

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

ORIGINAL APPLICATION NO. 336/2023
(I.A. No. 717/2023)

IN THE MATTER OF:

PANKAJ SRIVASTAVA
B-203, Indraprasth Grand,
Vrindavan Yojna, Sector- 4A,
Lucknow, Uttar Pradesh

...Applicant(s)

Versus

- 1. BIRLA CARBON INDIA PVT. LTD.**
Murdhwa Industrial Area,
P.O. Renukoot,
District Sonebhadra,
Uttar Pradesh
- 2. CHIEF ENVIRONMENT OFFICER (CIRCLE 2)**
Uttar Pradesh Pollution Control Board,
T.C. 12th Floor, Vibhuti Khnad,
Gomti Nagar,
Lucknow, Uttar Pradesh

...Respondent(s)

COUNSELS FOR RESPONDENT(S):

Ms. Vanita Bhargava and Ms. Nikitha Shenoy, Advocates
for Birla Carbon India Pvt. Ltd. (Respondent no. 1)
Mr. Daleep Dhyani, Advocate for UPPCB (through VC)

CORAM:

HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER

RESERVED ON: DECEMBER 01, 2023
PRONOUNCED ON: JANUARY 19, 2024

JUDGMENT

BY HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER

1. This Original Application (hereinafter referred to as '**OA**') dated 04.05.2023 under Sections 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as '**NGT Act 2010**') has been registered on an application submitted by Mr. Pankaj Srivastava, resident of B-203, Indraprasth Grand, Vrindavan Yojana, Sector 4A, Lucknow (hereinafter referred to as '**applicant**'), complaining that there is an industrial unit namely, M/s. Birla Carbon India Pvt. Ltd., Unit Renukoot, District Sonebhadra, State of Uttar Pradesh (hereinafter referred to as '**respondent 1/proponent**'), which is discharging its untreated polluted black water into an existing nallah which is connected to "Renu River" and ultimately connects to River Sone, causing pollution of the river and violating the provisions of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as '**Water Act 1974**') read with Rule 33 of the Rules framed thereunder.

2. On 22.01.2021, Shri Pakodilal, Member of Parliament, along with local administration inspected above nallah and also the plant of respondent 1 in order to verify the complaint of local residents and found that water colour of nallah was black due to discharge of black effluent water into nallah by respondent 1.

3. Another inspection was conducted by a team comprising Central Pollution Control Board (hereinafter referred to as '**CPCB**') and Uttar Pradesh Pollution Control Board (hereinafter referred to as '**UPPCB**') on 09.02.2021 and they also found discharge of untreated carbon containing black water in adjacent nallah as a result of overflow of Effluent Treatment Plant (hereinafter referred to as '**ETP**') of the unit causing pollution.

Consequently, Chief Environment Officer, Circle – 2 (hereinafter referred to as ‘**CEO (Circle-2)**’) issued a show cause notice dated 24.03.2021 in exercise of powers under Section 33A of Water Act 1974 to show cause as to why operation of the unit be not closed immediately, electricity and water supply be not directed to be disconnected and environmental compensation at the rate of Rs. 30,000/- per day be not imposed upon the industrial unit i.e., respondent 1. However, despite show cause notice, nothing has improved and respondent 1 has not stopped discharging untreated black colour water into nallah.

4. Applicant has supported its averments by filing certain photographs as annexures 2 to 9. Applicant has said that though respondent 1 is proposed to follow Zero Liquid Discharge (hereinafter referred to as ‘**ZLD**’) system but due to overflow of ETP or leakage, as the case may be, plant’s pond is over-flowing and carbon black has settled on the top of the pond water.

Tribunal’s order dated 18.05.2023:

5. Applicant’s complaint was considered by Tribunal on 18.05.2023 and noticing that a substantial question relating to environment has arisen due to implementation of Scheduled enactment under NGT Act 2010, Tribunal found it appropriate to constitute a Joint Committee comprising CPCB, UPPCB and District Magistrate, Sonbhadra to ascertain factual position and furnish a factual report. In respect of show cause notice dated 24.03.2021, Tribunal observed that UPPCB may take further action and finalise the matter within one month and file Action Taken Report. Tribunal directed for supply of copy of the complaint to various authorities as well as project proponent i.e., respondent 1.

Response dated 22.06.2023 submitted by respondent 1:

6. Proponent has filed its response stating that on 09.12.2021, officials of CPCB and UPPCB jointly visited the industrial unit of respondent 1 and observed some water near boundary wall inside the plant. Water reached there due to road and floor cleaning activity inside the plant. Proponent recollected the accumulated water and recycled it for use in production process. UPPCB issued show cause notice dated 24.03.2021 and sought explanation from respondent 1 for violation of environmental norms as per inspection report dated 09.02.2021. Proponent submitted reply dated 14.04.2021 (annexure-B at page 16 of paper book) to show cause notice dated 24.03.2021, stating that consent letter dated 30.01.2019 was issued to proponent for domestic effluent and it is complying with the conditions imposed in the consent order. The inspection of the unit by Pakodilal, Member of Parliament, Sub-Divisional Magistrate, Dhudhi and Regional Officer, UPPCB on 22.01.2021 was admitted but it is said that during inspection, there was no effluent being discharged outside the factory premises. Certain minor observations related to plant housekeeping were made which were resolved immediately. The plant has Zero Water Discharge Scheme with Lamella Clarifier. It is recycling 100% effluent water again in the plant process. Electromagnetic flow meter is available for re-cycled water and online real data transmission of effluent water quality and quantity to CPCB is being done. Flow meter reading is being maintained in log book. There is reduction of intake of fresh water over a period of time after the installation of Zero Water Discharge Scheme. Proponent has also installed camera in ZLD plant and the feed is available on the net. No effluent or carbon black is being discharged in any of the rivers flowing in the area. With respect to the inspection made on 09.02.2021 by the team comprising officers of CPCB and UPPCB, proponent has stated that there was an observation by the inspection team

that some carbon has accumulated near ZLD plant which was due to plant floor washing. Some dry Carbon was also observed near plant boundary wall but there was no observation or evidence that effluent water was being discharged outside factory premises. However, it is said that certain minor observations were made relating to plant housekeeping which were resolved. With regard to accumulation of carbon near ZLD plant and other observations, reply of the proponent reads as under:

*“Infact, the issue related to **accumulation of some Carbon near ZLD Plant and some Dry Carbon near Plant Boundary Wall has also been addressed within four days of the Plant visit.** We have constructed Dyke wall near ZLD Plant and also prepared Pit near ZLD Plant to recover any waste Carbon Immediately and are ensuring that the same is recycled in the existing Carbon slurry rerun system. The compliance of the site visit observations of 09-02-2021 is also attached and marked as Annexure 4.*

It is also pertinent to mention that Environment testing including effluent water testing is done by third party M/s Ecomen Laboratories on quarterly basis and its report is submitted to State and Central Pollution Control Board. During the Plant visit also, we offered the team to collect and test the water sample.

Birla Carbon, Renukoot is responsible company and follows world class Environment and Safety Standards, Birla Carbon, Renukoot is the first company in the region to Install Zero Liquid discharge system in the year 2011.

*Birla Carbon most respectfully submits that the team of CPCB and State Pollution Control Board may kindly revisit the again and ascertain themselves to their satisfaction that the Plant is fully compliant and **all issues that were raised during the earlier visit have been resolved.***

*It is also respectfully submitted that **Birla Carbon, Renukoot should be given an opportunity to rectify the issues,** if any, before contemplating any punitive action as stated in the Show Cause Notice.*

*Without prejudice to our submissions that we are not polluting the River in any manner, **Birla Carbon, Renukoot has infact rectified all internal issues immediately within four days of the Plant visit by the CPCB and State Pollution Control Board team on 09-02-2021,** for which we will once again request the CPCB and State Pollution Control Board team to check and satisfy itself.*

We, therefore, most respectfully request you that as we are complying with all the conditions of the CTO water order and there is no Industrial discharge outside the factory premises so kindly withdraw your Show Cause Notice dated 24 March, 2021 and if you need any further clarification please let us know.”

Joint Committee Report dated 11.08.2023:

7. Joint Committee has also filed its Report dated 11.08.2023. It visited site of the plant on 21.06.2023 and its observations and findings during inspection are as under:

- “4. *The unit has valid consents under Water and Air Acts. The consented production capacity of Carbon Black 6100 MT/Month and by-product Electricity Generation-15 MW & Steam Generation-46000 MT/Month.*
5. *As per the water balance chart provided by the unit, total fresh water consumption in the production process is 2400 KLD and 400 KLD treated wastewater is recycled in the process. Remaining 2000 KLD water is consumed as make-up water in three cooling towers, DM water make-up in power plant and for the domestic consumption. (Annexure)*
6. *The unit has also provided **Effluent Collection Pit of 1514 KL Capacity for intermediate storage.** Settling through Lamella clarifier followed by MGF Sand Filtration is the treatment system employed to remove the carbon black particles from the effluent. **The treatment capacity of the ETP is 250 KLD. The treated effluent is recycled in the process.** (Annexure)*
7. *The **unit has also provided STP of capacity 250 KLD for treatment domestic effluent.** The primary and secondary treatment system followed by two stage filtration units (MGF & Activated carbon filters) has been employed for the treatment. The treated effluent is used for cooling tower make-up. (Annexure)*
8. *The matter raised in the application was related to the effluent discharged by the unit during February 2021.*
 - 8.1. *The **unit was visited** by the team of officials from UPPCB along with the Member of Parliament Shri Pakodilal Kaul **on 22.01.2021.** During the visit the **black color effluent was seen flowing into the adjacent drain which is finally meeting to River Son through River Renu.***
 - 8.2. *The joint committee comprising of representatives from CPCB, UPPCB and District Magistrate constituted by*

Hon'ble NGT in the matter of Original Application No. 164/2018 Ashwani Kumar Dubey Applicant Vs Union of India & Ors. Respondent(s) **visited the unit on 09.02.2021**. The committee in its report state that, 'It was informed that they are reusing and recycling the treated effluent. However, **the team found that, there was a bypass arrangement through boundary wall near ETP through which the dark blackish effluent was letting out into the drain outside the plant premises.**'

8.3. Regional Office, UPPCB, Sonebhadra has **visited the unit on 02.03.2023 and found the status as complying**. Regional Office, UPPCB, Sonebhadra vide letter Dated 05.03.2021 recommended to impose the Environment compensation on said unit for defaulting period starting from 22.01.2021 to 02.03.2021. By accepting this recommendation, Head Office, UPPCB has issued a show-cause notice to the said industry on 24.03.2021.

8.4. The same constituted joint committee in the matter of Original Application No. 164/2018 **again visited the unit during June 07-11, 2021** and reported the status as following,

8.4.1. The unit is achieving ZLD for ETP & STP.

8.4.2. The **leakages through the boundary wall near ETP found during the earlier visit is trapped**.

8.4.3. The unit has also installed a CCTV camera at the said spot. And also provided the footage of random dates which shows that the wastewater was not discharging outside the plant boundary.

8.5. Thereafter, during the quarterly visits of the said joint committee, the unit was always found complying with the ZLD condition.

8.6. Even during the visit of the joint committee constitute in this matter also found that the unit has not discharging any effluent outside the plant premises and monitoring the status through the CCTV camera installed on the boundary wall.

9. The UPPCB has imposed the environmental compensation of Rs. 1,20,000/- for discharging the effluent outside the plant premises.

9.1. Regional Office, UPPCB, Sonebhadra office vide its report dated 05.03.2021, recommended for imposing the environmental compensation at the rate of Rs. 30,000/- per

day for the period of 40 days starting from the day on which the unit was first time found discharging the effluent outside the plant premises i.e., 22.01.2021 to the date of latest visit i.e., 02.03.2021.

