Item No. 02

BEFORE THE NATIONAL GREEN TRIBUNAL
CENTRAL ZONE BENCH, BHOPAL
(Through Video Conferencing)

Original Application No. 89/2020 (CZ)

Hanuman Ram — Applicant(s)

Versus

State of Rajasthan & Ors — Respondent(s)

Date of hearing: 09.08.2021

CORAM: HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER

HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER

For Applicant(s): Mr. Naveen Ahuja, Adv.

For Respondent(s): Mr. Ardhendumauli Kumar Prasad, Adv
Mr. Yadvendra Yadav, Adv

ORDER

1. Issue raised in this application are non compliance of environmental rules and illegal and unlawful activities by non-applicant no. 6 relating to bleaching and dyeing of textiles operating in the village Khari, Tehsil - Sayla, District - Jalore, Rajasthan resulting into discharge of hazardous effluents in the nearby agricultural fields and contamination of ground water. In the instant case the non-applicant no.6 is running an unauthorized and illegal unit of bleaching and dyeing of textiles where large amount of harmful chemicals such as hydrogen peroxide, sodium silicate, salt surfactants, color and alkaline conditions are being used to cater the textile industries in the nearby areas without taking any prior permission or clearances requisite from the concerned departments and keeping all the environmental norms at stake. That adjacent to the unit of bleaching

and dyeing, a pit has been created illegally by digging soil to the tune of 20 feet deep on an area of 20 Bigah's (approx.) by the non-applicant no. 6 in his private land to discharge the effluents, which has now become a chemical pond as all the waste water is discharged in that area. That the said activity is being done under the garb of non-applicant officials and is continuing from a long time thereby affecting the acres of agricultural land adjacent to this chemical laundry nullifying the productivity of the land and damaging the life's of large number of people residing in the village which is just 500 meters away from this hazardous chemical laundry. The water used for the purpose of blanching and dying in the said chemical laundry comes from the bore-well illegally installed by the non-applicant no. 6 in his another nearby land which results in depletion of ground water level on the one hand and on the other hand after using the ground water for the purposes of dyeing the effluents are discharged into the dug pit and in case of overflow of wastewater, the same is discharge into the open agricultural fields resulting in the contamination of the ground water as there being no ETP installed for the treatment of the Same.

2. The talab of the village which was the only source of drinking water for the villagers has dried out and the villagers are now forced to drink the ground water which is also contaminated and salty which is causing deadly diseases like Cancer and various skin diseases. That several complaints were also made to the non-applicant authorities by the villagers but due to the collusion with the non-applicant no. 6, neither of the complaints of the villagers are given ears to, nor any action has been taken by the non-applicant authorities till date and has become mere silent spectators. That there is a hog violation of environmental norms causing clamor of the villagers that their

livelihood is hampered and is also infringement of right to life enshrined under Article 21 of the Constitution.

3. The matter was taken up on 06th October, 2020 and this Tribunal issued notice to the respondents and also constituted a Joint Committee consisting Central Pollution Control Board and Rajasthan Pollution Control Board with Central Ground Water Board/ Authority and directed to submit Factual and Action Taken Report. The Joint Committee submitted the report as follows:

"In compliance of the order passed by Hon'ble NGT, dated 06.10.2020 in OA 89/ 2020, following officers were nominated by the concerned departments to visit the site and submit a factual and action taken report before the Hon'ble NGT:

i. ShriAmit Juyal, Regional Officer, RPCB, Balotra, Dist- Barmer.
ii. Dr. Ranu Chouksey Verma, Scientist-B, CPCB, RD- Bhopal.
iii. Shri Praveen Jain, Sr. Scientific Assistant, CPCB, RD- Bhopal.
iv. Ms. Reena Borana, Assitant Hydrogeologist, CGWB, State Unit Office, Jodhpur.
v. Shri Ravi Kumar Chandel, Assistant Env. Engineer, RPCB, Balotra, Dist.Barmer.

