

(2023) 11 NGT CK 0001

National Green Tribunal Principal Bench, New Delhi

Case No: Original Application No. 260 Of 2023

Dr. Vijay Kumar

APPELLANT

Vs

State Of Uttar Pradesh

RESPONDENT

Date of Decision: Nov. 1, 2023

Acts Referred:

- Code of Civil Procedure, 1908 - Order 26 Rule 9, Order 26 Rule 10, Order 26 Rule 10A
- National Green Tribunal Act, 2010 - Section 14, 14(1), 14(2), 15, 19(1)
- Water (Prevention and Control of Pollution) Act, 1974 - Section 25, 26
- Wildlife Protection Act, 1972 - Section 18, 26A

Hon'ble Judges: Prakash Shrivastava, CP; Sudhir Agarwal, JM; Dr. A. Senthil Vel, EM

Bench: Full Bench

Final Decision: Dismissed

Judgement

Sudhir Agarwal, Judicial Member

1. This Tribunal suo-moto took cognizance of letter dated 06.01.2023 sent by Dr. Vijay Kumar, resident of Harola, Sector-5, District-Noida, State of Uttar Pradesh and treated the said letter to be a Petition and registered it as present Original Application (hereinafter referred to as 'OA') under Sections 14 and 15 of National Green Tribunal Act, 2010 (hereinafter referred to as 'NGT Act, 2010').
2. The complaint made by Dr. Vijay Kumar is that there is a paper mill namely, Sandeep Paper Mills at A-20, Udyog Marg, Sector-6, Noida, located just a few kilometers away from River Yamuna and adjacent to Villages Harola, Nayabans, Attta and Jhundpura and Sectors-5 to 12, 14, 15, 15A and 44 of Noida. The industrial unit is located in the heart of city and near New Okhla Industrial Development Authority (hereinafter referred to as 'NOIDA') Office and Uttar Pradesh Pollution Control Board (hereinafter

referred to as 'UPPCB') Office. It is largely responsible for release of all kinds of chemicals which have debilitating effects on health of everyone living in this area. There are several villages in Sectors around this hazardous industry and the effluents released by the industrial unit emits obnoxious smell causing several respiratory diseases to the residents. Elderly people and school going children are facing adverse health problems. Complainant has personally seen lot of waste material like rubber, plastic, gatta etc. used by the said industrial unit. It has piled up huge mountains of the above kind of waste on one of the gate of the industry just opposite to the village. The industry releases very harmful chemical in air through one big chimney and emits black smoke. Residents always found black kind of substance on their clothes, terraces and in the morning on their cars. The noise caused by the industry disturb the peace of the residents in day and night both. All deadly effluents including in the waste materials are being used for burning the burner to make paper for the industry. It is effecting health of nearby residents and playing with future generation. Economic benefit of the industrial unit cannot be more important than the health of thousands of people living around the industrial unit. Residents are facing serious health problems including drinking water problems. Many residents are admitted in the hospitals for respiratory and other problems like Cancer, and kidney diseases etc. UPPCB must take reports of source of air emissions/ambient air quality, effluent samples report as well as underground water sample test.

3. Tribunal's order dated 25.05.2023: Considering the complaint ex-facie, Tribunal, vide order dated 25.05.2023, observed that a substantial question relating to environment due to implementation of Scheduled Enactments under NGT Act, 2010 has arisen but since the allegations were not supported with any material, whatsoever, except a few photographs which were also not very clear to support the serious allegations made in the complaint, a Joint Committee was constituted by Tribunal comprising UPPCB, Central Pollution Control Board (hereinafter referred to as 'CPCB') and District Magistrate, Gautam Budh Nagar to obtain a factual report. Committee was directed to visit the site, collect relevant information and submit factual Report particularly, covering the aspect of Consent, compliance, operation of industry in densely populated area, schedule of operation in accordance with Graded Response Action Plan (hereinafter referred to as 'GRAP') and use of approved fuel. It was also directed that in case, Joint Committee finds any violation on the part of Project Proponent (hereinafter referred to as 'PP'), a copy of the Report shall be served upon PP to enable it to file its objection/response by the next date.

4. Joint Committee's Report dated 28.08.2023: Pursuant to order dated 25.05.2023 passed by Tribunal, a Joint Committee comprising (i) Dr. Nitin Madan, ADM (E), Gautam Budh Nagar, (ii) Shri Rishabh Shrivastava, Scientist-C, CPCB, Delhi, (iii) Shri Utsav Sharma, Regional Officer, UPPCB, Noida, and (iv) Shri Kishan Singh, Assistant

Environment Engineer, UPPCB, Noida visited the industrial unit of M/s. Sandeep Paper Mills Pvt. Ltd. on 21.07.2023 and submitted its Report vide letter dated 28.08.2023. It is said that M/s. Sandeep Paper Mills was established in Noida Industrial Development Area, constituted and notified as such under the provisions of Uttar Pradesh Industrial Development Area Act, 1976 (hereinafter referred to as 'UPIDA Act, 1976'); land for establishment of industrial unit was allotted by New Okhla Industrial Development Authority (hereinafter referred to as 'NOIDA') constituted under the provisions of UPIDA Act, 1976, vide allotment letter dated 06.04.1979; area of the plot is 3524.25 m²; plot allotted to the industry is Industrial Plot No. 20 in Block-A, Sector-VI in Noida area; M/s. Sandeep Paper Mills Pvt. Ltd. is a company incorporated under Companies Act, 1956 vide certificate of incorporation dated 15.03.1979 issued by Registrar of Companies, Delhi and Haryana; industry commenced its business of manufacturing Media Kraft Paper; it was granted Consent under Section 25/26 of Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'Water Act, 1974'); the quantity of maximum daily effluent discharge permitted to the proponent is 15 KLD domestic effluent through septic tank and 300 KLD Industrial effluent after treatment from Effluent Treatment Plant (hereinafter referred to as 'ETP'); copy of the latest Consent order dated 19.01.2022, valid upto to 31.12.2026, is Annexure-2 to Joint Committee Report; PP also had an authorization issued under Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 (hereinafter referred to as 'HOWMTM Rules, 2016') for generation, collection, utilization, storage and disposal or any other use of Hazardous and other waste and the latest authorization is dated 14.04.2022, valid upto 13.04.2027, filed as Annexure-4 to Joint Committee Report.

