

**BEFORE THE NATIONAL GREEN TRIBUNAL
SITTING AT CHENNAI**

(Under Section 18(1) read with Section 16(c) [*in relation to orders under Section 33-A of the Water (Prevention and Control of Pollution) Act 1974, (6 of 1974)*] and Section 14 [*in relation to orders under Section 31-A of the Air (Prevention and Control of Pollution Act, 1981, (14 of 1981)*], of the National Green Tribunal Act 2010 (19 of 2010)

Appeal No. 10 of 2020 (SZ)

&

I.A. No. 26 of 2020(SZ)

IN THE MATTER OF

M/s Fatima Poultry Farm Rep by its
Proprietor Mohd Raza Nabi, S/o. Haji Ali Nabi.

APPELLANT

AND

Telangana State Pollution Control Board,
Hyderabad, Telangana State & 2 others

RESPONDENTS

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HYDERABAD T.S.



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ADDITIONAL WRITTEN SUBMISSIONS

The following additional substantive legal arguments are most respectfully sought to be advanced by the Counsel for the Appellants in addition to the previously filed Arguments in the matter of the maintainability of this petition which are

as under;



1. These additional Written Submission are necessitated to be submitted in the matter due to the pronouncement of the Learned Honorable National Green Tribunal Principal Bench, New Delhi, in Original Application No 681 of 2017, *Gauri Maulekhi Vs the Union of India*, dated 16-09-2020, *2020 SCC Online NGT 850*, in the matter of the General Directions, in Para 17 therein which are as under;

Para 17. Accordingly, we allow this application and direct the CPCB to revisit the guidelines for categorizing the poultry farms as green category and exempting their regulation under the Air Act, Water Act and the EP Act. *The CPCB may issue fresh appropriate orders within three months and in if no further order is issued, all the State PCBs/PCCs will require enforcement of consent mechanism under the above Acts after 01.01.2021 for all poultry farms above 5000 birds in the same manner as is being done for farms having more than one lac birds.* Till then, even without such consent mechanism, the State PCB/PCCs may strictly enforce the environmental norms and take appropriate remedial action against the any



violation of water, air and soil standards statutorily laid down.

2. Briefly reiterated the Appellant has been running a Poultry Farm in Thummaluru Village, Maheshwaram Mandal, R.R District, a southern outlying area about 40+ Kilometers from the Main Hyderabad City since 2003 with less than 1,00,000 Birds therein.

3. The Central Pollution Control Board, has in Letter No B-4032/PCI-SSI/Poultry/2015-13165, dated 20-10-2015 "Environmental Guidelines for Poultry Farms", promulgated a number of guidelines in the matter which would apply to establishments having more than one lakh birds, and also siting criteria for the establishment of new farms. These guidelines would be applicable to establishments having more than one lakhs birds only and not otherwise, and also the "siting criteria" would be applicable to farms established after the promulgation of the



said guidelines. These Guidelines were promulgated under a Letter of Central Pollution Control Board in Letter No B-4032/PCI-SSI/poultry/2015-13165, dated 20-10-2015 to the Punjab Pollution Control Board enclosing “Environmental Guidelines for Poultry Farms” and reiterated in the circular letter of the Central Pollution Control Board No F.No B-29012/IPC-V/2017-18 dated 19-07-2017, and also of the Letter of the Central Pollution Control Board No F.No. 8-29012/IPC-VI/2017-18/8028 dated 19-07-2017.

4. These notifications are ordered to be modified by the General Order and Direction of the Learned Honorable Learned Honorable National Green Tribunal Principal Bench, New Delhi, in Original Application No 681 of 2017, Gauri Maulekhi Vs the Union of India, dated 16-09-2020, by reducing the cut-off population of Poultry Birds from One Lakh(1,00,000) to five thousand (5000) Birds.



6. It is stated with great deference to this Most learned Honorable Tribunal that these general regulations could be terms improper and inappropriate in the circumstances in which they are made upon inadequate information made by a source which may lack the necessary expertise in the matter.

7. In the matter of *Director General (Road Development) National Highways Authority of India Vs Aam Aadmi Lokmanch and Others*, C.A. No 6932 of 2015 (Judgement Dated 14-07-2020, 2020 SCC Online SC 572, the Supreme Court had occasion to hold as under;

Para 76. The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of



the abusive practice, its powers can also be preventive.

Para 77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued.

Thereafter the supreme court also held as under;

Para 80. The NGT's directions, though placed in the context of its adjudicatory role, have a wider ramification in the sense that its rulings constitute the appropriate norm which are to be followed by all those engaging in similar activities. Therefore, its orders, contextually in the course of



adjudication, also establish and direct behaviour appropriate for future guidance. In these circumstances, given the panoply of the NGT's powers under the NGT Act, which include considering regulatory directions issued by expert regulatory bodies under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Biodiversity Act, 2002 it has to be held that general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT.

Para 81. Turning next to the question of the correctness of the general directions contained in Para 17(e) of the NGT's order, this court has no manner of doubt that such directions were improper and not justified in the facts of this case. What the NGT had before it, was the report of the SDM and a report commissioned about the nature of the incident. Based on these limited inputs, the tribunal concluded-without any rationale and based on no scientific or technical evidence, or



experts' opinion, that development and construction should not be carried out within 100 feet of a "lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops". The decisions of this court, including the *State of Meghalaya Vs All Dimasa Students Union, Dimas-Haso District Committee*, (2009) 8 SCC 177; *Mantri Technoze Pvt. Ltd. Vs Forward Foundation*, (2019) 18 SCC 494; the *Hanuman Laxman Aroskar Vs Union of India* case (2019) 15 SCC 401 and the *Tamil Nadu Pollution Control Board Vs Sterlite industries India Limited*, (2019) 19 SCC 479, all show that the NGT resorted to the appointment of technical and scientific experts in the relevant field, who studied the issue, made site inspections and furnished reports. Such reports were subjected to discussion by the parties before the NGT, who were also given the opportunity of objecting to or making representations against such reports. Based on a final consideration of all these materials, and the submissions of parties before it, the NGT proceeded to issue directions. This procedure was wholly overlooked by the NGT in the present case. As a result, it is held that



the said tribunal's directions were improper and are procedurally indefensible. The directions contained in Para 17(e) are therefore set aside.

Therefore, the Supreme Court came about to hold as under;

Para 95. In the present case, the State of Maharashtra has not shown any material or file containing the reasons behind the directive of 14.11.2017. It is not in dispute that the direction was consequential to, and solely based on the directions of the NGT in Para 17(e). As noticed earlier, those directions were not based on any scientific evidence or report of any technical expert. Furthermore, even the impugned notification does not specify what constitutes “hills”, and how they can be applied in towns and communities set in undulating areas and hilly terrain. This is not only vague, but makes the directions arbitrary as they can be applied at will by the concerned authorities. More importantly, they amount to a blanket change of all regional and development plans. While such directions can be issued, if situations so warrant, such as in extraordinary or emergent circumstances, the complete absence of any reasons why the state



issued them, coupled with the lack of any supporting expert report or input, renders it an arbitrary exercise. That they are based only on the NGT's orders, only underlines the lack of any application of mind on the part of the State, while issuing them.

Para 96. For the above reasons, we hold that the impugned judgment of the Bombay High Court cannot be sustained; it is set aside. Consequently, the directions in the notification under Section 154 (dated 14.11.2017) are hereby quashed.

8. In *Mantri Techzone Private Limited Vs Forward Foundation and others*, (2019) 18 SCC 494, the court took it upon itself to set aside the order of the National Green Tribunal contained in 2016 SCC Online NGT 1409, in so far as it contains General Directions, except in so far as it pertain to the Respondent s Nos 9 and 10 therein, (who had conceded before the Learned Honorable Court), were quashed.



9. The High court of Bombay (Mumbai) also in the case of *Central India Ayush Drugs Manufacturers Association Nagpur, Vs State of Maharashtra, 2017(1) Mh.L.J. 526* also had occasion to render its opinion on the matter, wherein it has held that the National Green Tribunal Act does not empower it to examine validity of any Rules or Regulations made under enactments, and Para 27 is illustrative thereof;

Para 27. Here, considering the jurisdiction given to the National Green Tribunal only to decide civil cases, where substantial question involved is in relation to environment, it is apparent that the NGT cannot be said to be conferred with the absolute jurisdiction to adjudicate all types of disputes or even all civil disputes. A limited jurisdiction to deal with specific type of civil disputes is only made available to it. Bare reading of section 28 of the N.G.T. Act prescribing the bar of jurisdiction also substantiates this. Thus, power to pronounce upon the vires of any statutory provision or of any subordinate legislation can not be read into any of the provisions which confer



either appellate or original jurisdiction upon National Green Tribunal. The Parliament which has deliberately employed wide or liberal words while laying down the compass or the scheme of N.G.T. Act, has not used such words while phrasing section 14 of that Act or conferring jurisdiction upon National Green Tribunal. On the contrary, its intention to limit the power to decide certain specified nature of disputes is apparent. We find that the scheme of N.G.T. Act does not permit National Green Tribunal to decide upon the vires of any of the enactments which confer appellate or other jurisdiction upon it and find mention in Schedule-I of N.G.T. Act. It also does not empower it to examine validity of any Rules or Regulations made under these enactments.

10. Also in *Alpha Chem & another Vs State of U.P., 1991 Supp (1) SCC 518*, the Supreme Court had occasion to deal with the ambit of the powers of a Tribunal which itself is a creature of statute, and it had held as under;

4. We are of the view that there is force in this contention. The High Court was not right in



its contemplation that the vires of the impugned provisions could be examined in the revision proceedings. The jurisdiction of the High Court in revision is under the same limitation insofar as the contention as to constitutionality is concerned as was indicated by this Court in *K.S. Venkataraman & Co. (P) Ltd. v. State of Madras* [(1966) 2 SCR 229, 247-48 : AIR 1966 SC 1089 : 17 STC 418] in the context of the reference jurisdiction of the High Court under the Income Tax Act. It was held: (SCR pp. 247-48)

“Up to this stage all the three authorities are the creatures of the Act and they function thereunder. They cannot ignore any sources of income on the ground that the relevant provisions offend the fundamental rights or are bad for want of legislative competence. The Act does not confer any such right on them Whether the provisions are good or bad is not their concern Can it be said that a question whether a provision of the Act is ultra vires of the legislature arises out of the Tribunal's order? As the Tribunal is a



creature of the statute, it can only decide the dispute between the assessee and the Commissioner in terms of the provisions of the Act. The question of ultra vires is foreign to the scope of its jurisdiction. If an assessee raises such a question, the Tribunal can only reject it on the ground that it has no jurisdiction to entertain the said objection or decide on it. As no such question can be raised or can arise on the Tribunal's order, the High Court cannot possibly give any decision on the question of the ultra vires of a provision”

Even as the authorities under the Act cannot go into the vires of the very statutes under which they are constituted and draw their power and jurisdiction therefrom so is the High Court in matters arising before it from proceedings under the Act and examine the constitutionality of the statute and its provisions. The High Court can, of course, deal with the question of constitutionality in judicial review of legislation under Article 226. That is what the appellants sought to do before the



court in the writ petition. The High Court was not justified in requiring the appellants to have recourse to proceedings of revision taken under the 'Act' to have the contention as to constitutionality resolved.

11. Also, the order of the Learned Honorable National Green Tribunal Principal Bench, New Delhi, in Original Application No 681 of 2017, *Gauri Maulekhi Vs the Union of India*, dated 16-09-2020, 2020 SCC Online NGT 850, has taken it upon itself to quote a series of articles by one Ms Natalie Obiko Pearson, whose journalistic talents are unimpeachable , and is the Vancouver Bureau Chief, 9in Canada), of the Bloomberg Organization, and can hardly be called a scientific expert on the poultry industry in India. Sharang Limaye, and Ganesh Nagarajan, are also journalist for the Bloomberg Organization. The series of articles of the above persons on this topic on the Bloomberg organization are also enclosed and are only general in nature.



Therefore, the same may be disregarded and have no implication in fact and law in this matter.



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HYDERABAD T.S.

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Item No. 09

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(By Video Conferencing)

Original Application No. 681/2017

Gauri Maulekhi

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 16.09.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S. P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Applicant(s): Mr. Raj Panjwani, Senior Advocate with Ms. Priyanka Bangari,
Advocate
Respondent(s): Mr. Thakur Sumit, Advocate for MoEF&CC
Mr. Amit Mahajan, Advocate for R-3
Mr. Sameer Sinha, Advocate for R-5
Ms. Inderjeet Sidhu, Advocate for intervenor

ORDER

1. Grievance in this Application is against the CPCB guidelines dated 20.10.2015 regarding poultry farms. Objection of the applicant is to the following part of the Guidelines:-

"The poultry farms which are handling 1,00,000 or more birds at a given time in single location need to approach State Pollution Control Board to obtain necessary consent for operation under the Water (Prevention and Control of Pollution) Act, 1974"

.....

"The hatcheries of any size which are performing the exclusive operation, feed mills of any capacity and the

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commercial poultry farms which are handling more than 5,000 birds at a given time on any single location need to be got registered with local bodies”

Further grievance is against the direction dated 29.02.2016 issued by the CPCB to categorize commercial poultry farming as green industry.

2. Basis of the grievance is that poultry farms with less than one lac birds have been wrongly left out of the regulatory regime of the Stat PCBs/PCCs against the concept of sustainable principle and to that extent defeating the object of setting up of such regulatory mechanism. Classifying poultry farms as 'green' is arbitrary, based on no possible logic.

3. Case of the applicant is that chickens destined for the egg industry are artificially incubated and hatched at commercial hatcheries. At the age of approximately 16 weeks, most hens are then transferred into small, barren wire cages called 'battery cages' placed side by side. Every layer contains thousands of cages, lined in multiple rows, stacked 3-5 tiers high. The battery cages are so small that the hens are unable even to spread their wings. The floor space available to each hen is 450 cm which is less than the area of a single sheet of A4 size paper. Battery cages prevent all forms of natural behavior including perching and roosting, scratching and foraging, comfort behavior and exploring.

4. Poultry farms cause extensive pollution to the areas that surround them. As poultry farms have thousands of birds in intensive confinement in each farm, the level of waste is high. This waste is seldom disposed of scientifically, in accordance with law. Pests such as flies, ticks, lice,



mites, maggots, scavenging birds and even stray dogs are routinely attracted to the poultry farms. There is an intense odor that emanates from these farms which affects the entire neighborhood and is a source of blatant nuisance.

5. The built up fecal matter in the battery cage facilities makes for an environmental hazard and a health hazard for both people and the birds which are constantly exposed to pathogens. In order to keep these birds alive in such intensive and filthy environs, the poultry farm owners regularly administer non-therapeutic antibiotics. The administration of these non-therapeutic antibiotics causes antibiotic resistance in the human beings who consume eggs or meat of such birds.

6. Poultry farms impact the ecology and standard of living of those who surround the farms. Pests which are attracted to the farms make it difficult for the people living in the vicinity to such farms to eat, work or to perform their day-to-day activities. There are several instances where poultry farms situated near various establishments have made it difficult for the residents of those establishments to live normal lives.

7. In support of its averments, the applicant has relied upon several Newspaper and other Articles, article published on 07.05.2017 in "The Tribune" titled 'Children can't eat, study here, courtesy houseflies- Poultry Farm adjacent to Zirakpur school makes their stay miserable, an article published on 29.04.2011 in "The Hindu" titled "Unhygienic conditions in poultry farms result in fly menace", an article published in "The Indian Express" on 01.07.2016 titled "Flies in the face of a Karnal village", an article published in Poultry, Fisheries and Wildlife sciences, volume 1, issue 1 titled "Environmental Impacts of Poultry Production"



and an article published in "Indian Journal of Community Medicine" titled "Association of Poultry Farms with Housefly and Morbidity: A comparative Study from Raipur Rani, Haryana". In short, findings in the said articles are that breeding of houseflies takes place in the poultry farms in the dumped waste. Poor manure management is not only a major cause of pollution of soil and water but it is also a source of highly offensive odor and houseflies and is capable of affecting the life of people living in the vicinity. Extensive use of antibiotics on regular basis adversely affects health of the persons living around the farms, in violation of the Drugs and Cosmetic Act, 1940. Antibiotic resistance has become a big issue as per several studies, a National Action Plan on Antimicrobial Resistance (NAP-AMR) 2017-2021, a study of Antibiotic Resistance in Poultry Environment, Spread of Resistance from Poultry Farm to Agricultural Field, a study dated 20.07.2017 done by Bloomberg¹ article titled "Indian Poultry Farms Are Breeding Drug Resistant Superbugs" by Natalie Obiko Pearson, highlights that the Indian poultry farms have become a breeding ground for drug resistant superbugs, a study dated 20.07.2017 titled "The Prevalence of Extended - Spectrum Beta-Lactamase-Producing Multidrug-Resistant Escherichia Coli in Poultry Chickens and variation according to farming practices in Punjab, India, a report on "Environmental Status of Some Poultry Farms in India" by CSIR-National Environmental Engineering Research Institute (NEERI), Delhi Zonal Centre, Ministry of Science and Technology and 269th Law Commission Report on Transportation and

¹ <https://www.bloomberg.com/news/articles/2017-07-20/poultry-farms-in-india-resemble-superbug-reservoirs-study-finds#:~:text=Indian%20poultry%20farms%20aren't,most%20potent%20antibiotics%2C%20researchers%20found.&text=Of%20tested%20birds%20destined%20for,journal%20Environmental%20Health%20Perspectives%20showed>



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House-keeping of egg-laying hens (layers) and broiler chickens dated July, 2017. Further, reference has been made to the report by CSIR-National Environment Engineering Research Institute (NEERI) titled 'Environmental Status of Some Poultry Farms in India', recommending cage free farming for hygienic environment.

8. The decision of the CPCB exempting the poultry farms with less than one lakh birds from registration with the Pollution Control Boards under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (Air Act, 1981) and Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (Water Act, 1974) has been questioned as not being conducive to the clean environment which is part of right to life. The exemption is hit by 'sustainable development' concept to be enforced by this Tribunal under Section 20 read with Section 15 of the National Green Tribunal Act, 2010. It is submitted that poultry farms are a source of odor, attract flies, rodents and other pests that carry disease. The emissions therefrom include gases like ammonia, volatile organic compounds (VOCs), and Hydrogen Sulphide (H₂S) that affect the life of the people living in that vicinity. The poultry farms use large quantity of pesticides and antibiotics in their feeds that contaminate the soil and ground water thereby compromising public health. The reports show that unregulated poultry farming causes pollution of soil and groundwater. The intensive battery cage factory farming facilities pose unacceptable risks to public health and the environment. The studies show that the crowded, stressful and unsanitary conditions of these facilities give rise to disease, including avian influenza. Use of antibiotics is so rampant that they are being administered as a precautionary measure rather than as a last resort in the case of medical needs. Misuse of antibiotics in poultry farms is leading to multi-drug resistant bacteria, which is



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spreading into the environment through unsafe disposal of poultry litter and waste in agricultural fields, with the potential of spreading drug resistant infections to humans. Giving of non-therapeutic antibiotics in poultry farms is leading to drug resistance amongst the consumers of such meat and eggs and is causing tremendous financial loss to the nation. Non-therapeutic antibiotics are only needed to be given in poultry farms because the housing conditions of birds in poultry farms are so unhygienic. If better and more hygienic cage free methods of farming were utilized, as recommended by NEERI-CISR, then there would be no need to administer non-therapeutic antibiotics to the animals. The only way to ensure cleanliness is to give the animals space and keep the facilities clean. Unhygienic conditions in the poultry industry is a major health hazards for both humans and animals and has serious negative implications on the animal's health and also on humans who work and live in and near such unhygienic conditions. This certainly calls for effective regulation and not exempting regulatory mechanism provided for such farms with more than one lac birds.

9. The application was filed on 07.11.2017. On 13.11.2017 the Tribunal issued notice to Respondents, including MoEF&CC, CPCB and Central Drug Standard Control Organization. M.A. No. 1049/2018 was filed by an association of poultry farms for being party which was rejected on 25.07.2018. However, in the light of orders of the Hon'ble Supreme Court dated 16.08.2019 in Civil Appeal No. 9154 of 2018, the said association was permitted to intervene.

10. Response has been filed by the CPCB. In the said reply no justification has been shown as to why poultry farms with less than one lakhs birds have been exempted from the ambit of the Water Act, 1974



and the Air Act, 1981. However, it is stated that the use of antibiotics is an issue under the purview of Animal Husbandry and the Drug Control and Food Safety Departments. Reply filed by the MoEF&CC also does not in any manner give any justification for the impugned action. The reply of the Ministry of Health and Family Welfare also does not deal with the issue except to state that use of antibiotics is governed by the Drugs and Cosmetics Act and Antibiotic Policy of the Ministry. Food Safety and Standards Authority of India ('FSSAI') has also filed a counter affidavit which does not deal with the central issue, except to say that standards have been laid down for various types of foods. The association of poultry farmers have highlighted the importance of eggs and poultry and need for antibiotics. It is stated that the poultry farms are established far away from the residential areas and, thus, residents are not affected by the activities of the poultry farms. Such activities help the rural areas by providing jobs and source of livelihood. Cheap source of protein is provided by eggs and chickens. A copy of Notification dated 29.04.2019 issued by the Ministry of Agriculture and Farmers Welfare has been placed on record which deals with responsibilities of the poultry farm owners to comply with the rules as per given environmental conditions for the welfare of layer hens which require registration with the Department of Animal Husbandry, Dairying and Farming. Ministry of Animal Husbandry has also filed an affidavit to the effect that PILs are pending before the Delhi High Court on the subject of compliance of the provisions of the prevention of Cruelty Animals Act, 1960 and Rules framed thereunder.

11. We have considered the above pleadings and also heard learned counsel for the parties who have mainly relied upon the pleadings referred to above at length.



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12. Main contention on behalf of the applicant is that unregulated disposal of waste and operation of poultry farms is detrimental to the environment. Waste generated in the natural course on account of fecal matter etc. harms the environment unless safeguards are adopted and use of pests antibiotics has great potential for diseases among the animals and the humans as mentioned in the study undertaken by the NEERI, referred to above and observations made by the Law Commission in its 269th Report. Thus, leaving the field of poultry farm below one lakhs birds unregulated is failure to protect environment, as required under the Water Act, 1974 and the Air Act, 1981. Mere requirement for poultry farms with more than 5000 birds to register with the local bodies could be no substitute for the said statutory regulation nor CPCB has any statutory Authority to delegate its powers to the local bodies. The categorization of poultry industry as green by the MoEF&CC is also arbitrary and not based on any logic. Reference has been made to the report of the NEERI as follows:-

“Poultry production is associated with a variety of environmental pollutants, including oxygen-demanding substance, ammonia, solids, besides the poultry attracts flies, rodents, dogs and other pest that create local nuisances and carry diseases. Poor management of manure, litter and waste water etc. adversely affects the living in the vicinity. Odour is generated for fresh and decomposed waste products such as manures, carcasses, feathers and bedding litter. Furthermore, intensive poultry production may be responsible for green houses gasses, acidification and eutrophication.”

13. It was submitted non-therapeutic use of antibiotics and anti-microbial resistance to keep birds alive, overcrowded and unsanitary conditions build up drug-resistant bacteria in the birds which transmits to the consumers to the poultry products.

14. In view of such serious ramifications and potential for deteriorating the environment, it is imperative that the CPCB reconsiders this Policy



and require applicability of consent mechanism under the Air Act, 1981 and Water Act, 1974, instead of exempting it. Reliance has been placed on an order of this Tribunal dated 08.07.2019 in O.A. No. 46/2018, *Nuggehalli Jayasimha vs. Government of NCT of Delhi* dealing with compliance of environmental norms by dairies. The Tribunal directed the DPCC to perform its responsibility under the Water Act, 1974 and the Air Act, 1981 of enforcing environmental norms against the dairies, rejecting the plea that there is provision in the Municipal laws to address the issue. The Tribunal held that overlapping provisions in the Municipal laws do not discharge the environmental authorities of their statutory responsibilities.

15. There is no meaningful response to the above contentions on behalf of the applicant either in the pleadings or in oral submissions.

16. On due consideration of the matter, we find substance in the submissions of the applicant. Sustainable development is part of right to life.² The State Authorities are under obligation to protect environment as per sustainable development concept. Responsibilities of the States to the environment are by Public Trust Doctrine³. The Water Act, the Air Act, and the Environment (Protection) Act have been enacted in the wake of international conventions and override all other legislations. They create obligation on the regulatory authorities to enforce the environmental measures. There is no discretion to exempt the mandate of mandate of Water Act for activities having potential to cause water pollution⁴. It has not been disputed that the operation of poultry farms has potential to damage to the environment which needs to be regulated.

² (1996) 5 SCC 647 *Vellore Citizens' Welfare Forum v. UOI*

³ 1997 (1) SCC 388 *M.C. Mehta v. Kamal Nath*

⁴ (1999) 2 SCC 718 & (2001) 2 SCC 62 *A.P. Pollution Control Board v. Prof. M.V. Nayudu (Retd.) & Ors.*



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Leaving out poultry farms below one lakh birds unregulated by the State PCB and merely requiring registration with the local bodies or treating them at par with the agricultural farms will be against the mandate of sustainable development, which principle is to be enforced by this Tribunal. Likewise, in view of pollution potential in operation of poultry farms except small ones, say upto 5000 birds cannot fall in the 'Green' category as has been done by the CPCB.