The members of the joint committee held a meeting in the Office of the Regional Officer, RSPCB, Balotra to discuss on OA 89/ 2020 and deliberations were made to finalize the step of inspection. In pursuance to the above order, the team of officials from Central Pollution Control Board, Regional Directorate (Central), Bhopal; Rajasthan Pollution Control Board, Balotra, Dist.- Barmer and Central Ground Water Board, State Unit Office, Jodhpur visited Khari village, Tehsil Sayla, District Jalore area on 19.10.2020 along with other local authorities including Patwari (Lumba Ki Dhani) Shri Ram Swarup, Nayab Tehsildar (Jeevana) Shri Heeraram Kuldeep, Tehsildar (Sayla) Shri M.R. Patel in the presence of applicant Shri Hanuman Ram and respondent no. 6, Shri Ishwar Singh.

2. The Factual & Action Taken Report

i. The respondent no.6 Shri Ishwar Singh is having agricultural land of approx. 54 Bigah in Village- Khari, Tehsil Sayla, District Jalore but it was found that a part of the agricultural land was used by the respondent no. 6 for illegal processing of textile i.e. plain washing of fabrics to cater textile industries in the nearby areas. No conversion of land from agriculture to industrial purpose or prior permission or clearances from the concerned departments had been obtained by the Respondent no.6

ii. In this part of illegal operation, 15 small sized washing tanks (length-10 ft., width-4.5 ft. & depth-2.5 ft) were constructed for washing the fabric. All these tanks were drained in common outlet (drain) which was empted into artificial pond constructed by respondent no. 6, Sh. Ishwar Singh in his private land in area of approx. 5 Bigah. Adaan (structure for drying of washed cloth) was also found constructed for drying of washed fabric. Effluent was found stored in the artificially pond.

iii. There was a tube well of about 200 feet depth located near the washing tanks. This tube well was not closed or sealed but since the electricity supply was disconnected on 18/06/2020, as reported by the Electricity Board, Jalore, hence seemed to be not in use. There was another water supply in the field which was claimed to be used for irrigation purposes and the water was supplied through pipeline from another field of Sh. Ishwar Singh in Village- Khari which was about 1.5 km from the site.

iv. Inspection of this illegal textile unit was earlier carried out by officials of Rajasthan Pollution Control Board, Regional Office (RO), Balotra on 27.08.2019. Illegal operation and establishment for textile processing unit was reported by the team on non-converted agricultural land of respondent no. 6 and was discharging untreated effluents directly on the land.

v. Whereas RPCB issued closure directions to illegal unit under the provisions of Section 33 (A) of the Water (Prevention and Control of Pollution) Act, 1974 vide letter no. F.5 (Comp-02) RPCB/ Textile/ 2653-2657 dated 16.12.2019.

vi. Whereas a letter was issued to Jodhpur Vidhyut Vitaran Nigam Ltd. (JVVNL), Jalore by RPCB, RO-Balotra vide letter no. RPCB/RO/ Balotra/ Gen- 36/2230dated 01.01.2020 for disconnection of electricity supply to the respondent no.6 in compliance to the closure direction issued on 16.12.2019.

vii. A *complaint was made by applicant Shri Hanuman Ram & Ors. to the Collector, Jalore on 11.06.2020 regarding illegal textile operation/ establishment on the private agricultural land of respondent no. 6, Sh. Ishwar Singh and discharge of untreated effluent into drain/ on land keeping environment norms at stack.*

viii. Jodhpur Vidhyut Vitaran Nigam Ltd. (JdVVNL), Dist. Jalore vide letter no. JdVVNL/EE/PVS/ Jalore/ Revenue/ P-2218 dated 29.07.2020, the electricity connection of respondent no.6

was terminated and the transformer was removed on 18.06.2020.

ix. A meeting was convened by Rajasthan Pollution Control Board, Jaipur on24/06/2020 under the Chairmanship of Chief Secretary, State of Rajasthan regarding inter-departmental issues related to consent mechanism for industries and others; where it was directed that the Revenue Department/ Local Self Government Department shall take action against the industries illegally operating on non-converted land and also as per Hon'ble NGT for any industrial operation it is mandate to obtained NOC from CGWA.