5. Joint Committee Report also shows that ETP was functioning and parameters of treated waste water discharged by the industry were found within prescribed limit. Similarly, with regard to air pollution status, it is said that industrial unit has one boiler of 8 tons per hour capacity wherein biomass is used as fuel. All other arrangements for arresting air pollution are in order and the monitored value of the air was found within prescribed standards. The sludge generated in ETP is reused along with raw material and the quantity of sludge generated is about 1.0 MT per day. No substantial irregularity or violation of environmental norms and laws was found by Joint Committee. However, it found that the house keeping system of industrial complex was not very satisfactory and that should have been properly maintained by the industry. It is also recommended that industry should get a performance audit conducted from an Expert Agency like IIT/NEERI/CLRI.

6. Some other suggestions were also made with regard to covering of raw material storage area and recovered waste storage area; disposal of empty plastic/gunny bags of biomass fuel only through authorized recycler and to maintain information/data in this regard; installation of separate electromagnetic flow meters on all borewells and

maintenance of record of total solid waste and plastic waste, generated and disposed of separately.

7. Committee also recommended that further expansion with regard to production capacity should not be permitted to the proponent considering socio-economic-environmental scenario of the area where the unit was presently operational and may consider in consultation of the NOIDA Authority for resettlement plan in other sector subject to carrying capacity and environmental conditions.

8. Relevant extract of Report, containing general information, observations and recommendations are reproduced as under:

"1. Details about the Unit i.e., M/s Sandeep Paper Mills, Plot No.- A-20, Sector-6, Noida.

M/s Sandeep Paper Mills has been allotted the present premises under industrial land use for manufacturing of paper vide NOIDA Authority's allotment letter dated 06.04.1979. The unit is presently engaged in the production of Media Kraft Paper in the said plot admeasuring 3524.25 square meters, copy of allotment letter is annexed as Annexure I. UPPCB has granted Consent to Operate under the provisions of Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 for production of Media Kraft Paper-130 MTD, copy of said consent is annexed as Annexure II. All the processes were found in operation at the 'time of inspection. The details of the unit are as follow:

General Information

1.	Raw Material	Waste Paper, Resin, Pac, Surface Size etc.
2.	Consented production capacity for Products/By-products	Media Kraft Paper-130MTD
3.	Present production	Presently production of Media Kraft Paper — 120MTD. (approx.)

**Information
pertaining to water
consumption and
waste
water generation**

4.	Freshwater source & Consumption (kl/day)	03 nos. of bore wells provided with mechanical flow meters of capacity 5 HP, 5 HP and 7.5 HP As per records maintained by the Unit, the raw water consumption details are as follow : o Average groundwater extraction was 350 KLD during the month of April-2023 to June-2023 which includes water used domestic purposes also. A common Mechanical Flow meter has been installed on the all borewells
5.	Type of flow meter(s)	
6.	Flow meter Reading (s)	Flow-37009 m ³
7.	Status of NOC from UPGWD ground water extraction	NOC granted from UPGWD up to 04.08.2026 for 1,32,025 m ³ /year abstraction of ground water.

8.	Consented wastewater discharge (KLD)	Industrial — 300KLD

	Mode Effluent disposal	<p>The Unit has installed ETP with Biological treatment capacity of 600 KLD based. ETP is comprised of primary treatment and secondary treatment followed tertiary treatment.</p>
	ETP details	<p>The unit comprises Collection tank, Sedicell, spray filter, Aeration tank, Secondary clarifier, Pressure Sand Activated Carbon sludge press, Air blower, Clarifier Scrapper, Treated water store tank</p>
12.		<p>The industry treated effluent is being used in process, washing, sprinkling and rest is discharged into drain.</p>

Information pertaining to Air Pollution

14.

Source of Air Pollution, details of fuel and status of APCDs

The Unit has one boiler of capacity 8 T/hr.

Biomass is used as fuel in the boiler. Multi-cyclone dust collector, Bag filter and wet scrubber system is installed with boiler as Air Pollution Control (APCDs).

Flue gases are discharged into the ambient air through a stack of 36 meters height.

Unit has installed OCEMS on the stack for monitoring of emissions which was found operational during inspection and showed parameters within prescribed norms.

During inspection, the work of monitoring boiler chimney was done by the team of regional laboratory of UP Pollution Board, the monitored values were within prescribed standards, a copy of report attached.

Annexure-III.

**Information
pertaining to ETP
sludge and other
solid
waste**

		According the representative, approx 1.0 MTD of ETP sludge is generated, which is reused with the raw material. Plastic waste
15.	Quantity of ETP sludge	
16.	Nature of waste	

17.

Facility
storage/ disposal
/treatment

Waste paper is used by industry as a raw material. It has been informed that there is about 1 percent plastic in the said waste paper, which has been informed to be segregated and disposed through organization/ authorized recycler. In regarding to the above, a copy of the agreement and Form-10 made with TSDF for organization M/s Bharat Oil and Management Ltd has submitted. According to Form-10, on 10.04.2023, 445 kg plastic waste has been given by the industry to TSDF organization. The industry received hazardous waste authorization from the UP Pollution Control Board which is valid upto 13.04.2027. **Annexure-IV.**

Water Pollution:

During inspection, all ETP units were found in operation. In order to monitor the compliance status of treated waste water, grab samples were collected from inlet and outlet of ETP. The analysis results are presented below and copy of the said report is annexed as Annexure V:

Samplings	Parameters
Location	TSS BOD COD O8GM LSS
pH	(mg/l) (mg/l) (mg/l) (mg/l)
ETP	4.83 296.684.0776.0
inlet	-
ETP	-
Final	2.21 40.0 22.0 184.0
outlet	2.2 -
Notified	50 30 250 10
Standard	-

The monitored values at the ETP outlet are complying with the notified prescribed standards: Air Pollution:

i. One boiler of 8 TPH is installed. During inspection the boiler was in operation and emissions are channelled through stacks of height 36m. Portholes and sampling platforms are provided.

ii. During the inspection, the work of monitoring boiler chimney was done by the team of regional laboratory of UP Pollution Control Board, the monitored values were within prescribed standards, a copy of the report is attached.

