

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH SITTING AT NEW DELHI**

ORIGINAL APPLICATION NO. 241 OF 2021

IN THE MATTER OF:

RAJA MUZAFFAR BHAT

...APPLICANT

VERSUS

UNION OF INDIA AND OTHERS.

...RESPONDENTS


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Date: 27.05.2023

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Response to the Action Taken Report of the Housing & Urban Development Department dated 28.04.2023 and the Jammu and Kashmir Pollution Control Committee dated 12.05.2023

MOST RESPECTFULLY SHOWETH:

1. That by order dated 14.10.2022, this Hon'ble Tribunal has specifically directed to file an Action Taken Report by 30.04.2023:

'38. An action taken report in pursuance of above order particularly with reference to setting up of decentralized and centralized STPs and stopping discharges from waste discharging points to Doodhganga and Mamath Kull. Further, 90 MTs shifted solid waste to another site be remediated including already existing legacy waste and providing status on waste processing plants may be filed by e-mail at judicialngt@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF on or before 30.04.2023. The Principal Secretary, Urban Development, J&K may remain present in person by VC on the next date'.

2. It is submitted that Action Taken Report of the Housing & Urban Development Department dated 28.04.2023 and the Jammu and Kashmir Pollution Control Committee dated 12.05.2023 has been filed. The Applicant herein is making submissions in the following paragraphs on the report filed.

PRELIMINARY SUBMISSIONS:

3. That the Housing & Urban Development Department filed a report dated 14.01.2022 before this Hon'ble Tribunal and certain statements were made which are still not complied. Further, the recent reports dated 28.04.2023 and 12.05.2023 has also not clearly clarified those statements. The report dated 14.01.2022 stated:

(i) On Page No. 3 of Para A under head Sewage Treatment the report stated that there is total 13 dewatering pumping stations where the Srinagar Municipal Corporation is flushing 16.36 MLD waste water into Doodh Ganga. It has been proposed to construct modular sewage treatment plants for treatment of untreated sewage coming out from these dewatering stations. It also stated that DPRs will be ready by 31.03.2022 and modular STPs will be commissioned in 18 months. The report dated 28.04.2023 has not stated anything about the setting up of modular STP as an interim measure for treatment of sewage, till the time main STP is prepared.

(ii) The report further stated that comprehensive sewerage scheme of 125.5 MLD has been proposed. The Applicant herein submits that the Action Taken Report dated 28.04.2023 is completely silent on the quantity of untreated sewage has not been disclosed. Furthermore, the report is also silent about the comprehensive sewerage scheme of 125.5 MLD has been proposed. Thus, there is absolutely no noteworthy action taken by the local bodies. That till date not a single STP has been installed on the entire stretch of Doodh Ganga stream, neither in Srinagar Municipal Corporation limits nor in the upstream Budgam District. Even, the tenders have not been floated yet. It is pertinent to point

out that the report dated 14.01.2022 had categorically stated that:

"the modular STPs are an interim measure and in case the JICA proposal gets through, the entire polluted portion of Doodhganga shall get covered under the project and the modular STPs shall be shifted and relocated for use in rural habitations."

It is submitted that no action on the ground has taken place even after passing of about one and half year.

(iii) That the Action Taken Report dated 14.01.2022 on Page No. 5 of Para B under the head Solid Waste Management states that the waste dumped on the banks of Mammath Kull and Doodh Ganga has been removed by concerned Municipal Corporations. That the recent Action Taken Report dated 28.04.2023 also states that there is no legacy waste on the banks of the Nallah. In this regard, the Applicant submits that there are piles of legacy wastes lying on the banks of Doodhganga and hence the report has wrongly stated that all the legacy waste has been removed. The Applicant submits that in Budgam town an old waste dump site near Mamath Kul was closed but now the waste is dumped unscientifically in another village, Hanjan and machines installed at landfill sites are not made operational. The Action Taken Report of Housing and Urban Development Department dated 24.06.2022 (at Point 8 (vii), internal Page 8) states that:

"comprehensive Solid Waste Management facilities have been approved for Budgam town at the cost of Rs 299.47 lakhs at Pallar Budgam with two Waste Management Centres of 5 TPD capacity and for Chadoora town at Hayatpora at the cost of Rs. 124.38 lakhs consisting of 01 Waste Management Center of 4 TPD capacity. The work on the project has been started by way of construction of Waste Management Centre at the site".

