

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

.....

**M.A. NO. 762 OF 2014**

**IN**

**M.A. NO. 44 OF 2013**

**IN**

**O.A. NO. 36 OF 2012**

**IN THE MATTER OF:**

Rajiv Narayan & Anr.

.....Applicant

versus

Union of India & Ors.

....Respondent

**AND IN THE MATTER OF:**

Rathi Steel & Power Ltd.  
C-4, S.S. of G.T. Road,  
Industrial Area, Ghaziabad,  
U.P. through  
Authorized Signatory  
Y.K. Agrawal

.....Applicant

**Counsel for Applicant in Original Application 36 of 2012:**

Mr. Raj Panjwani, Sr. Advocate and Mr. Rahul Choudhary,  
Advocate

**Counsel for Applicant in M.A. 762 of 2014:**

Mr. Abhishek Garg, Mr. D.K. Garg and Mr. Deepak Mishra,  
Advocates.

**Counsel for Respondents:**

Mr. Vikas Malhotra, Advocate for Respondent No. 1  
Mr. Daleep Kumar Dhyani, Mr. Pradeep Mishra, Advocates and  
Mr. Suraj Singh, Advocates for Respondent No. 2  
Ms. Alpana Poddar, Advocate for Respondent No. 3  
Ms. Sushma Singh, Advocate for Respondent No. 5  
Mr. B.V. Niren and Mr. V.V. Vardhan, Advocates for CGWA

## JUDGMENT

**PRESENT:**

**Hon'ble Mr. Justice Swatanter Kumar (Chairperson)**

**Hon'ble Mr. Justice U.D. Salvi (Judicial Member)**

**Hon'ble Dr. D.K. Agrawal (Expert Member)**

**Hon'ble Prof. A.R. Yousuf (Expert Member)**

**Reserved on 17<sup>th</sup> December, 2014**

**Pronounced on 13<sup>th</sup> January, 2015**

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

**JUSTICE SWATANTER KUMAR, (CHAIRPERSON)**

Rajiv Narayan, applicant herein and a resident of Ghaziabad, being a public spirited person, working in the field of environment conservation, filed an Original Application (being O.A. No. 36 of 2012) under the provisions of the National Green Tribunal Act, 2010 (for short 'the NGT Act'). According to the applicant, who resides two kms. from the National Highway and near an industrial area, it was noticed that small and big industries which are emitting black smoke in the area, were causing serious air pollution and health hazards to the local residents. According to him, the Central Pollution Control Board (for short 'CPCB') in 2009, came up with a Comprehensive Environmental Pollution Index (CEPI), by looking at four prime parameters, i.e. pollutant, pathway, receptor and additional high risk element to arrive at a score for water, air and land pollution. This index showed Ghaziabad as third most polluted city in the country. The Ministry of Environment, Forest and Climate Change (for short 'MoEF'), vide its order dated 31<sup>st</sup> August, 2010, had imposed a moratorium

on consideration of projects for Environmental Clearance, which were located in a critically polluted area/ industrial cluster, identified by the CPCB. One of the polluted areas identified by the CPCB was Ghaziabad and consequently this moratorium became applicable to that city. The World Bank in 'Project Appraisal Document of 2010' has also referred to a finding by CPCB that the pollution in Ghaziabad is seriously affecting the quality of life of communities, particularly referring to industrial clusters. Applicant has referred to various Press Reports and subsequent reports prepared by different statutory authorities. On these facts, the applicant prayed for issuance of various orders, including closing of the polluting industries, strict implementation of prescribed standards and ensuring complete implementation of the action plan for improving air quality within the scope and ambit of the Acts specified in Schedule I of the NGT Act.

