

(2025) 10 RAJ CK 1237

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 645 Of 2025

Tata Bricks Company

APPELLANT

Vs

Rajasthan State Pollution Control Board

RESPONDENT

Date of Decision : 30-10-2025

Acts Referred:

Constitution of India, 1950 — Article 226

National Green Tribunal Act, 2010 — Section 15, 18, 31

Air (Prevention and Control of Pollution) Act, 1981 — Section 31(A), 33(A)

Citation : (2025) 10 RAJ CK 1237

Hon'ble Judges : Sunil Beniwal, J

Bench : Single Bench

Advocate : Manish Shishodia, D.S. Thind, Harshvardhan Rathore, Vijay Kumar Aggarwal, Hemant Kumar Jain, Bhuvneshwar Singh Sodha, Deepesh Birla, Amit Kumar, Sonika Punia, S.R. Godara, Hans Raj Choudhary, Sajjan Singh Rathore, Pravin Kumar Choudhary, Mahendra Bishnoi, Sanjay Raj Paliwal, Neelam Sharma

Final Decision : Disposed Of

Judgement

Sunil Beniwal, J

1. Learned Senior Counsel, Mr. Manish Shishodia, appearing on behalf of the petitioners, at the outset, submitted that he proposes to make some preliminary submissions, which are identical in the present writ petition, along with other writ petitions mentioned in Schedule-A, attached with this order, which may be treated as part of this order.

2. It is submitted by the learned Senior counsel that the present bunch of petitions have been filed feeling aggrieved of the imposition of environmental compensation by the respondent – Rajasthan State Pollution Control Board ("RSPCB"), pursuant to the directions issued by the National Green Tribunal ("NGT").

2.1 It is further submitted by the learned Senior Counsel that his preliminary submissions may be considered and decided first, without going into the merits

of individual writ petitions and if his preliminary submissions are decided and are accepted, then the entire bunch of writ petitions could be decided accordingly. It is also submitted that if this Court is not inclined to accept the preliminary submissions, then the writ petitions may be posted again for deciding the same on merits.

2.2 Considering the submissions made above, the preliminary submissions are being considered and decided first.

3. At this stage, although this Court is not deliberating the factual aspects involved in this bunch of writ petitions, however, it would be relevant to produce background of the matter for clarity. Hence, for brevity, the facts of writ petition No.645/2025 are considered.

3.1 The petitioner, to operate as a brick kiln, had applied to RSPCB for grant of Consent to Operate on 26.11.2021 and the same was granted on 13.02.2022 (Annex.3) for the period from 26.11.2021 to 31.10.2031. However, in the meanwhile, a show cause notice dated 19.01.2022 (Annex.4) was issued by RSPCB in pursuance of directions issued by the NGT vide order dated 10.11.2021 in the case of Hakam Singh & Anr. Vs. State of Rajasthan & Ors.; O.A. No.262/2020 and imposition of Environmental Compensation was sought alleging operation of unit without obtaining Consent to Operate.

3.2 Thereafter, Environmental Compensation to the tune of Rs.15,60,000/- was levied vide order dated 08.03.2022 (Annex.5) passed by RSPCB. Aggrieved of the same, the petitioner preferred a writ petition being SBCWP No.7580/2022, which is pending and is tagged with the present bunch of writ petitions.

3.3 The petitioner also approached the NGT seeking impleadment as party in the aforesaid case pending before it. The NGT, while disposing of the application for impleadment on 11.07.2022, directed that the order dated 08.03.2022 (Annex.5) be treated a notice and granted time to the petitioner to file response to the same.

3.4 The petitioner thereafter submitted a reply pursuant to the aforesaid order passed by the NGT and thereafter the impugned show cause notice dated 18.12.2024 (Annex.7) came to be passed seeking to revoke consent to operate on account of non-deposition of Environmental Compensation been imposed vide order dated 08.03.2022.