However, even after passing of almost one year, no Waste Management facilities have been set up and all the waste is being dumped at the banks of Doodhganga and Mamath Kull without segregation. Untreated Liquid Waste also continues to go into Mamth Kul in Budgam town at various locations.

(iv) The earlier Action Taken Report dated 14.01.2022 on Page No. 8 of Para D under the head Regulation of Mining Activity states that extraction is being carried out in a controlled and scientific manner in accordance with the approved mining plans, environmental clearances where extraction is limited up to 1 meter depth. Further, the Action taken Report dated 20.06.2022 on Page No. 15 in Para xxiii states that the mining department has given an undertaking that at present no illegal mining is taking place. Furthermore, the Action taken Report dated 12.05.2023 filed by Jammu and Kashmir Pollution Control Committee on Page No. 236 states that the owners of tractors/trippers/machines indulged in illegal extraction and transportation has been penalised. The Applicant herein submits that various reports has given contradictory responses with regard to illegal mining. The Applicant further states that presently the mining is taking place up to 10-12 meters (approx.) deep inside the river which is much beyond what has been approved thereby posing great threat ultimately leading to soil erosion.

I. Response to the Action Taken Report of the Jammu and Kashmir Pollution Control Committee dated 12.05.2023:

A. Persistent illegal mining is taking place in River Doodh Ganga at Chadoora town:

4. The Action Taken Report dated 12.05.2023 filed by Jammu and Kashmir Pollution Control Committee on Page No. 236 states:

*"...lease holders of Minor **Mineral Block No. 11 and Block No. 12 have not been found indulged in illegal mining***

within or outside the peripheries on their respective blocks and furnished list of tractor/Tipper/Machine owners found indulged in illegal extraction/transportation of minerals from Doodh Ganga."

5. The Applicant in this regard submits that the report stating that '*Block No. 11 and Block No. 12 have not been found indulged in illegal mining*' is absolutely wrong in making the statement as large scale illegal mining is persistently taking place. The Applicant further submits that as per the earlier report dated 14.01.2022 submitted by Housing and Urban Development Department in this matter, Para D titled '*Regulation of Mining Activities*' categorically states that '*the extraction is limited upto 1 meter depth as per the approved mining plan*' but presently the mining is taking place up to 10-12 meters (approx.) deep inside the river which is much beyond what has been approved thereby posing great threat ultimately leading to soil erosion. The report is completely silent and failed to admit such illegality. The copy of the images showing such illegal mining up to 10-12 meters is taking place has been annexed as Annexure A/2 of the Additional Affidavit filed by the Applicant on 23.05.2023.
6. The Action taken Report dated 12.05.2023 filed by Jammu and Kashmir Pollution Control Committee on Page No. 237 states:

"The Technical Advisory Committee of J&K Pollution Control Committee has been entrusted with the assessment of the Environmental Compensation to be levied on account of illegal extraction/transportation of minerals from Doodh Ganga carried out the offenders as per the report of the District Mineral Officer Budgum and the Technical Advisory Committee has assessed and recommended to levy EC to the tune of Rs. 28.50 lacs on the offenders for illegal extraction/transportation of Minerals from Doodh Ganga Nallah".
7. In this regard, the Applicant submits that this Hon'ble Tribunal vide order dated 19.02.2020 in the matter of **Mushtakeem vs.**

MoEF&CC and Others. (2020 SCC OnLine NGT 595) has specifically made the observations on the penalty to be levied based upon the category of vehicles:

"5. Having regard to the above practical difficulty, we modify the orders dated 05.04.2019 and 26.07.2019 as follows:

SN	Category of Vehicles	Penalty
1	<i>Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and less than 5 years old</i>	<i>Rs. 4 lacs</i>
2	<i>Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old.</i>	<i>Rs. 3 lacs</i>
3	<i>For the remaining Vehicles older than 10 years/Equipments/Excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.</i>	<i>Rs. 2 lacs</i>

8. The Applicant herein submits that the compensation assessed is absolutely not in consonance with the specific direction of this Hon'ble Tribunal. That the Technical Advisory Committee has miserably failed to fairly assess the compensation as the environmental degradation caused is much severe in comparison to the mere compensation of Rs.2,50,000 imposed.

Copy of the order dated 19.02.2020, Mushtakeem vs. MoEF&CC and Others. (2020 SCC OnLine NGT 595) is annexed herewith as

Annexure A/2.

