Item No. NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Appeal No. 21 of 2019 (SZ)

(Through Video Conference)

IN THE MATTER OF:

Nutra Specialities Pvt. Ltd.,
Through their Company Secretary,
(now Venkata Narayana Active Ingredients Pvt. Ltd.,)
Chandrapadiya Village,
Vinjamur Mandal,
SPSR Nellore District,
Andhra Pradesh ... Appellant

Vs.

1.The Member Secretary,
Central Pollution Control Board,
through their Member Secretary,
East Arjun Nagar, Delhi 110032.

2. Andhra Pradesh Pollution Control Board,
through their Member Secretary,
Industrial Estate, Sanath Nagar,
Hyderabad – 500038.

3. CPCB Regional Directorate (South)
through their Regional Director,
Central Pollution Control Board,
Thimmaiah Main Road,
Shiva nagar,
Bangalore – 560010.

4. Ministry of Environment, Forests &
Climate Change,
through The Advisor (CP Divn.)
Aliganj, Jorbagh Road,
New Delhi – 110003 . .Respondents

Date of reserved for judgment:- 27 -7-2020
Date of pronouncement/uploading;- 28 -08-2020

CORAM: HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

Whether Judgment is allowed to be published on the Internet –__yes/No

Whether Judgment is to be published in the All India NGT Reporter – Yes/No

For Appellant(s) : Mr. Bhartari

For Respondent(s Mr. D.S. Ekambaram and
Mrs. Jayalakshmi for R1 and R3

JUDGEMENT

Delivered by Justice K. Ramakrishnan, Judicial Member

The above appeal has been filed against the order of the first respondent Annexure – A1 order dated 11.11.2019, issued by first respondent – Central Pollution Control Board against appellant industry, imposing environmental compensation of Rs.37,20,000/- (Rupees Thirty Seven Lakhs and Twenty Thousand only) under Section 5 of the Environment (Protection) Act, 1986.

2. It is alleged in the appeal memorandum that appellant was a company registered under the Indian Companies Act, 1956 originally under the name and style of 'Nutra Specialities Pvt. Ltd.,' having its Registered Office at Venkata Narayana Towers, III – Floor, New No.60 (Old No.35), Venkata Narayana Road, T. Nagar, Chennai and having its

unit at Chandrapadiya Village, Vinjamur Mandal, SPSR Nellore District, evidenced by Annexure –A2 - Certificate of Incorporation. The name of the company was later changed as 'Venkata Narayana Active Ingredients Pvt. Ltd., They were engaged in the manufacture of pharmaceuticals, particularly active Pharma Ingredients. They obtained 'consent to operate' from Andhra Pradesh Pollution Control Board, evidenced by Annexure –A3.

3. First respondent issued a show-cause notice dated 27.5.2015 to appellant on account of non-installation of on-line emission effluent monitoring system. Appellant took steps for the compliance and sent replies dated 2.11.2015 and 14.3.2016, requesting more time for compliance of the direction, by another letter dated 28.6.2016. Appellant informed first respondent and enclosed related documents regarding installation of on-line monitoring system in their unit. By another letter dated 23.8.2016, they informed first respondent that they had already procured Flow Meters and Web Cameras and they would be installed shortly. They also informed first respondent that they were in the process of setting up of a new ETP for their industry, replacing the old one. So they requested to cancel the 'closure' notice.

4. By direction dated 27.7.2016, first respondent issued direction, inter alia to close down the operation of the unit until installation of on-

line effluent monitoring system and uplinking the equipment with first respondent website. In the mean time, time for connecting the on-line monitoring system was extended by first respondent till 31.1.2017, evidenced by Annexure A-4.

5. Appellant unit was located in a remote Village, about 57 Kms from Nellore and having around 300 employees. They were facing difficulties relating to connectivity and they were finding it difficult to connect their on-line equipment to the website of first respondent which was subsequently solved by appellant to show their bona fides and also to fulfil their responsibility towards clean and safe environment. Due to the difficulties faced by members of the unit as well as its employees, they did not close down the unit. But at the same time, they were taking all steps to comply with the direction of first respondent in the 'closure' notice issued. They had installed on-line monitoring system in their unit with advanced Web Camera, Flow Meter, Data Logger and requisite software for uplinking and transmission of the data to the servers of first respondent. By their letter dated 26.3.2016, appellant informed first respondent regarding the installation of Flow Meter and Web Camera. The fact regarding installation of on-line connectivity of on-line monitoring system was conveyed to first respondent through their letters dated 2.1.2017, 9.1.2017 and 17.5.2017. They have completed