3.5 In similar manner, Environmental Compensation has been imposed by RSPCB on the petitioners alleging operation of brick kilns without Consent to Operate. The said imposition of Environmental Compensation has been challenged in the present bunch of writ petitions alleging the same to have been levied without jurisdiction/authority.

4. The preliminary submission, which is common in all the writ petitions, is that the RSPCB is not competent under the law to impose Environmental Compensation. In support of such submission, learned Senior Counsel, Mr.

Shishodia, made the following submissions:-

4.1 The RSPCB has exceeded its jurisdiction in imposing Environmental Compensation upon the petitioner as it has no authority under the law to do so and has relied upon the judgment passed by the Division Bench of the Allahabad High Court (Lucknow Bench) in the case of Suez India Pvt. Ltd. Vs. Uttar

Pradesh Pollution Control Board & other connected matters, decided on 17.07.2025. While relying on the aforesaid judgment, the learned Senior Counsel has referred to para Nos.2, 13, 39, 43, 44, 47, 51, 54, 63, 66, 67, 78, 70, 80, 82 and 83 and while taking this Court to the above referred paragraphs of the judgment, he argued that the State Pollution Control Board has no power to impose Environmental Compensation on any person or industry and it can merely file an application before the NGT under Section 15 read with Section 18 of the National Green Tribunal Act, 2010 ("NGT Act") for issuance of a direction to the person concerned for demand of the same.

4.2. He also placed reliance on the judgment rendered by the Hon'ble Apex Court in the case of Kantha Vibhag Yuva Koli Samaj Parivartan Vs. State of Gujarat & Ors. [(2023) 13 SCC 525] and referred to para Nos.3, 5, 6 and 14 to 17 of the aforesaid judgment and submitted that the NGT could not abdicate its jurisdiction and could not entrust judicial function to any administrative expert body. Such function is not delegable. He argued that Section 15 of the NGT Act empowers the NGT to award compensation to the victim of pollution and the environmental damages to provide for restitution of property, which has been damaged and for the restitution of environment. He also argued that it is the NGT alone, who has been entrusted by the Act and it is rather core adjudicatory function, which cannot be delegated to any administrative expert body.

4.3. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of D.P.C.C. Vs. Lodhi Property Co. Ltd. & other connected matters, [2025 SCC OnLine SC 1601] while contending that power to impose or collect restitution or compensatory damages can be imposed only after detailing the principle and the procedure incorporating basic principles of natural justice in the subordinate legislation. He further contended that the Hon'ble Apex Court has clearly opined that without there being any legislative regulatory mechanism, the State Pollution Control Board cannot demand Environmental Compensation. The Hon'ble Apex Court, in the aforesaid judgment in the case of Lodhi Property Co. Ltd. (supra), has laid down that guidelines issued by the Central Pollution Control Board, in its document "General Framework for Imposing Environmental Damages" which were issued in December, 2022, are required to reviewed thoroughly and issued in form of Rules & Regulations as this will enable declaration of law and ensure its recognition and easy implementation. While elaborating his submission, learned Senior Counsel has referred to para Nos.2, 3, 6, 12, 30, 31, 33, 35, 37 and 39 of the aforesaid judgment and while taking this Court to the above referred paragraphs of the said judgment, he submitted that the Hon'ble Apex Court, in concluding para, has specifically observed that the

State Pollution Control Board, shall impose or collect restitutionary or compensatory damages only after detailing the principle and procedure incorporation basic principles of natural justice in the subordinate legislation. That being so, unless the necessary Rules & Regulations are framed and are incorporated and declared as a law, the State Pollution Control Board has no authority to impose Environmental Compensation upon the petitioners, based on the guidelines which have no legislative competence.

4.4. The Environmental Compensation has been calculated without any formula and there is no transparency as to on what basis the figure mentioned as Environmental Compensation has been arrived at by the RSPCB. He submitted that the alleged mechanism does not carry any statutory force as it has not been notified in the official gazette. There is no material available on record nor any impugned orders to reflect as to who has suffered damages or harmed. The impugned orders have been passed in cyclostyled manner without due application of mind. Based on the above, learned Senior Counsel Mr. Shishodia submitted that the present bunch of petitions deserves to be allowed on the above preliminary submissions and the impugned orders passed in the present bunch of petitions are required to be quashed and set aside on this count alone and any amount recovered towards Environmental Compensation from the petitioners, during pendency of the present bunch of petitions, is required to be refunded.

