapter VII, Rule 21 which reads as under:

**“21. Demarcation of Ground Water Quality Sensitive Zone:**

(1) To collect, evaluate and analyze ground water quality data and related information for the purpose of generating an overview of the problem, the Ground Water Department shall hold technical consultations with the expert bodies such as Central Ground Water Board, Uttar Pradesh Jal Nigam, Central and State Pollution Control Boards, Indian Institute of Toxicological Research, National Institute of Hydrology, IITs and also those Institutions, which have conducted area specific ground water quality studies, for providing the existing data, reports and information on ground water quality for both rural and urban segments of Uttar Pradesh.

(2) Based on the evaluation, analysis and mapping of such available data, the Ground Water Department shall proceed to generate and develop a comprehensive quality data base for the entire state. Subsequently, **the department shall identify those areas which are found affected with poor ground water quality along with risk of pollution hazards on drinking and irrigation water supplies. Such areas shall be demarcated and mapped as Ground Water Quality Sensitive Zones.**

(3) The department shall prepare a detailed district wise list of such Ground Water Quality Sensitive Zones with their GPS locations.

(4) The complete information on ground water quality for the entire state shall be submitted to the State Ground Water Management and Regulatory Authority for onward action, with the objective to ensure protection of ground water quality in such delineated zones through appropriate measures for prevention and control of pollution and finding safe quality areas for potable water supplies.

(5) State Ground Water Management and Regulatory Authority shall take immediate action and will issue directions to concerned departments to change or redesign their existing policies or schemes to ensure protection of ground water quality in such delineated zones. All concerned departments shall have to change or redesign their existing policies or schemes in such delineated zones.

(6) After issuance of direction in sub rule (5), if District Ground Water Management Council finds that any particular scheme of any department is responsible for pollution of ground water in that district, the Council in such cases shall immediately take action in consonance with the provision of the Act and also shall submit a case to State Ground Water Management and Regulatory Authority.”

xxii. Rule 22 requires issue of notification to declare the identified area for Ground Water Quality Sensitive Zone for the purpose

of UPGWMR Act 2019. The said notification is not only to be published in the Gazette but also to be placed as Public Notice by publication in three daily regional newspapers and also to be uploaded on the website. There are further procedures and process for fixing standards of treated waste water and installation of treatment plant which we are omitting at this stage. Rain Water Harvesting is governed by Chapter IX.

- xxiii. UPGWMR Act 2019 read with UPGWMR Rules 2019 show that different Authorities have to conduct study in respect of ground water, following the procedure laid down therein and Competent Authority only then must issue NOC/permission/clearance mentioning requisite conditions and data including quantity of permissible abstraction of ground water and not otherwise.

**History of CGWA, its origin and relevant provisions relating to its powers, duties etc.:**

89. As already said, issue relating to depletion of ground water, for the first time, caught attention of Supreme Court in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***. On 20.03.1996, in daily newspaper “Indian Express”, published on 18.03.1996, a news item was published under the caption of “Falling Groundwater Level Threatens City”. Court took judicial notice on 20.03.1996 and required CGWB and Delhi Pollution Control Committee to respond. On 03.04.1996, Court issued notices to Municipal Corporation of Delhi and Delhi Waterworks and Sewerage Disposal Undertaking. One Scientist, Dr. P.C. Chaturvedi, (Director), CGWB filed affidavit stating that since 1962 and onwards, water levels in country are declining. During the years 1971 to 1983, fall in water level was 4 meters to 8 meters in National Capital Territory. There was a further fall of water level from 4 meters to more than 8

meters during 1983 to 1985. One of the reasons stated in the affidavit for decline of water level was, enhanced pumpage. Consequently, Supreme Court issued notice to Government of India through Secretary, Ministry of Water Resources and Government of National Capital Territory, Delhi. The factual position regarding fall of water levels in the country was admitted in the affidavits filed by various authorities before Supreme Court. Thereafter, vide order dated 04.09.1996, Supreme Court requested Director, NEERI to examine the matter at institute level, by experts in the field, and submit report. NEERI was also required to submit suggestions and recommendations for checking further decline of underground water level. Consequently, NEERI submitted report dated 23.09.1996 with the title **“Water Resources Management in India, Present Status and Solution Paradigm”**. An affidavit dated 24.10.1996 was filed on behalf of Ministry of Water Resources, by Additional Secretary, making comments on NEERI report, indicating an overall declining water level picture in the country, and also, schemes and activities undertaken by Government of India through various departments to monitor ground water. It was pointed out that in order to arrest depleting trend and to avoid indiscriminate withdrawal of ground water, Government of India had circulated a Model Bill to States/Union Territories, in 1970, to help them to bring out suitable legislation on the lines of Model Bill to regulate and control development of ground water in the respective areas. It was stated in the affidavit that in more than 120 blocks i.e., 231 blocks, in 6 Mandals, and 12 Talukas, level of ground water is over exploited. Noticing all these facts, Supreme Court, accepted one of the suggestions of NEERI, regarding constitution of an Authority under Section 3(3) of EP Act 1986, and passed order on 05.12.1996, over ruling objection taken by Ministry of Water Recourses, Government of India that water being a State subject, it would not be possible to



constitute an Authority under Section 3(3) of EP Act 1986, and held that **EP Act, 1986 is made by Parliament under Entry 13 List I Schedule 7 read with Article 253 of the Constitution of India and shall have an over-riding effect.** There was already an Organization namely CGWB having its Office across the country, hence Supreme Court directed that Central Government may consider to issue a Notification constituting the “Board” itself as an “Authority” under Section 3(3) of EP Act, 1986. It also observed that the said Authority would have all statutory powers under Section 3(3) of EP Act 1986 and would be in a position to have effective control all over India. **Supreme Court also said that any institution/department constituted by State Government can independently function in its own field with the cooperation and under the guidance of the organization set up by CGWB.**

90. As a result, thereof, Notification dated 14.01.1997 was issued by Ministry of Environment and Forest (hereinafter referred to as ‘**MoEF**’), in exercise of power conferred by Section 3(3) of EP Act 1986 constituting CGWB as an Authority i.e., CGWA, for the purpose of regulation and control of ground water management and development, from the date of publication of the said Notification in the official Gazette. It was published in the Gazette of India on the same date.

91. Para 1 of Notification of 1997 said that CGWA would constitute of the following:

- (i) Chairman, CGWB-Chairperson
- (ii) Member (Exploratory Drilling and Materials Management), CGWB-Member
- (iii) Member (Sustainable Management and Liaison), CGWB-Member
- (iv) Member (Survey, Assessment and Monitoring), CGWB-Member

(v) An officer not below the rank of the Joint Secretary to the Government of India to be appointed by the Central Government-Member.

92. Para 2 of the said Notification dated 14.01.1997, provided powers and functions of CGWA, and said:

*“2. The Authority shall exercise the following powers and perform the following functions, namely: -*

- (i) exercise of powers under section 5 of the Environment (Protection) Act, 1986 for issuing directions and taking such measures in respect of all the matters referred to in sub-section (2) of section 3 of the said Act;*
- (ii) to resort to the penal provisions contained in sections 15 to 21 of the said Act;*
- (iii) **to regulate indiscriminate boring and withdrawal of ground water in the country and to issue necessary regulatory directions with a view to preserve and protect the ground water.”***

93. The jurisdiction of the said Authority was declared to be whole of India, vide para 3.

94. Supreme Court in ***M.C. Mehta vs. Union of India & Others. (1997) (supra)*** also said that the Authority i.e., CGWA can resort to penal provisions contained in Section 15 to 21 of EP Act 1986. It also observed that main object for constitution of said Authority being the urgent need for regulating indiscriminate boring and withdrawal of underground water in the country, the said Authority so constituted, shall apply its mind to this urgent aspect of the matter and issue necessary regulatory directions with a view to preserve and protect underground water.

95. Initially, constitution of CGWA was for one year as provided in para 1 of Notification dated 14.01.1997. It was amended by Notification dated 13.01.1998, published in the Gazette of India (Extraordinary) of the same date and in place of one year, it was made five years.

96. Another amendment was brought in Notification dated 14.01.1997 by Notification dated 05.01.1999, published in the Gazette of India (Extraordinary) dated 08.01.1999 and thereby, CGWA was made six persons Authority by adding Regional Director or an officer of equivalent rank, CGWB as Member Secretary.

97. The constitution of CGWA and its functions underwent a major amendment vide Notification dated 06.11.2000, published in Gazette of India (Extraordinary) dated 16.11.2000. Thereby, in para 1, period of CGWA was deleted, hence CGWA became an Authority without any limitation of period. Further, composition of CGWA was also changed by making it a ten members Committee including Chairman, with a further provision authorizing it to have some special invitees, as and when required. The new composition of CGWA was as follows:

- (i) Chairman, CGWB-Chairman
- (ii) Member (Survey, Assessment and Monitoring), CGWB-Member
- (iii) Member (Exploration Drilling and Materials Management), CGWB-Member
- (iv) Member (Sustainable Management and Liaison), CGWB-Member
- (v) Member (Training and Technology Transfer), CGWB-Member
- (vi) Joint Secretary (Administration), Ministry of Water Resources-Member
- (vii) Joint Secretary and Financial Adviser, Ministry of Water Resources-Member
- (viii) Joint Secretary, MoEF-Member
- (ix) Chief Engineer, Irrigation Management Organization (Water, Planning and Projects), Central Water Commission-Member
- (x) Director/General Manager (Exploration), Oil and Natural Gas Corporation Ltd.-Member

98. The aforesaid Notification further authorized CGWA to invite, from time to time, following, as special invitees, as and when required:

- (i) Joint Secretary (Soil and Water Conservation), Department of Agriculture and Co-operation
- (ii) Joint Secretary (Water Supply), Ministry of Urban Development
- (iii) Joint Secretary (Department of Drinking Water Supply), Ministry of Rural Development
- (iv) Director, National Institute of Hydrology, Roorkee
- (v) Director, National Geo-physical Research Institute, Hyderabad.

99. The powers and functions of CGWA described by Notification dated 14.01.1997 were also amended and for clause (iii), the following clause (iii) and (iv) were substituted:

*“(iii) to regulate and control, management and development of ground water in the country and to issue necessary regulatory directions for this purpose;*

*(iv) exercise of powers under Section 4 of the Environment (Protection) Act, 1986, for appointment of officers.”*

100. CGWA was conferred with powers to issue directions under Section 5 and also to exercise powers on the matters referred to in Section 3(2) of EP Act 1986. Thus, it would be appropriate to have a bird eye-view of Section 3(3), 3(2) and 5 of EP Act 1986. Section 3(2) and (3) read as under:

*“3(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:*

- (i) co-ordination of actions by the State Governments, officers and other authorities—
  - (a) under this Act, or the rules made thereunder, or*
  - (b) under any other law for the time being in force which is relatable to the objects of this Act;**
- (ii) planning and execution of a nationwide programme for the prevention, control and abatement of environmental pollution;*
- (iii) laying down standards for the quality of environment in its various aspects;*

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever;

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

**“3(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.”**

101. Section 5 confers power to give directions which was also conferred upon CGWA by Central Government in its notification under Section 3(3). Section 5 reads as under:

**“5. POWER TO GIVE DIRECTIONS:**

*Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any 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) stoppage or regulation of the supply of electricity or water or any other service.”*

102. Perusal of above, shows that Section 5 has been given an overriding effect over any other law but directions issued under Section 5 have to be within the compass of EP Act 1986 and cannot travel beyond. Further sub-section 2 of Section 3 has to be read with sub-section 1 which shows that power to take such measure as deemed necessary and expedient, was conferred with the clear objective that it should be for the purpose of protecting and improving quality of environment and preventing, controlling and abating environmental pollution. Further the aforesaid power is also subject to the provisions of EP Act 1986.

103. Section 24 of EP Act 1986 also made a declaration that subject to sub-section 2, provisions of EP Act 1986 and the rules or orders made therein, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than EP Act, 1986.

104. Therefore, not only provisions of EP Act, 1986 but even rules or orders issued under EP Act 1986 shall prevail over any other enactment except EP Act 1986. In other words, If, there is anything otherwise

provided in EP Act 1986, then the rules/orders etc. will have to be read consistent therewith and as per legislative or statutory hierarchy, the one which is superior in hierarchy, shall prevail.

105. The steps, taken by Central Government or the Authority constituted under Section 3(3) with power to issue directions under Section 5 or to take such measures as are necessary under sub-section 2 of Section 3, are the orders in respect whereof, Section 24 sub-section 1 provides that the same shall prevail over any other enactment having any inconsistent provision. The only exception is with regard to the offences and punishment, subject to the provisions of sub-section 2 of Section 24, which provides, where any Act or omission constitutes any offence punishable under EP Act 1986 and also under any other Act, then the offender found guilty of such offence, shall be liable to be punished under the other Act and not EP Act 1986.

106. Section 25 of EP Act 1986 confers power upon Central Government to frame rules and Section 26 provides procedure which obviously would not include or cover the direction or orders or steps taken by virtue to Section 3(2) or Section 5 of EP Act 1986.

107. Hence directions issued under Section 5 or orders issued on the matters referable to Section 3(2), in our opinion, are statutory orders. We have already discussed that EP Act 1986 is referable to Entry 13 List I Schedule VII of the Constitution read with Article 253, having been enacted pursuant to the International Conference and resolutions and to give effect thereto, it shall prevail over Provincial legislation. All Provincial enactments, relating to ground water, therefore, would have to subserve the Guidelines issued by CGWA since these guidelines are referable to Section 5 read with Section 3(2) of EP Act, 1986. These guidelines are not

mere executive orders but statutory orders and, in any case, having been issued in exercise of powers under EP Act, 1986, as stated above, shall prevail over Provincial enactments/legislations. To the extent, subject is covered by EP Act 1986 and the orders issued by CGWA, Provincial legislature would lack power to make law, and if made, shall sub serve.

108. The limitation upon CGWA is that the guidelines, not only, are subject to the provisions of EP Act 1986 but should also conform the mandate that it should be for the purpose of protecting and improving quality of environmental and preventing, controlling and abating environmental pollution.

109. Now we shall consider issues formulated above, on merits. Issues **(i) and (ii)** can be considered together.

110. Supreme Court in its order dated 10.12.1996 in ***M.C. Mehta vs. Union of India & Others. 1997 (supra)***, in para 12 of the judgment, said that the main object for constitution of CGWB, as an Authority, is the urgent need for regulating indiscriminate boring and withdrawal of underground water in the country. Court further said that it has no doubt that the Authority, i.e., CGWA shall apply its mind to this urgent aspect of the matter and issue necessary regulatory directions with a view to preserve and protect underground water. Court reiterated its above directions by stating *“This aspect may be taken up by the Authority on an urgent basis”*.

111. Supreme Court also took notice of the fact that there are some legislations in the States to regulate water resources development but by and large, underground water was being exploited all over the country, without any effective regulatory regime. It is in this regard, Court directed that an Authority under EP Act, 1986 be constituted with



powers necessary to deal with situation created by indiscreet abstraction of ground water causing depletion of ground water levels, dwindling surface water resources, deterioration of surface and ground water quality and haphazard land use.

112. In the same case, i.e., ***M.C. Mehta vs. Union of India & Others. (1997) (supra)***, in earlier order dated 05.12.1996, Court had also rejected contention advanced on behalf of Government of India, Ministry of Water Resources that under the constitution, water is State subject and, therefore, Central Government or Parliament has no role. Court said that:

***“We are prima facie of the view that the Act being an Act made by Parliament under Entry 13 List I read with Article 253 of the Constitution of India, it has an overriding effect.”***

113. In ***S. Jagannath vs. Union of India & Others 1997(2)SCC87***, Supreme Court in its judgment dated 11.12.1996, was confronted with the situation where provincial legislations on coastal aquaculture regulating industries, set up in coastal areas, contained provisions which were not in consonance with Central enactment i.e., EP Act 1986 and notification issued by Government of India under Section 3(3) of the said Act, i.e., Coastal Regulation Zone (CRZ). Supreme Court held:

***“...we are of the view that the Act being a Central legislation has the overriding effect. The Act, (the Environment Protection Act, 1986) has been enacted under Entry 13 of list I Schedule VII of the Constitution of India. The said entry is as under:***

***“Participation in international conferences, assessment and other bodies and implementing of decisions made thereat.”***  
***The preamble to the Act clearly states that it was enacted to implement the decisions taken at the United Nations’ Conference on the Human Environment held at Stockholm in June, 1972. Parliament has enacted the Act under Entry 13 of List I Schedule VII read with Article 253 of the Constitution of India. The CRZ notification having been issued under the Act shall have overriding effect and shall prevail over the law made by the legislatures of the States.”***

(Emphasis added)

114. In ***Mantri Techzone Pvt. Ltd. vs. Forward Foundation & Others (2019)18SCC494***, it was reiterated when a similar question with respect to Provincial legislation vis-a-vis law on environment was raised. Supreme Court said:

***“A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution of India will have the overriding effect over State Legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify ‘Buffer Zones around specific lakes and water bodies in contradiction with zoning regulations under these statutes or RMP”.*** (Para 47)

(Emphasis added)

115. Recently, in ***Civil Appeal No. 6932 of 2015, The Director General (Road Development) National Highways Authority of India vs. Aam Aadmi Lokmanch & Others.***, the above view taken in ***Mantri Technoze Pvt. Ltd. vs. Forward Foundation (Supra)*** has been referred and followed.

116. Therefore, it is now established that irrespective of the legislative list contained in Schedule 7, whenever matter relates to environment is to be seen, if governed by the laws enacted on environment by Parliament, referable to entry 13 List 1 of 7<sup>th</sup> Schedule, the same shall prevail. In other words, when a subject is covered by a legislation referable to list 1 of Seventh Schedule of the Constitution, to the extent matter is covered by such Central legislation, Provincial legislature would cease to have any legislative competence to that extent, irrespective of entry in list 2. Provincial legislature can make law only on the aspects not covered by Parliamentary enactment.

117. Thus, we are clearly of the view that on the subject of regulation of ground water, provisions of EP Act 1986, the orders issued by Central Government under Section 3(3), and by CGWA under section 5 and/or section 3(2) of EP Act 1986 shall hold field

and on this subject Provincial legislation cannot be brought in to impede, obstruct or deny or deprive CGWA, in its function for protection, perseveration and sustenance of ground water in the country. **Questions (i) and (ii) are answered accordingly.**

118. **Question (iii) and (iv)** are overlapping, hence both are being considered together.

119. Though CGWA was constituted in Jan.1997, we do not find much activity on its part initially for about two years. Only in 1999, CGWA issued “Guidelines for granting NOC for withdrawal of ground water by industries/projects w.e.f. 01.01.1999” (hereinafter referred to as ‘**Guidelines 1999**’). It permitted all industries seeking NOC for ground water abstraction, to submit application in the prescribed proforma, in the Office of Regional Director, CGWB of the concerned State or Member Secretary, CGWA, New Delhi. Proponent was to submit a referral letter from Statutory Organizations like State Pollution Control Boards, MoEF, Bureau of Indian Standards, etc. for processing of its case. Proponent was also required to submit detailed designs for Rain Water Harvesting which was mandatory for areas falling in critical blocks. For evaluation of proposal, Guidelines 1999 provided, in respect of over-exploited, critical and semi-critical blocks, as under:

***“Over-Exploited Blocks-*** *It was decided that clearance to industries in Critical/Over-Critical areas needs to be considered on case to case basis and in case of severely over-exploited areas which are devoid of any deeper potential aquifers clearances for industrial use of ground water may be denied as per the policy. (21<sup>st</sup> meeting held on 24.5.2006).*

***Critical Blocks-****granting permits to industries for ground water extraction be considered subject to implementation of Rain Water Harvesting/Ground Water Recharge matching the proposed draft. (23<sup>rd</sup> meeting held on 28.8.2007).*

***Semi-critical Blocks-****granting permits to industries be considered subject to implementation of Rain Water Harvesting/Ground Water Recharge. (23<sup>rd</sup> meeting held on 28.8.2007).”*

120. Thereafter, a new set of Guidelines was issued, with effect from 20.10.2009, i.e., “Guidelines for evaluation of proposals/requests for ground water abstraction for drinking and domestic purposes in Notified areas and Industry/Infrastructure project proposals in non-notified areas” (hereinafter referred to as ‘**Guidelines, 2009**’). It recognized high intensive development of ground water in certain areas, i.e., irrigation, drinking, domestic and industrial uses in the country, resulting in over-exploitation, leading to long term decline in ground water levels. In certain situations, quality of ground water was found deteriorated. As per the study available up to 2004, out of 5723 assessed units (Blocks, Mandals, Talukas and Districts), 839 were over-exploited, 226 critical, and 550 semi-critical. However, details of Guidelines 2009 show, since CGWA had notified only 43 areas for the purpose of regulation of ground water development, hence it confined its regulatory action only to “notified areas”. Guidelines also said that NOC can be accorded for construction of tube wells/replacement of existing defunct well for drinking and domestic purpose to Government department entrusted with the water supply; other Government organizations if Water Supplying Department is not providing water in the area; schools/institutions/universities; hospitals; Embassies and State Bhawans. Pre-conditions for grant of NOC for abstraction of ground water to above categories were also given in said Guidelines.

121. Chapter A, para 1, of **Guidelines 2009**, gives details of the purpose for which NOC could be accorded, and pre-conditions for grant of NOC mentioned therein, are as under:

- “1) NOC can be accorded for construction of tube wells/replacement of existing defunct well for drinking and domestic purpose to:*
- (i) Government department entrusted with the water supply*
  - (ii) Other Government organizations if Water Supplying Department is not providing water in the area*
  - (iii) Schools/Institutions/Universities*

- (iv) Hospitals*
- (v) Embassies*
- (vi) State Bhawans*
- (vii) For Individuals for individual households.”*

122. **Guidelines 2009** further laid down pre-conditions for grant of NOC for abstraction of ground water to categories under **serial no. (i) to (vi) in notified areas**, as under:

*“Pre-conditions for grant of NOC for abstraction of ground water to categories under Sl. No. (i) to (vi) are:*

- 1. Maximum diameter of the tube well should be restricted to 100 mm only and capacity of the pump should not exceed 1HP except in case of Government water supply agencies. In case of Govt. water supply agencies, tubewell size/dia. can be more depending on the ground water availability and requirement.*
- 2. Concurrent with the construction of tube well, **the owner of the tube well shall undertake installation of the rain water harvesting structure in the premises** within 45 days of issuance of NOC and will confirm to the Authority for verification.*
- 3. The water from the tube well be used for drinking and domestic purposes only.*
- 4. All details of the drilling like rock formations encountered, the depth and diameter of the constructed tube well, type of pipes used, yield of bore well/tube well and ground water quality etc. have to be furnished to the nodal agency authorized by district administration head within 15 days of the completion of the construction.*
- 5. **This permission is valid for a period of two months from the date of issue of NOC** except in case of Government water supplying agencies/departments.”*

123. In respect of Sl. No. (vii) i.e. For Individuals for individual households, in notified areas, **Guidelines 2009** imposed conditions as under:

- “1. Only one tube-well is allowed for construction in the premises to meet the drinking and domestic purposes. No tube-well/bore-well will be constructed, if any working tube-well already exists. In case the existing well has become non-functional and is to be replaced, it should be converted into recharge well, if possible or properly sealed and no water be pumped from it.*

2. *The persons(s) intending to construct new tube-well will intimate the Authorized office/Advisory Committee, 10 days in advance along with the name and address of the drilling agency, which will undertake construction of tube-well. Authorities/Nodal Agency can ask the user to supply additional information.*
3. *The maximum diameter of the tube-well should be restricted to 100mm only and the capacity of the pump should not exceed 1HP.*
4. ***Concurrent with the construction of tube-well, the owner of the tube-well shall undertake installation of the rainwater harvesting system in the premises.***
5. *The water from the tube-well/bore-well will be used exclusively for drinking and domestic purposes only.*
6. *All details of the drilling like rock formations encountered, the depth and diameter of the constructed tube well, type of pipes used in tube-well, yield of bore well/ tube well and ground water quality etc. shall be kept for record and are to be provided at the time of inspection.*
7. *Any violation of the above conditions will attract legal action under section 15 of the Environment (Protection) Act, 1986.”*

124. Chapter A, para II of **Guidelines 2009** said that permission will not be accorded for construction of tube well for agriculture, industrial, commercial, horticulture and construction purposes in “notified areas”.

125. Chapter B of **Guidelines 2009**, laid down Guidelines for evaluation of proposals/requests for abstraction of ground water for industrial/infrastructure projects, in **non-notified areas**. Para B-1, mentioned 12 criteria on which the proposals shall be evaluated i.e. (i) purpose of ground water use, (ii) area of ground water against its availability, (iii) availability of shallow aquifer, (iv) availability of deeper aquifer, (v) Criteria for recycling and reuse of effluents, (vi) adoption of water conservation measures, (vii) installation of water meters, (viii) examining the scope of rain water harvesting and ground water recharging potential, (ix) land use, (x) ground water draft, (xi) saline ground water aquifers and (xii) mining areas.

126. It was stated further that project proposals for various purposes would be evaluated for consideration of ground water abstraction, under different hydrological conditions, including water conservation measures in safe, semi-critical, critical and over-exploited areas. A chart was given for evaluation of proposals to abstract ground water for industries, as under:

**“Evaluation of Proposals to Abstract Ground Water for Industries**

<b>Category</b>	<b>Stage of Development</b>	<b>Recycle/Reuse</b>	<b>Other Water Conservation Practices</b>	<b>Withdrawal permitted (%age of proposed recharge)</b>
Safe	<70	Mandatory recycling and reuse of water	Water audit measures to be adopted	To be brought under the purview if quantity of abstraction exceeds 1000 m <sup>3</sup> /day in hard rock areas and 2000 m <sup>3</sup> /day in alluvial areas. RWH to be adopted.
Semi-critical	70-100	Efficient utilization of recycled water and reuse of water should be mandatory.	Water audit measures to be adopted	Withdrawal may be permitted subject to undertaking of recharge measures. Since the area is less stressed, <b>at least 50% recharge be made mandatory.</b>
Critical	90-100	Efficient utilization of recycled water and reuse of water should be mandatory.	Water audit measures to be adopted	Withdrawal may be permitted subject to undertaking of recharge measures. <b>The quantum of recharge should be equal to or more than the proposed withdrawal.</b>
Over-exploited	>100	Efficient utilization of recycled water and reuse of water should be mandatory.	Water audit measures to be adopted	<b>Withdrawal may be permitted up to 60% of proposed recharge.</b> Also <b>withdrawal should not exceed a maximum limit of 1500 m<sup>3</sup> /day for each unit.</b>

127. Chapter B, Para B-2 of **Guidelines 2009**, laid down certain conditions for abstraction of ground water for infrastructure projects in non- notified areas, as under:

**“B-2 ABSTRACTION OF GROUND WATER FOR INFRASTRUCTURE PROJECTS**

- *Run-off from the entire project area is to be utilized for artificial recharge to ground water.*
- *In case of residential township and colony, the quantum of water for usage other than drinking/ domestic shall not exceed 25% of the total requirement.*
- *The concerned State Government, while sanctioning any infrastructure project is to look into the ground water availability aspect also.*
- *Proponents are to submit a status report on water supply available from water supplying agencies stating the quantum of water that would be provided by the agency.”*

128. In Para B-3, conditions for abstraction of ground water for **industrial projects in non - notified** areas was laid down as under:

**“B-3 ABSTRACTION OF GROUND WATER FOR INDUSTRIAL PROJECTS**

**a) Areas having Deeper Aquifers:**

***In all Over-exploited and Critical areas having deeper potential aquifers, withdrawal may be permitted irrespective of the stage of development subject to:***

- (a) Withdrawal of water from deeper aquifers only,*
- (b) Implementing recharge measures to recharge shallow/deeper aquifers to the extent possible within the lease/industry area*
- (c) Recommendation of concerned Regional Directorate on feasibility of exploitation of deeper aquifers.*

**b) Water table intersection by mining industries and dewatering of mine pit water**

*Abstraction of ground water by mining industry intersecting water table can be permitted and dewatering of mine pit water be permitted subject to the following conditions:*

- *The mine water is to be put to gainful use. This may include water supply to adjacent areas and local water supply agencies, utilization for dust suppression by the industry, utilization by the mining industry for different processes, utilization for artificial recharge to ground water etc.*
- *Piezometers for monitoring the ground water level are to be mandatorily installed within the mine lease area and in peripheral areas. The record of water level data be maintained and to be provided whenever demanded by the regulating agency.*

**c) Abstraction of saline ground water by Industries**



*Due care to be taken in respect of disposal of the effluents by the units so as to protect the water bodies and the sub-surface shallow aquifers from pollution. Proposals pertaining to the cases must have a detailed report elucidating the mechanism of handling the effluent water and its various uses. All precautions must be taken for protection of environment. Large scale recharge mechanism is mandatory in such cases to improve the ground water quality in the region.”*

129. Certain exemption of industries from obtaining NOC was provided in para-B-3 (IV) as under:

**“IV Exemption of Industries from obtaining NOC from CGWA.**

- (i) *Industries requiring ground water upto 25 m<sup>3</sup>/day located in over exploited areas; upto 50 m<sup>3</sup>/day for critical areas; and upto 100 m<sup>3</sup>/day in semi-critical areas are exempted from obtaining NOC for ground water abstraction from CGWA.*
- *The responsibility of verifying the actual requirement and withdrawal is vested with the State Pollution Control Boards.*
  - *It should also be mandatory for such industries to undertake Rain Water Harvesting to the extent possible and enforcement of the same is vested with the State Pollution Control Boards.*
- (ii) *Industries located in Safe category areas, are required to obtain NOC from CGWA if ground water abstraction by the industry exceeds 1000 m<sup>3</sup> /day for hard rock areas and 2000m<sup>3</sup>/day for alluvial areas. Such cases will be examined as in ‘B’.*

***(The above will not include industries which are using water as a raw material like packaged drinking water industries, distilleries and breweries)”***

130. For the purpose of monitoring of implementation of **Guidelines 2009**, CGWA made State Pollution Control Boards, responsible. Further, a Committee was constituted at District level for evaluation of industry/infrastructure project proposals seeking ground water clearances, comprising of:

- (i) District Collector- Chairman
- (ii) Hydrogeologist, CGWB of concerned District- Member
- (iii) Representative from Industry- Member
- (iv) Representative from Pollution Control Boards- Member
- (v) Additional member to be adopted if required.