17. Accordingly, we allow this application and direct the CPCB to revisit the guidelines for categorizing the poultry farms as green category and exempting their regulation under the Air Act, Water Act and the EP Act. The CPCB may issue fresh appropriate orders within three months and in if no further order is issued, all the State PCBs/PCCs will require enforcement of consent mechanism under the above Acts after 01.01.2021 for all poultry farms above 5000 birds in the same manner as is being done for farms having more than one lac birds. Till then, even without such consent mechanism, the State PCB/PCCs may strictly enforce the environmental norms and take appropriate remedial action against the any violation of water, air and soil standards statutorily laid down.

Adarsh Kumar Goel, CP

S. P. Wangdi, JM

Dr. Nagin Nanda, EM

September 16, 2020
Original Application No. 681/2017
A



Civil Appeal No. 6932 of 2015

(Road Development) National Highways Authority of India v. Aam Aadmi Lokmanch
2020 SCC OnLine SC 572

In the Supreme Court of India

(BEFORE ROHINTON FALI NARIMAN, S. RAVINDRA BHAT AND V. RAMASUBRAMANIAN, JJ.)

Civil Appeal No. 6932 of 2015

Director General (Road Development) National Highways Authority of
India ... Appellant(s);
Versus

Aam Aadmi Lokmanch and Others ... Respondents.

With

C.A. No. 5971 of 2019

C.A. No. 4379 of 2018

C.A. No. 2741 of 2020

(Arising out of Diary No. 19018 of 2018)

C.A. No. 6862 of 2018

C.A. No. 2742 of 2020

(Arising out of SLP (C) No. 28178 of 2018)

C.A. No. 11803 of 2018

C.A. No. 2743 of 2020

(Arising out of SLP (C) No. 1706 of 2019)

C.A. No. 2744 of 2020

(Arising out of Diary No. 1632 of 2019)

Civil Appeal No. 6932 of 2015, C.A. No. 5971 of 2019, C.A. No. 4379 of 2018, C.A. No. 2741 of 2020 (Arising out of Diary No. 19018 of 2018), C.A. No. 6862 of 2018, C.A. No. 2742 of 2020 (Arising out of SLP (C) No. 28178 of 2018), C.A. No. 11803 of 2018, C.A. No. 2743 of 2020 (Arising out of SLP (C) No. 1706 of 2019) and C.A. No. 2744 of 2020 (Arising out of Diary No. 1632 of 2019)

Decided on July 14, 2020

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.:— Leave granted in SLP (C) Nos. 28178/2018, 1706/2019, Diary No. 19018 of 2018 and 1632 of 2019. With consent of counsel for the parties, they were tagged with the companion civil appeals and heard finally.

2. On 06 June, 2013, when Ms. Vishakha Wadekar, was driving her car with her young daughter, Sanskruti Wadekar she had no inkling that danger lurked round the corner of the highway; over-mining at the height of 75 x 30 ft, in Gut No. 112, resulted in the destruction of a small hill by the side of the national highway. The resultant debris and a part of the hill collapsed and slid down to the road, claiming the lives of Ms. Vishakha and her daughter. The directions made by the Pune bench of the National Green Tribunal, on an application by a registered organization, (the respondent in the appeal, the Aam Aadmi Lokmanch, hereafter "Lokmanch") are the subject matter of the appeals (CA 6932/2015 by NHAI; CA 5971/2019; CA 11803/2018 and CA 6862/2018) before this court. The other appeals by special leave question the judgments and orders of the Bombay High Court, which upheld the regulations framed pursuant to the order of the NGT. The High Court negated the challenge to those regulations in the writ petitions presented before it.

3. The facts in brief are that the National Highways Authority of India (hereafter "NHAI") had entered into an agreement with M/s P.S. Toll Road (Pvt.) Ltd., a unit/undertaking of Reliance Infrastructure Ltd. (which is arrayed as the ninth respondent; PS Toll Road (Pvt.)

Ltd. hereafter referred to as "the concessionaire") on 10.03.2010 for the maintenance and operation of the Pune-Satara section of National Highway No. 4, to an extent of 140 kms. The scope of the agreement included construction of the project (i.e. the highway stretch) as well as its operation and maintenance for a period of 24 years. The agreement included stipulations mandating safety to the highway users (clause 18.1.1). The NHAI was duty bound to appoint experienced safety consultants for carrying out safety audits of Project Highways (clause 18.1.2), the expenditure for which was to be borne by the concessionaire (clause 18.1.3). An elaborate highway monitoring mechanism was also contemplated by the agreement (clause 19.1) through which by the seventh of each month, an independent engineer was to furnish a report after due inspection (of the operation and maintenance arrangements), containing defects or deficiencies (clauses 19.2). Additionally, the independent engineer was to require the concessionaire to carry out specified tests for confirming that the highway was operated in accordance with applicable standards (clause 19.3). Other stipulations included, *inter alia*, requirements that the concessionaire had to carry out remedial measures (Clause 19.4.1) within a period of 15 days after receipt of the report of the independent engineer. The concessionaire was put to terms in that if relevant repairs or remedial measures were not undertaken, the NHAI could recover damages in terms of Clause 17.8. Another obligation cast on the concessionaire was to send a periodic report of various occurrences, including "unusual occurrences on the Project Highway" such as death or injury to any person (clause 19.6), any obstruction, or "flooding of Project Highway".

4. In the meanwhile, the fifth respondent (who has filed CA 5971/2019 against the NGT's order, hereafter referred to as "Rathod") on 03.01.2011 applied to the Government of Maharashtra for a license to extract minor minerals. This license was sought in respect of land bearing survey number 112A to look more to an extent of 5 acres and 93 cents. The license was granted by the appropriate authority of the government. By clause 1 of the terms of this license, the period of the license was two months; clause 5 stated that for extraction and minor minerals digging, work could not exceed more than 20 feet down side of the land surface.

5. Apparently soon after the license was taken over, certain demands were made regarding construction of a connecting road to the village. The materials on record by way of letters written to the local panchayat are to the effect that as a result of construction of the highway and due to the passage of time the existing road had been washed away. Consequently, the 2 km stretch from the left side of the new tunnel going up to the village was virtually non-existent. The panchayat requested that the road should be strengthened and widened.

6. On 31.01.2011, the local authorities of the State government issued a show cause notice to Rathod alleging that debris were stored illegally on the site. It was alleged that this was contrary to Section 48 of the Maharashtra Land Revenue Code, 1966 (hereafter "land revenue code"). Again, on 16.06.2011, the local panchayat issued a notice (which is on the record) stating that as a result of mineral extraction, the natural flow of rainwater was being obstructed. The notice also added that two heavy machines in non-performing condition were lying idle on the land and two JCB machines were also stationed there. Rathore evidently received these notices; this is attested by his replies to the Tehsildar and other local authorities. After obtaining a report from the local officials, the Tehsildar, Bhor issued an order directing payment of Rs. 1,271,200 by Rathod for violation of the land revenue code on account of illegal extraction and use of minor minerals.

7. This activity of excavation and piling of debris, did not go unnoticed on the part of NHAI; it wrote to the Collector of Pune, pointing out that:

"...large scale and indiscriminate excavation in the upper side hills of New Katraj Tunnel at both ends is in progress. Due to this excavation, drainage system above and near tunnel has been affected. This may lead to seepage of water inside tunnel roof thereby collapse of walls and ceiling of tunnel resulting in collapse of tunnel and may lead to major mishap. The collapse in tunnel will block the entire traffic of NH4 from Mumbai/Pune to Bangalore and vice versa leading to chaotic situation."



8. The letter also mentioned specifically that Rathod had been notified; it sought action from the state government.

9. In the early hours of the morning of 6th June, 2013, due to the monsoon, there was heavy rainfall at Mauje Shindewadi Tehsil, Bhore and the surrounding areas. Water flowing through the hills at Mauje Shindewadi entered the road near the octroi post of the Pune Municipal Corporation, at Mauje Shindewadi Tehsil Bhore, District Pune, on NH-4, with great force. This created an obstacle in the form of a large sheet of water. Under these conditions, when the Alto car driven by Vishakha Wadekar and her daughter Sanskruti, was obstructed, they alighted to wade across to safety; however, the water gushed with great intensity and swept them away, resulting in their death. The resulting magisterial inquiry under Section 176, Code of Criminal Procedure resulted in a report dated 04.10.2013. The Sub-Divisional Magistrate who inquired into the incident appointed an expert, whose report was considered; he also visited the site and held several hearings. During the hearings, pursuant to notices issued to various parties, the statements of Rathod, the local police authorities, eyewitnesses (Abhay Arvind Ranade, Vineet Vasant George and relatives of the deceased), the Project Director (General Manager) of NHAI, the team leader of the independent engineering firm associated with checking quality of maintenance of the highway, etc. were recorded.

10. Soon after the incident, the Lokmanch, through its president, filed an application under Section 14(1) read with Sections 16 and 18 of the National Green Tribunal Act, 2010 (hereafter "the NGT Act"), seeking mandatory injunction to restore natural contours at the foot base of the hill that had been destroyed by Rathod. Besides, general relief by way of directions to other respondents to take necessary action for the protection of hills from destruction and for maintaining foot base design of the hills in the natural survey was sought.

11. The material produced before the NGT by the State of Maharashtra in the form of an affidavit revealed that large scale destruction of hills by individuals and concerns who had been given short term mining licenses, had occurred. According to the affidavit, there were 62 cases, and in many cases "hill-cutting" was resorted to by developers. The state had apparently imposed fines and penalties for these illegal activities.

12. The NGT, in its impugned order, commenting on the role of Rathod, held as follows, while justifying the imposition of liability upon that respondent:

"It appears from the record that land Survey No. 112, is owned by the Respondent Nos. 5 and 6 and their family members. There are hills in the said land. They illegally cut hills without permission and extract minor mineral, which reduced height of hill, circumference of the hill and or peripheral nature, surface of the hill in question. Acts of the Respondent Nos. 5 and 6 made the area of hill fragile, susceptible to danger to the ecology and support of natural soil. In such a case, mere recovery of additional royalty would not be a proper remedial measure. At many places, the hill cutting is noticed prior to and after the pathetic incident and now inquiry is undertaken by the concerned revenue officials."

13. Thereafter, the NGT based on its reasoning that the regulation of some activities, especially involving anything affecting hills has to be strictly regulated, directed as follows:

"12. The question may arise as to what is the meaning of expression 'Hill'. General perception is that it would depend upon ocular assessment of the area, which is rounded land that is higher than the land surrounded by it, but is not expected to be as high as mountain. In other words, it is usually rounded natural elevation of land, lower than a mountain. There is no particular definition of the word 'Hill'. The Oxford Dictionary gives meaning of word 'Hill' as follows:

Hill - noun a naturally raised area of land, not as high or craggy as a mountain, a sloping stretch of road: they were climbing a steep hill in low gear, a heap or mound of something, a hill of sliding shingle.

The wordbook has given meaning of expression 'Hill' as follows:

231 "Hill is an elevation of the earth's surface that has a distinct summit. It has much less surface area than a mountain and is lower in elevation. Hills rise less than

305 metres above the surrounding area, whereas mountains always exceed that height. However, a hill is not simply Small Mountain. It is formed in a considerably different way.

Hills may be classified according to the way they were formed and the kinds of materials they are made of. There are two types, constructional and destructional. Constructional hills are created by a built-up of rock debris or sand deposited by glaciers and wind. Oval-shaped landforms called drumlins and sand dunes are samples of this type. Destructional hills are shaped by the deep erosion of areas that were raised by disturbances in the earth's crust. Such hills may consist of limestone overlying layers of more easily eroded rock."

13. Draft Development Control Regulation Plan (DCR) of Pune is yet not approved by the PMC or Government. The cutting of hill by the Respondent Nos. 5 and 6, created destruction to render a part of land useless, including development thereof for plantation of trees. It goes without saying that the destruction of hill could not have occurred without connivance or at least purposeful act or omission by the Project Proponent i.e. NHAI (Respondent No. 9). It is in the affidavit of Mr. Rajeskumar Kundal, that agreement requires to take necessary steps for stoppage of illegal construction activity at Katraj hill top. However, a Notice dated 25th April, 2011, was issued to the Respondent No. 5 and copy of the same was marked to the Tehsildar, Bhor before occurrence of the incident. The Collector, Pune was requested to look into the matter. The authorities were thus, asked to take appropriate steps for stoppage of illegal activity in order to avoid major mishap and to ensure not to occur. They stated that one Mrs. Vishakha Vadekar, and her daughter died due to water flow, which gushed from the hill top and poured on the road.

14. We do not find any significant material to show that the Respondent No. 9 (NHAI) has taken reasonable steps to avoid the untoward incident. We do not find copies of the complaint made by NHAI to the authority. Assuming for a moment that such communications were made at the fag end of April, 2011, yet, it was responsibility of NHAI to persuade said authority or the higher authority about inaction after 2011. The incident of raining in which Mrs. Vishakha Vadekar and her daughter had flown away, is said to have occurred on 10th July, 2013. Obviously, the Respondent No. 9, appears to have kept silence for about two (2) years, inspite of knowledge that the work of hill cutting was going on. In our opinion, NHAI (Respondent No. 9) perhaps was likely to be impliedly benefited due to the illegal act of hill cutting due to availability of murum, stones and soil for the work for its project. The contractor of NHAI was, therefore, interested in keeping the fingers crossed.

15. Considering probability and circumstances appearing on record, we have no hesitation in holding that there took place degradation of environment to large extent due to hill cutting at Katraj. We have further no hesitation in holding that the hill cutting occurred due to illegal acts of the Respondent Nos. 5, 6 and with or due to act of omission of the Respondent No. 9. They are liable to pay compensation to the legal representatives of the victims of incident in question. They are also liable to pay restitution charges and penalty for causing damage to the environment, in order to avoid such incident in future.

16. We deem it proper to give certain further directions to the concerned authority. In keeping with these findings, we direct:

17. a) The Respondent Nos. 5, 6 and 9 shall pay amount of Rs. 50 Lakhs as joint penalty imposed on them for causing environmental damage in the nearby area of Katraj, due to the hill-cutting.

b) This amount shall be deposited with Collector (Pune) within six (6) weeks, else Collector can recover the amount as arrears of Land Revenue. This amount shall be deposited by Collector in special escrow account, and the amount be spent for environmental protection and conservation activities, including hill protection and conservation in the district.

c) The Respondent Nos. 5, 6 and 9 shall jointly and severally pay amount of Rs. 15 Lakhs towards compensation to the legal representatives of deceased Mrs. Vishakha



Vadekar, and her daughter if identity of legal representatives is proved before the Collector. The above three (3) Respondents shall immediately within four (4) weeks, deposit such amount in the office of Collector, Pune for payment to the legal representatives of deceased in the incident. The Collector may issue a publication for locating legal representatives of above deceased women for payment of compensation and pay to them compensation after satisfaction of identity of the legal representatives by making due proportion as provided under the relevant provisions of the Succession Act.

d) The Respondent Nos. 5, 6 and 9 shall also deposit amount of Rs. 10 Lakhs with the office of Collector for plantation of trees in order to restore damage caused to environment, though it may not be a sufficient remedy.

e) The Respondent Nos. 1, 2, 3, 4, 7 and 8 shall give instructions to the concerned revenue officials working within all districts to have regular vigil within their areas to verify whether fringes or nearby any hill or hill-top construction is/are noticed and if found to be so, due inquiry may be made as to whether it is authorized or unauthorized. So also, instructions may be issued to the Municipal authorities to ensure that no construction permission shall be given to any construction/development work, which is being proposed and is located at a distance may be of 100 ft. away from lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops, except for Bamboo cottages.

f) In case of emergency or public purpose, the Hill cutting may be done by the concerned office of the Collector/Commissioner by passing a reasoned order or if so required by Law as provided under the Environment (Protection) Act, 1986 and the Regulations thereunder."

14. Rathod, the NHAI and three other appellants (Patel India Pvt. Ltd., Fern Constructions (India) Ltd. and D.B. Realty Ltd.) have preferred appeals against the impugned order of the NGT; their grievance is from the general directions issued in the impugned order, implicating buildings near hills.

15. In the second set of matters, i.e. the appeals by special leave, the facts are that acting on the directions of the NGT, the State of Maharashtra invoked its powers under Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") and directed, by a notification/circular dated 14.11.2017 that development (relating to construction) was impermissible in an area abutting hills up to 100 feet.

16. By the impugned common judgment, the High Court held that there was no denial that the power to issue such directions or circulars existed by way of the amended Section 154 and that such power was essential. The court further held that no individual or entity could claim any absolute right and contend that he could develop or construct anywhere and that the directions contained in the notification supplemented bye-laws and building codes already in place in Mumbai and Pune. It was also observed that:

"In Regulation 2 we have the definitions and as far as Part II is concerned, that is general planning and building requirements. Regulation 11.1 says that no piece of land shall be used as site for construction of building if the site is hilly and having gradient more than 1:5. Thus, these stipulations are already in place. What the National Green Tribunal brought to the notice of the authorities is indiscriminate cutting of hills in the Katraj Ghat. This unauthorized construction by breaking of hills resulted in an accident. That is why the NGT directed that on hill tops and hill slopes and the portion at the foot of the hill and surrounding 100 feet, no construction activity should be permitted and no development permission be issued and such directions be issued to the Municipal Corporations and Municipal Councils. Bearing in mind that there are in place legal provisions restricting the development activity on hill top and hill slope zones, all that the NGT and this Government Resolution directs is that in cases where there has already been a permitted development activity within 100 feet of the hill, then, no permission for additional construction be granted nor any development be permitted by sanctioning additional Floor Space Index (FSI) or Transferable Development Rights (TDR). In the event in sanctioned development plans if area of the above nature is in buildable zone,

then, for carrying out development in such zone and while granting individual development permissions, an area of 100 feet surrounding the hills should be demarcated as non-buildable. It can be used as open space, road etc. We are surprised that an order and direction of the NGT traceable to and in accordance with the planning law it challenged before us. Further, the directions of the State Government, which are but reiteration of the existing regulations, are under challenge. The impugned Government Resolution is in consonance with the provisions of the MRTP Act and the constitutional mandate enshrined in Article 21 and 48 thereof.

24. We are not in agreement with Dr. Sathe, Mr. Godbole and Dr. Saraf that merely because such directions are issued in exercise of the powers conferred by sub-section (1) of section 154, the development Plan for the limits of the Municipal Corporations, namely Pune and Mumbai is altered or modified. We are also not impressed by their argument that by such a Government Resolution, a modification is brought about in the Development Control Regulations and all this is without recourse to the specific powers conferred by the MRTP Act. In other words, these are bypassed and by a Government Resolution, the above stand amended. In that regard our attention has been invited to the provisions in the MRTP Act enabling modifications or changes in the Development Plan and the procedure prescribed in that behalf.

25. We do not see any modification to the plan being brought about by the subject Government Resolution. If at all, the directions therein complement the provisions of the Development Control Regulations for the cities of the Mumbai and Pune or the concerned Municipal Corporation/Municipal Council areas. As it is, there was no permission to construct buildings other than a electric sub-stations, water works etc. on hill tops. As far as these slopes are concerned, by their very nature, a hill slides down and if the slope is steep, then, no construction activity can be carried out. There is no guarantee or assurance that any construction activity in such areas would be able to withstand a landslide or accidents, resulting from erosion of the hills on account of natural reasons. It is experienced that human intervention is necessarily not responsible for a landslide, mudslide etc. On account of natural causes and calamities, such events can occur. Apart from that, the occurrence increases because of human intervention including a construction activity carried out at the foot of the hill or on top thereof. It is also possible if the hill is cut from its sides indiscriminately. It is also possible if there is damage to a hill while extracting minor minerals. The hill then becomes uneven. Then, it is not possible to prevent any calamity. Hence, in order to take care of the natural calamities and which have occurred in various places in the State of Maharashtra recently and also on account of unrestricted and unregulated breaking and cutting of the hills resulting in accidents endangering human life and safety that these supplemental directions have been issued. If they are for efficient administration of the Act and if they subserve larger public interest, then no fault can be found with the Government Resolution. Each of the operative directions, namely, serial Nos. 1, 2 and 3 of this Government Resolution subserve this object and purpose. If the Government Resolution has been issued after the attention of the Government has been invited to an accident in Katraj Ghat occurring due to unauthorized and illegal cutting of hills, then, it is not as if the State Government has construed it as a command or a binding order and issued the subject Government Resolution. The attention of the State Government being invited to such illegal and unauthorized so also uncontrolled, unregulated and unrestricted hill-cutting, that in order to prevent the same, the Government stepped in. It took recourse to its power conferred by section 154 of the MRTP Act in order to prevent future occurrences of this nature. If accidents and calamities can be prevented by timely intervention of the State Government in this manner, then, we do not think that on the specious and unsubstantiated pleas of the petitioners, we should strike down the Government Resolution."

17. The NHA in its appeal contends that the NGT fell into error in issuing sweeping directions against it without considering that was no evidence to establish that it was in any way responsible for the degradation of the environment, which led to the tragedy. It is urged by Senior Counsel Mr. P.S. Narasimha that the NGT's findings are contrary to



established facts and have also resulted in grave miscarriage of justice. He highlighted that there was no material on record to establish that the NHAI was in any way culpable or had failed to perform a public duty or neglected to avert a foreseeable calamity. Elaborating on this, it was urged that the illegal mining activity was not carried on within the right-of-way or the carriageway of the highway. What occurred was the result of an act of God, i.e. extremely heavy rains, which resulted in flooding on the highway caused entirely on account of the debris collected which acted to obstruct the smooth flow of water.

18. It was highlighted that in any case, the NHAI could not be held responsible or made liable for the occurrence which led to the tragedy. Mr. Narasimha also argued that the NGT did not return any finding that the construction of the highway was in any way contrary to environmental clearances or permissions secured by the NHAI. Therefore, the findings of the Tribunal in so far as they pertained to the neglect or alleged omission of the NHAI, were contrary to law. He urged that the findings were illogical and irrational, and deserve to be set aside.

19. The NHAI also highlights that it wrote letters to the local administration on 24.04.2011 and 15.07.2011, seeking its intervention on account of the illegal mining and activities and hill destruction, for which Rathod was responsible. However, the State government did not take any action. Likewise, Rathod did not take any remedial steps or cease the activity. The resultant tragedy entirely on account of the omissions of the state's authorities to take action and the neglect and culpable negligence on the part of Rathod, was the cause of the tragedy and the events which led to the loss of two lives. It was also emphasized that the direction to pay compensation was contrary to legal principles and undermined the law. It was argued that neither the NHAI nor its concessionaire had any control over the activities of the state, which granted the mining licences. Rathod, the licensee, had continued illegal mining in the vicinity causing the accumulation of debris. This in turn, resulted in the obstruction of a culvert which resulted in collection of a large volume of water. A huge sheet of water gushed out into the highway, sweeping away the car, tragically resulting in the death of two individuals. It was argued that in these circumstances, the NHAI could not be saddled with the responsibility of either paying damages to the dependents and legal representatives of the deceased nor could it be made liable to restore the environment through the payment of Rs. 50 lakhs or any part of it.

20. Rathod urges that the NGT's findings against him are contrary to law. He argues that the NGT did not implead those who had standing, i.e. the legal representatives of the deceased; in fact, they had filed a civil suit, claiming compensation against him, as well as the NHAI and the state, for alleged negligence and tortious liability. In those proceedings, the court is bound to record evidence and render findings based on the facts. The NGT could not thus have unilaterally, based on a one-sided view of the materials, held that he was liable.

21. It was submitted that the allegation that Rathod was primarily responsible for degradation of the hill, which clogged the culverts and water channels, resulting in the tragedy, was contrary to the facts. Mr. Vijay Verma, counsel for Rathod, relied on some portions of the magisterial report to say that the NHAI had the report of an independent engineer, who had pointed to certain deficiencies on the part of the concessionaire. Therefore, to hold him responsible for the tragedy, and direct him to pay a huge sum of Rs. 15 lakh and further pay amounts towards environmental damage, was unwarranted.

22. It was argued that the NGT could not have issued directions with respect to payment of any sums, in the absence of any application by the legal representatives of the deceased. It is further argued in Rathod's appeal that apart from issuing notice for recovery of amounts towards alleged illegal mining, neither the state authorities nor the NHAI took any positive remedial action for strengthening the culvert and the catch water drains which were in disrepair, and constructed on the hill above the tunnel for drainage of rainwater. The masonry on the culvert for draining water was choked due to lack of maintenance. Such maintenance was the sole responsibility of the concessionaire and for that, the NHAI had to be held liable. It is also highlighted that Section 18 of the NGT Act mandates that the procedure established by the statute to exercise jurisdiction had to be followed. Since the



legal heirs of the deceased had not applied to the NGT for any relief and had instead approached the civil court claiming compensation on account of wilful neglect and culpable inaction on the part of NHAI, the NGT ought to have left the matter for proper decision in accordance with the evidence led. Instead the NGT took upon itself the task of a judging the appellant as one of those responsible for the incident. It is emphasised that the mining activity carried on was in accordance with the license and if there was any irregularity that was cured on payment of fine. So far as the collection of debris which ultimately led to the overflow of water and the deaths of two individuals goes, it is argued that the proper functioning of the drainage system would have ensured that such collection of vast quantities of water would not have occurred. Therefore, the inaction of the NHAI in taking timely action and intervening with the state authorities, led to the tragic incident. The responsibility for this incident could not have been placed at the doorstep of Rathod. The actions of Rathod, it is stated were too remote and could not have been the subject of damages at all.

23. In the appeals (by special leave as well as the statutory appeals by third parties), where the grievance is on account of the directions issued by the State of Maharashtra under Section 154 of the MRTP Act, the third party appellants challenge the order of the NGT arguing that the provisions of the NGT Act, especially sections 14, and 19 do not authorise that tribunal to issue sweeping and unilateral directions requiring stoppage and cessation of all manner of building activity or developments within hundred feet of hill slopes. It is highlighted that such sweeping directions are illogical and are not based on any scientific study or analysis. It is argued that the NGT has issued general directions couched in a vague manner in para 17(e) of its order.