5. Learned counsel Mr. Vijay Kumar Aggarwal, appearing in SBCWP No.6090/2022 while adopting the arguments as advanced by learned Senior Counsel Mr. Shishodia, submitted that appeal against the impugned order is not maintainable as they are composite orders passed under both the Air (Prevention and Control of Pollution) Act, 1981 ("Act of 1981") and the Water (Prevention and Control of Pollution) Act, 1974 ("Act of 1974"). He submitted that there is no provision provided under the Act of 1981 to appeal against the directions issued under Section 31 of the said Act. The remedy available under the Act of 1974 cannot be availed to appeal against the composite impugned orders and, therefore, the objections as raised by the respondents in their reply with regard to the maintainability of the present writ petitions deserve to be rejected.

5.1. He placed reliance on the judgment of the Hon'ble Apex Court in the case of Tamil Nadu Pollution Control Board Vs. Sterlite Industries (I) Ltd. & Ors. [(2019) 19 SCC 479].

5.2. He also submitted that brick-kilns work on different scale and level, meaning thereby, the capability and investment, therefore, mechanism to impose Environmental Compensation, without any prescribed mode of calculation, is also not comprehensible.

6. Learned Counsel Mr. Hemant Kumar Jain, appearing in SBCWP No.3088/2023 while adopting the arguments as advanced by learned Senior Counsel Mr. Shishodia and Mr. Vijay Kumar Aggarwal, further submitted that even if appeal is

to be preferred, the same cannot be done as the Appellate Authority at Jaipur is not functioning and, therefore, writ petitions are required to be heard on merit.

7. Per contra, learned counsel for the RSPCB as well as the State, made the following submissions:-

7.1 The respondent-RSPCB was right in imposing Environmental Compensation upon the petitioner as an inspection was carried out in view of the direction issued by the NGT and during inspection, it was noted that the brick kilns, being operated by the petitioners, were running without Consent to Operate or in some cases, without seeking necessary conversion. It is submitted that the Environmental Compensation is calculated for the period in which the petitioners-industries were found to be running without Consent to Operate and, therefore, the RSPCB was fully justified in imposing environmental compensation. It is submitted that penalty for violation and environmental damages are two different subjects and as far as penalty is concerned, the same is for the purpose of penalizing the person for not adhering to the norms and the guidelines under which he is supposed to run brick-kilns and environmental compensation is a compensation, which is levied on the default for causing environmental pollution and the environmental compensation is recovered as to restore the damage caused on account of such environmental damage.

7.2 The State Pollution Control Board is under obligation to consider the direction issued by the Central Pollution Control Board as per Section 18(1)(b) of the Act of 1981. Thus, in view of the same and considering the judgment rendered by the Hon'ble Apex Court in the case of Paryavaran Suraksha Samiti & Ors. Vs. Union of India & Ors. [(2017) 5 SCC 326], the mechanism of calculation, imposition and recovery of environmental compensation has been formulated, which under clause (2) provides the procedure for calculating amount of environmental compensation. That being so, the action of the respondent-RSPCB in imposing Environmental Compensation cannot be held to be illegal or arbitrary in any manner.

7.3 The NGT, vide its order dated 11.02.2021, has delegated to the State Pollution Control Boards, the authority to assess and recover compensation from brick kilns, therefore, the impugned orders were rightly passed.

7.4 While responding to the submission made with regard to direction issued in the case of Lodhi Properties (supra), it is submitted on behalf of the respondents that the Hon'ble Apex Court has not declared the method of calculating as unconstitutional and, therefore, it cannot be concluded that there is anything wrong in the formula for calculation, rather, the direction has been given only to give statutory colour to the guidelines.

