

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

.....

**ORIGINAL APPLICATION NO. 157 OF 2014**

**IN THE MATTER OF:**

Sarav Shikshit Evam Berojgar Janhit  
Sangharsh Samiti Barmana,  
Distt. Bilaspur, Himachal Pradesh  
Through its President  
Sh. Amarjeet

.....Applicant

Versus

1. State of Himachal Pradesh  
Through Principal Secretary (Industries,)  
H.P. Secretariat, Shimla-171002 (H.P.)
2. Principal Secretary (Health,)  
Govt. of H.P. Secretariat, Shimla-171002 (H.P.)
3. Principal Secretary (Agriculture,)  
Govt. of H.P. Secretariat, Shimla-171002 (H.P.)
4. Deputy Commissioner, Bilaspur,  
Disstt. Bilaspur, Himachal Pradesh
5. Himachal Pradesh State Pollution Control Board,  
New Shimla, though its Member Secretary
6. Chief Medical Officer, Bilaspur,  
Distt. Bilaspur, Himachal Pradesh.
7. District Agriculture Officer, Bilaspur,  
Distt. Bilaspur, Himachal Pradesh
8. The General Manager,  
Associate Cement Company (ACC) Ltd.  
Gagal Cement Works, P.O. Barmana,  
Distt. Bilaspur, Himachal Pradesh

..... Respondents

**COUNSEL FOR APPLICANT:**

Mr. Y.S. Thakur, Advocate

**COUNSEL FOR RESPONDENT:**

Mr. Anup Rattan, AAG, and Mr. Vivek Singh Attri, Dy. A.G. Mr. J.S. Guleria, AGG for State of H.P

Mr. Kapil Dev Sood, Sr. Advocate, Mr. Sanjeev Sood, Advocate and Mr. Chinmay Pradip Sharma, Adv. for respondent no. 8

**JUDGMENT**

**PRESENT:**

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

**Hon'ble Mr. Justice M.S. Nambiar (Judicial Member)**

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

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

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**Reserved on: 30<sup>th</sup> September, 2015**

**Pronounced on: 10<sup>th</sup> December, 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)**

The Applicant, a registered society under the Cooperative Societies Registration Act, 2006 through its President has approached the Tribunal under Section 14 and 15 read with Section 17 of the National Green Tribunal Act, 2010 (for short NGT Act) with a prayer that the Tribunal should pass an order/direction to the official respondents to take appropriate steps against respondent no. 8 (Associate Cement Company Ltd.) as the unit is causing air and water pollution and consequent health hazards in and around its premises located near Barmana, District Bilaspur, State of Himachal Pradesh. The plant of respondent no. 8 was commissioned on 12<sup>th</sup> March, 1984 near to the National Highway-21. Initially, the plant was installed with a capacity of 5.6 lakh tons of cement production per annum which was later increased to a

total capacity of 4.64 million tons per annum. The applicant submits that the inhabitants of the area, small farmers had extended their full co-operation to the respondent company and had vacated their valuable lands for establishment of the plant. With the passage of time, the residents of the area faced very serious health problems posed by the air pollution and noise emitted from the plant. It is further submitted by the applicant that the residential area of the villagers are within the radius of about 10-150 meters from the factory and the residents of the area are prone to skin diseases and respiratory problems. The grass in the agricultural fields also get covered with dust emitting from cement unit and same cannot be fed to the cattle. These are the major problems and environmental hazards that the villagers of that area are facing continuously. The applicant submitted that they had made representations to the Government and to the Pollution Control Board and vide letter dated 10<sup>th</sup> January, 2012 a Committee was constituted to prepare a report. The team visited the area on 16<sup>th</sup> January, 2012 and 17<sup>th</sup> January, 2012 and discussed the issues raised by the people of the affected areas and also inspected the unit. The team suggested certain preventive measures which the industry was required to take and the following extract of the report can usefully be reproduced at this stage:

*The issues of the complaint were also discussed with the Sh. Shrivastava, Sh. Sandeep Sharma, and other officials of M/s ACC Ltd regarding social issues. As decision on these social issues are to be taken by the Government /Administration or by the ACC Management and are beyond the powers vested with the State Pollution Control Board. However, as a matter of local issue, the Deputy*

*Commissioner, Bilaspur may convene a meeting of the complainants and ACC Ltd, Barmana to look for the solution to resolve the social issues of the local residents as a part of Corporate Social Responsibility activity.*

*As the industrial activity of the said unit and residential area are both contiguous to each other and no buffer zone exists in between. So in view of this existing situation in which some of the residential houses existing very close to the unit's boundary wall, the unit is required to take some more steps for improvement in the ambient air quality w.r.t noise and air by providing acoustic measures around the electrical motors, machines etc., at the boundary walls and to provide permanent covered and enclose shed for the some of the material lying (although covered temporarily by tarpauli) storage/stacking of the material gypsum, ash, coal etc. to further prevent the chances of fugitive emission in case of any windy condition and material handling.*

*The unit is also required to provide acoustic measures/acoustic wall of adequate height along the road side towards village Barhai to reduce the noise generated from crusher and especially from vehicular movements as the houses are just 50-80 m away from the crushers site in the mining area and unit may be directed to restrict the operation of crusher during night hours. The unit may explore the possibility of covering the crusher with acoustic material to further reduce the noise level.*

*The unit is required to replace the old ducts/joints/bag filters to avoid/reduce the frequency of leakage/bursting of ducts/bags and quick replacement of punctured filter bags by the environmental surveillance team of the unit and regular cleaning of all the points/plants and machinery where ever the dust can accumulate/deposit.*

*As per the results of the ambient air quality obtained from the online ambient air quality station some value of RSPM are exceeding the prescribed standards during the normal working days when there were no rains. Unit may be directed to maintain the ambient air quality standards and take necessary steps to bring the RSPM level in the ambient air within limit.*

*Continuous Ambient Air Quality Monitoring Station installed by the unit to be got calibrated for accurate continuous ambient air quality monitoring results.*

*A survey may be got conducted from the concerned Dept./agency to study the impact on health of the nearby public and on agriculture, vegetation due to activity of the said cement plant.*

2. It is submitted by the applicant that effective steps were not taken by the industry and even the authorities have not performed

their duties. The applicant made representations on 06<sup>th</sup> March, 2012 and 17<sup>th</sup> March, 2012 to the authorities including Himachal Pradesh Pollution Control Board, requesting them to take appropriate action against respondent no. 8. According to the applicant, the capacity of the unit should not have been expanded. In light of these averments, the applicant has prayed that the official respondent should be directed to take appropriate action against the respondent no. 8. Penalties on respondent no. 8 should be imposed to compensate the applicant and residents of the area because of the health hazards that they have been exposed to and to appoint an Expert Committee to examine the impacts of running of the unit of respondent no. 8 upon air and water and on the health of the inhabitants living in the area.

3. The application was vehemently contested by the respondent no. 8. Besides denying the averments made in the application, respondent no. 8 has taken up the plea that the application is barred by time, it is a motivated application and is beyond the purview and jurisdiction of the NGT Act. It is further stated that the unit of respondent no. 8 provides livelihood to large number of people as well as revenue to the State and it is not causing any air or water pollution. According to the respondent no. 8, no serious complaint has ever been received and respondent no. 8 has invested more than 94 crores in installation of Pollution Control Equipment and the annual maintenance expenditure on Pollution Control Equipment is more than 3.22 crores per annum.