131. The aforesaid Guidelines show that all substantially highly affected areas, facing scarcity of ground water, already placed in the category of over-exploited and critical, were not managed/regulated on a mere pretext that CGWA has notified only 43 areas and, therefore, CGWA without any reason, in an unwarranted and unauthorized manner, defied directions of Supreme Court issued in ***M.C. Mehta vs. Union of India & Others. (1997) (supra)***, by restricting its activity of regulation to only 43 “notified areas” for protection of ground water. This approach of CGWA was not consistent with the directions given by Supreme Court in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***. Unfortunately, CGWA assumed role of mere licensing Authority, permitting abstraction of ground water by industrial and other establishments, and failed to withstand the expectations and objective with which it was constituted. It restricted its statutory duties on its own, ignoring mandate of Supreme Court requiring it to take immediate steps to protect depletion of ground water where its level had gone down to alarming level, unconcerned to whether it is notified or not, in the entire country. Vide instruction no. 26-1/CGWA/D1/09/744 dated 08.10.2009, CGWA issued directions to Heads of Central Road Research Institute, National Highway Authority of India, Central Public Works Department, State Public Works Department, Indian Railways, Sports Authority of India, Board of Cricket Control of India, Airport Authority of India, Ministry of Civil Aviation, Ministry of Sports and Youth Affairs to take up rain water harvesting/adopt artificial recharge of ground water to augment ground water resources and to save it from further depletion. In furtherance of above, CGWA said:

*“1. The Director, Central Road Research Institute, Chairman, National Highway Authority of India, Director General, Central Public Works Department; Heads of the State Public Works Department whether called as Secretary, Principal Secretary or by any other name; Chairman, Railway Board; Head of Sports*

*Authority of India; Chairman, Airport Authority of India; Director General, Ministry of Civil Aviation; Heads of Ministry of Youth Affairs and Sports, **shall ensure taking up rain water harvesting/adoption of artificial recharge to ground water in the country by their respective organizations/Departments, within a period of 365 days from the date of receipt of this direction, to augment ground water resources and to save it from further depletion.***

*2. The above authorities shall obtain site-specific designs and other technical guidance from the Regional Director/Office-in-Charge of Central Ground Water Board or the Ground Water Department of the State/Union Territory.*

*3. The Regional Director/Officer-in-charge of Central Ground Water Board or the Ground Water Department of the State/UT, upon request from the above authorities shall extend all necessary technical assistance/design input.*

*4. The authorities mentioned in the directions No. 1, shall intimate the action taken report in this connection, to Central Ground Water Authority within a period of 90 days of completion of rainwater harvesting/recharge structure.”*

132. Another direction was issued vide instruction no. 26-1/CGWA/D1/09/743/783 dated 08.10.2009, directing all residential group housing societies/institutions/schools/hotels/industrial establishments falling in the over-exploited and critical areas as specified in the Schedule, to adopt roof top Rain Water Harvesting systems in their premises. They were directed to complete the systems, by May 2010.

133. CGWA issued a new set of Guidelines namely “Criteria for Evaluation of Proposals/Requests for Ground Water Abstraction” (hereinafter referred to as ‘**Guidelines 2012**’) which came into force on 15.11.2012.

134. **Guidelines 2012** laid down different parameters for notified areas and non-notified areas. Chapter A with the title ‘Notified Areas’ said that permission to abstract ground water through any energized means will not be accorded for any purpose other than drinking water. In para II, it provided that NOC can be accorded for construction of ground water

abstraction structures/replacement of existing defunct well for drinking purpose only to:

- a. *Government department/Agency/Undertaking entrusted with the water supply*
- b. *Other Government organizations/State Government Guest Houses/Registered Housing societies*
- c. *Schools/ educational & State/Central Government recognized research Institutions/ Universities*
- d. *Hospitals.”*

135. It further stated that NOC for items (b) to (d) will be considered only if Water Supplying Department is not providing adequate water in the area/ premises. Further it laid down pre-conditions for grant of NOC for abstraction of ground water to categories (a) to (d) as under:

1. *Maximum diameter of the groundwater abstraction structures should be restricted to 150 mm (6 inches) only and capacity of the pump should not exceed 1 HP. In case of Government water supply agencies, housing societies, tube well size/dia. & HP of prime mover can be more depending on the ground water availability and requirement.*
2. *Concurrent with the construction of groundwater abstraction structures, the organization shall undertake artificial recharge to groundwater through rain water harvesting structure in the premises within 45 days of issuance of NOC and will confirm to the Authorised Officer for verification.*
3. *Water meter installation in the abstraction structure is mandatory and confirmation of water meter installation shall be given to the Authorised Officer under intimation to the concerned Regional office of CGWB immediately after construction. The daily water meter reading should be maintained and quarterly report should be submitted to Authorised Officer.*
4. *The water from the groundwater abstraction structures will be used for drinking and domestic purposes only.*
5. *All details of the drilling like rock formations encountered, the depth and diameter of the constructed groundwater abstraction structures, type of pipes used, yield of bore well/ tube well (Fracture zones encountered/zones tapped) and ground water quality etc. have to be furnished to the nodal agency authorized by district administration head within 15 days of the completion of the construction.*
6. *The permission for construction of groundwater abstraction structure would be valid for a period of six months from the date of issue of NOC.*
7. *The NOC issued would be non-transferable.”*

136. Another category, "Individual Household" also could be accorded NOC for drinking purposes. Conditions for the same, provided in Guidelines 2012, read as under:

*"e. For Individual households:*

- 1. Permission to be granted only for such cases where public water supply system does not exist. The permission shall be valid only till such time there is no public water supply provided. In that case, the abstraction structure shall be exclusively utilized for artificial recharge to groundwater or sealed.*
- 2. A certificate from the water supply agency regarding non-availability of government water supply to the area/individual is to be submitted by the applicant.*
- 3. The premises should have only one Groundwater abstraction structure (either existing or new) to meet the drinking and domestic requirements. No tube-well/bore-well will be constructed, if any working tube-well already exists. In case the existing well has become non-functional and is to be replaced, it should be converted into recharge well, if possible or properly sealed and no water be pumped from it. **An undertaking as per Annexure-II is to be submitted by individual.***
- 4. The person(s) intending to construct new tube-well will seek permission from the Authorized officer/Advisory Committee, at least 30 days in advance along with the name and address of the drilling agency, which will undertake construction of tube-well. Authorities/Nodal Agency can ask the user to supply additional information.*
- 5. The maximum diameter of the tube-well should be restricted to 110 mm (4 ½ inches) only and the capacity of the pump should not exceed 1HP. In case of deep water level the capacity/dia. of the structure will be decided by the Authority based on the site specific recommendations.*
- 6. Concurrent with the construction of groundwater abstraction structure, the owner of the tube-well shall undertake artificial recharge to groundwater through rainwater harvesting in the premises.*
- 7. The water from the tube-well/bore-well will be used exclusively for drinking and domestic purposes only within the premises.*
- 8. All details of the drilling like rock formations encountered, the depth and diameter of the constructed tube-well, (Fracture zones encountered/zones tapped) type of pipes used in tube well, yield of bore well/tube well and ground water quality etc., shall be kept for record and are to be provided at the time of inspection.*
- 9. Any violation of the above conditions will attract legal action under section 15 of the Environment (Protection) Act, 1986.*

*In case the notified area is de-notified subsequently, the conditions pertaining to "non-notified areas" shall be followed."*

137. **Guidelines 2012** said, if a notified area is subsequently de-notified, conditions pertaining to non-notified areas shall be followed.

138. Chapter B of **Guidelines 2012** dealt with “non-notified areas”. It is stated that NOC for ground water withdrawal will be considered for **industries/infrastructure projects** which are either **new or under expansion** as per the criteria given in Para I to VI, which reads as under:

**“B. NON-NOTIFIED AREAS**

*NOC for Ground Water withdrawal will be considered for Industries/Infrastructure projects **which are either NEW or under EXPANSION** as per the criteria given below:*

**I. Industries**

<b>Category*</b>	<b>Recycle/Reuse</b> <i>(for various purposes except recharge to ground water)</i>	<b>Withdrawal permitted</b> <i>(% of proposed recharge)</i>
<i>Safe</i>	<i>Mandatory recycling and reuse of water</i>	<i>NOC is required for groundwater withdrawal if quantity of groundwater abstraction exceeds 100 m<sup>3</sup>/day. AR to groundwater to be adopted. However, <b>Industries under B-VI have no exemption from obtaining NOC.</b></i>
<i>Semi-critical</i>	<i>Major and Medium industries shall recycle and reuse at least 50% of the waste water</i>	<i>Withdrawal may be permitted subject to undertaking of recharge** measures. The <b>withdrawal should not exceed 200% of the recharged quantity.</b></i>
<i>Critical</i>	<i>Major and Medium industries should fully recycle and reuse the waste water</i>	<i>Withdrawal may be permitted subject to undertaking of recharge** measures. The <b>withdrawal should not exceed 100% of the recharged quantity.</b></i>
<b>Over-exploited (except industries falling under category</b>	<i>Full utilization of recycled water and reuse of water should</i>	<i>Withdrawal may be permitted subject to undertaking of</i>

<b>mentioned in B(VI)</b>	<i>be mandatory</i>	<i>recharge** measures. The <b>withdrawal should not exceed 50% of the recharged quantity.</b></i>
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*\*The present guidelines will follow the assessment of Ground Water Resource Estimation (GWRE) 2009 till it is revised.*

*\*\*The **recharge should be implemented within the premises and/or preferably in the same water shed/assessment unit.** Detailed Project Proposal (DPR) shall be included along with the application for NOC.*

## **II. Infrastructure Projects**

*(SEZ, Group Housing projects, Residential townships, Hospitals, Educational Institutions, Roads, Bridges, Technology parks, Malls, Multiplex, etc.)*

- a. Run-off from the entire project area is to be utilized for artificial recharge to ground water unless risk of contamination exists or area is water logged. The runoff from the entire premises shall be utilized for harvesting/storage also, apart from recharge.*
- b. The quantum of ground water for usage other than drinking/domestic shall not exceed 25% of total ground water abstraction in case of Housing projects/Residential Townships.*
- c. Proponents are to submit a status report stating the quantum of water required and the quantity that would be provided by the Government Water Supplying agency. This should be supported by a letter from the agency.*

## **III. Areas Having Specific Depth Zones Notified:**

- a. In areas where specific depth zones are notified, permission to withdraw groundwater can be considered based on the site-specific recommendations of Regional Directorate of CGWB from the depth zones, which are not coming under the notification.*

## **IV. Mining and Dewatering Projects**

*Abstraction of ground water by mining industries intersecting water table for dewatering of mine pit water, and dewatering ground water for basement construction of buildings, etc., may be permitted subject to the following conditions in addition to those already specified under Para B-I.*

- a. The dewatered quantum of water is to be put to gainful use. This may include water supply and provide to water supply agencies, agriculture, dust suppression by the industry, utilization by the mining industry, utilization for artificial recharge to groundwater, etc.*
- b. Piezometers for monitoring the ground water level are to be mandatorily installed within the premises and in peripheral areas. The record of water level data be maintained and to be provided periodically or whenever demanded by the regulating agency.*

- c. Wherever the mines/dewatering project is situated in the coastal area special care should be taken to prevent sea water ingress. This should be supported by a technical evaluation report.
- d. In case of mining projects detailed and continuous study on the groundwater regime, including groundwater modeling should be carried out and the results should be submitted to the Regional Directorate of CGWB periodically.

**V. Abstraction of Saline Ground Water by Industries/ infrastructure Projects**

Industries/infrastructure projects desirous of utilizing saline ground water would be permitted to extract saline groundwater. However, due care to be taken in respect of disposal of the effluents by the units so as to protect the water bodies and the aquifers from pollution. Proposals pertaining to such cases must have a detailed project report elucidating the mechanism of handling the effluent water and its various uses. All precautions must be taken for protection of environment especially fresh water aquifers in and around the area. Large scale recharge mechanism should be adopted wherever feasible in such cases to improve the ground water conditions in the region.

**VI. Industries Using Groundwater as Raw Material and other Water Intensive Industries**

Industries using **water as raw material/water intensive industries like packaged drinking water, mineral water industries, distilleries, breweries, soft drink manufacturing industries, textiles, paper & pulp, etc. shall not be granted NOC for groundwater withdrawal from OE areas.** In Safe, Semi-Critical & Critical areas NOC for ground water withdrawal is mandatory for these industries as per Section B-1. However, ground water withdrawal will be limited as follows:

<b>Category</b>	<b>Ground water withdrawal limit</b>
Safe	Withdrawal limited to 200% of ground water recharge
Semi-critical	Withdrawal limited to 100% of ground water recharge
Critical	Withdrawal limited to 50% of ground water recharge
Over-exploited	<b>No permission for industries under this category</b>

139. Some further conditions are provided in clause D as under:

**“D. OTHER CONDITIONS (Applicable for all cases):**

- a. Sale and supply of raw/unprocessed/untreated ground water by unauthorized agencies for commercial use is not permitted.
- b. **Non-compliance of conditions mentioned in the NOC may be taken as sufficient reason for cancellation of NOC accorded/ non-renewal of NOC.**
- c. **Wherever State Government Authorities are in existence to manage and control ground water regimes, the**



- Groundwater Regulation would be done by them.** The State Ground Water Authority (SGWA) shall send a quarterly progress report to CGWA for records.
- d. In case of any delay in executing the project for bona fide reasons within the set time, for which NOC has been granted, the firm shall apply to CGWA for extension. CGWA may consider extension based on its merits.
  - e. No application for NOC shall be entertained without proper referral letters from the statutory authority (Central and State Govt. Dept and Agencies).
  - f. The referral letter shall contain verification on the quantum of water for the industry/project with detailed break up of groundwater consumption, recycle & reuse of the waste water, so that the wastage of the precious resource can be avoided. In case this is not given by the referral authority, applicant should obtain a letter from the Industries Dept/Project Sanctioning Authority on the same line.
  - g. The CRZA rules and regulation shall be applicable wherever in vogue.
  - h. No permission required for withdrawal of ground water from any area if withdrawal is done through non-energized means.
  - i. Mandatory clause on RWH may be relaxed in case of water logged/shallow water level (<5 m bgl during pre-monsoon) areas.
  - j. **Relaxation in the quantity of ground water withdrawal in over-exploited areas, and/or quantity of recharge being affected by the firm can be permitted by CGWA if it feels it absolutely necessary in national interest.**
  - k. The artificial recharge proposals are required to be vetted by any competent authority of State/ Centre.
  - l. Treated water shall not be used for recharge to ground water, since it may contain heavy metals & other toxic elements. The treated waters shall be fully used by the proponent or any other agency, who can utilize it without contaminating the underlying aquifer / water bodies.
  - m. NOC issued is non-transferable.”

140. Thus **Guidelines 2012** show that study of State wise resources as on 31.03.2009 was available, showing that out of 5842 assessment units (Blocks, Mandals, Talukas, districts), 802 were over-exploited, 169 critical, 523 semi-critical, 4277 safe and 71 saline. Annual replenishable ground water resources was estimated as 431 billion cubic meters (hereinafter referred to as '**bcm**'), net ground availability was 396 bcm and overall stage of ground water development of the country was 61%.

141. **Guidelines 2012** further stated that CGWA has notified 82 areas for the purpose of regulation of ground water development. District

Administrative Head i.e., Divisional Commissioner or District Magistrate in case of Administrative Block or Taluka or Head of Municipality in case of municipal area or notified area, was appointed Authorized Officer by CGWA under Section 4 of EP Act, 1986. All issues pertaining to grant of NOC for ground water withdrawal, checking violations, sealing of ground water abstraction structure, launching of prosecution against offenders, attending to complaints etc. were to be addressed by Authorized Officers. In “notified area”, Guidelines said, that permission to abstract ground water through any energized means will not be accorded for any purpose other than drinking water. In notified area, NOC was open for sanction for drinking purposes only and that too to the limited categories of Government departments entrusted with water supply, other Government organizations and educational institutions-private or Governmental including research institutions/universities and also hospitals where water supply is not available from Government or semi-governments water supply departments. In non-notified areas, directions for grant of NOC for withdrawal of ground water to new and under expansions industries and infrastructure projects with certain conditions, were mentioned in **Guidelines 2012**.

142. Here again we find that CGWA, in respect of over-exploited and critical areas, assumed jurisdiction in a restricted manner by confining it to 82 areas which it had notified, though it is evident from Guidelines, that as per Ground Water Resource Estimates of 2009, 802 areas were identified as over-exploited and 169 as critical and 523 semi-critical. This restricted regulation assumed by CGWA was clearly in defiance of dictates of Supreme Court in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***.

143. At this stage, we find that **OA No. 59/2012, Vikrant Kumar Tongad vs. Union of India & Others** was filed before Tribunal, raising grievance that there is under regulated, large-scale dewatering of areas particularly in NOIDA and Greater NOIDA, by various construction companies, excessive use of ground water and non-compliance of notifications and guidelines issued under EP Act 1986 which is causing depletion of ground water level in district Gautam Buddha Nagar, (State of Uttar Pradesh). Applicant, Vikrant Kumar Tongad requested Tribunal to direct authorities concerned to, make proper assessment of depletion in ground water level in district Gautam Buddha Nagar, stop dewatering activity in violation of guidelines, regulate ground water extraction for commercial, industrial, residential and other purposes, stop illegal water packaging units, make assessment of their impact on ground water, implement regulations related to ground water harvesting and take penal action against defaulting industries, infrastructure units and establishments etc. State of UP contested the matter by filing reply dated 06.02.2013 wherein it admitted depletion of ground water level in NOIDA and Greater NOIDA, at certain places, but pleaded its compulsion on the ground of fulfillment of daily requirement of urban and rural populace. It also brought before Tribunal the efforts taken by State of UP for conservation of ground water resources by taking steps, as under:

- (i) An Executive Committee under Chairmanship of Chief Secretary, Government of UP was constituted in 2004 to review rain water harvesting and ground water recharge programmes in State of UP;
- (ii) Roof top rain water harvesting systems was made mandatory for individual plots having size of 300 square meters or more, made compulsory for existing as well as new Government and Semi-Government buildings;

- (iii) Housing schemes/plans of 20 acres or more at the layout level, 5% of total areas was to be kept aside for pond/water bodies while maximum depth of ponds is to be kept 3 meters;
- (iv) Pucca construction in parks would be allowed only up to 5% of total area and as far as possible, pavements would be made of permeable or semi-permeable/perforated material;
- (v) For new schemes, geological and hydrological surveys need be carried out so that ground water recharging system can be adopted as per local conditions;
- (vi) For monitoring of ground water level and assessment of ground water quality in all industrial units, installation of piezometers (ground water monitoring system) was made compulsory;
- (vii) Steps were taken for spreading awareness amongst general public;
- (viii) Ground Water Department of State was assigned job of regular monitoring of ground water level, in both, urban and rural areas and also to conduct block wise ground water resource estimation.
- (ix) Central Government had not framed any norms for ground water resource assessment in urban areas but the State Government of U.P. issued various Government orders dated 12.04.2001, 08.09.2004, 19.11.2004, 02.12.2004, 28.09.2004, 25.04.2006, 01.07.2008, 19.06.2009 and 05.08.2010 wherein, besides other thing, more emphasis was laid on rain water harvesting.

144. A separate reply was filed by CGWA, dated 12.02.2013, wherein it referred to Guidelines 2012 and reiterated that State wise assessment of ground water resources was last assessed, as on 31.03.2009 which revealed 802 units in the category of over-exploited but there against only 162 units were notified and therein extraction of ground water was made impermissible for any purpose other than drinking water. In

respect of **Gautam Buddha Nagar**, it pointed out that it **had four blocks- Bisrakh, Dadri, Dankaur and Jewar**. As per estimation on 31.03.2004, all the four blocks were in the category of safe but as per the estimation on 31.03.2009 Bisrakh and Dankaur entered the category of “semi-critical” and Block Jewar shifted to the category of “over-exploited”. Only Dadri could maintain its category of “safe” though ground water development had gone from 25.98% (as on 31.03.2004) to 73.03% (as on 31.03.2009).

145. CGWA, however, did not give any reason, why despite identification of large number of units as over-exploited only fraction thereof were notified. Boldly it continued to ignore and defy mandate of Supreme Court, given in ***M.C. Mehta vs. Union of India & Others. (1997) (supra)***.

146. From the record, we find that application filed by Vikrant Kumar Tongad was admitted on 21.11.2012 and an interim order was also passed on 11.01.2013 granting injunction against abstraction of ground water by builders in NOIDA and Greater NOIDA.

147. When the above matter was pending, CGWA issued an **additional Guideline/criteria** which **came into force on 05.04.2013**, permitting abstraction of saline ground water in notified areas subject to certain conditions mentioned therein.

148. At this stage, one more application i.e., **OA No. 108/2013, Legal Aid National Green Tribunal Bar Association vs. NCT of Delhi & Others** was filed under Section 18(1) read with 14, 15 and 17 of NGT Act, 2010 which raised grievance concerning illegal abstraction of ground water in State of Delhi resulting into abnormal fall in ground water level. It refers to a notification dated 12.07.2010 published in Delhi Gazette

dated 9<sup>th</sup> -15<sup>th</sup> July, 2010 issued by Lieutenant Governor of National Capital Territory of Delhi, in exercise of powers under Section 5 of EP Act, 1986 stating that no person etc. shall draw ground water through bore well or tube well (new or existing), without permission, for domestic, commercial, agriculture and/or industrial uses. Applicant therein sought relief from this Tribunal directing authorities concerned to implement relevant provisions for effective management and regulation of ground water and rain water harvesting. This application was taken up on 23.04.2013 and notices were issued to the respondents. Tribunal required respondents to specifically place on record how many bore wells/tube wells were working in Delhi and how many of them were authorized or unauthorized. In the reply filed by Delhi Jal Board and other authorities, it was stated that there were 106 tube wells operating with permission and 205 were functioning unauthorizedly and illegally. Tribunal found that the persons operating tube wells, illegally, were not paying any charges to the authorities and it had become an incentive for illegal and unauthorized use of ground water leading to depletion of underground water and the common problem of water scarcity to the people of Delhi. Consequently, a Committee was constituted to collect complete data of legal and illegal tube wells working in NCT of Delhi, take potential action against illegally operating tube wells/bore wells, recommend measures to be taken to prevent fall of level of ground water in Delhi and also to suggest methods and means for encouraging rain water harvesting and efforts for recharging level of ground water in Delhi.

149. A similar grievance/complaint was made in **OA No. 179/2013, Raj Hans Bansal vs. Ministry of Water Resources & Others** in respect of NCT of Delhi. Notices were issued in this matter to the respondents on

23.08.2013 and subsequently, it was clubbed with **OA No. 108/2013** (*supra*) vide order dated 19.11.2013.

150. During pendency of above matters, **Guidelines 2012** underwent a minor amendment by **CGWA Notification dated 06.08.2014** stating that Guidelines/Criteria thenceforth will follow report on ground water resources estimation as on March 2011 for evaluation of project proposal of industries/infrastructures/mining, seeking ground water extraction.

151. Neither the above Guidelines resulted in any improvement to pathetic condition of constant depletion of ground water nor CGWA made any serious attempt for betterment of the situation. The water level continued to deplete.

152. Complaints about ineffective, inadequate and improper regulatory measures adopted and/or omissions on the part of CGWA, and indiscriminate extraction of ground water continuously, across the country, were brought before Tribunal in several other matters. One of such matters is **OA No. 176/2015** (*supra*) wherein grievance raised was that large number of hotels in State of UP were drawing ground water for commercial purposes without having any permission/sanction from CGWA and authorities including UPPCB, CPCB; and that CGWA is not taking any action against them though their action of withdrawal of ground water illegally is causing harm to environment, ground water level and global warming. This application was entertained and notices were issued to the respondents on 26.05.2015. It was found that 3 hotels namely Hotel Holiday Regency, Moradabad, Hotel Clark Awadh, Lucknow and Hotel Country Inn, Sahibabad were extracting ground water without permission while Hotel Sunshine Park, Ghaziabad claimed that it was having a separate water connection from Ghaziabad Nagar Nigam. Hotel

Raddisson Blu, Kaushambi informed that it has both sources of water i.e., ground water and water supply from Nagar Nigam. Extraction of ground water was not with the permission of CGWA though after filing of OA, some hotels moved application and subsequently got permission from CGWA.

153. CGWA, in response, relied on **Guidelines 2012** and took the stand that it is **regulating only notified areas** where abstraction of ground water is permissible only for drinking water but in non-notified areas the permission can be granted subject to conditions mentioned in Guidelines 2012.

154. Thereupon, CGWA issued another set of Guidelines (a draft at that stage) namely “Guidelines/Criteria for evaluation of proposals/request for ground water abstraction”, (hereinafter referred to as “**Guidelines 2015**”), giving effect from 16.11.2015, claiming that the same have been framed as per Tribunal’s direction for further betterment of ground water regulatory processes. CGWA invited objections/suggestions/comments till 15.01.2016. These Guidelines show that latest assessment of State wise ground water resources was available to CGWB as on 31.03.2011, according to which, out of 6607 assessment units (Blocks, Mandals, Talukas, districts), 1071 were over-exploited, 217 critical, 697 semi-critical, 4580 safe and 92 saline. Annual replenishable ground water resource was estimated as 433 bcm and net ground water availability as 398 bcm. Overall stage of ground water development of country was 62%. Guidelines 2015 also show that till that time, CGWA had notified only 162 areas for the purpose of regulation of ground water development. Guidelines 2015 sought to supersede all earlier Guidelines w.e.f. 16.11.2015. In respect of notified areas, it provided that permission to abstract ground water through any energized means will not be



accorded for any purpose other than drinking water. However, in respect of **non-notified areas**, CGWA followed very flexible stand which it had earlier also, but with certain conditions. It provided that NOC for ground water withdrawal will be considered for industries/infrastructure/mining projects, as per categorization of the areas i.e., safe, semi-critical, critical and over-exploited. It also said that **industries using water as raw material/water intensive industries shall not be granted NOC for ground water withdrawal in over-exploited area.**

155. The ineffectiveness and casual approach of CGWA was brought to the notice of Tribunal, with further complaint that ground water level in entire country is continuously depleting and going down, in **OA No. 176/2015 (supra)**. It was also pointed out that by order dated 15.04.2015 in **OA No. 204/2014, Krishan Kant Singh vs. M/s. Deoria Paper Ltd.**, Tribunal directed that it shall be obligatory upon CGWA to ensure that any person operating tube well or any means to abstract ground water should obtain its permission and operate the same subject to law in force, whether it is existing unit or still to be established, and in compliance thereof, **Guidelines 2015** were published, inviting objections.

156. The matter of **Vikrant Kumar Tongad (supra)** came up for consideration on 26.07.2018. During the course of arguments, it was brought to the notice of Tribunal that water is depleting in certain areas regularly as per study of CGWA and, therefore, a Rational Policy has to be adopted so as to make water available to cope up the need of society, and simultaneously, preserving water for further generation by preventing wastage of preventable use based on the principle of “sustainable development”. It was also noticed that problem of depletion of ground water was not limited to Delhi or NCR but needs be considered for entire country and effective enforcement of regulatory measures PAN

India, particularly, in respect of semi-critical, critical and over-exploited areas. Draft Guidelines 2015 were also referred. Tribunal did not find effective regulatory measures either on the part of CGWA or concerned Ministry, hence, directed an expert from Ministry of Water Resources to remain present on next date with latest updates. Para 15 to 18 of order dated 26.07.2018 in **Vikrant Kumar Tongad (supra)** read as under:

“15. Certain Affidavits have been filed with regard to the inference about the extent of extraction of ground water. In its compliance report dated 31.05.2018 the Senior Town Planners, Department of Country Town and Planning, State of Haryana has suggested a formula for tentative calculation of water consumption for constructions which broadly is **0.75 kilo litre per sqm to 1 kilo litre per sqm**. Actual requirement was found to be 2 kilo litre per sqm. for the building upto 20 stories if the number of storeys is more, the use of water per sqm. was more. On that basis it is suggested as follows:

<b>Sr. No.</b>	<b>Building/Tower</b>	<b>Factors for Water consumption (In Litres per sqm. of build up area)</b>
1.	Buildings upto 5 stories	750 litres per sqm.
2.	Buildings 5 to 10 stories	1000 litres per sqm.
3.	Buildings 10 to 20 stories	1500 litres per sqm.
4.	Buildings above 20 stories	2000 litres per sqm.

16. When the matter taken up for hearing today, learned counsel for the parties submitted that the concern for ground water depletion is not limited to Delhi or NCR. This Tribunal may, instead of going **into the issue limited to NCR region, consider various aspects of the said issue comprehensively including the existing mechanism for regulation of ground water extraction as well as recharge of ground water.**

17. On the one hand there is the need for the water which is the basic necessity, on the other compulsion of restricting its use in view of the fact that the availability of water is inadequate and level of water is depleting atleast in certain areas as per the study of Central Ground Water Authority. The Policy has to be rational, meeting the basic need of everyone and at the same time preserving the water for the future generation by preventing wastage or preventable use based on the principle of Sustainable Development. **Incidental to such policy is the issue of punitive measures and recovery of damages for those who have extracted ground water in the past who go on doing unauthorised/illegal extraction, leading to alarming depletion in the ground water.** Further question will be steps to be taken to tap all relevant sources specially the rain water harvesting, persevering the water bodies etc.

18. Our attention has been drawn in this regard to the guidelines for the criteria for evaluation of proposal for extraction of ground

*water w.e.f. 16.11.2015. These guidelines provide for notified and non-notified areas depending upon the availability of water and criteria adopted for permitting extraction and the area where there is water scarcity. Learned counsel for the Applicant submits that further guidelines have been prepared though the same may be at the draft stage.*

*For this purpose, we may direct an Expert from Ministry of Water of Resources to remain present on the next date with the latest updates.”*

(Emphasis added)

157. In **OA No. 176/2015 (supra)**, Tribunal on 28.08.2018, taking note of complaints of inaction of CGWA, and ineffective regulation of extraction of ground water in critical areas, observed:

*“we are disappointed at the apathy shown by the CGWA. **On the one hand the CGHWA has classified over-exploited, critical and semi-critical areas for regulation, on the other it has refused to regulate such areas on a specious plea that it is only concerned with the notified area.** Being the Central Authority for the whole country under the binding mandate of the order of the Hon’ble Supreme Court, such apathy can hardly be appreciated and such pleas is against the concept of rule of law.”*

(Emphasis added)

158. Consequently, vide order dated 28.08.2018, Tribunal directed Ministry of Water Resources, in consultation with MoEF and Ministry of Agriculture, to forthwith review existing mechanism so as to ensure effective steps for conserving ground water, at least in areas which are over-exploited, critical and semi-critical. Tribunal further said, the policy framework should include monitoring mechanism with provision for coercive measures required, consistent with the directions of Supreme Court in **M.C. Mehta vs. Union of India & Others (1997) (supra)**; policy must also provide for recovery of damages for illegal drawl of ground water; and damages should include penalty as well as environmental compensation.

159. On 29.08.2018, matter of **Vikrant Kumar Tongad (supra)** came up before Tribunal when it expressed its displeasure, for non-finalization

of Guidelines, despite order of Supreme Court passed as long back as in 1996 in ***M.C. Mehta vs. Union of India & Others. (1997) (supra)*** pursuant where to, CGWA was constituted by Government of India vide Notification dated 14.01.1997. Referring to all its earlier orders passed in ***Vikrant Kumar Tongad (supra)*** and also in some other cases which came up before Tribunal later, namely ***OA No. 176/2015 (supra)*** and ***OA No. 484/2015, Shailesh Singh vs. Hotel the Oberoi Amarvilas & Others*** (order dated 28.08.2018), it was observed that CGWA has failed to perform its duty of coming out with clear rational policy for conserving ground water despite Supreme Court orders in ***M.C. Mehta vs. Union of India & Others (1997) (supra)***. Tribunal also referred to its orders in ***OA No. 108/2013 (supra)***, ***OA No. 179/2013 (supra)*** and ***Appeal No. 67/2015, Apex Chambers of Commerce and Industries of N.C.T. of Delhi & Others vs. Govt. of NCT Delhi & Others*** which pertained to Delhi Jal Board, wherein stand of Board was that for commercial packaging or supply, permission to abstract ground water would not be granted. Hence Tribunal by order dated 10.07.2018 prohibited such abstraction.