7.5 While responding the submissions with regard to damage suffered, it is submitted by the respondents that compensation has been imposed on the petitioners on account of non-compliance with requisite of obtaining/renewing Consent to Operate and, therefore, the question as to who has suffered damage

does not arise.

7.6 The petitioners have not challenged the order dated 11.02.2021, passed by the NGT, pursuant to which, the impugned orders/notices have been issued to the petitioners imposing Environmental Compensation. The said order of NGT is the whole genesis in this litigation as every action ranging from site inspection to issuance of the impugned orders has been carried out as per direction issued in the said order and, therefore, without challenging the same, the present writ petitions are not maintainable. In support of this submission, learned counsel has placed reliance on the judgment of the Meghalaya High Court rendered in the case of Dayanidhi Ventures Pvt. Ltd. Vs. Meghalaya State Pollution Control Board & Ors. [WP(C) No.338/2021, decided on 16.12.2021].

7.7 The judgment rendered in the case of Lodhi Properties (supra), does not help the petitioners as the impugned communications, passed due to the non-compliance of possessing Consent to Operate. Further, the Court has, in no manner, denied the authority of State Pollution Control Boards to levy environmental compensation.

7.8 The action of the RSPCB cannot be said to be arbitrary or unreasonable as show cause notices were issued to which respective replies were filed by the petitioners and subsequent thereto, the impugned communications were issued. The 'Polluter Pays Principle' not only applies to emission of actual pollution but also to non-compliance of requisite permissions to maintain the environmental law compliance concerning pollution and Consent to Operate comes within the ambit of such compliance as action plan as to how the work will be carried and emissions would be maintained has to be submitted before NOC can be issued.

7.9 The Allahabad High Court, in the case of M/s. Ramesh Dyeing and Washing, Ghaziabad Vs. State of U.P. [Writ(C) No.7305/2025, decided on 21.08.2025], dismissed the writ petition while relying on the judgment of the Hon'ble Apex Court in the case of Lodhi Properties (supra) and observed that Pollution Control Board has jurisdiction to impose Environmental Compensation.

7.10 In response to the submission made by Mr. Vijay Kumar Aggarwal, it is submitted that the impugned communications are composite in nature, however, remedy of petitioners lies before the NGT itself as the communications have been issued in compliance of the direction of the NGT.

7.11 While responding to the submissions made by Mr. Hemant Kumar Jain, it is submitted that the appellate authority has been notified on 18.09.2025 and, therefore, the submission made by him is incorrect on the face of it. Thus, the petitioner very well has an alternative remedy to approach the Appellate Authority. Reliance has been placed on the judgment of Allahabad High Court delivered in the case of Nagar Palika Parishad Vs. State of UP & Ors. [(2024) ILR 12 All. 741].

8. Heard learned counsel for the parties and perused the record.

9. One of the argument raised by the respondents is with regard to the maintainability of writ petitions in view of the fact that the petitioners have equally efficacious alternative remedy.

9.1 This Court deems it appropriate to deal with the issue of alternative remedy at first.

9.2 The counsel for the petitioners, while making preliminary submissions, have submitted that RSPCB exceeded its jurisdiction in calculating and imposing Environmental Compensation upon the petitioners, more particularly in view of not having legislative competence to take such action.

9.3 It may also be noted that order/show cause notice is challenged by the petitioners on ground of it being without jurisdiction. If order/action is without jurisdiction, then writ petition is maintainable despite alternative remedy being available, as has been held by the Hon'ble Apex Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors. [(1998) 8 SCC 1], wherein it was observed as under:-

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Qua Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. Rashid Ahmad v. Municipal Board, kairana, [1950]1SCR566 , laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting Writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. The Income Tax

Investigation Commissioner, [1954]25ITR167(SC) which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This

proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that Writ Petition under Article 226 could still be entertained in exceptional circumstances.