Observations:

i. During inspection, the Unit was found in operation. Manufacturing of Media Kraft Paper-130 MTD. The requirement of fresh water was met through Bore wells.

ii. The Unit has provided OCEMS for the parameters, namely, pH, TSS, BOD & COD at final outlet of ETP and it was found operational during the visit and parameters were found within the prescribed limit (values of OCEMS BOD-15.3 mg/ltr, COD-131.6 mg/ltr, TSS-34.7 mg/ltr, pH-7.8).

iii. The unit has consents under the Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution), Act, 1981 till 31.12.2026.

iv. The unit has installed a PTZ camera for boiler stack and fuel conveyor feed. Access for live streaming of these cameras have been submitted with the State Pollution Control Board.

v. The unit has obtained NOC for three borewells for abstraction of ground water under Uttar Pradesh Ground Water Management and Regulation Act, 2019, copy of said permission is annexed as Annexure VI.

vi. As per the production records perused by the inspecting team, average production in months of April, 2023, May, 2023 and June, 2023 comes out to around 120 MTD, 102 MTD and 91 MTD respectively.

vii. The gunny bags used for transportation of biomass were found stacked near the main door of biomass storage area as shown in the site photographs attached. As per the unit representative, these bags are returned to the vendor, however, no record with regards to same could be furnished to the inspecting team.

viii. The plastic waste/laminates recovered from the raw material were found stacked near the raw material feeding conveyor as shown in the site photographs attached. The plastic waste being generated is being disposed through Bharat Oil & Waste Management Limited and Harsht Trading Company which in turn is getting it processed in M/s Nuvoco Vistas Corp. Ltd. Cement plant in co-processing, copy of said agreements is annexed as Annexure VII.

ix. The OCEMS is presently installed in filter feed tank, same should be placed in the treated waste water stream for true representation of effluent quality after treatment through Activated Carbon Filter and Pressure Sand Filter.

x. During the inspection, the housekeeping system of the industry complex was not found satisfactory and the raw material storage area is open and has not been covered with tin shed. Recommendations:

I. The Unit should ensure that the treated waste water is discharged as per prescribed standards at all times.

II. The unit should engage an expert government agency, like IIT/NEERI/CLRI for adequacy & performance evaluation of ETP. The report be submitted to CPCB and UPPCB within a period of 3 months.

III. The unit should carry out the calibration of OCEMS on regular basis.

IV. The industry should improve the housekeeping system and deploy odour masking agents using mystifies.

V. The unit should properly cover the raw material storage area and recovered plastic waste storage area.

VI. The unit should dispose the empty plastic/gunny bags of biomass fuel only through the authorized recycler and related information/data should be maintained and sent to the Uttar Pradesh Pollution Control Board.

VII. The unit should install separate electromagnetic flow meters on all bore wells.

VIII. The unit is operating in relatively small area and thus need to earmark and demarcate areas for each activity, viz a viz, storage of raw material, storage of fuel, processing floor, storage of finished good and storage area for waste materials among others in order to ensure work place housekeeping as well as safety.

IX. The unit should install flow meters to measure the quantity of recycled/reused water and maintain the record for the same.

X. The unit should maintain the record of total solid waste and plastic waste generated and disposed separately.

XI. The unit should not be permitted for any further expansion with regards to production capacity henceforth. Simultaneously, unit should consider reducing its production capacity in present plant due to evolving socio-economic-environmental scenario of the area where it is presently operational and engage with Noida Authority for resettlement plan in other Sectors subject to carrying capacity and environmental conditions.

Objection to Joint Committee's Report filed by applicant:

9. Though, the complainant had chosen not to approach Tribunal by filing a proper application under Sections 14 and 15 of NGT Act, 2010, as per Rules, with supporting

documents and impleadment of concerned parties, so that issue raised by him may be adjudicated in accordance with law and consistent with principles of natural justice by giving opportunity to all concerned parties and instead has chosen to send a letter petition to this Tribunal whereupon Tribunal suo-moto exercised its power and entertained complaint to look into the correctness of the complaint and thereby got factual report from a Joint Committee but after submission of the Joint Committee Report, applicant has chosen to file a detailed objection to Joint Committee's Report running in 439 pages to contest the Joint Committee Report and to pursue this Tribunal to ignore the said Report and instead take action against the industrial unit concerned.

10. Ordinarily, when suo-moto power is exercised, there is no applicant who is to be heard and hence complainant is not entitled to be heard by permitting to place on record further pleadings but to satisfy ourselves so that no environmental damaging activity may go on, we have entertained the objections filed by applicant and have also heard him.

11. One of the basic complaint of the complainant is that the unit is situated near residential areas without disclosing this fact that NOIDA is an industrial development area notified under UPID Act, 1976 and the area so notified is for the purpose of development of industries wherein residential and other blocks are incidental being in aid and assistance of development of industries and the industry in question was established more than 40 years back i.e., in 1979.

12. The objections raised by the complainant to Joint Committee Report dated 28.08.2023, in brief, are as under:

(i) Joint Committee has dealt with the aspect relating to Consent instead of giving report on operation of industry in densely populated area though location of industry in densely populated area is affecting local resident's health adversely.

(ii) Report does not mention effect of industry on the residents living in the vicinity of the industry and also effect on ground water, air etc. The residents living near industry are suffering various diseases like Cancer, Kidney failure, Ashthma, skin related problems etc.

(iii) Report fails to point out effect on ground water of nearby area which is badly affected due to the industry and the conditions of the villagers is very miserable since they are not getting clean water to drink, even cannot use ground water for bathing purposes since it is saline and not suitable even for washing clothes.

(iv) NOIDA Authority is providing drinking water to residential sectors but has failed to provide Ganga Jal water line to villagers of NOIDA.

(v) Report fails to mention the kind of hazardous chemicals and harmful gases being released by the industry in the air or water while residents are suffering from black smoke released from the chimney of the industry day and night.

(vi) Report says that treated effluent is being re-used and remaining one is discharged into drain but it does not mention the drain in which it is being discharged and where the said drain ultimately meets.

(vii) Report fails to consider previous quarterly monitoring Reports of the industry, though, submission of quarterly reports constitute conditions of consent granted to the industry by UPPCB.

(viii) Consent conditions also require industry to submit point-wise Compliance Report, maintain log-book of ETP and submit latest test Report of treated effluent from ETP by approved laboratory after operation of unit. There is no reference of such documents in the report and if the industry had not provided such documents to UPPCB, it cannot be presumed that the industry is working within the prescribed standards and it is continuously violating Environment (Protection) Act, 1986 (hereinafter referred to as 'EP Act, 1986') and Rules framed thereunder.