9.2. Based on the report of the Regional Office, UPPCB Lucknow has issued show cause notice to the unit vide letter dated 24.03.2021. (Annexure)

9.3. The unit submitted a letter to the UPPCB on 07.10.2022 that the said **discharge was been eliminated within 04 days immediately after the inspection of the committee on 09.02.2021**. By accepting the claim of the unit UPPCB issued the direction on 29.11.2022 and imposed the environmental compensation for 4 days at the rate of 30.000/- day, which was paid by the unit.

9.4. However, **the compensation imposed only for 4-days needs to be revisited and reviewed considering the available facts.**

10. The unit has also submitted representation to the committee along with the supporting documents. The unit claims that the applicant is the ex-employ of the company and having the responsibility of the EHS (Environment, Health, and Safety), during the reported period of non-compliance in February 2021. However, later he has dispute with the company and due to which he has filed this application. (Annexure)

11. Finding of the committee:

11.1. **It is true that the unit discharged the blackish effluent into the adjacent drain during January-February 2021, which was observed by UPPCB on 22.01.2021 and the joint committee on 09.02.2021.**

11.2. However, **the unit has eliminated the said leakages** through the boundary wall near ETP and installed a CCTV camera at the said spot for continuous surveillance.

11.3. **The compliance status in this regard has been verified by UPPCB on 02.03.2021** and thereafter in each quarterly visit of the joint committee constituted in the matter of OA No 164/2018, the unit was always found complying with the ZLD condition.

11.4. The joint committee constituted in this matter visited the industry on 21.06.2023 and found that the unit is achieving ZLD through recycling of the treated effluent.

11.5. However, the UPPCB needs to revisit the period of non-compliances considered for imposing the environmental compensation.”

Reply Affidavit dated 04.09.2023 filed on 12.09.2023:

8. Reply Affidavit dated 04.09.2023 has also been filed by respondent 1 and stand taken by it, in para 5(a) to (f), is as under:

- “(a) The unit had a Zero liquid discharge plant since 2011 with a lamella clarifier. The unit is recycling 100% of the effluent water generated in the production process. Electromagnetic flow meter is installed for recycled water. Online real time data is transmitted to CPCB, which includes quality and quantity of recycled water. Flow meter reading is maintained in the manual log book.
- (b) The unit had responded to the Show Cause Notice dated 24 March 2021 issued by UP Pollution Control Board (“UPPCB”) vide letter dated 14 April 2021 and had stated that on 9 February 2021 there was no discharge, however, there was accumulation of some carbon near ZLD plant and some dry carbon near plant boundary wall. It was stated that the said issue had been addressed within four days of the plant visit and the unit had constructed a dyke wall near ZLD plant and also prepared pit near ZLD plant to recover any waste carbon immediately and had been ensuring that the same is recycled in the existing carbon slurry rerun system. The reply to the show cause notice has been annexed to the reply of 22.6.2023 as Annexure B. The geotagged image of boundary wall area taken on 12.2.2021 and image of the location mentioned in the show cause notice showing area is dry and clean is annexed hereto and marked as ANNEXURE R/ 1.
- (c) It was also stated that the fact that the unit is a ZLD unit is evident from the reduction of intake of fresh water over a period of time after the installation of zero water discharge system.
- (d) It was also submitted that the Environment testing of effluent water done by third party M/s Ecomen Laboratories on quarterly basis also shows that the same is within parameters.
- (e) The Oversight Committee appointed by the NGT in OA No. 164/2018 in Re: Ashwani Kumar Dubey versus Union of India and Ors. pending before this Hon’ble Tribunal in which this Tribunal had directed quarterly monitoring of the region where Respondent unit is situated, had visited the site on 31 July 2021 and found that the unit was achieving ZLD; there was no leakage to the boundary wall near ETP and the unit had installed CCTV

camera in ZLD plant, and the footage shows that waste water was not being discharged outside the plant boundary.

(f) The UPPCB also visited the unit on 23 August 2022. UPPCB accepted that the issue regarding the accumulation of carbon ZLD plant had been rectified within four days and accordingly the environmental compensation at Rs. 30,000/- per day amounting to Rs.1,20,000/- was imposed vide letter dated 29 November 2022. The same was paid by the Respondent vide letter dated 10 December 2022, copies of which are annexed to the reply dated 22.06.2023 as Annexure C and D respectively.”

9. Respondent 1 has also raised an objection with regard to *bona-fide* of applicant, stating that he is a disgruntled ex-employee of proponent. He worked for a period of 32 years in Safety Health and Environment Department and was heading the same till September 2020. In September 2020, he requested for pre-mature retirement due to family commitments which was allowed. He again sought a statement whereupon he was granted extension of one year and after expiry of the extension, he again sought a further extension of 3 years, which was refused. Applicant did not find favour with the respondent 1 company, hence this application has been filed just to put the company in unwarranted trouble. Applicant himself was responsible for setting up of Zero Water Discharge treatment plant which achieved zero discharge status with successful installation and commissioning of Sewage Treatment Plant (hereinafter referred to as ‘**STP**’) and construction of hazardous waste collection area. Photographs taken by applicant in June and July 2021 are from the area which is inaccessible to general public and it appears that he has taken photographs during employment being used for *mala-fide* reasons.

10. Reliance is placed on Supreme Court’s order dated 21.10.2022 in **Civil Appeal No.2407/2021, State of Uttar Pradesh vs. Uday Education and Welfare Trust** observing that credentials and bonafides of applicant must be tested before permitting a litigant to knock door of

justice. Reliance is also placed on Supreme Court's judgment in **Dalip Singh vs. State of Uttar Pradesh, (2010) 2 SCC 114** where litigants approaching Courts and Tribunals with uncleaned hands attempting to use machinery of justice system for *mala-fide* motives have been condemned.