XXX XXX

20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

9.4 It is further to be noted that the impugned orders are composite in nature as they have been passed under the Act of 1981 so also Act of 1974, thus remedy of appeal cannot be availed as held by the Hon'ble Apex Court in the case of Sterlite Industries (supra) wherein the Court observed as under:-

"35...At this juncture, it is important to state that Section 33B of the Water Act and Section 31B of the Air Act were both enacted on 18.10.2010, which is the very date on which the NGT Act came into force. What is important to note is that whereas Section 33B(c) of the Water Act read with Section 16(c) of the NGT Act make it clear that directions issued Under Section 33A of the Water Act are appealable to the NGT, directions issued Under Section 31A of the Air Act are not so appealable. In fact, the statutory scheme is that directions given Under Section 31A of the Air Act are not appealable. This being the case, all the aforesaid orders, being composite orders issued under both the Water Act and the Air Act, it will not be possible to split the aforesaid orders and say that so far as they affect water pollution, they are appealable to the NGT, but so far as they affect air pollution, a suit or a writ petition would lie against such orders.....However, Shri Sundaram argued, with particular

reference to the explanation to Section 31A of the Air Act that "directions" partake of the nature of "orders" when closure of any particular industry or stoppage of supply of electricity qua any single industry is made, and therefore, such directions are appealable as orders Under Section 31 of the Air Act. This argument is also of no avail as Section 33A of the Water Act contains an identical explanation to that contained in Section 31A of the Air Act. Despite this, the legislative scheme, as stated hereinabove, is that so far as directions under the Water Act are concerned, they are appealable, but so far as directions under the Air Act are concerned, they are not appealable."

Thus, this Court is well within its jurisdiction to entertain the present writ petitions.

10. Now, I propose to deal with the issue submitted in the form of preliminary

submission, which is as to whether Rajasthan State Pollution Control Board is competent to impose Environmental Compensation, as has been imposed in the orders impugned in the present bunch of petitions.

10.1 In order to adjudicate the above issue, it would be appropriate to first consider the judgment of the Hon'ble Apex Court in the case of Lodhi Properties (supra). Before considering the said judgment, it would be appropriate to reproduce certain relevant paragraphs of the judgment, which are reproduced as under:-

"31. At this stage, we must also take note of the recent 2024 amendments to the Water and Air Acts. Two major changes relevant for our consideration are that of decriminalisation and introduction of the office of "Adjudicatory Officer". Even after the amendments, in our opinion, there is no conflict between the powers of the State Boards to direct payment of environmental damages under Sections 33A and 31A of the Water and Air Acts and the powers of the Adjudicating Officer to impose penalties under Chapter VII of the Water Act and Chapter VI of the Air Act. The decriminalization of offences under these Chapters has not removed the punitive nature of actions that can be taken under them. There remains a clear distinction between the nature of directions that the State Boards can issue under Sections 33A and 31A of the Water and Air Acts for payment of environmental damage and the determination by Adjudicating Officers. The former is compensatory in nature and will be resorted to when remedial measures are being undertaken to restore the degraded environment or pollution caused. The latter is a penalty for an offence under the law and is imposed with the objective of punishing the offender. This penalty collected here will not be specifically directed towards the restoration of the degraded environment (for instance, to decontaminate a pond that has been polluted due to discharge of untreated sewage). It will be deposited in the Environmental Protection Fund that is to be set up under Section 16 of the Environment (Protection) Act. According to Section 16(3) of the EP Act, the Fund shall be used for, (a) the promotion of awareness, education and research for the protection of environment; (b) the expenses for achieving the objects and for purposes of the Air (Prevention and Control of Pollution) Act, 1981(14 of 1981) and under this Act; and (c) such other purposes, as may be prescribed.

A. Board's Responsibility to Choose Appropriate Course of Action.

32. Given their broad statutory mandate and the significant duty towards public health and environmental protection the Boards must have the power and distinction to decide the appropriate action against a polluting entity. It is essential that the Boards function effectively and efficiently by adopting such measures as is necessary in a given situation. The Boards can decide whether a polluting entity needs to be punished by imposition of penalty or if the situation demands immediate restoration of the environmental damage by the polluter or both.