9. Furthermore, the Applicant in this regard submits that it is pertinent to note that Jammu and Kashmir Pollution Control Committee imposed a mere penalty of Rs.2,50,000 upon the contractor undertaking riverbed mining in Doodh Ganga upstream vide letter dated 11.05.2023 (Annexure A/4 of the of the Additional Affidavit filed by the Applicant on 23.05.2023.) It is significant to note that the environmental compensation of Rs.2.50 lakhs has been imposed upon Sh. Gh. Qadir Sheikh, who is the owner of the Excavator.

10. That the Jammu and Kashmir Pollution Control Committee has failed to impose the environmental compensation upon the actual Project Proponent, Shri Danish Yusuf, who has obtained the Environmental Clearance. It is to be significantly noted that the list only pertains to details about the vehicles involved in illegal mining, that the report has miserably failed to identify the Project Proponent who obtained the clearances and no penal action has been initiated against them.

II. Response to the Action Taken Report of the Housing & Urban Development Department dated 28.04.2023:

B. No installation of STPs on River Doodh Ganga Stretch and Sewage water is being discharged from Pumping Stations:

11. The Action Taken Report dated 28.04.2023 on Para No. 4 Page No. 210 states that:

"the number of measures have been undertaken to ensure quality of treated effluent as per the prescribe standards. Online Continuous Effluent Monitoring Systems (OCEMS) are being installed in all 15 operational STPs of UEED and also, NABL accreditation of 03 labs of UEED has been approved to be taken up during the current financial year 2023-2024".

12. The Applicant herein submits that despite specific directions of this Hon'ble Tribunal and specific recommendations *vide* Joint Committee Report dated 14.01.2022, till date not a single STP has been installed on the entire stretch of Doodh ganga stream, neither in Srinagar Municipal Corporation limits nor in the upstream Budgam District and sewage water are persistently being dumped directly into the river. Even, the tenders have not been floated yet. This shows the blatant and gross violation of the local bodies despite the legal mandate placed upon them. Furthermore, it is to be noted that the Action Taken Report dated 14.01.2022 on Page No. 3 of Para A under head Sewage Management states that.

13. It has been proposed to construct modular sewage treatment plants for treatment of untreated sewage coming out from these dewatering stations. The Applicant herein submits that as per the Joint Committee Report recommendations were made with regard to the formulation of Short-Term and Long-Term Action Plan to be prepared by the respective Departments, responsible agencies for sewage management. That the as a short-term action plan, the Committee recommended the installation of Modular STPs, however, till date no necessary action has been taken with regard to the compliance on the installation of Modular STPs and the discharge of sewerage into the Doodh Ganga is still persistent in complete violation of the orders of this Hon'ble Tribunal. The Report is completely silent and has failed to provide any details and information with regard to the installation and operation of STPs.

Copy of the images taken by the Applicant on 25.05.2023 at Channapora Bridge and Bagh-e-Mehtab showing discharge of sewage water directly into the Doodh Ganga are annexed herewith as **Annexure A/1.**

C. Continuous dumping of waste and lying of Legacy

Wastes on the embankments of River Doodh Ganga:

14. The Action Taken Report dated 28.04.2023 on Para No. 11(ii) at Page No. 217 states that:

"ii. Removal of legacy waste from the Banks: The waste collected at various spots on the banks of the Doodh Ganga has been completely removed and there is no legacy waste anywhere on the banks of the Nallah within the jurisdiction of Srinagar Municipal Corporation. Special sanitation drives are undertaken to remove scattered waste from the Nallah".

15. That the Applicant herein submits that legacy wastes are not collected periodically. Wastes are collected once in ten to fifteen

days. Furthermore, the Applicant submits that waste is not collected in a segregated manner and machines installed at landfill sites are not made operational. Liquid waste management is also not done in the Chadoora town. In Budgam town an old waste dump site near Mamath Kul was closed but now the waste is dumped unscientifically in another village, Hanjan. The waste management plant, sanitary landfill site is yet to be set up in town. Untreated Liquid Waste continues to go into Mamth Kul in Budgam town at various locations. The Applicant submits that Chadoora town needs more garbage collection vehicles so that they collect waste from nearby habitations like Hanjigund, Batpora, Wathoora, Gopalpora Alamdar Colony & Chinar Colony and all this waste is taken to Chadoora landfill site located at Nagam Hypathpora Road. The Applicant also submits that no proper segregation of waste is done as the result, the stress in the landfill is persistent.