11. On the merits of the matter, respondent, in para 13 to 22, has said as under:

- “13. *The contention made by the Applicant in his application (paragraph 4) that untreated effluent is flowing from the ETP towards Nallah is completely incorrect. The applicant in its reply dated 22.6.2023 has **produced images showing the condition of the land between ZLD system and plant boundary wall on different dates of July 2021 (i.e. 5th July'21, 15th July'21 & 21st July'21)** as Annexure G. These images are taken from the video recordings from the camera placed on boundary wall near ZLD area. The video clippings from the same camera are available for the different dates of July 2021 i.e., 5th, 9th, 15th, 20th and 31st July 2021.*
14. *In paragraph 5, the Applicant has falsely contended that the ZLD plant pond had overflowed on 25 June 2021. The Applicant submitted image of effluent pit and not the ZLD pond as mentioned in the application. This effluent pit is inside ZLD area. Our ZLD area is surrounded by dyke wall, which restricts effluent water to flow outside ZLD area. Overflow of effluent pit goes into collection pit, which is evident from the images produced by the Respondent in its reply dated 22.6.2023 as Annexure I and J.*
15. *In paragraph 6, the **Applicant has falsely contended that settling pond was overflowing on 25 June 2021.** This is a false allegation. The Respondent has produced the geo tagged images with similar coordinates in its reply dated 22.6.2023 as Annexure K to show that the Respondent has a second collection pit at this point where water is recollected and reprocessed.*
16. *It is to be noted that **between 20 June 2021 to 26 June 2021, there were medium to heavy rains in the Renukoot area and applicant has taken photos of wet surface** as mentioned in paragraph 6 of the application.*
17. *In paragraph 7 of the Application, the Applicant has contended that untreated black water discharge is being made from carbon pond near main laboratory is being made into the Nalla. It is*

submitted that the said **carbon pond near laboratory did not exist during the year 2021**. There was a fountain pond that existed in the year 2021. There was an outlet of the fountain pond which was connected with STP. In order to further strengthen the ZLD system, this fountain pond was converted into emergency effluent tank in April 2022, and it was connected to the ZLD. Necessary arrangements were made for circular movement of the effluent from ZLD to emergency effluent tank and back. The outlet of the erstwhile fountain pond removed at the time of converting fountain pond into the emergency effluent tank. The image provided by the Applicant was of outlet of the fountain pond which was connected to STP. It is a case of misrepresentation of facts. The Applicant has in its reply dated 22.6.2023 produced a geo tagged image as Annexure M showing that there is no such outlet as claimed by the Applicant.

18. In paragraph 8, the Applicant has again made the same false claim about untreated black water accumulating near ZLD area and the boundary wall. The said photographs nowhere show that the same are of an area near ZLD plant or boundary wall. Further the Respondent has produced images of the boundary wall showing there is no discharge and the same is endorsed by the report of the NGT Oversight Committee, extract of which was produced with the reply dated 22.6.2023 as Annexure H and the video clippings of different dates of July 2021 (i.e. 5 July 2021, 15 July 2021 and 21 July 2021) which were already submitted to NGT Oversight Committee during their visit on 3 July 2021. The Respondent can produce the video clippings before this Hon'ble Tribunal, as and when required. The Current image of the boundary wall has been produced with the reply dated 22.6.2023 as Annexure N.
19. It is also submitted that pursuant to the directions of this Hon'ble Tribunal, the UPPCB had visited the plant on 20 June 2023 and had requested the following documents to be submitted:

1.	NGT direction (No. 336/2023)
2.	Process Flow with description
3.	Water Balance
4.	CTO (Air & Water)
5.	CTO compliance last 3 months (March-May'23)
6.	Hazardous Waste Authorization
7.	Hazardous waste annual return for last 2 years (FY 21 & FY 22)
8.	Environmental Compensation documents
9.	ETP Dimension & Design

The Respondent submitted the same on 22 June 2023. The same

are annexed hereto as ANNEXURE R/3/Colly)

20. *It is submitted that the Respondent has a valid Consent to operate and has filed monthly compliance reports showing compliance with the consent conditions. No Objection has been raised with respect to the same. It also has authorisation under the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and is a fully compliant industry.*
21. *Apart from the compliance reports submitted by the Respondent unit, it is also subjected to quarterly monitoring by the NGT oversight committee, as mentioned above.*
22. *The Respondent unit is a responsible global organization and is environmentally conscious. It recognizes its responsibility to safeguard the environment. It takes a long-term view and continually adapts and invests towards using resources more effectively and minimizing adverse impact on environment, if any. Its aim is to become net zero (carbon neutral) by 2050. The environmental part of the sustainability report 2022 was produced with the reply dated 22.6.2023 as annexure 0.”*

Tribunal’s order dated 09.10.2023:

12. The factum about compliance by unit was found by Regional Officer, UPPCB only on 02.03.2023, therefore, environmental compensation imposed for 4 days remained unexplainable by Learned Counsel appearing for UPPCB. Tribunal accordingly, vide its order dated 09.10.2023, made its observations as under:

“2. In pursuance to the direction of the Tribunal dated 18.05.2023, a report dated 11.08.2023 has been filed by the joint Committee. The report mentions that during the visit of the team of officials from UPPCB along with Member of Parliament on 22.01.2021, black colour effluent was seen flowing into the adjacent drain which is finally meeting the River Son through River Renu. It is further stated that the unit was again visited by the joint Committee comprising of representatives from CPCB, UPPCB, District Magistrate and that the unit was reusing and recycling the treated effluents. However, the team of officials had found that there was a bypass arrangement through the boundary wall near ETP through which the dark blackish effluent was letting out into the drain outside the plant premises.