24. These appellants argue that the Bombay High Court also fell into error and did not appreciate that the entire basis of the Directions/Resolution of 14.11.2017 by the State of Maharashtra were the directions issued by the NGT. Highlighting various provisions of the MRTP Act, learned counsel argued that wherever development codes were formulated, they were in accordance with established principles, after following the prescribed procedure. Based upon these codes and the building regulations framed by various town planning departments, clearances and permissions/approval for development and construction were issued. It was argued that the mandatory and sweeping nature of the directions in para 17 (e) by the NGT has resulted in these directions being embodied in the impugned resolution, which has a catastrophic effect on those clearances.

25. Learned senior counsel, Mr. Shyam Divan, highlights that apart from the fact that the definition of 'hill' is vague, and even the regulations under the MRTP Act are silent in this regard, the NGT failed to consider that the impact of its directions and the impugned notification, in hilly terrains where the population is concentrated in particular areas, in small towns, semi urban and rural areas would be devastating inasmuch as all nature of buildings would be banned. It is pointed out that hill development is based upon consideration of individual local soil conditions, the stability of the surrounding terrain, etc. All these are taken into account by individual local town planning authorities when they permit or refuse permission to individual development or construction projects. The uniform adoption of the "no construction within the hundred feet area" rule, it is submitted, is completely contrary to well-established principles of town planning.

26. It is argued that the directions issued by the state government impugned in the writ petitions before the Bombay High Court, are contrary to the provisions of the MRTP Act inasmuch as they amount to supplanting provisions of the existing master plan and other development codes, which have the force of law and were framed after widespread consultations. It is pointed out that the provisions of the MRTP Act require that any change in such codes or master plans would have to be made after mandatory due consideration of objections, which are to be preceded by publication of the proposals. By directing the state government to follow the order in paragraph 17(e), the NGT in fact made directions contrary to law. It is argued that the state also acted contrary to the express provisions of the MRTP Act inasmuch as it did not follow the procedure required by the Act to change the master plan and the development codes.



27. It is further submitted that the NGT's directions were the basis of the state government's notification. It was argued that the state government's blind adherence to these directions amounted to abdication of its duties, was in contravention of express provisions of the MRTP Act and also amounted to acting on the dictates of another authority. It was submitted that for these reasons, the impugned notification cannot be sustained. Counsel relied on the decision of this court in *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.*² to highlight that the NGT has a narrow and circumscribed jurisdiction in regard to issuing directions as well as ordering compensation.

28. The Lokmanch justified the order of the NGT and blamed the NHAI, the concessionaire, Rathod and the state government for not taking adequate and timely measures in public interest. It is alleged that proper channels were not created and maintained alongside the highway to avoid water clogging on the main carriageway. It is argued that existing water channels were extremely narrow and were incapable of handling significant volumes, and that even those channels were clogged due to construction debris which had fallen on the sides. It is pointed out that under Section 4 of the National Highways Act, 1956 (hereafter "Highways Act") "highways" include lands appurtenant thereto, all bridges, culverts, tunnels, causeways and other structures constructed on or over the highway and all fences, trees, posts, etc. The duty of keeping them in good repair, clearly was that of the NHAI and the concessionaire.

29. So far as the Rathod's role is concerned, learned counsel, Ms. Shilpa Chohan, submitted that the NGT acted well within its rights and acted within its jurisdiction in entertaining and proceeding with the application, under Sections 14 read with 16 and 18 of the NGT Act. The Lokmanch sought mandatory injunction to restore the natural contour at the foot base of the hills, particularly the hill that was destroyed by the private respondents. It was submitted that apart from the enquiry report of the magistrate/sub-divisional officer, a report was also commissioned by the NGT through the local *tehsildar*; that report dated 15.09.2014 disclosed that unauthorised hill destruction under the pretext of minor mineral extraction was widespread during 2011-2013. This report showed that as many as 62 cases of hill destruction (mostly indulged in by developers), came to light. Many of these occurred without obtaining any permit or authorisation and were plainly illegal.

30. It is argued further that the private respondents were permitted to extract minor minerals only for a short period. However, they exceeded not only the permit, but also went further and destroyed the hill for the purpose of mining minerals. This over-mining as well as hill destruction was not within the permission or the terms of the license. It is highlighted that "hill cutting" or hill destruction causes shortening of hills, poses a potential danger of soil erosion and reduces vegetation, forestry, flora and fauna, and deprives natural support to the earth, therefore ultimately posing an environmental hazard to nearby areas, including residential areas. It is argued that the destruction of hills results in the distortion of the flow of streams and rivers, which change their courses resulting in heavy loss to human life and also to flora and fauna, besides at times, destruction of property. It is submitted that the NGT's decision requiring payment of compensation was within its jurisdiction; to support this, learned counsel relied upon the provisions of Schedule II to the NGT Act, particularly referring to the heads of compensation relief for damages that can be claimed and granted, i.e. death, permanent, temporary, or total, or partial disability or other injury, damages to private property, expenses incurred by the government for any administrative or legal action, or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of the environment. It was submitted that the statutory basis for calculating these damages under Schedule II to the NGT Act is provided by Section 15, which empowers the NGT to provide relief and compensation to victims of pollution in terms of Schedule I for restitution of property, restitution of environment, and also importantly Section 17, which empowers the NGT to direct the payment of compensation on account of death of or injury to any person or damage to property, under all any of the heads specified in Schedule II, which is the result of any accident or is an adverse impact of any activity or operational process. It is submitted that there is nothing in the enactment which confines the jurisdiction of the NGT



to adjudicate complaints, especially those relating to fatalities caused by environmental damage, to applications initiated by legal representatives or persons directly affected. It is submitted that if a particular accident or incident is so widespread as to affect an entire area, it would be well within the jurisdiction of the NGT to entertain an application made by anyone. Learned counsel highlighted the difference in phraseology between Sections 15 and 17 on the one hand, and Section 18 on the other. It is submitted that Section 18(2) clearly is without prejudice to the provisions contained in Section 16 and primary jurisdiction can be invoked by the Tribunal upon being moved by anyone in this regard.

31. Ms. Chohan cited the decision of this court in *Mantri Technoze Pvt. Ltd. v. Forward Foundation*² to say that the NGT could legitimately issue directions which are binding on all other statutory authorities. She also relied on Section 33 of the NGT Act, emphasizing that the enactment overrides all other enactments. Reliance was also placed on the decision in *Hanuman Laxman Aroskar v. Union of India*.⁴

32. The State of Maharashtra supported the arguments made on behalf of the Lokmanch. It was pointed out that the jurisdiction to issue general directions to preserve and protect the environment, through restitution orders is found in Section 15(1)(c) of the NGT Act. It is also submitted that the power and jurisdiction to order compensation in the case of death, is independent and can be invoked in case of fatal accidents, as is evident from the provisions of Schedule II. The state further argues that the judgment of the Bombay High Court too is unexceptionable, inasmuch as it correctly appreciated and upheld the exercise of regulatory power under Section 154 of the MRTP Act. Counsel urged that the said provision was amended in 2015 and in the absence of any challenge to it, the exercise of power after due consideration of relevant factors, could not be countenanced.

The Issues

33. Four issues arise for consideration. Firstly, the jurisdiction of the NGT to award compensation; secondly the merits and soundness of the NGT's decision to award compensation and the legal principles applicable; thirdly, the NGT's wide directions with respect to the ban on construction in and around foothills and lastly, the *vires* of the directions/notifications issued under Section 154, MRTP Act.

I. Jurisdiction of the NGT

34. The relevant provisions of the NGT Act are extracted below:

"2. Definitions. — (1) *In this Act, unless the context otherwise requires*

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(m) "substantial question relating to environment" shall include an instance where—

(i) *there is a direct violation of a specific statutory environmental obligation by a person by which—*

(A) *the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or*

(B) *the gravity of damage to the environment or property is substantial; or*

(C) *the damage to public health is broadly measurable;*

(ii) *the environmental consequences relate to a specific activity or a point source of pollution;*

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14. Tribunal to settle disputes.—(1) *The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.*

(2) *The Tribunal shall hear the disputes arising from the questions referred to in subsection (1) and settle such disputes and pass order thereon.*

(3) *No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:*

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed



within a further period not exceeding sixty days.”

15. Relief, compensation and restitution.—(1) The Tribunal may, by an order, provide,—

- (a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);
- (b) for restitution of property damaged;
- (c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.”

16. Tribunal to have appellate jurisdiction.—Any person aggrieved by,

- (a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under Section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under Section 33-A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);
- (e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government or other authority under Section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);
- (f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under Section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986);
- (h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);
- (i) an order made, on or after the commencement of the National Green Tribunal Act,



- 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);
- (j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section within a further period not exceeding sixty days.

17. Liability to pay relief or compensation in certain cases.

- (1) Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.
- (2) If the death, injury or damage caused by an accident or the adverse impact of an activity or operation or process under any enactment specified in Schedule I cannot be attributed to any single activity or operation or process but is the combined or resultant effect of several such activities, operations and processes, the Tribunal may, apportion the liability for relief or compensation amongst those responsible for such activities, operations and processes on an equitable basis.
- (3) The Tribunal shall, in case of an accident, apply the principle of no fault

18. Application or appeal to Tribunal.

- (1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.
- (2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by--
- (a) the person, who has sustained the injury; or
- (b) the owner of the property to which the damage has been caused; or
- (c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or
- (d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or
- (e) any person aggrieved, including any representative body or organisation; or
- (f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 (29 of 1986) or any other law for the time being in force:

Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application:

Provided further that the person, the owner, the legal representative, agent, representative body or organisation shall not be entitled to make an application for grant of relief or compensation or settlement of dispute if such person, the owner, the legal representative, agent, representative body or organisation have preferred an appeal under section 16.



(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.

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29. Bar of jurisdiction.—(1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.

(2) No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court."

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33. Act to have overriding effect.—The provisions of this Act, shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

35. A plain reading of the above provisions of the NGT Act would reveal that the tribunal possesses two kinds of power and jurisdiction: one, primary jurisdiction under Sections 14-15, and appellate jurisdiction under Section 16. Under Section 14, the NGT has the power to adjudicate upon disputes relating to "civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved" relating to the implementation of "the enactments specified in Schedule I" [Section 14 (1)]. The other provisions [Sections 14(2) and (3)] are incidental to the primary jurisdiction under Section 14(1). Section 15, on the other hand, is couched in wide terms. Section 15 (1) provides that compensation or damages can be given by the NGT to "victims of pollution and other environmental damage arising under the enactments specified in the Schedule I" [Section 15 (1)(a)]; for restitution of property damaged [Section 15(1)(b)] and for restitution of the environment for such area or areas [Section 15(1)(c)]. Section 15(2) is procedural; Section 15(3) prescribes the period of limitation for applications. Section 15(4) enables the NGT to, having regard to the damage to public health, property and environment,

"divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit."

36. The enactments specified under Schedule I are the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Forest (Conservation) Act, 1980; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; the Public Liability Insurance Act, 1991; and the Biological Diversity Act, 2002.

37. Schedule II reads as follows:

"**SCHEDULE II [See sections 15(4) and 17(1)] HEADS UNDER WHICH COMPENSATION OR RELIEF FOR DAMAGE MAY BE CLAIMED**

- (a) Death;
- (b) Permanent, temporary, total or partial disability or other injury or sickness;
- (c) Loss of wages due to total or partial disability or permanent or temporary disability;
- (d) Medical expenses incurred for treatment of injuries or sickness;
- (e) Damages to private property;



- (f) Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons;
- (g) Expenses incurred by the Government for any administrative or legal action or to cope with any harm or damage, including compensation for environmental degradation and restoration of the quality of environment;
- (h) Loss to the Government or local authority arising out of, or connected with, the activity causing any damage;
- (i) Claims on account of any harm, damage or destruction to the fauna including milch and draught animals and aquatic fauna;
- (j) Claims on account of any harm, damage or destruction to flora including aquatic flora, crops, vegetables, trees and orchards;
- (k) Claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems;
- (l) Loss and destruction of any property other than private property;
- (m) Loss of business or employment or both;
- (n) Any other claim arising out of, or connected with, any activity of handling of hazardous substance."

38. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.

39. The reference to Schedule II, in Section 15(4) is not merely by way of events which are actionable in relation to harm caused due to the acts resulting in violation of any enactment under Schedule I. The wide language of that provision enables the tribunal (NGT) to direct, *inter alia*, payment of compensation, "having regard to the damage to public health, property and environment". This interpretation is borne out by a reading of Section 17(2) regarding the apportionment of liability for payment of compensation.

40. In the decision of this court reported as *Hinch Lal Tiwari v. Kamala Devi*², this court held that ponds constituted public utility and were meant for common use. The court held that ponds could not be allotted or commercialised, and that filling up of ponds was illegal. Recently, in *Jitendra Singh v. Ministry of Environment*³, the Court quoted and applied the observations in *Hinch Lal* (supra), in the context of an appeal directed against an order of the NGT which had summarily dismissed an application under Sections 14 and 15 of the NGT Act seeking directions to cease the filling up of ponds in the Greater Noida Industrial Development Area.

41. Long ago, in *State of Tamil Nadu v. Hind Stone*², this court made following observations:

"6. Rivers, Forests, Minerals and such other resources constitute a Nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the Regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957 ..."

42. Likewise, in *Lafarge Umiam Mining (Pvt.) Ltd. v. Union of India*³ these pertinent observations were made:

"75. Universal human dependence on the use of environmental resources for the most basic needs renders 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 environmental protection and the risks which are to be regulated. This aspect is recognised by the



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concepts of "sustainable development". It is equally well settled by the decision of this Court in *Narmada Bachao Andolan v. Union of India* that environment has different facets and care of the environment is an ongoing process. These concepts Rule out the formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring "no go" areas (whose identification would again depend on undertaking of due diligence exercise). In such cases, the margin of appreciation doctrine would apply."

43. Recently, in *State of Meghalaya v. All Dimasa Students Union, Dima-Hasao District Committee*² this court had affirmed a part of the decision of the NGT issuing directions in respect of large-scale mining in the state of Meghalaya, on the ground that it had an adverse impact on the environment. This was despite the fact that mining and the subject of mines is not specified in the list of enactments under the first schedule. The court also approved the NGT's directions, appointing experts, to assess the impact of such mining on the environment.

44. The legal position and jurisdiction of NGT was considered by this court in *Mantri Techzone* (supra) where it was held that the NGT has "special jurisdiction" for "enforcement of environmental rights." It was held that:

"**41.** The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore Lal v. Chairman, Employees' State Insurance Corpn.* (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

45. Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions.



46. Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru, 2015 ("RMP"). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP."

45. It is noteworthy that this court clearly held that under Section 15(1)(b) and 15(1)(c), the NGT has the power to make directions and provide for "restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act." Though a direction for compensation under Section 15(1)(a) is relatable to violation of enactments specified under the first schedule, the power under Section 17 appears to be cast in wider terms.

46. As noticed earlier, Section 17 (1) refers to first schedule enactments; it talks of death of, or injury to, any person "or damage to any property or environment" which "has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment" in Schedule I. One of the enactments is the Environment Protection Act, 1986 (hereafter "EPA").

47. The definition of "environment" under the EPA is wide and is an inclusive one: "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property".¹⁰ Similarly, "environmental pollutant" and "environmental pollution" are defined as follows:

"environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;¹¹

"environmental pollution" means the presence in the environment of any environmental pollutant;¹²

48. Section 3(1) of the EPA confers upon the Central Government, wide power in relation to protection of the environment:

"3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT.- (1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution."

49. Long back, in *M.C. Mehta v. Union of India*¹³ this court recognized the potential harm to the environment caused by mining operations:

"Legal parameters

45. The natural sources of air, water and soil cannot be utilised if the utilisation results in irreversible damage to environment. There has been accelerated degradation of environment primarily on account of lack of effective enforcement of environmental laws and non-compliance of the statutory norms. This Court has repeatedly said that the right to live is a fundamental right under Article 21 of the Constitution and it includes the



right to enjoyment of pollution-free water and air for full enjoyment of life. (See Subhash Kumar v. State of Bihar [(1991) 1 SCC 598.]

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47. The mining operation is hazardous in nature. It impairs ecology and people's right to natural resources. The entire process of setting up and functioning of mining operation requires utmost good faith and honesty on the part of the intending entrepreneur. For carrying on any mining activity close to township which has tendency to degrade environment and is likely to affect air, water and soil and impair the quality of life of inhabitants of the area, there would be greater responsibility on the part of the entrepreneur. The fullest disclosures including the potential for increased burdens on the environment consequent upon possible increase in the quantum and degree of pollution, has to be made at the outset so that the public and all those concerned including authorities may decide whether the permission can at all be granted for carrying on mining activity. The regulatory authorities have to act with utmost care in ensuring compliance of safeguards, norms and standards to be observed by such entrepreneurs. When questioned, the regulatory authorities have to show that the said authorities acted in the manner enjoined upon them. Where the regulatory authorities, either connive or act negligently by not taking prompt action to prevent, avoid or control the damage to environment, natural resources and people's life, health and property, the principles of accountability for restoration and compensation have to be applied."

50. Acting under the provisions of the EPA, the Central Government had issued a notification on 14.09.2006, mandating Environmental Impact Assessment (EIA) in exercise of its power under Section 3(2) of the EPA read with Rule 5 of the rules framed thereunder. In terms of this notification, environment impact assessment and clearance was necessary for different processes and industries. Mining too, was included as part of the notification; the only exception was that minor mineral leases for an area below five hectares were exempted. Clearly, therefore, the Central Government included within the purview of the EPA, major and minor mineral extraction.

51. Several irregularities were noticed over a period of time, with regard to minor mineral extraction, including sand, and there was need for introducing stringent regulations for those activities. A report of the then Ministry of Environment and Forests (MoEF, now MoEF&CC) submitted in 2010 was critical of the prevailing norms. As a result, this court and the NGT issued orders and directives making ECs compulsory for projects less than five hectares. The Central Government too initiated measures.

52. The following observations of this court were made in *Deepak Kumar v. State of Haryana*¹⁴:

"18. Comments and inputs from various States and experts were also invited so as to prepare a report for consideration of MoEF. Based on the discussion held and subsequent inputs received, a draft report was prepared and circulated to all members for their further inputs. The report was further discussed on 29-1-2010 for its finalisation. The observations/comments made during the meeting were incorporated in the report and it was again circulated to all members for their consideration. The report so circulated was ultimately finalised. The decision taken by MoEF affects generally the mining of minor minerals including the riverbed mining throughout the country.

19. For an easy reference, we may extract the issues and recommendations made by MoEF, which are as follows:

"4.0. Issues and recommendations

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It may thus be observed that minerals have been classified into major and minor minerals based on their end use rather than level of production, level of mechanisation, export and import, etc. There do exist some minor mineral mines of silica sand and limestone where the scale of mechanisation and level of production is much higher than those of industrial mineral mines. Further, in terms of the economic cost and revenue, it has been estimated that the total value of minor minerals constitutes about 10% of the total value of mineral production whereas the value of non-metallic minerals comprises



only 3%. It is, therefore, evident that the operation of mines of minor minerals need to be subject to some regulatory parameters as that of mines of major minerals.

Further, unlike India there does not exist any such system based on end usage in other countries for classifying minerals into major and minor categories. Thus, there is a need to relook at the definition of 'minor minerals' per se.

It is, therefore, recommended that the Ministry of Mines along with Indian Bureau of Mines, in consultation with the State Governments may re-examine the classification of minerals into major and minor categories so that the regulatory aspects and environment mitigation measures are appropriately integrated for ensuring sustainable and scientific mining with least impacts on environment.

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4.5. Requirement of mine plan for minor minerals

At present, most of the State Governments have not made it mandatory for preparation of mining plan in respect of minor minerals. In some States like Rajasthan, eco-friendly mining plans are prepared, which are approved by the State Mining Department. The eco-friendly mining plans so prepared, though conceptually welcome, are observed to be deficient and need to be made comprehensive in a manner as is being done for major minerals. Besides, the aspects of reclamation and rehabilitation of mined out areas, progressive mine closure plan, as in vogue for major minerals could be introduced for minor minerals as well.

It is recommended that provision for preparation and approval of mine plan, as in the case of major minerals may appropriately be provided in the rules governing the mining of minor minerals by the respective State Governments. These should specifically include the provision for reclamation and rehabilitation of mined out area, progressive mine closure plan and post mine land use.

4.6. Creation of separate corpus for reclamation/rehabilitation of mines of minor minerals

Mining of minor minerals, in our country, is by and large an unorganised sector and is practised in haphazard and unscientific manner. At times, the size of the leasehold is also too small to address the issue of reclamation and rehabilitation of mined out areas. It may, therefore, be desirable that before the concept of mine closure plan for minor minerals is adopted, the existing abandoned mines may be reclaimed and rehabilitated with the involvement of the State Government. There is thus, a need to create a separate corpus, which may be utilised for reclamation and rehabilitation of mined out areas. The respective State Governments may work out a suitable mechanism for creation of such corpus on the 'polluter pays' principle. An organisational structure may also need to be created for undertaking and monitoring these activities.

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4.8. Uniform minor mineral concession rules

The economic value of the minor minerals excavated in the country is estimated to contribute to about 9% of the total value of the minerals whereas the non-metallic minerals contribute to about 2.8%. Keeping in view the large extent of mining of minor minerals and its significant potential to adversely affect the environment, it is recommended that model mineral concession rules may be framed for minor minerals as well and the minor minerals may be subjected to a simpler regulatory regime, which is, however, similar to major minerals regime.

4.9. Riverbed mining

4.9.1. Environment damage being caused by unregulated riverbed mining of sand, bazarri and boulders is attracting considerable attention including in the courts. The following recommendations are therefore made for the riverbed mining:

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5.0. Conclusion

Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However,



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the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need be duly noted. The Union Ministry of Mines along with the Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States."

(emphasis supplied)

20. *The Report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a relook to the definition of "minor minerals" per se. The necessity of the preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.*

21. *Further, it was also recommended that the States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining plan should take note of the level of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, the number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in the 2010 Rules. A proper framework has also to be evolved on cluster of mining of minor minerals for which there must be a Regional Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.*

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28. *The Central Government also should take steps to bring into force the Minor Minerals Conservation and Development Rules, 2010 at the earliest. The State Governments and UTs also should take immediate steps to frame necessary rules under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 taking into consideration the recommendations of MoEF in its Report of March 2010 and model guidelines framed by the Ministry of Mines, Government of India. Communicate the copy of this order to MoEF, Secretary, Ministry of Mines, New Delhi; Ministry of Water Resources, Central Government Water Authority; the Chief Secretaries of the respective States and Union Territories, who would circulate this order to the Departments concerned.*

29. *We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF. Ordered accordingly."*

53. *By virtue of a notification,¹⁵ environmental clearance is necessary even for minor mineral extraction where the area of operation is less than 5 hectares; the procedure has been outlined under Appendix XI of that notification. Clearly, therefore, mining of even minor minerals, when resorted to on a large scale (i.e. where more than a few leases or permits are granted), has a potential impact on the environment. In the facts of this case, the state had granted no less than 62 minor mineral permits in the vicinity; unauthorized activity (in the form *inter alia*, of over-mining and piling of debris) had resulted in the imposition of the penalty. Clearly, there was violation of the EPA in the present case, because Rathod's mining lease covered an area in excess of 5 hectares; it fell within the regulatory notification of 2006. There is nothing on record to show that the relevant*



clearance was obtained by Rathod. Plainly, therefore, the facts of the present case disclosed violation of the EPA—an enactment listed in Schedule I of the NGT Act. This meant that the NGT's jurisdiction under Section 15(1)(a) and Section 17 could not have been disputed.

54. This court is of the considered opinion that the expression "environment" and "environmental pollution" have to be given a broader meaning, having regard to Parliamentary intent to ensure the objective of the EPA. It effectuates the principles underlying Article 48A of the Constitution of India. The EPA is in essence, an umbrella legislation enacting a broad framework for the central government to coordinate the activities of various central and state authorities established under other laws, such as the Water Act and Air Act. The EPA also effectively enunciates the critical legislative policy for environment protection. It changes the narrative and emphasis from a narrow concept of pollution control to a wider facet of environment protection. The expansive definition of environment that includes water, air and land *"and the interrelation which exist among and between water, air and land, other human creatures, plants, micro-organisms and property"* give an indication of the wide powers conferred on the Central Government. A wide net is cast over the environment related laws. The EPA also empowers the central government to comprehensively control environmental pollution by industrial and related activities. For these reasons, and in view of the above discussion, it is held that the NGT correctly assumed jurisdiction, having regard to the nature of the accident in the facts of this case.

II. Was the direction to pay compensation towards death, and damages towards restitution justified?

55. In the present case, the deceased were concededly travelling on the highway. The incident of flooding occurred, and was caused due to clogging of the water channels. The report of the sub divisional magistrate indicated that the Inspecting Engineer (Arvi Associates, a firm) had given a report after inspection. On behalf of the independent engineering firm appointed by the NHAI, an oral deposition was given before the sub-divisional officer. It was stated that the roadside channel and culvert from where water is disposed of, had been rendered screen blinded and a pipeline of 1.2 m diameter existed there for disposal of water. The necessity of remedial action was communicated to the concessionaire, before the occurrence of the accident. It was also stated that in terms of the instructions of the NHAI, the concessionaire was informed about the deficiency on 15.05.2013 and by a further letter dated 04.06.2013. An action plan for completing pre-monsoon work was sought from the concessionaire. However, the concessionaire did not submit an action plan despite lapse of one month.