B. Powers Must Be Guided by Transparency and Non-Arbitrariness.

33. While we hold that the Boards have the power to direct the payment of environmental damages, we make it clear that this power must always be guided by two overarching principles. First, that the power cannot be exercised in an arbitrary manner; and second, the process of exercising this power must be infused with transparency. ...

35. To ensure that the Boards impose restitutionary and the compensatory environmental damages in a fair transparent, non- arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of rules and regulations must be notified. This shall include methods by which environmental damage is determined, and the consequent quantum of damages are assessed. They may also incorporate certain basic principles of natural justice for fairness in action. At present environmental damages are being levied by the Boards on the basis of certain guidelines issued by the Central Pollution Control Board in its document "General framework for imposing environmental damage compensation" issue in December, 2022. These guidelines seem to have been issued pursuant to the directions of the NGT. It is important that these guidelines are reviewed thoroughly and issued in the form of Rules and Regulations. This will enable declaration of a law that applies and ensures its recognition and easy implementation.

36. These Rules must also create enabling framework for citizens to file complaints about environmental damage. Public participation in environmental protection has assumed great importance with climate change threatening to drastically disrupt our way of living. Boards, being the first line of defence against polluting activities, must provide easy accessibility and encourage public participation in their function and decision making.

37. While we have reversed the decision of the High Court on the principle of law and hold that the environmental regulators, the Pollution Control Boards, can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an ex-ante measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the Water and Air Acts, we issue the following consequential directions.

39. For the reasons stated above:

(a) we allow these appeals and set aside the judgement and order dated 23.01.2012, passed by the Division Bench of the High Court of Delhi to the extent of declaration of law but direct that the show cause notices that have been set aside by the High Court shall not be revived.

(b) we direct that the Pollution Control Boards can impose and collect as restitutionary and compensatory damages fixed sums of monies or require furnishing bank guarantees as an ex-ante measure towards potential environmental damage in exercise of powers under Sections 33A and 31A of the

Water and Air Acts.

(c) it is further directed that the power to impose or collect restitutionary or compensatory damages or the requirement to furnish bank guarantees as an ex-ante measure under Sections 33A and 31A of the Water and Air Acts shall be enforced only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation.”

10.2 A perusal of the above judgment, more particularly, the paragraphs as reproduced above, reflects that the Hon’ble Apex Court, in para No.39 of the judgment, has specifically concluded and directed that power to impose or collect restitutionary or compensatory damages or requirement of furnishing a bank guarantee as an ex-ante measure under Sections 33A and 31A of the Water and Air Act respectively shall be imposed only after detailing the principle and procedure incorporating basic principles of natural justice in the subordinate legislation. Meaning thereby, the Hon’ble Apex Court, while considering the issue of imposition of the Environmental Compensation by the State Pollution Control Boards, observed that the State Pollution Control Boards can impose restitutionary or compensatory environmental damages but only after having competence of subordinate legislation in the form of Rules & Regulations. In para No.35 of the said judgment, the Hon’ble Apex Court has further observed that to ensure that the Boards can impose restitutionary and compensatory damages in a fair, transparent, and non-arbitrary manner, with procedural certainty, necessary subordinate legislation in the form of Rules and Regulations must be notified. This shall include methods by which environmental damages is determined, and the consequent quantum of damages are assessed. While bringing such Rules & Regulations, it may also incorporate certain principles of natural justice for fairness in action. It is further observed that presently there is no legislation providing method of calculating Environmental Compensation and environmental damages being levied by the Boards on the basis of the certain guidelines issued by the Central Pollution Control Board in its document “General Framework for imposing environmental damage compensation” issued in December, 2022. It is noted by the Hon’ble Apex Court that these guidelines seem to have been issued pursuant to the directions of the NGT and the same are required to be reviewed thoroughly and are required to be issued in the form of Rules & Regulations.