III. Comments on the Response dated 26.05.2023 of the J&K Pollution Control Committee to the Additional Affidavit filed by the Applicant:

16. The J&K Pollution Control Committee on its Response dated 26.05.2023 Page No. 276 states that:

"Further, it is submitted that the Environmental Compensation has not been levied against the project proponent since the District Mineral Officer, Budgam vide its communication no. DMO/Bud/DGM/F-05/2903-2906 dt. 27-12-2022 has categorically informed that the lease holders of Minor Mineral Block No. 11 (chadoora old Bridge to Hanjigund D/S Doodhganga Nallah) and Block No. 12 (Chadoora Foot Bridge to Sogam Bridge U/S Doodhganga Nallah) have not been found involved in illegal mining within or outside the peripheries of their respective blocks."

17. That the Applicant in this regard submits that the Technical Advisory Committee has not inspected and visited the ground and it is the Geology Department who has imposed the compensation upon the vehicles owners thereby completely remaining silent about the Project Proponents who has obtained EC for such mining operations.
18. Thus, in light of the above submissions as well as the facts stated in the Action Taken Report, it is clear that the due to the nonchalant attitude of the State respondents there persists large-scale illegal mining in Doodh Ganga River in complete violation of the law and earlier directions of this Hon'ble Tribunal. That there is absolutely no restoration with regard to the removal of legacy wastes and most importantly till date no development is witnessed with regard to the installation of modular STPs as a short-term remedy. That there is a major violation of the directions of the Hon'ble Supreme Court and Tribunal passed in **Paryavaran Suraksha Samiti & Anr. vs. Union of India & Ors. (2017) 5 SCC 326** and **Paryavaran Suraksha Samiti & Anr. vs. Union of India & Ors. (O.A. 593/2017)** with regard to mandatory setting up of STPs and 100% treatment of sewage before discharging it into the river. Hence, the Hon'ble Tribunal may pass appropriate order considering above submissions of the Applicant.

IV. Non-compliance with the Order dated 08.03.2022 of this Hon'ble Tribunal wherein directions were issued to recover compensation from the erring officers and to undertake restoration of environment:

19. That this Hon'ble Tribunal *vide* order dated 08.03.2022 stated that:

'the State is accordingly held liable to pay interim compensation of Rs. One crore each under all the three heads which may be deposited in a separate account to be utilized for restoration of environment. The amount may be deposited with the District Magistrate, Budgam and spent as per plan approved by the Chief Secretary, consistent with the District Action Plan of the concerned area. It will be open to the State to recover the amount

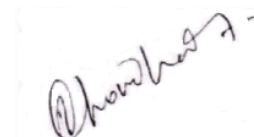
from the polluters/erring officers in accordance with law'.

20. That it is pertinent to be noted that despite imposing an interim compensation of 1 crore each under the heads of sewage treatment, waste management and illegal mining, till date no satisfactory action has been initiated and on ground no restoration is visible. The Applicant herein further submit that the interim compensation was not realised from the salaries of Erring Officers rather it has been paid from State exchequer as a result there is no deterrence upon the Local Authorities and hence the illegality persistently continues.
21. That in this regard, an RTI Application dated 26.12.2022 was filed before the Deputy Commissioner, Budgam seeking detailed information on the utilization of the penalty money imposed by this Hon'ble Tribunal.
22. That the response received on 18.01.2023 states that *'the amount of 3 crores has been deposited and directions were issued to the line departments to submit requisite comprehensive action plan about utilization of the penalty amount.'* That the RTI response clearly shows that there is absolutely no information pertaining to the utilization of the penalty amount for the restoration of the environmental degradation caused. The reality on ground is there is absolutely no action initiated for the restoration purpose thereby highlighting the complete lawlessness by the Government. (Copy of the RTI dated 26.12.2022 and response dated 18.01.2023 are annexed as Annexure A/3 of the Additional Affidavit of the Applicant dated 23.05.2023).