compliance of the direction within the extended time line of 31.1.2017 by their internal order dated 29.12.2016. The connectivity of the system was however verified by Information Technology Department of first respondent only on 5.6.2017 though they have submitted the requisite documents, including Self-Certificate to first respondent, as per their instructions long ago. They also submitted request to first respondent to revoke the 'closure' direction. The request made by appellant viz., 23.8.2016, 26.8.2016, 2.1.2017, 9.1.2017, 17.5.2017 and inspection report dated 5.6.2017 were produced as Annexure – A5.

6. First respondent by proceedings Annexure A-6 dated 18.7.2017 revoked the 'closure' direction. However, they instituted an application before the National Green Tribunal, Principal Bench, New Delhi against several industries, including appellant, as 15th respondent in that case for imposition of penalty for not closing their industry as per the 'closure' order dated 27.7.2016 as O.A.No.256 of 2017 produced as Annexure A-7. As per the directions issued in O.A.No.256 of 2017, vide Annexure – A8 proceedings dated 9.4.2019, first respondent imposed an environmental compensation of Rs.85.50 Lakhs against the appellant unit. No show cause notice or opportunity was given to appellant before imposing environment compensation. Though they submitted a letter dated 22.4.2019 explaining the circumstances under which they would

not close down the industry and requesting to revoke the impugned direction of imposing environmental compensation as per their letter dated 22.4.2019, 14.5.2019 and 24.5.2019, which were produced as Annexure A-9 , no response was received from the first respondent.

8. Since first respondent did not respond to those representations, appellant filed Annexure A-10 appeal against Annexure A-8 proceedings of imposing environmental compensation of Rs.85.50 Lakhs before the National Green Tribunal, Principal Bench, New Delhi.

9. The Principal Bench of the National Green Tribunal, New Delhi, by Annexure A-11 order dated 21.8.2019, disposed of Annexure A-10 appeal, directing first respondent to treat the impugned order, as a 'preliminary order' and after considering the objections of appellant, pass appropriate final orders in the matter in accordance with law.

10. Appellant submitted Annexure A-12 View Point dated 19.8.2019 and also submitted Annexure A-13 series submissions at the time of hearing on 18.9.2019.

11. After considering the objection, first respondent passed the present impugned Annexure A-1 proceedings, imposing environmental compensation of Rs.37.20 Lakhs, directing appellant unit to deposit the amount within 15 days for the alleged non compliance from 1.2.2017 till

4.6.2017. First respondent had taken different stand on different units in respect of imposition of environmental compensation evidenced by Annexure A-14 series. First respondent also issued direction of imposing environmental compensation against other units in respect of establishment of Effluent Treatment Plant and related issues evidenced by Annexure A15 series proceedings.

12. Appellant submitted Annexure A-16 representation, seeking revocation of the present impugned order, imposing environmental compensation of Rs.37.20 Lakhs dated 29.11.2019 evidenced by Annexure A-16.

13. Since first respondent has not taken any action on the representation submitted by appellant, the present appeal has been filed by the appellant unit.

14. The impugned order is challenged by appellant on the following grounds:

(i)Under Section 5 of the Environment (Protection) Act, 1986, first respondent has no power to impose 'environmental compensation' and as such imposition of environmental compensation by first respondent against appellant unit is without jurisdiction and on that ground, the same is liable to be set aside.

(ii) First respondent has not given any reason or method of calculation of environmental compensation in the impugned order.

(iii) It is also not clear from the proceedings as to how the original compensation of Rs.85.50 Lakhs was reduced to Rs.37.20 Lakhs and the reason for not accepting the objections of appellant and as such it cannot be said to be a speaking order.

(iv) First respondent has taken different stand in respect of several units regarding imposition of environmental compensation and the yard stick applied by first respondent for imposing environmental compensation on other units are different from the yard stick adopted for appellant unit.

(v) The method of calculation and the amount of compensation imposed are also high and excessive. They have not considered the fact that appellant had installed the on-line effluent monitoring system and also the Flow Meter and Web Camera, as directed, within the extended time of 31.1.2017 and as such they are not liable to pay any compensation, especially when there was no damage caused to environment which makes the appellant unit liable for the payment of environmental compensation.