2. Large number of industries were issued notices. Vide orders dated 15<sup>th</sup> January, 2013 and 15<sup>th</sup> February, 2013, the Tribunal had directed the joint team of CPCB and Uttar Pradesh Pollution Control Board (for short 'UPPCB') to inspect the sites and give a report to the Tribunal. The industries which were operating without consent of the Board and without permission of the competent authorities and were causing pollution were ordered to be closed. The joint team visited various industries. Some of the industries had given an undertaking to the inspecting team that they would take steps and install antipollution devices to completely become compliant and thus, would not further cause

pollution. The Units which were found to be closed, were permitted to operate for a period of one week during which the joint inspection team was expected to inspect the unit and submit their reports. It also came to the notice of the Tribunal that large no. of industries were permitted to carry on their operation by issuance of NOC without obtaining the consent of the UPPCB. These polluting industries were found to be nearly 220 in number. M/s Rathi Steel and Power Ltd. was stated to be one of the most seriously polluting industry. A joint inspecting team, when inspected this unit, noticed a number of deficiencies. It may be noticed that this unit had been given time by CPCB and UPPCB to take proper steps and measures to prevent and control the pollution. These measures had not been taken despite repeated extensions. The Unit, during the pendency of these proceedings filed M.A. No. 44 of 2013 stating therein that the Unit had been established in the year 1971 and is producing stainless steel of about 200 mt per day and employs large number of employees. In order to take preventive steps for water, air and noise pollution, the Unit had changed its manufacturing technology from time to time. It had given contract to various industries for installation of the requisite equipments. On or about 6<sup>th</sup> April, 2012, the Applicant claims to have entered into a contract with M/s Ecomak E & I Systems (P) Ltd. for supply, procurement, fabrication and testing of Bag Filters with the work order as stated in that contract. It was also to provide for ID Fan, replacement of water cooled duct, addition of post combustion chamber, expansions of

the bag house unit etc. According to the applicant, work is in progress.

3. UPPCB issued a Closure Notice on 18<sup>th</sup> January, 2013 to this Unit which was challenged by the applicant who filed a Writ Petition (Civil) No. 437 of 2013 in the High Court of Delhi at New Delhi challenging the order of Learned Tribunal dated 15<sup>th</sup> January, 2013 and the Closure Notice dated 18<sup>th</sup> January, 2013 issued by the UPPCB. Delhi High Court by order dated 24<sup>th</sup> January, 2013, granted liberty to the applicant to either approach the Tribunal or the Hon'ble Supreme Court of India. However, High Court stayed the operation of the Notice issued by the UPPCB. The Hon'ble Supreme Court vide its order dated 8<sup>th</sup> February, 2013 extended the stay order for another two weeks from 8<sup>th</sup> February, 2013 to enable the applicant-industrial unit to run their industrial unit. Vide order dated 8<sup>th</sup> February, 2013, the Hon'ble Supreme Court gave liberty to the applicant to approach the Tribunal for modification of the order dated 15<sup>th</sup> January, 2013 and extended the time granted by the High Court for a further period of two weeks without making any observation on the merits.

4. The applicant however, took no steps for challenging the notice issued by the Board or for modification of the order dated 15<sup>th</sup> January, 2013 passed by the Tribunal as observed by the Hon'ble Supreme Court of India. However, it filed an Miscellaneous Application (M.A. No. 44 of 2013) praying that the industrial unit was ready and willing to comply with all the norms



to bring the industry within the permissible limits of pollution in which the process had already started and was likely to be completed by 25<sup>th</sup> April, 2013. It further stated that the process of installation was in progress even when the order dated 15<sup>th</sup> January, 2013 was passed by the Tribunal. On these specific averments, the applicant made the following prayers:

“It is therefore, most respectfully prayed that this Hon’ble Tribunal may graciously be pleased to:

- (a) Pass appropriate direction granting time to the applicant-industrial unit till 25.4.2013, for revamping and installation of most modern equipments to bring the air pollution within the permissible limit and till then the applicant-industrial unit may be permitted to operate its industrial unit;
- (b) Pass such other or further order/s as this Hon’ble Court may deem fit and proper in the interest of justice.”

From the above application and the prayers made, it is evident that the applicant had neither disputed the fact that it was a polluting industry, nor it had taken the necessary steps for preventing and controlling air and water pollution for all this time and only prayed extension of time for installation of antipollution devices.