(ix) Committee has failed to enclose Report of the effluent of the drain adjacent to the industry where colour of the water is actually different as has personally been noticed by the complainant who has taken photographs also.

(x) Complainant claims to file Consent letters under Water Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'Air Act, 1981') as annexure-5 to its objections but we find that annexure-5 is copy of the test reports dated 24.08.2023 of the sample collected from inlet of ETP and final outlet of ETP and the report of final outlet of ETP shows that the results meet the prescribed standards and there is no violation of norms prescribed under Water Act, 1974.

(xi) Report has failed to mention the year in which ETP was installed in the industry and has also failed to mention whether ETP is functioning as per the parameters or not.

(xii) Report fails to mention kind of waste like waste oil, cotton rags, fly ash generated from the boiler etc.

(xiii) Joint Committee has failed to inspect the relevant record with regard to handing over of waste to TSDF facility and does not verify the actual disposal of waste by paper industry and there is no mention about waste oil, fly ash and other waste and the manner of its disposal.

(xiv) Joint Committee has failed to enclose report from TSDF facility to show as to how such units are disposing of waste and what mode of transportation is being used by

them for transporting waste from M/s. Sandeep Paper Mills to their facility.

(xv) Report fails to mention that the raw material feeding conveyor is on the main road and trucks used by industry for raw material are not only disturbing traffic but also unload the raw material on the road and hazardous waste kept lying on the gate where raw material is unloaded by the trucks.

(xvi) Committee on the one hand has said that the industry is disposing plastic waste as per norms and guidelines but on the other hand had recommended that unit should properly cover raw material storage area and recovered plastic waste area which is contradictory.

(xvii) Committee has recommended that for maintenance of record of total solid waste and plastic waste generated and disposed separately, meaning thereby there is no proper record of the solid and plastic waste with the unit, hence, the question of fulfilling standard parameters does not arise.

(xviii) The industrial unit claim that gunny bags used to be returned to the vendors but no record was maintained. Hence, the committee recommended that empty plastic/gunny bags of biomass fuel should be disposed through authorized recycler and related information/data should be maintained and sent to UPPCB which shows no compliance of consent conditions by Proponent.

(xix) Report fails to mention anything about hazardous substance used by the industry and hazardous waste discharge by it. The terms and conditions of authorization therefore have been violated.

(xx) Joint Committee has failed to mention anything about emergency response procedure, storage area for hazardous waste at an isolated spot in the premises which ought to be fenced, covered and duly marked and has also not said anything about adverse impact on the air, soil, water including ground water, disposal facility and the design of facility ought to be approved by the UPPCB. Further, there should have been display online data outside the main factory gate with regard to quantity and nature of hazardous waste chemicals handled in the plant including waste water and air emissions, solid hazardous waste generated within the factory premises and full details should have been given. All these parameters are important as per HoWMTM, Rules, 2016.

(xi) Committee has failed to consider that the industry now complying with the conditions of authorization issued under Hazardous Waste (Management and Handling) Rules, 1989, a closure order should have been issued but no such thing has been mentioned by the Committee in the Report.

(xxii) Committee has not mentioned anything about compliance of conditions of NOC granted by UP Ground Water Department for abstraction of ground water, though there are general and specific conditions which the industry was required to be observed.

(xxiii) Committee has failed to mention about affixing digital water flow meter, effect of extraction of ground water on the densely populated area, construction of piezometers and installation of digital water level recorders etc., all these requirements are part of conditions of NOC which have not been mentioned by Joint Committee.

(xxiv) Though, Committee on the one hand has said that industry is functioning within the parameters but simultaneously has recommended installation of separate electromagnetic flow meters on all bore wells and installation of flow meters to measure the quantity of recycled/reused water and maintenance of the record for the same, these are contradictory.

(xxv) Report does not mention the effect of extraction of huge quantity of ground water by the industry on adjacent residential area.

(xxvi) Committee on the one hand has said that Proponent has installed OCEMS for all requisite parameters while also recommended that the OCEMS presently installed in filter feed tank, should be placed in the treated waste water stream for true representation of effluent quality after treatment through activated carbon filter and pressure sand filter which means that there is no proper compliance with regard to installation of OCEMS by the industry.

(xxvii) One of the conditions of the consent is 33% of the land to be maintained for plantation of trees which has not been observed and not even a single tree has been planted in the red category industry by PP.

(xxviii) Report fails to mention about obnoxious smell emitted by Proponent's industry which is unbearable for the local residents who are being suffocated by such emissions.

(xxix) Committee has not said anything about noise pollution by this industry.

(xxx) Report is silent about the category of the industry.

(xxxi) Okhla Bird Sanctuary a protected area declared by a notification dated 08.05.1990 issued under Sections 18 and 26 (A) of Wildlife Protection Act, 1972 is within 10 kms of the Proponent's industry but no Environmental Clearance (hereinafter referred to as 'EC') has been obtained which is in violation of Supreme Court's Judgment dated 04.12.2006 in **Goa Foundation vs. Union of India, (2011)15SCC7911** titled as **W.P.(C) No.460/2004**.

(xxxii) Though in 1976, 36 villages of Yamuna-Hindon-Delhi Border Regulated Area were notified as New Okhla Industrial Development Area by notification dated 17.04.1976 issued under UP Industrial Development Act, 1976 but after 46 years, there is substantial change and the area has got developed a huge population changing the objective of NOIDA and also changing it from industrial to commercial sector. Therefore, all hazardous industries need be shifted or closed and this aspect has been completely omitted by the committee, though, it has recommended that no expansion should be permitted to the industry in question.

(xxxiii) Committee has tried to give clean chit, though, the industry does not fulfill various standard parameters laid down in the consent document and other norms.

(xxxiv) On 12.07.2019, NOIDA authority's officials and others inspected the premises and imposed fine of Rs. 21 lakhs for violating Environment (Protection) Act, 1986, Factories Act, 1948 and UP Urban Planning and Development Act, 1973. The news was published in daily newspaper 'Times of India' dated 12.07.2019.