15. First respondent filed reply statement contending as follows:

"*Appellant unit is identified as one of the 17 categories of highly polluting industries, discharging environmental pollutants directly or indirectly into the ambient water and air, having potential threat to cause adverse effect on human health and other eco-system. In order to inculcate habit of self-monitoring mechanism within the industries for complying with the prescribed standards and for strengthening the monitoring and compliance through self-regulatory mechanism, online source emission and effluent monitoring systems need to be installed and operated by the industries on 'polluter pays' principle."*

16. So, first respondent issued a direction dated 5.2.2014 under Section 18(1)(b) of the Water (Prevention & Control of Pollution) Act, 1974 and the Air (Prevention & Control of Pollution) Act, 1981 to all the State Pollution Control Boards/ Pollution Control Committees for installation of real time continuous online effluent/emission monitoring systems (OCEMS) for various parameters like pH, BOD, COD, TSS, flow, PM and other consented parameters by the 17 categories of highly polluting industries by 31.3.2015. It was also clarified vide guidelines uploaded on website of first respondent dated 7.11.2014 that Flow Meter and Web Camera may be installed in case of industries having Zero Liquid Discharge.

17. First respondent issued Annexure R-1 show-cause notice dated 27.7.2015 under Section 5 of the Environment (Protection) Act, 1986 to appellant, directing them to submit documentary evidence regarding status of installation and connectivity details of real time OCEMS to first respondent.

18. Appellant submitted Annexure R-2 reply dated 2.11.2015 stating that installation of OCEMS was under progress.

19. First respondent issued Annexure R-3 reminder letter dated 11.2.2016 stating that appellant had failed to comply with the directions issued and directed them to complete the OCEMS installation and submit documentary evidence.

20. Appellant sent Annexure R-4 letter dated 14.3.2016 stating that installation of OCEMS was under progress and requested for extension of time.

21. Thereafter, first respondent issued Annexure R-5 proceedings dated 27.7.2016 under Section 5 of the Environment (Protection) Act, 1986 'closure' direction till the installation of OCEMS in their unit.

22. Appellant submitted letter dated 26.8.2016 evidenced by Annexure A-6 informing completion of installation of OCEMS in their unit. But they had not submitted the connectivity details in that letter.

23. Thereafter, they sent Annexure R-7 letter dated 17.5.2017 informing the status of compliance along with self-certificate, giving the connectivity details, as required and also informed in that letter that they had not stopped the operation of the unit in compliance of the 'closure' direction issued dated 27.7.2016.

24. The connectivity status of the OCEMS, data for HTDS flow, LTDS Flow Meter and Web Camera of applicant was verified by the IT Division of the first respondent, evidenced by Status Report of IT Division dated 5.6.2017, evidenced by Annexure R8.

25. They also issued Annexure R-9 letter dated 9.6.2017, explaining the reason why the industry had not stopped the production even after receiving the 'closure' direction of the first respondent by their letter dated 27.7.2016.

26. The reply submitted was not satisfactory. However, since the unit has complied with the direction of installation of OCEMS in their unit, they issued Annexure R-10 'revocation' letter dated 18.7.2017, revoking the 'closure' order, but reserving their right to proceed against appellant for not closing down the unit as per the direction in accordance with law.

27. The Principal Bench of the National Green Tribunal, New Delhi in PARYAVARAN SURAKSHA SAMITI & ANR VS. UNION OF INDIA &

ORS (O.A.No.593 of 2017 (W.P.(Civil) No.375 of 2012) directed the Central Pollution Control Board to evolve a formula for recovering environmental compensation and that fund may be kept in a separate account and utilised in terms of an action plan for protection of environment and directed the Central Pollution Control Board to prepare such action plan within three months.

28. On the basis of the directions of the Principal Bench of the National Green Tribunal, New Delhi, Central Pollution Control Board had constituted a committee and prepared the methodology for assessing environmental compensation, including list of instances for taking cognizance of cases fit for violation and levy environmental compensation and submitted a methodology before the National Green Tribunal, Principal Bench, New Delhi, evidenced by Annexure R-11.