3. In the subsequent visit by the Regional Officer, UPPCB on 02.03.2023, the unit was found to be complying.

4. *The report further reveals that the Regional Office, UPPCB, Sonbhadra Office vide report dated 05.03.2021 had recommended environmental compensation @ of Rs. 30,000/- per day for the period of 40 days from 22.01.2021 to 02.03.2021 and a show cause notice was issued but by order dated 29.11.2022, environmental compensation of Rs. 1,20,000/- for violation period of 4 days was imposed.*

5. *On perusal of the record, it is found that the show cause notice dated 24.03.2021 clearly mentions about inspection dated 22.01.2021 and default of discharge of effluent in the drain, but in the final order dated 29.11.2022 while imposing the environmental compensation for 4 days, the violation noted in the inspection dated 22.01.2021 has been completely given a go by and has not even been taken note of.*

6. *We prima-facie do not find sufficient material on record justifying the imposition of environmental compensation for four days instead of 40 days from 22.01.2021 to 02.03.2021 as mentioned in the show cause notice dated 24.03.2021.*

7. *Learned Counsel for M/s. Birla Carbon Renukoot Plant seeks two weeks' time to examine this aspect and make her submissions.*

8. *Meanwhile, let notice be also issued to the Chief Environment Officer (Circle 2), UPPCB who had passed the order dated 29.11.2022. The Registry is directed to take appropriate steps to serve the notice.*

9. *List on 01.12.2023."*

13. Report dated 11.08.2023 was considered by Tribunal on 09.10.2023. It found that Regional Officer, UPPCB has made recommendation for imposing of environmental compensation for the period of 22.01.2021 to 02.03.2021 i.e., 40 days. But in the final order passed by UPPCB on 29.11.2022, environmental compensation of only 4 days to the extent of Rs. 1,20,000/- was imposed. Learned Counsel appearing for UPPCB could not explain as to why environmental compensation was only for 4 days when violation was found on 22.01.2021 as also on 09.02.2021 pursuant where to, show cause notice dated 05.03.2021 was issued.

Additional Affidavit dated 28.11.2023 filed by respondent 1:

14. Additional affidavit has been submitted on the short question as to whether there was any violation from 22.01.2021 to 02.03.2021 on the part of respondent 1 and whether environmental compensation proposed for 40 days was justified or environmental compensation actually imposed for 4 days i.e., from 09.02.2021 to 12.02.2021 is correct. The stand taken by respondent in para 5 reads as under:

- “(i) *On 22 January 2021, no water sample was taken as per the prescribed procedure enshrined in Rule 6 of the Environment Protection Rules, 1986;*
- (ii) *It is pertinent to note that based on only visual observations Show Cause Notice was issued and no photograph was taken by any visiting officials who were visiting the plant premises (to support their allegation of effluent discharge into the drain and also whether the same was beyond the parameters prescribed).*
- (iii) *The laboratory analysis report of outlet of ETP by CPCB in relation to the **inspection conducted by Scientists from the Banaras Hindu University on 17 January 2021 just four days prior to the date of alleged discharge i.e. 22 January 2021, shows there was no effluent discharge into the drain.** Moreover, it is reiterated that Respondent is ZLD unit since 2011, and submitting annual compliance report regularly.*
- (iv) *The monthly test reports of upstream and downstream of the drain/nalla from independent recognized laboratory done on 26 December 2020, 30 January 2021, 27 February 2021 and 29 March 2021 close to the date of alleged discharge i.e 22 January 2021 shows there was no contamination from industrial effluent and all parameters were within normal range.*
- (v) *The Respondent had filed self-compliance reports with UPPCB to show compliance with CTO conditions. The test reports of waste water from ETP outlet and STP outlet for period just prior to 22 January 2021 shows all parameters were within prescribed limit.*
- (vi) *The contemporary reports of the period close to 22 January 2021 showing compliance by the Respondent shows that there is no possibility of any untreated effluent discharge in the drain. It is reiterated that the apprehension of the officials was based*

on a visual observation is set to a nought by the contemporary reports mentioned above.

(vii) The aforesaid facts were explained to UPPCB officials on 14 April 2021 and 30 June 2022. Thereafter, the Regional officer of UPPCB again inspected the plant on 23 August 2022. The Respondent had a personal hearing with the Chief Environment Officer, UPPCB on 29 September 2022 and explained why there was no discharge on 22 January 2021. The same was minuted in letter of Respondent dated 7 October 2022. Based on the representations made from 2 March 2021 till date, inspections conducted from time to time where it was noted we were in compliance, submissions made during the personal hearing [followed by written submission] and only after careful consideration of the aforesaid, that Chief Environment Officer reevaluated the environmental compensation.”

15. Further in para 6 and 7 of the affidavit, respondent 1 has stated as under:

“6. The detail facts and submissions hereinbelow would establish that there was no discharge of effluent in the drain before, on or after 22 January 2021:

(a) That the Unit, which is a ZLD unit since 2011, has been submitting an annual environmental statement and compliance report to UPPCB pursuant to its Consent to Operate dated 30 January 2019. Pertinently, the Compliance Report was signed by the Applicant in the present matter, in his official capacity during his employment in the Safety Health and Environment Department of the Respondent till July 2021. No violations have been noted in the said reports.

(b) That prior to 22 January 2021, Respondent had submitted its compliance report to UPPCB on 9 January 2021, along with (i) the test reports of waste water from ETP outlet and STP outlet on 28 October 2020 and 29 October 2020 showing that all the parameters were within the prescribed limits; (ii) monthly meter reading of ETP/STP. Copy of the compliance report dated 9 January 2021 is annexed hereto and marked as ANNEXURE R-1/1.

*(c) That the CPCB had issued an Industry Inspection Report (Food, Dairy Beverages/Chemical/ Others). (**“CPCB Report”**) on the basis of an inspection carried out by scientists of Banaras Hindu University on 17 January 2021, just four days prior to the date of alleged discharge*

i.e., 22 January 2021.

Pertinently, the CPCB Report specifically records that there was no discharge of effluents and the quality of the treated effluent at outlet of ETP was within the parameters prescribed in the CTO. Further, the Compliance Status is clearly mentioned as “Comply” on the basis of Discharge norms and the Other Observations of the report, for the heading “Any Discharge/ Bypass evident” states “No”. The report has photographs of the various locations of the Respondent.