5. This application (M.A. No. 44/2013) was heard and it was submitted before the Tribunal that according to the joint inspection team it was a seriously polluting industry and the stack discharge was in excess of prescribed limit, another bag filter system was not in operation, resulting in ambient emissions which were also beyond the prescribed limit. These aspects, as well as the fact that the industry is operating for long, in any case,

since 2007; without being in conformity with the prescribed norms of emission and prevention of water pollution. In fact, the stand of the unit itself is that it would make all efforts to install antipollution devices, carry-out all the directions issued by the joint inspection team and the Boards and bring the parameters of emission and discharge within the prescribed limit by 25<sup>th</sup> April, 2013. It was on this premise that the applicant had prayed for extension of time for compliance. The Tribunal while clearly noticing the above stand of the unit, and its assurance to do the needful by 25<sup>th</sup> April, 2013, ordered it not to be closed. However, it was made clear that in the event of default of compliance of the directions, the order itself shall be deemed to be a closure notice to the industry. With these directions, the application was disposed of vide order dated 21<sup>st</sup> February, 2013.

6. The main application, being O.A. No. 36/2012, where all polluting industries were involved, particularly the ones which were operating without valid consent of the Board were ordered to be taken up on 15<sup>th</sup> March, 2013. However, the learned Counsel appearing for the parties mentioned the matter. Learned Counsel appearing for the original applicant and large number of industries, in relation to whom various directions had been passed by the Tribunal, vehemently argued that this unit (M/s Rathi Steel & Power Ltd.) was constantly causing serious pollution and the order of the Tribunal dated 21<sup>st</sup> February, 2013, was working very unfairly against those industries and prayed for revival of the matter. In view of the peculiar circumstances of the

case, the extent of pollution being caused by this unit and to ensure that the unit complies with its undertaking to the Tribunal, without changing the relief in relation to extension of time granted to the unit, (i.e. 25<sup>th</sup> April, 2013) the application was directed to be listed on 28<sup>th</sup> February, 2013. With the consent of the learned Counsel appearing for the parties, thereafter, the matter was ordered to be adjourned to 13<sup>th</sup> March, 2013. The prayer granted by the Tribunal in relation to extension of time as prayed in M.A. No. 44 of 2013 was not altered and, in fact, even today the same has not been varied.

7. Vide order dated 15<sup>th</sup> March, 2013, the joint inspection team was required to complete the inspection of the units as well as give general ambient air quality report to the Tribunal. On 22<sup>nd</sup> March, 2013, when the matter came up for hearing, it was submitted before the Tribunal that despite our earlier orders, M/s. Rathi Steel & Power Ltd. continued to be one of the most polluting industry. Further, it was the contention of other respondents, that this unit was taking undue advantage of extension of time granted to it for compliance of the directions, while other units were suffering the consequences of closure etc. It was further submitted that UPPCB ought not to have consented for passing of the order dated 21<sup>st</sup> February, 2013. According to the UPPCB, the unit had to take steps for controlling the pollution and was required to install various equipments for the same, which it had not done so far. On behalf of the applicant and CPCB, it was submitted that the unit is a seriously polluting



industry and does not have necessary pollution control equipments in place, even as of day. While referring to the inspection report of the joint inspection team dated 13<sup>th</sup> March, 2013, various deficiencies have been pointed out, in the order of the Tribunal dated 22<sup>nd</sup> March, 2013. In that report, it was pointed out that the stack monitoring facilities provided with the stacks were not as per the Emission Regulation Part –III, adequate stack monitoring facility was not available, emissions were being generated during melting of the metal and AOD operations, intensive fugitive emissions were observed from various operations, shed induction and AOD furnace is not designed for containment of the fugitive emissions, the shed was open from sides and, therefore, arresting of the fugitive emission was not possible. There was only one primary hood over the furnace which is rusted and damaged, no secondary suction hoods were provided for the induction furnaces. The ID fans and bag filter were poor. AOD dust was lying in open which was being lifted, causing fugitive emission due to re-suspension. Large quantity of water was used for recirculation purposes in the rolling mills which generated large quantity of sludge containing heavy metals. No record of disposal of sludge was being maintained. Overall housekeeping and maintenance of the plant was very poor.