4. The respondent no. 8 has developed a green belt in order to ensure proper adherence to the environmental aspects. The Himachal Pradesh Pollution Control Board (for short 'HPPCB') had inspected the premises of respondent no. 8 and had taken samples. On the analysis of such samples, it has been shown that all emissions and dust are within the limits prescribed under law. The particulate matters PM 10 and PM 2.5 are within the limits prescribed and Monitoring Reports depicting the same have been placed on record. Respondent no. 8 has all the necessary approvals and permissions, both from the Centre and State Government for operation of the cement plant. The noise levels had also been measured in the unit of respondent no. 8 and were found to be within the permissible limits. Respondent no. 8 claims to have installed highly efficient bag filters. Also barricading sheets have been installed to create barrier so as to obstruct the wind flow. 5000 saplings were planted in order to satisfy its Corporate Social Responsibility. 90 tons of plastic waste have been received by industry which was received from various districts of Himachal Pradesh. It has also installed sprinklers. The allegations with regard to health hazard have been denied and it has been specifically stated that people have not got sick or suffered health problems because of the activity of the respondent no. 8. The respondent no. 8 has placed on record various photographs showing the green belt and the wind barriers erected by the said respondent. It has also placed on record various analysis reports in

support of its case. It has been specifically denied that the crops get covered with cement dust and therefore, there is loss caused to the villagers and the fodder of the animals is rendered unfit for feeding cattle. The State of Himachal Pradesh has filed the formal reply however, the HPPCB has filed a detailed reply. In their reply it has been stated that the Consent to Operate was granted on 22<sup>nd</sup> March, 1982. It is admitted that the air pollution device has been installed. The Regional Officer of the Board had conducted regular checks and monitoring of the unit from time to time. The recent result of stack monitoring of the unit indicates that the parameters are conforming to the prescribed standards. The result of ambient air and the noise monitoring of the unit are also within the prescribed standards except on few occasions which may be contributory due to other factors like movement of traffic on the highway or other human activities.

5. As regards to the water quality, it is submitted that cement industry itself does not discharge any industrial effluent and as such impact on water quality due to cement production is insignificant. The water quality of river upstream and downstream of the unit of the respondent no. 8 was checked and the result showed that the water quality is within the standards prescribed, specifically B and C of the criteria prescribed by the Central Pollution Control Board (for short 'CPCB'). The unit has dry process which does not generate any effluent. On the complaint received on 27<sup>th</sup> January, 2012 the unit was inspected on some dates when the

parameters were found to be excessive. The Board had issued directions vide its order dated 21<sup>st</sup> June, 2012. The compliance report was submitted on 12<sup>th</sup> July, 2012 thereafter the parameters were found to be in order. It is admitted that the complaints were received from the local residents and ambient air pollution sample was collected in November and December, 2013 in relation to the houses of the residents. The emission was found to be above the prescribed limits, accordingly notices dated 24<sup>th</sup> December, 2013 were issued to both the unit I and II of respondent no. 8 for ensuring compliance to the norms. In response to these notices the respondent no. 8 submitted its compliance report on 31<sup>st</sup> December, 2013. The sample that were taken in March and May, 2014 were found to be within the limits. HPPCB in their reply have submitted that the sewage from the factory and the colonies is collected in the Sewage Treatment Plant, which is regularly checked and monitored by the Regional Officer and the results of the effluent, on analysis, were found to be within the limits, the water is used for gardening etc. It will be useful to refer to the following paras of the reply of the Board:

*8-9 Contents of the para 8-9 relate to representations made by applicant to different concerned authorities & information on sample reports which are matter of record. It is submitted that applicant is referring the monitoring data of 2012. It is submitted that the State Board conducts inspections and monitor the air and noise of the unit on regular basis and whenever any shortcomings are observed notices are issued for ensuring compliance. As already submitted in para supra on the complaint of the applicants, a Committee of the Board visited the unit and based on the report, a notice dated 27-01-2012 was served upon the unit for compliance of Committee's recommendations. Thereafter the Environment Engineer,*