56. The SDO's report noted that the culvert had been constructed from the new tunnel and was existing from 2004. Apparently a 1m diameter pipe was positioned in the culvert and had made a causeway. One hotel also had constructed an approach road and placed a 950 MM pipe. The existing drainage capacity of the octroi post and the hotel was insufficient due to heavy rains as a result of which rainwater was not totally drained. This water started accumulating on the road. Certain ramps were also constructed by Tata Motors for its convenience; they were removed by the concessionaire; nevertheless, the ramps were prepared again. The existing cross drainage provision was of a sub-culvert-type structure and the size at the time of the old highway was 1m × 1 m. The report further observed that the natural drainage and sides of hills of the highway was adversely affected and had been tampered with. The disposal of water on the right side overhead of the tunnel through the cross train on the old highway *via* the catch drain and subsequently the channels for the water flow were choked due to development work and adversely affected the clearance of rain water. The report indicates that after the accident on 06.06.2013, the local administration cleared the debris which had created obstacles, to facilitate the free flow of water into the catch drain culvert and further flow of water.

57. The legal position regarding highways is outlined in two enactments, i.e. the National Highways Act, 1956 ("the Highways Act") and the NHAI Act. The provisions of the Highways Act, to the extent they are relevant are as follows:

"4. National highways to vest in the Union. — All national highways shall vest in the Union, and for the purposes of this Act "highways" include—



- (i) all lands appurtenant thereto, whether demarcated or not;
 (ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and
 (iii) all fences, trees, posts and boundary, furlong and milestones of such highways or any land appurtenant to such highways.

5. Responsibility for development and maintenance of national highways.—It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.

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8A. Power of Central Government to enter into agreements for development and maintenance of national highways — (1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway.

(2) Notwithstanding anything contained in section 7, the person referred to in sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (59 of 1988) on the national highway forming subject-matter of such agreement, for proper management thereof."

58. Section 16 of the NHAI Act spells out the functions of the NHAI; it reads as follows:

"16. Functions of the Authority.— (1) Subject to the rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government. rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government."

59. Acting in furtherance of its powers, the NHAI entered into an agreement with the concessionaire for the construction, operation and maintenance of the highway in question (i.e. the stretch of 140 kms on which the accident occurred). The question is whether the NHAI, which indisputably owns and controls the highway, and on whose behalf it was constructed, and for which the maintenance and operation agreement was entered into, led to a duty of care, to the users (of the highway).

60. This issue had arisen in *Rajkot Municipal Corpn. v. Manjulben Jayantilal Nakum*¹⁶ in the context of certain facts. The deceased used to travel on a railway season ticket to Rajkot to attend to his office work. One day whilst he was on the footpath on the way to his office, a roadside tree suddenly fell on him, resulting in serious injuries on the head and other parts of the body, and later died in the hospital. The High Court allowed the writ petition. This court noted the distinction between a common law duty of care owed to members of the public, and whether liability could be imposed upon a local authority for breach of its statutory duty. The court noticed previous English decisions¹⁷ and stated that:

"18. The question emerges as to when would the breach of statutory duty under a particular enactment give rise to tortious liability? The statutory duty gives rise to civil action. The statutory negligence is sui generis and independent of any other form of



tortious liability. It would, therefore, be of necessity to find out from the construction of each statutory duty whether the particular duty is general duty in public law or private law duty towards the plaintiff. The plaintiff must show that (a) the injury suffered is within the ambit of statute; (b) statutory duty imposes a liability for civil action; (c) the statutory duty was not fulfilled; and (d) the breach of duty has caused him injury. These essentials are required to be considered in each case. The action for breach of statutory duty may belong to the category of either strict or absolute liability which is required, therefore, to be considered in the nature of statutory duty the defendant owes to the plaintiff; whether or not the duty is absolute; and the public policy underlying the duty. In most cases, the statute may not give rise to cause of action unless it is breached and it has caused damage to the plaintiff, though occasionally the statute may make breach of duty actionable per se. The burden, therefore, is on the plaintiff to prove on balance of probabilities that the defendant owes that duty of care to the plaintiff or class of persons to whom he belongs, that defendant was negligent in the performance or omission of that duty and breach of duty caused or materially contributed to his injury and that duty of care is owed on the defendant. If the statute requires certain protection on the principle of *volenti non fit injuria*, the liability stands excluded. The breach of duty created by a statute, if it results in damage to an individual prima facie, is tort for which the action for damages will lie in the suit. One would often take the Act, as a whole, to find out the object of the law and to find out whether one has a right and remedy provided for breach of duty. It would, therefore, be of necessity in every case to find the intention of legislature in creating duty and the resultant consequences suffered from the action or omission thereof, which are required to be considered. No action for damages lies if on proper construction of statute, the intention is that some other remedy is available. One of the tests in determining the intention of the statute is to ascertain whether the duty is owed primarily to the general public or community and only incidentally to an individual or primarily to the individual or class of individuals and only incidentally to the general public or the community. If the statute aims at duty to protect a particular citizen or particular class of citizens to which the plaintiff belongs, it prima facie creates at the same time correlative right vested in those citizens of which plaintiff is one; he has remedy for enforcement, namely, the action for damages for any loss occasioned due to negligence or for failure of it. But this test is not always conclusive.

19. Duty may be of such paramount importance that it is owed to all the public. It would be wrong to think that on an action, the duty could be enforced by way of damages when duty is owed to a section of public and cannot be enforced if an individual sustains damages to whom the Corporation owes no duty and no private interest is infringed. Breach of statutory duty, therefore, requires to be examined in the context in which the duty is created not towards the individual, but has its effect on the right of individual vis-à-vis the society. Statutory duty generally is towards public at large and not towards an individual or individuals and the correlative right is vested in the public and not in private person, even though they may suffer damages. The duty in such a case is to be enforced by way of criminal prosecution or by way of injunction at the suit under Section 192 of CPC or with leave of court under Order I, Rule 8 CPC by public-spirited person or in any appropriate manner to enforce the right and not by way of private action for damages. In that situation, the legislature, while recognising the private right vested in an injured individual, may intend that it shall be maintained solely by some special remedy provided for a particular case and not by ordinary method of an action for damages as penalty or compensation.

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24. Generally, a public authority entrusted with no statutory obligation to exercise a power, does not come under common law duty of care to do so but by conduct the public authority may place itself in such a situation that it attracts the duty of care which calls for exercise of the power. Common illustration is provided by an action in which an authority in the exercise of its functions, if it had created a danger, thereby subjecting itself to a duty of care for the safety of others which must be discharged by an exercise of its statutory power or by giving necessary warnings. It is the conduct of the authority



in creating the danger that attracts the duty of care as envisaged in Sheppard v. Borough of Glossop [(1921) 3 KB 132 : 1921 All ER Rep 61, CA]. The statute does not by itself give rise to a civil action but it forms the formulation on which the common law can build a cause of action....

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39. It can be seen that ordinarily the principle of the law of negligence applies to public authorities also. They are liable to damages because by a negligent act or failure to act when they are under a duty to act or for a failure to consider whether to exercise a power conferred on them with the intention that it would be exercised if and when public interest requires it. Where the public authority has decided to exercise a power and has done it negligently a person who has acted in reliance on what the public authority has done, may have no difficulty in proving that the damages which he has suffered have been caused by the negligence. Where the damage has resulted from a negligent failure to act there may be greater difficulty in proving causation and requires examination in greater detail. ..."

61. In the UK, the duty of a highway authority was described by Diplock L.J. in *Griffiths v. Liverpool Corporation*¹⁸ as follows:

"The duty at common law to maintain, which includes a duty to repair a highway, was not based in negligence but in nuisance. It was an absolute duty to maintain, not merely a duty to take reasonable care to maintain, and the statutory duty which replaced it was also absolute."

62. Again, Diplock, LJ stated in *Burnside v. Emerson*¹⁹ described the duty as follows:

"in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition."

63. Later, in *Haydon v. Kent County Council*²⁰ Lord Denning M.R. explained that while the duty to maintain the highway meant an absolute duty to ensure that it was in a condition to be used as a highway and to ensure safety, it did not include the duty to ensure at all times that the road surface was kept clean. It was clarified however, that the issue had to be considered in each case, and it was to be considered whether the authority had taken reasonable steps to keep it in good repair after being notified about obstruction:

"If section 41 is to be construed as capable of imposing a duty to take remedial measures to deal with ice and snow on a highway, or footway, which is in good physical repair, so that whether in particular circumstances that duty has arisen is to be decided 'as a question of fact and degree,' it would seem that the facts relevant to determining whether the duty has arisen would be essentially similar to those relevant to deciding whether a breach of the duty has been proved and whether the statutory defence under section 58 has been made out. Parliament did not define those facts for the purpose of section 41. The concept of the passing of sufficient time to make it prima facie unreasonable for the highway authority to have failed to take remedial measures must presuppose some idea of the amount and nature of the resources for dealing with snow and ice which are or ought to be available to the authority, and of the order of priority among different carriageways and footways which guides or which ought to guide the authority; and of the necessary degree of urgency in using those resources. No such guidance is given in the statute with reference to proof of the arising of the duty."

64. In *Stovin v. Wise*²¹, the defendant emerged from a side road and ran down the plaintiff, because she was not keeping a proper look-out. When she was sued for damages, the defendant joined the County Council as a third party because the visibility at the intersection was poor and they said that the Council, which had the duty to maintain the road should have done something to improve it. The council had statutory powers which would have enabled the necessary work to be done and there was evidence that the relevant officers had decided in principle that it should be done, but they had not taken steps to do it. The House of Lords held that there was no duty of care in private law based on the statutory duty, and that "Drivers of vehicles must take the highway network as they find it". It was held that statutory power could not be converted into a common law duty.



The council had done nothing which, apart from statute, would have attracted a common law duty of care. It had done nothing at all. The only basis on which it was a candidate for liability was that Parliament had entrusted it with general responsibility for the highways and given it the power to improve them and take other measures for the safety of their users. Lord Hoffmann observed,

"In summary, therefore, I think that the minimum preconditions for basing a duty of care upon the existence of a statutory power, if it can be done at all, are, first, that it would in the circumstances have been irrational not to have exercised the power, so that there was in effect a public law duty to act, and secondly, that there are exceptional grounds for holding that the policy of the statute requires compensation to be paid to persons who suffer loss because the power was not exercised."

65. *Stovin* (supra) and its enunciation that the existence of a public duty did not *per se* extend to a private duty of care to take special measures, unless exceptional features were proved, was followed in *Gorringe v. Calderdale Metropolitan Borough Council*²². The entire law was re-examined and the correct position, restated in a recent judgment by the UK Supreme Court in *Robinson v. Chief Constable of West Yorkshire Police*²³, which observed as follows:

"32 *At common law, public authorities are generally subject to the same liabilities in tort as private individuals and bodies: see, for example, Entick v. Carrington (1765) 2 Wils KB 275 and Mersey Docks and Harbour Board v. Gibbs (1866) LR 1 HL 93. Dicey famously stated that "every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen": The Law of the Constitution, 3rd ed (1889), p 181. An important exception at common law was the Crown, but that exception was addressed by the Crown Proceedings Act 1947, section 2.*

33. *Accordingly, if conduct would be tortious if committed by a private person or body, it is generally equally tortious if committed by a public authority: see, for example, Dorset Yacht Co. Ltd. v. Home Office [1970] AC 1004, as explained in Gorringe's case 2004 (1) WLR 1057, para 39. That general principle is subject to the possibility that the common law or statute may provide otherwise, for example by authorising the conduct in question: Geddis v. Proprietors of Bann Reservoir (1878) 3 App Cas 430. It follows that public authorities are generally under a duty of care to avoid causing actionable harm in situations where a duty of care would arise under ordinary principles of the law of negligence, unless the law provides otherwise.*

34. *On the other hand, public authorities, like private individuals and bodies, are generally under no duty of care to prevent the occurrence of harm: as Lord Toulson JSC stated in Michael's case [2015] AC 1732, para 97, "the common law does not generally impose liability for pure omissions". This "omissions principle" has been helpfully summarised by Tofaris and Steel, "Negligence Liability for Omissions and the Police" [2016] CLJ 128:*

"In the tort of negligence, a person A is not under a duty to take care to prevent harm occurring to person B through a source of danger not created by A unless (i) A has assumed a responsibility to protect B from that danger, (ii) A has done something which prevents another from protecting B from that danger, (iii) A has a special level of control over that source of danger, or (iv) A's status creates an obligation to protect B from that danger."

35. *As that summary makes clear, there are certain circumstances in which public authorities, like private individuals and bodies, can come under a duty of care to prevent the occurrence of harm: see, for example,*

Barrett v. Enfield London Borough Council [2001] 2 AC 550 and Phelps v. Hillingdon London Borough Council [2001] 2 AC 619, as explained in Gorringe's case 2004 (1) WLR 1057, paras 39-40. In the absence of such circumstances, however, public authorities generally owe no duty of care towards individuals to confer a benefit upon them by protecting them from harm, any more than would a private individual or body: see, for example, Smith v. Littlewoods Organisation Ltd. [1987] AC 241, concerning a private



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body, applied in *Mitchell v. Glasgow City Council* [2009] AC 874, concerning a public authority.

36 That is so, notwithstanding that a public authority may have statutory powers or duties enabling or requiring it to prevent the harm in question. A well known illustration of that principle is the decision of the House of Lords in *East Suffolk Rivers Catchment Board v. Kent* [1941] AC 74. The position is different if, on its true construction, the statutory power or duty is intended to give rise to a duty to individual members of the public which is enforceable by means of a private right of action. If, however, the statute does not create a private right of action, then "it would be, to say the least, unusual if the mere existence of the statutory duty [or, a fortiori, a statutory power] could generate a common law duty of care": *Gorringe's case* 2004 (1) WLR 1057, para 23.

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40 However, until the reasoning in the *Anns* case was repudiated, it was not possible to justify a rejection of liability, where a prima facie duty of care arose at the first stage of the analysis from the foreseeability of harm, on the basis that public bodies are not generally liable for failing to exercise their statutory powers or duties so as to confer the benefit of protection from harm. Instead, it was necessary to have recourse to public policy in order to justify the rejection of liability at the second stage. That was accordingly the approach adopted by the House of Lords and the Court of Appeal in a series of judgments, including *Hill's case* [1989] AC 53. The need to have recourse to public policy for that purpose has been superseded by the return to orthodoxy in *Gorringe's case*. Since that case, a public authority's non-liability for the consequences of an omission can generally be justified on the basis that the omissions principle is a general principle of the law of negligence, and the law of negligence generally applies to public authorities in the same way that it applies to private individuals and bodies.

41 Equally, concerns about public policy cannot in themselves override a liability which would arise at common law for a positive act carried out in the course of performing a statutory function: the true question is whether, properly construed, the statute excludes the liability which would otherwise arise: see *Gorringe's case* 2004 (1) WLR 1057, para 38, per Lord Hoffmann.

42 That is not to deny that what might be described as policy considerations sometimes have a role to play in the law of negligence. As explained earlier, where established principles do not provide a clear answer to the question whether a duty of care should be recognised in a novel situation, the court will have to consider whether its recognition would be just and reasonable."

66. In *Yetkin v. Mahmood*²⁴, where injury was caused to a highway user by shrubs which had overgrown and impeded visibility, the court upheld the claim for damages. The court observed as follows:

"...The planting of vegetation in the raised beds of the central reservation is obviously a reasonable exercise of the authority's powers but to plant shrubs which will grow so large as to obscure the view and then not to ensure that they are trimmed back is a negligent exercise of those powers. The judge held that that failure was a cause of this accident. It is not suggested that he was not right so to hold. I have no doubt that, in the circumstances of this case, the local authority had a common law duty of care towards the claimant, notwithstanding her own negligence, that that duty was breached and that the breach was a cause of the accident. There was no need for the judge to consider whether the danger created by the bushes amounted to a trap or enticement. It follows in my judgment that the judge erred in dismissing the claim. He should have held that primary liability was established."

67. A similar approach was indicated by this court in *Municipal Corpn. of Delhi v. Sushila Devi*²⁵ (where a tree fell on a passer-by causing injury) the court upheld the findings that the municipal corporation was liable, stating that:

"**13.** By a catena of decisions, the law is well settled that if there is a tree standing on the defendant's land which is dried or dead and for that reason may fall and the defect is one which is either known or should have been known to the defendant, then the



defendant is liable for any injury caused by the fall of the tree (see *Brown v. Harrison* [1947 WN 191 : 63 TLR 484], *Quinn v. Scott* [(1965) 1 WLR 1004 : (1965) 2 All ER 588] and *Mackie v. Dumbartonshire County Council* [1927 WN 247]). The duty of the owner/occupier of the premises by the side of the road whereon persons lawfully pass by, extends to guarding against what may happen just by the side of the premises on account of anything dangerous on the premises. The premises must be maintained in a safe state of repair. The owner/occupier cannot escape the liability for injury caused by any dangerous thing existing on the premises by pleading that he had employed a competent person to keep the premises in safe repairs. In *Municipal Corpn. of Delhi v. Subhagwanti* [AIR 1966 SC 1750] a clock tower which was 80 years' old collapsed in Chandni Chowk, Delhi causing the death of a number of persons. Their Lordships held that the owner could not be permitted to take a defence that he neither knew nor ought to have known the danger. "[T]he owner is legally responsible irrespective of whether the damage is caused by a patent or a latent defect", — said their Lordships. In our opinion the same principle is applicable to the owner of a tree standing by the side of a road. If the tree is dangerous in the sense that on account of any disease or being dead the tree or its branch is likely to fall and thereby injure any passer-by then such a tree or branch must be removed so as to avert the danger to life. It is pertinent to note that it is not the defence of the Municipal Corporation that vis major or an act of God such as a storm, tempest, lightning or extraordinary heavy rain had occurred causing the fall of the branch of the tree and hence the Corporation was not liable."

68. This approach that a statutory corporation or local authority can be held liable in tort for injury occasioned on account of omission to oversee, or defective supervision of its activities contracted out to another agency, was also followed in *Vadodara Municipal Corporation v. Purshottam V. Muranji*²⁵.

69. The terms of the agreement which the NHAI entered into with the concessionaire clearly contemplated the safety of highway users (Clause 18.1.1) and an elaborate highway monitoring mechanism (Clause 19.1). The agreement also required any unusual occurrences to be reported; an independent engineer was required to, and did inspect the highway. The reports of the inspecting engineer reveal that the deficiencies by way of narrowing of water channels, and the unusual collection of debris, were noted. Even before the incident, the NHAI was alive to this; it had separately written to Rathod, and later to the local administration about it through its letter dated 15.04.2011. That letter is revealing; it *inter alia*, states that:

"During pre-monsoon rains all the excavated muck has been carried to NH4 along with rain water and block Satara bound traffic lane for quite some time. The problem will be severe during heavy rains of July and August.

As such safety of highway and tunnel is completely at stake due to indiscriminate cutting of hills on upper side of tunnel and both the end."

70. Having regard to the duty imposed on the NHAI by virtue of Sections 4 and 5 of the Highways Act, read with Section 16 of the NHAI Act, there can be no manner of doubt that the NHAI was responsible for the maintenance of the highway, including the stretch upon which the accident occurred. The report of the sub-divisional officer clearly shows that inspection reports were furnished to the NHAI shortly before the incident, highlighting the deficiencies; also, the NHAI's correspondence with Rathod, and the local administration, reveal that it was aware of the danger and likelihood of risk to human life, and the foreseeability of the event that actually occurred later. Further, letters addressed by the local administration and the NHAI to Rathod similarly show that it was incumbent upon him to take remedial action. The failure of the NHAI to ensure remedial action, and likewise the failure by Rathod to take measures to prevent the accident, *prima facie*, disclose their liability.

71. The absence of legal representatives or heirs of the deceased in the proceedings, or the fact that they had initiated independent civil action, in the opinion of this court, was not an impediment, nor could it have precluded the NGT from exercising its jurisdiction, given the gravity of the matter and the danger posed to the members of the public. The initiation



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of civil action did not mean that the NGT had to either reject the application (as far as it claimed relief for the accident), or await the outcome of the civil suit. This position is clear from the proviso to Section 18(1) which reads as follows:

"Provided that where all the legal representatives of the deceased have not joined in any such application for compensation or relief or settlement of dispute, the application shall be made on behalf of, or, for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application."

72. The above provision clearly implies that an application without impleading the legal heirs cannot be rejected. At the most, the tribunal has to implead all legal heirs. In the present case, that procedure was not followed. However, the legal heirs have instituted a suit. The ends of justice would be served if that suit (Special Civil Suit No. 890 of 2014 before the Court of the Civil Judge Senior Division, Pune) is directed to revive and continue it; a direction is issued to the concerned court (Court of the Civil Judge Senior Division, Pune). The directions in this regard by the NGT, towards payment of compensation are to be regarded as indicative of a *prima facie* determination. Consequently, the direction to the NHAI and Rathod, jointly making them liable to pay Rs. 15 lakhs is justified. It is clarified that the civil suit will now proceed, and based on evidence, the court would finally decide the issue of liability, and make such further consequential orders or decrees as may be found necessary in this regard, towards apportioning of liability of the NHAI, Rathod, the state or any other party (including the concessionaire). This court's order shall not be treated as conclusive; the trial court shall independently proceed to evaluate the evidence and hear the parties on the merits of their submissions. The restitutionary order by the NGT, directing payment by Rathod and NHAI of Rs. 10 lakhs too, in this court's opinion, cannot be found to be at fault. It is upheld. The NHAI and Rathod shall comply with the directions of the NGT and deposit the sum of Rs. 15 lakhs with the said court within four weeks, in equal proportion. The sum Rs. 10 lakhs shall be deposited in the same proportion, in court, to be disbursed to the state government for restoring the environment and carrying out afforestation/planting of trees etc.

Point Nos III and IV: Correctness of NGT's directions contained in Para 17 (e) of its impugned order, and the legality of the order/notification of the state of Maharashtra, issued under Section 154, MRTP Act

73. As to the third point, two issues arise for consideration - firstly, the power of the NGT to issue directions banning development and building activities of the kind contained in Para 17(e) of its impugned order, and secondly, the correctness of the procedure adopted while issuing such directions, in this case.

74. In the *All Dimasa Student Union case*²², this court considered the nature of powers and jurisdiction of NGT. The relevant discussion is as follows:

"156. What are the powers and jurisdiction of the Tribunal given under the National Green Tribunal Act, 2010 has to be looked into to consider the above submission? Insofar as jurisdiction of the Tribunal is concerned, we have already noticed Sections 14, 15 and 16 of the Act. Section 19 of the Act deals with procedure and powers of the Tribunal. Section 19 which is relevant for the present case is as follows²⁸:

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157. Sub-section (1) of Section 19 provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. What subsection (1) meant to convey is that the Tribunal is not shackled with the procedure laid down by CPC for conducting its proceedings. Subsection (2) of Section 19 empowers the Tribunal with powers to regulate its own procedure. Section 19(2) confers *vide* powers on the Tribunal insofar as its procedure is concerned. Section 19(4) vests some powers as are vested in the civil court, while trying a suit, in respect of matters enumerated therein. The use of the expression "shall not be bound by the procedure laid down by CPC" is not akin to saying that procedure as laid down by CPC is in no manner relevant to the Tribunal. Further, Section 19(1) also does not mean that the Tribunal cannot follow any procedure given in CPC. One provision of



CPC inserted by Act 104 of 1976 with effect from 1-2-1977 is Order 26, which is relevant for present inquiry. Order 26 Rule 10-A provides as follows:

"10-A. Commission for scientific investigations.—(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this Rule as they apply in relation to a Commissioner appointed under Rule 9."

158. Rule 10-A provides that where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court. Rule 10-A is enabling power to the courts to obtain report from such persons as it thinks fit when any question involves with the scientific investigation. The powers under Rule 10-A which are to be exercised by the Court can very well be used by NGT to obtain reports by experts. NGT as per the statutory scheme of NGT has to decide several complex questions pertaining to pollution and environment. The scientific investigation and report by experts are necessary requirements in appropriate cases to come to correct conclusion to find out measures to remedy the pollution and environment. We do not, thus, find any dearth of jurisdiction in NGT to appoint a committee to submit a report. We may further say that while asking an expert to give a report, NGT is not confined to the four corners of Rule 10-A rather its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A as per Section 19(1) as noticed above."

75. The court also took note of Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 (framed under Sections 4(4) and 35 of the NGT Act).²⁹ This court then held as follows:

"160. Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure the ends of justice. Use of words "may", "such orders", "gives such directions", "as may be necessary or expedient", "to give effect to its orders", "order to prevent abuse of process", are words which enable the Tribunal to pass orders and the above words confer wide discretion.

163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain v. CIT* [*L. Hirday Narain v. CIT, (1970) 2 SCC 355*], wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14: (SCC p. 359)

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164. We, thus, are of the considered opinion that there is no lack of jurisdiction in NGT to direct for appointment of committee or to obtain a report from a committee in the given facts of the case."

76. The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the



nature of the abusive practice, its powers can also be preventive.

77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent the future occurrence of incidents that impact the environment, are issued.