This makes it clear that even up till four days prior to 22 January 2021, no discharge was found by the CPCB on the basis of the inspection conducted by expert scientists from Banaras Hindu University. A copy of the CPCB Report dated 17 January 2021 is annexed herewith and marked as ANNEXURE R-1/2.

*(d) That **on 22 January 2021 some observations were made by the visiting officials based on noticing some coloured effluent** but no sample was collected on the said date. Therefore it cannot be assumed that the effluent noticed was beyond parameters only based on colour especially when CPCB Report dated 17 January 2021 found Respondent to be compliant just 4 days prior which can be demonstrated by the monthly test report as stated earlier. **It is humbly submitted that in any event the Respondent can be said to be in violation only if the procedure prescribed under Rule 6 of the Environment Protection Rules, 1986 or Rule 30 of the Water (Prevention and Control of Pollution) Rules, 1975 was followed and a sample is taken by the officials in the manner prescribed and after complying with the requirements provided in Rule 6 and 8 of Environment Protection Rules.***

(e) The Oversight Committee appointed by this Hon’ble Tribunal in O.A No. 164/2018 in Re: Ashwani Kumar Dubey versus Union of India and Ors. had submitted a quarterly compliance report dated 27 November 2020 regarding the inspection done on 2 to 5 November 2020 which shows there was no observation of any non-compliances by the Respondent. Copy of the compliance report dated 27 November 2020 of oversight committee appointed by this Hon’ble Tribunal in OA 164/2018 is annexed hereto and marked as ANNEXURE R-1/3.

(f) There is no drain constructed between plant & Nalla. There is a permanent wall between the plant and the Nalla

for preventing any contamination to Nalla from the plant. It may also be noted that the **monthly test reports of water in upstream & downstream of nalla on monthly basis from independent government recognized laboratory on 26 December 2020, 30 January 2021, 27 February 2021, 29 March 2021 show that there was no contamination from the industry to the nalla and all the parameters were within the prescribed values.** A copy of the water testing reports conducted by Envirochem Research & Test Labs Pvt. Ltd., an approved environmental laboratory from the MoEFCC is annexed herewith and marked as ANNEXURE R-1/4.

7. In view of the aforesaid, the Respondent duly satisfied the UPPCB by way of the explanations in the following correspondence and by placing relevant documents and reports, in response to the Show Cause Notice dated 24 March 2021, on account of which the compensation was reevaluated:
- (a) Reply dated 14 April 2021 denying that any effluent was being discharged outside the factory premises on 22 January 2021, and there were only certain minor observations relating to plant housekeeping. (Annexed at Page 31-37 of the Reply Affidavit)
 - (b) Letter dated 30 June 2022 along with (i) geo-tagged photographs of the area (ii) statement of consumption of recycled water showing reduced intake of fresh water for process and domestic purpose (iii) flow water chart alongwith photographs of zero water discharge system (iv) plant visit report dated 9 February 2021 of CPCB being alongwith the Regional Officer of UPPCB. Copy of letter dated 30 June 2022 of the Respondent is annexed herewith and marked as ANNEXURE R-1/5.
 - (c) UPPCB, in light of the representations made by the Respondent conducted an onsite inspection on 23 August 2022 and noted that a walkway had been constructed near the boundary of the industrial premises to monitor that the industrial effluent is not being disposed outside the premises and status of waste effluent is maintained and CCTV cameras have been installed.
 - (d) Personal hearing was given to the Respondent by the Chief Environment Officer, UPPCB on 22 September 2022 wherein it was pointed out that (i) the ZLD plant was strengthened after the observation of CPCB on 9 February 2021 and completed on 12 February 2021. (ii) the geotagged image of the boundary wall taken on 12

February 2021 shows the area dry and clean. (iii) Installation of the ZLD system with lamella clarifier which is recycling 100% of effluent water, reducing use of fresh water. Electromagnetic flow meters have been installed for recycled water and online real time data is transmitted to CPCB which includes quantity and quality of recycled water. (iv) CPCB Report dated 17 January 2021 showing compliance by the Respondent. Additionally, the following documents were handed over to the Chief Environment Officer (i) Water testing reports of upstream and downstream of nalla of 26 December 2020, 30 January 2021, 27 February 2021 and 29 March 2021; (ii) Detailed scheme of waste water treatment & recycle system installed in the Respondent; (iii) Copy of Logbook containing quantity & quality of recycled water for the period starting from 17 January 2021 to 21 April 2021. Copy of the letter dated 7 October 2022 of the Respondent referencing the meeting of 22 September 2022 is annexed herewith and marked as ANNEXURE R-1/6.”

16. Respondent said that in view of the above facts, CEO (Circle-2) vide order dated 29.11.2022 imposed environmental compensation of only 4 days which was paid by respondent on 10.12.2022.

17. In para 9, it is said that no substantial instance of pollution, causing severe permanent or temporary harm to environment or living being was caused by respondent's activities. There was a minor infraction of some carbon accumulation due to plant floor and washing activities which were removed in the fastest possible time and respondent has paid environmental compensation. There was no sample or evidence to show that there was any untreated discharge during any period and the unit is in fact in compliant.

Compliance Report dated 29.11.2023 filed by UPPCB on 30.11.2023:

18. UPPCB has filed the above Report and in paras 3 to 15 has said as under:

“3. That it is submitted that M/s Birla Carbon India Private Ltd. Renukoot Murdhwa, Sonbhadra is engaged in production of

Carbon Black 6100 MT/Month and by-product Electricity Generation-15 MW & Steam Generation-46000 MT/Month using raw material Carbon Black Feed Stock, LHSL/LDO, Potassium Nitrate, Molasses, Caustic Soda, Hydrochloric Acid. **The process involves the cracking or pyrolysis of liquid hydrocarbon in a limited supply of air to form carbon black particles.** These particles after a number of further stages of formation and treatment take the final pellet form. **The water is used for domestic and industrial purposes such as pelletization, reactor quenching and cooling etc.** Total fresh water consumption in the production process is 2400 KLD and 400 KLD treated wastewater is recycled in the process. Remaining 2000 KLD water is consumed as make-up water in three cooling towers, DM water make-up in power plant and for the domestic consumption.