x. The committee has also visited Primary Health Center, Sirana, Dist.- Jalore to assess if there is any medical case reported as submitted by the applicant Sh. Hanuman Ram in his application. The information as provided by the Medical Officer, PHC, Sirana, Dist.- Jalore no such specific medical cases have been reported in the area in last 3 years.

xi. The inspection team has collected grab samples of ground water from 04 locations [Tube well Sh. Ishwar Singh (25.4333839, 71.9994643), Tube well Hanuman Ram (25.4312055, 72.0191218), Tube well Kripal Singh (25.4269944, 71.9945816), Tube well Hukma Ram (25.4437315, 72.0007262)] and of surface water found stagnated in the artificial pond (25.4336527, 71.9992072) at the land of respondent no. 6 where effluents were discharged, and samples were analyzed at CPCB, Regional Directorate, Bhopal. The analysis results are as given in the Table No.1.

Table No. 1Analysis Report of Ground water samples collected on 19.10.2020 in the matter of Hon'ble NGT OA No. 89 of 2020

	Locations				
Parameters	***Tube well Ishwar Singh***	***Tube well Hnaumman Singh***	***Tube well Hukma Ram (villager)***	***Tube well Kripal Singh (villager)***	***Pond where untreated effluents discharged***
pH	***7.72***	***7.92***	***8.31***	***8.17***	***10.23***
Sp. Cond.	***7330***	***6120***	***9320***	***9320***	***30534***
SS (mg/L)	*--*	*--*	*--*	*--*	***137***
TDS (mg/L)	***4246***	***3607***	***4366***	***5626***	***22400***
Total Alkalinity (mg/L)	***541***	***578***	***615***	***619***	***1028***
COD (mg/L)	***7***	***6***	***7***	***14***	***101***
BOD (mg/L)	***Parameters not analyzed for Ground Water Samples***				***13.5***
Chloride (mg/L)	***1561***	***1801***	***2007***	***2762***	***7163***

Sulphate (mg/L)	***210***	***223***	***223***	***372***	***853***
Heavy metals					
Cadmium (Cd)	***BDL***	***BDL***	***BDL***	***BDL***	***0.024***
Chromium (Cr)	***BDL***	***BDL***	***BDL***	***BDL***	
Copper (Cu)	***BDL***	***BDL***	***BDL***	***BDL***	***0.035***
Lead (Pb)	***BDL***	***BDL***	***BDL***	***BDL***	***0.067***
Nickel (Ni)	***BDL***	***BDL***	***BDL***	***BDL***	***0.1138***
Zinc (Zn)	***0.0099***	***0.081***	***0.0064***	***0.0064***	***0.02980***
Iron (Fe)	***0.029***	***0.034***	***0.141***	***0.141***	***0.132***
Manganese (Mn)	***0.0088***	***0.0035***	***0.0067***	***0.0067***	***0.0216***

xii*. The analysis report of collected samples reveals that compared to ground water samples, the surface water sample collected from the artificial pond shows much higher values of pH, TDS, Sp. Conductivity, COD, BOD, Chloride and Sulphate and even presence of Heavy metals, which confirms the discharge of untreated effluents by the concerned in the pond.*

3. Environmental Compensation

In pursuance of the IR submitted by Rajasthan Pollution Control Board, RO-Balotra dated 27.08.2019 and the observations made by the joint committee during the visit of the site on 19.10.2020 it was found that-

i. *The respondent no. 6, Sh. Ishwar Singh, S/o Narayan Singh, Kh. No. 190, Village- Khari, Tehsil- Sayla, Dist.- Jalore was running an illegal textiles processing (washing of fabric) on his non-converted agricultural land at the village Khari.*

ii. *Neither the prior permission from the concerned department nor the conversion of agricultural land for its use in industrial purpose has been taken.*

iii. *No records have been maintained for the consumption of fresh water and generated wastewater.*

iv. *Illegal Extraction of ground water from 02 bore wells on his private land was found being used in above mentioned textile processing purpose without any NOC from CGWA for extraction of ground water for industrial use.*

v. *Polluted effluents generated during the process were found being illegally discharged by the respondent no. 6 without any prior treatment in an artificial pond on his private land.*

In compliance of Hon'ble NGT order dated 21.02.2019 in the matter of OA No. 739/2018 (residents of Gram Panchayat Varahiya vs.