78. Courts in the US, notably the US Supreme Court, have been faced with problems arising from regulatory adjudication. The scope of such decision making which resembles an adjudicatory outcome by courts, was considered in *Securities Exchange Commission v. Chenery Corp.*²⁰ This case arose from an order of the Securities Exchange Commission (SEC) refusing to approve a utility company's bankruptcy reorganization plan, due to that plan's favourable treatment of management's stock purchases during the reorganization period. The SEC originally had based its disapproval on its understanding of general corporation law principles. The Supreme Court initially struck down that decision as a misreading of the principles. On remand, the SEC reaffirmed its rejection of the reorganization plan. But this time, the SEC relied on its interpretation of the standards of the Public Utility Holding Company Act of 1935. When the Supreme Court decided the appeal for the second time, it affirmed the SEC's order. The court clarified that SEC would be allowed to establish such an interpretation by means of a particularized order rather than a general regulation and observed that:

"Not every principle essential to the effective administration of a statute can or should be cast immediately into the mold of a general rule. Some principles must await their own development, while others must be adjusted to meet particular, unforeseeable situations. In performing its important functions in these respects, therefore, an administrative agency must be equipped to act either by general rule or by individual order. To insist upon one form of action to the exclusion of the other is to exalt form over necessity. In other words, problems may arise in a case which the administrative agency could not reasonably foresee, problems which must be solved despite the absence of a relevant general rule. Or the agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgment into a hard and fast rule. Or the problem may be so specialized and varying in nature as to be impossible of capture within the boundaries of a general rule. In those situations, the agency must retain power to deal with the problems on a case-to-case basis if the administrative process is to be effective. There is thus a very definite place for the case by case evolution of statutory standards. And the choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primary in the informed discretion of the administrative agency."

79. Similar observations were made by this court in *PTC India v. Central Electricity Regulatory Commission*²¹. The court stated as follows, after analysing the provisions of the Electricity Act 2003:

"49. On the above analysis of various sections of the 2003 Act, we find that the decision-making and regulation-making functions are both assigned to CERC. Law comes into existence not only through legislation but also by regulation and litigation. Laws from all three sources are binding. According to Professor Wade, "between legislative and administrative functions we have regulatory functions". A statutory instrument, such as a rule or regulation, emanates from the exercise of delegated legislative power which is a part of administrative process resembling enactment of law by the legislature whereas a quasi-judicial order comes from adjudication which is also a part of administrative process resembling a judicial decision by a court of law.

50. Applying the above test, price fixation exercise is really legislative in character, unless by the terms of a particular statute it is made quasi-judicial as in the case of tariff fixation under Section 62 made appealable under Section 111 of the 2003 Act, though



Section 61 is an enabling provision for the framing of regulations by CERC. If one takes "tariff" as a subject-matter, one finds that under Part VII of the 2003 Act actual determination/fixation of tariff is done by the appropriate Commission under Section 62 whereas Section 61 is the enabling provision for framing of regulations containing generic propositions in accordance with which the appropriate Commission has to fix the tariff. This basic scheme equally applies to the subject-matter "trading margin" in a different statutory context as will be demonstrated by discussion hereinbelow."

80. The NGT's directions, though placed in the context of its adjudicatory role, have a wider ramification in the sense that its rulings constitute the appropriate norm which are to be followed by all those engaging in similar activities. Therefore, its orders, contextually in the course of adjudication, also establish and direct behaviour appropriate for future guidance. In these circumstances, given the panoply of the NGT's powers under the NGT Act, which include considering regulatory directions issued by expert regulatory bodies under the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Biodiversity Act, 2002 it has to be held that general directions for future guidance, to avoid or prevent injury to the environment for appropriate assimilation in relevant rules, can be given by the NGT.

81. Turning next to the question of the correctness of the general directions contained in Para 17(e) of the NGT's order, this court has no manner of doubt that such directions were improper and not justified in the facts of this case. What the NGT had before it, was the report of the SDM and a report commissioned about the nature of the incident. Based on these limited inputs, the tribunal concluded-without any *rationale* and based on no scientific or technical evidence, or experts' opinion, that development and construction should not be carried out within 100 feet of a "lowest slope i.e. incline of any hill within its territorial limits, as well as hill-tops". The decisions of this court, including the *All Dimasa Students Union case* (f.n. 9); *Mantri Technoze Pvt. Ltd. case* (f.n.3); the *Hanuman Laxman Aroskar case* (f.n. 4) and the *Tamil Nadu Pollution Control Board case* (f.n. 2) all show that the NGT resorted to the appointment of technical and scientific experts in the relevant field, who studied the issue, made site inspections and furnished reports. Such reports were subjected to discussion by the parties before the NGT, who were also given the opportunity of objecting to or making representations against such reports. Based on a final consideration of all these materials, and the submissions of parties before it, the NGT proceeded to issue directions. This procedure was wholly overlooked by the NGT in the present case. As a result, it is held that the said tribunal's directions were improper and are procedurally indefensible. The directions contained in Para 17(e) are therefore set aside.

82. To consider the last issue, i.e. validity of the notification/direction issued by the state government, it is necessary to briefly outline provisions of the MRTP Act. The MRTP Act was framed and enacted for the purpose of use, planning and development in the regions (of Maharashtra). This was through the establishment of Regional Planning Boards, New Town Development Authorities and Special Planning Authorities, as the case may be, for specified "notified areas". The Act provides for the preparation of development plans, appointment of Special Planning Authorities for notified areas, and creation of new towns for designated areas by means of development authorities. The MRTP Act also enables compulsory acquisition of land for public purposes in respect of the plans and for purposes connected therewith. The Act provides for an elaborate procedure for preparation of the regional plan by a Regional Planning Board ("the board") and development plan by any planning authority. The board has to follow the procedure contained in Chapter II(C). Section 16 provides the procedure - the regional boards have to (after necessary survey) prepare land-use maps for the region, and prepare a draft regional plan, after which they have to publish a notice about the plan in the Official Gazette, inviting objections and suggestions from any person with respect to the draft plan. The board has to refer the objections, suggestions and representations received by it to the Regional Planning Committee ("the committee" hereafter) appointed under Section 10 for consideration and report. The committee, after giving a reasonable opportunity of being heard to the affected persons has to submit its report to the board, after which the board has to prepare the regional plan after considering the suggestions, objections and representations and the report of the committee. This is to

be submitted to the State Government for approval. On approval of the plan by the State Government under Section 15, the final regional plan has to be published under Section 17.

83. Chapter III deals with the procedure for preparation of development plans by a planning authority. Section 23 provides that the planning authority should make a declaration of its intent to prepare such a plan and publish the same in the Official Gazette, inviting suggestions or objections from the public within a period of not less than sixty days from the publication of the notice in the Official Gazette. Thereafter under Section 26, the planning authority has to prepare a draft development plan, not later than two years from the date of notice published under Section 23, and publish the notice in the Official Gazette stating that the development plan has been prepared, once again inviting objections or suggestions from any person with respect to the draft plan within a period of sixty days from the notice. Section 27 provides that the planning authority having regard to, and guided by the proposals made in the regional plan, shall not carry out any modification therein without prior concurrence of the Regional Planning Board. Section 28 mandates the planning authority to consider suggestions or objections received by it under Section 26(1) and provide a reasonable opportunity of being heard to any person including the representatives of the Government who may have filed any objections or suggestions, and thereafter modify or change the plan in such manner, as provided under Section 28(4). Section 29 further provides for modification of the draft development plan, which is of substantial nature. By this, a planning authority or the Town Planning Officer is required to publish a notice in the Official Gazette inviting objections and suggestions from any person with respect to the proposed modification not later than sixty days from the date of such notice. The section then requires the authority concerned to consider all objections and suggestions received by it and give a reasonable opportunity of being heard to any person including representatives of government departments who may have filed any objections or made any suggestions in respect of the draft development plan before making such modifications or changes in the draft development plan. Section 30 requires the planning authority to submit the draft plan to the State Government for approval, within twelve months from the date of publication of the notice under Section 26 that the draft plan has been prepared. Section 31 provides that the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette, sanction the draft development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft development plan to the planning authority for modifying the plan as it may direct, or refuse to accord sanction. It further provides that where the modifications proposed to be made by the State Government are of a substantial nature, the State Government has to follow the procedure contemplated under Section 28 to give a reasonable opportunity of hearing to the objectors before finalizing the modification.

84. Section 37 confers powers on a planning authority to carry out such modification in a final development plan as will not change its character. This power could be exercised by a planning authority after publishing a notice in the Official Gazette and in such other manner as may be determined by it inviting objections and suggestions from any person with respect to the proposed modification, not later than one month from the date of such notice. This section also enjoins the planning authority to serve notice on all persons affected by the proposed modification and, after giving a hearing to any such persons, submit the proposed modification (with amendments, if any) to the State Government for sanction. Section 40 provides for appointment of a Special Planning Authority for developing certain notified areas, and Section 40(1)(c) provides that the State Government may, by notification in the Official Gazette appoint Bombay Metropolitan Region Development Authority (BMRDA) established under the Bombay Metropolitan Region Development Authority Act, 1974 to be the Special Planning Authority for developing any undeveloped area specified in the notification as a notified area. Section 116 then lays down that a Special Planning Authority shall have all the powers of a planning authority as provided in Chapter VII of the MRTP Act for the special purpose of acquisition of such land in the notified area either by agreement or under the Land Acquisition Act.

85. So far as plans and developments that were approved before the impugned



notification was issued, this court is of the opinion that they cannot be disturbed and the right of the applicants, be they developers, builders or owners of land or plots, cannot be prejudiced or adversely affected. This is evident from a ruling of this court in *T. Vijayalakshmi v. Town Planning Member*³². This court stated that town planning legislations (like the MRTP Act) are regulatory; and that when a development plan is in force during the proposal for its amendment, courts should not interfere with them on the assumption that the approved plan for building or development, would not be eventually permitted. It was held that:

"Whether the amendments to the said comprehensive development plan as proposed by the Authority would ultimately be accepted by the State or not is uncertain. It is yet to apply its mind. Amendments to a development plan must conform to the provisions of the Act. As noticed hereinbefore, the State has called for objection from the citizens. Ecological balance no doubt is required to be maintained and the courts while interpreting a statute should bestow serious consideration in this behalf, but ecological aspects, it is trite, are ordinarily a part of the town planning legislation. If in the legislation itself or in the statute governing the field, ecological aspects have not been taken into consideration keeping in view the future need, the State and the Authority must take the blame therefor. We must assume that these aspects of the matter were taken into consideration by the Authority and the State. But the rights of the parties cannot be intermeddled with so long as an appropriate amendment in the legislation is not brought into force."

86. This court has ruled, that even modification to an existing development plan, under the MRTP Act, under Section 37, is in the nature of a legislative function. This court had observed under *Pune Municipal Corpn. v. Promoters and Builders Assn*³³ speaking of Section 37 (1) that:

"4. Reading of this provision reveals that under clause (1), the Planning Authority after inviting objections and suggestions regarding the proposed amendment and after giving notice to all affected persons shall submit the proposed modification for sanction to the Government. Deliberation with the public before making the amendment is over at this stage. The Government, thereafter, under clause (2) is given absolute liberty to make or not to make necessary inquiry before granting sanction. Again, while according sanction, the Government may do so with or without modifications. The Government could impose such conditions as it deems fit. It is also permissible for the Government to refuse the sanction. This is the true meaning of clause (2). It is difficult to uphold the contrary interpretation given by the High Court. The main limitation for the Government is made under clause (1) that no authority can propose an amendment so as to change the basic character of the development plan. The proposed amendment could only be minor within the limits of the development plan. And for such minor changes it is only normal for the Government to exercise a wide discretion, by keeping various relevant factors in mind. Again, if it is arbitrary or unreasonable the same could be challenged. It is not the case of the respondents herein that the proposed change is arbitrary or unreasonable. They challenged the same citing the reason that the Government is not empowered under the Act to make such changes to the modification."

5. Making of DCR or amendments thereof are legislative functions. Therefore, Section 37 has to be viewed as repository of legislative powers for effecting amendments to DCR. That legislative power of amending DCR is delegated to the State Government. As we have already pointed out, the true interpretation of Section 37(2) permits the State Government to make necessary modifications or put conditions while granting sanction. In Section 37(2), the legislature has not intended to provide for a public hearing before according sanction. The procedure for making such amendment is provided in Section 37. Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity. Moreover, a provision for "such inquiry as it may consider necessary" by a subordinate

legislating body is generally an enabling provision to facilitate the subordinate legislating body to obtain relevant information from any source and it is not intended to vest any right in anybody. (Union of India v. Cynamide India Ltd. [(1987) 2 SCC 720], SCC paras 5 and 27. See generally H.S.S.K. Niyami v. Union of India [(1990) 4 SCC 516] and Canara Bank v. Debasis Das [(2003) 4 SCC 557 : 2003 SCC (L&S) 507].) While exercising legislative functions, unless unreasonableness or arbitrariness is pointed out, it is not open for the Court to interfere. (See generally ONGC v. Assn. of Natural Gas Consuming Industries of Gujarat [1990 Supp SCC 397].) Therefore, the view adopted by the High Court does not appear to be correct.

87. This issue was again underscored by this court in *Machavarapu Srinivasa Rao v. Vijayawada, Guntur, Tenali, Mangalagiri Urban Development Authority*,³⁴ where it was held as follows, in respect of provisions of the Andhra Pradesh (Urban Areas) Development Act, 1975:

"20. An analysis of the above-noted provisions shows that once the master plan or the zonal development plan is approved by the State Government, no one including the State Government/Development Authority can use land for any purpose other than the one specified therein. There is no provision in the Act under which the Development Authority can sanction construction of a building, etc. or use of land for a purpose other than the one specified in the master plan/zonal development plan. The power vested in the Development Authority to make modification in the development plan is also not unlimited. It cannot make important alterations in the character of the plan. Such modification can be made only by the State Government and that too after following the procedure prescribed under Section 12(3)."

88. In a decision which concerned change in development plan under the MRTP Act, this court observed that any changes in a development or master plan involve consultations and a high degree of expertise, in *MIG Cricket Club v. Abhinav Sahakar Education Society*³⁵:

"28. It is well settled that the user of the land is to be decided by the authority empowered to take such a decision and this Court in exercise of its power of judicial review would not interfere with the same unless the change in the user is found to be arbitrary. The process involves consideration of competing claims and requirements of the inhabitants in present and future so as to make their lives happy, healthy and comfortable. We are of the opinion that town planning requires high degree of expertise and that is best left to the decision of the State Government to which the advice of the expert body is available. In the facts of the present case, we find that the power has been exercised in accordance with law and there is no arbitrariness in the same."

89. Now, under the provisions of the MRTP Act³⁶, regional plans and development plans have to take into account features such as soil conservation, preservation of natural features, prevention of flooding etc, while factoring planning for each city or area concerned. In turn, such regional and development plans would constitute the blueprint for local town planning authorities to grant or refuse permission to individual applicants. In these circumstances, the use of Section 154 of the MRTP Act, in the present case, in fact amounted to a modification of all plans - regional, development, etc. Such modification (by way of absolute prohibition in construction) was not preceded by any manner of public consultation, much less previous invitation of objections or consideration of the views of affected parties. It is in this background that one has to consider the argument of the state, which found favour with the High Court, that such notification was issued in public interest.

90. The unamended Section 154 of the MRTP Act read as follows:

"154 Control by the State Government

- (1) Every Regional Board, Planning Authority and Development Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.
- (2) If in, or his connection with, the exercise of its powers and discharge of its functions by the Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the State Government, the decision of the State



Government on such dispute shall be final."

91. Section 154 (1) was amendment by a substitution (with effect from 22.04.2015). The new provision [Section 154 (1)] reads as follows:

"154. (1) Notwithstanding anything contained in this Act or the rules or regulations made thereunder, the State Government may, for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time, such directions or instructions as may be necessary, to any Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions within the time-limit, if any, specified in such directions or instructions."

92. Directions can be issued "notwithstanding" any other provisions of the Act, "for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time." No doubt, the non-obstante clause has an overriding effect on other provisions of the Act. However, if one keeps in mind that the preparations of regional and development plans are in terms of specific provisions which outline detailed procedures that have to be necessarily followed, in the absence of which, time and again courts have intervened and held that such modifications (without following prescribed procedure or without prescribed consultations) are illegal, the power has to be resorted to for good and adequate reasons. The direction, impugned in the present case, on the face of it, is not premised on any central or state government programmes, policies or projects. The impugned notification reads as follows:

GOVERNMENT OF MAHARASHTRA
URBAN DEVELOPMENT DEPARTMENT
Madam Cama Road
Hutatma Rajguru Chowk
Mantralaya, Mumbai 400032
Government Resolution No. TPS-1817/ANS-90/97/UD-13
dated 14 November 2017

The Development schemes are prepared for area in jurisdiction of planning authorities under the Maharashtra Regional Development and Town Planning Act, 1966. In the context of unauthorised constructions undertaken by hill cutting, at Katraj Ghat District Pune, the Hon'ble National Green Tribunal, Pune has, by order dated 19 May 2015 in Application Number 4/2014, issued orders and instructed to inform all Mahanagar Palik/Nagarpalika in the state not to give any development permission for constructions on the hilltop and 100 feet distance from the hill slopes. A provision already exists in development control regulations that no development is permissible on the hilltop and no hill slopes having a gradient of more than 1:5. Considering the order dated 19 May 2015 of the Hon'ble National Green Tribunal in exercise of powers under section 154 of the Maharashtra Regional Town Development and Town Planning Act 1966 the following the directions were issued to all planning authorities in the state:

DIRECTIONS

1. The planning authorities while preparing development plan for area in their jurisdiction or amending them in respect of undeveloped portion abutting the hills upto 100 feet should be shown as No development/Open space Reservation.
2. In the event the 100 area abutting hills, has already been developed, in that area no permission be granted for additional FSI or TDR.
3. In the event the 100 feet area abutting hills is under No Development Zone as per sanctioned Development plan, then while granting permission for Development for further 100 feet area abutting/contiguous thereto should be permitted only for nonbuildable purposes such as open space, road et cetera.

In the name of and by order of the Hon'ble Governor State of Maharashtra"

93. There are several authorities for the proposition that though an administrative order



need not necessarily comply with principles of natural justice such as granting hearing, yet, administrative decisions or orders have to be based on some reasons. In *Shri. Sitaram Sugar Mills Company v. Union of India*,³² (which concerned the zoning regulations for the purpose of levy sugar under the relevant statutory order, in terms of the Essential Commodities Act), the Supreme Court held as follows:

"Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be "reasonably related to the purposes of the enabling legislation". If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, "Parliament never intended to give authority to make such rules; they are unreasonable ultra vires.

A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness."

94. In *Cellular Operators Association v. Telecom Regulatory Authority of India*,³⁸ this court held that subordinate regulatory legislation, can be set aside in judicial review, if they show no *rationale* or are arbitrary:

"62. In view of the aforesaid, it is clear that the Quality of Service Regulations and the Consumer Regulations must be read together as part of a single scheme in order to test the reasonableness thereof. The countervailing advantage to service providers by way of the allowance of 2% average call drops per month, which has been granted under the 2009 Quality of Service Regulations, could not have been ignored by the impugned Regulation so as to affect the fundamental rights of the appellants, and having been so ignored, would render the impugned Regulation manifestly arbitrary and unreasonable.

63. Secondly, no facts have been shown to us which would indicate that a particular area would be filled with call drops thanks to the fault on the part of the service providers in which consumers would be severely inconvenienced. The mere ipse dixit of the learned Attorney General, without any facts being pleaded to this effect, cannot possibly make an unconstitutional regulation constitutional. We, therefore, hold that a strict penal liability laid down on the erroneous basis that the fault is entirely with the service provider is manifestly arbitrary and unreasonable. Also, the payment of such penalty to a consumer who may himself be at fault, and which gives an unjustifiable windfall to such consumer, is also manifestly arbitrary and unreasonable. In the circumstances, it is not necessary to go into the appellants' submissions that call drops take place because of four reasons, three of which are not attributable to the fault of the service provider, which includes sealing and shutting down towers by municipal authorities over which they have no control, or whether they are attributable to only two causes, as suggested by the Attorney General, being network-related causes or user-related causes. Equally, it is not necessary to determine finally as to whether the reason for a call drop can technologically be found out and whether it is a network-related reason or a user-related reason.

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66. The reason given in the Explanatory Memorandum for compensating the consumer is that the compensation given is only notional. The very notion that only notional compensation is awarded, is also entirely without basis. A consumer may well suffer a call drop after 3 or 4 seconds in a voice call. Whereas the consumer is charged only 4 or 5 paise for such dropped call, the service provider has to pay a sum of rupee one to the said consumer.

This cannot be called notional at all. It is also not clear as to why the Authority decided to limit compensation to three call drops per day or how it arrived at the figure of Re 1 to compensate inconvenience caused to the consumer. It is equally unclear as to



why the calling party alone is provided compensation because, according to the Explanatory Memorandum, inconvenience is suffered due to the interruption of a call, and such inconvenience is suffered both by the calling party and the person who receives the call. The receiving party can legitimately claim that his inconvenience when a call drops, is as great as that of the calling party. And the receiving party may need to make the second call, in which case he receives nothing, and the calling party receives Re 1 for the additional expense made by the receiving party. All this betrays a complete lack of intelligent care and deliberation in framing such a regulation by the Authority, rendering the impugned Regulation manifestly arbitrary and unreasonable."

95. In the present case, the State of Maharashtra has not shown any material or file containing the reasons behind the directive of 14.11.2017. It is not in dispute that the direction was consequential to, and solely based on the directions of the NGT in Para 17(e). As noticed earlier, those directions were not based on any scientific evidence or report of any technical expert. Furthermore, even the impugned notification does not specify what constitutes "hills", and how they can be applied in towns and communities set in undulating areas and hilly terrain. This is not only vague, but makes the directions arbitrary as they can be applied at will by the concerned authorities. More importantly, they amount to a blanket change of all regional and development plans. While such directions can be issued, if situations so warrant, such as in extraordinary or emergent circumstances, the complete absence of any reasons why the state issued them, coupled with the lack of any supporting expert report or input, renders it an arbitrary exercise. That they are based only on the NGT's orders, only underlines the lack of any application of mind on the part of the State, while issuing them.

96. For the above reasons, we hold that the impugned judgment of the Bombay High Court cannot be sustained; it is set aside. Consequently, the directions in the notification under Section 154 (dated 14.11.2017) are hereby quashed.

97. In view of the above discussions, CA 6932/2015 and CA 5971/2019 are hereby disposed of in terms of the directions in this judgment. The other appeals by special leave by third parties, against the NGT's order, and the order of the NGT, are partly allowed in the above terms. There shall be no order on costs.

¹ In terms of Clause 19.4.2, the measure of damages which NHA1 could recover was calculable in terms of each days delay in complying with the remedial measures suggested by the engineer, based on the "higher (a) 0.5% of the Average Daily Fee and (b) 0.1% of the cost of such repair or repair estimated by the Independent Engineer" The same clause (17.8.1) stated that:

"Notwithstanding anything contained in this agreement, should the actual traffic exceed the design capacity during any year or part thereof and the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this agreement and the Authority shall be entitled from such date to recover damages, to be calculated and paid for each day of the delay until the breach is cured, at the higher of (a) 5% (five percent) of Average daily fee and 1% (one percent) of the cost of such repair or rectification as estimated by the Independent Engineer, for the balance period of the concession. The recovery of such damages shall be without prejudice to the rights of the Authority under this agreement, including the right of termination thereof."

² 2019 SCC OnLine SC 221.

³ (2019) 18 SCC 494

⁴ (2019) 15 SCC 401

⁵ (2001) 6 SCC 496

⁶ 2019 SCC OnLine SC 1510

⁷ (1981) 2 SCC 205

⁸ (2011) 7 SCC 338

⁹ (2019) 8 SCC 177

¹⁰ Section 2(a) EPA



¹¹ Section 2(b) EPA

¹² Section 2(c) EPA

¹³ (2004) 12 SCC 118

¹⁴ (2012) 4 SCC 629

¹⁵ No. 3181 dated 14 August, 2018, published by the Government of India, in the Official Gazette

¹⁶ (1997) 9 SCC 552

¹⁷ *Gorris v. Scott* [(1874) 9 Exch 125] and *Kilgollan v. William Cooke & Co. Ltd.* (1956) 2 All ER 294, CA]

¹⁸ [1967] 1 Q.B. 374

¹⁹ [1968] 1 W.L.R. 1490

²⁰ [1978] Q.B. 343

²¹ 1996 (3) All ER 801

²² 2004 (1) WLR 1057

²³ 2019 (2) All ER 1041

²⁴ 2011 QB 827

²⁵ (1999) 4 SCC 317 at page 323

²⁶ (2014) 16 SCC 14

²⁷ See f.n.9 (supra).

²⁸ ***19. Procedure and powers of Tribunal.**—(1) *The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.*

(2) *Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.*

(3) *The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.*

(4) *The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely—*

(a) *summoning and enforcing the attendance of any person and examining him on oath;*

(b) *requiring the discovery and production of documents;*

(c) *receiving evidence on affidavits;*

(d) *subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;*

(e) *issuing commissions for the examination of witnesses or documents;*

(f) *reviewing its decision;*

(g) *dismissing an application for default or deciding it ex parte;*

(h) *setting aside any order of dismissal of any application for default or any order passed by it ex parte;*

(i) *pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;*

(j) *pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;*

(k) *any other matter which may be prescribed.*

(5) *All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Penal Code, 1860 and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."*

²⁹ The said rule reads as follows:



"24. Order and directions in certain cases. — *The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.*"

³⁰ 332 U.S. 194 (1947)

³¹ (2010) 4 SCC 603

³² (2006) 8 SCC 502

³³ (2004) 10 SCC 796

³⁴ (2011) 12 SCC 154

³⁵ (2011) 9 SCC 97

³⁶ Section 14 and 22

³⁷ (1990) 3 SCC 223

³⁸ (2016) 7 SCC 703

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3-Judge
Bench
2019
March 5

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SUPREME COURT CASES

(2019) 18 SCC

(2019) 18 Supreme Court Cases 494

(BEFORE DR A.K. SIKRI, S. ABDUL NAZEER AND M.R. SHAH, JJ.)