160. In another matter taken up on the same date i.e., 29.08.2018 i.e., ***OA No. 411/2018, M/s. A-One Mineral Water Industry vs. Central Ground Water Authority & Others***, Tribunal deprecated and disapproved approach and working of CGWA including its Chairman and Administrator and required Secretary, MoEF&CC to look into the matter and report before Tribunal.

161. Several matters namely ***OA No. 59/2012 (supra)***, ***OA No. 108/2013 (supra)***, ***OA No. 179/2013 (supra)***, ***OA No. 176/2015 (supra)***, ***OA No. 484/2015 (supra)***, ***OA No. 327/2018, Shailesh Singh Vs Panchsheel Buildtech Pvt. Ltd. & Others***, ***OA No. 115/2017,***

**Shailesh Singh Vs. Central Ground Water Board & Others., OA No. 411/2118 (supra)** and **Appeal No. 67/2015 (supra)** came up on 22.10.2018 when no progress was shown by the authorities before Tribunal, despite categorical orders passed earlier. Deprecating, Tribunal observed that the authorities are comfortably sleeping over the matter, and in spite of pendency, no concrete steps were shown to have been taken by them. The matter was adjourned to 12.11.2018 directing Secretary, Water Resources, Govt. of India to remain personally present to show cause why action for defiance and non-compliance of Tribunal's order be not taken.

162. All these matters led by **OA No. 59/2012 (supra)** came up before Tribunal on 12.11.2018. In its order, Tribunal noticed that even in over-exploited, critical and semi-critical area, with or without permission underground water continued to be extracted on a specious plea that though critical, the area was not notified and thus, not regulated. Before Tribunal, CGWA sought to disown its responsibility stating that water is a subject matter of 'State' and, therefore, Central bodies have limited role. Similar defense taken before Supreme Court, by Government of India, was already negated in **M.C. Mehta vs. Union of India & Others (1997) (supra)**, still CGWA repeated the same. This was deprecated by Tribunal. Various observations made by Tribunal, demonstrating failure of CGWA in functioning as per directions and observation of Supreme Court in **M.C. Mehta vs. Union of India & Others (1997) (supra)**, in paras 3 to 8, read as under:

*"3. As a result of the survey of the geographical areas in the country, over exploited, critical and semi critical areas have been declared. The CGWA had issued 2012 guidelines and thereafter prepared draft guidelines on 16.11.2015 which are pending finalization for the last three years. The Tribunal noticed that even in over exploited, critical and semi critical areas, with or without permission, underground water continues to be extracted on a specious plea that though critical the area was not*

declared notified and is, thus, not regulated. The CGWA has also sought to disown its responsibility by saying that the matter was State subject.

4. The Tribunal has passed several order prohibiting extraction of underground water for commercial purposes with or without permission. **Mechanical condition of requiring recharge of the underground water, which does not actually happen, and on that basis permitting drawal of underground water for commercial purposes has been held to be unjustified.**

5. **The underground water has been found to be extracted for building construction, for bottling plants, for swimming pools, threatening availability of the underground in over exploited, critical and semi critical areas specially in absence of adequate steps for rain water harvesting for recharge of the underground water.**

6. **The plea that industries are allowed to draw underground water against charges is ridiculous and beyond comprehension in over exploited, critical and semi critical areas. It is against the precautionary principle, sustainable development as well as inter generational equity principle. One may understand the drawal of underground for drinking purposes where no other source for such purpose exists but for no other purpose, much less the industrial purpose such drawal of underground water can be allowed with or without payment in such areas. The Tribunal has also noted that drawal of ground water in the catchment areas of rivers may affect e-flow of the rivers which in turn affect aquatic life and the river water quality.**

7. We do appreciate the difficulties of the agriculturists but the option of providing alternative of use of treated sewage water etc. or switching over to less water consuming crops needs to be considered. Equally significant is the need for checking contamination of underground water by who are discharging untreated effluents in the earth or in the water bodies. Comprehensive planning and execution thereof on the subject with utmost priority is necessary and absence thereof has led to emergency situation in certain areas.

8. In several orders, we have noted the apathy of the Authorities in the last six years in neglecting the subject in breach of the trust reposed in such Authorities. It was this concern that led to our earlier observations and direction to require the presence of Secretary, Department of Water Resources in person. We have no information about steps taken in compliance of earlier directions, including action for illegal activities of the CGWA except a statement that the said Authority is ill equipped. If so, we do not know why? We note that presence of the said Secretary today and also affidavit filed before this Tribunal on 16.10.2018 to the effect that policy framework has been evolved and re-framing of policy guidelines are “under consideration” for reference to the Ministry of Law.”

(Emphasis added)

163. Thereafter, CGWA came up with a new set of Guidelines, vide **Notification S.O. 6140(E) dated 12.12.2018**, published in Gazette of India (Extraordinary), of the same date, titled as “Guidelines to regulate and control ground water extraction in India”. It was given effect from 01.06.2019 (hereinafter referred as ‘**Guidelines 2018**’).

164. Para 2 thereof stated that these Guidelines shall supersede all earlier guidelines issued by CGWA and will have PAN India applicability.

165. Para 2.1 referred those categories of users who were exempted from obtaining NOC for ground water abstraction and read as under:

**“2.1. Exemptions**

*1. The following categories of users shall be exempted from obtaining NOC for ground water abstraction:*

- i. All users drawing/proposing to draw ground water through non-energized means (bucket & rope, hand pump, mhote etc.)*
- ii. Individual households drawing/proposing to draw ground water from a single dug well/bore well/tube well through delivery pipe of up to 1" diameter*
- iii. Agricultural users*
- iv. Armed Forces Establishments during operational deployment or during mobilization in forward locations.*

*The following categories of users shall be granted exemption from the requirement of NOC for ground water withdrawal, subject to submission of particulars as per the proforma (Annexure III) to CGWA.*

- i. Strategic and operational infrastructure projects for Armed Forces*
- ii. Defence Establishments and Paramilitary Forces Establishments*
- iii. Government water supply agencies in safe and semi critical areas*

*The agencies mentioned under Sl. Nos. i, ii and iii shall install digital water flow meters to monitor monthly ground water abstraction, construct observation wells (piezometers) equipped with Digital Water Level Recorders (DWLR) for regular monitoring of ground water levels if the proposed ground water extraction is > 10 m<sup>3</sup>/day. Data sharing mechanism will be the same as in Section 2.3.1.VII. They will also monitor ground water quality from the abstraction structures once in a year during the month of April/ May. Guidelines for construction of piezometer are given in Annexure IV. The ground*

*water samples collected shall be analysed at an NABL accredited laboratory. The data on ground water abstraction, ground water levels and ground water quality shall be submitted to the concerned Regional Office of Central Ground Water Board on the web portal.”*

166. Para 2.2 deals with drinking and domestic use and said as under:

**“2.2. Drinking & Domestic use**

*Request for NOC shall be considered only in cases where the water supply department/agency concerned is unable to supply adequate amount of water in the area. For granting NOC for ground water withdrawal for drinking & domestic purposes, two broad categories identified are as follows:*

- a) Individual households/connections*
- b) Infrastructure projects/industries/mining projects/water supply agencies/others”*

167. Para 2.2.1 deals with the conditions and procedure for grant of NOC to individual household. Para 2.2.2 deals with infrastructure projects/industries/mining projects/public water supply agencies/others requiring water only for drinking & domestic use. These paras 2.2.1 and 2.2.2 read as under:

**“2.2.1. Individual households:**

*Individual houses drawing/ proposing to draw ground water through more than one functional bore well/tube well/dug well or drawing ground water through delivery pipe of more than 1" diameter from a single ground water abstraction structure shall be required to seek NOC for ground water withdrawal under this category. NOC for ground water extraction shall be granted subject to the following conditions:*

- i. Application for NOC shall be accompanied by the proof of ownership of household(s).*
- ii. NOC for new wells shall be granted only in such cases where public water supply system does not exist/water supply is inadequate.*
- iii. Applicant shall submit an affidavit on non-judicial stamp paper of Rs. 10/- confirming non/inadequate availability of public water supply.*
- iv. The NOC shall be valid for a period of 5 years from the date of issue or till such time public water supply is provided to the household, whichever is earlier. The applicant shall apply for renewal of NOC at least 90 days prior to expiry of its validity.*
- v. The user shall install digital water flow meter on the tube well/ bore well / dug well and submit the data through the web-portal*
- vi. The user shall submit ground water abstraction data through the web-portal.*
- vii. If the existing well becomes defunct within the validity period of NOC, the user can construct a replacement well under intimation*



to the Regional Director of CGWB. The defunct well shall be properly sealed as per guidelines given in Annexure V.

- viii. The owner shall implement roof top rain water harvesting as per the prevalent building bye laws. However, no recharge shall be undertaken in areas prone to water logging (water levels within 5 metres below ground level).
- ix. The owner shall pay Water Conservation Fee based on quantum of ground water extraction as applicable (Refer Sub-section 2.6).
- x. The NOC shall become void in case of change in land use of the property/ water use. It will then become mandatory for the owner to apply for fresh NOC.

**2.2.2. Infrastructure projects/industries/mining projects/public water supply agencies/other requiring water only for drinking & domestic use.**

An indicative list of infrastructure projects to be considered under this category is given in Annexure VI. **NOC for ground water withdrawal for drinking and domestic purpose only** for infrastructure projects/ industry/ mining projects/water supply agencies/ others will be granted based on the following conditions:

- I. Application for NOC shall be accompanied by the following documents:
  - i) Approval in the form of Terms of Reference/Consent to Establish/Consent to Operate/License issued by the statutory bodies viz. Ministry of Environment, Forests & Climate Change (MoEF & CC)/State Level Expert Appraisal Committee (SEAC)/State Level Environment Impact Assessment Authority (SLEIAA)/State Pollution Control Board (SPCB)/ Urban/Rural Development Authority/Department of Industries or any other authority mandated by Central/State Government.
  - ii) Details of water requirement computed as per National Building Code, 2016 (Annexure VII), taking into account recycling/ reuse of treated water for flushing etc. (in case of new buildings).
  - iii) Affidavit on non-judicial stamp paper of Rs. 10/- by the applicant, confirming non/ inadequate availability of public water supply in case of users requiring ground water up to 10 m<sup>3</sup>/day for drinking/ domestic use.
  - iv) Certificate of non-availability of water from government water supply agency in case of infrastructure project/industry/mine requiring ground water in excess of 10 m<sup>3</sup>/day for drinking/ domestic use.
  - v) Water quality data of bore well/tube well/dug well in respect of existing projects from NABL accredited laboratory.
- II. Use of recycled/ treated waste water for purposes like flushing, green belt etc. shall be mandatory for new projects requiring >12.5 m<sup>3</sup>/d of ground water.
- III. NOC for new /existing wells shall be granted only in such cases where the required amount of water is not available from the public water supply system.

- IV. *If the existing well becomes defunct within the validity period of NOC, the user can construct a replacement well under intimation to CGWA on web portal. The defunct well shall be properly sealed (Refer Annexure V).*
- V. *The proponent shall mandatorily install roof top rain water harvesting system in the project area, wherever the ground water level is deeper than 5 metres below ground level.*
- VI. *The proponent shall pay Water Conservation Fee based on quantum of ground water extraction as applicable (Refer Sub-section 2.6).*
- VII. *Installation of **digital water flow meter** (conforming to BIS standard) in the abstraction structure(s) shall be **mandatory** and intimation regarding the same shall be communicated to the CGWA within 30 days of grant of NOC through the web-portal. Monthly water meter reading shall be digitally recorded and reports of ground water abstraction shall be submitted through the web portal to CGWA.*
- VIII. *Construction of purpose-built observation wells (piezometers) for monthly ground water level monitoring shall be mandatory for proponents drawing/ proposing to draw 10m<sup>3</sup>/day or more of ground water. Detailed guidelines for construction of piezometers are given in Annexure IV. Depth and zone of aquifer tapped in the piezometer should be commensurate with that of the pumping well.*
- IX. *Installation of Digital Water Level Recorders (DWLR) in the observation well shall be mandatory for projects requiring ground water from 50 to less than 500 m<sup>3</sup>/day in safe and semi critical assessment units and 20 to less than 200 m<sup>3</sup>/day in critical and overexploited assessment units. The list of safe, semi critical, critical, overexploited and saline assessment units is available at [www.noc-cgwb.gov.in](http://www.noc-cgwb.gov.in).*
- X. *For projects requiring ground water extraction of 500 m<sup>3</sup>/day or more in safe and semi critical assessment units and 200 m<sup>3</sup>/day or more in critical and overexploited assessment units, installation of DWLR with telemetry in the observation well shall be mandatory. The data server shall be maintained by the supplier of the instrument and access will be provided to CGWA through the web portal. It shall be the responsibility of the applicant to provide user ID and password to the above agency.*
- XI. *Monthly water level data shall be submitted to CGWA through the web portal.*
- XII. *All proponents shall monitor quality of ground water from the abstraction structure(s). Water samples from borewells/ tube wells / dug wells shall be collected during April/May every year and analyzed from NABL accredited laboratories for basic parameters (cations and anions), heavy metals, pesticides/ organic compounds etc. Water quality data shall be made available to CGWA through the web portal.*

*XIII. The NOC shall be valid for a period of 5 years from the date of issue or till such time public water supply is provided to the project area, whichever is earlier.*

*XIV. The proponent/ authorized representative of the occupants of the infrastructure project shall apply for renewal of NOC at least 90 days prior to expiry of its validity.”*

168. The indicative list of “Infrastructure projects” governed by para 2.2.2, as mentioned in annexure VI to the **Guidelines 2018**, referred to: residential apartment, Residential township, Office building, School College, University, Industrial Area (Drinking use), SEZ (Drinking use), Metro Station, Railway Station, Bus Depot, Airport, Seaport, Highway infrastructure, Fire station, Warehouse, Business Plaza, Malls & Multiplex, Hospitals, Nursing Homes, Water Park/Theme Park/Amusement Park, Resort, Hotel/Restaurant/Food Plaza, Holiday home/Guest house, Banquet Hall/Marriage Gardens, IT Complex, Logistics & Cargo, Clubs and Trade Centre.

169. Para 2.3 deals with industrial/mining/infrastructure projects and separate conditions are provided for industries, mining projects and infrastructure projects and the conditions are as under:

**“2.3 Industrial/ Mining/ Infrastructure projects**

*All industries/ mining/ infrastructure projects, **whether existing/new/ under expansion** and drawing/ proposing to draw ground water through energized means shall need to obtain NOC for ground water withdrawal from the Central Ground Water Authority.*

**2.3.1 Industries**

*NOC to industries shall be granted only for such cases where government agencies are not able to supply the desired quantity of water. The applications for NOC shall be considered as per the criteria given below.*

*I. Application for NOC shall be accompanied by the following documents:*

*i) Approval in the form of Terms of Reference/ Consent to Establish/ License issued by statutory bodies viz. Ministry of Environment, Forests & Climate Change (MoEF&CC) or State Pollution Control Board (SPCB) or State Level Expert Appraisal Committee (SEAC) or State Level Environment Impact Assessment*

Authority (SLEIAA) or Bureau of Indian Standards (BIS) or Food Safety and Standards Authority of India (FSSAI) or Department of Industries or any other authority mandated by Central or State Government.

ii) A valid Consent to Operate issued by the Industry Department/ Pollution Control Board/ copy of application submitted for renewal of Consent to Operate.

iii) Certificate regarding non/partial availability of fresh water/treated waste water supply from the concerned government agency in cases where requirement of ground water is more than 10 m<sup>3</sup>/day.

iv) An affidavit on nonjudicial stamp paper of Rs. 10/- regarding non availability of water supply from government agencies in cases where ground water requirement is up to 10 m<sup>3</sup>/day.

v) Water quality data of bore well/tube well/dug well in respect of existing industries from NABL accredited laboratory.

II. **Hydrogeological report** prepared by NABET accredited consultant shall be mandatory for users drawing/ proposing to draw ground water to the tune of 2000 m<sup>3</sup>/day or more in safe assessment units, **1500 m<sup>3</sup>/day or more in semi critical and critical assessment units and 1000 m<sup>3</sup>/day or more in over-exploited assessment units.** Pro-forma for hydrogeological report is given in Annexure VIII. Installation of digital water flow meter (conforming to BIS standard) in the abstraction structure(s) shall be mandatory and intimation of the same shall be communicated to the CGWA through the web portal within 30 days of grant of NOC.

III. Monthly water flow meter readings shall be recorded and reports of ground water extraction shall be submitted to CGWA through the web portal.

IV. Industries shall minimize the use of fresh ground water through recycling and reuse of waste water.

V. All industries abstracting ground water to the tune of 500 m<sup>3</sup>/day or more in safe and semi critical and **200 m<sup>3</sup>/day or more in critical and over-exploited assessment units shall be required to undertake water audit** (Annexure IX) through CII/ FICCI/ NPC certified auditors and submit report within three months of completion of the same to CGWA through the web portal. **The first audit shall be done within a year of grant of NOC.** Subsequent audits shall be conducted once in 3 years for Safe/Semi critical assessment units and once in 2 years in critical/over-exploited assessment units.

VI. Construction of observation well(s) (**piezometers**) **within the premises, for monthly ground water level monitoring, shall be mandatory for industries drawing/ proposing to draw more than 10 m<sup>3</sup>/day of ground water.** Depth and aquifer zone tapped in the piezometer shall be commensurate with that of pumping well/ wells. The number of observation wells (piezometers) shall be specified in the No Objection Certificate. Detailed guidelines for construction of piezometers are given in Annexure IV. Monthly water level data shall be submitted to the CGWA through the web portal.

VII. Industries drawing/proposing to draw ground water from 50 to less than 500 m<sup>3</sup>/day in safe and semi critical assessment units and those drawing/proposing to draw **20 to less than 200 m<sup>3</sup>/day of ground water in critical and over-exploited assessment units shall install digital water level recorder (DWLR) in the observation well for continuous monitoring of ground water levels.** Depth to water levels shall be monitored at 12 hour intervals and the DWLR data shall be retrieved and submitted to CGWA through the web portal.

VIII. Industries drawing/proposing to draw ground water to the tune of 500 m<sup>3</sup>/day or more in safe and semi critical areas and 200 m<sup>3</sup>/day or more in critical and over-exploited areas would be required to install DWLR with telemetry in the observation well for continuous monitoring of ground water levels. The server will be maintained by the supplier of the instrument and access shall be provided to CGWA. It shall be the responsibility of the proponent to provide User ID and password to the CGWA.

IX. All industries shall monitor quality of ground water from the abstraction structure(s). Water samples from bore wells/tube wells/dug wells shall be collected during April/May every year and analysed from NABL accredited laboratories for basic parameters (cations and anions), heavy metals, pesticides/organic compounds etc. Water quality data shall be made available to CGWA through the web portal.

X. All industries except those falling in red and orange categories as per CPCB (list available on [http://envfor.nic.in/sites/default/files/Latest\\_118\\_Final\\_Directions.pdf](http://envfor.nic.in/sites/default/files/Latest_118_Final_Directions.pdf)) shall implement roof top rain water harvesting within six months of grant of NOC. Recharge of harvested water shall not be permitted in areas prone to water logging (water level within 5 m.bgl).

XI. Industries shall deposit Water Conservation Fee (WCF) based on quantum of extraction as applicable (see Subsection 2.6). Industries which are not able to implement roof top rain water harvesting due to likely threat of pollution or any other valid reason shall be required to pay additional water conservation fee to compensate for the quantum of water that could have been recharged by the unit.

**XII. NOC shall be valid for a period of 3 years in safe and semi critical areas and 2 years in critical and overexploited areas.**

XIII. The applicant shall apply for renewal of NOC at least 90 days prior to expiry of its validity.

XIV. Industries which are likely to cause ground water pollution e.g. Tanning, Slaughter Houses, Dye, Chemical/Petrochemical, Coal washeries, other hazardous units etc. (as per CPCB list) need to undertake necessary measures to ensure prevention of ground water pollution (Annexure X).

XV. Recharge/ injection of treated/untreated waste water within/ outside the plant premises is strictly prohibited.

XVI. Existing industries, which have already obtained NOC and have implemented recharge measures as specified in the NOC, shall be exempted from paying WCF. However, if the industry is going for expansion, WCF will have to be paid for the additional quantum of ground water withdrawal as per applicable rates.

XVII. Existing industries, which have obtained NOC and adopted pond/ ponds but have not been able to implement the specified volume of recharge due to various reasons, shall have an option to de-adopt pond/ ponds and pay WCF within six months of the effectiveness of these guidelines. **If at the time of renewal it is observed that the industry has not been able to comply with the recharge condition specified in the NOC, the industry shall have to pay WCF in addition to the penalty as specified in the Environment (Protection) Act, 1986.**

XVIII. Wherever feasible, requirement of water for greenbelt (horticulture) shall be met from recycled/ treated waste water.

XIX. If an existing well becomes defunct within the validity period of NOC, the proponent shall construct a replacement well under intimation to the CGWA through the web portal. The defunct well shall be properly sealed (Annexure V).

XX. In case of change of ownership, new owner of the industry will have to apply for necessary changes in the NOC with documentary proof within 45 days of taking over possession of the premises.

### **2.3.2 Mining projects**

All existing as well as new mining projects need to obtain NOC for mine dewatering and/or ground water withdrawal through wells, if any, from Central Ground Water Authority. NOC for abstraction of ground water shall be granted subject to the following conditions:

I. Application for NOC shall be accompanied by the following documents:

- i) Approval from statutory bodies viz. Ministry of Environment, Forests & Climate Change (MoEF & CC) or State Pollution Control Board (SPCB) or State Level Expert Appraisal Committee (SEAC) or State Level Environment Impact Assessment Authority (SLEIAA).
- ii) Certified mine lease map.
- iii) Document showing ownership/ lease of land.
- iv) Mining plan approved by the concerned Govt. agency/ department.
- v) Comprehensive report prepared by NABET accredited consultant on ground water conditions in both core and buffer zones of the mine, depth wise and year wise mine seepage calculations, impact assessment of mining and dewatering, details of recycling, reuse and recharge, reduction of pumping with use of technology for mining and water management to minimize and mitigate the adverse impact on ground water, based on local conditions. Format for report is given in Annexure VIII.

II. The water available from de-watering operations shall be put to gainful use such as water supply, irrigation, dust suppression, mining process etc.

III. Installation of digital water flow meter (conforming to BIS standard) in the abstraction structure(s) shall be mandatory and intimation of the same shall be communicated to the CGWA through the web portal.

IV. Water flow meter reading shall be digitally recorded and submitted to the CGWA through the web portal.

V. The proponent shall have to pay WCF based on quantum of ground water extraction as applicable (see Subsection 2.6).

VI. Construction of observation well(s) (piezometers) within the premises along the periphery, for monthly ground water level monitoring, shall be mandatory for mines drawing/ proposing to draw more than 10 m<sup>3</sup>/day of ground water. Depth and aquifer zone tapped in the piezometer shall be commensurate with that of pumping well/ wells. The number of observation wells (piezometers) shall be specified in the No Objection Certificate. Detailed guidelines for construction of piezometers are given in Annexure IV. Monthly water level data shall be submitted to the CGWA through the web portal.

VII. Proponents drawing/proposing to draw ground water from 50 to less than 500 m<sup>3</sup>/day in safe and semi critical assessment units and those drawing/proposing to draw 20 to less than 200 m<sup>3</sup>/day of ground water in critical and over-exploited assessment units shall install digital water level recorder (DWLR) in the observation well(s) for continuous monitoring of ground water levels. Depth to water levels shall be monitored at 12 hour intervals and the DWLR data shall be retrieved and submitted to the CGWA through the web portal.

VIII Proponents drawing/proposing to extract ground water to the tune of 500m<sup>3</sup>/day or more in safe and semi critical areas and 200 m<sup>3</sup>/day or more in critical and over-exploited areas would be required to install DWLR with telemetry in the observation well for continuous monitoring of ground water levels. The server will be maintained by the supplier of the instrument and access shall be provided to CGWA. It shall be the responsibility of the proponent to provide User ID and password to CGWA.

IX. In addition, the proponent shall monitor ground water levels by establishing key wells in the core and buffer zones as specified in the NOC.

X. All mining units shall monitor quality of ground water from the abstraction structure(s). Water samples from bore wells/tube wells /dug wells shall be collected during April/May every year and analyzed from NABL accredited laboratories for basic parameters (cations and anions), heavy metals, pesticides/ organic compounds etc. Water quality data shall be made available to the CGWA through the web portal.

XI. The NOC shall be valid for a period of 2 years from the date of issue of NOC.

XII. The proponent shall apply for renewal of NOC at least 90 days prior to expiry of its validity.

### **2.3.3 Infrastructure projects requiring dewatering or use of ground water for construction**

New infrastructure projects/residential buildings may require dewatering during construction activity and/or use ground water for construction. In both cases, applicants shall seek NOC from CGWA before commencement of work. The NOC will be granted subject to the following conditions:

I. Application for NOC shall be accompanied by the following documents:

i) Approval letter from statutory bodies viz. Ministry of Environment, Forests & Climate Change (MoEF & CC) or State Pollution Control Board (SPCB) or State Level Expert Appraisal Committee (SEAC) or State Level Environment Impact Assessment Authority (SLEIAA) or Urban/Rural/Area Development Authority.

ii) In cases where dewatering of more than 100 m<sup>3</sup>/day is required, hydrogeological report prepared by NABET accredited consultant on the ground water situation in the area giving detailed plan of pumping, proposed usage of pumped water and comprehensive impact assessment of the same on the ground water regime. The report should highlight environmental risks and proposed management strategies to overcome any significant environmental issues.

iii) An affidavit on nonjudicial stamp paper of Rs. 10/- regarding non availability of water from any other source for construction in safe and semi critical areas.

iv) Certificate from the government agency regarding non availability of treated sewage water for construction within 10 km radius of the site in critical and over-exploited areas.

II. The proponent shall be required to adopt roof top rain water harvesting in the project premises after completion of building construction. Recharge measures shall not be implemented in areas prone to water logging (water level within 5 metres below ground level).

III. The proponent will have to pay WCF based on quantum of ground water extraction as applicable (see Sub-section 2.6).

IV. Proponent shall be required to carry out regular monitoring as mentioned below:

Parameter to be monitored	Frequency	Submission to the CGWA
Dewatering discharge rate (using a digital water flow meter)	Continuous	Through the web-portal



<i>Water levels in the surrounding area by constructing observation wells (piezometers) in consultation with the concerned Regional Office of CGWB</i>	<i>Fortnightly</i>	<i>Through the web-portal</i>
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*Monitoring records and results should be retained by the proponent for up to two years, for inspection or reporting as required by CGWA.*

*V. NOC shall be valid for the specific period as per the detailed proposal submitted by the project proponent.”*

170. Para 2.4 deals with agriculture sector and said that it shall be exempted from obtaining NOC for ground water withdrawal but placed responsibility upon concerned State Governments to undertake sustainability of ground water source. Para 2.5 deals with the abstraction of saline/contaminated ground water. It is said that abstraction of saline/contaminated ground water for use by industries/ dewatering by infrastructure/mining projects including those located in over-exploited areas would be encouraged. The list of such assessment units having saline ground water at all depths as per the latest assessment of dynamic ground water resources will be made available by the Authority in the web-based application system. Packaged drinking water units shall be encouraged to be set up in quality affected areas. All precautions must be taken for protection of environment, especially fresh water aquifers in and around the area. Other conditions for granting NOC would be the same as mentioned in Section 2.3 for industries and infrastructure projects, respectively. Some additional conditions were provided which we are omitting being non-relevant at this stage. Para 2.6 is provisions for Water Conservation Fee (hereinafter referred to as ‘**WCF**’), in compliance of Tribunal’s order dated 13.07.2017 in **OA No. 200/2014** dealing with Ganga matter, wherein it was observed that all users must be required to pay for ground water extraction. The rates of WCF were claimed to have been determined by CGWA after considering factors namely, i) Cost of implementation of rainwater

harvesting/artificial recharge structures by industries/infrastructure units/mines which have been mandated to implement the same as per NOCs granted earlier; and ii) charges being levied by various State Governments for use of surface water by industries.

171. On 18.12.2018, leading cases **OA No. 176/2015 (supra)** and **OA No. 59/2012 (supra)** came up before Tribunal along with **OA No. 108/2013 (supra)**, **OA No. 179/2013 (supra)**, **OA No. 484/2015 (supra)**, **OA No. 327/2018 (supra)**, **OA No. 115/2017 (supra)**, **OA No. 411/2118 (supra)**, **OA No. 613/2017, Mohd. Javed Asghar vs. M/s Upper Ganges Sugar and Industries Ltd. (Distillery Unit) & Others.** and **OA No. 614/2017, Mohd. Javed Asghar vs. State of U.P. & Others** and **Appeal No. 67/2015 (supra)**. After hearing, order was uploaded on 03.01.2019. Entire historical background and also litigation going on in Tribunal, in respect of massive abstraction of ground water and failure of statutory body like CGWA in effective regulation, consistent depletion of ground water level worsening the condition, was noticed and then Tribunal also examined Guidelines 2018. Deprecating the same, in para 22 to 27 of order dated 03.01.2019, Tribunal said:

*“20. It is clear from the above that, rather than laying down stricter norms for extraction of ground water for commercial purposes and putting in place a robust institutional mechanism for surveillance and monitoring, **extraction of ground water has been liberalized adding to the crisis unmindful of the ground situation and likely impact it will have on environment.** No data has been furnished to justify the policy reversal by way of uncontrolled liberalized drawal of groundwater in OCS areas.*

*21. The provisions of the impugned notification show that **drawal of ground water has been, for all practical purposes, made unregulated in all areas, including the OCS areas.***

*22. The **so called regulation is illusory.** The so called conditions are incapable of meaningful monitoring, as shown by past experience also*

*23. The **water conservation fee virtually gives licence to harness ground water to any extent even in OCS areas.***

24. There is **no institutional mechanism to monitor removal and replenishment of ground water.**

25. Delegation provision is virtual abdication of authority.

26. There is no check on injection of pollutants in the ground water in the impugned notification. There is no provision with regard to check on water quality and its remediation, if there is contamination.

27. We are satisfied that the **Notification dated 12.12.2018** tested on the Precautionary Principle, Sustainable Development as well as Inter-generational Equity Principles **is unsustainable in law** and instead of conservation of ground water which is necessary for providing access to drinking water in OCS areas, as well also other needs of environment, including sustenance of rivers and other water bodies, it will result in fast depletion of ground water and damage to water bodies and will be destructive of the fundamental right to life under Article 21 of the Constitution of India.”