State of M.P.) Copy enclosed as Annexure-10, where it is clearly mentioned that-

"*7. From the above, it is clear that in spite of fact that the stone crusher have been found to be operating illegally, no compensation has been assessed and recovered for crushing damage to the environment by illegally activities. As laid down by this Tribunal repeatedly, the Regulatory Authorities are not only required to prohibit illegal polluting activities but they are also required to recover compensation for the damage caused apart from prosecution or other steps so as to render polluting activities to be unprofitable. Failure to do so may call for action against the regulatory authorities themselves."*

The committee opined to impose Environmental compensation cost for illegal extraction of ground water for its use in industrial purpose and running an illegal textile washing unit without any permission and discharging untreated effluents on land.

The committee also referred following two reports for EC calculation:

i. *Report of the CPCB in-house committee on methodology for assessing Environmental compensation and action plan to utilize the funds".*
ii. *"Assessment of Environmental compensation in case of illegal extraction of ground water, submitted in compliance to Hon'ble NGT Order dated 7.5.2019 in OA No. 327/2018 in the matter of Shailesh Singh vs CGWB & Ors."*

3.1 EC for illegal extraction of ground water for industrial purpose

Environmental compensation (ECGW) based on the purpose for illegal extraction of ground water as well as the deterrent factor detailed below:

(ECGW)= Water consumption per day X Environmental Compensation rate for illegal extraction of ground water (ECRGW) X No. of Days X Deterrent Factor

Where, water consumption is in m^3/day and ECRGW in Rs/m^3"

Environmental Compensation Rate (ECRGW) for illegal extraction of ground water for use in industrial units as per the report on "Assessment of Environmental compensation in case of illegal extraction of ground water, submitted in compliance to Hon'ble NGT Order dated 7.5.2019 in OA No. 327/2018 in the matter of Shailesh Singh vs CGWB & Ors." is as detailed in below Tables;

6.4 ECR_{GW} for Industrial Units

S.No.	Area Category	Water Consumption (m^3/day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR_{GW}) in Rs./m^3			
1	Safe	20	30	40	50
2	Semi critical	40	60	80	100
3	Critical	60	80	110	150
4	Over-exploited	80	120	160	200
Minimum EC_{GW}=Rs 1,00,000/-					

6.5 :- Deterrent Factor

S.No.	Water Consumption	Deterrent Factor		
		< 2 years	2-5 years	>5 years
1	<1000 KLD	1.00	1.00	1.25
2	1000-5000 KLD	1.00	1.00	1.50
3	>5000 KLD	1.00	1.25	2.00
Note: The industrial operations may be reviewed and only permitted, if it is safe to continue withdrawal of ground water at the rate permitted.				

The committee after discussion has draw out the following parameters for assessment of Environmental Compensation:

i. ***Water consumption per day:*** *As the bore wells are not fitted with water meters and there is no specific data available for consumption of water, water consumption per day has been calculated based on the size of each storage tanks (Length-10 ft., Width- 4.5 ft. & Height- 2.5 ft) available at the site. The unit has 15 storage tanks each of capacity of about 3.2 m3, having total capacity of 48 m3 which are being filled once a day. Hence, total water used in the process per day is 48 m3.*

ii. ***Environmental Compensation Rate (ECRGW):*** *As per Ground Water Resource assessment data, March, -2017, Block- Sayla, Dist. –Jalore (Copy enclosed as Annexure-13) provided by CGWB, Block- Sayla, Dist.-Jalore comes*

under category- Over exploited area. Hence, ECRGW will be taken as 80 Rs. /m3.

iii. Number of days of Non-compliance/violation:

i. *The day violation was observed by RPCB i.e. 27.8.2019.*

ii. *Till the day when electricity connection was terminated and transformer was removed by Jodhpur Vidhyut Vitaran Nigam Ltd. (JdVVNL), Dist. Jalore i.e. 18.06.2020*

Total number of days is calculated as 297 days.