MANTRI TECHZONE PRIVATE LIMITED

.. Appellant; a*Versus*

FORWARD FOUNDATION AND OTHERS

.. Respondents.

Civil Appeals No. 5016 of 2016[†] with Nos. 8002-8003, 9227,
10992-95, 12152, 12156-60, 12326 of 2016, 1343, 4923-24 and
14966 of 2017 and 2246 of 2018, decided on March 5, 2019 b

**A. Environment Law — Polluter Pays Principle and Remedial/
Compensatory/Punitive Measures — Nature and Scope — Power of NGT to
direct Remedial/Compensatory/Punitive Measures**

— NGT's power to grant and give directions for relief, compensation and
restitution under NGT Act, 2010 — Scope of — Overriding effect of NGT Act,
2010 over State legislation in cases of conflict — Extent of c

— Held, NGT while directing restoration of environment can specify
buffer zones around specific lakes and water bodies in contradiction to
zoning regulations under the State Municipal Corporation Act or Master
Plan framed under town planning laws, as NGT Act has overriding effect
— NGT Act being a Central Act enacted under Sch. VII List I Entry 13
of the Constitution shall have overriding effect over State legislation —
Therefore, specific directions of NGT relating to penalty (on basis of pollution
pays principle) and environmental restoration (liability being on project
proponents, who had caused damage to water bodies), affirmed even if
NGT's direction relating to buffer zones (no construction zones of various
lengths specified for water body types concerned) was different from zoning
regulations of State Government d

— But general direction of NGT relating to all buffer zones not relating
to project proponents and differing from State zoning regulations, set aside
— Thus Direction/Condition (1) in order dt. 4-5-2016 in *Forward Foundation*,
2016 SCC OnLine NGT 1409, set aside except directions issued against R-9
& R-10 e

— Constitution of India — Sch. VII List I Entry 13 — Water/River/
Coastal Pollution — Water Conservation/Preservation, Development Projects
and Interlinking of Rivers — Primacy of environmental laws over town
planning laws — Wetlands (Conservation and Management) Rules, 2010
— Local Government, Municipalities and Panchayats — Town Planning —
Ecology/Environmental clearance — Layout/Master/Zonal Plan — Primacy of
environmental laws over — National Green Tribunal Act, 2010, Ss. 33, 14, 15,
20 and 22 f
(Paras 39 to 47 and 60 to 63) g

[Ed.: Project proponents are Respondents 9 and 10 in Original Application No. 222
of 2014 and appellants in in Civil Appeals Nos. 5016 and 8002-03 of 2016.]

[†] Arising from the Judgment and Order in *Forward Foundation v. State of Karnataka*, 2015 SCC
OnLine NGT 5 (National Green Tribunal, Principal Bench at New Delhi, Original Application
No. 222 of 2014, dt. 7-5-2015) and *Forward Foundation v. State of Karnataka*, 2016 SCC OnLine
NGT 1409 (National Green Tribunal, Principal Bench at New Delhi, Original Application No. 222
of 2014, dt. 4-5-2016) h



B. Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Scope

- a* — Held, appeal under S. 22 has to be read subject to conditions provided therein — Thus appeal restricted to substantial question of law arising from judgment of NGT — Merely because remedy of appeal is provided, it does not ipso facto permit appellants to agitate their appeal to seek re-appreciation of factual matrix of entire matter — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38 and 55)

b **C. Environment Law — National Green Tribunal Act, 2010 — S. 22 — Appeal to Supreme Court under — Whether raises substantial question(s) of law — Test**

- It has to be tested whether the question (i) is of general public importance, (ii) directly and substantially affects rights of parties and (iii) is an open question or is not free from difficulty or calls for discussion of alternative views — If question is settled by highest court or plea raised is palpably absurd, it would not be substantial question — Civil Procedure Code, 1908, S. 100 (Paras 35 to 38)
- c*

d **D. Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20, 33, 14 and 22 — Limitation of 6 months under S. 14 or 5 yrs under S. 15 — As matter related to environmental degradation and its restoration, limitation of 5 yrs under S. 15, held, would apply — A broad construction should apply to such beneficial legislation — Application before Tribunal not barred by limitation**

- Considering specific prayer of applicants before NGT, evidence supported by data, findings arrived at by NGT, and jurisdiction of NGT it is not an application under S. 14 simpliciter — It was a petition under S. 15 — Non-mention of or erroneous mention of provision of law, not a bar to pass appropriate orders, if NGT had jurisdiction in respect of same — Directions issued by NGT against both project proponents in present case did not suffer from any perversity — General Principles of Environmental Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Nature and Scope — Limitation period for approaching NGT — Reckoning of (Paras 48 to 55)
- e*
- f*

E. Environment Law — National Green Tribunal Act, 2010 — S. 15 r/w Ss. 20 and 33 — Application before Tribunal, when not barred by res judicata due to earlier writ petition

- g* — Parties, not common — Issues not directly and substantially same, writ petition related to land acquisition, present application related to environment, ecology and their restoration — No commonality of cause of action or likelihood of conflict between judgments — Prayer and genesis entirely different in their scope and relief — Practice and Procedure — Res Judicata (Paras 56 to 59)

h



The present appeals were filed under Section 22 of the National Green Tribunal Act, 2010 (the NGT Act, 2010) against the judgment of restoration and penalty of the Tribunal.

Disposing of the appeals, the Supreme Court

Held :

Appeal to Supreme Court

The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by the Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court and the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law. (Para 37)

Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd., 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, *relied on*

Further, merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to seek reappraisal of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappraisal of evidence and the factual matrix that has been considered by the Tribunal is ex facie impermissible under Section 22 of the NGT Act, 2010. There cannot be fresh appreciation or reappraisal of facts and evidence in a statutory appeal under this provision. (Paras 36 to 38)

Jurisdiction of Tribunal

The first question is in relation to the maintainability of the application before the Tribunal. (Para 39)

The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights. (Para 40)

The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act, 2010. (Para 41)

The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 of the NGT Act, 2010 for taking restorative measures in the interest of the environment. (Para 43)

The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. The existence of the Tribunal



a without its broad restorative powers under Section 15(1)(c) read with Section 20 of the NGT Act, 2010, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment. (Para 44)

Kishore Lal v. ESI Corpn., (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, *relied on*

b Section 15 of the NGT Act, 2010 provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the NGT Act, 2010, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the NGT Act, 2010) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self-contained jurisdictions. (Para 45)

c Further, Section 18 of the NGT Act, 2010 recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. The only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. (Para 46)

d Section 33 of the NGT Act, 2010 provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976; and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP. (Para 47)

e The State of Karnataka is aggrieved by the Direction/Condition (1) of the order dated 4-5-2016 of the Tribunal in *Forward Foundation*, 2016 SCC OnLine NGT 1409. The applicants have no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed. Civil Appeals Nos. 5016 and 8002-03 of 2016 filed by appellant-Respondents 9 and 10 are dismissed. The impugned judgment and order insofar as appellant-Respondents 9 and 10 are concerned is sustained. All the other appeals are allowed and Direction/Condition (1) in the order dated 4-5-2016 is set aside except the direction issued against Respondents 9 and 10. (Paras 60 to 62)

f *Forward Foundation v. State of Karnataka*, 2016 SCC OnLine NGT 1409, *partly reversed*
g *Core Mind Software & Services (P) Ltd. v. Forward Foundation*, 2015 SCC OnLine SC 1778, *referred to*



Limitation

OA No. 222 of 2014 was not an application simpliciter under Section 14 of the NGT Act, 2010. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the NGT Act, 2010 and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose. (Para 49)

In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. Non-mention of or erroneous mention of the provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal. (Para 50)

The Tribunal has pointed out on the basis of the Committee Report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. (Paras 52 and 51)

Forward Foundation v. State of Karnataka, 2015 SCC OnLine NGT 5, affirmed

The findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee report and the inspection note of the expert members. The directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity. (Para 54)

Forward Foundation v. State of Karnataka, 2015 SCC OnLine NGT 5, affirmed

It is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by the Supreme Court under Section 22 of the NGT Act, 2010. (Para 55)

Forward Foundation v. State of Karnataka, 2016 SCC OnLine NGT 637, referred to SS-D/62061/S

Advocates who appeared in this case :

Udaya Holla, Advocate General, Shashi Kiran Shetty, Maninder Singh, Dhruv Mehta, Mukul Rohatgi, Neeraj Kishan Kaul, R. Venkataramani, Sajan Poovayya, Ms Kiran Suri and Basavaprabhu S. Patil, Senior Advocates [Mahesh Thakur, Ms Anuparna Bordoloi, Savyasachi Sahai, Ms Vipasha Singh, Gaurav Goel, V.N. Raghupathy, M/s Devasa & Co., Devashish Bharuka, Justine George, Prabhas Bajaj, Ms Kanika



MANTRI TECHZONE (P) LTD. v. FORWARD FOUNDATION (*Abdul Nazeer, J.*) 499

a S., Ravi Bharuka, Ms Sarushree, Satish Kumar, Gaurav Agrawal, George Thomas, Anurag Gharote, A.S. Bhasme, Abid Ali Beeran P., Nishanth Patil, Rohit Prasad, Ananth Suresh, S.K. Kulkarni, M. Gireesh Kumar, Ankur S. Kulkarni, Shekhar G. Devasa, Bhuvanendra K.V., S. Mahesh, Manish Tiwari, Luv Kumar, Praveen Vignesh, Priyadarshi Banerjee, Pratibhanu Singh Kharola, Saransh Jain, Meka V. Ramakrishna, Madhavam Sharma, Ms Sriparna Dutta Choudhury, Udayaditya Banerjee, Mahesh Agrawal, Ankur Saigal, Ms Tanvi Manchanda, Nithin P., Ms Priyanka M.P., E.C. Agrawala, S.J. Amith, Ms Rithika Gambir, A. Shwarya Kumar, Dr (Ms) Vipin Gupta, Parikshit P. Angadi, Chinmay Deshpande, Geet Ahuja, Parikshit Angadi, Anup Kumar, O.P. Bhadani, Rajesh Mahale, Anand Sanjay M. Nuli, Dharm Singh, Sandeep Grover, Ms Pankhuri Bhardwaj and Pai Amit, Advocates] for the appearing parties.

b

	<i>Chronological list of cases cited</i>	<i>on page(s)</i>
	1. 2016 SCC OnLine NGT 1409, <i>Forward Foundation v. State of Karnataka (partly reversed)</i>	499e, 499g, 509a, 514e, 522e-f, 523e-f
	2. 2016 SCC OnLine NGT 637, <i>Forward Foundation v. State of Karnataka</i>	508e
c	3. 2015 SCC OnLine SC 1778, <i>Core Mind Software & Services (P) Ltd. v. Forward Foundation</i>	507f-g
	4. 2015 SCC OnLine NGT 5, <i>Forward Foundation v. State of Karnataka</i>	499e, 505e-f, 508c, 520a-b, 521a, 522a
	5. (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1, <i>Kishore Lal v. ESI Corpn.</i>	518a
d	6. 1962 Supp (3) SCR 549 : AIR 1962 SC 1314, <i>Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.</i>	516e-f

The Judgment of the Court was delivered by

e S. ABDUL NAZEER, J.— These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity “the NGT Act”) challenging the judgment and order dated 7-5-2015¹ and 4-5-2016² respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short “the Tribunal”).

f 2. The appellants in Civil Appeals Nos. 5016 of 2016 and 8002-03 of 2016 are Respondents 9 and 10 in Original Application No. 222 of 2014 (hereinafter referred to as “Respondents 9 and 10”). The said application was filed by Respondents 1 to 3 herein (hereinafter referred to as “the applicants”). Respondents 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as Respondents 1 to 4 in the application. Respondents 12 and 13 herein were subsequently impleaded in the application (for short “the impleaded respondents”).

g 3. The State of Karnataka has filed Civil Appeals Nos. 4923-24 of 2017, challenging the general condition and Direction (1) contained in the order of the Tribunal dated 4-5-2016². The other appeals have been filed by different entities, who were not parties before the Tribunal challenging the order of the Tribunal dated 4-5-2016² insofar as it directs a buffer/green zone of 75 m in respect of lakes, 50 m in respect of primary Rajakaluves, 35 m in

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1 *Forward Foundation v. State of Karnataka*, 2015 SCC OnLine NGT 5
2 *Forward Foundation v. State of Karnataka*, 2016 SCC OnLine NGT 1409



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case of secondary Rajakaluves and 25 m in case of tertiary Rajakaluves with retrospective effect. According to them, they are adversely affected by the aforesaid condition in the impugned order.

a

4. The applicants filed OA No. 222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short "KIADB") to Respondents 9 and 10 vide Notifications dated 23-4-2004 and 7-5-2004 respectively for setting up of software technology park, commercial and residential complex, hotel and multi-level car parks. The Master Plan formulated by the Bangalore Development Authority (for short "BDA"), identifies the allotted land as "residential sensitive", though the same land was identified in the Draft Master Plan as "protected zone". It was further contended that the revenue map in respect of properties as referred in the land lease agreements has multiple Rajakaluves (storm water drains). The development projects in question sit right on the catchment and wetland area which feeds the Rajakaluves, which in turn drains rainwater into Bellandur Lake. The project will thus encroach two Rajakaluves of 1.38 ac and 1.23 ac each.

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5. The satellite digital images of the area from the year 2000 to 2012 show encroachment upon these Rajakaluves, as well as the manner in which they are covered by the construction. The State Level Expert Appraisal Committee (for short "SEAC"), which was to assist the State Level Environment Impact Assessment Authority (for short "SEIAA"), held its meetings on various dates to examine the project. It had required Appellant 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short "BWSSB") for the project in question. It was also observed that the project lies between Bellandur Lake and Agara Lake. Respondent 9 was also directed to take protective measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11-11-2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

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6. It was alleged that NOC was issued covering an area of 17,404 sq m whereas the built-up area, as noted by SEAC, is 13,50,454.98 sq m. Respondent 9 obtained NOC from BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent 9 had approached the Karnataka State Pollution Control Board (for short "KSPCB") for obtaining clearance, which was granted on 4-9-2012 subject to the fulfilment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by KSPCB to Respondent 9 also contained a condition with regard to obtaining environmental clearance from the competent authority and no construction was to commence until such clearance was granted.

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7. The applicants further contended that Respondent 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of SEAC in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over

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a the ecologically sensitive area of the lake catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities, the applicant submitted that the conversion of land from “protected zone” to “residential sensitive area” is violative of the law. The project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the Rajakaluves. Respondents 9 and 10 started to level the land by filling it with debris, thus causing damage to the drains. The conditions with regard to no disturbance to the storm water drains, natural valleys and buffer area in and around the Rajakaluves have been violated. It has in turn, affected the groundwater table and borewells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is in violation of the Wetlands (Conservation of Management) Rules, 2010 (for short “the 2010 Rules”).

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d 8. It was submitted that SEIAA in its meeting dated 29-9-2012, decided to close the file pertaining to Respondent 10 due to non-submission of requisite information and the application thereof was rejected in November 2012. Despite the rejection, Respondent 10 commenced construction on the project in full swing.

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h 9. The applicants also relied upon the findings of the Joint Legislative Committee, constituted under the Chairmanship of Shri A.T. Ramaswamy in the month of July 2005, which stated that there were 262 waterbodies in Bangalore City in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 km of Rajakaluves have been encroached upon in several places and have become sewage channels. The applicants also relied on the report of the Committee under the Chairmanship of Hon’ble Justice N.K. Patil suggesting immediate remedial action in order to remove encroachments on the lake area and the Rajakaluves and preservation of the lakes in and around Bangalore City. It was further contended that other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore metropolitan area which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tank is not polluted. The Central Government in August 2013 had issued an advisory on conservation and restoration of waterbodies in the urban areas. The applicants claim to have obtained monitoring report of the project by Respondent 5, Ministry of Environment and Forests, through RTI on 21-8-2013. The report dated 14-8-2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that Bellandur Lake is not affected by the construction and operational phase of the project. This approach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.



10. The Lake Development Authority (for short "LDA"), after inspection in the catchment area of Bellandur Lake submitted its report dated 12-6-2013 which confirms that the project will have disastrous impact, including deleterious effect on Bellandur Lake. This report was brought to the notice of KIADB. LDA has also opined that the land should be classified and maintained as sensitive area. KIADB called upon Respondent 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, Respondents 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardising the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 m buffer zone is to be created around the lakes and 50 m buffer zone to be created on either side of the Rajakaluves. It was also pleaded that Respondent 9 had obtained the NOC from BWSSB only with regard to residential units and not for the entire project and that the environmental clearance obtained by Respondent 9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of Respondent 9 alone is approximately 4.5 million litres per day i.e. 135 million litres per month, which is more than what BWSSB supplies to the entire Agaram Ward. The construction of respective projects by Respondents 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of Bellandur Lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the waterbodies.

11. Respondent 9 in its objections contended that it was incorporated with the objective of establishing an information technology park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. It had submitted the proposal to establish such information technology park and other facilities to the State Government and requested for allotment of land for the project. Its proposal was considered in 78th High-Level Committee meeting held on 21-6-2000 and after examining the proposal, it was approved by the Government on 6-7-2000. Before the State High-Level Committee, it had informed that its requirement was 110 ac of land, 25 MW of power from the Karnataka Power Transmission Corpn. Ltd. (for short "KPTCL"), and four lakh litres of water per day from BWSSB. The lands for the project were initially notified vide Notification dated 10-2-2004. Subsequently, the lands were allotted vide letter dated 28-6-2007 for which lease-cum-sale agreement was signed on 30-6-2007. Considering the overall development of the State of Bangalore, this respondent proposed a Mixed Use Development Project consisting of an information



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a technology park, residential apartments, retail, hotel and office buildings with a total built-up area of 13,50,454.98 sq m. The Project was conceived as a zero waste discharge project. The Project is located one-and-a-half kilometres away from the southern side of Bellandur Lake. Towards the north, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the east, lies the project of Respondent 10 and another developer is also developing a project on the western side. It has obtained sanction plan on 4-7-2007 which was renewed from time to time.

b 12. Respondent 9 claims that it has obtained NOC from Airport Authority of India on 9-4-2010. Bharat Sanchar Nigam Ltd., vide its communication dated 16-4-2010, granted clearance for the project construction. BWSSB, vide its communication dated 26-4-2011 issued NOC for portion of the proposed construction to be built. Bangalore Electricity Supply Co. Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental clearance was granted by SEIAA vide communication dated 17-4-2012. The Director General of Police has issued NOC and KSPCB vide order dated 4-9-2012 accorded its consent for construction of the said Project subject to the conditions stated therein. It was further stated that after grant of the environmental clearance on 17-9-2012, the same was published in the leading newspapers *Kannada Prabha* and *The Indian Express* on 12-3-2012 and 14-3-2014 respectively.

e 13. It submitted a modified building plan which was approved by KIADB vide its letter dated 30-8-2012, which was valid up to 10-8-2014. It started the construction of the Project in November 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the environmental clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs 306.73 crores on the Project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.

g 14. Respondent 10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and mala fides. It had submitted a revised proposal in respect of its project in question and to obtain fresh clearance on 31-8-2007 with an investment of Rs 179.22 crores. The State High-Level Committee had cleared the project which was communicated to it on 25-1-2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains



and secondary storm water drains that exist in its properties. It has clearances from various authorities, including Environmental Clearance and consent for establishment.

15. KIADB stated that after possession of the land was handed over to Respondents 9 and 10, one year time was granted for the implementation of the Project which was extended from time to time. The building drawings were approved on 4-7-2007, and the modified building drawings were approved on 26-4-2011 and 30-8-2012 with specific conditions. In its meeting held on 16-7-2013, it was resolved to inform Respondents 9 to fully comply with the Ecology and Environment Rules and to obtain approvals from LDA and KSPCB. LDA vide its letter dated 24-9-2013, had informed KIADB that the construction activity in the catchment area in Bellandur Lake could drastically impact the lake with deleterious effects and asked it to stop construction activity of Respondents 9 and 10. However, the validity of the building drawings was again extended up to 10-8-2014. The Lokayukta on 17-12-2013 had written a letter in respect of complaint filed by the South-East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21-12-2013 to keep in abeyance the approval accorded and even the re-validations of plans. This was also informed to Respondent 9. The Board took a decision which was communicated to Respondent 9 on 2-1-2014, wherein it asked Respondent 9 to stop all construction activities on the allotted lands. The said communication was challenged by Respondent 9 and on the stop-work notice, stay was granted by the High Court of Karnataka. The stop-work notice dated 23-12-2013 issued by Bruhat Bengaluru Mahanagara Palike (for short "BBMP") was also stayed vide order dated 21-1-2014. The proposal submitted by Respondents 9 and 10 had been approved by the State Government. The land allotted to Respondents 9 and 10 does not consist of any Rajakaluves.

16. LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only when certain newspaper reports surfaced during the month of June 2013 and till that time it was in the dark. After the complaints, it inspected Bellandur Lake and Agara Lake on 12-6-2013 and prepared an inspection report. In the report, it was noticed that large-scale construction activities were going on in the catchment area of Bellandur Lake and that there was a change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB vide letter dated 6-7-2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31-8-2013, that Respondent 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23-9-2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it also communicated its objections to KIADB mentioning that construction activity



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a would be in contravention of the directions of the Supreme Court. Despite these warnings, KIADB granted approval to the extension of the building drawings of the project in favour of the project proponents with certain conditions, like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed. Further, the natural sloping pattern of the project site was not to be altered and the lakes and other waterbodies within and/or at the vicinity of the project area should be protected and conserved. Despite the objections, the plans were approved and approvals b were extended from time to time. It has taken a categorical stand that the projects as approved by KIADB would have adverse impact on Bellandur and Agara Lakes.

17. On the basis of the pleadings of the parties, the Tribunal framed the following questions for consideration and determination:

c 17.1. Whether the application filed by the applicants and supported by Respondents 11 and 12, is barred by time and thus, not maintainable?

17.2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?

d 17.3. Whether the present application is barred by the principle of res judicata and/or constructive res judicata?

17.4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of Writ Petitions Nos. 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and

e 17.5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

18. The Tribunal by its order dated 7-5-2015¹ at Annexure A-2, disposed of the applications with the following directions: (*Forward Foundation case*¹, SCC Online NGT para 85)

f "85. ... (1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal inter alia but specifically on the issues stated hereinafter:

g (a) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.

(b) CEO of the Lake Development Authority, Karnataka State.

(c) Chief Town Planner of BBMP, Bangalore.

h (d) Chairman of SEAC which recommended the grant of environmental clearance to the projects in question.

¹ *Forward Foundation v. State of Karnataka*, 2015 SCC OnLine NGT 5



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(e) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.

(f) Dr Siddharth Kaul, former Advisor to MoEF. a

(g) A senior officer from the National Institute of Hydrology, Roorkee.

(2) Member-Secretary of the Karnataka State Pollution Control Board shall act as the Convener of the Committee and would submit the final report to the Tribunal. b

(3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the waterbodies, with particular reference to lakes. b

(4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of Respondents 9 and 10 or by any of the projects in the area in question. c

(5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons. d

(6) The Committee shall substantially notice if any of the conditions of the environmental clearance order in each case of Respondents 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area. e

(7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The Committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of waterbodies. f

(8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore. g

(9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letters dated 4-7-2007 and 22-4-2008 respectively. Further, the Committee would also report whether both Respondents 9 and 10 have installed ETP/STP and have taken full measures for recycling of used water for washing and flushing, etc., in terms of letters h



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dated 11-10-2013 and 3-1-2013, issued by the Karnataka Industrial Area
Development Board to Respondents 9 and 10 respectively.

a (10) In the event, the Committee is of the opinion that the adverse
impacts noticed are redeemable, then what directions need to be issued in
that behalf and the cost involved for achieving the said conservation and
restoration of lakes and waterbodies.

b (11) Till the submission of the report by the Committee and directions
passed by the Tribunal in that regard, both Respondents 9 and 10 are hereby
restrained from creating any third party interests or part with the possession
of the property in question or any part thereof, in favour of any person.

c (12) The Committee shall submit its report to MoEF and to this
Tribunal as expeditiously as possible and in any case not later than three
months from today. During that period we restrain MoEF, SEIAA and/or any
public authority from sanctioning any construction project on the wetlands
and catchment areas of the waterbodies in the city of Bangalore.

(13) The Committee shall report if the project proponents are proposing
to discharge their trade or domestic effluents into the lake or any of the
waterbodies in and around of the area in question.

d (14) For the reasons stated in the judgment Respondent 9 is liable and
shall pay a sum of Rs 117.35 crores, while Respondent 10 shall pay a sum
of Rs 22.5 crores respectively being 5% of the project value, within two
weeks from today. The said amount would be paid to KSPCB, which shall
maintain a separate account for the same and would spend this amount for
environmental and ecological restoration, restitution and other measures to
be taken to rectify the damage resulting from default and non-compliance
e to law by the project proponent in that area, after taking approval of the
Tribunal.

f (15) We make it clear that the said respondents would not be entitled
to pass on the amount in terms of Direction 14, onto the purchasers
because this liability accrues as a result of their own intentional defaults,
disobedience of law in force and carrying on project activities and
construction illegally and unauthorisedly.”