Through



Ritwick Dutta



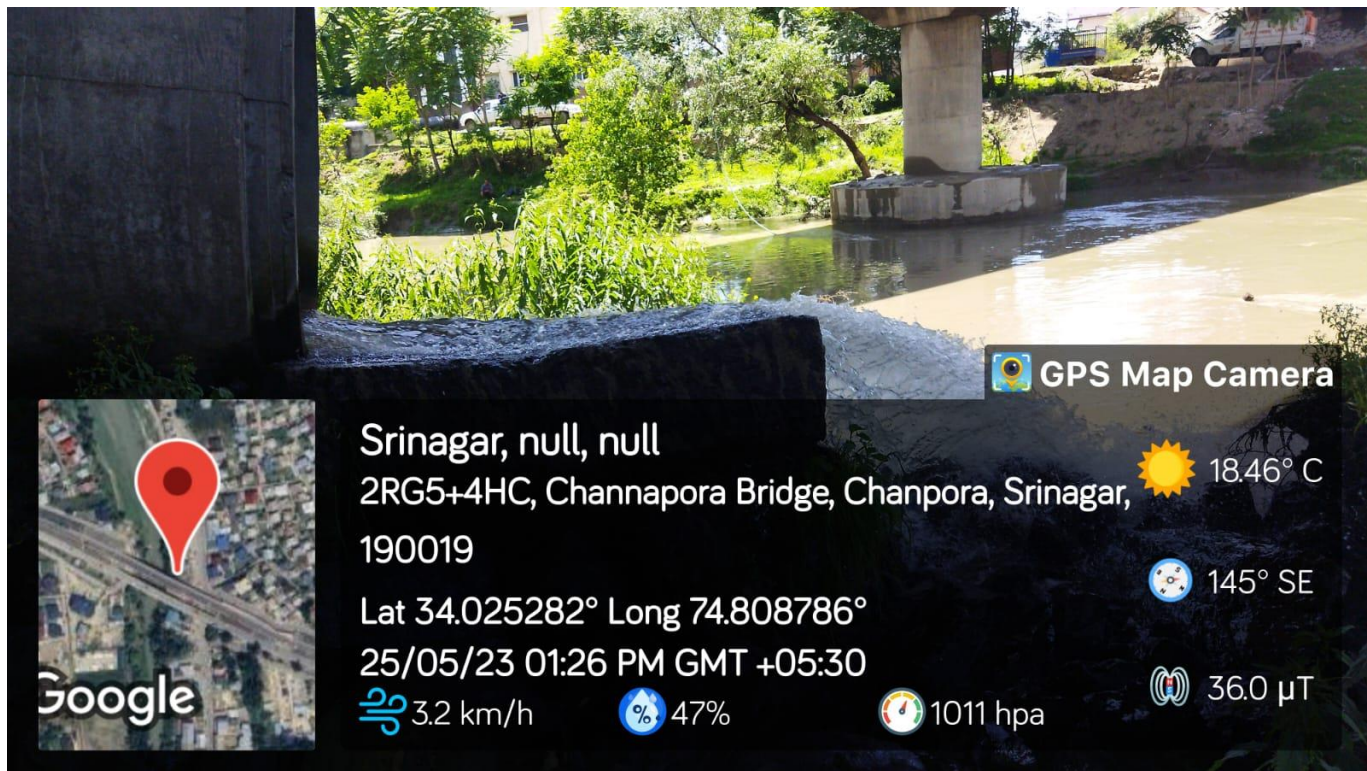
Rahul Choudhary
Advocates
Counsel for the Applicant

Dated:- 27.05.2023

ANNEXURE A/1

COPY OF THE IMAGES TAKEN BY THE APPLICANT ON 25.05.2023 AT CHANNAPORA BRIDGE AND BAGH-E-MEHTAB SHOWING DISCHARGE OF SEWAGE WATER DIRECTLY INTO THE DOODH GANGA.





2020 SCC OnLine NGT 595

In the National Green Tribunal[±]

(BEFORE ADARSH KUMAR GOEL, CHAIRPERSON AND S.P WANGDI, JUDICIAL MEMBER, DR. NAGIN NANDA, EXPERT MEMBER AND SIDDHANTA DAS, EXPERT MEMBER)

Mushtakeem ... Applicant(s);

Versus

MoEF & CC and Others ... Respondent(s).