(xxxv) Report does not mention anything about Sewage Treatment Plant (hereinafter referred to as 'STP'), though, the industry was fined for flouting STP norms and non-compliance with Solid Waste Management, Rules, 2016 (hereinafter referred to as 'SWM Rules, 2016').

(xxxvi) Committee has failed to mention anything about environmental impact assessment of the industry, cost benefit analysis Report and annual balance sheet of the industry.

(xxxvii) Even, if it is assumed that the industry is complying with all norms and conditions still paper and pulp industry causes air and water pollution as said in an article published in an International Journal of Lakes and River.

(xxxviii) Committee has failed to consider that the industry can lead to a disaster in future affecting people's life.

(xxxix) Committee has failed to consider that as per the present Guidelines of NOIDA, paper and pulp industries are not allowed to be established in NOIDA and this industry cannot be allowed to run in the heart of the city.

(xl) Report also fails to mention damage caused due to lack of Rain Water Harvesting System (hereinafter referred to as 'RWHS') provided by the industry, its failure to provide energy conservation system, top soil preservation etc.

(xli) Committee Report is only reiteration of documentary information and there is no scientific study conducted by the expert members of the Committee.

DISCUSSION ON MERITS:

13. Cognizance in this matter was taken by this Tribunal suo-moto, after receiving information through a Letter Petition addressed by Dr. Vijay Kumar to this Tribunal making a complaint with the allegations which if found correct, would have given rise to a substantial question relating to environment arising due to implementation of enactments mentioned in the Schedule of NGT Act, 2010 and remedial, preventive and punitive action under the relevant environmental Statutes would have been necessary. The jurisdiction to entertain a complaint and take further action suo-moto by registering the complaint as OA under Sections 14 and 15 of NGT Act, 2010 has been recognized by Supreme Court in **Municipal Corporation of Greater Mumbai vs. Ankita Sinha & Others (2022) 13 SCC 401**. It was argued therein that NGT did not have power to initiate suo-moto proceedings and the grounds raised in support of the above contention as formulated by Supreme Court were founded on the arguments that (i) NGT is a creature of the statute and just like other statutory Tribunals, NGT is also bound within statutory confines, (ii) NGT Act is applicable to "disputes" as necessarily referring to a lis between two parties and (iii) lack of general power of judicial review shows legislative intent to curb suo-moto powers.

14. Dealing with above arguments and the grounds, Supreme Court examined the matter from various angles i.e., the backdrop of constitution of National Green Tribunal, preamble and statement of objects and reasons of NGT Act 2010, purposive interpretation, features of NGT Act 2010, non-adjudicatory roles of NGT, uniqueness of NGT vis-a-vis other Tribunals, need of NGT to exercise suo-moto powers, *sui generis* role of NGT, authority with self-activating capability, precautionary principle, environmental justice and environmental equity and environmental jurisprudence in India. We may summarize the observations made by Supreme Court under the above-mentioned heads as under:

- i) NGT was conceived as a complimentary specialized forum to deal with all environmental multidisciplinary issues, both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and Supreme Court.
- ii) NGT was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts. It was explicitly noted that creation of NGT would allow Supreme Court and High Courts to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum.
- iii) The power of judicial review was omitted to ensure avoidance of High Courts' interference with Tribunal's orders by way of a mid-way scrutiny by High Courts, before the matter travels to Supreme Court where NGT's orders can be challenged.

- iv) The mandate and jurisdiction of NGT is conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.
- v) Unlike Civil Courts which cannot travel beyond the relief sought by the parties, NGT is conferred with power of moulding any relief. The provisions show that NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.
- vi) Myriad roles are to be discharged by NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons.
- vii) Parliament intended to confer wide jurisdiction on NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by High Courts under Article 226 of the Constitution or by Supreme Court under Article 32 of the Constitution.
- viii) The activities of NGT are not only geared towards the protection of environment but also to ensure that the developments do not cause serious and irreparable damage to ecology and the environment.
- ix) Concept of *lis*, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment.
- x) NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration.
- xi) In **Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India, (2012)8SCC326**, Court mandated transfer of all cases, concerning the Statutes mentioned in Schedule I of NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo-moto* by the Courts.
- xii) As long as the sphere of action is not breached, NGT's powers must be understood to be of the widest amplitude.
- xiii) In **Mantri Techzone (P) Ltd. vs. Forward Foundation, (2019)18SCC494**, Court recognized that NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context, Tribunal has special jurisdiction for enforcement of environmental rights.
- xiv) In **Rajeev Suri vs. DDA, 2021 SCC Online SC 7**, Court said that in its own domain, as crystalized by the statute, the role of NGT is clearly discernible.

xv) Referring to **Andhra Pradesh Pollution Control Board vs. Prof. M. V. Nayudu (Retd.) and Ors, (1999)2SCC718**, Court said that role of NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

xvi) Statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

xvii) Referring to **State of Meghalaya vs. All Dimasa Students Union Dima-Hasao District Committee, (2019)8SCC177**, Court said that reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising “wide range of jurisdiction” and the “wide range of powers”, given to it by the statute.

xviii) NGT has been recognized as one of the most progressive Tribunals in the world.

xix) NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution.

xx) Referring to **DG NHAI vs. Aam Aadmi Lokmanch, 2020 SCC Online SC 572**, Court repelled the argument for a restricted jurisdiction for NGT, and observed in paragraph 76 that powers conferred on NGT are both reflexive and preventive and the role of NGT was recognized in paragraph 77 as “an expert regulatory body”, which can issue general directions also albeit within the statutory framework.

xxi) NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from High Courts and Supreme Court.

xxii) Given the multifarious role envisaged for NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take *suo-motu* cognizance of matters, for effective discharge of its mandate.

xxiii) Section 14(1) of NGT Act deals with jurisdiction, and the jurisdictional provision conspicuously omits to specify that an application is necessary to trigger NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the

enactments in Schedule I are satisfied, the jurisdiction and power of NGT gets activated. On these material aspects, NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by NGT is not circumscribed by receipt of application.

xxiv) Section 14(1) exists as a standalone feature, not constricted by the operational mechanism of the subsequent subsections. The sub-Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub-Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play.

xxv) When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

xxvi) The other pertinent provisions relating to, inter-alia, jurisdiction, interim orders, payment of compensation and review, do not require any application or appeal, for NGT to pass necessary orders. These crucial powers are expected to be exercised by NGT, would logically suggest that the action/orders of NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

xxvii) To be effective in its domain, we need to ascribe to NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application.

xxviii) It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial.

xxix) It would thus be appropriate to state that much of the principles, institutions and mechanisms in this sphere have been created, on account of this Court's initiative.

xxx) Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultantly developing a *sui generis* environmental discourse.

xxxi) NGT is the institutionalization of the developments made by Supreme Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions, therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

xxxii) NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns.

xxxiii) NGT must act, if the exigencies so demand, without indefinitely waiting for the metaphorical Godot to knock on its portal.