8. Besides this, the Committee also noticed that when they started to take samples at three places at about 1:00 P.M. on 13<sup>th</sup> March, 2013 to assess quantum of fugitive emission and ambient air quality, at about 5:00 P.M., the industrial operation by the

industry was stopped, so samples could not be taken. In the order of the Tribunal dated 22<sup>nd</sup> March, 2013, it was again noticed that the requirements for collection of samples were not provided. As a result of which, the samples could not be collected. Further, the unit was taking undue advantage of the order of the Tribunal and was not installing antipollution devices. It is also noticed in the order that from the report it was clear that there are serious technical lacunae in the pollution controlling equipments installed and the work is incomplete. The Tribunal felt that in these circumstances, the industry was not entitled to any equitable relief and discretion of the Tribunal in its favour. Thus, the unit was directed to shut down and after complying with the directions issued by the CPCB and UPPCB, it was expected to inform the Member Secretary of CPCB and UPPCB of such compliance. A Joint Inspection was directed to be conducted as well and if the report was satisfactory as well as the analysis report showed that emission and discharge of effluents was within the prescribed parameters, the industry would continue to operate and carry on its business. Otherwise, it was required to shut down its manufacturing activity. All other steel industries were also issued notices.

9. The matter was adjourned for submission of the inspection report of various units, including this unit. On 16<sup>th</sup> May, 2013, the Tribunal directed filing of the complete report. The joint inspection team was directed to report, in relation to alternative power supply sources, whether or not the industry was

consuming ground water for industrial purposes and were paying cess as required under the Water (Prevention and Control of Pollution) Cess Act, 1977 (for short 'Water Cess Act'). The inspection teams were also directed to report the effect of such extraction on the ground water. A large number of industries had filed applications for different reliefs, particularly, with reference to the inspection report filed by joint inspection team. These applications in relation to air, water and ground water pollution were being heard together by the Tribunal. Vide our order dated 04<sup>th</sup> July, 2013, a number of industries which were found to be compliant and non-polluting, were directed to carry on their manufacturing process. Similarly, other industries which were complying, non-polluting and had installed antipollution devices by them and whose emissions and/or discharge of treated effluent was strictly in conformity with the prescribed parameters were also directed to operate vide order dated 5<sup>th</sup> July, 2013. In that order, the industries which were extracting ground water were required to install water meters for recording of such consumption and acoustic enclosures for the DG Sets in the industries. There were various steps required to be taken by the industrial units to ensure that there was no pollution and no adverse effect on the ground water as a result of extraction of ground water and release of effluents on land. Various violations of different Acts of Schedule-I to the NGT Act, 2010 i.e. Air (Prevention and Control of Pollution) Act, 1981 (for short 'Air Act'), Water (Prevention and Control of Pollution) Act, 1974 (for short 'Water Act'), The

Environment (Protection) Act, 1986 and Water Cess Act, were also noticed in regard to this unit.

10. Vide order of the Tribunal dated 12<sup>th</sup> September, 2013, M/s. Rathi Steel & Power Ltd. was directed to file an affidavit by its Managing Director, showing its annual turnover for the last ten years with profit and loss statement on record. The Board was also directed to file its complete record in relation to the grant or consent to operate for the last ten years and hence, the matter was adjourned. Thereafter, the learned Counsel appearing for the unit took adjournment to produce documents and the order passed by the Hon'ble Supreme Court of India. The matter was adjourned for that purpose on 09<sup>th</sup> October, 2013 when order of the Hon'ble Supreme Court of India dated 20<sup>th</sup> September, 2013 was placed on record.

11. Vide order dated 20<sup>th</sup> September, 2013, the Hon'ble Supreme Court of India disposed of that appeal while modifying the order of the Tribunal, thereby directing that the Tribunal would not proceed with the matter for a period of ten weeks from the date of the order. In the meanwhile, the unit had informed the Board vide letter dated 31<sup>st</sup> August, 2013 of substantially complying with the directions of the Board. It was further stated by the unit that if any other requirements were to be fulfilled, the same shall be complied with within five weeks. Respondent No. 3 was directed to get the unit inspected and submit a report to this Tribunal. With these directions, the appeal was disposed of by the Hon'ble Supreme Court of India.