4. The unit has also provided Effluent Collection Pit of 1514 KL capacity for intermediate storage. Settling through Lamella clarifier followed by MGF Sand Filtration is the treatment system employed to remove the carbon black particles from the effluent. **The treatment capacity of the ETP is 250 KLD.** The treated effluent is completely recycled in the process. The recycled water is measured through V-notch and its logbook is maintained.
5. That the unit has also provided STP of capacity 250 KLD for treatment of domestic effluent. The primary and secondary treatment system followed by two stage filtration units (MGF & Activated carbon filters) has been employed for the treatment. The treated effluent is used for cooling tower make-up.
6. That as per the report of Regional Office, UPPCB, Sonbhadra, dated 05.03.2021, the Joint inspection by the officials of CPCB, District Administration and Regional Office UPPCB was done on 09.02.2021. **During the inspection the unit was found operational and overflow from ETP was observed.** It was also mentioned in the report dated 05.03.2021 that earlier during the visit of the team of officials from UPPCB and District Administration along with Hon'ble Member of Parliament on 22.01.2021, **blackish water was seen flowing into the adjacent drain,** but no inspection report along with analysis report of the said black water was sent by Regional Officer after this visit. That it is also submitted that there was no mention of any bypass drain from industry in the report dated 05.03.2021. The copy of report dated 05.03.2021 is enclosed herewith and marked as Annexure No.- 1.
7. That it is submitted that Regional Office, UPPCB, Sonbhadra vide report dated 05.03.2021 had recommended environmental compensation @ of Rs. 30,000/- per day for the

period of 40 days from 22.01.2021 to 02.03.2021 on the basis of inspection done on 09.02.2021. Though, there was no mention of any discharge outside the premises from industry during inspection dated 02.03.2021, till which environmental compensation was recommended. Accordingly a show cause notice was issued to the unit on 24.03.2021 for imposition of Environmental Compensation by UPPCB @ Rs 30,000/- per day for defaulting period.

8. That it is submitted the industry vide letter dated 14.04.2021 has informed that industry was visited by Shri Pakorilal (Member of Parliament), SDM Dhudhi and Regional Officer, UPPCB on 22.01.2021. During the inspection there was no Effluent water being discharged outside the factory premises. There were certain minor observations related to Plant housekeeping only, which have been resolved immediately. The unit is having ZLD arrangement along with electromagnetic flow meter for measuring recycled water and online real data transmission system of effluent water quality and quantity to CPCB. In order to give natural justice to project proponent, the reply of industry submitted vide letter dated 14.04.2021 in response to show cause notice dated 24.03.2021 was considered. The copy of letter dated 14.04.2021 is enclosed herewith and marked as Annexure No. -2.
9. That it is submitted that after considering the industry letter dated 14.04.2023, Regional Officer, Sonbhadra had sent a letter dated 15.04.2021 informing that during the visit on 22.01.2021 and 02.03.2021, no effluent was found being discharged outside the industry, so no effluent sample were taken for analysis. During inspection, the industry was directed to maintain housekeeping within the industry. Again the unit was inspected by CPCB along with officials of regional office UPPCB Sonbhadra on 09.02.2021. The leakage near the boundary wall at ETP site was found on 09.02.2021. The team observed some carbon accumulation near ZLD Plant which got accumulated due to plant floor washing. Some dry carbon was also observed near the plant boundary wall.

That on the basis of above facts, Regional Officer, Sonbhadra has vide letter dated 15.04.2021 has recommended to review the proposal of Environmental Compensation sent previously vide letter dated 05.03.2021. The copy of letter dated 15.04.2021 is enclosed herewith and marked as Annexure No.-3.

10. That it is submitted that the unit has been inspected time to time by Third Party institutes (IT BHU) engaged by CPCB. As per the inspection report of Third Party comprising of Prof. of IIT BHU done on 27.06.2019, 17.01.2021 and 09.02.2022,

wherein it has been reported that the unit is having ETP for treatment of industrial effluent and STP for treatment of domestic effluent. Treated effluent was found fully recycled in the process and industry was found maintaining ZLD. The copy of report dated 27.06.2019, 17.01.2021 and 09.02.2022 are enclosed herewith and marked as Annexure No.- 4.

11. That it is submitted that Committee comprising of officials of CPCB, UPPCB and District Administration constituted by Hon'ble NGT in the matter of O.A. No. 164 of 2018 Ashwani Kumar Dubey Vs Union of India & Ors. has filed quarterly status report to Hon'ble NGT on 09.09.2021. Therein it is mentioned that "unit is achieving ZLD for ETP and STP, the leakage through boundary wall near ETP fully tapped and unit has installed CCTV camera at the said spot and provided the footage of random dates which shows that the wastewater was not discharging outside the plant boundary". The copy of relevant pages of report dated 09.09.2021 is enclosed herewith and marked as Annexure No. - 5.
12. **Industry vide letter dated 07.10.2022 have informed** that during visit on 09.02.2021 the water near boundary wall inside the plant reached there, due to road and floor cleaning activity inside the plant and near the ZLD plant. However the unit recollected the accumulated water and recycled it for the use in production process. **Industry has also taken observations seriously and immediately improved the ZLD plant within four days after the joint visit of the officials i.e. by 12.02.2021. Industry constructed dike wall and pit near ZLD plant to arrest any possible leakage in future.** The copy of letter dated 07.10.2022 is attached herewith and marked as Annexure No.-6.
13. That the industry has also submitted the water quality report of the sample collected from adjacent nala at upstream of the plant and downstream of the plant on 25.01.2021, 22.02.2021 and 24.03.2021 done by Laboratory approved from MoEF&CC and having ISO-14001:2015, ISO-45001:2018 and ISO 9001:2015 certification. **The reports shows that the water quality at adjacent nala was improving at downstream in comparison to upstream of plant, which reveals that the water quality of nala is not affected by the industry and it is improving naturally.** The copy of the analysis reports are enclosed herewith and marked as Annexure No.- 7.
14. That it is submitted that Regional Officer, UPPCB, Sonbhadra vide letter dated 25.08.2022 had informed that the unit was inspected by the officials of Regional Office, Sonbhadra on 23.08.2022 and it was found that industry is not discharging any effluent outside the premises and maintaining ZLD. Unit