HPPCB, Bilasur conducted the air and noise monitoring of the unit on 04.04.2010 and 10.04.2012, 15.05.2012, 16.05.2012 & 25.05.2012, wherein parameters at some places were found above the prescribed limits, therefore unit was issued directions on 21.06.2012 (annexed as Annexure R-5/8) to ensure regular sprinkling and cleaning of the premises, get the internal road metalled and to operate and maintain the pollution control devices properly. In response to the notice respondent unit had submitted compliance report dated 12-7-2012 with respect to action taken by it which is annexed as Annexure R-5/9. As already submitted the respondent Board is conducting regular checks and monitoring of the unit and recent results of air and noise are conforming to the norms. Rest of the contents of the para relate to Health Department and Agriculture Department.

15 In reply to para 15 it is submitted that as per information received from Regional Office, Bilaspur respondent unit has provided requisite pollution control measures for the control of pollution like bag filters, electorstatic precipitators, and stacks of adequate heights, water sprinklers, and covers over belt conveyors, use of vacuum cleaners, sewage treatment plant and plantation etc. The detail of Air Pollution Control Devices is annexed as Annexure R-5/1. As already submitted in para supra the State Board is ensuring compliance of norms by regular intervention by way of inspections/monitoring and issuing notices/directions from time to time whenever any deviation from the norms is observed.

16 In reply to para 16 it is submitted that manual ambient air quality monitoring stations have been installed at five different locations i.e. Mines Office, Gypsy hut, house of Sh. Vatan Singh vill, Barmana, Canteen buildings and club (In residential colony), which takes into account the likely impact of all the emissions from cement plant in the area. As far as Continuous Ambient Air Quality Monitoring Station (CAAQMS) is concerned, same has been installed to monitor the emissions on-line from the cement production. This station is linked with CPCB and HPPCB servers. However, the continuous Real time online monitoring stations requires air conditioning and other support infrastructure to maintain required temperatures and standard conditions. As such cannot be provided on each location due to technical feasibility. The 'Kainchi-mor' and other areas on the Manali Highway adjacent to cement plant carry a very high traffic density which also contribute to the dust levels in the ambient air. Thus locating a real-time online monitoring station on such locations may not give the representative values of dust contribution due to cement production.

*17. Contents of para 17 are admitted to the extent that 8 MW power plant as alleged has been installed by the respondent no. 8. This power plant utilises heat from the waste hot gases arising from various unit operations while manufacturing the cement and thus helps in reducing the atmospheric temperature of the area which otherwise would have escaped into the atmosphere. Therefore, this is a captive power plant, which operates without using any fuel. The State Board has granted the Consent to this captive power plant which is annexed as Annexure- R-5/13.*

6. The Board, along with reply has also placed on record analysis reports in relation to the levels of Total Suspended Solids (TSS), BOD, COD, Oil & Grease and PH. The analysis report with regard to R.S.P.M, Sulphur dioxide, Nitrogen Oxide and Ambient Air Quality reports have been placed on record. The Board has also filed a statement of Water quality monitoring data and Ambient Air Quality. These reports quite tally with the averments made in the reply of the Board. In some reports, the parameters are excessive to the prescribed limits while in others, they have been found to be safely within the prescribed standards. We may also notice here that the parties have filed a DVD and CD on record in support of their averments.

### **DISCUSSION ON MERIT**

7. First and foremost, we would like to deal with the objections taken by the respondent no.8 in regard to limitation and jurisdiction of this Tribunal. Both the objections taken by respondent no. 8 are without merit and in fact, during the course of arguments they were not even pressed before the Tribunal. As far