(Emphasis added)

172. Consequently, Tribunal directed not to implement said Notification.

Its direction in para 28, reads as under:

“28. Accordingly, the impugned **Notification may not be given effect to in view of serious shortcomings as pointed above so that an appropriate mechanism can be introduced consistent with the needs of environment.**”

(Emphasis added)

173. Tribunal directed MoEF&CC to constitute an Expert Committee by including representatives from IIT Delhi, IIT Roorkee, IIM Ahmedabad, CPCB, NITI Ayog and any other concerned agency or department to examine the issue of appropriate policy for conservation of ground water with a robust institutional mechanism for surveillance and monitoring, with a view to enhance access to ground water for drinking purposes in OCS (over exploited, critical and semi-critical) areas by way of appropriate replenishment practices which can be properly accounted and measured for, as well as to sustain floodplains of rivers in terms of e-flow and other water bodies. Giving this direction in para 29 of the judgment, Tribunal directed MoEF&CC and also Ministry of Water Resources to finalize the issue of subject, inter-se, with regard to ground water reserve and its quality. Committee was to be constituted in two

weeks and report was directed to be given by Committee in two months. Committee was also required to indicate projection of its impact study in the light of projected data for next 50 years (in phased manner with action plan for each decade). Thereafter, the concerned Ministry was to issue fresh guidelines and submit report to Tribunal on or before 30.04.2019. In para 32, Tribunal directed CPCB to constitute a mechanism to deal with individual cases of violations of norms, as existed prior to Notification of 12.12.2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law. Tribunal further said that all the matters related to illegal extraction of ground water by individuals are disposed of with these directions.

174. Thus, vide order dated 03.01.2019, all individual matters relating to extraction of ground water illegally, stood disposed of. However, when the matters were next listed on 07.05.2019, Tribunal found that MoEF&CC has failed to perform its duty, and directions, issued by Tribunal vide order dated 03.01.2019, were not complied. In fact, Committee required to be constituted within two weeks, was actually constituted only on 29.03.2019. Tribunal deprecated it and said:

***“We do not appreciate such attitude of Government departments when under a statutory enactment, violation of orders of this Tribunal is a criminal offence. The Committee has not acted promptly and no significant progress has been brought to our notice. Lack of sensitivity of serious issues of environment such as fast depleting ground water is a matter of concern.”***

175. Having said so, Tribunal directed Committee to submit report positively by 30.06.2019, failing which Joint Secretary concerned of MoEF&CC was directed to remain present to explain as to why action be not taken for violation of Tribunal's orders. Further, report dated 30.04.2019 submitted by CPCB vide e-mail, was also considered wherein

it had taken the stand that assessment of environmental compensation for illegal extraction of ground water has been done. This report was not accepted by Tribunal, giving following reasons:

- i. ***The OCS areas which need regulation for conservation of ground water cannot be further treated separately as notified or non-notified.*** Conservation of ground water in the said areas is of equal necessity. Depletion of ground water in the said areas affects the sub-terranean flow and results in contamination of ground water and also poses a potential danger for drying up of important natural resource in violation of established principle of 'Intergenerational Equity'.
- ii. ***The compensation to be recovered for illegal extraction has to be deterrent specially when it is for commercial or industrial purpose and linked to the quantum of ground water extracted and the period for which such extraction takes place.***
- iii. ***Scenario analysis with robust scientific logic is required for all the classes considered in comparable terms which has not been done in the present report.***

176. CPCB was directed to submit fresh report on or before 30.06.2019.

177. Referring to ground water development on the basis of Guidelines 2015 for existing industries, infrastructure in the said mining projects, Tribunal said that it did not find any safeguards suggested to address the concern, earlier expressed against depleting ground water. It, further held:

***"The mandate of CGWA is not exploitation of ground water in depleted areas but to conserve it. Any policy which results in further depletion obviously cannot be permitted in OCS areas. CGWA is free to lay down and follow stringent norms to ensure that there is no depletion of ground water in OCS areas and depleted water level is improved and replenished. Any policy has to be in that direction and not in reverse direction as is unfortunately being attempted by CGWA, as noticed in earlier orders."***

178. Tribunal also observed that MoEF&CC must come up with an appropriate policy. Strangely, MoEF&CC took the plea that CGWA has not cooperated, which has caused delay. This stand was denied by CGWA. In this situation, Tribunal observed that the fact remains that failure is on the part of both. Entrusted with the responsibility of

protecting ground water, CGWA and all other Authorities must cooperate and collaborate in the exercise to come out with a policy which must result in checking further depletion of ground water and enhance replenishment. Tribunal directed concerned Secretaries to monitor compliance of directions, having regard to the importance of the issue.

179. Mistakenly, Registry failed to notice that individual matters were already disposed of vide order dated 03.01.2019, and thus, should not have listed on 07.05.2019, except the matter relating to status of compliance of directions of Supreme Court in NGT, to check depletion of ground water level in the country. This mistake occurred on 23.08.2019 also.

180. In the meantime, pursuant to order dated 03.01.2019 and 07.05.2019, MoEF&CC filed affidavit on 18.07.2019. Report of CPCB dated 26.06.2019 was also filed. Both these were taken into consideration on 23.08.2019 and order of Tribunal was uploaded on 11.09.2019.

181. The listing of disposed matter was noticed by Tribunal in the order dated 11.09.2019, hence, it was clarified that all the above matters be treated to be disposed of and shall be dealt with by concerned Regulatory Authority in accordance with law. The relevant extract of order dated 11.09.2019 passed in **OA No. 59/2012 (MA No. 34/2016 & MA No. 190/2016) (supra), OA No. 108/2013 (supra), OA No. 179/2013 (supra), Appeal No. 67/2015 with MA No. 107/2019 (supra), OA No. 176/2015 (supra), OA No. 484/2015 (supra), OA No. 327/2018 (supra), OA No. 115/2017 (supra), OA No. 411/2018 (supra), OA No. 613/2017 (supra) and OA No. 614/2017 (supra)**, reads as under:

*“These matters involve the issue of conservation of ground water.*

Vide order dated 03.01.2019 in O.A. No. 176/2015, this Tribunal directed as follows:

*“32. The CPCB may constitute a mechanism to deal with individual cases of violations of norms, as existed prior to Notification of 12.12.2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law. **All the matters relating to illegal extraction of ground water by individuals are disposed of with these directions.**”*

***In view of above, the above matters having been disposed of were wrongly listed on 07.05.2019 and on 23.08.2019. The same be treated and disposed of and may be dealt with by the concerned regulatory authorities in accordance with law.*** The report of CPCB dated 26.06.2019 may be following on the subject of assessment of recovery of compensation for illegal drawl of ground water apart from prosecution and stoppage of illegal drawl of ground water in accordance with law.”

182. A separate order in **OA No. 176/2015 (supra) (MA No. 133/2015)** was uploaded on the issue of conservation of ground water. Considering the said issue, Tribunal found that the report was deficient on the issue of prevention or depletion of ground water and the same was not addressed at all. No effective enforcement mechanism of conditions, subject to which ground water extraction may be allowed in OCS areas, was provided. Mere condition of recharge without clear strategy of enforcement was not found appropriate and adequate safeguard, for permitting extraction of ground water. The report left many issues for being considered. Some aspects of the report were considered in paras 20 and 21 of the order dated 11.09.2019 passed in **OA No. 176/2015 (supra)**, which read as under:

*“20. The report of CPCB dated 26.06.2019 deals with methodology for assessing environmental compensation (EC), Formula for Environmental Compensation for illegal extraction of ground water, Environmental Compensation Rate (ECRGw) which has been further dealt with in different categories, i.e. ECRGw for Drinking & Domestic use for household purposes and those for institutional activity, commercial complexes, townships etc., ECRGw for Packaged Drinking Water Units, ECRGw for Mining, Infrastructure and Dewatering Projects, ECRGw for Industrial Units, Deterrent*

factors to compensate losses and environmental damage (for packaging drinking water units, mining, industrial and commercial purposes) and Deterrent Factor . Formula for Environmental Compensation for illegal extraction of ground water is as follows:

**“5. Formula for Environmental Compensation for illegal extraction of ground water**

The committee recommended that the formula considering water consumption, no. of days, rates for imposing Environmental Compensation based on the purpose for illegal abstraction of ground water as well as the deterrent factor detailed below:

$$\text{ECGw} = \text{Water consumption per day} \times \text{Environmental Compensation rate for illegal extraction of ground water (ECR}_{\text{GW}}) \times \text{No. of Days} \times \text{Deterrent Factor}$$

Where, water consumption is in m<sup>3</sup>/day and ECR<sub>GW</sub> in Rs/m<sup>3</sup>”

All other details can be seen from the report which is available on the website of CPCB. The report also gives recommendations as follows:

21. The committee has given following recommendations:

1. In case of **fixation of liability, it always lies with current owner of the premises** where illegal extraction of groundwater is taking place.
2. **Violation duration** may be assumed as **at least one year** in case where no evidence for period of installation of **borewell could be established.**
3. For illegal industrial ground water abstraction, where metering system is not available, water consumption may be estimated as per consent conditions imposed by SPCB/PCC.
4. **Water intensive industries should only be permitted in safe, semi-critical and critical area, and should not be allowed to establish new industries in overexploited area.**
5. **Water in over-exploited area should be permitted only for drinking purposes** and industries established in this area without prior consent or NOC from CGWA or another concerned department must be closed down with immediate effect. No expansion in existing industrial activity should be permitted, irrespective of additional water demand arises or not.
6. **Present categorization of area (Over-exploited, Critical and Semi-Critical), as per CGWA shall be considered for calculation of EC, regardless of the area category when the period of violation started.**



7. ***In case of all existing cases having more than 5000 KLD ground water demand, permission may be given only after examining scientific assessment of water availability and assessing intergenerational equity by CGWA.***
8. ***The industrial units should be directed to adopt State of the Art technologies, use of surface water, treated waste water and reduce specific water consumption, thereby ground water demand is reduced by 10% over three years' period. The industries also be encouraged to create facilities for storage of excess storm water and adequate measures such as groundwater recharge as well as restoration of lakes /ponds in the vicinity of the industry.***
9. ***In addition, all repeated violations will attract EC at 1.25 times the previous EC.***
10. *Authorities assigned for levy EC and taking penal action are listed below:*

S. No.	Actions	Authority
1.	<i>To seal illegal borewell/tube-well to stop extraction of water and further closure of project</i>	<i>District Magistrate</i>
2.	<i>To levy ECGw as per prescribed method</i>	<i>District Magistrate/CGWA</i>
3.	<i>To levy EC on industries involved in illegal abstraction of Groundwater , as per the method prescribed in report of CPCB- "EC for industrial units"</i>	<i>CPCB/SPCB/PCC</i>
4.	<i>Prosecution of Violator</i>	<i>CGWA under Environment (Protection) Act, 1986 (or)</i>
		<i>SPCB/PCC under Water (Prevention and Control of Pollution), Act, 1974</i>

183. Tribunal then constituted another Committee comprising of Joint Secretary, MoEF&CC, concerned Joint Secretary, MoWR, CGWB, National Institute of Hydrology, Roorkee, National Remote Sensing Center, Hyderabad and CPCB to go into the following questions:

- (a) *Steps required to be taken for preventing depletion of ground water.*

- (b) *Robust monitoring mechanism to ensure that no ground water is unauthorisedly extracted, including review of manning and functioning of CGWA.*
- (c) *Robust mechanism to monitor conditions laid down for grant of permission for extraction of ground water.*
- (d) *Recommendations in the report of the CPCB dated 26.06.2019 referred to above.”*

184. Tribunal, however, accepted report of CPCB with regard to compensation as an interim arrangement and directed that the same may be acted upon by Regulatory Authorities and compensation be recovered from violators, for the period of violation, which may be assessed on case to case basis. Further, Tribunal said that report of CPCB that water intensive industries can be allowed even in semi-critical and critical area without any further safeguards, may not be acted upon, till further orders.

185. The association of Industrial Manufactures, Ghaziabad filed **I.A. No. 640/2019** in **OA No. 176/2015 (supra)**, seeking review of order dated 11.09.2019 on the ground that order has caused prejudice to them, hence needs reconsideration. This I.A. was considered on 10.10.2019 and rejecting the same, by order of the said date, in para 6, Tribunal said:

**“6. Since the OCS areas have been found to be seriously affected by over-drawl of ground water, regulation of such drawl for commercial purposes cannot be dispensed with for any industry even in industrial area.** Availability of water for drinking is a first priority. The ‘Precautionary’ principle, ‘Sustainable Development’ principle and the Inter-generational equity are part of life and **in absence of replenishment of ground water, unregulated drawl thereof cannot be held to be right of any commercial entity.** Shortage of availability of water for commercial purposes cannot be remedied by drawl of groundwater in over exploited, critically exploited and semi-critical exploited (OCS) areas. Water is certainly a scarce resource and the industry has to put up with such scarcity. **It is for the industry and the concerned authorities to find out alternative ways and means for sustenance of the industries instead of permitting indiscriminate drawl of groundwater in such areas till situation improves. Alternative means may be shifting to areas where water is not scarce or to processes where water is not required.** As already noted, groundwater is depleting in such

*areas and measures are required to check such depletion. If industries continue to draw ground water without NOC from CGWA as per current guidelines and orders of this Tribunal in OCS areas, the industries will have to face legal consequence of such illegal action.”*

186. As per directions contained in order dated 11.09.2019, report submitted on 16.03.2020 was placed before Tribunal along with **OA No. 176/2015 (supra)** on 13.07.2020. It was brought to the notice of Tribunal that illegal extraction of ground water is neither being effectively checked nor there is any recovery of compensation from defaulters. In an article, published in “**Times of India**”, dated 06.06.2017, it was stated that four crore liters of water was being illegally extracted in Gurgaon daily. Similar complaints of huge quantity of ground water extraction by tanker mafias were reported in NCT of Delhi which require constant action by Regulatory Authorities and robust mechanism for effective review. A news item was published in daily newspaper “**Tribune**”, on 15.07.2020, under the title “Decline in water table caused crack in Mahendragarh Field: Experts”. Drying of main rivers including Ganga due to depletion of ground water, water bodies running dry at alarming rate and extraction of ground water resulting in fall of water table beyond the level of replenishment, various studies and articles published in different magazines of repute etc. were considered by Tribunal in its order uploaded on 20.07.2020. In respect of State of Uttar Pradesh, in particular, district Gautam Buddha Nagar, Tribunal considered complaint of fast depletion of ground water due to large scale extraction by various commercial entities, including hotels in Ghaziabad, Moradabad and Agra etc. Giving reference of earlier orders passed from time to time, including order dated 03.01.2019, Tribunal observed that preparation of Guidelines, without studying “Impact Assessment” would be against the principle of “sustainable development”. The principal

vulnerable features, on account whereof Guidelines 2018 were criticized and Regulatory Authorities were directed not to give effect to it, were noted in para 15 of judgment dated 20.07.2020, as under:

**“15. In its order of 03.01.2019, the Tribunal disapproved the notification, holding that ultimately, it is the result of all the measures, shown by the data on the ground, which has to be the basis of any policy and not just laying down of measures. It was observed that the notification granted exemptions in OCS areas without having regard to the impact on groundwater, or a roadmap for controlling the falling ground level. Doing so without impact assessment was against sustainable development.**

*Some further vulnerable features of the notification were noted as follows:*

*i. Exemption of individual households to draw ground water from single dug well/bore well/tube well through delivery pipe of upto 1" diameter and certain other categories, even if there is an existing supply of drinking water.*

*Beyond the said exemption, ground water withdrawal can be permitted on the basis of NOC where water supply is not adequate subject to certain conditions.*

*ii. Infrastructural projects including water supply agencies could be allowed to get NOC and the said industries are in Annexure-VI.”*

187. Guidelines had to show an application of mind as to how the Policy adopted by Regulatory Authorities would prevent extraction of water beyond desired level in OCS areas. Tribunal also noted its order dated 07.05.2019, considering CPCB report dated 30.04.2019, with regard to compensation regime, which was found unsatisfactory and CPCB was directed to give a fresh report observing that compensation to be recovered for illegal extraction has to be deterrent, specially when it is for commercial or industrial purpose, and should be linked to the quantum of ground water extraction and period for which such extraction takes place. It was also observed that scenario analysis with robust scientific logic is required for all the classes considered in comparable terms. Tribunal considered affidavit dated 16.03.2020, filed by CGWA for Ministry of Jal Shakti, and pointed out that Committee report annexed to

the affidavit continues to be entirely unsatisfactory. The observations made in para 24 of the judgment dated 20.07.2020, are:

*“24. The matter is being taken up in continuation of order dated 11.09.2019. We have heard Shri Vikramjit Banerjee, learned ASG appearing for MoJS and CGWA, We have considered the CGWA affidavit dated 16.3.2020 filed for MoJS which annexes the report of the Committee purporting to be in compliance of Tribunal order dated 11.9.2019. **The situation continues to be entirely unsatisfactory. Several issues in the report are same which were rejected in the order dated 3.1.2019.** The MoJS appears to be avoiding its Constitutional obligation of complying with the judgement of the Hon’ble Supreme Court and repeated directions of this Tribunal. Surprisingly and regretfully, a wholly untenable prayer is made that the Tribunal should review its earlier orders, which have attained finality, never having been challenged. It is thus clear that there is no intent or effort to comply with the said orders. **The report is not in compliance of this Tribunal’s orders but rather, largely violates the spirit of the said mandate.** We proceed to record the reasons.”*

188. Several issues in the report were same as already rejected by Tribunal vide order dated 03.01.2019. Ministry of Jal Shakti was found avoiding its Constitutional obligation of complying with the judgment of Supreme Court and repeated directions of Tribunal. Observing that report was not in compliance of Tribunal’s earlier orders, rather violates their spirit, Tribunal gave its reasons, in para 25 to 30, as under:

*“25. The CGWA affidavit states that **the restriction on extraction of groundwater in OCS areas is likely to have adverse impact on industrial production, employment opportunities and GDP of some States.** It seeks vacation of the Tribunal order dated 03.01.2019, so as to issue NOCs for groundwater extraction as per proposed guidelines or as per 2015 guidelines.*

*26. **As mentioned earlier, the report practically reiterates the regime earlier brought out on 12.12.2018, which was rejected by the Tribunal on 3.1.2019** being against sustainable development and mandate of law laid down by the Hon’ble Supreme Court. We do not find it necessary to reproduce the report in extenso but refer to and comment upon the main aspects thereof.*

*a. The report states at the outset, contrary to the Hon’ble Supreme Court judgment:*

*“Water being a State subject, **initiatives on water management including conservation and water harvesting in the Country is primarily States’ responsibility.** Further, to supplement the efforts of the*

State Governments, Government of India provides technical and financial assistance to encourage sustainable development and efficient management of water resources through various schemes and programmes.”

However, as against the above stand, the report also mentions that the CGWA is vested with the regulation, control, management and development of groundwater in the country. It has issued guidelines (including the 2015 and the 2018 guidelines), and enumerated its various initiatives and policy decisions.

- b. For the same reasons for which notification dated 12.12.2018 was found unacceptable, the proposed recommendations, **liberalizing groundwater extraction across the board to certain categories without any impact assessment and effective checks, are against law.**
- c. Exemptions for infrastructure projects, MSMEs or other industries or commercial purposes except drinking water, where supply is not otherwise available in water stressed areas, will be against **sustainable development and public trust doctrine unless individual impact assessment is conducted and permitting such extraction found viable.**
- d. There has to be listing of priorities within available limited resources and unlimited demands and impact assessment of such activity and policy of permitting extraction has to be based on **carrying capacity in the form of the water levels.**
- e. **No road map has been provided how the new regime will check and neutralize falling ground water levels. There is neither a claim that in the last 24 years of regulation by the CGWA, ground water levels have improved, nor any projection for future improved.** Data compiled by Niti Ayog in its report published in 2018 ‘composite water index’ is clear evidence of over exploitation at several locations. Moreover, CGWA itself has conducted survey and identified 1868 out of 6585 assessment units as OCS areas. Its failure is in not having effective regulatory regime. There is no adequate implementation of conditions for drawal of ground water for commercial purposes. Such failure is shown by falling levels and news of **mafias engaged in illegal drawal of ground water in OCS areas without effective check.** Further liberalization will defeat the purpose of having CGWA and be contrary to the mandate of public trust doctrine. Effective steps for protecting ground water in OCS areas against **singularly commercial considerations** are critical.
- f. The report observes:

“During the discussions, it was observed that ground water is a replenishable resource and the aquifer zones from which ground water is extracted gets replenished every year from rainfall and other sources. **Therefore, there is a need to extract groundwater by various users including industries/agriculture needs in safe, semi-critical and critical areas as space is to be created in the aquifers for replenishment of water through rainfall/other**

**sources.** It is pertinent to mention here that in case we do not allow extraction of ground-water in these areas the precious rainfall may be lost through runoff as the void in aquifers may not be available for recharge purposes through rainfall.

In safe, semi-critical and critical areas, annual ground water withdrawal is less than the annual ground water recharge and in over-exploited areas, it exceeds annual recharge. In view of this,, the Committee was of the view that it may not be appropriate to club semi-critical and critical with over-exploited assessment units, provided necessary measures to compensate the ground water withdrawal are ensured and at no point groundwater extraction exceeds 100% of recharge. **Hence, the committee was of the opinion that two broad categories of assessment units namely i) over-exploited and ii) critical, semi-critical & safe be considered for framing the guidelines. Stricter regulatory regime was suggested for over-exploited assessment units to avoid further deterioration.”**

We find the statement that withdrawal to the extent of replenishment **must be done** to avoid wastage of rain water is contradicted by **continually falling levels of ground water in OCS areas.** There is no question of wastage of rain water where water level is falling. In such areas, the withdrawal has to be reduced not only to the extent of replenishment but to enhance the ground water to safe and sustainable levels. Replenishment and raising of water level are both important in OCS areas. Falling groundwater levels dry up water bodies and reduce the flow of the rivers. CPCB website acknowledges **351 river stretches as polluted for reasons including non-availability of flow which prevents adequate dilution capacity. This affects the aquatic life, wildlife and food-chain and the entire eco-system.**

- g. The report states, under the heading **‘action being taken for preventing depletion of groundwater and recharge’:**

“The focus of this report is therefore to create a balanced approach, **with emphasis on demand side management and practical regulation that does not impede development.** Committee was also apprised about the fact that Water being a State subject, initiatives on **water management including conservation of ground water is primarily States' responsibility.** However, Central government supplements the efforts of states Government through technical and financial assistance.”

There is clear contradiction in mentioning need for balanced approach on the one hand and **emphasis on the demand side.** Such approach is against the mandate of ‘Sustainable Development’, including Precautionary principle, intra and inter-generational equity and ‘public trust’ doctrine.

- h. The report’s recommendation under the heading **‘Industry, Infrastructure and Mining projects’** that extraction of

groundwater by existing industries need not be checked as it may obstruct growth, is an argument against the principle of 'Sustainable Development'. **There is no absolute right even of existing industries to continue to draw ground water without regard to depleting groundwater levels as held even in 2015.** Such extraction cannot be at the cost of environment and ignoring intra and intergenerational, precautionary and sustainable development principles. **Development and growth must be undertaken but not without ignoring the sustainable groundwater level.**

- i. Recommendation for robust monitoring mechanism by restructuring CGWA, strengthening manpower having network upto District Level etc. may be looked into by the concerned authorities and action taken for implementation so as to ensure that there is effective regulatory mechanism as per the mandate of law. Our observations are same with regard to robust mechanism to monitor conditions laid down for grant of permission for extraction of groundwater.
  - j. Recommendation in para 13.0, on quantum of compensation and action required against violators, are contrary to CPCB recommendations for closing down industries in over exploited areas for extracting groundwater illegally, and cannot be accepted. The present proposal is against stringent action against violators committing criminal offence which cannot be appreciated. To regulate and control groundwater extraction in India, the overriding principle of carrying capacity has to apply to every category of commercial use of groundwater, including industrial use, mining projects, infrastructure projects. Compensation for unlawful groundwater extraction must be on the bases of **restitution and deterrence.**
  - k. The water rates in para 6.0 of the report with regard to various categories including packaged water and beverages and mining infrastructure projects **in OCS have to be in the nature of deterrent because groundwater extraction for such purposes is not permissible beyond carrying capacity. The proposed rates do not meet such test.** Thus, unregulated drawal of water being a criminal offence under the law, **compensation may be recovered as per CPCB report dated 26.06.2019 until any further appropriate mechanism is prepared.** The 2015 CGWA guidelines and the MoEF report itself provides that groundwater extraction for commercial purposes was impermissible in OCS areas. Instead of moving in that direction, present proposal is in reverse direction which is not permissible.
27. In terms of the Tribunal's previous orders (dated 03.01.2019, Paras 29 and 31, and dated 11.09.2019, Para 24), **the core issues that are required to be considered are:**
- a. **Has a robust institutional monitoring mechanism been evolved**
    - i. **To define 'assessment unit'- wise carrying capacity and accordingly set (a) target replenishment levels and (b) plan for permissible levels of extraction, of ground water levels in OCS areas;**



- ii. **to assign individual target replenishment levels as a condition for granting extraction permits, and to audit such replenishment by those who are extracting groundwater; as well as to audit and measure actual carrying capacity periodically;**
  - iii. **to monitor real-time implementation of conditions for permitting extraction of ground water;**
  - iv. **to withdraw permits for extraction of ground water failing target replenishment levels; as well as**
  - v. **to sustain the flow of rivers in terms of e-flows and sustain other water bodies?**
- b. Is there a provision for an impact study in light of projected data for the next 50 years (in phased manner with action plan decade-wise)?**
- c. Has an effective and measurable plan been prepared for preventing depletion and unauthorized extraction of ground water backed by requisite mechanism in the form of manning and effective functioning of CGWA so as to ensure sustainable ground water management in terms of the Hon'ble Supreme Court mandate by which CGWA was created?**
- d. Is the compensation regime against violators adequately deterrent?**
28. **The answer is 'no'. If implemented, the current report would nullify the mandate of the Hon'ble Supreme Court by seeking to deregulate ground water extraction, ignoring its impact on the e-flow of rivers, water bodies and overall sustainable management of scarce natural resources with emphasis on industrial development, without balancing development and environment. Irreversible damage cannot be allowed by extracting water beyond safe levels, without impact assessment.**
29. **We, thus, hold that as per mandate of sustainable development under Section 20 of NGT Act, 2010, which has been held to be part of right to life under Article 21 of the Constitution, the regulatory authority must direct its policy towards preventing further depletion of and upgrading the groundwater levels based on impact assessment. Extraction can neither be unregulated or allowed across the board without individual consideration. For this purpose, there is need to compile data by mapping all the assessment units individually in terms of current and estimated water level, drawal and replenishment and preparing a management plan for all such units. The CGWA being a statutory regulator for the country has to exercise overriding power in the form of statutory regulatory orders. It may have its own network and, to the extent found viable, utilize the network of existing Authorities like District Magistrates, Environment Departments, Departments of Irrigation and Public Health etc. The ground water assessment has to be done annually and placed on the respective websites of the Districts or States. Any extraction of groundwater has to be permitted keeping in**

mind availability of groundwater ensuring that there is no further depletion and ground water level remains at safe level.

30. At this stage, **we may notice that the regulatory mechanism of the CGWA has not been adequate, as the report also notes.** CGWA does not appear to have requisite strength nor enforcement mechanism nor strategies. This may be one of the reasons for failure in effective monitoring, defeating the object of law. This has led to large number of petitions before this Tribunal pointing out that illegal groundwater extraction was rampant. The plans for **rain water harvesting and many other steps to a great extent remain largely only on paper.** Remedial measures need to be taken in view serious challenges in protection of groundwater level, to save rivers and water bodies and the entire chain of environment.”

189. Thereafter, following directions were issued in para 39:

**“Directions**

39. In the light of the above discussion, we direct as follows:
- a. MoJS may ensure requisite manning and effective functioning of CGWA so as to ensure **sustainable ground water management** in terms of the Hon’ble Supreme Court mandate by which CGWA was created.
  - b. **Let CGWA and MoJS comply with the directions of this Tribunal in orders dated 3.1.2019, 7.5.2019 and 11.9.2019, to have a meaningful regulatory regime and institutional mechanisms for ensuring prevention of depletion and unauthorized extraction of ground water and sustainable management of groundwater in OCS areas. Regard must be had to water availability and safe levels to which its drawal can be allowed, especially for commercial purposes, based on available and assessed data in each “Assessment unit”.** Procedures for assessment of individual applications and institutional mechanism may be clearly laid down.
  - c. As per orders dated 3.1.2019, undertaking an impact study in light of projected data for the next 50 years (in phased manner with action plan decade-wise).
  - d. There must be **no general permission for withdrawal of ground water, particularly to any commercial entity, without environment impact assessment of such activity on individual Assessment units in cumulative terms covering carrying capacity aspects by an expert committee.** Such permission should as per Water Management Plans to be prepared in terms of this order based on mapping of individual assessment units. Any permission should be for specified times and for specified quantity of water and not in perpetuity, and be necessarily subject to digital flow meters which cannot be accessed by proponents, with mandatory annual calibration by authorized agency at proponents’ cost. **An annual review by independent and expert evaluation must audit and record ground water levels as well as compliance with the conditions of the permission.** Such audits must be published online for transparency and to track compliance and year-on-year change in ground water levels, and

*swift action taken against those who fail audit, including withdrawal of permission, blacklisting, initiation of prosecution and recovery of deterrent compensation as per CPCB regime. Records must be maintained online and for a sufficient and reasonable time.*

- e. *As observed in para 0(a) and 0(a) above, **all OCS assessment units must undergo water mapping. Water Management Plans need to be prepared for all OCS assessment units in the country based on the mapping data, starting with Over-exploited blocks. The Water Management Plans, data on water availability or scarcity and policy of CGWA must be uploaded on its website for transparency and public involvement. Such exercise may be done expeditiously, preferably within next three months.***”

190. Interestingly, Ministry of Jal Shakti, after referring to earlier orders and order dated 20.07.2020, passed by Tribunal, issued a fresh notification dated **24.09.2020**, published in Gazette of India (Extraordinary) dated 24.09.2020, laying down Guidelines to regulate and control ground water extraction in India, in supersession of all earlier Guidelines issued by CGWA (hereinafter referred to as '**Guidelines 2020**'). These Guidelines have come into force from the date of publication in the Gazette i.e., 24.09.2020. It further says that Guidelines shall have PAN-India applicability.

191. Guidelines 2020 says that Ground water abstraction in States/UTs (which are not regulating ground water abstraction) shall continue to be regulated by CGWA. Further, wherever States/UTs have come out with their own ground water abstraction Guidelines, which are inconsistent with the CGWA Guidelines, the provisions of CGWA Guidelines will prevail. However, in case, Guidelines followed by such States/UTs contain some more stringent provisions than CGWA Guidelines, such provisions may also be given effect to, by the States/UTs Authorities, in addition to those contained in the CGWA Guidelines. States may be at liberty to suggest additional conditions/criteria based on the local hydro-geological situations which

shall be reviewed by CGWA/Ministry of Jal Shakti, Government of India before acceptance. All new/existing industries, industries seeking expansion, infrastructure projects and mining projects abstracting ground water, unless specifically exempted under para 1.0 below, will be required to seek NOC from CGWA, or, the concerned State/UT Ground Water Authority, as the case may be. Guidelines 2020 said that water management plans shall be prepared by all State Ground Water Authorities/Organizations for all over-exploited, critical and semi-critical assessment units, starting with over-exploited units.