15. In the case where jurisdiction is exercised by Tribunal suo-moto, the concept of lis generally applicable in civil cases is not attracted. Tribunal adopts the role of amicus environment and cannot remain a mute spectator but has to act on its own. In other words, in the cases where action is taken suo-moto, a formal party like applicant is not present. When information is received by Tribunal on its own or through the medium of individual(s), without roping in such individual as a party to the lis, Tribunal on its own, may enter into the dispute and proceed further. That is how in the cases where suo-moto jurisdiction is exercised, neither a formal applicant is present nor the person conveying information is entitled as a matter of right to contest the matter as a party to the lis.

16. However, it is open to Tribunal, if in any matter complainant comes before Tribunal to assist it, normally, to entertain such complainant and allow him to assist Tribunal.

17. In the present case, what we find is that complainant Dr. Vijay Kumar sent a letter petition making certain allegations against proponent M/s. Sandeep Paper Mills Pvt. Ltd. instead of adopting the normal course prescribed in the Rules to file OA in the prescribed performa and payment of requisite Court fees supporting the allegation with appropriate material and enable this Tribunal to proceed further on substantive material.

18. In the letter petition where complaint is not appended with any material supporting the allegations, normally Tribunal seeks verification of such allegations by constituting an Expert Committee on the subject to collect factual information as also verification of the allegations made in the complaint and if the same are found correct, to proceed further. Tribunal followed the above procedure and entertained complaint, registered the same as OA under Sections 14 and 15 of NGT Act, 2010 and appointed a Joint Committee comprising respondents i.e., UPPCB, CPCB and local highest administrative officer at the District Level i.e., District Magistrate, Gautam Budha Nagar requiring them to submit a factual Report. Besides other, Tribunal also required Committee to

submit its report specially on the aspect of consent, compliance, operation of industry in densely populated area, schedule of operation in accordance with GRAP and use of approved fuel.

19. In furtherance of the above order dated 25.05.2023, Joint Committee has submitted Report pointing out that the industry in question is situated in an area which is statutory constituted for industrial development and all other activities are incidental. UP Legislature for the purpose of industrial development in the State, enacted UPID Act, 1976. In exercise of powers under above Act, New Okhla Industrial Development Authority was constituted in certain area including the area wherein M/s. Sandeep Paper Mills Pvt. Ltd. has been established, and notified as part of New Okhla Industrial Development Area vide Notification dated 17.04.1976. Proponent industry took steps for establishment of the industry in 1979 and the land was allotted by allotment letter dated 06.04.1979.

20. It is nobody's case that the unit was installed in a densely populated area in 1979 or that there was any siting restriction or otherwise obstruction in establishment of the industry at the place where it is operating presently. Joint Committee on the aspect of Consent has found that the industry in question had Consent under relevant environmental Statutes, validity whereof not only was operating at the time when OA was filed but even on the date when Joint Committee made inspection and even till date. On the aspect of compliance, it has found that all requisite equipments and arrangements for checking air and water pollution have been installed by the industry and Joint Committee did not find any water or air pollution caused by the said industry. Water samples or air samples were collected and everything has been found satisfying the parameters provided under Water Act, 1974 and Air Act, 1981.

21. With regard to disposal of solid waste due authorization under HoWMTM Rules, 2016 has been obtained by the industry and in disposal of the hazardous waste, Committee did not find any violation on the part of proponent.

22. Proponent is extracting ground water for which it had installed 3 borewells in respect whereof also, it has obtained authorisation/NOC from Uttar Pradesh Ground Water Department under the provisions of UP Ground Water Management and Regulation Act, 2019.

23. Complainant though initially had chosen to require this Tribunal to initiate proceedings suo-moto but later on, appeared and filed objection to the Joint Committee Report dated 28.08.2023. Complainant has sought to treat the Committee as an inspecting body which should have proceeded to inspect to find out any violation on the part of proponent by making a fishing and roving inquiry, though Joint Committee was constituted to submit factual Report in respect of the allegations made by complainant and also on certain aspects specifically mentioned in the order dated

25.05.2023 i.e., consent, compliance, operation of industry in densely populated area, schedule of operation in accordance with GRAP and use of approved fuel.

24. Joint Committee has made inspection and given its Report as per the directions of this Tribunal and not by acting on its own as a self-authorized inspecting body making inspection of the industrial unit to find out any violation whatsoever. It was not exercising any statutory power vested in it under some statute relating to environment.

25. Such Reports are more in the nature of Report submitted by the commission appointed under the provisions of Order 26 of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC 1908'). Rule 10-A talks of commission for scientific investigation.

26. Rule 9 Order 26 CPC 1908 says that Court may issue a Commission when it requires local investigation for the purpose of elucidating any matter in dispute and direct such Commission to make such investigation and report to the Court.

27. Rule 10 provides procedure and Rule 10A deals with Commission appointed for investigation when such aspect is involved making Rule 10 applicable for the purpose of procedure.

28. Report of Commission can be objected by the parties to the litigation appearing before Court and it is open to the Court to reject or accept or partly accept the Commissioner's Report. Status of Commissioner's report is that of an evidence in the litigation when accepted by Court. Court can also issue a fresh or further Commission for enquiry when it is not satisfied with the earlier Commission report.