29. On the basis of the formula evolved viz., penalty = PI * N * R * S * LF. PI = Pollution Index of industrial sector (pharmaceutical) = 80, N-number of days violation – strictly after 24.8.2016 to 4.6.2017, after the date of 'closure' direction i.e.,23.8.2016 and date of IT verification viz., 5.6.017 =285 days. R = a factor of fixing of penalty = Rs.250/-. S =Factor of scale of operation (pharma, large scale) = 1.5 (Scale of operation not given in consent so large scale is taken default in calculation). LF = location factor (the unit is located in Nellore, having population of

4,99,575 ie., less than 10,00,000, as per population census, 2011 = 1.0, they had calculated Environmental Compensation at Rs.85,50,000/- and issued a direction dated 9.4.2019.

30. Appellant filed appeal before the Principal Bench as Appeal No.9 of 2019 and the Tribunal by order dated 21.8.2019 disposed of the appeal, directing the first respondent to consider the views of the industry and after giving opportunity of personal hearing, pass final orders afresh.

31. Accordingly, 'personal hearing' was conducted on 18.9.2019, where they had raised the following issues:

i.The industry is located in remote area and internet connectivity was not well established which caused delay in connectivity of OCEMS.

ii. The industry had to cater to the needs of more than 300 employees from the rural area and more than 1,000 people were depending on their unit directly or indirectly and closure of the unit would cause untold hardship to those persons. So they could not comply with the direction of 'closure' order.

iii. The installation was completed within the extended time line of 31.1.2017.

32. The objections were considered in their minutes, evidenced by Annexure R-12.

33. Thereafter, revised environmental compensation was calculated, restricting the period from 31.1.2017 to 4.6.2017, for 124 days and imposed compensation of Rs.37.20 Lakhs and that is how the present calculation had been made. So there is no illegality committed by first respondent in imposing environmental compensation and there is no ground made out for interfering with the order passed by first respondent.

34. Appellant filed rejoinder denying the allegations in the reply statement and also stating that there was compliance of the direction by 14.12.2016 itself and they have requisite details of uploading data and also produced certain documents to show compliance of the direction within the extended time. They have further submitted that without prejudice to their contention, if this Tribunal did not accept the contention but confirms the order of compensation, then the amount may be permitted to be utilised by appellant internally for improvement of their Effluent Treatment Plant and environment causes permitted by first respondent in respect of other industrial units.

35. Central Pollution Control Board also filed further reply, denying the allegations in the rejoinder filed and also confirming the deposit of

Rs.18.60 Lakhs, that is 50% of the revised environmental compensation as per the directions of this Tribunal by order dated 3.1.2020 when the stay was granted on 24.1.2020.

36. Appellant also filed further rejoinder affidavit, reiterating their earlier contentions and challenging the reasons given by first respondent for imposing environmental compensation.

37. Heard Mr. Bhartari, learned counsel for appellant Mr. D.S. Ekambaram and Mrs. Jayalakshmi appearing for first and third respondents.

38. This Tribunal had dispensed with notice to second respondent, as they were not necessary parties to the proceedings.

39. Learned counsel for appellant submitted that Central Pollution Control Board has no jurisdiction to impose environmental compensation, as Section 5 of the Environment (Protection) Act, 1986 does not confer such power on Central Pollution Control Board. So it is without jurisdiction. Learned counsel also submitted that even the documents produced by first respondent, as directed by this Tribunal will go to show that they received the on-line recording data from their system as early as on 14.12.2016 itself and as such that will go to show that the direction issued was complied within the extended time of

31.1.2017 and imposing compensation from 1.2.2017 to 4.6.2017 taking that as violation period is not correct. Learned counsel also argued that the amount of compensation imposed is high and excessive and without any justification.

40. On the other hand, learned counsel appearing for first respondent submitted that there is no illegality committed by first respondent in imposing compensation. The formula was evolved by Central Pollution Control Board, as directed by the Principal Bench of the National Green Tribunal, New Delhi in O.A.No.593 of 2017 and that was circulated under Section 18-1(b) of the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981 invoking the power under Section 5 of the Environment (Protection) Act, 1986 and that order of the Principal Bench has not been challenged. So appellant is not entitled to challenge the jurisdiction of first respondent in imposing compensation under Section 5 of the Environment (Protection) Act, 1986.