192. Para 1.0 of **Guidelines 2020** deals with exemptions from seeking NOC. It is more or less similar to the earlier exemption clause contained in the preceding Guidelines, with a solitary difference that this time industrial units in the category of Micro and Small Enterprises drawing less than 10 cum/day, are added in the category of exempted categories. It says:

**“1.0 Exemptions from seeking No Objection Certificate:**

*Following categories of consumers shall be exempted from seeking No Objection Certificate for ground water extraction:*

- (i) Individual domestic consumers in both rural and urban areas for drinking water and domestic uses.*
- (ii) Rural drinking water supply schemes.*
- (iii) Armed Forces Establishments and Central Armed Police Forces establishments in both rural and urban areas.*
- (iv) Agricultural activities.*
- (v) **Micro and small Enterprises drawing ground water less than 10 cum/day.”***

193. For Drinking & domestic use for Residential apartments/Group housing societies/Government water supply agencies in urban areas, procedure for NOC is provided in para 2.0. It says that for new and existing wells, where Government water supply agency is unable to

supply requisite amount of water in the area, NOC shall be granted, subject to following specific conditions:

- “i) Installation of **Sewage Treatment Plants** shall be mandatory for all residential apartments/ Group Housing Societies where ground water requirement is more than 20 m<sup>3</sup>/day. **The water from Sewage Treatment Plants shall be utilized for toilet flushing, car washing, gardening etc.***
- ii) The No Objection Certificate shall be valid for a period of five years from the date of issue or till such time local Government water supply is provided to the project area, whichever is earlier. In case the project proponent receives water supply from the concerned local Government Water Supply Agency during the validity of the No Objection Certificate, intimation regarding availability of public water supply shall be sent by the project proponent to CGWA and No Objection Certificate will be cancelled by the Authority. In other cases, the project proponent will apply for renewal of No Objection Certificate, ninety days before the expiry of No Objection Certificate.*
- iii) Proponents shall be liable to pay ground water abstraction charges for the quantum of ground water proposed to be extracted, as per rates mentioned in Table 5.1.”*

194. Vide para 3.0, Agriculture sector was exempted from obtaining NOC for ground water extraction. For commercial use, para 4.0 of Guidelines, 2020, says that no new major industry shall be granted NOC in over-exploited assessment areas except as per the policy Guidelines.

195. Para 4.1 deals with the case of industrial use and says that in over-exploited assessment units, NOC shall not be granted for ground water abstraction to any new industry except those falling in the category of Micro, Small and Medium Enterprises (hereinafter referred to as **‘MSME’**). However, an exception has been provided for grant of NOC for drinking/domestic use for work force, green belt use by these new industries. Expansion of existing industries involving increase in quantum of ground water abstraction in over-exploited assessment units shall not be permitted. NOC shall not be granted to new packaged water industries in over-exploited areas, even if they belong to MSME category.

Thereafter, certain specific conditions have been mentioned for grant of NOC to industries, and the same are as under-

- i) *No Objection Certificate shall be granted only in such cases where local government water supply agencies **are not able to supply the desired quantity of water.***
- ii) *All industries shall be required to adopt latest water efficient technologies so as to reduce dependence on ground water resources.*
- iii) *All **industries abstracting ground water in excess of 100 m<sup>3</sup>/d** shall be required to **undertake annual water audit** through Confederation of Indian Industries (CII)/ Federation Indian Chamber of Commerce and Industry (FICCI)/ National Productivity Council (NPC) certified auditors and submit audit reports within three months of completion of the same to CGWA. All such industries shall be required to reduce their ground water use by at least 20% over the next three years through appropriate means.*
- iv) *Construction of observation well(s) (piezometer)(s) within the premises and installation of appropriate water level monitoring mechanism as mentioned in Section 15 shall be mandatory for industries drawing/ proposing to draw more than 10 m<sup>3</sup>/day of ground water and. **Monitoring of water level shall be done by the project proponent. The piezometer (observation well) shall be constructed at a minimum distance of 15 m from the bore well/production well.** Depth and aquifer zone tapped in the piezometer shall be the same as that of the pumping well/wells. Detailed guidelines for design and construction of piezometers are given in Annexure II. Monthly water level data shall be submitted to the CGWA through the web portal.*
- v) *The proponent shall be required to adopt roof top rain water harvesting/recharge in the project premises. **Industries which are likely to pollute ground water (chemical, pharmaceutical, dyes, pigments, paints, textiles, tannery, pesticides/insecticides, fertilizers, slaughter house, explosives etc.) shall store the harvested rain water in surface storage tanks for use in the industry.***
- vi) *Injection of treated/untreated waste water into aquifer system is strictly prohibited.*
- vii) *Industries which are likely to cause ground water pollution e.g. Tanning, Slaughter Houses, Dye, Chemical/ Petrochemical, Coal washeries, other hazardous units etc. (as per CPCB list) need to undertake necessary well head protection measures to ensure prevention of ground water pollution (Annexure III).*
- viii) ***All industries drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges** as applicable as per Tables 5.2 A and 5.3 A.*
- ix) *All **existing industries drawing ground water in over-exploited assessment units shall be liable to pay ground***

**water restoration charges** as applicable as per Tables 5.2 B and 5.3 B.”

196. The documents to be submitted along with application for grant of NOC, included an IAR, which was made mandatory, where abstraction of ground water proposed is in excess of 100 m<sup>3</sup>/day in over-exploited, critical and semi-critical areas. The aforesaid report shall be on the ground water regime and also socio-economic impacts to be prepared by accredited consultants.

197. In respect of mining projects, Para 4.2 says that there is no restriction on grant of NOC even in over-exploited areas. It reads as under:

*“All existing as well as new mining projects will be required to obtain No Objection Certificate for ground water abstraction. **Since mining projects are location specific, there will be no ban on grant of No Objection Certificate for abstraction of ground water for such projects in over-exploited assessment units.**”*

198. However, specific conditions attached for issue of NOC for mining projects are provided in para 4.2, as under:

- “i) It shall be mandatory for all the mining industries to ensure that water available from de-watering operations is properly treated and should be gainfully utilized for supply for irrigation, dust suppression, mining process, recharge in downstream and for maintaining e-flows in the river system.*
- ii) Construction of observation well(s) (piezometers) along the periphery in the premises, for monthly ground water level monitoring, shall be mandatory for mines drawing/ proposing to draw more than 10 m<sup>3</sup>/day of ground water. Depth and aquifer zone tapped in the piezometer shall be commensurate with that of pumping well/ wells.*
- iii) In addition, the proponent shall monitor ground water levels by establishing observation wells (piezometers) in the core and buffer zones as specified in the No Objection Certificate.*
- iv) In case of coal and other base metal mining the project proponent shall use the advance dewatering technology (by construction of series of dewatering abstraction structures) to avoid contamination of surface water.*

- v) *In addition to this, all mining units shall also monitor the water quality of mine seepage and mine discharge through NABL accredited/ Govt. approved laboratories and the same shall be submitted at the time of self-compliance.*
- vi) *All mining projects drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges as applicable as per Tables 5.4 A.*
- vii) *All mining projects drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges as per Table 5.4 B.”*

199. The documents required to be submitted along with application for NOC in respect of a mining project, include, besides mining plan approved by the concerned Authorities and proposals for rain water harvesting/recharge within the premises, a comprehensive report, made mandatory vide clause(c), which reads as under:

*“(c) Comprehensive report prepared by accredited consultant on ground water conditions in both core and buffer zones of the mine, depth wise and year wise mine seepage calculations, impact assessment of mining and dewatering on ground water regime and its socio-economic impact, details of recycling, reuse and recharge, reduction of pumping with use of technology for mining and water management to minimize and mitigate the adverse impact on ground water, based on local conditions. Format for report is given in Annexure V.”*

200. In Para 4.3 of **Guidelines 2020**, issue of NOC to infrastructure project has been dealt with. Here, it is said that since infrastructure projects are location specific, grant of NOC to such projects located in over-exploited assessment units shall not be banned. It reads as under:

**“4.3 Infrastructure projects:**

***Since infrastructure projects are location specific, grant of No Objection Certificate to such projects located in over-exploited assessment units shall not be banned. New infrastructure projects/residential buildings may require dewatering during construction activity and/or use ground water for construction. In both cases, applicants shall seek No Objection Certificate from CGWA before commencement of work. However, in over-exploited assessment units, use of ground water for construction activity shall be permitted only if no treated sewage water is available within 10 km radius of the site. New as well as existing Infrastructure projects shall also be required to seek No Objection Certificate for abstraction of ground water.”***



201. However, it is also provided in para 4.3 that no NOC shall be granted for extraction of groundwater for water parks, theme parks and amusement parks in over-exploited assessment units. Thereafter, specific conditions for grant of NOC for ground water abstraction in infrastructure projects are provided, in para 4.3 in clauses (i) to (v), as under:

- “i) In case of infrastructure projects that require dewatering, proponent shall be required to carry out regular monitoring of dewatering discharge rate (using a digital water flow meter) and submit the data through the web portal to CGWA/SGWA as applicable. Monitoring records and results should be retained by the proponent for two years, for inspection or reporting as required by CGWA/SGWA.*
- ii) Installation of Sewage Treatment Plants (STP) shall be mandatory for new projects, where ground water requirement is more than 20 m<sup>3</sup>/day. The water from STP shall be utilized for toilet flushing, car washing, gardening etc.*
- iii) For infrastructure dewatering/ construction activity, No Objection Certificate shall be valid for specific period as per the detailed proposal submitted by the project proponent.*
- iv) All infrastructure projects drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges as applicable as per Table 5.3 A.*
- v) All infrastructure projects (new/ existing) drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges as per Table 5.3 B.”*

202. For documents required to be submitted along with the application, clauses (a), (c), and (e) to (g) of Para 4.3, talk of the following documents:

- “(a) In cases where dewatering is involved, submission of impact assessment report prepared by an accredited consultant on the ground water situation in the area giving detailed plan of pumping, proposed usage of pumped water and comprehensive impact assessment of the same on the ground water regime shall be mandatory. The report should highlight environmental risks and proposed management strategies to overcome any significant environmental issues such as ground water level decline, land subsidence etc.*

*(c) Certificate from a government agency regarding non availability of treated sewage water for construction within 10 km radius of the site in critical and over-exploited areas.*

*(e) Proposal for rain water harvesting/ recharge within the premises as per Model Building Bye Laws issued by Ministry of Housing & Urban Affairs.*

*(f) Details of water requirement computed as per National Building Code, 2016 (Annexure I), taking into account recycling/ reuse of treated water for flushing etc. (in case of completed infrastructure projects for commercial use).*

*(g) Completion certificate from the concerned agency for infrastructure projects requiring water for commercial use.”*

203. More attention has been paid in **Guidelines 2020** on ground water abstraction charges. It is payable by all residential apartments/group housing societies/Government water supply agencies in urban areas and industries/mining/infrastructure projects. Ground water abstraction charges, based on quantum of ground water extraction and category of assessment units as per details given in Guidelines, are payable by all industries/mining/infrastructure projects drawing ground water in safe, semi-critical and critical assessment units. Ground water restoration charges, based on quantum of ground water abstraction, are payable by all existing mining/infrastructure projects and existing industries including MSME drawing ground water in over-exploited assessment units. Ground water restoration charges are also payable by new MSME, new infrastructure and new mining projects in over-exploited areas.

204. Para 6.0 deals with Bulk Water Supply and says that all private tankers, abstracting ground water, and use it for supply as bulk water suppliers, will now mandatorily seek NOC for ground water abstraction. Bulk water suppliers through tankers drawing ground water in safe, semi-critical and critical assessment units shall pay ground water abstraction charges as per Table-6.1A. Bulk water suppliers drawing ground water in over-exploited assessment units shall pay ground water

restoration charges as per the Table-6.1B. All tankers will have to install GPS based system for their monitoring of movement/area of operation.

205. Para 7.0 deals with abstraction of saline ground water and here the provision is broadly similar as it was in earlier Guidelines.

206. A new provision with regard to protection of wetland areas is added vide para 8.0 and it reads as under:

**“8.0 Protection of Wetland Areas**

*The wet land areas in the country are very crucial as they are direct reflection of the presence of ground water in such areas. The protection of the wetland areas is being separately handled by the Wetland Authorities. **Since ground water is very crucial for the survival of the wetland area, any excessive ground water development within the zone of wetland area would affect the volume of water in that wetland.***

***Projects falling within 500 m. from the periphery of demarcated wetland areas shall mandatorily submit a detailed proposal indicating that any ground water abstraction by the project proponent does not affect the protected wetland areas. Furthermore, before seeking permission from CGWA, the projects shall take consent/approval from the appropriate Wetland Authorities to establish their projects in the area.”***

207. Thereafter, in para 9.0 some general compliance conditions of NOC are mentioned which we are omitting at this stage.

208. In para 11.0, subject of renewal of NOC is dealt with. The term of renewal is specified in para 11.0 (v) as under:

*“v. No Objection Certificate will be renewed for the terms specified for various uses as follows:*

<b>Category</b>	<b>Use</b>	<b>Term of renewal</b>
<i>Critical, Semi-critical and safe</i>	<i>Infrastructure projects for drinking &amp; domestic use and urban Water Supply Agencies</i>	<i>5 years</i>
	<i>Industries</i>	<b>3 years</b>
	<i>Mines</i>	<i>2 years</i>
<i>Over-exploited</i>	<i>All users in ‘Over-exploited areas’</i>	<b>2 years</b>

”

209. If there is delay in finalization of NOC, Para 11.0 (vi) contains provision for deemed grant of NOC and reads as under:

*“vi. If the application for renewal is submitted in time and the CGWA/the respective State/Ut Authority is unable to process the application in time, **No Objection Certificate shall be deemed to be extended till the date of renewal** of No Objection Certificate.”*

210. However, if PP has delayed in applying for renewal, provision has been made that he will have to pay only environmental compensation for the period starting from the date of expiry of NOC till NOC is renewed by Competent Authority. However continued withdrawal/extraction of ground water by PP, despite expiry of NOC, will not be illegal. This is what is provided in para 11.0 (vii) which reads as under:

*“vii. If the proponent fails to apply for renewal within 3 months from the date of expiry of No Objection Certificate, the proponent shall be liable to pay Environmental Compensation for the period starting from the date of expiry of No Objection Certificate till No Objection Certificate is renewed by the competent authority.”*

211. **Guidelines 2020**, vide para 13.0 has appointed District Magistrate/District Collector/Sub Divisional Magistrates of each Revenue District/Sub division as Authorized Officers, delegating power to seal illegal wells, disconnect electricity supply to the energized well, launch prosecution against offenders etc., including grievance redressal related to ground water in their respective jurisdictions. It is also provided that to decentralize and strengthen monitoring and compliance mechanism as per the Guidelines, officials of concerned Departments of Revenue and industries of States/UTs shall be appointed as Authorized Officers in consultation with State/UT Governments. Copy of NOC issued by CGWA shall be forwarded to the respective District Magistrate/District Collector. It is provided in Para 13.0 that for any violation of directions of CGWA and non-fulfillment of the conditions laid down in NOC,

Authorized Officers will file appropriate petition/original application etc. under Sections 15 to 21 of EP Act, 1986, in appropriate Courts.

212. Para 14.0 direct all Project Proponents (drawing ground water more than 10m<sup>3</sup>/day) to have mandatorily constructed piezometers (observation wells) within their premises for monitoring of ground water levels.

213. Determination of environmental compensation and formula thereof is provided in para 15.0 of **Guidelines 2020**, and, it reads as under:

***“Extraction of ground water for commercial use by industries, infrastructure units and mining projects without a valid No Objection Certificate from appropriate authority shall be considered illegal and such entities shall be liable to pay Environmental Compensation for the quantum of ground water so extracted. The norms prescribed by Central Pollution Control Board (CPCB) shall be utilized for calculating the Environmental compensation as mentioned below:***

*ECGW = Ground water consumption per day x Environmental Compensation rate (ECRGW) x No. of days x Deterrence factor  
where ground water consumption is in m<sup>3</sup>/day and ECRGW in Rs./Cum”*

214. Rates of environmental compensation are prescribed in para 15.1 which are different for different kinds of units in as much as table 15.1 provides rates of environmental compensation for packaged drinking water units; table 15.2 in respect of mining/infrastructure dewatering projects; and table 15.3 for industrial units. It is, however, provided in all the 3 tables mentioned above that minimum environmental compensation shall not be less than Rs. One lakh.

215. Para 15.2 lays down deterrent factors to compensate losses and environmental damage (packaged drinking water units and mining/infrastructure dewatering projects). Para 16.0, besides, and/or in addition of environmental compensation, provides penalty liable to be

imposed on Proponents for non-compliance of NOC conditions issued by appropriate authority and rates of penalty are given in Table 16.1.

216. Para 17.0 provided other important conditions applicable to all and reads as under:

**“17.0 Other important Conditions (Applicable to all):**

- i. Sale of ground water by a person/agency not having valid no objection certificate from CGWA/State Ground Water Authority is not permitted.*
- ii. In infrastructure projects, paved/parking area must be covered with interlocking/perforated tiles or other suitable measures to ensure groundwater infiltration/harvesting.*
- iii. In case of Infrastructure projects, the firm/entity shall ensure implementation of dual water supply system in the projects. Compliance of the same shall be submitted through the web portal.*
- iv. Non-compliance of conditions mentioned in the No Objection Certificate may be taken as sufficient reason for cancellation of no objection certificate accorded/non-renewal of No Objection Certificate.***
- v. No application shall be entertained without supporting documents as specified in relevant sections.*
- vi. Abstraction structure(s) should be located inside the premises of project property.*
- vii. Self compliance of conditions laid down in the no objection certificate shall be reported by the users online in the web portal of Central Ground Water Authority/state Ground Water Authority.*
- viii. Processing fee prescribed, if any, from time to time shall be charged for various services.*

**Note:**

- 1. Guidelines are subject to modification from time to time.*
- 2. In case of any discrepancy between Hindi and English versions of this document including the annexures, the English version shall prevail.”*

217. Thus, the concerned Ministry namely Ministry of Jal Shakti (Department of Water Resources, river Development and Ganga Rejuvenation) issued **Guidelines 2020** in purported compliance of

directions contained in Tribunal's orders dated 11.09.2019, 20.7.2020 and earlier orders referred in this judgment, but as a matter of fact, we find that Guidelines 2020 broadly do not satisfy directions as given repeatedly and persistently, reposing confidence in the Authorities who are responsible and accountable for preservation and protection of environment, that they would understand their statutory obligations, sensitize themselves with the traumatic condition of environment, show patent endeavour for improvement, march with a conviction that not only present day people but coming generations also get a healthy environment with clean air, non-contaminated water, adequate for drinking and other daily uses, enough ground water necessary for agriculture and simultaneously for developmental activities; and perform with a real sense of devotion and determination. To our utter dismay, they have failed. We do not find much improvement in **Guidelines 2020**. Virtually, it is only a new cover provided to the old scheme with minor variations, alterations and modifications, here and there, but having no substantial consequences to the root cause and central issue, i.e. protection and preservation of ground water, prevention of, not only further depletion, but a serious and effective attempt for recharge and restoration.

218. So far as exemption for requirement of NOC is concerned, the category of consumers namely domestic, requiring water for drinking and domestic uses, whether in rural and urban areas, Establishments of Security Forces like Armed Forces and Central Armed Police Forces etc. and agricultural activities, we, at this stage, do not find any reason to make any comment but inclusion of some commercial and industrial activities i.e. micro and small industrial entrepreneurs category i.e. MSME, drawing ground water less than 10m<sup>3</sup>/day, even in the area

where ground water level is critical or over exploited, is incomprehensible. The number of such units and impact of drawl of ground water, by such units, on the water level, it appears, has not been examined at all, in as much as the Tribunal passed order on 20.07.2020 and notification containing **Guidelines 2020** has been issued 24.09.2020 i.e., within less than two months.

219. Further, in respect of other commercial and industrial activities also, the alleged restrictions are only an eye wash. For commercial uses, it is provided that no NOC to new major industries shall be granted in over-exploited assessment areas except as per Policy Guidelines. In the context of commercial use, only for industrial use, it is provided that NOC shall not be granted for ground water extraction to a new industry, except those falling in the category of MSME. The existing units are not covered by it. More over in the new units, NOC for abstraction of ground water for drinking/domestic use for work force, green belt etc. shall be permitted. Expansion of existing units involving increase of ground water extraction in over-exploited assessment areas shall not be permitted. There is a twist when it says that NOC shall not be granted to new packaged water industries in over-exploited areas even if they belong to MSME category. In Guidelines 2015, no NOC was to be given to any water intensive industry, even if it is MSME, in over exploited assessment areas. Now it is restricted to packaged water industries. Apparently, a drastic relaxation has been given in respect of water intensive industries, for no reason, and that too in flagrant defiance of order of Tribunal.

220. The critical and semi-critical areas have been left untouched and there is no such restriction at all. The only reference to these areas in para 4.1 (viii) is that industries drawing ground water in safe, semi-critical and critical assessment areas shall be required to pay ground



water extraction charges which will also be paid by existing industries. The charges are provided as per table 5.2 A and 5.3 A for safe, semi-critical and critical assessment units and tables 5.2 B and 5.3 B for over-exploited areas. The rates provided therein are:

**“Table 5.2 A: Rates of ground water abstraction charges for packaged drinking water units (Rs per m<sup>3</sup>)**

S.No.	Category of area ↓ Ground water use →	Quantum of ground water withdrawal				
		Up to 50m <sup>3</sup> /day	51 to <200 m <sup>3</sup> /day	200 to <1000 m <sup>3</sup> /day	1000 to <5000 m <sup>3</sup> /day	5000 m <sup>3</sup> /day and above
1.	Safe	1.00	3.00	5.00	8.00	10.00
2.	Semi-critical	2.00	5.00	10.00	15.00	20.00
3.	Critical	4.00	10.00	20.00	40.00	60.00

**Table 5.3 A: Rates of Ground Water abstraction charges for other industries & infrastructure projects (Rs per m<sup>3</sup>)**

S.No.	Category of area ↓ Ground water use →	Quantum of ground water withdrawal			
		< 200 m <sup>3</sup> /day	200 to <1000 m <sup>3</sup> /day	1000 to <5000 m <sup>3</sup> /day	5000 m <sup>3</sup> /day and above
1.	Safe	1.00	2.00	3.00	5.00
2.	Semi-critical	2.00	3.00	5.00	8.00
3.	Critical	4.00	6.00	8.00	10.00

**Table 5.2 B: Rates of ground water restoration charges for packaged drinking water units (Rs per m<sup>3</sup>)**

S.No.	Category of area ↓ Ground water use →	Quantum of ground water withdrawal				
		Up to 50 m <sup>3</sup> /day	51 to <200 m <sup>3</sup> /day	200 to <1000 m <sup>3</sup> /day	1000 to <5000 m <sup>3</sup> /day	5000 m <sup>3</sup> /day and above
1.	Over-exploited (existing industries only)	8.00	20.00	40.00	80.00	120.00

**Table 5.3 B: Rates of ground water restoration charges for other industries & infrastructure projects (Rs per m<sup>3</sup>)**

S.No.	Category of area ↓  Ground water use →	Quantum of ground water withdrawal			
		< 200 m <sup>3</sup> /day	200 to <1000 m <sup>3</sup> /day	1000 to <5000 m <sup>3</sup> /day	5000 m <sup>3</sup> /day and above
1.	Over-exploited (existing industries / new Industries as per the present Guidelines)	6.00	10.00	16.00	20.00

221. In respect of mining and infrastructure projects, it is specifically provided that NOC shall not be denied or banned for existing as well as new projects in over-exploited areas. Though some conditions are there for monitoring of quantity of ground water extraction in the said area, payment of abstraction charges or the restoration charges as the case may be, but effective steps capable of execution for recharge/restoration are clearly wanting.

222. Thus, the issue of constant depletion of water level was initially brought before Tribunal, in the context of NOIDA and Greater NOIDA which are part of district Gautam Buddha Nagar, but subsequently, extended to the entire country since this problem was/is being faced by people throughout the country, and this Tribunal repeatedly required Statutory Regulators to take effective steps for prevention of depletion of water level and also for recharge/restoration/rejuvenation of water level; enough power is conferred by Statute upon Statutory Regulator i.e. CGWA to take all permissible, possible and effective steps for the purpose, but it is not understandable why it has been/is reluctant to execute and enforce the said power, in the manner it was desired to protect and preserve ground water level across the country. It is admitted, as also demonstrated in earlier paragraphs, that when study of

ground water level was made in different phases, extreme alarming level of ground water was noted in sufficiently large number of places but for regulation purposes a very small fragment thereof was selected by CGWA. In its own discretion, without specifying the criteria on which only a few areas were so selected, CGWA notified a very small numbers and made some provisions for regulating the same. In respect of others, termed as non-notified area, very relaxed and concessional provisions were made, that too, like grant of a license i.e. NOC, in a very smooth and casual fashion, unmindful of the fact that its statutory duty was to take steps for protection and conservation of ground water level and not to grant easy access for abstraction, that too, to commercial institutions/ establishments/bodies, to extract ground water for commercial/industrial purposes without having any corresponding actual recharge/restoration of ground water, particularly, in the area where it had already depleted to a very low level and was classified as over-exploited, critical or semi critical. Tribunal did not appreciate this approach, and expressed its displeasure and disapproval repeatedly, but, and despite that, CGWA, on the pretext of effective functioning of economy, issued revised Guidelines repeatedly and frequently but all failed, when tested at the anvil of conservation and protection of ground water level in stressed or highly stressed areas.

223. Major deficiencies, observed by Tribunal, in various guidelines issued by CGWA, are summarized here as under:

- i. Policy to be followed by CGWA has to be rational, meeting basic need of everyone and at the same time preserving water for future generation by preventing wastage or preventable use based on the principle of “sustainable development”.

- ii. Policy must have punitive measures and recovery of damages from those who have extracted ground water in past and continue to do so unauthorizedly, i.e., illegal extraction, leading to alarming depletion of ground water.
- iii. Steps to be taken to tap all relevant sources specially the rain water harvesting and preservation of water bodies;
- iv. When CGWA has classified, over-exploited, critical and semi critical areas for regulation, it has no reason to refuse regulation of such areas on the plea that it would govern/regulate only notified area;
- v. Being Central Authority, CGWA has to regulate ground water in the whole country under the mandate of Supreme Court, hence cannot show apathy on the pretext of notified area, ignoring other areas where ground water level is similarly stressed i.e., over-exploited, critical or semi-critical;
- vi. Extraction of ground water in over-exploited, critical and semi-critical area with or without permission, only on the pretext of being non-notified, amounts to failure of Statutory duty on the part of CGWA;
- vii. Mechanical imposition of condition of recharge of underground water without any mechanism for ensuring its compliance or to check, whether complied or not, at all, while continuing to permit drawl of ground water for commercial purposes, is unjustified;
- viii. Abstraction of ground water for building construction, watering plants, swimming pools, threatening availability of ground water in over-exploited, critical and semi- critical areas, specially, in absence of adequate steps for recharge of ground water, is unjustified;

- ix. Mere provision for realization of some amount/charges for drawl of ground water is ridiculous and illegal, in respect of extraction of ground water in over-exploited, critical and semi- critical area;
- x. CGWA has to observe in its functions, precautionary principle, sustainable development as well as inter-generational equity principle. Drawl of ground water for industrial purposes with or without payment, in OCS areas, should be banned.
- xi. Checking of contamination of ground water by discharge of untreated effluents in water bodies need comprehensive planning and execution and on priority basis, it is necessary, failing whereof, has led to emergency situation in certain areas;
- xii. Apathy of authorities in last several years, in neglecting subject in breach of trust, reposed in such authorities, has been noted by Tribunal still no information was given with regard to compliance of earlier orders including action for illegal activities of CGWA.
- xiii. Instead of laying down strict norms for extraction of ground water for commercial purposes and putting in place a robust institutional mechanism for surveillance and monitoring, extraction of ground water has been liberalized, adding to the crisis, unmindful of ground situation and likely impact, it will have on environment.
- xiv. No study or data has been furnished or collected to justify this approach.
- xv. Drawl of ground water for all practical purposes made unregulated in all areas including OCS.
- xvi. The so called regulation is illusory.
- xvii. Water conservation fee in effect a license to harness ground water to any extent even in OCS areas.
- xviii. No institutional mechanism to monitor removal and replenishment of ground water;

- xix. No check on injunction of pollutants in ground water;
- xx. No provision to check water quality and remediation, if there is contamination;
- xxi. Instead of conservation of ground water necessary for providing access to drinking water in OCS areas, Guidelines would result in fast depletion of ground water and damage to water bodies;
- xxii. Mandate of CGWA is not exploitation of ground water in depleted area but to conserve it;
- xxiii. OCS areas need regulation for conservation of ground water, cannot be treated separately as notified or non-notified;
- xxiv. Compensation to be recovered for illegal abstraction, has to be deterrent, linked to the quantum of ground water extracted and period for which such extraction took place;
- xxv. CGWA must lay down and follow stringent norms to ensure that there is no depletion of ground water in OCS areas and depleted water level is improved and replenished;
- xxvi. The abstraction of ground water in over-exploited area should be permitted only for drinking purposes;
- xxvii. For calculation of environmental compensation, present categorization of area (over-exploited, critical and semi-critical) shall be considered, irrespective of when violation started or committed;
- xxviii. In case of demand of more than 5000 KLD in existing cases, permission be given only after examining scientific assessment of water availability and inter-generational equity. In case of repeated violations, environmental compensation shall be computed at 1.25 times of the previous environmental compensation;

- xxix. Since OCS areas have been found seriously affected by over-drawl of ground water, regulation of such drawl for commercial purposes cannot be dispensed with for any industry, even in industrial area;
- xxx. In absence of replenishment of ground water, unregulated drawl cannot be permitted to any commercial entity;
- xxxi. Shortage of availability of water for commercial purposes cannot be remedied by permitting drawl of ground water in OCS areas.
- xxxii. Water is a scarce resource; hence, industry has to cope up with such scarcity and find out its own alternative ways to meet the requirement of water;
- xxxiii. They cannot be permitted indiscriminate drawl of water in such areas till situation improves;
- xxxiv. Liberalization of ground water extraction across the board, to certain categories, without any impact assessment and effective checks, are against law;
- xxxv. No road map has been prepared by CGWA as to how revised Guidelines will check and neutralize falling ground water level particular, when it has continuously gone down. Liberalization of abstraction of ground water would defeat the purpose of Constitution of CGWA and is contrary to mandate of Public Trust doctrine;
- xxxvi. Effective steps for protecting ground water in OCS areas against individual commercial considerations are must to serve general people.

224. In the backdrop of the aforesaid observations which we have culled out from various orders of Tribunal, referred above, ultimately, in the order dated 20.07.2020, 4 issues were formulated in para 27 and in para 28, Tribunal said that the answer to the said issues is 'no'. Tribunal held

that as per mandate of sustainable development under Section 20 of NGT Act 2010, Regulator must direct its policy towards preventing further depletion of, and upgrading, ground water levels, based on impact assessment. Extraction can neither be unregulated nor allowed across the board without individual consideration. The directions were consequently issued to prepare meaningful regulatory regime, institutional mechanism for ensuring prevention of depletion, unauthorized extraction of ground water and sustainable management in OCS areas.

