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BEYOND GOVERNANCE

Case Study

The Case Study section is inserted to make Chartered Secretary Journal (CSJ) more interactive for the members and students. The Case Study is followed by question(s) which are to be solved by member(s)/ student/s. The answer(s) are to be sent to cs.journal@icsi.edu latest by the 25th of each month.

The answer(s) will be reviewed by a Panel of reviewer(s). The winner will be given:

- (i) Certificate of Appreciation.
- (ii) His/Her name will be published in the next issue of the Journal.
- (iii) He/She will be awarded cash award of ₹ 2,500.

Crossword

'Crossword' contains terminologies/concepts from Companies Act, IBC, NCLT and such related areas of profession. Members/ students are to send the answers to the Crossword to cs.journal@icsi.edu latest by 25th of each month.

- The answer(s) will be published in the next issue of CSJ.
- The winners will be selected randomly.
- The name of three winners will be published in the next issue of CSJ.

National/International Reports: Analysis

A new Section on 'National/International Reports: Analysis' from the March 2025 covering reports on the recent policy initiatives and insights at National and International level is introduced. The purpose is to communicate information amongst professionals on various reports released by National/International organisations, having an impact on the profession.

Book Review

A new Section on 'Book Review' is inserted from June 2025 issue onwards of Chartered Secretary Journal for creating awareness on books of latest titles related to profession. This section will cover a brief summary on the contents and central theme of the book.

CASE STUDY

Outline: An appeal was made to the Apex Court w.r.t. order of NGT imposing penalty on the principle of “polluter pays” based on turnover, closure of unit and direction to the Enforcement Directorate to initiate prosecution for violation of environmental laws under Part- A of Schedule I of the PMLA, 2002.

Relevant Facts

1. The appellant was earlier engaged in four manufacturing activities when the proceedings commenced which later, were expanded with two additions.
2. There was also a residential area where 500-600 people, the employees of the appellant, resided. The appellant is said to be an exporter of handicraft items and has employed around 7000 workers.
3. On the allegation raised, the NGT had first constituted a Joint Committee comprising of the Central Pollution Control Board (for brevity, ‘CPCB’), the respondent no.3 and the Uttar Pradesh Pollution Control Board (for brevity, ‘UPPCB’), the respondent no.2.
4. A report dated 07.05.2019 was filed which noticed ineffective effluent treatment, storage of hazardous wastes and the Thermocol manufacturing unit having not been granted the consent to establish/operate, among other defects. The report proposed a show cause notice under the Water Act, 1974, the closure of the unit and imposition of EC of Rs.10 lakhs. This was followed up with a notice dated 30.03.2019 by the UPPCB to which objections were filed.
5. Further reports dated 16.07.2019 and 03.12.2019 were placed before the NGT in which EC was computed based on the “Assessment of Environmental Compensation in Case of Illegal Extraction of Groundwater” dated 26.06.2019 brought out by the CPCB in compliance with the orders of the NGT. A total EC of Rs.2,49,71,157/- was imposed.
6. The appellant is said to have deposited an EC of Rs.1,16,39,727/-; after the waiver effected on representations made.
7. Finding that the appellant had violated environmental laws including the provisions relating to extraction of groundwater, the NGT went ahead to discuss the provisions of the PMLA,

various decisions with respect to that statute and also those decisions of the NGT, imposing compensation with reference to the turnover of the polluter on the principle: “polluter pays”. The NGT thus imposed the compensation, issued directions including that with reference to PMLA as also made a sweeping direction for the closure of the divisions of the appellant, in which requisite steps are not taken to comply with the prescribed standards.

Submissions on behalf of the Appellant:

1. The environmental compensation (for brevity, ‘EC’) as determined by the statutory bodies were paid up by the appellant. The appellant also had brought about all the mitigating measures, eventually leading to a report of complete compliance of the statutory conditions and the terms imposed by the Pollution Control Board (for brevity, ‘PCB’). Despite that last report of 30.07.2021, clearly recording compliance, the NGT went ahead and imposed a compensation of Rs. 50 crores based on the allegedly admitted turnover of the appellant.
2. There is no rational nexus in thus computing the penalty on the basis of turnover.
3. The NGT also directed the Enforcement Directorate (for brevity, ‘ED’) to examine the matter and take appropriate action under the Prevention of Money Laundering Act, 2002 (“PMLA, 2002”) wherein the environmental laws are also included in Part-A of Schedule I.

Submissions of the Respondent:

1. The respondent no.1, the applicant before the National Green Tribunal (for brevity, ‘NGT’) alleged that the appellant, the respondent no.1 before the NGT, as an industry was actively perpetrating environmental degradation and pollution as also extracting ground water; thus polluting the surroundings and also releasing effluents into the nearby river which is a tributary of the Ganga.
2. The proceedings before the NGT extended over a period of three years in which various reports were called for from a Joint Committee constituted by the NGT and eventually based on the reports, the matter was disposed of with certain directions, with which the appellant is aggrieved.

Findings of the Apex Court:

1. The initial reports of the Joint Committee constituted by the NGT clearly indicate violations of the environmental laws which led to the penalisation by imposition of EC.
2. The proceedings were commenced by the applicant in the year 2019 and it was only in the year 2021 that a modicum of compliance was reported.
3. The Advocate-on-Record, appearing for the Pollution Control Board submits that as of now there is full compliance of the environmental laws. However, it is urged that the NGT was within its power in enhancing the penalty since it is a deterrent measure. It is also pointed out that the calibration of the quantum of penalty could also be with reference to multipliers under CPCB, 2019 methodology, instead of a flat turnover percentage.

Based on the above case study, decide the following:

1. *If there is non-compliance of any of the statutory conditions or that imposed by the PCBs in mitigation of the unit specific pollution, then can jurisdictional PCB, after having accepted the report of compliance, issue notice for closure such of the divisions of the appellant which are falling short of the compliance?*
2. *Considering whether there is any nexus between the turnover and the pollution alleged, comment for the penalty imposed by NGT on the basis of turnover.*
3. *Whether NGT has jurisdiction to direct the Enforcement Directorate for prosecution of individuals under the PMLA?*

Disclaimer: The case study has been framed from the facts and figures available in the public domain with some modifications/assumptions so as to enable members to apply their professional skills to answer the same and hide the identity of the case. Author is not to be held liable for any resemblance of the facts and figures with any case.

Winner of Case Study – August 2025

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