19. Feeling aggrieved by the said order, Respondents 9 and 10 filed Civil
Appeals Nos. 4829 and 4832 of 2015 before this Court. This Court by its order
dated 20-5-2015³ passed the following order: [*Core Mind Software & Services
(P) Ltd. case*³, SCC OnLine SC paras 2-5]

g “2. One of the main contentions raised by the appellants in these
appeals is that though the Tribunal had heard the matter only on preliminary
issues and no arguments on merit were advanced, final judgment decides
the merits of the disputes as well and above all a penalty of Rs 117.35
crores against the original Respondent 9 (the appellant in CA No. 4832 of

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3 *Core Mind Software & Services (P) Ltd. v. Forward Foundation*, 2015 SCC OnLine SC 1778



2015) and Rs 22.5 crores against original Respondent 10 (the appellant in CA No. 4829/2015) is imposed.

3. On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing. a

4. With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject-matter of challenge. However, it is not necessary to deal with the same at this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment¹ can also be raised. b

5. The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty. Mr Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties.” c

20. In relation to Issue 5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 6-4-2016⁴ on these applications as under: (*Forward Foundation case*⁴, SCC OnLine NGT) d

“MA No. 603 of 2015 and MA No. 596 of 2015

These applications have been filed on behalf of Respondents 9 and 10 respectively. It is not necessary for us to refer to any details in view of the directions that we propose to issue in this case. e

Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon’ble Supreme Court of India primarily on the question of imposition of environmental compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf. f

With the above directions MA No. 603 of 2015 and MA No. 596 of 2015 stand disposed of without any order as to cost.” g

21. It is evident from the above orders that the Tribunal had granted opportunity to the parties to address it “limited question”, as aforementioned. h

¹ *Forward Foundation v. State of Karnataka*, 2015 SCC OnLine NGT 5

⁴ *Forward Foundation v. State of Karnataka*, 2016 SCC OnLine NGT 637



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The Tribunal after hearing the parties passed an order dated 4-5-2016² as under:
(*Forward Foundation case*², SCC OnLine NGT)

- a **“General conditions or directions**
- b 1. In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—
- c (i) In the case of *lakes*, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.
(ii) 50 m from the edge of the primary Rajkulewas.
(iii) 35 m from the edges in the case of secondary Rajkulewas.
- d (iv) 25 m from the edges in the case of tertiary Rajkulewas.
- e This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.
- f All the offending constructions raised by Respondents 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these respondents — project proponent would be permitted to raise any construction in this zone.
- g All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore.
- h 2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified by CPCB/MoEF.
3. Bangalore City receives treated potable water of 1360 MLD from River Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of groundwater exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the

2 *Forward Foundation v. State of Karnataka*, 2016 SCC OnLine NGT 1409



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BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

(i) At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a prerequisite for grant of EC.

(ii) All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.

(iii) Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

Specific conditions/directions for Respondent 9

In addition to the above directions which should be equally part of EC condition in respect of Respondents 9 and 10, following specific conditions shall apply to Respondent 9:

(i) Reclaimed area of the lake to the extent of 3 ac 10 guntas in Survey No. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent 9 to the authorities concerned immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.

(ii) In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the Rajkalewa should be maintained as green belt.

(iii) Several irrigation canals or tertiary Rajkalewas taking off from the Agara tank were passing through the area of Respondent 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between Agara Lake and Belandur Lake, Respondent 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.

(iv) The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic metres in the depth range of 0 to 9 m. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by



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SEIAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur Lake.

a (v) The kharab land identified by Revenue Department admeasuring 1 ac 2 guntas should be demarcated and maintained separately as green belt.

b (vi) The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.

c (vii) In view of the heavy traffic load in the adjoining Sarjapur Road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

* * *

d 10. Though, at the time of hearing prior to passing of the judgment, we had heard the parties on all aspects but still we have provided rehearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent 9 calls for no variation and Respondent 9 should be called upon to pay the said amount of Rs 117.35 crores determined under the judgment prior to commencement of any project activity at the site. Respondent 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

e Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent 10 and the fact that the remedial measures can more effectively be taken by Respondent 10, we reduce environmental compensation payable by Respondent 10 to Rs 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

f **General directions**

g 1. We direct SEIAA, Karnataka to issue amended order granting environmental clearance within four weeks from today incorporating all the conditions stated in this judgment and such other conditions as it may deem appropriate in light of this judgment and inspection note of the expert members. The project proponents would be permitted to commence activity only after issuance of amended environmental clearance order.

h 2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting environmental clearance, this judgment, notification of 2006 and other laws in force.



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3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the authorities concerned are directed to incorporate such conditions in the projects to whom environmental clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other lakes/wetlands in the city of Bengaluru. a

4. We hereby direct the State of Karnataka to submit a proposal to MoEF for demarcating wetlands in terms of the Wetland Rules, 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law. b

5. Both Respondents 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said respondents. c

6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent 9 is concerned. Admittedly the respondent has been allotted and is in possession of land admeasuring 63.94 ac, though environmental clearance has been granted for 2,92,636.03 sq m which is equivalent to 72.22 ac. For this reason alone, environmental clearance cannot be given effect to. While issuing the amended environmental clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent 9 to submit a fresh layout plan and the entire project may be revised in accordance with law. d

7. Both the respondents (project proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended environmental clearance that would be issued. e

8. The amount of environmental compensation will be deposited prior to issuance of amended environmental clearance. f

With the above directions, Original Application No. 222 of 2014 and Miscellaneous Applications Nos. 596 of 2016 and 603 of 2016 are finally disposed of while leaving the parties to bear their own costs.” g
(emphasis in original)

22. Appearing for the appellants in CA No. 5016 of 2016, Shri Mukul Rohatgi, learned Senior Counsel, has submitted that the State Government in exercise of the power conferred under the Karnataka Industrial Areas Development Act (for short “the KIAD Act”) declared the land in question as an industrial area. Thereafter, the land in question has been acquired by the State Government in the year 2004. Following the acquisition, on 28-6-2007, the land was allotted to the appellant by KIADB. SEIAA granted environmental clearance which was followed by public notice concerning clearance on 14-3-2012. h



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Neither the allotment of land nor the environmental clearance was challenged before the Tribunal. Thus, none of the statutory decisions or processes, are the cause of action for the purpose of the application. The averments made in the original application does not satisfy or meet the requirements of Sections 14(1) and (3) of the NGT Act and the original application does not spell out the cause of action relevant for the purpose of the said provision. Since the statutory processes and clearances could not have been challenged for being hit by Section 14(3), the construction activities which were the alleged cause of action could not have been challenged. Therefore, the Tribunal ought to have held that the application was not maintainable.

23. Further, the application is barred by limitation. Though environmental clearance was granted on 17-2-2012 and it was published in two leading newspapers on 12-3-2012 and 14-3-2012, modified plan was approved by KIADB on 30-8-2012, the application ought to have been filed within six months from the date on which cause of action for the dispute first arose in terms of Section 14 of the NGT Act. The present application has been filed in March 2014 which was much beyond the prescribed period of limitation. No application seeking condonation of delay has been filed accompanying the application. Hence, the Tribunal ought to have dismissed the application on the ground that as it is barred by time.

24. It was also argued that buffer zone laid down by NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22-6-2007. This is contrary to the Karnataka Town and Country Planning Act, 1961 (for short "the Planning Act").

25. Shri Neeraj Kishan Kaul and Shri R. Venkataramani, learned Senior Counsel appearing for the appellants, in this case have also made similar submissions. It was argued that the direction imposing penalty/compensation is illegal on the ground that the applicants did not allege that the construction work of the project has caused environmental wrong. No wrong or injury either to Bellandur Lake waterbody or to Bellandur Lake area, has been alleged and established. As such, there is no question of any enquiry relating to imposition of penalty or any compensation.

26. Shri Maninder Singh, learned Senior Counsel appearing for the appellants, in CAs Nos. 5016 and 10995 of 2016, while supporting the submissions made by Shri Rohatgi, has submitted that the appellant has obtained sanction and approvals for the project from the competent authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible i.e. 30-9-2013. Hence, imposing penalty/compensation is entirely unsustainable.

27. The learned Advocate General, Shri Udaya Holla, appearing for the appellant State of Karnataka in CAs Nos. 4923-24 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of NGT to the extent of setting aside the buffer zone in respect of waterbodies and drains specified in



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the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and Rajakaluves. It is also aggrieved by the order of NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or vires of any statutory provision/regulation. Therefore, the order of NGT to that extent is liable to be set aside.

28. The learned Senior Counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 m buffer zone around the lakes and a buffer zone of 50 m, 25 m and 15 m from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 m around the lake and 50, 35 and 25 m respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by NGT is without any legal and scientific basis and has the effect of amending the Revised Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan.

29. On the other hand, Shri Sajan Poovayya, learned Senior Counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in CAs Nos. 5016 and 8002-03 of 2016 (Respondents 9 and 10). He has no objection to set aside the order insofar as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of NGT in para 1 of the order dated 4-5-2016² except the directions issued against Respondents 9 and 10. In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeals Nos. 4923-24 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by Respondents 9 and 10.

30. Shri Poovayya has strongly opposed the submissions made by the learned Senior Counsel appearing for the appellants in CA No. 5016 of 2016 and CAs Nos. 8002-03 of 2016. It is submitted that the Tribunal is a specialised body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act. Section 14 provides for the jurisdiction over all civil cases where a substantial question relating to environment is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. The Tribunal has the jurisdiction under Section 15(1)(a) of the NGT Act to provide relief

² *Forward Foundation v. State of Karnataka*, 2016 SCC OnLine NGT 1409



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a and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Sections 15(1)(b) and 15(1)(c), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas, as the Tribunal may think fit. Sections 15(1)(b) and 15(1)(c) have not been made relatable to enactment specified in Schedule I of the Act. Section 15(1)(c) is an entire island of power and jurisdiction read with Section 21 of the Act. He submits that whenever ecology is being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment. The limitation provided in Section 14 is period of six months from the date on which cause of action first arose whereas in Section 15 it is five years. Therefore, the petition is not barred by time.

c 31. He has further submitted that the provisions of Section 33 shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force. This gives the Tribunal overriding powers over anything inconsistently contained in the KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short "the KMC Act"). Therefore, the Tribunal while providing for restoration of environment in an area can specify buffer zone around specific lakes and waterbodies in contravention with zoning regulation.

e 32. Regarding limitation, he has submitted that the application filed by Respondents 1 to 3 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining sensitive area in its natural condition so that ecological balance of the area is not disturbed. Therefore, the petition was under Section 15 of the Act and it can be filed within five years from the date on which the cause for such compensation or relief first arose.

f 33. It was further submitted that right to appeal under Section 22 is not a vested right unless provided by statute. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Section 22 of the Act provides for an appeal on the ground specified in Section 100 of the Code of Civil Procedure, 1908 (for short "CPC"). Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. In the instant case, the appeal does not involve any substantial question of law hence it has to be dismissed in limine. He has taken us through various materials placed on record in order to substantiate that the direction passed and penalty imposed by the Tribunal upon to project proponents are sustainable. He prays for dismissal of the appeals.

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34. We have carefully considered the submissions of the learned counsel of the parties and perused the materials placed on record.

35. Before considering the other contentions of the learned counsel for the parties, let us first consider the scope of enquiry in appeals filed under Section 22, which is as under: a

“22. *Appeal to Supreme Court.*—Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908): b

Provided that the Supreme Court may entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal.”

36. It is settled that there is no vested right of appeal unless the statute so provides. Further, if a statute provides for a condition subject to which the appropriate appellate court can exercise jurisdiction, the court is under an obligation to satisfy itself whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfilment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided under Section 22 is to be read subject to the conditions provided therein. c
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37. Section 22 provides for an appeal to the Supreme Court on the grounds specified in Section 100 CPC. Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the appellate court. The scope of appeal under Section 22, therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in *Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.*⁵ This Court has laid down the test as under: (AIR p. 1318, para 6) e

“6. ... The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.” f
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38. It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not ipso facto permit the appellants to agitate their appeal to h

⁵ 1962 Supp (3) SCR 549 : AIR 1962 SC 1314



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seek reappraisal of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale reappraisal of evidence and the factual matrix that has been considered by the Tribunal is *ex facie* impermissible under Section 22. There cannot be fresh appreciation or reappraisal of facts and evidence in a statutory appeal under this provision.

a 39. The first question raised by the learned counsel is in relation to the maintainability of the application before the Tribunal.

b 40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.

c 41. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

d 42. The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Sections 15(1)(b) and 15(1)(c), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Sections 15(1)(b) and (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

e 43. Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardised, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

f 44. The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore*

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*Lal v. ESI Corpn.*⁶, para 17.) The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialised Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment. a

45. Section 15 of the Act provides power and jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Sections 14 and 15 as self-contained jurisdictions. b

46. Further, Section 18 of the Act recognises the right to file applications each under Section 14 as well as Section 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the scheduled enactments, cumulatively, leave no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. c

47. Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, the Planning Act, the Karnataka Municipal Corporations Act, 1976 (the KMC Act); and the Revised Master Plan of Bengaluru, 2015 (RMP). A Central legislation enacted under Entry 13 of Schedule VII List I of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for restoration of environment in an area, can specify buffer zones around specific lakes and waterbodies in contradiction with zoning regulations under these statutes or RMP. d

48. The second question raised by the appellants is that the petition is barred by time. According to the appellants, environmental clearance was granted to Respondent 9 on 17-2-2012 for which notice was published in the leading newspaper on 12-3-2012 and 14-3-2012. Modified building plan was approved on 30-8-2012, which was followed up to 10-8-2014. Similar events had taken place in regard to the project of Respondent 10 who had been e

⁶ (2007) 4 SCC 579 : (2007) 2 SCC (L&S) 1 f



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granted environmental clearance on 30-9-2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.

49. OA No. 222 of 2014 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's (LDA) Report dated 12-6-2013 and the Ministry of Environment, Forests and Climate Change (MoEF) Monitoring Committee Report dated 14-8-2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

50. In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well-settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.

51. Shri R. Venkataramani, learned Senior Counsel, appearing for the appellant in CA No. 5016 of 2016 has submitted that the constructions had not commenced before the grant of environment clearance. The inspection report dated 11-1-2012 of the Chairman of KSPCB observes that "no construction" had commenced on the date of inspection. This report cannot be overlooked on the basis of some dumping of debris which could not be attributed to the appellant. He has pointed out the report of the Committee appointed by the Tribunal in the month of August 2015, wherein it was stated that "it started construction after obtaining clearance". In this regard he has also taken us through various documents placed on record and submits that there is absolutely no justification in imposing monitoring penalty/compensation without assessment of impact.

52. The Tribunal has pointed out on the basis of the Committee report of August 2015, that the appellant had encroached 3 ac 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee



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constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes and wetland being adversely affected by these projects. That is why, the Tribunal has observed¹ as under: (*Forward Foundation case*¹, SCC OnLine NGT para 72)

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“72. In light of the above scope of the project and records before the Tribunal and the defaults on the part of the project proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:

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(1) The construction of both the projects had started prior to the grant to environmental clearance.

(2) The EIA Notification of 2006 requires that without grant of environmental clearance, no project can commence its activity. This restriction applies not only to operationalisation of the project but even for the purposes of establishment.

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(3) Revenue map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.

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(4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.

(5) Google satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13-11-2000 and 23-11-2010. Secondly, it reveals the excavation work carried out by Respondents 9 and 10 commenced prior to obtaining environmental clearance.

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(6) Restriction in regard to extraction of groundwater was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.

(7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to lakes and other waterbodies within and/or at the vicinity of the project area to be protected and conserved. The inspection report by MoEF clearly notes that Conditions (xxxix) and (xl) in the environmental clearance of Respondent 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase.”

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¹ *Forward Foundation v. State of Karnataka*, 2015 SCC OnLine NGT 5



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53. In para 81, the Tribunal has observed as under: (*Forward Foundation case*¹, SCC OnLine NGT para 81)

a "81. ... Another very important aspect which cannot be overlooked by the Tribunal is with regard to Respondents 9 and 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with Conditions (xxxix) and (xl) (or alike conditions) in the order granting the environmental clearance. This has even been noticed by MoEF in its monitoring report dated 14-8-2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof."

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c **54.** In our view, the findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee's report and the inspection note of the expert members. Therefore, the directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity.

d **55.** We are also of the view that it is impermissible for the appellants to seek a factual review through the methodology of reappreciation of factual matrix by this Court under Section 22 of the NGT Act.

e **56.** Shri R. Venkataramani, learned Senior Counsel has also raised a subsidiary issue relating to res judicata. According to him, Respondents 12 and 13 filed Writ Petitions Nos. 3656-57 of 2013 seeking similar reliefs in a representative capacity. The issues raised therein are same as those canvassed in the application before the Tribunal. The reliefs sought for are essentially the same. Hence, the applications are barred by the principle of res judicata.

f **57.** The Tribunal has answered this issue in paras 47 to 51 of the order. There was no dispute insofar as filing of the writ petitions is concerned. However, the parties are not common nor the issues in application and the writ petitions are directly and substantially the same. After examination of the pleadings, the Tribunal has recorded a finding of fact that there is no commonality of a cause of action or likelihood of a conflict between the judgments. The prayers and the genesis of the respective proceedings are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment ecology and its restoration while the proceedings before the High Court relate to entirely different issues with acquisition of land, its allotment and transfer to the third party. These issues in both the proceedings are neither substantial nor materially identical.

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¹ *Forward Foundation v. State of Karnataka*, 2015 SCC OnLine NGT 5



58. After elaborately considering this question, the Tribunal has concluded as under: (*Forward Foundation case*¹, SCC OnLine NGT para 51)

“51. ... For these reasons, we find no merit in this contention of Respondents 9 and 10. The purpose of the doctrine of *res judicata* is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of reagitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon’ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality insofar as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon’ble High Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The “cause of action” in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor *constructive res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of “judicial propriety”, because of the writ petitions pending before the Hon’ble High Court of Karnataka.”

59. We do not find any error in the aforesaid conclusion of the Tribunal. We are of the view that the Tribunal was justified in holding that the objections taken by Respondents 9 and 10 do not satisfy the basic ingredients to attract the application of *res judicata* or *constructive res judicata*.

60. The State of Karnataka is aggrieved by the following offending portion of the order dated 4-5-2016²: (*Forward Foundation case*², SCC OnLine NGT)

“1. In view of our discussion in the main judgment, we are of the considered view that the fixation of distance from waterbodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50 m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25 m in the case of secondary Rajkulewas and 15 m in the tertiary Rajkulewas in contradiction to the 30 m in the case of lake which is certainly much bigger waterbody and its utility as a waterbody/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents 9 and 10 from Rajkulewas, waterbodies and wetlands shall be maintained as below—

(i) In the case of lakes, 75 m from the periphery of waterbody to be maintained as green belt and buffer zone for all the existing waterbodies i.e. lakes/wetlands.

1 *Forward Foundation v. State of Karnataka*, 2015 SCC OnLine NGT 5

2 *Forward Foundation v. State of Karnataka*, 2016 SCC OnLine NGT 1409



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- (ii) 50 m from the edge of the primary Rajkulewas.
- (iii) 35 m from the edges in the case of secondary Rajkulewas.
- a (iv) 25 m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

- b All the offending constructions raised by Respondents 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these respondents — project proponent would be permitted to raise any construction in this zone.

- c All authorities particularly Lake Development Authority shall carry out this operation in respect of all the waterbodies/lakes of Bangalore.”
(emphasis in original)

- d 61. We have already noticed that Shri Poovayya has no objection to set aside the aforesaid impugned portion of the order insofar as the appellants in all the appeals except the appeals filed by Respondents 9 and 10 are concerned. The aforesaid portion of the order contains not only general directions but also certain directions against Respondents 9 and 10. Therefore, only that portion of the order which does not pertain to Respondents 9 and 10 needs to be quashed.

62. In the light of the above discussion, we pass the following order:

- e 62.1. Civil Appeal No. 5016 of 2016 and Civil Appeals Nos. 8002-03 of 2016 filed by the appellant-Respondents 9 and 10 are hereby dismissed. The impugned judgment and order insofar as the appellant-Respondents 9 and 10 are concerned is sustained.

- f 62.2. All the other appeals are hereby allowed and Direction/Condition (1) in the order dated 4-5-2016² is hereby set aside except the direction issued against Respondents 9 and 10.

63. There will be no order as to costs.

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2 Forward Foundation v. State of Karnataka, 2016 SCC OnLine NGT 1409



526 CENTRAL... ASSOCIATION vs. STATE OF MAH. [2017(1) Mh.L.J.]

views expressed by the Delhi High Court in the case of *Delhi State Industrial and Infrastructure Development Cop. Ltd. vs. Integrated Techno System Pvt. Ltd. and anr.* (supra). The petition is devoid of merits and is accordingly dismissed. No order as to costs.

46. At this stage, learned counsel for the petitioner seeks continuation of the ad interim order passed by this Court. The learned arbitrator shall not publish his award for a period of six weeks from today.

Petition dismissed.

NATIONAL GREEN TRIBUNAL : JURISDICTION OF
(*B. P. Dharmadhikari and A. S. Chandurkar, JJ.*)
CENTRAL INDIA AYUSH DRUGS MANUFACTURERS
ASSOCIATION, NAGPUR and others *Petitioners.*

vs.

STATE OF MAHARASHTRA and others *Respondents.*

(a) **Biological Diversity Act, 2002 (18 of 2003), SS. 23, 24, 50 and Biological Diversity Rules, 2004, R. 17, National Green Tribunal Act (19 of 2010), SS. 14, 16, 19, 2(1)(c), (m) and Constitution of India, Art. 226 — Constitutionality of Act — National Green Tribunal — Jurisdiction of — Petitioner sought declaration that Rule 17 of Biological Diversity Rules, does not apply to Indian entities or body corporate — In view of section 14 of National Green Tribunal Act read with section 2(1)(c) and (m), it is clear that civil cases which can be considered by National Green Tribunal must affect environment — If it is not affecting environment, Tribunal will not have jurisdiction — Relief sought does not directly or indirectly affect environment — Furthermore scheme of National Green Tribunal Act does not permit National Green Tribunal to decide upon vires of any of enactment which confer appellate or other jurisdiction upon it — It also does not empower it to examine validity of any Rules or Regulations made under these enactments. (2012) 8 SCC 32, Rel. (Paras 24 and 27)**

(b) **National Green Tribunal Act (19 of 2010), S. 14(1), (2) Sch. I — National Green Tribunal — Jurisdiction of — Perusal of section 14, reveals that civil cases covered under section 14(1) are referred to as disputes in sub-section (2) — These disputes must be civil in nature, must arise out of implementation of enactments specified in Schedule I and substantial question relating to environment must be involved therein. (Para 21)**

(c) **National Green Tribunal Act (19 of 2010), S. 14 — National Green Tribunal — Jurisdiction of — Issue of enforcement of legal right relating to environment or substantial question relating to environment must surface and form subject-matter of civil case — Then only National Green Tribunal will have jurisdiction under section 14. (Para 21)**

(d) **National Green Tribunal Act (19 of 2010), S. 2(1)(m) — “Substantial question relating to environment” — Scope — Definition of — Section 2(1)(m) of National Green Tribunal Act defines “substantial question**

W. P. No. 6360 of 2015 decided on 28-9-2016. (Nagpur)



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relating to environment” — Definition is wide and inclusive — If there is direct violation of specific statutory environmental obligation or then environmental consequences relating to specific activity or point source of pollution, same are covered in sweep of this inclusive definition. (Para 22)

(e) National Green Tribunal Act (19 of 2010), S. 2(1)(c) — Definition of “Environment” — Inclusive definition — Natural elements mentioned in definition and impact upon it of living creatures or property, constitute environment — This inter-relationship between these elements and other factors stipulated therein together, jointly and severally constitute environment. (Para 23)

For petitioners : S. V. Manohar, Senior Advocate with Akshay Naik

For respondent Nos. 1 and 2 : S. M. Bahirwar

For respondent Nos. 3 and 4 : Aditya Sondhi, Senior Advocate with
Mrs. Anjali Joshi

List of cases referred :

1. *Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India and others, (2012) 8 SCC 326* (Paras 4, 20, 26)
2. *Indian Oil Corporation Ltd. vs. Nagpur Municipal Corporation and another, 2012(1) BCR 526* (Paras 5, 25)
3. *Committee of Management and another vs. Vice Chancellor and others, (2009) 2 SCC 630* (Para 5)
4. *L. Chandrakumar vs. Union of India and others, 1997(2) Mh.L.J. (S.C.) 198 = (1997) 3 SCC 261* (Paras 6, 20, 26)
5. *Anil Hoble vs. Kashinath Jairam Shetye and others, 2015 MhLJ Online 22 = 2015 SCC Online Bom. 3699* (Para 18)
6. *M/s Manglam Warehousing Pvt. Ltd. vs. Rajasthan State Pollution Control Board and others, 2014 SCC Online Raj. 4699* (Para 18)
7. *Alpha Chem and another vs. State of U. P. and others, 1991 Supp. (1) SCC 518* (Paras 19, 25)

JUDGMENT ON PRELIMINARY OBJECTION

B. P. DHARMADHIKARI, J. :— By this writ petition, filed under Article 226 of the Constitution of India, the petitioners seek a declaration that Rule 17 of the Biological Diversity Rules, 2004 does not apply to the Indian entities or body corporates. In the alternate, it is prayed that to the extent the said Rule envisages equitable sharing of benefits by the Indian entities, it should be declared *ultra vires* to the provisions of the Biological Diversity Act, 2002 and, therefore, unconstitutional.

Further declaration sought is, that the Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014 (hereinafter referred to as “the Regulations” for short) apply only to transactions involving non-Indian entities and the same do not apply to the Indian entities not trading any biological resources with non-Indian entities.