225. Unfortunately, the concerned Ministry and Regulator have acted in haste and just in 2 months i.e. 24.09.2020, have published Guidelines 2020 wherein most of the infirmities, irregularities, and failures, pointed out on the part of CGWA, in earlier Guidelines, as such, are present. Though there are minor variations and alterations, but the same are wholly inconsequential, looking to the gravity of the situation, arising due to consistent depletion of ground water.

226. The Notification issued by UPGWD shows that in the State of UP almost every district, and some districts as a whole, are in serious stressed condition, having depletion of water to the extent of critical and over-exploited level, and a very few are exceptions.

227. The condition of NCT of Delhi, as already noticed, is already, seriously alarming.

228. Just a few days back, a newspaper report was published that in Chennai city, ground water level has disappeared up to 2000 feet, meaning thereby, virtually ground water has disappeared thereat.



229. In this grim situation, continuous laxity on the part of Authorities and CGWA in particular, is a matter of serious concern. We have to opt now for some stringent measures else we also would be failing in our duty of dedicated vigilant to protect environment. In **Mantri Techzone (supra)**, Supreme Court said:

*“Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. **The Tribunal is a specialized judicial body** for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources **including enforcement of any legal right relating to environment.** The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. **Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.**”*

230. We have already referred to the provisions of **Guidelines 2020**. The new Guidelines, are nothing but placement of old wine in new bottle. It is reflection of an adamant attitude on the part of the concerned authorities for not accepting any improvement on their part but continue to violate directions and orders of Tribunal and to stay unconcerned, totally apathetic, to the fast deterioration of ground water level, making it even difficult for drinking and other domestic purposes as also agriculture, in many areas.

231. This time, **Guidelines 2020** is applicable to all areas, irrespective of notified or non-notified but in that way, in the exemption category, certain industries have been included which are entitled to extract ground water even in OSC areas. These industries are irrespective of the nature of commercial activities and may include even chemical, paints, pigments, textiles, pharmaceutical, pesticides/insecticides, fertilizers, explosives, slaughter house, tanning, slaughter houses, dye, chemical/petrochemical, coal washeries, other hazardous units, etc. (as per CPCB list). Permission to draw ground water even in over-exploited

areas is made available freely to mining industries and infrastructure projects only on the ground that they are specific site projects, hence there shall be no ban for extraction of ground water in over-exploited assessment units. We do not understand as to why these activities should be permitted in an area where ground water level has depleted to an alarming level so as to classify the area in over-exploited category. If such condition would have been made applicable to mining industry indulging in a commodity, mining whereof is necessary in national interest or a kind of rare commodity or some other special category, we could have understood the reason for allowing such abstraction in over-exploited area, though we are not expressing any final opinion even in this regard, but a general relaxation to all kinds of mining activities permitting extraction of ground water even in over-exploited area is apparently irrational and shows that the principle of “sustainable development” is not the key word which has been observed while framing **Guidelines 2020** and instead, it is the individual commercial interest of the PPs which has dominated with the authorities concerned, in making the above Guidelines.

232. Similarly, in the matter of infrastructure projects, the reason given is that they are location specific. But we fail to understand as to how an infrastructure project would be unavoidable in an area where ground water itself is not easily available for other necessities like domestic use, agriculture etc. It is not a case, where looking to the cost of the land, Government has proposed to execute a welfare scheme of providing accommodation to poor people or homeless people or other similar classes of people. Other infrastructure projects needed for essential services may also claim such approach but irrespective of any class or category, this relaxation has been granted, permitting abstraction of

ground water even in over-exploited areas. There are number of infrastructure projects which are engaged in constructing luxurious residential accommodation, grand villas, farm houses (it is only technically called farm houses but in fact a luxurious residential accommodation with some part of the land used for gardening and amusement purposes and not accessible/affordable to common average class people but normally meant for the elite and imperial class) and similar other projects, Multispecialty luxurious Private hospitals, private educational high grade institutions which are beyond the capacity of common men kids etc. These projects can be undertaken anywhere else and there is no necessity or even a public interest involve to have such projects in the areas where ground water level is so depleted that the area is classified as over-exploited or even critical or semi-critical. Permitting this kind of concession/relaxation and showing generosity in regard to abstraction of ground water to such PPs, shows that Regulators have not even undertaken any study as to whether these projects are basically accessed by the real end users or mostly in the hands of investors/status seekers/individual economic benefit handlers and meant for handful number of elite socialites or powermongers but causing grave and severe impact on common man's life affecting his basic fundamental right of availability of drinking water, not for amusement but bare survival. In the name of infrastructure development, there is huge capital transactions between one person to another who are mostly not end users. Here interest of the people indulging in unaccountable money are involved, therefore, it is necessary on the part of the Regulator, before being lenient in permitting abstraction of ground water, to conduct a ground study to find out whether grant of such general concession is in public interest and more particularly, in the interest of protection and conservation of

environment which is the only duty of the Regulator created for this very purpose under the order of Supreme Court but that has not been done.

233. It is said that economic health of country needs rapid infrastructure development, particularly in realty sector. However, policy makers and Regulators must know that Developers/Project proponents will disappear after selling units and subsequently when drinking water will be in crises, individual buyers will be the real sufferers. Providing easy access to ground water for Developers and turning a blind eye to large number of buyers, means an approach against general public. That too for exploitation of natural resources which belong to public and State holds only in trust. Concerned departments and Regulators are bound to follow doctrine of public trust and inter-generational equity. It is also against the principle of sustainable development.

234. Further, earlier in Guidelines up to 2015, industries, where water is raw material or water intensive industries, were not allowed abstraction of ground water in over-exploited areas, though this restriction was confined to notified areas. In the revised scheme of 2020, on the one hand, concept of notified or non-notified area has been done away but simultaneously industries where water is raw material or water intensive industries, are entitled to get NOC for extraction of ground water. Now the restriction is confined to only packaged water industries. Other industries are permitted to be granted NOC in category of OCS areas. In over-exploited areas, only new industries have been denied NOC. So here again also, a substantial relaxation has been made.

235. Rates of water charges, rates of extraction charges are almost similar as in Guidelines 2018. Environmental compensation for illegal abstraction in para 15 of **Guidelines 2020** and the rates of

environmental compensation and deterrent factors are provided in para 15.1 to 15.4. If, period is less than 2 years, the deterrent factor is only one, if, period is between 2 to 5 years, it is 2.5 and if it is more than 5, then it is 2. No distinction in deterrent factor has been made for such illegal extraction of ground water in the context of OCS areas. Such difference is only in respect of rate of environmental compensation. Tribunal said that such compensation must be deterrent meaning thereby violation should not be profitable to the violator. Therefore, in our view, the Guidelines do not satisfy above direction of Tribunal. The rates are also very nominal and not deterrent by any logic or standard.

236. Hence, we are satisfied that even **Guidelines 2020** do not conform and comply with the directions given by Tribunal, as noticed above, and suffers broadly irregularities and infirmities, pointed out earlier. In fact, Guidelines are more stretched and extensively tilted towards various categories of commercial proponents, and permit drawl of ground water in an easy manner than to take care of conservation, particularly, in OCS areas.

237. CGWA is a Statutory Authority and has statutory powers to issue directions or take such measures as are necessary for protecting environment. These directions are referable to EP Act 1986, enacted vide Entry 13 List 1 of Constitution and therefore even Provincial legislations would have no competence to touch on this subject. Undoubtedly water is in List II Entry 17 but to the extent, the subject of ground water is part of pollution and governed by EP Act, 1986, for the reasons already discussed above, Provincial legislature would lack competence and it cannot make laws in respect of subject of water, covered by EP Act 1986 or orders, directions, rules, etc. made thereunder.

238. CGWA, however, even if prevails over Provincial legislations, cannot confer upon itself a jurisdiction so as to sit over the orders of Tribunal. In fact, power of CGWA, which it can exercise under Section 5 and Section 3(2), is subject to the mandate and scheme of EP Act 1986 and if it travels beyond it or infringes the mandate of law contained in EP Act 1986, such direction or order of CGWA would not be valid. NGT Act 2010 is a subsequent enactment and has jurisdiction in respect of environmental matters and its orders have over-riding effect over any other law. Its orders are also binding on the Authorities. Therefore, CGWA is bound by the directions and orders of Tribunal. When exercising powers of issuing directions etc., under Section 3(2) and 5 of EP Act, 1986. CGWA cannot issue orders and direction contrary to the orders of Tribunal.

239. Supreme Court in ***Mantri Techzone (supra)*** said:

***“...Tribunal .... has a legal obligation to provide for preventive and restorative measures in the interest of the environment.”***

240. When Tribunal, in discharge of above obligation, has given some directions, the same cannot be flouted, ignored or disobeyed. More so, no order can be issued by any authority in contradiction to the order of Tribunal.

241. If the Guidelines/orders/directions, somehow fail to satisfy the above requirement and do not carry out the purpose and objective as stated under Section 3(1), it would give rise to a substantial question relating to environment arising out of implementation of enactments specified in Schedule I, wherein EP Act 1986 is one of the scheduled enactment and Tribunal will have to settle the dispute and pass appropriate order adjudicating the said substantial question relating to

environment. The phrase ‘substantial question relating to environment’ has been defined under Section 2(m) of EP Act 1986, as under:

*“(m) “**substantial question relating to environment**” shall include an instance where:*

*(i) there is a direct violation of a specific statutory environmental obligation by a person by which,*

*(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or*

*(B) the gravity of damage to the environment or property is substantial; or*

*(C) the damage to public health is broadly measurable;*

*(ii) the environmental consequences relate to a specific activity or a point source of pollution;”*

242. The definition is inclusive and would include any act on the part of CGWA which is not in furtherance of the object and purpose for which the said Authority was constituted and/or does not implement the mandate of EP Act 1986, particularly mandate given by section 3(1).

243. Supreme Court in its order dated 10.12.1996 in **M.C. Mehta vs. Union of India & Others. (1997) (supra)**, made it very clear, in para 12 of the judgment, that the main object for constitution of CGWB, as an Authority, is the urgent need for regulating indiscriminate boring and withdrawal of underground water in the country. Court further said that it has no doubt that the Authority, i.e., CGWA shall apply its mind to this urgent aspect of the matter and issue necessary regulatory directions with a view to preserve and protect underground water. Court reiterated its above directions by stating:

*“This aspect may be taken up by the Authority on an urgent basis.”*

244. CGWA, while giving directions or laying down guidelines, had to take into consideration, and is under an obligation, to appreciate the mandate of Supreme Court and cannot abrogate or surrender to Provincial legislations on the ground that in some States there are Provincial legislations with regard to ground water and, therefore,

Authorities under those enactments will deal with the issues relating to ground water and CGWA has no concern particularly when on some aspects Provincial legislations are not consistent with directions of CGWA. It also cannot stay satisfied by issuing guidelines giving easy access to extract ground water in OCS areas to almost all commercial proponents. This is a failure on the part of CGWA in discharge of its statutory duties which neither can be justified nor appreciated.

245. Further, at the pain of repetition, we reiterate, if there is an adjudication or order passed by Tribunal, referable to Section 14 and/or 15 or any other provision of NGT Act 2010, CGWA is also bound to comply those directions and/or issue its order or directions in accordance with the orders of Tribunal in view of Section 21 of NGT Act 2010, which says that decision of Tribunal shall be binding and Section 26 makes it an offence if the order or award or a decision of Tribunal is not complied with. The above view is further emboldened by Section 33 of NGT Act 2010 which gives overriding effect to the provisions of NGT Act 2010 over any other law for the time being in force or in any instrument having effect by virtue of any law other than NGT Act 2010.

246. CGWA must inform itself and be guided while issuing guidelines for regulating ground water to follow the basic fundamental principles applicable to Environmental Law, i.e., (i) Sustainable Development; (ii) 'Precautionary' Principle; (iii) Doctrine of Public Trust; (iv) 'Polluter Pays' principle; and (v) Intergenerational equity.

247. 'Sustainable Development': It is a concept which conveys that there must be balance between development and ecology. The concept was given a definite shape in a report submitted by World Commission on Environment and Development, i.e., titled "Our Common Future". The



Commission was chaired by Ms. GH Brundtland, the then Prime Minister of Norway. In the report, 'Sustainable Development' was defined as "development that meets the needs of the present without compromising the ability of the future generations to meet their own ends". This report was commonly known as 'Brundtland Report' and discussed under agenda 21 of UN Conference on Environment and Development, held in June, 1992 at Rio de Janeiro, Brazil. Some of the basic principles of Sustainable Development stated in the said report, were, (a) intergenerational equity, i.e., right of every generation to get benefit from natural resources; (b) 'Precautionary' principle, i.e., where there are threats of serious or irreversible damage, lack of whole scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation; (c) 'Polluter Pays' principle, i.e., the polluter should bear the cost of pollution.

248. 'Precautionary' principle, is the message that environmental measures by the concerned authorities must anticipate, prevent and attract the cost of environmental degradation. Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation and *onus* of proof is on the actor or developer to prove that action is environmentally benign.

249. Similarly, 'Polluter Pays' principle contemplates that not only polluter should pay compensation to the victims but also the cost of restoring environmental degradation. A person found guilty of degrading environment, is liable to compensate for his act, irrelevant of the fact, whether he is involved in the development process or not.

250. Supreme Court in ***M.C. Mehta vs Kamal Nath & Others (1997)1SCC388***, has discussed the above principles in detail and while dealing with the concept of Doctrine of Public Trust has said that public has a right to expect certain lands and natural areas to retain their natural characteristic. Tracing history of Doctrine of Public Trust, Court referred to the ancient Roman Empire and Roman law, recognizing natural resources as common properties, i.e., rivers, sea-shores, forests, air, water etc. Under Roman Law, these resources were either owned by no one or by everyone in common. After referring to American, English and some other countries laws, Supreme Court said:

*“we see no reason why the public trust doctrine should not be expanded to include all eco-systems operating in our natural resources.”*

251. Court further said:

*“State is the trustee of all natural resources which are by nature meant for public use and enjoyment. **Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.**”*

252. The Doctrine of Public Trust was reiterated in ***M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu & Others (1999)6SCC464***.

253. Considering above principles, when directions are issued by Tribunal in discharge of its function under NGT Act 2010, CGWA or any other authority or even Government cannot ignore it. Normally policies laid down by authorities are not interfered by Tribunal. But, if any policy or direction or guidelines or orders are liable to cause damage to environment and/or likely to affect adversely preservation, protection and conservation of environment, such directions etc. would give rise to substantial question relating to environment and this Tribunal has

statutory authority, jurisdiction and obligation to interfere and adjudicate the issue so as to protect environment and where degradation/damage has already occurred, issue directions for rejuvenation applying Polluters' Pay principle. Such decision of Tribunal is binding on the authorities and they, under law, are bound to follow and implement the same, since any non-compliance of order of Tribunal is not only subject to execution but is also a criminal offence. Any order or direction of the Authorities, contrary to Tribunal's direction, cannot be executed or followed for the reason that NGT Act 2010 has over-riding effect over any other law. Therefore, orders of Tribunal shall prevail.

254. The question of jurisdiction of Tribunal has been considered recently by Supreme Court in many matters.

255. In ***State of Meghalaya vs. All Dimisa Students Union, Dima Hasao District Committee & Others (2019)8SCC177***, illegal mining in the State of Meghalaya was the issue where this Tribunal issued detailed guidelines and imposed heavy environmental compensation on the State. In appeal, Supreme Court, formulated 14 points for consideration but we are referring here the relevant one, as under:

*"1. Whether orders passed by the National Green Tribunal are without jurisdiction being beyond the purview of Sections 14, 15 and 16 of the National Green Tribunal Act, 2010?"*

*7. Whether the order of National Green Tribunal dated 17.04.2014 directing for complete ban on mining is unsustainable?"*

*9. Whether NGT had any jurisdiction to constitute committees to submit reports, to implement the orders of NGT, to monitor storage/transportation; of minerals and to prepare action plan for restoration of environment?"*

*10. Whether the NGT committed error in directing for constitution of fund, namely, Meghalaya Environment Protection and Restoration Fund?"*

*11. Whether NGT by constituting Committees has delegated essential judicial powers to the Committees and has further encroached the constitutional scheme of administration of Tribal*

*areas under Article 244(2) and Article 275(1) and Schedule VI of the Constitution?*

*12. Whether direction to deposit Rs.100/- crores by the State of Meghalaya by order dated 04.01.2019 of NGT impugned in C.A.No.2968 of 2019 is sustainable?”*

256. Considering point no. 1, referring to pleadings, Supreme Court said that clear allegations of environmental degradation consequent to illegal coal mining were made. Inaction of respondent Authorities resulting in violation of environmental laws, i.e., Water Act, 1974, Air Act, 1981 and EP Act, 1986 was also alleged. Thus, allegations were sufficient to attract jurisdiction of Tribunal under Section 14. Tribunal also found that the allegations of degradation of environment, i.e., water, air and surface were substantiated. Hence, Court said that Tribunal has jurisdiction under Section 14 to pass appropriate orders therein. Distinguishing ***Techi Tagi Tara vs. Rajendra Singh Bhandari & Others (2018) 11 SCC 734***, Court said that therein the matter of appointment of professionals by State Government in Pollution Control Boards cannot be said to be a primary dispute over which Tribunal would have jurisdiction. Hence, judgment was rendered on different facts and did not pertain to environmental degradation. The question (i) was answered upholding jurisdiction of the Tribunal. Dealing Issue No. 7, Court said that use of natural resources plays major role in carrying out development. A fine balance has to be maintained in utilization of natural resources and its conservation and preservation. One cannot be sacrificed for the interest of other. Issue 7 was answered by observing that the direction of Tribunal will not come into force if the mining is done by Tribals in accordance with the regulations contained in the relevant statutory provisions. Issues 9 and 10 were taken together and referring to Section 19 of NGT Act 2010 read with order 26 and in particular, Rule 10(a) of CPC, Court held that Tribunal can obtain

reports from Experts. Under statutory scheme, Tribunal has to decide several complex questions pertaining to pollution and environment. Scientific investigation and report by experts are necessary requirement in appropriate cases to come to correct conclusion to find out measures to remedy pollution and environment. Court also referred to Section 35, whereunder, Rules were framed and then referred to Rule 24 of the Rules and upheld power of Tribunal to appoint Committee to obtain report. Issue 11 was also answered in negative. Supreme Court rejected the contention of appellant that by constitution of Committee, essential judicial powers have been delegated by Tribunal. Upholding quantum of compensation, Court said, it is neither a penalty nor a fine imposed upon State but a step towards restoration of environment. The amount was upheld but State was permitted to transfer the said amount from Meghalaya Environment Protection & Relief Funds (MEPRF) to CPCB who was directed to utilize the same for restoration of environment.

257. Supreme Court considered Sections 14, 15 and 17 and observed that Tribunal has jurisdiction which can be kept in three categories. We find it appropriate to refer in this regard, law laid down in ***Mantri Techzone Private Limited vs. Forward Foundation & Others, (supra)*** therein on the question of jurisdiction, Court said,

*“41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.*

*42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so,*

*this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.*

*43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.*

*44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishore Lal v. Chairman, Employees State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.*

*45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self contained jurisdictions.”*

258. In ***The Director General (Road Development) National Highways Authority of India vs. Aam Aadmi Lok Manch & Others, Civil Appeal No. 6932/2015, (supra)***, decided on 14.07.2020, therein, NHAI had entered into an agreement with M/s P.S. Toll Road (Pvt.) Ltd., for maintenance and operation of Pune-Satara section of National Highway No. 4, to an extent of 140 kms. The agreement included construction of project as well as its operation and maintenance for a period of 24 years. There was another person Rathod who applied to Government of Maharashtra for a license to extract minor minerals in a

land bearing survey number 112A, area 5 acres and 93 cents. The mineral extraction was on the upper-hill of the road constructed by NHAI through its Contractor. Due to indiscriminate excavation and dumping of debris etc., an accident took place on the road on 06.06.2013 causing death of the lady who was driving vehicle and her daughter. A public-spirited organization, i.e., Aam Aadmi Lok Manch filed an application before Tribunal (Pune Bench) under Section 14 read with 16 and 18 of NGT Act, 2010, wherein Tribunal awarded compensation against Rathod (who extracted indiscriminate minerals), NHAI and its Contractor. All the aggrieved persons and Authorities preferred Appeals before Supreme Court which included Rathod, NHAI and some other construction firms which were sub-contractors. Court formulated four issues wherein first issue, relevant for our purpose is:

*“i) Jurisdiction of NGT to award compensation.”*

259. The above question has been replied in para 32 and onwards. Court has said that NGT has two kinds of powers and jurisdictions, one primary, i.e., under Section 14 & 15 and second Appellate, under Section 16. It also held that a conjoint reading of Sections 14, 15 and Schedules should not be taken to infer that Tribunal has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation etc. This interpretation, Court said, is not warranted. Proceeding further, in para 37, Court said:

*“The reference to Schedule II, in Section 15(4) is not merely by way of events which are actionable in relation to harm caused due to the acts resulting in violation of any enactment under Schedule I. The wide language of that provision enables the tribunal (NGT) to direct, inter alia, payment of compensation, “having regard to the damage to public health, property and environment”. This interpretation is borne out by a reading of Section 17(2) regarding the apportionment of liability for payment of compensation.”*

260. A three Judges Bench of Supreme Court, following earlier decision in **Mantri Techzone Private Limited vs. Forward Foundation & Others., (supra)** said in para 43, 71 and 72 of **The Director General (supra)** as under:

43. *It is noteworthy that this court clearly held that under Section 15(1)(b) and 15(1)(c), the NGT has the power to make directions and provide for “restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that **Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act.**” Though a direction for compensation under Section 15(1)(a) is relatable to violation of enactments specified under the first schedule, the power under Section 17 appears to be cast in wider terms.*

71. *The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT’s jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.*

72. *As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies’ orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the **tribunal**, based on the cases and applications made before it, **is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued.***”

261. In **Alembic Pharmaceuticals Ltd. v. Rohit Prajapati & Others (2020) SCC OnLine SC 347**, a circular was issued by MoEF on 14.05.2002, which envisaged grant of *ex-post facto* Environmental Clearance and challenge before Tribunal. Circular was held illegal holding that in environmental law, there is no concept of *ex post facto* Environmental Clearance etc. Matter was taken before Supreme Court and therein an objection was raised on behalf of PPs that Tribunal cannot declare Government of India, MoEF’s orders *ultra vires* or illegal. Reliance was placed on behalf the PPs, on the judgment in **Techi Tagi Tara v. Rajendra Singh Bhandari & Ors. (supra)** and **Tamil Nadu**



**Pollution Control Board v. Sterlite Industries (India) Ltd., (2019) 19 SCC 479.** Supreme Court relied upon an earlier judgment in **Common Cause v. Union of India (2017)9SCC499**, wherein an argument in support of *ex post facto* Environmental Clearance was rejected, and said in para 125, that:

*“We are not in agreement with learned counsel for the mining lease holders. There is no doubt that the **grant of an EC cannot be taken as a mechanical exercise. It can only be granted after due diligence and a reasonable care since damage to the environment can have a long term impact.** EIA 1994 is therefore very clear that if expansion or modernization of any mining activity exceeds the existing pollution load, a prior EC is necessary and as already held by this Court in **M.C. Mehta (M.C. Mehta v. Union of India, (2004) 12 SCC 118)** even for the renewal of a mining lease where there is no expansion or modernization of any activity, a prior EC is necessary. Such importance having been given to an EC, the **grant of an ex post facto environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment. The concept of an ex post facto or a retrospective EC is completely alien to environmental jurisprudence including EIA 1994 and EIA 2006. We make it clear that an EC will come into force not earlier than the date of its grant.**”*

262. Having referred to the above law, laid down in *Common Cause* (supra), Supreme Court in **Alembic Pharmaceuticals Ltd. v. Rohit Prajapati & Others (supra)** said in para 23, as under:

*“23. **The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA notification dated 27 January 1994. It is, as the judgment in Common Cause holds, detrimental to the environment and could lead to irreparable degradation. The reason why a retrospective EC or an ex post facto clearance is alien to environmental jurisprudence is that before the issuance of an EC, the statutory notification warrants a careful application of mind, besides a study into the likely consequences of a proposed activity on the environment. An EC can be issued only after various stages of the decision-making process have been completed.** Requirements such as conducting a public hearing, screening, scoping and appraisal are components of the decision-making process which ensure that the likely impacts of the industrial activity or the expansion of an existing industrial activity are considered in the decision-making calculus. Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. Moreover, if the EC was to be ultimately refused, irreparable harm would have been caused to the*

*environment. In either view of the matter, environment law cannot countenance the notion of an ex post facto clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development.”*

263. Supreme Court also distinguished **Tamil Nadu Pollution Control Board vs. Sterlite Industries (2019)19SCC479**. Consequently, Court upheld order of Tribunal to the extent the said circular of MoEF was held illegal/invalid.

264. In Municipal Corporation of **Greater Mumbai vs. Ankita Sinha & Ors., Civil Appeal Nos. 12122-12123 of 2018 connecting with other appeals decided vide judgment dated 07.10.2021**, a three judges' bench of Supreme Court examined the question “*whether NGT has power to exercise suo-moto jurisdiction*”. It was argued that NGT did not have power to initiate suo-moto proceedings and the grounds raised in support of the above contention as formulated by Supreme Court were founded on the argument that (i) NGT is a creature of the statute and just like other statutory Tribunals, NGT is also bound within statutory confines, (ii) NGT Act is applicable to “disputes” as necessarily referring to a lis between two parties and (iii) lack of general power of judicial review shows legislative intent to curb suo-moto powers.

265. Dealing with above arguments and the grounds, Supreme Court examined the matter from various angles i.e. the backdrop of constitution of National Green Tribunal, preamble & statement of objects and reasons of NGT Act 2010, purposive interpretation, features of NGT Act 2010, non-adjudicatory roles of NGT, uniqueness of NGT vis-à-vis other Tribunals, need of NGT to exercise suo-moto powers, sui generis role of NGT, authority with self-activating capability, precautionary principle, environmental justice and environmental equity and environmental jurisprudence in India. We may summarize the

observations made by Supreme Court under the above-mentioned heads as under:

- i) NGT was conceived as a complimentary specialized forum to deal with all environmental multidisciplinary issues, both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and Supreme Court.
- ii) NGT was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts. It was explicitly noted that creation of NGT would allow Supreme Court and High Courts to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum.
- iii) The power of judicial review was omitted to ensure avoidance of High Courts' interference with Tribunal's orders by way of a mid-way scrutiny by High Courts, before the matter travels to Supreme Court where NGT's orders can be challenged.
- iv) The mandate and jurisdiction of NGT is conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.
- v) Unlike Civil Courts which cannot travel beyond the relief sought by the parties, NGT is conferred with power of moulding any relief. The provisions show that NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.
- vi) Myriad roles are to be discharged by NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons.

- vii) Parliament intended to confer wide jurisdiction on NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by High Courts under Article 226 of the Constitution or by Supreme Court under Article 32 of the Constitution.
- viii) The activities of NGT are not only geared towards the protection of environment but also to ensure that the developments do not cause serious and irreparable damage to ecology and the environment.
- ix) Concept of *lis*, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment.
- x) NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration.
- xi) In ***Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India, (2012) 8 SCC 326***, Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo-moto* by the Courts.
- xii) As long as the sphere of action is not breached, NGT's powers must be understood to be of the widest amplitude.
- xiii) In ***Mantri Techzone (P) Ltd. vs. Forward Foundation, (2019) 18 SCC 494***, Court recognized that NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the

context, Tribunal has special jurisdiction for enforcement of environmental rights.

- xiv) In ***Rajeev Suri vs. DDA, 2021 SCC Online SC 7***, Court said that in its own domain, as crystalized by the statute, the role of NGT is clearly discernible.
- xv) Referring to ***Andhra Pradesh Pollution Control Board v. Prof. M. V. Nayudu (Retd.) and Ors, (1999) 2 SCC 718***, Court said that role of NGT was not simply adjudicatory in the nature of a *lis* but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.
- xvi) Statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.
- xvii) Referring to ***State of Meghalaya vs. All Dimasa Students Union (2019)8SCC177***, Court said that reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising “*wide range of jurisdiction*” and the “*wide range of powers*”, given to it by the statute.
- xviii) NGT has been recognized as one of the most progressive Tribunals in the world.
- xix) NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution.

- xx) Referring to ***DG NHAI vs. Aam Aadmi Lokmanch, 2020 SCC Online SC 572***, Court repelled the argument for a restricted jurisdiction for NGT, and observed in paragraph 76 that powers conferred on NGT are both reflexive and preventive and the role of NGT was recognized in paragraph 77 as “an expert regulatory body”, which can issue general directions also albeit within the statutory framework.
- xxi) NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from High Courts and Supreme Court.
- xxii) Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take suo-motu cognizance of matters, for effective discharge of its mandate.
- xxiii) Section 14(1) of NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. On these material aspects, NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by NGT is not circumscribed by receipt of application.

- xxiv) Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub-Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub-Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play.
- xxv) When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.
- xxvi) The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. These crucial powers are expected to be exercised by NGT, would logically suggest that the action/orders of NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.
- xxvii) To be effective in its domain, we need to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application.

xxviii) It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial.

xxix) It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative.

xxx) Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.

xxxi) NGT is the institutionalization of the developments made by Supreme Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

xxxii) NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns.

xxxiii) NGT must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal.

266. Thus Tribunal must intervene when it finds that a statutory Regulator is failing in effective regulation. CGWA was constituted with specific powers which included regulation, control, management and development of ground water in the country and to issue necessary



directions for this purpose. CGWA issued Guidelines in exercise of the powers under EP Act 1986 as conferred upon it which included grant of NOC for extraction of ground water, issued advisories, directions etc. wherever necessary. The purpose and objective with which CGWA was constituted and expected to work, was not accomplished or achieved for the reason that CGWA, firstly confined its activities to a very small number of areas out of large number of areas where ground water table was very low. All such areas were not taken care by CGWA. For the reasons not disclosed, it restricted itself to a small number of depleted areas and applied its Guidelines and Regulatory measures only to those areas on the pretext of calling the same as notified areas. It could not explain what distinction it found in so called notified and non-notified areas when depletion of ground water had same impact in both the areas. Principal obligation and function of CGWA was/is, to maintain ground water table by taking effective steps for recharge, restoration and rejuvenation, and regulate extraction of ground water in stressed areas. CGWA has converted itself into a licensing Authority, permitting very charitably extraction of ground water in stressed areas i.e., critical, semi-critical and over-exploited. Virtually, there was/is no attempt to deny or prevent abstraction of ground water in the areas where water level has gone extremely low and fallen in the category of OCS.

267. In order to determine categories of ground water level, quantity of abstraction of ground water in general and level of recharge was made basis. Where recharge was more and abstraction was lower i.e., to the extent of 70%, ground water level was kept in the category of **safe**. Where abstraction was 70-90%, it was kept in the category of **semi-critical**. Where abstraction was more than 90% and less than 100%, it was kept in the category of **critical** and where ground water abstraction was 100%

and more, and recharge is less, and there is continuous fall in ground water level, it would come in the category of **over-exploited**. Evidently, where, extraction of ground water is more than recharge, water level is bound to deplete continuously. Allowing extraction in such cases would cause irreparable damage to environment. Considering it, and the manner in which CGWA functioned, it was deprecated repeatedly and we have seen repeated revised Guidelines issued by CGWA. Up to 2020, it has issued 6 such Guidelines i.e., 1999, 2009, 2012, 2015, 2018 and 2020. Still effective regulatory provisions are awaited.