41. Appellant has not complied with the 'closure' order issued in dated 27.7.2016 and they were operating the unit without getting the revocation of closure order from first respondent. Further, they have not challenged the jurisdiction of first respondent in the earlier appeal and that was disposed of by the Principal Bench, giving appellant an

opportunity of 'personal hearing' regarding quantum of compensation alone. Required particulars were submitted by first respondent only in May, 2017 and without delay, inspection was conducted on 5.6.2017 and thereafter, revocation order was issued, reserving their right of imposing environmental compensation for the violation committed by appellant unit. So according to them, there is no illegality committed by first respondent and the quantum of compensation imposed is proper and they prayed for dismissal of the appeal.

42. The points that arise for consideration are:

(i).Whether the contention of the counsel for appellant that the Central Pollution Control Board has no power to impose environment compensation is sustainable?

(ii) Whether the order of compensation imposed by Central Pollution Control Board is liable to be interfered with?

(iii) If so, what is the quantum of compensation payable?

43. POINT NO.(i): Learned counsel for appellant submitted that Central Pollution Control Board has no power to impose environmental compensation either under the Environment (Protection) Act, 1986 or under the Water (Prevention and Control of Pollution) Act, 1974 or Air (Prevention and Control of Pollution) Act, 1981.

Section 3 of the Environment (Protection) Act, 1986 reads as follows:

"*Section 3 of The Environment (Protection) Act, 1986*

Power of Central Government to take measures to protect and improve environment. —
(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.
(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 nation-wide 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) The Central Government may, if it considers it necessary or expedient so to do for the purposes 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.

44. Section 5 of The Environment (Protection) Act, 1986 reads as follows:

Section 5 in The Environment (Protection) Act, 1986

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.

45. In view of Section 3 of the Environment (Protection) Act, 1986, Central Pollution Control Board has a duty to make measures to protect and improve environment and certain aspects have been provided as to how they have to be dealt with. Sub-clause (iv) of sub-section (2) of Section 3 the Environment (Protection) Act, 1986 gives power to give further direction for the purpose of effective implementation of the provisions of this Act. Sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 authorises the Central Government to constitute an 'appropriate authority' to take measures, as provided under sub-section (2) of Section 3. That was how Central Pollution Control Board has been constituted for the purpose of effective implementation of the Environment (Protection) Act, 1986 to take all measures to abate pollution that is likely to be caused on account of operation of industrial units due to their non-compliance of the directions issued or conditions imposed in the consent granted. Further, the Apex Court, in several cases, have come to the conclusion that unless the violators are directed to pay compensation for causing pollution by applying the 'polluter pays' principle, no purpose will be served and evolved the doctrine of 'polluter pays' to realise environmental compensation from the erring units and directed the regulating authorities to take steps to implement the order and realise environmental compensation and utilise that amount for restoration of damage caused to environment.

46. Further, the Principal Bench of the National Green Tribunal in PRYAVARAN SURAKSHA SAMITI & ANR. VS. UNION OF INDIA & ORS (O.A.No.593 of 2017 (W.P.(Civil) No.375 of 2012) directed Central Pollution Control Board to evolve a formula for assessing environmental compensation against the erring units for non-compliance of the direction and accordingly Central Pollution Control Board had constituted a committee and evolved a formula as to how Environmental Compensation has to be assessed and the formula so evolved is Penalty = PI x N x R x S x LF where environmental compensation is in rupees. PI = Pollution Index of industrial sector , N - means number of days violation took place. R – means a factor of rupees or environmental compensation, S – means factor of scale of operation and LF – means location factor and also given as to how the value will have to be given in each case for the purpose of calculating environmental compensation and that formula in principle was accepted by the Tribunal and directed Central Pollution Control Board to issue further directions to State Pollution Control Boards to recover compensation, applying the 'polluter pays' principle from the violators. This direction of the Principal Bench of this Tribunal has not been challenged by any one. It is on that basis that Central Pollution Control Board had issued directions to the State Pollution Control Boards/ Pollution Committees to apply the formula and

recover environment compensation from the violator units on the basis of the guide lines issued.