ECGW = 48 X Rs. 80/ m3 X 297 days

= Rs. 11,40,480 Lacs

3.2 EC for illegal discharge of untreated effluent without Consent to Operate (CTO)

i. No Consent to Establish & Consent to Operate was obtained by the Respondent no. 6 from the concerned authority for industrial activity on the agricultural land.

ii. *As effluents generated during the process were discharged untreated into an artificial pond located behind the unit on the private land of the respondent no.6.*

"This is violation of effluents discharge/ inadequate ETPs/ ZLD. Hence the following EC may be calculated as per the "Report of the CPCB In-house committee on Methodology for assessing Environmental Compensation and Action Plan to utilize the Fund" acknowledged by Hon'ble NGT vide order dated 19.02.2019 in the matter of Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. in OA No.93/ 2017:

Environmental Compensation (EC)= PI X N X R X S X LF

Where,

EC is Environmental compensation

PI= Pollution Index of Industrial Sector

N= Number of Days of violation took place

R= A factor in Rupees for EC

S= Factor for scale of operation

LF= Location Factor

1	*PI for Textile Processing involving any effluent /emission (As per document on revised classification of Industrial Sectors under ROGW categories by CPCB, Feb,2016)*	*75*
2	*Number of days of Non-compliance /*	*297 days*

	violation : *i. Number of days violation took place the day violation was observed by RPCB i.e., 27.08.2019* *ii. Till the day when electricity connection was terminated and transformer was removed by Jodhpur Vidhyut Vitaran Nigam Ltd. (JDVVNL) Dist Jalore i.e, 18.06.2020*	
3	*A factor in Rupees for EC (Consider R as 250, as EC in cases of violation)*	*Rupees 250*
4	*Factor for scale of operation (small scale operation)*	*0.5*
5	*Location factor (Population<1 million)*	*1*
	EC=(75x297x250x0.5x1)	*Rs. 27,84,375/-*

Total Environmental Compensation Cost so calculated is: Rs.39,24,855/-

4. Recommendations of the Joint Committee:

i. Environmental Compensation cost of Total Rs. 39,24,855/- (Thirty Nine Lacs Twenty Four Thousand Eight Hundred and Fifty Five Rupees) may be imposed on Respondent no.6 Sh. Iswar Singh for illegal abstraction of ground water and operation of illegal unit for textile washing and discharging untreated effluents directly on the land

ii. The District Administration may be directed to recover the Environmental Compensation Cost from the Respondent no.6 and deposit the amount to RSPCB

iii. The District Administration shall ensure that no further illegal activity of washing of fabrics shall be continued by the Respondent No.6"

4. The learned counsel for Rajasthan Pollution Control Board has submitted that vide order dated 23rd July, 2019, the Pollution Control Board has constituted a Committee consisting Senior Officer to keep vigil and surveillance over all kinds of processes/activities in and around the jurisdiction of Regional Officer, Balotra by way of monitoring, inspection, surprise checks, patrolling including night patrolling and to take all necessary steps to prevent any kind of environmental pollution including discharge of illegal industrial effluent/air emissions, dumping/ disposal of any kind of waste. On 27th August, 2019, the inspection report

was submitted with the fact that the unit under question was operating on non-converted land and discharging the waste water without treatment, therefore, the directions with regard to the Environmental Compensation must be processed according to the rules. On 16th December, 2019, Rajasthan Pollution Control Board issued a notice with the following facts:

> *"6. And whereas the industry was inspected by the officials of the Board on 27.08.2019 and during the course of inspection it was observed that:*
>
> *(i) Unit is operating illegally in non-conforming area.*
>
> *(ii) Unit is involving in textile processing without obtaining consent under the provisions of the Water Act from the State Board.*
>
> *(iii) Industry is discharging effluent directly into nahhal/drain/on land without any treatment.*
>
> *7. And whereas the above act of the industry shows that it has been making discharge of effluent without any treatment into nallah/drain/on land and violating the provisions of the Water Act.*
>
> *8. And whereas above stated non-compliance and violations of the provisions of the Water Act have been viewed seriously by the Board.*
>
> *9. And whereas, the State Board may, in exercise of the powers conferred upon it under the provisions of Section 33A of the Water Act, and in performance of its functions under the Water Act, issue directions in writing to any other person, officer or any authority and such persons, officers or authority shall be bound*

to comply with such directions which 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"

5. While economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. Both development and environment must go hand in hand. In other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment [Indian council for enviro-legal action v union of India [1996]5scc 281]. The traditional concept that development and ecology are opposed to each other is no longer acceptable [Vellore citizens welfare forum v. union of India [1996]5scc 647].