as question of limitation is concerned, it is a 'recurring cause of action' and every event of pollution will give rise to a fresh 'cause of action' and cannot be hit by the concept of 'cause of action' first arose as enumerated under section 14 of the NGT Act. The industry had been granted consent in the year 1982 thereafter on regular interval fresh consent has been granted to the unit to operate. Not only this, even its manufacturing capacity was expanded. Various inspections have been conducted by the Board and the unit have been defaulting on some of the occasions while on other occasions it has been found to be complying. Every time it has been found to be defaulting or emitting or making noise in excess to the prescribed parameters, it would give a new cause of action and in that sense a recurring cause of action. Every new and complete cause of action would entitle applicant to a fresh period of limitation to approach the Tribunal. Furthermore, the applicant have also prayed for the relief of compensation which would be covered under Section 15 read with Section 17 of the NGT Act where the limitation prescribed is 5 years from the date when the cause of action first arose. The applicant has specifically relied upon the violations made by the respondent no. 8 in the year 2012-13 and onwards. As far as jurisdiction of the Tribunal is concerned, all the prayers raised in the application are within the ambit and scope of Section 14 read with Section 17 of the NGT Act. The respondent no. 8 has failed to point out as to which of the prayers made by the applicant falls beyond the ambit and scope of the NGT Act. Not only this, the case of the applicant is even

supported by the reply filed by the HPPCB. It is correct that this Tribunal would not enter into the jurisdiction as to whether the applicant or the villagers had been awarded proper compensation or not under the provisions of Land Acquisition (Himachal Pradesh Amendment) Act, 1979. That is the matter with which Tribunal is not concerned directly or indirectly. It squarely falls beyond the ambit and scope of the Acts mentioned in the Schedule of the NGT Act. The applicant cannot raise a plea whether they received appropriate compensation and had left their lands voluntarily or otherwise. Except to that extent, we are of the considered view that the application filed by the applicant squarely falls within the ambit and scope of the NGT Act. (refer to *The Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors.* 2015 ALL (I) NGT Reporter (2) (Delhi) 81. and *Medha Patekar vs. Ministry of Environment and Forest.* 2013 All (I) NGT Reporter (2) (Delhi) 174)

8. From the above facts, it is clear that from the view point of the environment, the unit of Respondent no. 8 is to be examined by the Tribunal with reference to the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, The Environment (Protection) Act, 1986 and the Noise Pollution (Regulation and Control) Rules, 2000 inter alia but primarily on the following aspects:

1. Air pollution from stack emission as well as ambient air quality as a result of activity carried out by respondent no.8.
2. Noise pollution resulting from the activity of respondent no. 8.

3. Discharge of treated sewage water from the STPs of the unit and installation of complete and comprehensive environmental protection devices.

9. There is really not much dispute on facts from the replies filed by the Board as well as by the respondent no. 8 and the applicant. It is clear that the unit was found violating the prescribed norms on different occasions particularly during the years 2012-13. While on some other occasions and particularly after issuance of notices and directions by the Board, in discharging of their statutory duties, the unit was found to be complying and non-polluting. The analysis reports on record and other documentary evidence also indicates the similar situation. Respondent no. 8 has claimed that it has spent huge amount in installing anti-pollution devices, developing the green belt and installation and operationalization of the STP plant with the taking of these measures which is admitted by the Board as well. The unit has been able to prevent and control pollution to a large extent. In fact, on number of occasions when their samples were analysed, the stack air quality, discharge from the STP and the noise pollution levels were found to be within the prescribed limits.

10. In view of the reply of the Board, analysis reports, photographs filed and the comparative statement of water quality and ambient air quality on record, we are unable to find merit in the contentions of the applicant that the unit of the respondent no. 8 is a continuous concern of air pollution and health hazards for the

villagers. It is an apparent case before us that the unit in question was commenced in the year 1982, in which the villagers effectively participated. Industry had been established long ago and as evident from the record, it has taken preventive measures and installed pollution control devices with the passage of time and has complied with the directions issued by the Tribunal from time to time. The applicant himself has not made a prayer in the application that this unit should be closed, in fact what he prays is that there should be more effective, purposeful and preventive regulatory regime in relation to the unit of respondent no. 8.