47. Central Pollution Control Board also filed O.A.No.256 of 2017 before this Bench, seeking interference of this Tribunal to implement the 'closure' order issued by Central Pollution Control Board which this Tribunal had disposed of by order dated 3.2.2020 on the basis of the status report submitted by Central Pollution Control Board regarding implementation of 'closure' order issued. So it is clear from this that till the time the Central Government or State Government have come with any policy of imposing environmental compensation, the Tribunal, applying the 'precautionary principle' to avoid pollution being caused to environment and prevent the persons from violating the norms or directions issued by the authorities like Central Control Board or State Pollution Control Board, directed Central Pollution Control Board to evolve the policy of imposing environmental compensation, applying the 'polluters pay' principle and in compliance of the order of the Principal Bench of the National Green Tribunal, the Central Pollution Control Board had to evolve a formula for calculating environmental compensation and that was directed to be implemented by the Principal Bench and in view of the decision mentioned above, the environmental compensation is being assessed by the regulating authority.

48. So the submission made by learned counsel for appellant that Central Pollution Control Board has no power to impose environmental compensation is without any substance and the same is liable to rejected. So the contention of appellant that Central Pollution Control Board/regulating authority has no power to impose environmental compensation is rejected. The point is answered accordingly.

49. Points 2 & 3:-

The contention of appellant is that the impugned order does not disclose the manner in which the environment compensation has been calculated. It is settled law that quasi judicial authorities are expected to give 'reasoned' order, specifying the manner in which the issues raised by the parties are considered and specify the reason for arriving at that decision in the order for enabling the parties to understand, the reasons given by the authority for passing the impugned order. Inspite of the fact that the above proposition is directed to be followed by the quasi judicial authorities by the Hon'ble Apex Court, High Courts and also by this Tribunal in several cases, the authorities are not following the same. They are passing the impugned cryptic order, exercising the quasi judicial power vested in them when deciding the matter and normally we used to set aside such orders passed by the quasi judicial authorities on that ground and remit the matter to the authority which passed the order to pass fresh reasoned order.

50. But in this case, it appears that at the time of hearing, the details were furnished and opportunity has been given to appellant to meet the same. Further, even during the course of hearing, on the basis of the documents produced by first respondent, the Tribunal had given opportunity to meet these aspects as well and as such there is no necessity to set aside that order on that ground. This Tribunal can consider the same in this appeal and pass appropriate orders in accordance with law.

51. As regards imposition of environmental compensation is concerned, there is no dispute regarding the fact that as early as on 5.2.2014 Pollution Control Boards/Pollution Control Committees were directed to issue directions respectively under Section 18(1)(b) of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 to 17 categories of highly polluting industries to install continuous on-line effluent and emission monitoring system (OCEMS) to be implemented by 31.1.2015. Further, guidelines were also issued and flow meter and web camera were also to be installed in case of industries having Zero Liquid Discharge system. Since appellant unit did not comply with the direction, Annexure R-1 show-cause notice dated 27.7.2015 was issued by first respondent to furnish the details regarding the status of installation and connectivity details of real time OCEMS by them. Appellant sent Annexure R-2 reply

dated 2.11.2015 stating that the installation work was in progress. First respondent issued Annexure R-3 reminder dated 11.2.2016 to appellant to comply with the direction and in case it is not complied with, further 'closure' direction would be issued. Appellant sent Annexure R-4 letter dated 14.3.2016 stating that it was in progress and requested some time.

52. It is an admitted fact that as per Annexure R-5 proceedings dated 27.7.2016 'closure' direction was issued by first respondent, directing appellant to close down the industry and start industrial unit only after complying with the direction of installation of OCEMS in their unit. Though Annexure R-6 letter dated 26.8.2016 had been sent by appellant regarding completion of installation of OCEMS but they had not furnished the connectivity details in that letter. Only by Annexure R-7 letter dated 17.5.2017, they have informed the status compliance along with self-certificate, giving the connectivity details as required and they had also informed that they had not stopped operation of the unit on the basis of 'closure' direction issued vide letter dated 27.7.2016. The unit was inspected, on the basis of Annexure R-7 letter, on 5.6.2017 by the IT unit evidenced by Annexure R-8 and thereafter since the reply sent by the unit was not satisfactory regarding non closure' of the unit, however, issued Annexure R10 'revocation' letter dated 18.7.2017, revoking the 'closure' order, reserving the right to proceed against

appellant for non closure of the unit and impose environment compensation in accordance with law as per the direction of the Principal Bench of the National Green Tribunal.