6. In a constitutional framework which is intended to create, foster and protect a democracy committed to liberal values, the rule of law provides the cornerstone. The rule of law is to be distinguished from rule by the law. The former comprehends the setting up of a legal regime with clearly defined rules and principles of even application, a regime of law which maintains the fundamental postulates of liberty, equality and due process. The rule of law postulates a law which is answerable to constitutional norms. The law in that sense is accountable as much as it is capable of exacting compliance. Rule by the law on the other hand can mean rule by a despotic law.

It is to maintain the just quality of the law and its observance of reason that rule of law precepts in constitutional democracies rest on constitutional foundations. A rule of law framework encompasses rules of law but it does much more than that. It embodies matters of substance and process. It dwells on the institutions which provide the arc of governance. By focusing on the structural norms which guide institutional decision making, rule of law frameworks recognize the vital role played by institutions and the serious consequences of leaving undefined the norms and processes by which they are constituted, composed and governed. A modern rule of law framework is hence comprehensive in its sweep and ambit. It recognizes that liberty and equality are the focal point of a just system of governance and without which human dignity can be subverted by administrative discretion and absolute power. Rule of law then dwells beyond a compendium which sanctifies rules of law. Its elements comprise of substantive principles, processual guarantees and institutional safeguards that are designed to ensure responsive, accountable and sensitive governance.

7. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which are sui generis. The environmental rule of law seeks to create essential tools – conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges – of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions

have charted. The environmental rule of law seeks to facilitate a multi– disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts. There are significant linkages between concepts such as sustainable development, the polluter pays principle and the trust doctrine. The universe of nature is indivisible and integrated. The state of the environment in one part of the earth affects and is fundamentally affected by what occurs in another part. Every element of the environment shares a symbiotic relationship with the others. It is this inseparable bond and connect which the environmental rule of law seeks to explore and understand in order to find solutions to the pressing problems which threaten the existence of humanity. The environmental rule of law is founded on the need to understand the consequences of our actions going beyond local, state and national boundaries. The rise in the oceans threatens not just maritime communities. The rise in temperatures, dilution of glaciers and growing desertification have consequences which go beyond the communities and creatures whose habitats are threatened. They affect the future survival of the entire eco-system. The environmental rule of law attempts to weave an understanding of the connections in the natural environment

which make the issue of survival a unified challenge which confronts human societies everywhere. It seeks to build on experiential learnings of the past to formulate principles which must become the building pillars of environmental regulation in the present and future. The environmental rule of law recognizes the overlap between and seeks to amalgamate scientific learning, legal principle and policy intervention. Significantly, it brings attention to the rules, processes and norms followed by institutions which provide regulatory governance on the environment. In doing so, it fosters a regime of open, accountable and transparent decision making on concerns of the environment. It fosters the importance of participatory governance – of the value in giving a voice to those who are most affected by environmental policies and public projects. The structural design of the environmental rule of law composes of substantive, procedural and institutional elements. The tools of analysis go beyond legal concepts. The result of the framework is more than just the sum total of its parts. Together, the elements which it embodies aspire to safeguard the bounties of nature against existential threats. For it is founded on the universal recognition that the future of human existence depends on how we conserve, protect and regenerate the environment today.

8. In its decision in Hanuman Laxman Aroskar vs Union of India,[2019] 15 SCC 401 the Court, recognized the importance of protecting the environmental rule of law. The court observed:

> *"142. Fundamental to the outcome of this case is a quest for environmental governance within a rule of law paradigm. Environmental governance is founded on the need to promote environmental sustainability as a crucial enabling factor which ensures the health of our*

ecosystem.