29. In **State of Meghalaya vs. All Dimasa Students Union, Dima-Hasao District Committee & Ors.**, (2019) 8 SCC 177, in para 195.14, Supreme Court has also referred to Order 26 Rule 10-A of Civil Procedure Code, observing that a court can appoint a commission for scientific investigation. The power which can be exercised by a court under Order 26 Rule 10-A CPC 1908 can be exercised by the Tribunal. However, while considering the power of Tribunal to constitute Committees for obtaining factual report, Supreme Court has said that Tribunal while asking an Expert to give report is not confined to the four corners of Rule 10-A and its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A by virtue of Section 19(1) of NGT Act, 2010. Para 195.14 reads as under:

"195.14. Under Order 26 Rule 10-A of the Civil Procedure Code, a court can appoint a commission for scientific investigation. The power which can be exercised by a court under Order 26 Rule 10-A CPC can very well be exercised by the NGT also. The NGT while asking expert to give a report is not confined to the four corners of Rule 10-A and its jurisdiction is not shackled by strict terms of Order 21 Rule 10-A by virtue of Section 19(1) of the NGT Act."

30. In **Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others vs. State of Gujarat and Others, 2022 SCC OnLine SC 120**, in Civil Appeal No. 1046/2019 decided on 21.01.2022, Supreme Court examined the status of Committee appointed by Courts/Tribunals and said that such Committees are set up to assist Tribunal with technical expertise in a given area, and their reports are, subject to judicially observed restraints, open to judicial review before Courts when decisions are taken solely based upon them. Supreme Court also said that precedents of Supreme Court unanimously note that Courts should be circumspect in rejecting the opinion of the Committees appointed by it, unless they find their decision to be manifestly arbitrary or mala-fide.

31. These Committees are set up because the fact-finding exercise in many matters can be complex, technical and time-consuming, and may often require the Committees to conduct field visits. These Committees are set up with specific terms of reference outlining their mandate, and their reports have to conform to the mandate. Once these Committees submit their final reports to the Court/Tribunal, it is open to the parties to object to them, which is then adjudicated upon. The role of these Expert Committees does not substitute the adjudicatory role of the Court or Tribunal. The role of an Expert Committee appointed by an adjudicatory forum is only to assist it in the exercise of adjudicatory functions by providing them better data and factual clarity, which is also open to challenge by all concerned parties.

32. Expert Committees may be appointed to assist NGT in the performance of its task and as an adjunct to its fact-finding role. But adjudication under the statute is entrusted to NGT and cannot be delegated to administrative authorities. Adjudicatory functions assigned to Courts and Tribunals cannot be hived off to Administrative Committees.

33. An Expert Committee may be able to assist NGT, for instance, by carrying out a fact-finding exercise, but the adjudication has to be by NGT. This is not a delegable function.

34. The above judgment has been referred to and followed recently in **Singrauli Super Thermal Power Station vs. Ashwani Kumar Dubey & Ors., Civil Appeal No. 3856/2022** and other connected Appeals decided vide judgment dated 05.07.2023.

35. Further, Tribunal in exercising of power under Section 14 is required to adjudicate an issue when a substantial question relating to environment due to implementation of enactment Scheduled in the Act has arisen. It is not every petty or inconsequential alleged omission or non-compliance which requires interference by Tribunal.

36. The jurisdiction of this Tribunal is discharged by considering the principle of 'Sustainable Development'. In **Lafarge Umiam Mining Private Limited, T.N. Godavarman Thirumulpad vs. Union of India and others, (2011)7SCC338**, Supreme

Court in para 75 of the judgment observed that universal human dependence on use of environmental resources for the most basic needs render it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environment protection and the risk which are to be regulated. This aspect is recognized by the concept of 'Sustainable Development'. Further, Court in para 76 of the judgment observed that since the nature and degree of environmental risk caused by different activities varies, the implementation of environmental rights and duties requires proper decision making based on informed reasons about the ends which may ultimately be pursued, as much as about the means for attaining them. Setting the standards of environmental protection involves mediating conflicting visions of what is of value in human life.

37. Following above dictum and in the light thereof when we examine the facts, proceedings and material in the present case, we find that the complainant i.e., Dr. Vijay Kumar in his letter dated 06.01.2023 has said,

- (i) The industrial unit (M/s. Sandeep Paper Mill) located just a few kilometer away from River Yamuna and adjacent to Villages Harola, Nayabans, Attta and Jhundpura and Sectors like 5 to 12, 14, 15, 15 A and 44 of Noida.
- (ii) Industry is located in the heart of city and near the office of NOIDA and UPPCB.
- (iii) The industry is largely responsible for release of all kinds of chemicals which have deliberating effects on health of every living in this area.
- (iv) There are many villages in Sectors around this hazardous industry.
- (v) Effluents released by the industry emits obnoxious smell causing number of respiratory diseases.
- (vi) Complainant has personally watched and seen use of waste material like rubber, plastic, gatta etc. by the said industry.
- (vii) The above waste is piled up at one of the gate of the industry just opposite to village.
- (viii) Industry releases very harmful chemical in air though one big chimney emitting black smoke.
- (ix) Residents always found black kind of substance on their clothes, terraces etc.
- (x) Noise coming out of industry renders residents sleepless and disturb their peace.
- (xi) Deadly effluents including waste materials are used in burning the burner to make paper for the industry.

(xii) The residents are facing various health problems in various manner including problem of drinking water and many are admitted in the hospitals for respiratory. Some have died due to Cancer and some are patient of Kidney mal-functioning.

38. The complainant has appended a few photographs showing thick, white smoke emitting from the chimney of the industry and also dumping of some material at a place which is not identifiable.

39. Complainant did not give specific details of the alleged hazardous chemicals released by the industry, nature of effluent etc. yet considering the complaint that the alleged pollution by the industry is causing health hazards to the local residents by functioning in a manner which violates environmental laws and norms, Tribunal proceeded further and sought a factual report by constituting a joint Committee. Joint Committee has found that it is not the white paper but media Kraft paper which is being manufactured by the industry. Raw material for manufacturing of media kraft paper is waste paper, packman etc. as mentioned in the Joint Committee Report. With regard to water pollution, Joint Committee collected samples and found discharge of the effluents meeting prescribed standards and within permissible limits. Similarly, with respect to air pollution, Joint Committee found that the boiler and accompanied equipment control air pollution effectively and the discharged smoke meet the standards prescribed under Air Act, 1981. Unit was inspected by Joint Committee when it was functional. All the instruments and equipments dealing with water and air pollution were found functional. Industry has obtained statutory consents/NOC/Clearance required under Water Act, 1974 and Air Act, 1981 as also authorization under HoWMTM Rules, 2016 from the Competent Authorities which were validly operating at the time of inspection and even today. For the functional requirement of fresh water, industry is abstracting ground water from 3 borewells in respect whereof it has obtained NOC. It had installed mechanical flow meter on all the borewells and the flow meter reading was also available to the Joint Committee meaning thereby the quantity of ground water extracted by the industry was well recorded. Treated effluent is being re-used to some extent and rest disposed of in the drain. Housekeeping maintenance, however, was not found very appropriate and satisfactory by Joint Committee and it recommended to improve the same.

