



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

CASE COMMENTARY

DELHI POLLUTION CONTROL COMMITTEE V LODHI PROPERTY COMPANY LTD

(2025) 2 SCC 670: 2025 SCC OnLine SC 1601 (P.S. Narasimha and Manoj Misra, JJ., 4

August 2025)

~ **D. KAVIN**

I. FACTS AND PROCEDURAL HISTORY

In 2006, after receiving instructions from the Ministry of Environment, Forest and Climate Change, the Delhi Pollution Control Committee (DPCC) delivered show-cause notices to some residential and commercial complexes. The DPCC highlighted the fact that those entities were engaged in construction and operation without having obtained certain permits called "consent to establish" and "consent to operate" according to the Water Act (1974) (Sections 25) and the Air Act (1981) (Sections 21 & 22). At the time of delivery of notices, the DPCC made the grant of the aforementioned permits conditional upon making certain financial payments or providing bank guarantees. Nevertheless, the High Court cancelled such condition in the case of *Splendor Landbase Ltd v Delhi Pollution Control Committee*.¹ It concluded that Sections 33-A of Water Act and 31-A of Air Act only granted certain powers to make directions. The demand of money was defined as a "penalty", which could be established only via criminal trials in a court of law according to the penalty chapters of the respective laws (Chapter VII of the Water Act and Chapter VI of the Air Act). Almost 23 years later, the Supreme Court has cancelled this limiting interpretation. It stated that Pollution Control Boards have the right to

¹ *Splendor Landbase Ltd. v. Delhi Pollution Control Committee*, 2010 SCC OnLine Del 3466, (2010) 173 DLT 52.

demand environmental restoration compensation or to demand bank guarantees prior to certain actions as a means to prevent environmental harm.²

II. THE COURT'S CENTRAL HOLDING

The main holding of the Supreme Court in this matter was that there were two different concepts in the law that the High Court confused with each other. Those were the concept of punishment for proved offence and the concept of civil restitution for the real or potential harm done to the environment. Criminal punishment presupposes a trial in the court when a party is charged with certain criminal offence according to particular penalty chapters. Civil restoration presupposes repairing the damage to the environment, and it can be ordered by Pollution Control Boards without any court procedure via Sections 33-A and 31-A. The Court stressed that the assumption of Boards being able to make such restorations only through criminal trials would significantly narrow the possibilities of protection of the health of the population and environment.³

III. DISTINGUISHING PUNITIVE FROM REMEDIAL POWER

Such distinction between punitive and remedial power is the core of this judgment and provides a direct answer to the primary question. Referencing *M.C. Mehta v Kamal Nath* and the decisions of NGT in *State Pollution Control Board v Swastik Ispat*,⁴ the Supreme Court stated that criminal punishment could be applied only in the course of the trial and when the party is convicted. As to the compensation or financial restorations, the money demand is made exclusively based on the facts of the damage to the environment regardless of any trial. Therefore, when the Board estimates the environmental damage or demands a bank guarantee, it does not usurp the court functions but holds the offender liable for his civil offence towards the society as a whole.⁵ The 2024 amendments, which decriminalized some offences, do not change the above-mentioned system. The transfer of some crimes to penalties which should be determined by Adjudicating Officers created a second alternative way but did not replace the power of Boards. The funds from fines paid as the result of penalties, goes to the Environment

² *Delhi Pollution Control Committee v. Lodhi Property Co. Ltd.*, (2025) 2 SCC 670, 2025 SCC OnLine SC 1601, ¶ 45.2 (hereinafter *Lodhi Property*).

³ *Lodhi Property*, (2025) 2 SCC 670, ¶ 35.

⁴ *State Pollution Control Board v. Swastik Ispat (P) Ltd.*, 2014 SCC OnLine NGT 13, ¶¶ 45–46; *M.C. Mehta v. Kamal Nath*, (2000) 6 SCC 213, ¶ 17.

⁵ *M.C. Mehta*, (2000) 6 SCC 213, ¶ 24.

Protection Fund for educational, scientific purposes while compensation damages should be exclusively reserved for restoration of the certain natural resource.⁶

IV. PROACTIVE, EX ANTE CHARACTER OF THE POLLUTER PAYS PRINCIPLE

The most important novelty introduced by *Lodhi Property* is temporal in nature. Since, *Indian Council for Enviro-Legal Action* and *Vellore Citizen's Welfare Forum*,⁷ "Polluter Pays" required those who caused damage to the environment to pay for the consequences of their actions and to compensate for victims' loss. *Lodhi Property* brings this provision of the "Polluter Pays" principle backwards in time. Financial responsibility does not depend on whether actual damage has occurred. In addition, this provision can be applied in the situation when the limit set by the regulations is exceeded without damaging the environment or even when there is no such limit and there is an anticipation of potential environmental harm.⁸ As a result, "Polluter Pays" becomes an instrument which is truly preventive, looking into the future, as per *Research Foundation for Science* where it is stipulated that "the rule covers the cost of preventing pollution as well as remedying the effects".⁹ Advance bank guarantees and cash deposits become instruments to exercise such prevention.¹⁰

V. NATURAL JUSTICE IS THE COST OF EXPANDING POWER

While expanding the powers of the Pollution Control Boards, the Court put strict boundaries around their application. The power to impose financial damages or advance bank guarantees can be enforced only after the regulations providing natural justice are developed.¹¹ Such regulations must establish in precise detail the mechanisms for calculation of environmental damages and the amounts of compensation.¹² This is a very important requirement because it turns the power of arbitrary financial demand into a power limited by a rule and procedural-based framework. This also serves as an indirect recognition of the fact that administrative guidelines currently adopted by the Central Pollution Control Board cannot be regarded as legal regulations.