"143. Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement — both in developed and developing countries alike …

"156. The rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the rule of law. Public access to information is, in similar terms, fundamental to the preservation of the rule of law. In a domestic context, environmental governance that is founded on the rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution. Proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution."

49. In its first global report on environmental rule of law in January 2019, the United Nations Environment Programme ("UNEP") has presciently stated:

"If human society is to stay within the bounds of critical ecological thresholds, it is imperative that environmental laws are widely

understood, respected, and enforced and the benefits of environmental protection are enjoyed by people and the planet. Environmental rule of law offers a framework for addressing the gap between environmental laws on the books and in practice and is key to achieving the Sustainable Development Goals. Successful implementation of environmental law depends on the ability to quickly and efficiently resolve environmental disputes and punish environmental violations. Providing environmental adjudicators and enforcers with the tools that allow them to respond to environmental matters flexibly, transparently, and meaningfully is a critical building block of environmental rule of law."

50. The need to adjudicate disputes over environmental harm within a rule of law framework is rooted in a principled commitment to ensure fidelity to the legal framework regulating environmental protection in a manner that transcends a case-by-case adjudication. Before this mode of analysis gained acceptance, we faced a situation in which, despite the existence of environmental legislation on the statute books, there was an absence of a set of overarching judicially recognized principles that could inform environmental adjudication in a manner that was stable, certain and predictable. In an article in the Asia-Pacific Journal of Environmental Law (2014), Bruce Pardy describes this conundrum in the following terms:

> *"Environmental regulations and standards typically identify specific limits or prohibitions on detrimental activities or substances. They are created to reflect the principles and prohibitions contained in the statute under which they are promulgated. However, where the contents of the statute are themselves*

indeterminate, there is no concrete rule or set of criteria to apply to formulate the standards. Their development can therefore be highly political and potentially arbitrary.

Instead of serving to protect citizens' environmental welfare, an indeterminate environmental law facilitates a utilitarian calculus that allows diffuse interests to be placed aside when they are judged to be less valuable than competing considerations."

9. However, even while using the framework of an environmental rule of law, the difficulty we face is this – when adjudicating bodies are called on to adjudicate on environmental infractions, the precise harm that has taken place is often not susceptible to concrete quantification. While the framework provides valuable guidance in relation to the principles to be kept in mind while adjudicating upon environmental disputes, it does not provide clear pathways to determine the harm caused in multifarious factual situations that fall for judicial consideration. The determination of such harm requires access to scientific data which is often difficult to come by in individual situations.

10. In an article in the Georgetown Environmental Law Review (2020), Arnold Kreilhuber and Angela Kariuki explain the manner in which the environmental rule of law seeks to resolve this imbroglio:

> "One of the main distinctions between environmental rule of law and other areas of law is the need to make decisions to protect human health and the environment in the face of uncertainty and data gaps. Instead of being paralyzed into inaction, careful documentation of the state of knowledge and uncertainties allows the regulated community, stakeholders, and other

institutions to more fully understand why certain decisions were made."

The point, therefore, is simply this – the environmental rule of law calls on us, as judges, to marshal the knowledge emerging from the record, limited though it may sometimes be, to respond in a stern and decisive fashion to violations of environmental law. We cannot be stupefied into inaction by not having access to complete details about the manner in which an environmental law violation has occurred or its full implications. Instead, the framework, acknowledging the imperfect world that we inhabit, provides a roadmap to deal with environmental law.

11. In a recent decision of the Court in Bengaluru Development Authority vs Sudhakar Hegde 2020 scc online sc 328, the Hon'ble Supreme Court held:

"107. The adversarial system is, by its nature, rights based. In the quest for justice, it is not uncommon to postulate a winning side and a losing side. In matters of the environment and development however, there is no trade-off between the two. The protection of the environment is an inherent component of development and growth…

"108. Professor Corker draws attention to the idea that the environmental protection goes beyond lawsuits. Where the state and statutory bodies fail in their duty to comply with the regulatory framework for the protection of the environment, the courts, acting on actions brought by public spirited individuals are

called to invalidate such actions…

> "109. The protection of the environment is premised not only on the active role of courts, but also on robust institutional frameworks within which every stakeholder complies with its duty to ensure sustainable development. A framework of environmental governance committed to the rule of law requires a regime which has effective, accountable and transparent institutions. Equally important is responsive, inclusive, participatory and representative decision making. Environmental governance is founded on the rule of law and emerges from the values of our Constitution. Where the health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution, proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution. Sustainable development is premised not merely on the redressal of the failure of democratic institutions in the protection of the environment, but ensuring that such failures do not take place."