11. The unit had been found to be wanting or defaulting on some occasions by the Board. In order to illustratively demonstrate the same we may refer to the notice issued by the Board on 27<sup>th</sup> January, 2012 that pointed out some patent default in carrying on of manufacturing activity by respondent no. 8 on the relevant time.

*H.P. State Pollution Control Board  
"HIM PARIVESH"  
Phase-III, New Shimla-171009.*

*Dated*

*No. PCB/(50-C)/M/s ACC Unit-I, Vol-XII/Bilaspur/11*

*From: Member Secretary*

*To*

*M/s Associated Cement Company Ltd.,  
Gagal Cement Works,  
Village & Post Office Barmana, Distt. Bilaspur, HP*

***Subject:- Notice under the Provisions of Air  
(Prevention & Control of Pollution) Act, 1981.***

*Whereas resolution by the residents of Barman, Teshil Sadar, Distt. Bilaspur was forwarded from Spl. Secretary (Env. S&T) to the Govt. of Himachal regarding pollution due to ACC Barmana.*

Whereas a committee comprising of Scientific Officer (HO), Aast. Environmental Engineer, HPSPCB, Bilaspur, and Jr. Scientific Officer, (HO) visited the location on 16/01/2012 and 17/01/2012 and submitted its report with the following observations:-

- a) There is fugitive emission in the cement plant from the second unit due to leakages from ducts, bag house.
- b) No buffer zone exists in between the unit and the residential area.
- c) The main source of the noise pollution in the mining is the movement of vehicle i.e. tipper (caterpillar type), excavation machines. The tippers are bringing the raw material from the mines to the crusher and feeding into the hopper of the crusher.
- d) The machine/motors in the plant area were not covered acoustically leading/adding to noise pollution.
- e) The drainage near police station outside the cement unit was not cleaned.
- f) Raw material required to be kept inside the enclosed and covered shed (transparent sheets may be provided for light) and provision of 2 gates be made for entry and exit. In case of storm/winds gates can be closed prevent flying of ash, dust etc from unit.
- g) Unit has installed online ambient air quality monitoring station in the residential area across the main road. The record of the ambient air quality during the spot was noted as:  
PM 10 = 82.0 micro gram/m<sup>3</sup> and PM 2.5 = 58.0 microgram/m<sup>3</sup>.

Whereas the results of the Ambient Air Quality from the Online Ambient Air Quality Station of RSPM recorded on 20/12/2011, 24/12/2011, 25/12/2011, 26/12/2011, 27/12/2011, 31/12/2011 are exceeding the prescribed standards during the normal working days when there were no rains. Two results out of six samples collected of noise monitoring conducted around the cement unit, mining area and near house of complainants were found above limit.

Whereas facts stated above tantamount to the violation of the provisions contained in Section 21 of Air (Prevention and Control) Act, 1981 constituting a cognizable offence punishable under the aforesaid Act;

Now therefore, in exercise of powers under Air Act & in consideration of the facts stated above you are hereby directed to conduct a survey from the concerned Department/agency to study the impact on health of the nearby public and on agriculture, vegetation due to activity of your plant. You are also required to get calibrated your Continuous Ambient Air Quality Monitoring Station for accurate results and take steps for

*improvement as per the observations of the Committee & to operate the pollution control devices properly.*

*Member Secretary*

*HPSPCB*

*Dated: 27-01-2012*

12. From the above notice it is clear that the respondent no. 8 has failed to check and discharge its statutory duty to carry on its manufacturing activity within the prescribed standards, particularly in relation to air and noise. The notice also indicates that though the equipment had been installed but they were to be maintained and operated properly. Thus, this was the pollution resulting from in-action, bad maintenance and apparent negligence on the part of the respondent no. 8. The ambient air quality from the Ambient Air Quality Monitoring Station was found to be excessive on the dates specifically mentioned therein.