12. In the meanwhile, the Tribunal had been dealing with different applications under the Original Application being O.A. No. 36/2012 as well as the Miscellaneous Applications filed by various industries. On 18<sup>th</sup> November, 2013, the learned Counsel appearing for the Industrial Unit/Applicant prayed for time to file affidavit to which liberty was granted and the matter was fixed on 29<sup>th</sup> November, 2013. When the matter came up for hearing on 29<sup>th</sup> November, 2013 again it was pointed out that the industry had still not taken all the required measures to prevent and control pollution. The joint inspection report dated 18<sup>th</sup> November, 2013 was filed and taken on record. There were three requirements to which the unit was expected to comply with (a) consent of the Board under Air Act, (b) consent of the Board under Water Act and (c) authorisation for handling the hazardous waste under the Hazardous Waste (Management and Handling) Rules, 2008. The Board was directed to produce the consent orders for the last seven years during which, undisputedly, the industry was causing serious pollution. The request of the Counsel for over extension of time to furnish the details in relation to account/balance sheet regarding installation of pollution control mechanism/devices, installation and maintenance thereof was accepted and two weeks further time was allowed to the Applicant. The order had been passed in M.A. No. 44/2013 in Original Application No. 36/2012 accordingly. The learned Counsel appearing for the Board had sought time to file requisite affidavit with documents vide which consent was granted.



Thereafter, the matter was adjourned on different dates on the request of the Counsel appearing for the Applicant/parties. Vide order dated 2<sup>nd</sup> April, 2014, the matter was ordered to be listed for final disposal on 12<sup>th</sup> May, 2014. On 12<sup>th</sup> May, 2014, the learned Counsel had placed on record the order passed by the Hon'ble Supreme Court of India on 11<sup>th</sup> April, 2014.

13. Against the order dated 29<sup>th</sup> November, 2013, the industry had preferred an appeal before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India vide this order dated 11<sup>th</sup> April, 2014, while noticing that the Appellant is not polluting the environmental atmosphere, granted interim prayer for stay of proceedings in M.A. No. 44/2013. The order dated 11<sup>th</sup> April, 2014 reads as under:-

“Heard the learned Counsel appearing for both the sides.

The learned Counsel for the respondent has submitted that at present, the appellant is not polluting the atmosphere.

In these circumstances, interim relief, as prayed for, is granted. It is directed that the appellant shall permit the concerned authorities to inspect their premises as and when the officers of the concerned Pollution Control Board desire to visit the same so as to ascertain whether the appellant-industry is polluting the atmosphere.”

In the I.A. before the Hon'ble Supreme Court of India, the Applicant had prayed for stay of further proceedings in M.A. No. 44/2013.

14. As is evident, M.A. No. 44/2013 filed before the Tribunal only related to grant of extension of time for complying with the directions of the Boards which has not been complied with till date.

15. The learned Counsel appearing for the Respondent in the Board submitted that during the arguments before the Hon'ble Supreme Court of India, it had been stated that the order of the Tribunal requiring the industry to produce its books of accounts, balance sheet for the last ten years was not called for in the facts of the case and that the industry was complying with the directions issued by the Board.

16. According to him, the Hon'ble Supreme Court of India probably while granting the stay meant to stay the execution of the direction in relation to that regard. Firstly, the prayer in M.A. No. 44/2013 and even before the Hon'ble Supreme Court of India in the miscellaneous application would be inconsequential inasmuch as the time granted in M.A. No. 44/2013 was upto 25<sup>th</sup> April, 2013 which is long over now. Secondly, even if we accept what is being contended on behalf of the respondents, we have not passed any direction after 29<sup>th</sup> November, 2013 requiring the industry to produce its books of accounts, balance sheet and other expenditure or income as was directed earlier. Besides this, the Hon'ble Supreme Court of India while passing the order dated 11<sup>th</sup> April, 2014, had subsequently directed that the industry would permit the concerned authorities to inspect their premises as and when the officers of the concerned Pollution Control Board desire to visit the same to ascertain whether the industry is polluting the environment or not.

17. In the inspection report dated 31<sup>st</sup> August, 2013, the inspecting team had noticed as many as six major shortcomings.