40. The allegations regarding emission of hazardous chemicals and discharge of polluted effluents etc. by the industry have not been found correct by Joint Committee. These findings as such, we find, have neither been shown to be incorrect or false by the complainant in its objections dated 25.09.2022. On the contrary, the grievance of complainant is that the Committee should have proceeded to make some further enquiry on aspects which are not part of the complaint as such nor within the directions of Tribunal and in fact virtually travel in the realm of roving and fishing enquiry particularly, when the unit has not been found to cause any water or air

pollution on the basis of scientific analytical reports obtained from the Competent Testing Labs of UPPCB. In these circumstances, we find no substance in the objections raised by the complainant and also no reason for not to accept the report submitted by Joint Committee. The recommendations made by Joint Committee, we find, are broadly by way of abundant precaution and to ask the industry to show even better performance but do not disclose any violation of environmental law or norm.

41. Even otherwise when we examine objections taken by applicant in his letter petition as also the objections filed to Joint Committee Report, we find shallowness in the allegations and an attempt to have an enquiry beyond the activities of proponent to find out some fault, that too, without providing any material to show nexus of the activities of proponent with such probable faults.

42. In the objection to Joint Committee Report, one of the objections is that Joint Committee Report has not dealt with the aspect of giving consent to the industry running in densely populated area affecting local resident's health adversely. It further says that the residents living in the vicinity of the industry are affected by ground water, air and suffering various diseases like Cancer, Kidney failure, Ashthma, skin related problems etc.

43. The complainant has not provided any material or details of the person(s), even by way of illustration, to show the sufferance as pointed out in the objections to the Joint Committee Report. It is also not clear as to how various diseases mentioned in the objections are related to the activities of the proponent. In the absence of any material provided by the complainant, it could never be imagined or expected from a Joint Committee constituted by Tribunal to collect factual information by undertaking a door to door survey of all the residents in the area to find out whether any one of them is suffering any disease and if so, reason behind that etc. Such kind of enquiry, in our view, is not expected from a Joint Committee appointed by this Tribunal to find out factual details in respect of industrial unit and also to find out whether it is causing any pollution or not.

44. The allegations with regard to contamination of ground water is made but nothing has been placed on record to show as to how contamination has been caused by the proponent when it has been permitted to extract ground water through permitted source by the Competent Authority and no material has been placed on record to show that any contamination to ground water has been caused due to any industrial activity of the proponent.

45. The next objection is regarding non-availability of drinking water i.e., Ganga Jal through water lines to villagers of Noida. This objection has nothing to do with the industrial activities of proponent and is beyond the scope of the enquiry which was directed to be made by Joint Committee.

46. Several objections are over-lapping stating that hazardous chemicals and harmful gases are being released by proponent without giving details of such chemicals and gases which in the industrial activities of proponent are liable to be released, particularly when the Joint Committee on the basis of samples collected has shown that no polluting activities were found on the part of the industry in question.

47. The further objection is that the Committee has not considered various record required to be maintained by proponent under the rules like logbook of ETP, test report of effluent discharged from ETP etc. Neither there was any such complaint in the letter nor any material has come that no such record was maintained by proponent. Moreover, assuming that such record was not produced before Joint Committee and Joint Committee did not examine such record, the fact remains that polluting activities have not been found on the part of the proponent and if there is any technical violation with regard to maintenance of such record, it is a matter between the Statutory Regulator and the proponent. Where no damage to environment has been caused, principle of 'polluter pays' does not apply and it is always open to the Statutory Regulator to ask and recommend the proponent to maintain record regularly failing which it is open to the Regulator to take action but in the absence of any material to show any polluting activities or actual pollution being caused to the air and water, we do not find that at the instance of the complaint, any action is needed by Tribunal as it cannot be said that a substantial question relating to environment has arisen.

48. The further objections that the year of establishment of ETP is not mentioned, the manner in which TSDF facility collecting waste is being disposed are also baseless in as much as the year of establishment of ETP is irrelevant when it was found functioning meeting the norms and there was no complaint against TSDF facility that it was not disposing waste collected from the proponent in question, properly, hence no such enquiry was required to be conducted by Joint Committee and the objections are only to point out some fault to Joint Committee Report without any substance.

49. The recommendations made by Committee are advisory in nature and for more effective management of the things but per se cannot be said to be a violation of environmental laws causing damage to environment and that being so, the said complaint do not result in giving rise to a substantial question relating to environment arising due to implementation Scheduled enactment under NGT Act, 2010 requiring interference or adjudication by Tribunal.

50. In substance, various objections mostly are over-lapping, have nothing to do with the subject matter which was taken cognizance by the Tribunal to call for the factual report and in the absence of any substantial objections to the correctness of the findings of the Joint Committee Report, we do not find any reason not to accept the same.

51. With regard to location of the industry, it is not the case that the industry is situated in a non-conforming area or that its location is in contravention of any provision relating to siting. On the contrary, the admitted position is that the entire area is declared to be an industrial development area and residential and other activities have been allowed only as a consequential activities necessary as incidental and ancillary activities for the development of industry. In the absence of any violation of any provision relating to siting and in the absence of any material to show that the industry in question is causing air, water or otherwise pollution, it cannot be said that continued operation and performance of the industry at the location in question is an anathema to a healthy atmosphere and also adverse to the health of the people residing in the nearby area. There may be some problems on account of other reasons but so long as there is no nexus with regard to damage of environment with the performance of the industry in question, the functioning of the industry in our view, cannot justifiably be interfered by Tribunal and neither the principle of 'sustainable development' nor 'inter-generational equity' nor 'precautionary principle' would embrace such an action on the part of this Tribunal.

52. In the circumstances, we reject the objections filed by complainant, and accept Joint Committee Report. We do not find any material to show that there is any violation on the part of industrial proponent with regard to environmental laws and norms which require any interference or issue of direction or even remedial, preventive or punitive action by this Tribunal.

53. The application is accordingly dismissed.