53. It is an admitted fact that thereafter first respondent had earlier imposed an environmental compensation of Rs.85.50 Lakhs vide proceedings dated 9.4.2019 which was challenged by appellant by filing Appeal No.9 of 2019 before this Tribunal and this Tribunal by order dated 21.8.2019 disposed of the appeal, directing first respondent to treat the impugned order as 'show-cause notice' and pass fresh orders, after considering objection of the appellant regarding their liability to pay environment compensation and also the quantum of compensation payable and after giving opportunity of 'personal hearing' to appellant. Accordingly, 'personal hearing' was conducted on 18.9.2019 and the present impugned order was passed, refixing the environmental compensation of Rs.37.20 Lakhs. This order is under challenge now.

54. Admittedly, after 'closure' direction was issued, Central Pollution Control Board, at the request of appellant and similar other units, extended the time for installation of OCEMS in their units upto 31.1.2017. It is an admitted fact that though certain representations had been submitted by appellant stating that they had installed the system but due to non availability of connectivity, they could not carry out functioning of the OCEMS and ultimately only on 17.5.2017, they had

communicated first respondent about the completion of installation of OCEMS and also installation of flow meter and web camera, as directed. It is only in that letter, they had informed the connectivity details like user ID and password. Then only it will be deemed to have been completed.

55. It is true that Central Pollution Control Board, as directed by this Tribunal, produced the details of receipt of data. That shows that first data was received on 23.12.2016. It may be mentioned here that even as per the representation submitted by appellant, there was no possibility of sending regular data on the basis of OCEMS installed, as the time for completion of the process was last extended upto 31.1.2017 by letter dated 29.12.2016 by Central Pollution Control Board. So sending first data as claimed cannot be said to be proper compliance of installation process as full connectivity details to be furnished by the unit for verification by Central Pollution Control Board which they have done only on 17.5.2017 and it is thereafter inspection was conducted on 5.6.2017 and revocation order was issued. So under these circumstances, it cannot be said that appellant had complied with the directions even before the extended date viz., 31.1.2017 and it cannot be accepted. So appellant is not entitled to get complete exoneration from payment of environmental compensation, as claimed by them.

56. It is an admitted fact that even though 'closure' order was issued, as early as 27.7.2016, admittedly appellant had not closed the

unit, as directed. But the 'closure' directions were issued and was not complied with by appellant and they continued operation of the unit unauthorisedly and any unauthorised operation has to be visited with consequence of payment of environmental compensation. So in fact, appellant's action of continuing with operation of the unit inspite of closure order is illegal and in fact they are liable to pay environmental compensation from that day onwards. But Central Pollution Control Board had taken a lenient view, taking the violation period from 1.02.2017 alone and reassessed the compensation as Rs.37.20 Lakhs which we feel, is perfectly justifiable and not called for any interference.

57. Appellant has produced certain other proceedings of imposing compensation on other units to show that there was no uniform yardstick applied by Central Pollution Control Board in imposing environmental compensation and as such environmental compensation imposed against them is excessive.

58. We do not find any merit in that submission, as each assessment will depend upon the facts of the particular case. The facts and nature of assessment will depend upon various factors to be taken into account, as provided in law .

59. So in view of the discussion made above, we do not find any reason to interfere with the order passed by first respondent imposing environmental compensation of Rs.37.20 Lakhs (Rupees Thirty Seven

Lakhs and Twenty Thousand only) against appellant,especially when appellant is one of the 17 categories of most polluting industries and dealing with pharmaceutical items and continuing operation illegally inspite of the 'closure' direction issued by first respondent.

60. As appellant has already deposited 50% of the compensation amount with first respondent in order to obtain stay of execution of the proceedings passed by first respondent, appellant is directed to deposit the balance amount also within one month. If appellant is not depositing the amout within that time, then first respondent is entitled to initiate proceedings against appellant for the realisation of the amount in accordance with law. The fixed deposit made by first respondent in respect of 50% of the compensation amount is directed to be adjusted by first respondent towards environmental compensation imposed and recover only the balance amount from appellant. The points are answered accordingly.

61. In view of the above discussions, the appeal has to fail and the same is liable to be disposed as mentioned above.

62. In the result, the appeal fails and the same is hereby disposed of with above directions. Parties are directed to bear their respective costs in the appeal.

In view of the order passed in Appeal No.21 of 2019, I.A.No.40 of 2019 and I.A.No.18 of 2020 are closed, as no separate order need to be passed.

.....J.M.

(Justice K. Ramakrishnan)

.....E.M.

(Shri. Saibal Dasgupta)

Appl.21/2019
28.8.20
Kkr