13. It is not a Corporate Social Responsibility of respondent no. 8 but it is a statutory requirement that it must maintain its operations of manufacturing strictly within the prescribed parameters at all the relevant times. Burden to show that it is performing its statutory duty without default would always be on respondent no. 8. From the documents on record and the replies it is evident that on some of the occasions the unit of respondent has been found to be wanting and non-compliant. The applicant however, has not placed any material on record to show that the residents of the nearby villages or the houses which are close to the unit have been really suffering from the diseases of any kind, as a result of the emissions and noise pollution from the unit of



respondent no. 8. There is also no direct evidence on record to show that the grass of the surrounding areas have been polluted or has dried up because of dust emission and therefore, the cattle of the area cannot be fed. To counter this the respondent no. 8 has placed large number of photographs on record showing complete greenery around the unit as well as healthy crops around the area. Thus it is not possible to hold at this stage and on the basis of the documents on record that the emissions from the unit of respondent no. 8 has definitely resulted in health hazard and causing damage to the agricultural activity of the villagers. Despite this, it does not mean that there is no obligation on the part of the unit of the respondent no. 8 to ensure that it does not cause any health or agricultural hazards which are part of environment itself due to carrying on of its activity. It is expected to fully comply with the requirements of the Precautionary Principle. The Polluters Pay Principle would arise from the terms and conditions of the order of Consent to Operate granted by the Board to respondent no. 8 as well as from the law enforced. The Respondent no. 8 states that it has taken approval from all the Central and State Authorities as well as has in discharge of its Corporate Social Responsibility taken the plastic waste which it used as a fuel for generation purposes. Keeping these factors in mind the Tribunal has to invoke both the Precautionary Principle and Polluter Pays Principle. The respondent no. 8 is to be mandated to ensure compliance to the required parameters without default and is under the constant vigilance of the Board and other concerned authorities. The

applicant has prayed for awarding of compensation to himself and to the residents of the area for violating their fundamental rights and causing serious pollution. However, the details, specific particulars thereto are conspicuous by their very absence in the application. Wherever the applicant claims damages or environmental compensation for loss suffered by him as a consequence of pollution resulting from carrying on of activity by the industry, the onus lies on him to prove such loss. The applicant has led no evidence in individual cases to show what loss they have suffered and what damage have been caused to their persons or property individually. Thus it is difficult for the Tribunal to award individual environmental compensation in terms of Section 17 of the NGT Act. However, it is undisputable that respondent no. 8 has violated the prescribed parameters in relation to air, noise and environmental pollution. The pollution has resulted from emissions as well as from operation of the heavy machinery causing noise pollution. The source of pollution is obviously attributable to the operation of the Plant, noise generated by the Plant, transportation, loading, unloading and allied activities of the Plant. The analysis reports and inspection reports from the Board do demonstrate that there was at a given point of time violations of the prescribed parameters. It is again not disputed that people are living in the close vicinity to the Plant. It would therefore have adverse impacts on environment and public health. From the above, it is clear that the industry was defaulting during 2012-13, where after it took remedial measures, which have been

confirmed in the inspecting report of the Board. It may be pointed out that the respondent no. 8 did not maintain the requisite buffer zone between the industrial unit and the residential area continuously up to, at least January, 2012 as is clearly mentioned in the notice issued on 27<sup>th</sup> January, 2012. Similarly, the unit was violating the norms in respect of noise levels for the said period as well. These violations even continued after the above mentioned notice. In respect of both the above violations respondent no. 8 has nothing in defence and accordingly needs to be saddled with the environmental compensation for violating the norms continuously till the year 2012 at least.