12. In Lal Bahadur vs State of Uttar Pradesh [2018]15 scc 407 , the Court underscored the principles that are the cornerstone of our environmental jurisprudence, as emerging from a settled line of precedent: the precautionary principle, the polluter pays principle and sustainable development. This Court further noted the importance of judicial intervention for ensuring environmental protection. In a recent

decision in State of Meghalaya & others vs All Dimasa Students Union,[2019] 8 SCC177 this Court reiterated the key principles of environmental jurisprudence in India, while awarding costs of Rs. 100 crores on the State of Meghalaya for engaging in illegal coal mining.

The UNEP report (supra) also goes on to note:

> "Courts and tribunals must be able to grant meaningful legal remedies in order to resolve disputes and enforce environmental laws. As shown in Figure 5.12, legal remedies are the actions, such as fines, jail time, and injunctions, that courts and tribunals are empowered to order. For environmental laws to have their desired effect and for there to be adequate incentives for compliance with environmental laws, the remedies must both redress the past environmental harm and deter future harm."

The above discussion puts into perspective our decision in the present appeals, through which we shall confirm the directions given by the NGT in its impugned judgment. The role of courts and tribunals cannot be overstated in ensuring that the 'shield' of the "rule of law" can be used as a facilitative instrument in ensuring compliance with environmental regulations.

13. In **Goel Ganga Developers India Pvt. Ltd. vs Union of India [2018] 18 SCC 257**, the Court dealt with a situation in which the project proponent had engaged in construction that was contrary to the environmental clearance granted to it. Coming down on the project proponent, a two-judge bench, held as follows:

> "64. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project *cost as damages. This is the general*

law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has manoeuvred and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone up to 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area, etc. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs 100 crores or 10% of the project cost, whichever is more."

14. The Court in State of M.P. vs Centre for Environment Protection Research & Development, [2020] 9 SCC 781 held as follows: "

"41. The Tribunal constituted under the NGT Act has jurisdiction under Section 14 of the said Act to decide all civil cases where any substantial question relating to environment including enforcement of any right relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule I to the said Act, which includes

the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

"42. In view of the definition of "substantial question relating to environment" in Section 2(1)(m) of the NGT Act, the learned Tribunal can examine and decide the question of violation of any specific statutory environmental obligation, which affects or is likely to affect a group of individuals, or the community at large.

"43. For exercise of power under Section 14 of the NGT Act, a substantial question of law should be involved including any legal right to environment and such question should arise out of implementation of the specified enactments.

"44. Violation of any specific statutory environmental obligation gives rise to a substantial question of law and not just statutory obligations under the enactments specified in Schedule I. However, the question must arise out of implementation of one or more of the enactments specified in Schedule I."

15. It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship". This indicates that while applying the concept of "sustainable development" one has to keep in mind the "principle of proportionality" based on the concept of balance. It is an exercise in which we have to balance the priorities of development on one hand and environmental protection on the other hand.

16. The Joint Committee has properly inspected and calculated the

Environmental compensation and recommended that the amount of Environmental Compensation must be recovered according to rules and should be deposited in the account of State Pollution Control Board which may further be used for the environmental purposes. Accordingly, we direct:

(i) Rajasthan Pollution Control Board, being statutory body is directed to proceed to recover the Environmental Compensation in according with law. The process of recovery should be initiated forthwith and Collector, District Barmer is directed to comply the order.

(ii) State Pollution Control Board and the District Administration is directed that there should not be any discharge of untreated water into the open land or open water body and the environmental rules must be complied with.

The application is finally disposed of accordingly.

s

Sheo Kumar Singh, JM

Arun Kumar Verma, EM

09th August, 2021
O.A. No. 89/2020
PU