M.A. No. 16/2020 (Filed by the State of Haryana for modification of order of this Tribunal dated 05.04.2019 read with order dated 26.07.2019 laying down terms on which vehicles or other equipment involved in illegal mining may be released.)
in Original Application No. 44/2016

Decided on February 19, 2020

Advocate who appeared in this case:

Mr. Ajay Bansal, AAG with Mr. Rahul Khurana, Advocate and Mr. Sanjay Simberwal, AME, Faridabad, for the Respondent(s)

ORDER

1. This application seeks modification of order dated 05.04.2019 read with order dated 26.07.2019 laying down terms on which vehicles or other equipments involved in illegal mining may be released passed by this Tribunal. After referring to the earlier orders on the subject passed by this Tribunal and the Hon'ble Supreme Court referred to therein, and perusing the reports received from different States, this Tribunal found that steps taken by the States to check illegal mining were not adequate. The Tribunal *inter alia* directed the States to ensure that in compliance of polluter pays principle, the illegal miners may be required to be pay compensation which should include not only the value of illegal mined material but also cost of restoration of environment as well as cost of ecological services foregone forever. It should be deterrent so as not to render such illegal activity profitable. It was further directed that the vehicles or any other equipments used for illegal mining are required to be confiscated and to be released only on payment of atleast 50% of the showroom value as laid down by this Tribunal earlier in *Original Application No. 110(THC)/2012, Threat to life arising out of coal mining in South Garo Hills District v. State of Meghalaya*, affirmed by the Hon'ble Supreme Court in (2019) 8 SCC 177.

2. The above order was passed by this Tribunal in exercise of jurisdiction under Section 15 of the NGT Act, 2010. It is well settled that terms for release of vehicles and equipments involved in violation of special law is not control by the general provisions of the Cr.P.C. In this connection reference may also be made to another order of this Tribunal on the same subject in *O.A. No. 840/2019, Atul Chouhan v. State of U.P.*. The said order was challenged by the State of U.P. in C.A. 1590/2019 which was dismissed by the Hon'ble Supreme Court on 07.05.2019. The Tribunal also referred to order of the Hon'ble Supreme Court dated 26.03.2019 in *Cr.A. 524/2019, State of Madhya Pradesh v. Uday Singh* that special procedure for confiscation prevailed over procedure under Section 451 of Cr.P.C. In the said case principle laid in *Sujit Kumar Rana*, (2004) 4 SCC 129 was followed.

3. In spite of above legal position, any other view on the subject will be against the law laid down by the Hon'ble Supreme Court. The plea that different Courts are taking different interpretation and releasing vehicles on *superdari* without any conditions is untenable. Legal position need to be brought to the notice of such courts where

matters are taken up.

4. Other difficulty pointed out by the State is that police stations are finding it difficult to provide sufficient space for custody of the vehicles. 669 vehicles have already been seized and more may be seized. The stand of the State itself supports the allegation that illegal sand mining and illegal use of vehicles for the purpose is taking place at large scale which itself may require a stern approach in the matter. The vehicles can be stored by the State at any appropriate place and cost recovered from the law violators. The State has to take necessary steps for enforcing rule of law and for protection of environment. As regards the difficulty that with the scale of compensation laid down by this Tribunal, the vehicle owners do not find it profitable to come forward and take the vehicles unless the scale of compensation is reduced. The showroom value of a truck is said to be around Rs. 30 lacs and 50% thereof comes to Rs. 15 lacs. In terms of order of this Tribunal, if amount of Rs. 15 lacs is to be deposited for release of every seized vehicle, there may be many vehicles which may be of much lesser value, in which case nobody may come forward to take such vehicles.

5. Having regard to the above practical difficulty, we modify the orders dated 05.04.2019 and 26.07.2019 as follows:

Sr. No.	Category of Vehicle	Penalty Amount
1	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and less than 5 years old.	Rs. 4 lacs
2	Vehicles/Equipments/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old.	Rs. 3 lacs
3	For the remaining Vehicles older than 10 years/Equipments/Excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2.	Rs. 2 lacs

Note — I: On repetition of the offence by the same vehicle/equipment, Order dated 05.04.2019 will be applicable.

Note — II: The option of release may be available for a period of one month from the date of seizure and thereafter, the vehicles may be confiscated and auctioned.

6. The State may issue an appropriate Office Order/Rule to the above effect and publish the same. Needless to say that any private contract between a financier and a debtor cannot affect the States' sovereign power to protect the environment and take incidental coercive measure for enforcement of rule of law. Lien of the State will override any private interest. The above compensation regime will be over and above any existing Rules or provisions. The amount collected may be remitted to the State PCBs/PCCs for being utilized for restoration of the environment.

7. The above course of action will be permissible to all the States at their option.

A copy of this order be sent to all the Chief Secretaries of all States/UTs, PCBs/PCCs, CPCB and MoEF&CC.

The application is disposed of.

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† Principal Bench, New Delhi

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