However, these appear to have been corrected to some extent in terms of the observation made by the inspection team in its inspection dated 31<sup>st</sup> October, 2013. However, when the inspection team inspected the premises on 2<sup>nd</sup> August, 2014, it observed:- (i) the unit has operated from January to March, 2014, without consent of the Board and the unit, in fact, even operated from January 2014 to August, 2014 without consent of the Board; (ii) at the time of inspection, the unit was not operating due to power cut; (iii) multiple samples of stacks that requires at least 8 hours to cover one complete cycle of continuous industrial operation could not be taken; (iv) the samples of AAQM were also diluted and did not represent the actual environmental scenario of the industry. The CPCB was also preparing to issue directions to such industry for installation of 'Continuous Emission Monitoring System' so as to avoid possibilities of by passing the pollution control devices. Joint Inspection Team prayed for further time to conduct the inspection. The joint inspection team finally inspected this industry on 10<sup>th</sup> October, 2014. After detailed inspection, the joint inspection team, inter-alia, but primarily, noticed further more deficiencies and made appropriate recommendations. 1). No separate water meter system was provided for 3 nos. of in-house tube-wells of the industry. 25 to 30 % of the total quantity of water consumed, was utilised by Induction Furnace Unit and remaining by the Rolling Mill division. (2) Documents pertaining to permission from the Central Ground Water Authority were not provided to the inspecting team.

(3) Although there is a network of sewer lines in the industrial area but found defunct. The inspecting team besides making recommendations in relation to above, had also earlier directed, installation of CEMS within six months from the date of earlier inspections.

18. When the matter was to be heard by the Tribunal, learned Counsel appearing for the Industry filed another application being M.A. No. 762/2014 praying that the order dated 17<sup>th</sup> September, 2014 in M.A. No. 44/2013 be recalled. This prayer had been made by the Applicant for the reason that the proceedings in M.A. No. 44/2013 have been stayed by the Hon'ble Supreme Court of India and no order whatsoever could be passed by the Tribunal in relation to preventing and control of pollution and any other matter relating thereto. Secondly, the industry was not a polluting industry and the Tribunal vide its order dated 25<sup>th</sup> February, 2013, and subsequent order had discharged other industries which were similarly situated and the Applicant industry is also entitled to be discharged.

19. Vide order dated 17<sup>th</sup> September, 2014, the Tribunal, in furtherance to the order of the Hon'ble Supreme Court dated 11<sup>th</sup> April, 2014, had directed the joint inspection team to report to the Tribunal the capacity of the septic tank, whether the domestic discharge was being made and the methods adopted for collection and treatment of sewage, etc. The Committee was also to report the source of water and payment of cess in accordance with the Water Cess Act and also to report on the industrial pollution

caused by the unit. These directions were passed in view of the fact that deficiencies (in functioning of the plant as well as water source and domestic waste) had been pointed out.

20. Thus, the directions in the order dated 17<sup>th</sup> September, 2014, were primarily for inspection as directed by the Hon'ble Supreme Court specifically and were based on the subsequent facts relating to water source and treatment of domestic discharge and sewage.

21. We have already noticed that the prayer in M.A. No. 44 of 2013 is in fact completely granted by the order of the Hon'ble Supreme Court and by the Tribunal and sufficient time has been granted to the unit to install antipollution devices. Despite grant of such time, the deficiencies have not been removed till date, even as pointed out in the joint inspection reports dated 10<sup>th</sup> October, 2014 and 2<sup>nd</sup> August, 2014 which we have referred above.

22. We are not to accept the contention of the unit to the extent that whatever be the situation, the Hon'ble Supreme Court has permitted the industry to carry on its activity and continue to cause pollution. We have already said that whatever was stated on behalf of the applicant and other respondents, the industry was not to furnish the details of the accounts as required by this Tribunal in terms of the observation of the Hon'ble Supreme Court. The Tribunal has not passed any direction in that regard. The major source of water for the industry are three tube-wells as mentioned in the inspection report dated 10<sup>th</sup> October, 2014 and



admittedly the industry had obtained no permission from the Central Ground Water Authority to extract the ground water. This has been specifically averred by the said Authority in their Affidavit dated 15<sup>th</sup> November, 2014, filed before the Tribunal. As per the different inspection reports, besides causing industrial pollution, the industry was also discharging domestic waste and sewage adding to the pollution. Furthermore, the industry was consuming huge quantity of water. It had not paid the requisite amount of cess for consumption of ground water, in accordance with the provisions of the Water Cess Act for all these years. In face of these circumstances, particularly when the events and deficiencies relating to the period subsequent to 25<sup>th</sup> April, 2013 primarily fall in the ambit of the original Application No. 36 of 2012, where hundreds of industries are involved and is not remotely connected with the prayer made in M.A. No. 44 of 2013, the Tribunal is expected to proceed in accordance with law.