268. Prior to 2020, whenever Guidelines were issued, CGWA confined its field of function only to notified areas. When Guidelines 2018 were issued, CGWA had designated only 162 areas as notified areas for regulation of ground water extraction, in the entire country. When this approach of CGWA was condemned and deprecated by Tribunal in various orders, and **Guidelines 2018** was held inconsistent with directions of Supreme Court in ***M.C. Mehta vs. Union of India & Others (1997) (supra)*** and directions issued by Tribunal from time to time, and CGWA was directed not to give effect to Guidelines 2018, then, in 43<sup>rd</sup> meeting of CGWA, held on 27.12.2019, it decided to do away with the practice of notified areas and **Guidelines 2020** are made applicable, irrespective of notified or not.

269. Unfortunately, **Guidelines 2020**, though have sought to meet some of the infirmities, pointed out by Tribunal, but the crucial infirmities, irregularities and the areas uncovered in the earlier Guidelines, pointed out by Tribunal in various orders, still have not been taken care. Guidelines 2020 suffers the same shortcomings, causing constant depletion of ground water level across the country, including

State of UP, and in particular, district Gautam Buddha Nagar and Ghaziabad where units of PP-1 to 3 are located.

270. CGWB, MOWR, RD&RR, has published '**GROUND WATER YEAR BOOK UTTAR PRADESH (2019-2020)**' in April 2021. It is said therein that declining trend is observed in 72.30% of the monitoring wells (556) covering ten years period. Decline of 0-20cm/yr. is commonly observed in 43.30% wells followed by 20-40cm/yr. in 16.64% >40cm/yr. in 12.35%. The low decline is spread all over the State but dominant in eastern and central parts and along Terai belt of the state. Higher decline occurs in most of the districts of western and southern regions. This is pre-monsoon DWL Trend. Post- monsoon DWL Trend is also not very encouraging. There is declining trend in 66.78% of the monitoring wells over 10 years period. Decline of 0-20cm/yr. is mostly observed in 34.39% wells followed by 20-40cm/yr. in 17.13% wells and more than 40cm/yr. is found in 15.24% wells. Higher decline is mostly in western, north western and southern parts and along Yamuna River.

271. In view of the above facts, we have no manner of doubt that CGWA though possesses powers to regulate ground water by taking all appropriate steps, but unfortunately, it has failed. Deprecation by Tribunal, repeatedly, has also not caused any impact or impression upon CGWA and it has continued in its attitude of defiance, for the reasons best known to it. We hold that neither CGWA has functioned as desired by order of Supreme Court in **M.C.Mehta vs UoI (supra)** nor the directions and guidelines issued by it were/are consistent with EP Act 1986. Instead of protection and preservation of ground water table, CGWA is more interested in allowing charitably abstraction of ground water even in stressed areas without study of water audit, without

having IAR, without examining carrying capacity and other relevant factors. **We answer questions (iii) and (iv)**, accordingly.

272. Now we proceed to consider **Questions (v), (vi) and (vii)** together.

273. CGWA has proceeded in this matter as it has nothing to do with the situation of depletion of water continuously across the country and in particular, the areas in dispute i.e., District Gautam Buddha Nagar and Ghaziabad. It has issued NOCs in a routine manner as if groundwater, a natural resource, is its own property and it can arbitrarily allow it to be consumed and exhausted by any individual or group of individuals for own economic and business interest, may be at the cost of society and forthcoming generation. Time and again, it has been reminded that natural wealth is national property, belong to people. Government is holding in trust, and under obligation to prevent its indiscreet exploitation for mere commercial purposes. People have a right to ensure that natural resources are not allowed to be frittered away in a manner which may result in irreversible damage to the environment.

274. Subsequently CGWA abdicated its responsibility, statutory obligation, powers with regard of ground water when UPGWMR Act 2019 was enacted. Being notified Authority under section 5 of EP Act 1986, CGWA ought to have regulated abstraction of ground water in stressed areas but it allowed State authorities to act even contrary to guidelines issued by CGWA. This approach on the part of CGWA neither appreciable nor can be condoned nor sustained.

275. In **State of Tamil Nadu vs. M/s. Hind Stone & Others (1981) 2 SCC 205**, Court said:

*“Rivers, forests, minerals and as such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a*

*duty to all succeeding generations to develop & conserve the natural resources of the nation in the best possible way.”*

276. In **Lafarge Umiam Mining Private Limited v. Union of India & Others (2011)7SCC338**, Court said:

**“Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering environment.** As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated.”

277. In **M.C. Mehta v. Union of India & Others (2004)12SCC118**, Court said:

**“The natural sources of air, water and soil cannot be utilized if the utilization results in irreversible damage to environments.** There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms.”

278. Undeterred by what has been said by Apex Court, time and again, acting in a most callous and defiant mode, CGWA has proceeded in its own way, going to the extent of permitting wholly illegally massive exploitation of ground water, that too, in extremely stressed areas, wholly unconcerned with the consequences.

279. This is evident from the record also.

280. PPs were granted NOC by CGWA on 28.09.2015, 03.10.2016 and 31.01.2018, as per averments contained in para 7 of CGWA’s reply dated 26.08.2020. CGWA itself has said that PP-1 was in Dadri block and it was in semi-critical category. PP-2 and PP-3 were in block-Rajapur and block-Bisrakh and both were in over-exploited category. CGWA at that time was following Guidelines 2015. In the annexure of Guidelines 2015, there was a list of “notified areas” by CGWA. Only one small area in the State of UP was notified i.e., Municipal Corporation, Ghaziabad, District

Ghaziabad. The aforesaid blocks, wherein units of PPs are situated, were in OCS category, but, since not notified, CGWA did not find within its domain to regulate the same. Therefore, in a casual fashion, CGWA issued NOC. We may however note that PPs industries were water extensive industries as mentioned in Guidelines 2015 and even in non-notified areas such industries could not have been issued NOC but allowed on the ground that restriction was for new industries. Without examining impact assessment and water audit, PPs could/should not have been issued NOC, but taking advantage of CGWA's laxity of confining regulation to only notified areas, NOCs were issued. This was also contrary to orders of Tribunal.

281. Ground water level position in District Gautam Buddha Nagar and Ghaziabad, from the material available in public domain, is reflected as under:

- i.) A district brochure of Gautam Buddha Nagar, UP, 2008-09 was prepared by Dr. B.C. Joshi, Scientist-B, CGWB. It is stated that number of ground water monitoring wells of CGWB as on 31.03.2007, were four in district Gautam Buddha Nagar and there were 7 piezometers. Report shows that no block of district Gautam Buddha Nagar was notified by CGWA.
- ii.) However, with regard to ground water major problems and issues, the report said "the ground water in deeper zones gets brackish to saline as it occurs more than 1000  $\mu\text{s}/\text{cm}$  at 25°C in sector-8 and sector-9. **Depletion of ground water levels locally in NOIDA and Greater NOIDA area is attributed to over exploitation of ground water.** Higher Manganese concentration in NOIDA urban areas is also reported. In para 4.2 of the report, ground water development was 74.64% in block-Bisrakh, 25.98% in Dadri,

58.14% in block- Dankaur and 62.77% in Jewar and average was 51.40%. All the 4 blocks were kept in safe category.

- iii.) Subsequent report of CGWA shows that water table in NOIDA, 18.22 meters in 2013, dropped to 24.13 meters in 2017. In Greater NOIDA, water table was 7.95 meters in 2013 and dropped to 11.11 meters in 2017. There was a consistent and average level drop of about 1.5 meters per year, in the aforesaid period.
- iv.) Jal Shakti Mantralaya, UP Government in its official site has published that in State of UP, out of total 820 blocks identified, 151 were semi-critical, 47 critical and 82 over-exploited. **Entire district Gautam Buddha Nagar and Ghaziabad were in the category of over-exploited. This position was shown since 2011 till 2020.**
- v.) As per report of CGWA, as **in March 2017, blocks-Bhojpur, Loni, Rajapur and Ghaziabad city** in district Ghaziabad were **in the category of over-exploited.**
- vi.) As per Guidelines 2012 and 2015, issued by CGWA, under Chapter B, NOC to non-notified areas would have issued for industries but where site is in over-exploited category, it says that withdrawal of ground water should not exceed 50% of the recharge quantity and may be permitted subject to undertaking of recharge measures.

282. As per stand of CGWA, **Guidelines 2012** read with Notification dated 06.08.2014, since only 162 units out of 1071 over-exploited units were notified, PPs were in the category of non-notified, therefore granted NOC despite the fact that the areas were in over-exploited category as per State Government's documents and as per CGWA, critical category.

283. NOC dated 28.09.2015 permitted PP-1 to abstract 1691m<sup>3</sup>/day (and not exceeding 507300m<sup>3</sup>/year) of ground water through three existing tube wells. It also provided that PP-1 shall implement ground water recharge measures to the tune to 204042m<sup>3</sup>/year but what measures were taken or any measure whatsoever was taken and whether this recharge condition was fulfilled or not, nothings has been said by CGWA in its reply and no monitoring mechanism has been provided. The condition was placed on record but without any serious or apparent intention of having it complied with. 50% of recharge in semi critical area was provided. Even in safe category, withdrawal could not be more than 200% of recharge quantity and. From either angle, neither annual quantum of extraction was not in accordance with **Guidelines 2012** nor quantum of recharge.

284. PP-2 was granted NOC by CGWA on 03.10.2016. On that date, Guidelines 2012 and 2015, both provided that industries using water as raw material/water intensive industries shall not be granted NOC for ground water withdrawal in over-exploited area. In annexure to the Guidelines 2015, water intensive industries were specified as follow:

- i.) **Packaged drinking water;**
- ii.) Mineral water plant;
- iii.) Tannery;
- iv.) Distillery;
- v.) **Brewery;**
- vi.) **Soft drink;**
- vii.) Paper & pulp-Fertilizer;
- viii.) Textile Dyeing;
- ix.) Textile Printing;
- x.) Textile spinning;
- xi.) Sugar;
- xii.) Dairy Product;
- xiii.) Water Park & Amusement center.



285. PP-2 obviously was/is a water intensive industry under the aforesaid list. Admittedly it was in the area which was identified as over-exploited, hence could not be granted any NOC but allowed only for the reason that it was an existing industry and in non-notified area. Same thing also applied to NOC granted to PP-3 on 31.01.2018 as it was also a water intensive industry and could not have been granted NOC as per Guidelines 2012 or 2015 but for want of notified area. Preservation and protection of ground water was given a complete go bye.

286. From record, it is also evident that NOC issued to PP-1 was for 3 years hence expired on 28.09.2018. In respect of PP-2 and 3, the period of NOC was 2 years and expired on 02.10.2018 and 02.01.2020, respectively.

287. The stand of CGWA and PPs is that before expiry of the period, they applied for renewal and since renewal could not be made in view of the order passed by Tribunal, restraining it, hence as per directions issued by Ministry, PPs were deemed to have NOCs till their applications are decided and, therefore, they continued to abstract ground water. This defense cannot be accepted and has to be rejected for the reason that there was no order of stay passed by Tribunal. The order says that if abstraction of ground water is to be allowed in OCS areas, CGWA, shall make Impact Assessment, and only thereafter consider request for abstraction of ground water in OCS areas. CGWA, instead of such assessment, decided for not passing any order and wrongly conveyed that Tribunal has prevented. Later, UPGWMR Act 2019 was enacted, and CGWA found it convenient to leave everything in the hands of authorities under the said Act. Many provisions in State law were inconsistent to guidelines of CGWA but even that aspect was ignored by CGWA. It could not have shirked away from its responsibility and liability. CGWA was

under a statutory obligation to function in a manner so as to achieve the objective and purpose for which it was constituted.

288. Extraction of ground water in OCS areas was allowed by CGWA in a mechanical manner with simply a paper condition that ground water will be recharged without ensuring compliance thereof. Even condition of recharge was not complied. PPs constructed roof top harvesting system of a small quantity. They tried to justify recharge condition stating that they adopted natural ponds in villages in vicinity and served by desilting etc. Adoption of existing village ponds is not compliance of recharge condition imposed in NOCs. For this purpose, Government of India, Ministry of Water Resources has issued "COMMON GUIDELINES FOR PREPARATION OF SCHEME ON MANAGEMENT OF DECLINING GROUND WATER TABLE FOR SUSTAINING FOOD PRODUCTION IN STATES OF PUNJAB, HARYANA AND WESTERN UTTAR PRADESH" in November 2013. Artificial recharge sources have to be as per NOC conditions read with guidelines of CGWA. These were neither observed nor considered.

289. **IRREGULARITIES IN NOC ISSUED BY UPGWD:** Similarly, U.P. authorities have also proceeded in a mechanical manner. They have not examined whether conditions of earlier NOC have been complied or not.

290. **NOCs issued by UPGWD are ex-facie illegal.** PP-1 has been given NOC for the period of 28.09.2018 to 27.09.2023. On 28.09.2018 even UPGWMA Act 2019 had not been born. Act came into force on 02.10.2019. It is inconceivable that NOC under such statute could have been issued from a period when statute itself was not in existence. Similarly, UPGWMA Rules 2020 came into force on 25.02.2020. Both Act and Rules are prospective. An NOC under above Rules obviously could not

have been issued from a date earlier to the date of enforcement of above Rules. Rules contemplate application in prescribed form under above Rules. When application on prescribed form under UPGWMR Rules 2020 could not have been filed before 25.02.2020, NOC under such rules, from a date earlier to 25.02.2020 is inconceivable. In any case, it is admitted that applications under UPGWMR Rules 2020 were submitted in January and February 2021. That being so, NOC could not have been issued from a date earlier to the date of submission of applications under UPGWMR Rules 2020.

291. Further, validity period of NOCs issued by UPGWD under UPGWMR Act 2019 is five years. For PP 1, it is 28.09.2018 – 27.09.2023 while for PP 3 it is 03.01.2020 – 02.01.2025. Guidelines 2020 of CGWA, vide Para 11.0 (v) says that for industries in critical, semi critical and safe areas, period of NOC would be 3 years and in over exploited area, it would be 2 years. NOCs for period contrary to Guidelines 2020 are impermissible and ex facie illegal.

292. In accordance with guidelines, a public notice dated 26.10.2020 was issued by CGWA requiring for submission of IAR and WAR, necessary for processing applications for NOC. UPGWD, however has proceeded without such compliance and issued NOCs within a very short period without caring of such conditions and also without verifying compliance of conditions of earlier NOCs. PP 2 was not issued any NOC after expiry of earlier NOC, hence abstraction of ground water by PP 2 after expiry of NOC, was illegal.

293. Ground water has been allowed to be abstracted for commercial purposes in OCS areas without any impact study or effective steps for rain water harvesting for recharge of ground water.

294. Asking for payment of ground water charges, by itself, is not beneficial and helpful for preservation and protection of water table of ground water in areas where it has gone down drastically. It is against the precautionary principle, sustainable development as well as intergenerational equity principles.

295. In the order dated 20.07.2020 passed in **OA No. 176/2015 (supra)**, Tribunal made it clear that Regulatory Authority must direct its policy towards preventing further depletion of and upgrading groundwater levels based on impact assessment. CGWA being a statutory Regulator of the country, has to exercise over-riding power in the form of statutory regulatory orders. There can be no exception for industries, being against sustainable development principle. Deep underground water belongs to State and is governed by public trust doctrine. State is under duty to protect ground water against excessive exploitation.

296. In **direction no. (d) of para 39 of order dated 20.07.2020 (supra)**, it is stated that there must be no general permission for withdrawal of ground water, particularly to any commercial entity, without environment impact assessment of such activity on individual assessment units in cumulative terms covering carrying capacity aspects by an expert committee. In the face of the above directions, it was not open to the Authorities, either State Authorities or Central Regulatory Authority to issue any NOC to respondents PPs in a mechanical manner, without complying the specific directions issued by Tribunal which were/are binding.

297. We are informed that various schemes have been launched by Government of India for public benefit, for availability of water i.e., Jal Shakti Abhiyan, Atal Bhujal Yojana (ATAL JAL), National Water Mission,

Pradhan Mantri Krishi Sinchayee Yojana, Swajaldhara, etc. We have no reason to doubt that Political Bureaucrats forming the Government, have a good intention for the larger public welfare and interest. This is evident from various welfare schemes and policies launched from time to time but the problem lies with the Administrative executing bodies who do not appear to have a similar welfare people-oriented approach. It appears that they are more interested in passing their time, tinkering with papers, putting notes after notes but without any effective, productive and fruitful execution of those policies. Administrative executing authorities must realize that in presenti, they may be able to pass their time but what they will be handing over to the coming generation, is deterioration in environment, pollution in air or water or deficit of water or water scarcity, whether underground or surface water or water bodies. This kind of legacy, if left over to be handed to the coming generations, will ruin them, make their survival difficult, and is against the society and the nation, as well. It will be a blatant breach of intergenerational equity and trust. The Administrative Executives, responsible for execution of policies, are accountable for conservation, protection and preservation of environment and cannot take a stand of neutrality, inaction or benefit of certain individuals on economic considerations, ignoring common people's interest and requirement.

298. The litigation commenced in Supreme Court in 20<sup>th</sup> century, has continued its journey in 21<sup>st</sup> century. More than 2 decades have passed but still what worried Supreme Court in 1996 when orders were passed in ***M.C. Mehta vs. Union of India (1997) (supra)***, situation has not improved. Instead has worsened further and deteriorated a lot. The number of areas, classified as OCS, are continuously increasing and

ground water level is continuously depleting, expanding its area of depletion.

299. The continued withdrawal of ground water by PPs even after expiry of NOC on 28.09.2018, 03.10.2018 and 31.01.2020 has been justified by CGWA and UPPCB on the ground that they applied for NOC before expiry but no order could be passed by CGWA since there was a stay order passed by Tribunal. Government of India issued an administrative instruction permitting such PPs to continue to extract ground water as if NOC is deemed granted. Subsequently, in the State of UP, UPGWMR Act, 2019 was enacted pursuant where to PPs applied before Authorities under UPGWMR Act 2019 and NOCs for further five years have been issued. This defense has no merit and is wholly misconceived as we have already demonstrated that NOCs issued by UPGWD are ex facie illegal. There is also no concept of deemed grant of NOC/Consent etc. in environmental laws. Also, there was no restrain order of Tribunal. We find no order passed by Tribunal restraining CGWA from passing any order on renewal of NOC for abstraction of ground water. The order passed in **OA No. 176/2015 (supra)** dated 03.01.2019 was that before grant of NOC, when abstraction of ground water is sought in OCS areas, impact assessment study shall be conducted by CGWA. What transpired is that CGWA for the reasons best known to it acted wholly illegally, did not conduct any impact assessment study and falsely claimed that since Tribunal has granted stay, therefore, it cannot pass an order on application for NOC. Tribunal's order directed CGWA to proceed in a manner so that depletion of ground water conditions may be checked and there may not be any irreversible permanent damage to the environment but CGWA itself failed in observing procedure and took shelter behind a false pretext though failure was on its part.

300. Further, once an NOC has expired, there could not have been any deemed grant of NOC. Grant of NOC means a positive study and assessment of various environmental conditions, the compliance aspect on the part of proponents in respect to NOC, if already issued and if it is a new one, then investigation into the conditions that the new proponent satisfy all the requisites, necessary for protection of environment. Hence, there cannot be a concept of deemed grant of NOC and for the same reasons, Supreme Court has rejected action of Authorities in granting sanctions, clearances etc., from back date, i.e., retrospective. Same reasons would apply against the concept of deemed NOC.

301. Be that as it may, the concept of deemed NOC has been stated in **Guidelines 2020** which was published on 24.09.2020 while NOC of all the three proponents had expired much earlier thereto. That being so, concept of deemed NOC contained in **Guidelines 2020** could not have been applied to PP-1 to 3. It is also impermissible for PPs to rely on Guidelines 2020 for the applications submitted for renewal prior to 24.04.2020 since those applications were not under Guidelines 2020 and the above guidelines are not operating retrospectively.

302. What prevailed with the authorities to support extraction of ground water and that too in highly stressed areas, by PPs, is better known to them but in absence of any otherwise material or reasonable explanation, we have of no reason but to infer that the stand taken by respondents supporting abstraction of ground water by PPs, after expiry of NOCs, is for something other than *bona fide* and not legal in law.

303. High degree of negligence on the part of Authorities is also evident from the fact that in earlier NOCs there was a specific condition for recharge of ground water and the quantity was also mentioned in NOCs

issued to PPs, but its compliance was never bothered. In joint Committee Report, Action Taken Report submitted by UPPCB and in the response of CGWA, there is not even a whisper, whether PP-1 to 3 actually complied with the condition of recharge of the water, partially or wholly, or even to some extent. Thus, *ex facie*, NOCs granted to PPs and allowing them to extract ground water, was neither valid nor legal.

304. PPs are justified in contending that earlier they were granted NOC by CGWA, whether legal or not, but they *bona fide* believed it to be legal and, therefore, extraction of ground water by them is not illegal. They proceeded to extract ground water under the authority of NOCs dated 28.09.2015, 03.10.2016 and 31.01.2018, respectively, issued by CGWA. Though above NOCs issued to PPs were not valid as they permit degradation of ground water in OCS areas, hence violated provisions of EP Act 1986, did not fulfil requirements of the concerned guidelines, even if NOCs are tested as per Guidelines, but since NOCs are admitted by CGWA and it has defended also, we find it difficult to hold PPs at fault. They acted *bona fide* under those NOCs. Fault was of CGWA.

305. However, we find no valid authority available to PPs in continuing to extract ground water, on and after expiry of NOCs issued to them, i.e., on or after 28.09.2018, 03.10.2018 and 31.01.2020. Further, PPs having failed to recharge ground water which was condition of NOCs, have committed default. They are liable to pay environmental compensation for illegal extraction of ground water in stressed areas and also for restoration/recharge/rejuvenation.

**The Recharge/Replenishment of Ground Water:**

306. As we have already discussed PPs were required to ensure replenishment of ground water. The quantum of ground water to be replenished by PP-1 and 3 was:



PP-1 - 204042 m<sup>3</sup>/year

PP-3 – 608000m<sup>3</sup>/year

307. With regard to replenishment, PP - 1 and 2 in their reply have not stated anything as to how the condition of replenishment was complied by them and whether it was actually complied or not. PP-3 in its reply has stated that it constructed rain water harvesting system capable of providing 13833.26 m<sup>3</sup> water per year i.e., about 4% which is almost negligible. PP-3 has further stated that it has adopted 13 village ponds in the nearby villages and the total area of those ponds comes to about 20.72 hectares which have potential of recharge of ground water to the extent of 622680 m<sup>3</sup> per year. That is how it has tried to explain the compliance of condition of replenishment of ground water. This stand taken by PP is thoroughly misconceived. The existing natural ponds in the villages may be adopted by industrial units for the purpose of maintenance etc. but the replenishment of ground water which was already there through those ponds in a natural way, cannot be taken credit by an industrial unit only on the ground that it is maintaining those ponds. Adoption of village ponds which are naturally existing, may help the villages towards maintenance of those ponds but cannot contribute to give benefit to an industrial unit to relieve of its statutory requirement of replenishment of ground water after extraction of ground water in stressed area. For this purpose, industrial unit has to take out its own measures of artificial recharge of ground water but that has not been done and, therefore, we are clearly of the view that condition of replenishment of ground water has not been complied by PPs in words and spirit and also in substance. PP-3 has also tried to explain that extraction of ground water has reduced in the last three years i.e. 2018, 2019 and 2020 which shows that ground water level has increased. Here

also, we find no substance in the submission for the reasons that since March 2020, extraordinary situation created due to pandemic situation caused by COVID-19, industrial production etc. has affected heavily, requiring lesser production and lesser consumption of raw material etc. Therefore, the alleged lesser extraction of ground water is for the different reasons. Even ground water level increase is attributed to lesser extraction of ground water for the above reasons and no benefit can be claimed by PPs on this account.

### **ROLE OF CGWA AND UPGWD**

308. In our view, CGWA is responsible for permitting illegal extraction of ground water, having aided, abated and assisted PPs in such illegal extraction. Its role is very disappointing. It has not performed as directed by Supreme Court in *M.C. Mehta vs UOI (supra)*. Instead of acting as protector, it has functioned as perisher and demolisher. Even when period of NOCs expired, PPs applied for NOC renewal, CGWA neither proceeded to consider such applications as per directions of Tribunal nor acted to check continued abstraction without NOC. It simply watched PPs to continue to do something which was illegal. It behaved as a passive spectator. A Statutory Regulator failed to regulate.

309. UPGWD has also done something which was unexpected from a government department and that too when it is performing role of Statutory Regulator. It has surpassed all degrees of patent illegalities; some such illegalities, we have pointed out above. It is true that 'Polluter Pays' principle apply to the person who causes pollution but such person may also be those who assisted, coordinated, cooperated and helped in causing pollution. CGWA and UPGWD satisfy all these characteristics. We, therefore, hold CGWA and UPGWD guilty and responsible for

permitting illegal extraction of ground water, for years together and even till date, by PPs.

310. CGWA, also, in a wholly illegal manner, abdicated its authority of regulating ground water on the pretext that after enactment of UPGWMR Act 2019, matter of NOC shall be dealt with by State Authorities under the said Act, though similar defense taken by MoEF, was rejected by Supreme Court in ***M.C. Mehta vs. Union of India & Others. (1997) (supra)*** and consistently it has been reminded in other matters also where similar issues were raised, in various judgments of Supreme Court as well as Tribunal. CGWA has also failed to ensure that UPGWD may not act contrary to guidelines issued by CGWA. We have demonstrated how NOCs issued by UPGWD contravened guidelines 2020 of CGWA. Therefore, we find CGWA directly responsible in causing pollution, damaging environment severely, by allowing illegal activities of extraction of ground water. CGWA also failed to ensure recharge of ground water by PPs. The confidence reposed on CGWA, by the highest Court, has been belied.

311. In our view, CGWA and UPGWD, both are, therefore, liable to pay environmental compensation for causing damage/deterioration to environment, are responsible for its restoration, restitution and rejuvenation etc., including recharge of ground water.

312. **We answer all three questions no. (v), (vi), and (vii) accordingly.**

313. Now, coming to the last **question (viii)**, we are of the view that PPs are responsible for illegal extraction of ground water at least after expiry of NOCs, issued to them by CGWA. They continued to extract ground water without any authority. Further, they are also liable to pay environmental compensation for causing loss to environment by failing to

comply the most crucial condition of NOCs, i.e., recharge of water. In the Guidelines itself, extraction of ground water was co-related with recharge. PPs could not have ignored to comply with the aforesaid condition of recharge. Having committed the said default, they are liable to pay environmental compensation for the said cause/loss, besides other legal action civil, criminal as the case may be. Thus, PPs shall pay environmental compensation for abstraction of ground water after expiry of NOCs and failing to recharge ground water as per the condition of NOCs.

314. Computation of environmental compensation and methodology for computation is next aspect, to be considered in this case.

**Environmental Compensation-Assessment/Methodology:**

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

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

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

*b) **for restitution of property damaged;***

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

*(2)The relief and Compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section of (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).*

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

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

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

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

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

317. Schedule II of NGT Act, 2010 gives a list of heads under which compensation or relief for damage may be granted. It has 14 heads in total out of which item (a) to (f), (l), (m) and (n) relates to loss, damage etc. sustained to the person or individual or their property. Item (i) to (k) relates to harm, damage, destruction etc. of environment or

environmental system including soil, air, water, land, and eco-system.

Items (i) to (k) of Schedule II of NGT Act, 2010 are as under:

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

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

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

318. Items (g) and (h) relate to expense and cost incurred by State in providing relief to affected person; and loss caused in connection with activity causing damage. The damage to environment covers a very wide variety of nature as is evident from definition of environment under section 2 (c) which is inclusive and says; ‘environment includes water, air, and land and the interrelationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property’.

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

320. Thus, broad principles of environmental laws are given but the methodology for assessing/determining compensation is not provided in the statute. Even Rules framed under NGT Act 2010 are silent on this aspect. Issue of determination of EC is significant in the sense that it should be proportionate to or bears a reasonable nexus with the environmental damage and its remediation/restoration. Similarly in case of compensation to be determined for a victim, it needs to co-relate to injury caused or damage suffered by such person as also cost incurred for treatment/remediation.

321. Taking into consideration multifarious situations relating to violation of environmental laws *vis-a-vis* different proponents, nature of cases involving violation of environmental laws can be categorized as under:

- (i) Where Project/Activities are carried out without obtaining requisite statutory permissions/consents/clearances/NOC etc., affecting environment and ecology. For example, EC under EIA 2006; Consent under Water Act 1974 and Air Act 1981; Authorisation under Solid Waste Management Rules 2016 and other Rules; and NOC for extraction and use of ground water, wherever applicable, and similar requirements under other statutes.
- (ii) Where proponents have violated conditions imposed under statutory Permissions, Consents, Clearances, NOC etc. affecting environment and ecology.
- (iii) Where Proponents have carried out their activities causing damage to environment and ecology by not following standards/norms regarding cleanliness/pollution of air, water etc.

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

323. Further category among above classification is, where, besides pollution of environment, proponents/violators action also affect the community at large regarding its source of livelihood, health etc.

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

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

326. To impose appropriate ‘environmental compensation’ for causing harm to environment, besides other relevant factors as pointed out, one has to understand the kind and nature of ‘Harmness cost’. This includes risk assessment. The concept of risk assessment will include human-health risk assessment and ecological risk assessment. U.S. Environmental Protection Agency has provided a guideline to understand harm caused to environment as well as people. For the purpose of human-health risk assessment, it comprised of three broad steps, namely, planning and problem formulation; effects and exposure assessment and risk categorization. The first part involves participation of stakeholders and others to get input; in the second aspect health effect of hazardous substances as well as likelihood and level of exposure to the pollutant are examined and the third step involves integration of effects and exposure assessment to determine risk.

327. Similarly, ecological risk assessment is an approach to determine risk of environmental harm by human activities. Here also we can find answer following three major steps, i.e., problem codification; analysis of exposure and risk characterization. First part encompasses identification



of risk and what needs to be protected. Second step insists upon crystallization of factors that are exposed, degree to exposure and whether exposure is likely or not to cause adverse ecological effects. Third step is comprised of two components, i.e., risk assessment and risk description.

328. In totality, problem is multi-fold and multi-angular. Solution is not straight but involves various shades and nuances and vary from case to case. Even Internationally, there is no thumb-rule to make assessment of damage and loss caused to environment due to activities carried out individually or collectively by the people, and for remediation/restoration. Different considerations are applicable and have been applied.

329. In India, where commercial activities were carried out without obtaining statutory permissions/consents/clearance/NOC, Courts have determined, in some matters, compensation by fixing certain percentage of cost of project. In some cases, volume of business transactions, turnover, magnitude of establishment of proponent have also been considered as guiding factors to determine environmental compensation.