10.3 Considering the observations made by the Hon’ble Apex Court, this Court is of the firm opinion that the RSPCB could not have demanded Environmental Compensation while considering the fact that there is no statutory backing with regard to the mechanism to calculate Environmental Compensation so also to have an authority to demand such Environmental Compensation.

10.4 Counsel for the respondents have stated that the Allahabad High Court, after considering the judgment of the Hon’ble Apex Court in the case of Lodhi Properties (supra), dismissed the writ petitions, however, it is noted that the Allahabad High Court has considered the only issue with regard to competence of

the State Pollution Control Board and has not considered the directions issued by the Hon'ble Apex Court, which mandated that the State Pollution Control Boards could demand Environmental Compensation only after framing Rules & Regulations.

10.5 There is no dispute to the fact that presently the formula, as applied by the RSPCB is based on the guidelines "Mechanism of Calculation, Imposition and Recovery of Environmental Compensation". These guidelines have no statutory backing and, therefore, considering the judgment of the Hon'ble Apex Court, the RSPCB has no authority of law in demanding such Environmental Compensation. It is also to be noted that in the present case, demands were raised in the year 2022-23. The Hon'ble Apex Court has though decided the issue regard to the competency of State Pollution Control Boards to impose Environmental Compensation recently in the case of Lodhi Property (supra) which was decided on 04.08.2025, and the demands raised in the present writ petitions are prior to it, yet considering the settled law on the prospective and retrospective operation of the judgments rendered by the Courts, which does not require much deliberation, it is clear that the observations made by the Hon'ble Apex Court in the said case would apply to impugned orders in the present bunch of writ petitions. The said of proposition of law was recently discussed by the Hon'ble Apex Court in the case of Kanishk Sinha & Anr. Vs. The State of

West Bengal & Anr.; 2025 INSC 278 wherein the Court observed that whereas the law made by the Legislature is always prospective in nature unless it has been specifically stated retrospective, the reverse is true for judicial pronouncements. The judgment of the Court will always be retrospective in nature unless judgment itself specifically states that the judgment will operate prospectively. That being so, once it is held by the Hon'ble Apex Court that the Environmental Compensation could only be imposed by the State Pollution Control Boards after it attains the legislative colour, the demand raised by the State Pollution Control Boards could not be allowed to stand and the impugned orders in the present bunch of petitions deserves to be quashed and set aside.

11. Another ground which has been raised by the learned counsel for the respondents to the effect that the order passed by NGT in pursuance of which the impugned orders have been passed by the RSPCB, has not been challenged before this Court, this Court is of the opinion that when the entire exercise of inspection and imposition of the environmental compensation has been carried out by the RSPCB then, it can be safely concluded that the said exercise constitutes an independent action which can be challenged under writ jurisdiction without challenging the order of NGT considering the fact that the impugned orders are composite in nature; more particularly, when the core issue is with regard to the competence and jurisdiction of the RSPCB to levy environmental compensation.

12. Some additional submissions have also been made by the petitioners as well as by the respondents on some other issues but this Court does not deem it

necessary to examine the same as the core issue is only with regard to the competence of the RSPCB to impose impose Environmental Compensation in absence of statutory backing.

13. In view of the above, the preliminary submissions, as raised by the petitioners, is accepted. The writ petitions are allowed. The impugned orders/notices/communications in the present writ petitions are hereby quashed and set aside.

14. It is hereby directed that if any amount has been collected or deposited in lieu of demand raised vide impugned orders/notices/ communications, the same shall be refunded to the respective petitioners within a period of six weeks from the date of receipt of certified copy of this order and if amounts are not deposited or collected, the respondent-RSPCB shall not take any further action.

15. However, the respondent-RSPCB can impose and collect restitutionary and compensatory damages so also damages qua potential environmental damage while exercising powers under Sections 33A of the Act of 1974 and 31A of the Act of 1981 provided the subordinate legislation is enacted detailing the principles and procedure incorporating basic principles of natural justice.

16. All pending applications, if any, shall also stand disposed of accordingly.