23. As far as, the other contention of the applicant is concerned, that large number of industries had been discharged by the Tribunal who were similarly situated like the applicant is a contention without any basis and substance.

24. Only those industries have been discharged under the orders of the Tribunal who were found to be compliant and non-polluting. Further, the joint inspection team and/or the UPPCB had submitted its inspection report stating that antipollution devices were functioning and the units were not polluting the environment. Despite grant of time by the Tribunal and by the

Hon'ble Supreme Court, this industry has failed to completely comply with the directions and become a compliant and non-polluting industry.

25. It is the statutory obligation of every industry/unit to comply with the parameters specified under the environmental laws. It has to be a complying industry as far as discharge of industrial/trade effluent, sewage, domestic discharges are concerned. Also, wherever it is extracting ground water, it must comply with the provisions of the Water Cess Act. This Act is specified in Schedule-I to the NGT Act and is, therefore, within the ambit and scope of the jurisdiction of the Tribunal.

26. Another very important aspect of the present case falling within the ambit and scope of Original Application No. 36/2012 is that this unit has been apparently and undisputedly polluting the environment for years together. According to the affidavit filed on behalf of UPPCB, this industry has even in the recent past operated for 997 days without consent (including a period from 1<sup>st</sup> January, 2014 to 8<sup>th</sup> August, 2014 as per inspection report dated 17<sup>th</sup> September, 2014). Besides this, the miscellaneous application no. 44 of 2013 and the affidavit filed on behalf of the industry itself clearly admits the fact that prior to 25<sup>th</sup> April, 2013 the industry had not installed antipollution devices. Obviously, the industry was a polluting industry, both for emissions and discharge of trade effluents. Keeping in view the iron manufacturing activity of the industry in absence of ETP and non-installation of other antipollution devices, the industry could, by

no stretch of imagination, be termed as a compliant or non-polluting industry.

27. In the peculiar circumstances of the case and for the reasons afore-stated, we pass the following order:-

1. M.A. No. 44/2013 has become infructuous as the only prayer in the said application was for granting of time for revamping and installation of most modern equipments to bring the air pollution within permissible limits till 25<sup>th</sup> April, 2013. Now nearly one and a half years has passed therefrom.
2. We direct the joint inspection team (a scientist from the MoEF, Sr. Environmental Engineer from Central Pollution Control Board and Sr. Environmental Engineer from the Uttar Pradesh Pollution Control Board) to inspect the unit and submit its final report to the Tribunal clearly stating whether the industry is complying all the directions issued by the Boards and is a non-polluting industry. The trade effluent, stack and ambient air quality samples would be collected and analysed and the report should be submitted to the Tribunal. The samples would be tested at the laboratory of the Central Pollution Control Board. The joint inspection team should clearly report as to the quantum of extraction of ground water by the industry, the cess payable and amount of cess actually paid by the industry for all these years. It should also be placed on record whether the industry has obtained the permission

from the Central Ground Water Authority for extraction of ground water, if so, with effect from which date. The joint inspection team shall also verify if the units have authorisation to deal with hazardous wastes, if the same is found in the premises of the unit.

3. The industry is to show cause as to why it should not be directed to pay compensation for polluting the environment and its restitution for the period when it operated without consent of the Board and admittedly caused pollution as it had not installed proper antipollution devices to control and check air and water pollution.
4. We also direct the Uttar Pradesh Pollution Control Board and the competent authority under the Water (Prevention and Control of Pollution) Cess Act, 1977 to issue notice to all the industries, particularly industries like M/s. Rathi Steel, wherever they were extracting ground water and were not paying appropriate cess in accordance with Water (Prevention and Control of Pollution) Cess Act, 1977. Further, if such industry is causing any pollution i.e. air and water by their activity, show cause notices shall be issued by the Board within two weeks from the date of this order and it should proceed with such industries in accordance with law.

28. This application is accordingly disposed of with the above directions and without any order as to costs.



**Justice Swatanter Kumar**  
**Chairperson**

**Justice U.D. Salvi**  
**Judicial Member**

**Dr. D.K. Agrawal**  
**Expert Member**

**Prof. A.R. Yousuf**  
**Expert Member**

**New Delhi**  
13<sup>th</sup> January, 2015

**NGT**