Then there have been reports of exceeding the limits with respect to air pollution levels at several times, for which respondent needs to be penalized. The letter dated 27<sup>th</sup> January, 2012 amongst others, clearly indicates the non-compliance by the industry and pollution arising there from. Thus the industry is liable to pay environmental compensation in general. Wherever industry violates the conditions of the Consent Order, its liability to pay environmental compensation automatically arise. It is primarily for the reason that it is for the industry to show that they were operating at all the relevant times within the prescribed standards and in consonance with the conditions of the Consent Order. In our considered view and particularly in face of the reports of the Board which we have afore-referred the industry has to be held

liable to pay environmental compensation on the principle of 'Polluter Pays' and 'No Fault Liability'.

14. The Tribunal has to pass some directions to ensure that even the intervening episodes of pollution do not result in future and there is no possibility of environmental and health hazards resulting from the activity of the manufacturing of cement by respondent no. 8. In view of above discussion, we pass the following directions:

1. The respondent no. 8 shall within a period of four weeks comply with all the directions that have been issued by the Pollution Control Board and all other concerned authorities in regard to environment. It will take all anti-pollution devices and ensure that its emissions, noise levels and the discharge from the STP is strictly within the prescribed parameters and does not exceed therefrom under any circumstances.
2. After the period of one month the unit will be inspected by the Joint Inspection Team consisting of the following members:
  - a. Representative of the Central Pollution Control Board.
  - b. Senior representative of the Himachal Pradesh Pollution Control Board.
  - c. Senior Officer from the Department of Industries, State of Himachal Pradesh.

d. Senior Doctor from the Directorate of Health from the State of Himachal Pradesh.

3. The inspecting team shall submit a complete and comprehensive report to the Tribunal inter-alia but primarily and particularly on creation of green belt, wind barriers, ambient air quality stack samples, discharge from the STP, noise levels and maintenance of anti-pollution devices fixed by the industry.
4. This Committee would also deal with the health aspects of the villagers living around the industry. It will clearly show if there is a direct nexus between the diseases, if any, suffered by such people as a result of cement manufacturing activity by respondent no. 8 at the site in question.
5. The report shall be submitted to the Tribunal within two weeks from the date of passing of this order.
6. The respondent no. 8 shall ensure that the transportation of cement from its premises to and trucks entering its premises for loading of cement should be properly cleaned, should be covered so as to prevent any dust emissions during loading and transportation and take all other possible measures in that regard and as recommended by the Committee.

7. The respondent no. 8 shall pay environmental compensation for the reasons afore-recorded for the period it has been operating in violation of the prescribed norms without properly managing the noise pollution levels and polluting the environment, particularly, in relation to the residential blocks around the factory. This pollution was for considerable period but more particularly, for the year 2012-13 for which sufficient data and document have been placed on record. Subsequently we hold and direct the respondent no. 8 to be liable to pay environmental compensation to the extent of Rs. 50 lakhs (refer to Sterlite Industries (India) Ltd. v. Union of India (UOI) and Ors., (2013 ) 4 SCC 575). This compensation shall be paid in the following manner;

- a. Rs. 20 lakhs to the CPCB,
- b. Rs.20 lakhs to the HPPCB and
- c. Rs.10 lakhs to the Government Hospital at Bilaspur.

All this amount will be used by the respective Boards for taking the remedial measures for improving the environmental and ecological damage that has occurred in the past, on and around the premise of the industry and would ensure that there is no pollution in future. The compensation amount shall also be used for upgradation, improving the environment, sanitation, health situation of the affected people.

The compensation amount which is to be deposited with the Government Hospital, Bilaspur shall be exclusively used for the health care of the persons living in the close vicinity of the plant of respondent no. 8. If any specific investigations are required to be conducted to establish the linkage between the manufacturing activity and the health hazards existing in the area in question, such amount shall be spend from this allocated fund. The people shall be provided with free medication.

15. Miscellaneous Application No. 697 of 2014 which is for condonation of delay of fifteen days in filing the present application has been allowed.

16. The application is thus finally disposed of with the above directions however, no order as to cost.

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

**Justice M.S. Nambiar**  
**Judicial Member**

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

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

New Delhi  
10<sup>th</sup> December, 2015