⁶ *Lodhi Property*, (2025) 2 SCC 670, ¶ 37.

⁷ *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212, ¶ 67; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, ¶ 12.

⁸ *Lodhi Property*, (2025) 2 SCC 670, ¶ 33.3.

⁹ *Research Foundation for Science (18) v. Union of India*, (2005) 13 SCC 186, ¶ 29.

¹⁰ *Lodhi Property*, (2025) 2 SCC 670, ¶¶ 33.5, 34.

¹¹ *Id.* ¶ 45.3.

¹² *Id.* ¶ 41.

VI. CONSTITUTIONAL BASIS: ARTICLES 21 AND 14

Such requirement for the proper procedure is not just administrative prudence. Rather, it has deep constitutional roots. Relying on *Bengaluru Development Authority v Sudhakar Hegde*,¹³ the Court put environmental regulations within the framework of Article 21 (the right to healthy environment is a component of the right to life) and Article 14 of the Constitution (prohibition of arbitrariness in governmental activities). Having proper institutionalized structures for making such decisions is a constitutional imperative, not just a good administrative practice.¹⁴ If the regulator has unlimited power to demand money from the company without established and published rules and hearing process, it will violate Article 14. Thus, Supreme Court achieved two goals with one stroke of pen: it expanded powers of the Boards but made sure at the same time that the expanded powers would be protected constitutionally from any abuse.

VII. DIRECTIVE PRINCIPLES: ARTICLE 48-A AND PART IV-A

Finally, the Court gave constitutional basis for the duties of the Boards in the form of Directive Principles and Fundamental Duties contained in the Part IV-A of the Constitution. It pointed out that the duty of the State to protect and improve the environment pursuant to Article 48-A automatically involves the duty to make environmental repairs.¹⁵ For that to happen, the regulating institution must have long-term vision, institutional memory and technical competence. All of these qualities were used by the Court as a justification of a broad and liberal interpretation of Sections 33-A and 31-A of the Act, arguing that otherwise there would be no way for the government to implement its constitutional duties in relation to the environment.¹⁶ The use of non-enforceable directive principles to expand legal powers is an old practice in Indian environmental law, and this judgment proves again that the directives are living legal documents.

VIII. OTHER OBSERVATIONS

Two other observations should be made in addition. Firstly, the Court did not fix an apparent discrepancy in the law. Whereas under Section 33-B of the Water Act, directions issued by authorities under that Act can be appealed before the National Green Tribunal, the same right appears to be missing in the Air Act for some reason.¹⁷ It seems like an odd omission for a case

¹³ *Bengaluru Development Authority v. Sudhakar Hegde*, (2020) 15 SCC 63, ¶ 95.

¹⁴ *Lodhi Property*, (2025) 2 SCC 670, ¶ 40.

¹⁵ *Id.* ¶ 22.

¹⁶ *Id.* ¶ 23.

¹⁷ *Id.* ¶ 20.

where procedural considerations are stressed to such an extent. Secondly, the actual remedy that was provided by the Court was very minimal. Although it overturned the existing judicial precedents, the Court declined to reconsider the initial show-cause notices of 2006, considering it sufficient to allow the authorities to keep the money that was already collected.¹⁸ Thus, the solution to the case presented itself quite pragmatically.

IX. CRITICAL ASSESSMENT

However convincing the argument presented by the Court might appear, there are still two big practical issues with this judgment. Firstly, until the relevant rules are formally approved by the government, Pollution Control Boards will continue to apply the very temporary administrative guidelines that the judgment finds inappropriate in this particular situation. Therefore, there is going to be a period when exactly the structural possibility of the type of arbitrariness mentioned in the judgment remains present. Secondly, the judgment does not clarify how a company can challenge the amount of compensation to be paid during the waiting for the approval of those new rules. As a result, the only option left is to file individual writ petitions to high courts and not to use regular environmental appeals procedure, which would otherwise be the case. Similar combination of strict pre-conditions of payment in advance and detailed procedures of that is used, for example, in US Superfund laws and European Union Environmental Liability Directive. Thus, this judgment gives India broad legal basis for polluter's liability but hasn't yet developed appropriate procedural guarantees.

X. CONCLUSION

The Lodhi Property case should be considered primarily as a decision aimed at increasing regulatory powers of pollution control authorities. The Court is not ready to interpret the "Polluter Pays" principle as a principle of reparation after harm is already done. Rather, it is transformed into a preventive obligation to be fulfilled by existing Pollution Control Boards without need of further legislation by Parliament. However, possibly its biggest contribution in the long run will be procedural: by tying the expanded powers to fair and transparent rules, the Court tried to prevent that expansion from destroying the impartiality and credibility of the authorities. However, its success in doing so depends much more on the content of the official rules that the Boards will have to create according to this decision.

¹⁸ *Id.* ¶ 44.