330. Nature is extremely precious. It is difficult to price elements of nature like light, oxygen (air), water in different forms like rain, snow, vapour etc. When nature is exploited beyond its carrying capacity, results are harmful and dangerous. People do not understand the value of what nature has given free. Recently in Covid-19 wave II, scarcity of oxygen proved its worth. In dreadful second phase of the above pandemic, any amount offered, in some cases, could not save life for want of oxygen. Further, damage to environment, sometimes do not reflect in individuals immediately and may take time but injury is there.

In such cases, process of determination of compensation may be different.

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

332. When there is collective violation, sometimes the issue arose about apportionment of cost. Where more than one violator is indulged, apportionment may not be equal since user's respective capacity to produce waste, contribution of different categories to overall costs etc. would be relevant. The element of economic benefit to company resulting from violation is also an important aspect to be considered, otherwise observations of Supreme Court that the amount of environmental compensation must be deterrent, will become obliterated. Article 14 of the Constitution says that unequal cannot be treated equally, and it has also to be taken care. Determination/assessment/computation of environmental compensation cannot be arbitrary. It must be founded on some objective and intelligible considerations and criteria. Simultaneously, Supreme Court also said that its calculations must be based on a principle which is simple and can be applied easily. In other words, it can be said that wherever Court finds it appropriate, expert's assessment can be sought but sometimes experts also go by their own

convictions and belief and fail to take into account judicial precedents which have advanced cause of environment by applying the principles of 'sustainable development', 'precautionary approach' and 'polluter pays', etc.

333. Clean-up cost or TPC, may be a relevant factor to evaluate damage, but in the diverse conditions as available in this Country, no single factor or formula may serve the purpose. Determination should be a quantitative estimation; the amount must be deterrent to polluter/violator and though there is some element of subjectivity but broadly assessment/computation must be founded on objective considerations. Appropriate compensation must be determined to cover not only the aspect of violation of law on the part of polluter/violator but also damage to the environment, its remediation/restoration, loss to the community at large and other relevant factors like deterrence, element of penalty etc.

334. Committee in its reports dated 21.06.2021 and 06.08.2021 has made certain recommendations determining environmental compensation under certain heads. The computation by Committee is based on certain formulas it has suggested. We have to examine mechanism suggested by Committee and also the value provided to factors like constant quotient and value of "R" i.e., Rupee, to find out whether the same satisfy all aspects necessary to determine appropriate environmental compensation. Applying principle of absolute liability, Polluters Pay alongwith Precautionary Principle and sustainable development, it has to be seen whether PPs are liable to pay environment compensation as suggested by Committee and also to undergo other statutory sanctions provided in the statutes including criminal

prosecution, or computation of compensation requires some other method.

335. **CPCB Guidelines:** CPCB has suggested in a report methodology for assessment of environmental compensation which may be levied or imposed upon industrial establishments who are guilty of violation of environmental laws and have caused damage/degradation/loss to environment. It does not encompass individuals, statutory institutions and Government etc. Report is titled as “*Report of the CPCB In-house Committee on Methodology for Assessing Environmental compensation and Action Plan to Utilize the Fund*” which was finalized in the meeting held on 27.03.2019. It shortlisted the incidents requiring an occasion for determining environmental compensation. Six such incidents, shortlisted, are:

**“Cases considered for levying Environmental Compensation (EC):**

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

336. For the instances at item (a), (b) and (c), report says that ‘Pollution Index’ (hereinafter referred to as ‘**PI**’) would be used as a basis to levy environmental compensation. CPCB had already published Guidelines categorizing industries into Red, Orange, Green and White, based on the concept of **PI**. The **PI** is arrived after considering quantity and quality of emissions/effluents generated, types of hazardous waste generated and

consumption of resources. **PI** of an industrial sector is a numerical number in the range of 0 to 100 and is represented as follows:

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

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

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

Where,

*EC is Environmental Compensation in ₹*

*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”*

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

*“Note:*

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

boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

**Table No. 1.1: Location Factor Values**

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

\*Population of the city/town as per the latest Census of India

#LF will be 1.0 in case unit is located >10km from municipal boundary

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

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

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

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

**Table No. 1.2: A sample calculation for Environmental Compensation**

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

339. We find that **R** which is a factor in Rupees (₹) is taken to be 100 minimum and 500 maximum. It has suggested that R value be taken as average i.e. Rs. 250/-. On what basis this minimum and maximum has been determined and why average is suggested, beyond any

comprehension. We do not find any material in the above report which may throw light for taking value of R as above. Similarly, for determining value of S i.e. Factor for Scale of Operation from 0.5 to 1.5, we find no Guidelines as to on what basis, it has been determined and only on the size of the industry, divided in small, medium and large, the said factor has been prescribed. The note further says that minimum environmental compensation would be Rs. 5000/- per day. From table 1.2, we find that in the highest case i.e., large industry, depending on the level of PI, maximum environmental compensation would be Rs. 60,000/- per day and minimum Rs. 10,000/- per day. The above determination excludes the actual loss to the environment and cost of remediation including damage to *flora-fauna* and human beings. Moreover, classification of industries for industrial policy, or for some licensing purpose, banking purpose etc. would be wholly irrelevant for environment. A small industry may be capable of causing much more pollution than medium or even large industry. For example, pollution caused by a brick kiln using coal as fuel may be much more than many medium category industries.

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

*“a. Industrial Inspections for compliance verification*

- a. Installation of Continuous water quality monitoring stations/Continuous ambient air quality monitoring stations for strengthening of existing monitoring network
- b. Preparation of Comprehensive Industry Documents on Industrial Sectors/clean technology
- c. Investigations of environmental damages, preparation of DPRs
- d. Remediation of contaminated sites
- e. Infrastructure augmentation of Urban Local Bodies (ULBs)/capacity building of SPCBs/PCCs.”

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

342. Chapter II of report deals with determination of environment compensation for violations of **Graded Response Action Plan (GRAP)** in NCR. Here a fixed amount of environmental compensation has been recommended in table 2.1, as under:

**“Table No. 2.1: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.**

<b>Activity</b>	<b>State Of Air Quality</b>	<b>Environmental Compensation</b>
<b>Industrial Emissions</b>	Severe +/Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh
	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh
<b>Vapour Recovery System (VRS) at Outlets of Oil Companies</b>		
<b>i. Not installed</b>	Target Date	Rs 1.0 Crore
<b>ii. Non-functional</b>	Very poor to Severe +	Rs 50.0 Lakh
	Moderate to Poor	Rs 25.0 Lakh
<b>Construction sites (Offending plot more than 20,000 Sq.m.)</b>	Severe +/Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh
	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh



<b>Solid waste/ garbage dumping in Industrial Estates</b>	Very poor to Severe +	Rs 25.0 Lakh
	Moderate to Poo	Rs 10.0 Lakh
<b>Failure to water sprinkling on unpaved roads</b>		
<b>a) Hot-spots</b>	Very poor to Severe +	Rs 25.0 Lakh
<b>b) Other than Hot-spots</b>	Very poor to Severe +	Rs 10.0 Lakh

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

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

344. It is suggested that determination of environmental compensation in this category would have two components, (i) Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage managing system; and (ii) Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because insufficient capacity of waste/sewage management facility. It further says that Cost saved/benefits achieved would also include interest on capital cost of waste/sewage management

facility, daily operation and maintenance (O & M) cost associated with the facility. The determination of environmental compensation, therefore, is suggested, applying following formula:

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

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

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

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

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

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

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

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

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

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

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

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

347. Para 3.3 deals with the method of determining environmental compensation for damage/untreated/partially treated sewage by concerned individual/authority. Under this head, CPCB has considered that for population above 1 lakh, requirement of water supply, would be minimum 150 to 200 lpcd and 85% whereof would result in sewage generation. It takes capital cost for 1 MLD STP ranges from 0.63 crores to 3 crores and O & M cost around Rs. 30,000 per month. Consequently, it suggested to assume capital cost for STPs as Rs. 1.75 crores/MLD (marginal average cost). Expected cost for conveyance system is assumed as Rs. 5.55 crore/MLD and annual O& M as 10% of combined capital cost. Based on the above assumptions, Committee has

recommended/suggested environmental compensation, to be levied on urban local bodies, by applying formula and here CPCB has suggested two formulas and any of them may be adopted.

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

*Alternatively;*

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

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

*Quantity of Sewage is in MLD”*

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

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

*Where;  
Waste Quantity in tons per day (TPD)*

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

*Simplifying;*

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

349. Here also certain assumed figures have been taken by CPCB. Report says that municipal solid waste generation is approximately 1.5 lakh MT/day in India as per MoHUA Report-2016. As per principles of Solid Waste Management Rules, 2016 and PWM Rules, 2016, total cost of municipal solid waste management in city/town includes cost for door to door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of municipal solid waste and disposal through facility like composting bio-methanation, recycling, co-processing in cement kilns etc. It is estimated that total cost of processing and treatment of municipal solid waste for a city of population of 1 lakh and generating approximately 50 tons/day of municipal solid waste is Rs. 15.5 Crores which includes capital cost (one time) and Operational and Management cost for one year. Expenditure for subsequent years would be only 3.5 Crores/annum. For arriving per day waste generation, CPCB has referred to a survey conducted by Environment Protection Training Research Institute (EPTRI) which estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes.

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

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

<b>City</b>	<b>Delhi</b>	<b>Agra</b>	<b>Gurugram</b>	<b>Ambala</b>
<b>Population (2011)</b>	1,63,49,831	17,60,285	8,76,969	5,00,774
<b>Class</b>	Mega-City	Million-plus City	Class-I Town	Class-I Town
<b>Waste Generation (kg. per person per day)</b>	0.6	0.5	0.4	0.4
<b>Waste Generation (TPD)</b>	9809.90	880.14	350.79	200.31
<b>Waste Disposal as per Rules (TPD) (assumed as 25% of waste generation for sample calculation)</b>	2452.47	220.04	87.70	50.08
<b>Waste Management Capacity Gap (TPD)</b>	7357.42	660.11	263.09	150.23
<b>Calculated EC (capital cost component) in Lacs. Rs.</b>	17657.82	1584.26	631.42	360.56
<b>Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)</b>	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000	Min. 100 Max. 1000
<b>Final EC (capital cost component) in Lacs. Rs.</b>	10000.00	1584.26	631.42	360.56
<b>Calculated EC (O&amp;M Component) in Lacs. Rs./Day</b>	147.15	13.20	5.26	3.00
<b>Minimum and Maximum values of EC (O&amp;M Cost Component) recommended by the Committee (Lacs Rs./Day)</b>	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0	Min. 0.1 Max. 1.0
<b>Final EC (O&amp;M Component) in Lacs. Rs./Day</b>	10.00	5.00	1.00	1.00
<b>Calculated Environmental Externality (Lacs Rs. Per Day)</b>	2.58	0.18	0.03	0.02

<b>Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)</b>	Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.01 Max. 0.05	Min. 0.01 Max. 0.05
<b>Final Environmental Externality (Lacs Rs. per day)</b>	0.80	0.25	0.03	0.02

351. Chapter IV deals with determination/computation of environmental compensation in case of “illegal extraction of ground water” and for this purpose report has referred to Tribunal’s order dated 03.01.2019 passed in **OA No. 327/2018, Shailesh Singh vs. Central Ground Water Board & Ors.** The relevant extract of the order quoted in para 4.1 of the report is as under:

*“CPCB may constitute a mechanism to deal with individual cases of violation of norms, as existed prior to Notification of 12/12/2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law.”*

352. Here, broadly, determination of environmental compensation refers to two major aspects i.e., illegal extraction of water as one aspect and illegal use of ground water as second aspect. For determination of environmental compensation for illegal extraction of ground water, formula suggested by Committee is:

***“EC<sub>GW</sub> = Water Consumption per Day x No. of Days x Environmental Compensation Rate for illegal extraction of ground water (EC<sub>RGW</sub>)***

*Where water Consumption is in m<sup>3</sup>/day and ECR<sub>GW</sub> in Rs./m<sup>3</sup>*

*Yield of the pump varies based on the capacity/power of pump, water head etc. For reference purpose, yield of the pump may be assumed as given in **Annexure-VI.***

*Time duration will be the period from which pump is operated illegally.*

*In case of illegal extraction of ground water, quantity of discharge as per the meter reading or as calculated with assumptions of yield and time may be used for calculation of EC<sub>GW</sub>.”*

353. Depending on the category of the area for the purpose of ground water i.e., safe, semi-critical, critical and over-exploited and also the purpose for which ground water is used, determination of environmental compensation for illegal use of ground water, has been suggested differently for different purpose/use i.e., for drinking and domestic use; for packaged drinking water units/for mining infrastructure and dewatering projects and for industrial units. Hence all these aspects are separately given in paragraph 4.6.1, 4.6.2, 4.6.3 and 4.6.4 as under:

**“4.6.1 ECRGW for Drinking and Domestic use:**

*Drinking and Domestic use means uses of ground water in households, institutional activity, hospitals, commercial complexes, townships etc.*

Sl. No	Area Category	Water Consumption ( $m^3$ / day)			
		<2	2 to <5	5 to <25	25 & above
		Environmental Compensation Rate ( $ECR_{GW}$ ) in Rs./ $m^3$			
1	Safe	4	6	8	10
2	Semi Critical	12	14	16	20
3.	Critical	22	24	26	30
4	Over-Exploited	32	34	36	40
<b>Minimum <math>EC_{GW}</math>=Rs 10,000/- (for households) and Rs. 50,000 (for institutional activity, commercial complexes, townships etc.)</b>					

**4.6.2 ECRGW for Packaged drinking water units:**

Sl. No	Area Category	Water Consumption ( $m^3$ / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate ( $ECR_{GW}$ ) in Rs./ $m^3$			
1	Safe	12	18	24	30
2	Semi Critical	24	36	48	60
3.	Critical	36	48	66	90
4	Over-Exploited	48	72	96	120
Minimum $EC_{GW}$ =Rs 1,00,000/-					

**4.6.3 ECRGW for Mining, Infrastructure and Dewatering Projects:**

Sl. No	Area Category	Water Consumption ( $m^3$ / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate ( $ECR_{GW}$ ) in Rs./ $m^3$			
1	Safe	15	21	30	40



2	<i>Semi Critical</i>	30	45	60	75
3.	<i>Critical</i>	45	60	85	115
4	<i>Over-Exploited</i>	60	90	120	150
<i>Minimum ECGW=Rs 1,00,000/</i>					

#### **4.6.4 ECRGW for Industrial Units:**

Sl. No	Area Category	Water Consumption ( $m^3$ / day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECRGW) in Rs./ $m^3$			
1	<i>Safe</i>	20	30	40	50
2	<i>Semi Critical</i>	40	60	80	100
3.	<i>Critical</i>	60	80	110	150
4	<i>Over-Exploited</i>	80	120	160	200
<i>Minimum ECGW=Rs 1,00,000/-</i>					

354. It is also recommended that minimum environmental compensation for illegal extraction of ground water would be Rs. 10,000/- if it is for domestic purposes, but in other matters, it would be Rs. 50,000/-.

355. These recommendations by CPCB have not been given in the form of a binding statutory provision. Even otherwise, we find that these are only broad suggestions, ignore several relevant aspects which have to be considered while determining environment compensation in a given case and, therefore, there cannot be taken as readymade application to all situations for determining of environment compensation. Moreover, on some aspects there is no suggestion, but it is deferred.

356. We also find that some crucial relevant aspects requiring application of 'Polluters Pay', have not been considered in the above suggestions. CPCB has failed to consider that the purpose of determination/computation/assessment of environmental compensation and levy thereof, involve various factors like (i) cost of damage to environment, (ii) cost needed for restoration/remediation of damage

caused to environment, (iii) element of deterrent/provincial, (iv) liability arising for violation of statutory mandatory law relating to environment namely requirement of consent, EC and NOC etc. It is not mere cost of item or subject but computation of something which situation has arisen by an act of PPs due to violation of environmental law causing damage to environment. The loss and its remedy involve complex of components.

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

others, and some may not suffer to the extent of showing symptoms of any diseases at all. When we talk of environmental compensation for causing degradation to environment and for its restoration or remediation, it is not a formal or casual or symbolic amount which is required to be levied upon the violator. It is substantive and adequate amount which must be levied for restoration of environment. CPCB in determining values of fixed quotients and rupees etc., has been very lenient as if only symbolically violator is to be held liable and it must pay a petty amount.

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

359. In respect of computation of compensation for illegal extraction of ground water, CPCB has referred to Tribunal's order in ***Court on its own motion vs. State of Karnataka (supra)*** directing it to lay down guidelines to deal with the scale of compensation but has failed to consider that Tribunal has also observed that its scale may have slabs depending on extent of pollution caused, economic viability etc. and deterrent effect.

360. Statutory Regulators have also failed to consider that environmental compensation is not a kind of fee which may result in

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

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

362. CPCB Guidelines have taken care of industries and municipal bodies. Its application in all cases irrespective of other relevant consideration may prove to be disastrous. Individuals, charitable, social or religious bodies, public sector and government establishments etc., may, in given circumstances justify a different approach. Further, there may be cases attracting aggravating factors or mitigating factors, for example in national emergency some activity got performed violating environmental norms or a proponent is resilient to any advice to adhere law to protect environment and so on. In fact, quantum of EC should

have nexus with State's efforts for protection and preservation of environment and control of pollution. Compensation regime must be a deterrent to violators and incentivize eco-friendly proponents. No one should get profited by violating environmental laws and community should also not suffer for violation of environmental norms by defaulting proponents. There is no reason, if beside the aspects noticed above, the computation process also incorporates the elements of inflation, quality of life, and economic prosperity.

363. In the context of "violation of disposal of Bio-Medical Waste" and "Non-compliance of Bio-Medical Waste Management Rules, 2016" and determination of environmental compensation for such violations, Tribunal in **OA No. 710/2017, Shailesh Singh vs. Sheela Hospital & Trauma Centre, Shahjahanpur & Others** and other connected matters, vide order dated 15.07.2019, accepted report of CPCB, and said:

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

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

364. The above recommendations i.e., in para 10, Tribunal said "*compensation regime suggested by the CPCB may be adopted. It will be open to the State PCBs/PCCs to adopt a higher scale of compensation, having regard to the problems faced in such States/UTs*". It further says that if State Governments and UTs still remain non-complying for two months, compensation will be recovered at the rate of Rs. 1 crore per month till non-compliance continues.

365. In respect of solid waste, sewage effluent, ground water extraction etc., Tribunal in **OA No. 593/2017, Paryavaran Suraksha Samiti and**

**another vs. Union of India and others**, vide order dated 28.08.2019 has said in para 16, that as regards environmental compensation regime fixed vide CPCB guidelines for industrial units, GRAP, solid waste, sewage and ground water is accepted as an interim measure. Tribunal further observed that recovery of compensation on 'Polluter Pays' principle is a part of enforcement strategy but not a substitute for compliance. It directed all States/UTs to enforce compensation regime latest w.e.f. 01.04.2020 and made it clear that it is not condoning any past violations. Tribunal directed to enforce recovery of compensation from 01.04.2020 from the defaulting local bodies failing which the concerned States/UTs themselves must pay the requisite amount of compensation.

366. In the matter of illegal mining causing damage to environment, methodology for determining environmental compensation was examined in **OA no. 360/2015, National Green Tribunal Bar Association vs. Virender Singh (State of Gujarat)** and other connected matters decided on 26.02.2021. Here a report was submitted by CPCB on 30.01.2020, placing on record recommendations made by Committee comprising:

- i.) Dr Purnamita Dasgupta, Professor, IEG, Delhi,
- ii.) Dr K.S. Kavi Kumar, Professor, MSE, Chennai,
- iii.) Dr. Yogesh Dubey, Associate Professor, IIFM, Bhopal,
- iv.) Shri Sundeep, Director, MoEF&CC, Delhi and
- v.) Shri A. Sudhakar, Additional Director, CPCB, Delhi

367. Report was considered by Tribunal vide order dated 17.08.2020.

Report said:

- “8. *The Committee considered two approaches:*
- (I) Approach 1: Direct Compensation based on the market value of extraction, adjusted for ecological damages.**
  - (II) Approach 2: Computing a Simplified NPV for ecological damages.**

9. In the first approach, the criteria adopted is:
- Exceedance Factor (EF).
  - Risk Factor (RF).
  - Deterrence Factor (DF).
10. Approach 1 is demonstrated by Table 1 as follows:

<b>Table No. 01: Approach 1</b>				
Permitted Quantity (in MT or m <sup>3</sup> )	Total Extraction (in MT or m <sup>3</sup> )	Excess Extraction (in MT or m <sup>3</sup> )	Exceedance in Extraction:	Compensation Charge (in Rs.)
X	Y	Z=Y-X	Z/X	D*(1+RF+DF) Where D=Z x Market Value of the material per MT-or-m <sup>3</sup>
				DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71
				RF = 0.25, 0.50, 0.75, 1.00 (as per table 2)

11. Approach 2 is demonstrated by following formula:  
 “Total Benefits (B)=Market Value of illegal extraction: D(refer Table 1)

Total Ecological Costs (C) = Market Value adjusted for risk factor: D \* RF (refer Table 1).”

12. Final recommendation is as follows:

“Thus, it is recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, maybe calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. **The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period of time and rarely is it feasible to achieve 100% restoration, even if the sand deposition in the river basin is restored through flooding in subsequent years.** The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. **However, till data on site-specific assessments becomes available, this approach may be adopted in the interim.** In situations where the risk categorization charged. However, till data on site-specific assessments becomes available, this approach may be adopted in the interim. In situations where the risk categorisation is

unavailable or pending calculation, the following Discount Rates may be considered:

Severity	Mild	Moderate	Significant	Severe
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount Rate	8%	7%	6%	5%

Here, in both the approaches, element of illegality committed by PP in carrying on mining was not considered at all. For example, if EC and/or consent is not obtained. Similarly cost of remediation/restoration was also not taken into consideration.

368. Counsel for applicant gave certain suggestions, which are mentioned in para 13 of order dated 17.08.2020. Tribunal directed Committee to re-examine the matter. Thereafter, further report was submitted on 12.10.2020 wherein earlier report was reiterated. Tribunal in para 12 of judgment dated 26.02.2021 said **“we propose to accept approach-2 in the report”**. Further in para 25, Tribunal said:

*“25. In the light of discussion in para 12 above, having regard to the totality of the situation, we accept the report of the CPCB and direct that the scale of compensation calculated with reference to approach II be adopted by all the States/UTs. **Though compensation assessment for damage to the environment is a dynamic concept, depending on variables, floor level formula can be worked out to avoid arbitrariness inherent in unguided discretion. CPCB may issue an appropriate statutory direction for the facility of monitoring and compliance to the Environment Secretaries of all the States/UTs who may forthwith evolve an appropriate mechanism for assessment and recovery of compensation in all Districts of the State. The recovered compensation may be kept in a separate account and utilized for restoration of environment by preparing an appropriate action plan under the directions of the Environment Secretary with the assistance of such individual/ institutions as may be considered necessary.**”*

369. Though Tribunal said that determination of environment compensation is a dynamic concept and depends on variables, and also



directed CPCB to issue statutory directions to all States/UT so that they may evolve appropriate mechanism for assessment, but nothing has been done in this regard till date. Some States have found it convenient to follow CPCB guidelines. State of Tamil Nadu vide order dated 03.01.2020 and State of Haryana vide order dated 29.04.2019 have adopted CPCB Guidelines.

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

371. In ***Goa Foundation vs. Union of India & Others (2014)6SCC590***, Supreme Court relied on ***Samaj Parivartana Samudaya & Others vs. State of Karnataka & Others (2013)8SCC209*** and held that **ten per cent of the sale price** of iron ore during e-auction should be taken as compensation. To arrive at the above view, Court observed that this was an appropriate compensation given that mining could not completely stopped due to its contribution towards employment and revenue generation for the State. Further, Court directed to create a special purpose vehicle, i.e., “Goan Iron Ore Permanent Fund” for depositing above directed compensation and utilization of above fund for remediation of damage to environment.

372. In ***Goel Ganga Developers vs Union of India and Others, (2018)18SCC257***, Tribunal imposed 195 cr. compensation since project was executed without EC. Supreme Court reduced it to **100 cr. or 10% of project cost whichever is higher**. Supreme Court also upheld Rs.5

cr. imposed by Tribunal vide order dated 27.09.2016. Thus, total amount exceeded even 10% of project cost.

373. In ***Mantri Techzone Private Limited vs. Forward Foundation & Others, (2019)18SCC494***, Supreme Court affirmed imposition of environmental compensation by Tribunal, considering cost of the project, where there was violation regarding EC/consent and proponent proceeded with construction activities violating provisions relating to EC/Consent. Tribunal determined environmental compensation at 5% and 3% of project cost of two builders. 5% of project cost was imposed where PP had raised illegal constructions while 3% was imposed where actual construction activity was not undertaken by PP and only preparatory steps were taken including excavation and deposition of huge earth by creating a hillock. Besides, Tribunal also directed for demolition and removal of debris from natural drain at the cost of PP.

374. The turn-over or annual receipt of PPs has not been placed on record by the parties. However, annual reports of PPs are available on public domain and therefrom we find that the annual turn-over of M/s. Varun Beverages, as per annual report of financial year 2020, is more than 4500 Crores. If we compute on even 1%, amount of compensation for one year would come to about 45 crores.

375. Similarly, in respect of Moon Beverages Ltd., for financial year 2019-2020 (ending on 31.03.2020), revenue receipt is more than 500 Crores as per final/annual report which is available on public domain. Computation on 1% of total revenue receipt would be 5 crores for one year.

376. Thus, computation of compensation on the annual turn-over or sales of the commodities manufactured by PPs using illegally extracted

ground water, would result in very high amount of environmental compensation. Taking a pragmatic view which would aid preservation of environment and simultaneously maintain the principle of sustainable development, we find it appropriate to adopt a slightly different method, by taking into consideration methodology formulated by CGWA for computation of compensation and adding therein the element of factors not taken into account in the above methodology, by CGWA.

377. PP-1 was supposed to implement ground water recharge measures to the tune of Rs. 2,04,042 m<sup>3</sup>/year. The site of its unit in 2015 was in safe category but subsequently came in 'semi-critical' category. In semi-critical category, as per the **Guidelines 2020**, recharge must be 100% of the extraction. Rates for recharge are not given in Guidelines 2020, hence we apply extraction charges given in CPCB report. The extraction allowed was Rs. 1693m<sup>3</sup>/day. Extraction charges, as per **Guidelines 2020**, are Rs. 5m<sup>3</sup>/day in semi-critical area which will make it about Rs. 8465/- per day, (1693×5). It will come to **Rs. 30,89,725/- per annum**. Similar amount will come for extraction of ground water after expiry of period of NOC. PP-1, therefore, shall pay environmental compensation of Rs. **1,85,38,350/-** (computation for six years) within one month with CPCB.

378. PP-2 and PP-3 were in 'over-exploited area'. The restoration charge for the kind of industries of PP-2 and PP-3, as per **Guidelines 2020** is Rs. 80m<sup>3</sup>/day in 'over-exploited' area which will come to around Rs. 3,31,20,000/- per annum and Rs. 2,42,83,360/- per annum in respect of PP-2 & PP-3, respectively. Charge for extraction of ground water after expiry of NOC, as per **Guideline 2020** is Rs. 40m<sup>3</sup>/d. It will come to Rs.1,65,60000/- and Rs. 1,21,41,680/- per annum, for PP-2 & PP-3 respectively. For element of restitution, we make above amount twice.

Therefore, PP-2 and PP-3 shall pay environmental compensation of **Rs. 13,24,80,000/-**, (computed for 4 years, from 2016 to 2020) and **Rs. 9,71,33,440/-**, (computed for about 4 years i.e., the period of 01.02.2018 to 31.01.2022) respectively, within 60 days, with CPCB.

379. CGWA having caused damage to environment and being responsible for allowing illegal extraction of ground water and failing to ensure recharge by the concerned PPs for which it may be held accountable.

380. UPGWD has attempted to confer a valid authority upon PPs to justify continued extraction of ground water though neither they had any such jurisdiction nor had undertaken any inquiry/investigation as to whether PP complied with earlier conditions of NOC. Therefore, they have also contributed and are responsible for causing damage to environment in causing illegal abstraction of ground water for which it may be held accountable.

381. In view of above, we issue following directions:

- (a) PP-1 i.e., M/s. Moon Beverages Ltd., unit at 2B/1, Ecotech-III, Udhog Kendra, Greater NOIDA, District Gautam Buddha Nagar, Uttar Pradesh shall pay **Rs. 1,85,38,350/-** as environmental compensation within one month.
- (b) PP-2 i.e., M/s. Moon Beverage Ltd., unit at A-32, Site IV Sahibabad Industrial Area, Sahibabad district Ghaziabad, Uttar Pradesh shall pay **Rs. 13,24,80,000/-** as environmental compensation within two months.
- (c) PP-3 i.e., M/s. Varun Beverages Ltd., unit at Plot No. 2E, Udyog Kendra, Ecotech-III, Greater NOIDA, Uttar Pradesh shall pay **Rs. 9,71,33,440/-** as environmental compensation within two months.

- (d) The aforesaid environmental compensation, received from PPs, shall be utilized for recharge of ground water, restoration of environmental damage, etc. For this purpose, we constitute a joint committee comprising, MOEF&CC, MOJS, CPCB, CGWA, UPGWD and District Magistrates of concerned districts. CPCB and CGWA shall be nodal authorities. Committee shall prepare restoration plan within 2 months, execute the same in next 6 months and submit compliance report to Registrar General, NGT, Principal Bench, New Delhi.
- (e) We also constitute a joint Committee of CPCB, CGWA, UPGWD and UPPCB to conduct survey in State of U.P. and prepare data of various categories drawing ground water for commercial purposes, study impact assessment, suggest ways and modes to reduce ground water extraction in OCS areas, and how ground water level can be improved. The Committee may induct any other expert as it may find necessary. The District Magistrate of concerned district where Committee would visit, shall also be a member of the Committee. UPPCB shall be nodal authority.
- (f) CGWA is directed to forthwith issue appropriate orders/directions, regulating ground water extraction in the light of observations made above and the orders passed by Supreme Court in ***M.C. Mehta vs. Union of India & Others (1997) (supra)*** and this Tribunal in various cases referred to in this judgment and must take all precautions and care to ensure that in OCS areas, ground water should not be allowed to be extracted in such a manner that general people would have to face problem of water for drinking and domestic purposes.
- (g) The statutory regulators would also take other remedial and punitive measures as provided in law including prosecution.

(h) Compliance reports by respective bodies/authorities and Committees shall be submitted after expiry of period given by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF and where no period is given, after 6 months to Registrar General, NGT, PB.

382. With above directions, and in the manner aforesaid, OA No. 69/2020 and Appeal No. 45/2020 are allowed.

383. A copy of the order be forwarded to Chief Secretary, Uttar Pradesh, CPCB, UPPCB, CGWA, UPGWD, MoEF&CC and Ministry of Jal Shakti by e-mail for compliance.

Adarsh Kumar Goel,  
Chairperson

Sudhir Agarwal,  
Judicial Member

Brijesh Sethi,  
Judicial Member

Prof. A. Senthil Vel,  
Expert Member

Dr. Afroz Ahmad,  
Expert Member

February 25, 2022  
Original Application No. 69/2020 &  
Appeal No. 45/2020  
R & AVT