*has made arrangement for collecting overflow water from ETP and recycling it back in the process and **has made 2 meter wide RCC structure in form of walk way near the boundary wall from where leakage was observed on 09.02.2021**. The representation of industry vide letter dated 14.04.2021 and 30.06.2022 were considered. On the basis of above facts Regional Officer, Sonbhadra has recommended for revoking the show cause notice issued to industry. The copy of letter dated 25.08.2022 is enclosed herewith and marked as Annexure No.-8.*

15. *That it is submitted that after scrutinizing the facts mentioned in Regional Office report dated 15.04.2021 and recommendation dated 25.08.2022, Third party inspection reports dated 27.06.2019, 17.01.2021 & 09.02.2022 by IIT BHU assigned by Central Pollution Control Board confirming that the unit is maintaining ZLD and representation of industry dated 14.04.2021 & 10.07.2022 in response of show cause notice mentioning about taking effective steps for preventing any leakage from industry within 04 days of inspection by joint committee on 09.02.2021, the authentic violation period was observed from 09.02.2021 to 12.02.2021.*

So all above facts and reply of industry were considered for sake of natural justice in deciding the show cause notice issued to the industry and environmental compensation of Rs 1,20,000/- has been imposed on 29.11.2022 against the unit after approval from competent higher authorities. The environmental compensation imposed by UPPCB has been deposited by the unit through NEFT on 06.12.2022.”

19. Learned Counsel appearing for applicant contended that inspections made on 22.01.2021 and 09.02.2021 are not disputed by proponent nor findings mentioned therein have been disputed but what it has tried to explain is that there was some maintenance issue, which was settled shortly. In respect of the observations made in inspection dated 09.02.2021 that there is a bypass and blackish material has been drained out in the nearby drain, this has been admitted by proponent by observing that it took necessary corrective steps, repaired the dyke wall and checked leakage within 4 days. Meaning thereby, observations made in inspection Report dated 09.02.2021 about bypass and leakage of untreated effluent

in the drain which ultimately meeting the river, is not disputed. It is contended that what was found on 09.02.2021, cannot be said to have commenced on that day only and not in existence prior thereto, and at least no material has been placed by proponent to show that there was no violation prior to 09.02.2021. Further, remedial steps were taken by proponent within 4 days, is also based on no material in as much as when proponent was aware of inspection dated 09.02.2021 and the findings of violations mentioned in the said inspection, if it had corrected the things within 4 days, proponent ought to have informed the authorities about such steps/remediation and requested them to make immediate inspection but no such attempt has been made. Only on 02.03.2021, when further inspection was made, then it was found that remedial steps have been taken. In these facts and circumstances, it is contended that violations from 22.01.2021 to 02.03.2021 are well established hence, proponent is liable to pay compensation for the entire period which comes to 40 days and UPPCB has acted illegally by imposing environmental compensation for 4 days only.

20. On the contrary, Learned Counsel appearing for proponent contended that violations were found only on 09.02.2021 which were rectified within 4 days and this explanation has been accepted by UPPCB hence, proponent has deposited environmental compensation of Rs.1,20,000/- which was computed for 4 days, hence, there is no occasion to pass any further order in the matter.

21. We have heard Learned Counsel appearing for the parties and perused the record.

22. It is evident from the above discussion that two inspections were made at proponent's premises. First inspection was made on 22.01.2021

when discharge of black material was found in the drain. These findings have not been controverted or disputed by proponent, by filing any objection to the said inspection Report or by giving any explanation to the concerned officials of UPPCB immediately after the inspection.

23. On second inspection made on 09.02.2021, similar violations, mentioned in more clear terms, were found. What was found on 09.02.2021, is admitted by proponent but it could not show that violations found on 09.02.2021 had commenced only on that day and were not in existence prior to 09.02.2021. There is no material placed by proponent on record to show that it took remedial steps within 4 days and checked violations by taking necessary steps. If it was done, proponent being aware of the second inspection made on 09.02.2021 when the violations were reported, hence, it was open to it to inform the authorities that now violations have been remediated and they may verify but no such steps have been taken. In these facts and circumstances, self-claimed contention of proponent without being supported by any material that it had remediated violations within 4 days, is clearly unacceptable.

24. In our view, proponent is liable to pay environmental compensation for the period when violations were first detected i.e., on 22.01.2021 and remediation was verified i.e., on 02.03.2021. Since partial violation has been admitted by proponent and rate of compensation is also admitted, we do not change the rate of compensation though as per the law laid down by Supreme Court, compensation ought to have been considered in the light of turn-over of company and other relevant factors, but we confine in the present case quantum of compensation at the rate of Rs. 30,000 per day. Therefore, for 40 days, environmental compensation amount comes to Rs.12 lakhs.

25. We accordingly hold proponent liable to pay environmental compensation of Rs. 12 lakhs which it shall pay to UPPCB after deducting the amount already paid, within two months.

26. With the above directions, OA is disposed of.

27. Pending IA also stands disposed of.

PRAKASH SHRIVASTAVA,
CHAIRPERSON

SUDHIR AGARWAL,
JUDICIAL MEMBER

ARUN KUMAR TYAGI,
JUDICIAL MEMBER

DR. A. SENTHIL VEL,
EXPERT MEMBER

January 19, 2024
Original Application No. 336/2023
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