By amendment, a prayer to declare said regulations *ultra vires* to sections 23 and 24 of the Biological Diversity Act, 2002 (hereinafter referred to as “the B. D. Act” for short) is also sought. The other prayers challenge orders and notices served upon the petitioners in the light of this provision.



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2. This Court has, on 2-12-2015 while issuing notices in the matter, restrained the respondents from taking any coercive action.

3. We have heard learned Senior counsel Shri S. V. Manohar with Shri Akshay Naik, learned counsel for the petitioners, learned counsel Shri S. M. Bahiware for respondent Nos. 1 and 2, and learned Senior counsel Shri Aditya Sondhi with Mrs. Anjali Joshi, learned counsel for respondent Nos. 3 and 4.

4. Learned Senior counsel Shri Aditya Sondhi for respondent Nos. 3 and 4 has raised a preliminary objection. According to him, the present grievance in writ petition should be raised before the National Green Tribunal in view of provisions contained in section 14 of the National Green Tribunal Act, 2010. (hereinafter referred to as "the N. G. T. Act" for short) He has invited our attention to provisions of sections 14, 16, 18, 19, and also to Schedule-I thereto of the N. G. T. Act. He draws support from the judgment of the Hon'ble Apex Court in the case of *Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India and others*, (2012) 8 SCC 326, particularly paragraph Nos. 40 and 41, to urge that challenges of such nature can be looked into by the National Green Tribunal and, hence, this Court should not entertain the petition. He submits that all civil disputes, in which question of implementation of the enactments specified in Schedule-I arises, are exclusively triable by the National Green Tribunal. There is no challenge before this Court to any provision contained in the N. G. T. Act or Rules framed thereunder. The challenge is to subordinate legislation framed under the B. D. Act and, hence, section 14 of the N. G. T. Act has to apply. He has attempted to draw assistance from order dated 2-12-2013, passed by the Division Bench of the Karnataka High Court, in Writ Petition No. 41532 of 2012.

5. Learned Senior counsel Shri S. V. Manohar for the petitioners, in reply, relies upon the judgment of the Division Bench of this Court in the case of *Indian Oil Corporation Ltd. vs. Nagpur Municipal Corporation and another*, 2012(1) BCR 526 and the judgment of the Hon'ble Apex Court in the case of *Committee of Management and another vs. Vice Chancellor and others*, (2009) 2 SCC 630. According to him, when there is challenge to *vires* of any Act or Rule, such a Tribunal does not possess jurisdiction to look into it. He contends that an appeal to the National Green Tribunal is provided under section 52-A of the B. D. Act and that section only prescribes a form of appeal. Section 14 of the N. G. T. Act is not a substantive provision which confers any other jurisdiction upon the National Green Tribunal independent of seven enactments mentioned in Schedule-I. If Schedule-I Enactments provide for a channel of grievance redressal, which enables the party to approach the National Green Tribunal, then only various provisions of the N. G. T. Act are attracted. In this situation, as *vires* of Rules or Guidelines/Regulations could not have been looked into by any authority functioning under the B. D. Act, same also cannot be looked into by the Tribunal constituted under the National Green Tribunal Act, 2010. Learned senior counsel Shri S. V. Manohar, therefore, prays for dismissal of preliminary objection, and prays to entertain the petition on merits.

6. In brief reply, learned Senior counsel Shri Aditya Sondhi for respondent Nos. 3 and 4 invites our attention to the judgment of the Seven Judges Bench of



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the Hon'ble Apex Court in the case of *L. Chandrakumar vs. Union of India and others*, 1997(2) Mh.L.J. (S.C.) 198 = (1997) 3 SCC 261. He presses paragraph Nos. 90 and 93 into service to submit that when such Tribunals are constituted, idea is to reduce frivolous litigation in the High Courts. Hence, the present prayers can also be examined by the National Green Tribunal, as *vires* or subordinate legislations are to be examined in the light of parent enactment i.e. the B. D. Act. He places emphasis on the fact that the National Green Tribunal is not constituted and functioning under the B. D. Act. He submits that, in this situation, the National Green Tribunal is not prohibited from examining the challenge as it arises under B. D. Act and relates to its implementation.

7. It will be appropriate to briefly examine seven enactments which are included in Schedule-I of the National Green Tribunal Act, 2010. The National Green Tribunal Act, 2010 has received assent of the Hon'ble President on 2-6-2010 and has been brought into force from 18-10-2010.

8. Section 28 of the Water (Prevention and Control of Pollution) Act, 1974 provides for an appeal against an order made by the State Board. The appellate authority is to be prescribed and constituted by the State Government. As per sub-section (2) of section 28, the appellate authority is to consist of a single person or three persons. Section 29 confers revisional jurisdiction of the State Government. It can be exercised *suo motu* or on an application made to it by the aggrieved party. Section 33-B has been added by amendment. It provides for an appeal to the National Green Tribunal against the appellate adjudication or revisional adjudication or directions issued under section 33-A. This section has been added w.e.f. 18-10-2010.

9. Section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 prescribes an appeal by any person or local authority against an order of assessment to such authority as may be prescribed by the Rules made under the said Act. Section 13-A has been added w.e.f. 18-10-2010, and it allows further appeal to the National Green Tribunal.

10. The Forest (Conservation) Act, 1980, vide its section 2-A, provides for an appeal to the National Green Tribunal against an order, or a decision of the State Government or other authority made under section 2 of that Act. This section 2-A has been added w.e.f. 18-10-2010.

11. The Air (Prevention and Control of Pollution) Act, 1981, vide its section 31, provides for an appeal against an order of the State Board to the appellate authority, as the State Government may constitute. Section 31-A enables the Board to issue certain directions. Section 31-B allows further challenge to the adjudication by the appellate authority before the National Green Tribunal. This section has been added w.e.f. 18-10-2010.

12. The Environment (Protection) Act, 1986, vide its section 5-A, provides for an appeal to the National Green Tribunal against directions issued under section 5 of the said act. This section 5-A has been added w.e.f. 18-10-2010.

13. The Public Liability Insurance Act, 1991, enables Collectors to award relief under section 7. Section 13, enables the Central Government or the person authorized by it to move an application to the Courts for restraining owner from

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handling hazardous substances. Section 12, confers powers on the Central Government to issue such directions, in writing, as it may deem fit for the purposes of the said Act. This enactment does not provide for any remedy before the National Green Tribunal.

14. The B. D. Act with which we are concerned in the present matter, vide its section 50, provides procedure for settlement of disputes between the State Biodiversity Boards and the National Biodiversity Authority. An appeal can be filed to the Central Government if a dispute is between the State Biodiversity Boards, the Central Government shall refer the same to the National Biodiversity Authority.

Section 52, enables aggrieved persons to challenge determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board by filing an appeal to the High Court. However, this provision subsisted, under section 52-A, on 18-10-2010. Since then, by virtue of section 52-A, an appeal against such determination or an order is to be filed before the National Green Tribunal.

15. The provisions of sections 14, 16, and 18 of the N. G. T. Act need to be construed in this background.

16. Section 14 of the N. G. T. Act, empowers the Tribunal to settle disputes. All civil cases specified in sub-section (1) thereof are amenable to its jurisdiction and sub-section (2) specifically provides for all disputes arising from questions referred to in sub-section (1) are to be heard and settled by it. An application for adjudication of such disputes cannot be entertained by the Tribunal, if it is made beyond a period of six months from the date of cause of action. It has been given power to condone delay of period not exceeding 60 days. Section 15 points out relief, compensation and restitution which Tribunal is empowered to grant under section 15(3). Application for grant of any compensation or relief or restitution of property or environment under section 15, cannot be entertained by the Tribunal, if it is not made within a period of 5 years from the date on which cause therefor first arose. Again it has been given power to condone delay for a period not exceeding 60 days. Under section 16 Appellate jurisdiction of National Green Tribunal has been specified. It can entertain an appeal filed by a person aggrieved against 10 orders as specified therein, which include enactments mentioned in Schedule-I of the N. G. T. Act. Appeal is required to be filed by the aggrieved person within a period of 30 days, and the Tribunal can condone delay of a period not exceeding 60 days. Under section 17, if death or injury to any person (other than a workman) or damage to any property or environment has resulted from an accident or adverse impact of any activity or operation or process, under any enactment specified in Schedule-I, the person responsible for it has to give such relief or pay compensation, as specified in section 17(1). Section 18 deals with the procedure for filing an application or appeal to the Tribunal.

17. Section 18 of the N. G. T. Act specifies that an application under sections 14 and 15 or an appeal under section 16 thereof has to be made in such a form or has to contain such particulars and should be accompanied by such document and such fees, as may be prescribed by Rules framed under the said



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Act. Sub-section (2) of section 18 provides for an application for grant of relief of compensation or settlement of dispute to be made by a person stipulated therein. As per sub-section (3) such application or appeal is to be decided expeditiously by the Tribunal and effort is to be made to adjudicate it finally within 6 months. Section 19 specifies that the Tribunal is not bound by the procedure laid down by Civil Procedure Code, but, is guided by the principles of natural justice. Proceedings before the Tribunal are deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purpose of section 196 of Indian Penal Code. Tribunal is deemed to be a Civil Court for the purpose of section 195 and Chapter XXVI of Criminal Procedure Code, 1973. Section 20 obliges the Tribunal to apply principles of sustainable development, precautionary principle and polluter pays principle, while adjudicating the proceedings before it. Section 21 requires it to take decision by majority. Section 22 provides for an appeal to Supreme Court.

18. Discussion above therefore, shows that appellate jurisdiction is conferred upon National Green Tribunal under various enactments as stipulated in section 16, read with Schedule-I of the N. G. T. Act, and against certain other orders as stipulated therein. But, then it is apparent that the appellate jurisdiction is distinct from the jurisdiction under section 14 and section 15 thereof. This is also seen in a judgment delivered by the Division Bench of this Court reported at 2015 MhLJ Online 22 = 2015 SCC Online Bom. 3699, *Anil Hoble vs. Kashinath Jairam Shetye and others* and a judgment delivered by Single Judge of Rajasthan High Court reported at 2014 SCC Online Raj. 4699, *M/s Manglam Warehousing Pvt. Ltd. vs. Rajasthan State Pollution Control Board and others*.

19. In 1991 Supp. (1) SCC 518, *Alpha Chem and another vs. State of U. P. and others*, the Hon'ble Apex Court has held that the challenge to constitutionality of a statute is maintainable under Article 226 or Article 32 of the Constitution of India and it is not open in proceedings before authorities constituted under a statute itself or even in appeal or revision before the High Court from such proceedings. These observations have been made while considering the challenge to section 4-A of the U. P. Sales Tax Act.

20. In judgment reported at (2012) 8 SCC 326, *Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India and others*, in paragraph No. 14 the provisions of N. G. T. Act have been looked into by the Hon'ble Apex Court and it is laid down that environmental issues and matters covered under N. G. T. Act in Schedule-I should be understood and litigated before the National Green Tribunal only, and not before any High Court. The judgment of Hon'ble 7 Judges in case of *L. Chandra Kumar vs. Union of India* (supra), calls for consideration in this background.

21. Perusal of section 14 of N. G. T. Act, reveals that civil cases covered under section 14(1) are referred to as disputes in sub-section (2). These disputes therefore, must be civil in nature, must arise out of implementation of enactments specified in Schedule-I and therein substantial question relating to environment must be involved. If these three ingredients are satisfied, bar under section 14(1) gets attracted. Thus all civil cases are not cognizable by National Green Tribunal, though they may arise out of implementation of Schedule-I enactments, if



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substantial question relating to environment does not arise therefrom. In section 14(1) words "including enforcement of any legal right relating to environment" are inserted after the word "environment". Thus, issue of enforcement of a legal right relating to environment or a substantial question relating to environment must surface and form subject-matter of a civil case arising out of implementation of Schedule-I enactments. Then only National Green Tribunal will have jurisdiction under section 14.

22. Section 2(1)(m) of N. G. T. Act defines "substantial question relating to environment". The definition is wide and inclusive. It stipulates that if there is direct violation of specific statutory environmental obligation or then environmental consequences relating to a specific activity or a point source of pollution, the same are covered in the sweep of this inclusive definition. Ingredients under sub-clause (i) of this definition is direct violation of specific statutory environmental obligation by a person affecting the community at large other than an individual or group of individuals or the gravity of damage to environment or property substantially, or the damage to public health is broadly measurable. Thus, reading of this definition shows that the cause giving rise to civil case must have some impact on environment so as to make it a question relating to environment. It is the degree of this impact which may then make it a substantial question.

23. Section 2(1)(c) defines 'Environment'. Again the definition is deliberately inclusive. It includes water, air and land, and the inter relationship which exists among and between water, air and land and human beings, other living creatures, plants, microorganism and property. Thus, natural elements mentioned in said definition and the impact upon it of living creatures or property, therefore, constitute environment. Thus, interrelationship between these elements and other factors stipulated therein together, jointly and severally constitute environment.

24. When section 14 is read along with and construed with section 2(1)(c) and (m), it is clear that civil cases which can be considered by the National Green Tribunal must affect environment. If it is not affecting environment, the Tribunal will not have jurisdiction. In present facts, reliefs sought for do not directly or indirectly affect environment.

25. The Division Bench judgment of this Court in case of *Indian Oil Corporation Ltd. vs. Nagpur Municipal Corporation and another* (supra), considers the scope of jurisdiction available to such Tribunal. There question of validity of subordinate legislation i.e. Octroi Rules framed under the City of Nagpur Corporation Act, 1948 arose and Nagpur Corporation contended that it can be looked into by an appellate authority which was hearing appeals under section 387 of the Corporation Act against the octroi demands/penalties. This Court found that the said Authority could not have considered such issue of validity or vires. Judgment of Hon'ble Supreme Court in case of *Alpha Chem and another vs. State of U. P. and others* (supra), considers this aspect and other judgments of Hon'ble Supreme Court taking similar view have been followed by the Division Bench in this judgment.

26. The observations of Hon'ble Apex Court in case of *Bhopal Gas Peedith Mahila Udyog Sangathan and others vs. Union of India and others*



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(supra), needs to be read in the backdrop of the above mentioned statutory provisions of the N. G. T. Act. The Hon'ble 7 Judges in a judgment in case of *L. Chandra Kumar vs. Union of India and others* (supra), were considering the scope of jurisdiction of Administrative Tribunals functioning under Administrative Tribunals Act, 1985. The Administrative Tribunal functioning at Center or in States under the Administrative Tribunals Act, 1985 is an independent body not interested with lis which arises between employer State and its employees. Its jurisdiction to decide such lis is absolute ie not limited or eclipsed by any stipulation in said enactment. In the background of its aims and object, the Hon'ble Apex Court has evaluated the constitutional scheme and provisions of the Administrative Tribunals Act, 1985. It has been held in paragraph No. 93 of the said judgment that said Tribunal is competent to hear matters where vires of statutory provisions are questioned, however, while discharging these duties, the Tribunal cannot act as a substitute of the High Court and the Supreme Court.

27. Here, considering the jurisdiction given to the National Green Tribunal only to decide civil cases, where substantial question involved is in relation to environment, it is apparent that the NGT cannot be said to be conferred with the absolute jurisdiction to adjudicate all types of disputes or even all civil disputes. A limited jurisdiction to deal with specific type of civil disputes is only made available to it. Bare reading of section 28 of the N. G. T. Act prescribing the bar of jurisdiction also substantiates this. Thus, power to pronounce upon the vires of any statutory provision or of any subordinate legislation can not be read into any of the provisions which confer either appellate or original jurisdiction upon National Green Tribunal. The Parliament which has deliberately employed wide or liberal words while laying down the compass or the scheme of N. G. T. Act, has not used such words while phrasing section 14 of that Act or conferring jurisdiction upon National Green Tribunal. On the contrary, its intention to limit the power to decide certain specified nature of disputes is apparent. We find that the scheme of N. G. T. Act does not permit National Green Tribunal to decide upon the vires of any of the enactments which confer appellate or other jurisdiction upon it and find mention in Schedule-I of N. G. T. Act. It also does not empower it to examine validity of any Rules or Regulations made under these enactments.

28. We therefore find that controversy presented to this Court in writ petition does not qualify as a civil case wherein substantial question relating to environment is involved. Similarly, the National Green Tribunal does not possess power to adjudicate upon the vires or validity of any enactment in Schedule-I or of subordinate legislation framed under such enactment.

29. We therefore dismiss the preliminary objection and declare that the petitioners do not have any alternate remedy before the National Green Tribunal to raise its challenge in this writ petition.

Order accordingly.



2016 SCC OnLine NGT 1409

Partly Reversed in *Mantri Techzone (P) Ltd. v. Forward Foundation*, (2019) 18 SCC 494

**In the National Green Tribunal
 Principal Bench, New Delhi**

(BEFORE SWATANTER KUMAR, CHAIRPERSON AND M.S. NAMBIAR, J.M. AND D.K. AGRAWAL, E.M., A.R. YOUSUF, E.M. AND BIKRAM SINGH SAJWAN, E.M.)

Forward Foundation and Others

Versus

State of Karnataka and Others

Original Application No. 222 of 2014

Decided on May 4, 2016

Present:

Applicant:

Mr. Raj Panjwani, Sr. Adv. with Mr. Rishabh Parikh, Adv.

Respondent No. 1: Mr. Devraj Ashok, Adv. for State of Karnataka

Respondent No. 2: Mr. Attin Shankar Rastogi, Adv.

Respondent No. 7: Mr. B.R. Srinivasa Gowda, Adv.

Respondent No. 8: Ms. Shweta S. Parihar and Mr. Ankur S. Kulkarni, Adv.

Respondent No. 9: Mr. Shekhar G. Devasa, Mr. D. Mahesh, and Mr. Manish Tiwari, Advs.

Respondent No. 10: Mr. Raju Ramachandran, Sr. Adv., Mr. Devashish Bharuka, Mr. Suraj Govindraj and Mr. Vaibhav Niti, Advs.

Respondent No. 11&12: Mr. Praveen Sehrawart and Mr. Saransh Jain, Advs.

ORDERS OF THE TRIBUNAL

Item No. 01

Vide our judgement dated 07th May, 2016 the Tribunal had disposed of Original Application No. 222 of 2014 — *Forward Foundation v. State of Karnataka* By its detailed judgment various directions were passed including appointment of High Powered Committee which was required to submit its report to the Tribunal. The High Powered Committee submitted the report in relation to the project of Respondents Nos. 9 and 10 in August, 2015.

The Project Proponent had preferred statutory Appeals against order dated 07th May, 2015 passed by the Tribunal before the Hon'ble Supreme Court of India which came to be disposed of vide order dated 20th May, 2015 passed by the Hon'ble Supreme Court of India. The said order reads as follows:—

one of the main contentions raised by the Appellants in these Appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs. 117.35 crores against the original Respondent No. 9 (the Appellant in C.A. No. 4832 of 2015) and Rs. 22.5 crores against Original Respondent No. 10 (the appellant in C.A. No. 4829/2015) is imposed.

On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order



on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject matter of challenge. However, it is not necessary to deal with the same this stage. We make it clear that in case the said application is decided against the appellants or if ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment can also be raised.

The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty.

Mr. Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deem fit in this behalf, after hearing the parties."

On the basis of the order of the Hon'ble Supreme Court of India dated 20th May, 2015 the Applicant filed M.A. Nos. 596/2015 and 603/2015 before the Tribunal praying that order dated 07th May, 2015 be recalled, particularly, in relation to the issue No. 5 and opportunity of hearing be granted to the Respondents. When these two applications came up for hearing before the Tribunal they were disposed of vide order dated 06th April, 2016 that reads as under:—

"M.A. No. 603 of 2015 and M.A. No. 596 of 2015

These Applications have been filed on behalf of the Respondent No. 9 & 10 respectively. It is not necessary for us to refer to any details in view of the directions that we propose to issue in this case.

Without prejudice to the rights and contentions of the parties and subject to just exception we would of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme Court of India primarily on the question of imposition of Environmental Compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf.

With the above directions the M.A. No. 603 of 2015 and M.A. No. 596 of 2015 stand disposed of without any order as to cost."

As is evident from the above order, the Tribunal had granted liberty to the parties to address the Tribunal on the limited question as afore-stated. The parties were heard at great length and the case was heard on day to day basis. Keeping in view the order of the Hon'ble Supreme Court of India, the peculiar facts and circumstances and more particularly the fact that one of the Hon'ble Member (Dr. D.K. Agrawal) would be demitting the office on 05th May, 2016, we consider it appropriate to pass detailed directions in relation to the both the matters for which the reasons could be recorded in the later part of the day by the Tribunal. Thus, we proceed to record the operative part of the judgment with directions as is deemed proper by the Tribunal.

In view of our discussion in the main judgment, the documents placed before the Tribunal and particularly keeping in view the Inspection Note prepared after site inspection by the two Hon'ble Expert Members of this Bench, we find it necessary for the Tribunal to impose certain conditions and issue appropriate directions, as a condition precedent for these projects to re-commence and/or complete their projects in accordance with law.

General Conditions or directions:

1. In view of our discussion in the main Judgment, we are of the considered view



that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP 2015 provides 50m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:—

- i) In the case of *Lakes*, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e. lakes/wetlands.
- (ii) 50m from the edge of the primary Rajkulewas.
- (iii) 35m from the edges in the case of secondary Rajkulewas
- (iv) 25m from the edges in the case of tertiary Rajkulewas.

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents - Project Proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake development Authority shall carry out this operation in respect of all the water bodies/lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or privately owned, should meet the revised standards notified by CPCB/MoEF.

3. Bangalore city receives treated potable water of 1360 MLD from river Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of ground water exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

- i. At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a pre-requisite for grant of EC.
- ii. All the project proponents should necessarily use only treated sewage water for construction purpose and this should be reflected in EC as a condition for construction phase.
- iii. Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

Specific Conditions/Directions for Respondent 9;

In addition to the above directions which should be equally part of EC condition in respect of respondents nos. 9 & 10, following specific conditions shall apply to respondent No. 9:



- i. Reclaimed area of the lake to the extent of 3 acres 10 guntas in survey No. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent No. 9 to the concerned Authorities immediately. In addition, a buffer zone of 75m should be provided between the lake and the project area and this should be maintained as green area.
- ii. In the remaining area, where primary Rajkalewa is abutting the project area, 50m buffer zone on the side of the project area from the edge of the rajkalewa should be maintained as green belt.
- iii. Several irrigation canals or tertiary rajkalewas taking off from the Agara tank were passing through the area of respondent No. 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between the Agara lake and the Belandur Lake, respondent No. 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15m on either bank maintained as green belt.
- iv. The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic meters in the depth range of 0 to 9 meters. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by SIEAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur lake.
- v. The Kharab land identified by Revenue Dept. admeasuring 1 acre 2 guntas should be demarcated and maintained separately as green belt.
- vi. The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.
- vii. In view of the heavy traffic load in the adjoining Sarjapur road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

10. Though, at the time of hearing prior to passing the Judgment, we had heard the parties on all aspects but still we have provided re-hearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that environmental compensation imposed upon Respondent No. 9 calls for no variation and the Respondent No. 9 should be called upon to pay the said amount of Rs. 117.35 Crores determined under the Judgment prior to commencement of any project activity at the site. Respondent No. 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent No. 10 and the fact that the remedial measures can more effectively be taken by the Respondent No. 10, we reduce environmental compensation payable by Respondent No. 10 to Rs. 13.5 crores (3% of the stated



project cost instead of 5% as imposed in the original judgment).

General Directions:

1. We direct SEIAA, Karnataka to issue amended order granting Environmental Clearance within four weeks from today incorporating all the conditions stated in this judgement and such other conditions as it may deem appropriate in light of this judgment and Inspection Note of the Expert Members. The Project Proponents would be permitted to commence activity only after issuance of amended Environmental Clearance order.
2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting Environmental Clearance, this Judgment, Notification of 2006 and other laws in force.
3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the Authorities concerned are directed to incorporate such conditions in the projects to whom Environmental Clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other Lakes/wetlands in the city of Bengaluru.
4. We hereby direct the State of Karnataka to submit a proposal to the MoEF for demarcating wetlands in terms of Wetland Rules 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and the MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.
5. Both the Respondents Nos. 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their Banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said Respondents.
6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent No. 9 is concerned. Admittedly the Respondent has been allotted and is in possession of land admeasuring 63.94 acres, though Environmental Clearance has been granted for 2,92,636.03 Sq. Meters which is equivalent to 72.22 acres. For this reason alone, Environmental Clearance cannot be given effect to. While issuing the amended Environmental Clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent No. 9 to submit a fresh layout plan and the entire project may be revised in accordance with law.
7. Both the Respondents (Project Proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended Environmental Clearance that would be issued.
8. The amount of environmental compensation will be deposited prior to issuance of amended Environmental Clearance.

With the above directions, the Original Application No. 222 of 2014 and Misc. Applications Nos. 596/2016 and 603/2016 are finally disposed of while leaving the parties to bear their own costs.

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2015 SCC OnLine NGT 5

Affirmed in Mantri Techzone (P) Ltd. v. Forward Foundation, (2019) 18 SCC 494

In the National Green Tribunal, Principal Bench New Delhi

(BEFORE SWATANTER KUMAR, CHAIRPERSON, U.D. SALVI, J.M., DR. D.K. AGRAWAL, E.M. AND PROFESSOR A.R. YOUSUF, E.M.)

In the Matter of:

Forward Foundation A Charitable Trust Having its registered office at 24/B, Haralur Village, HSR Layout Post Bangalore-560102 Through its Secretary and Others ... Applicants;

Versus

State of Karnataka, Vidhana Soudha Bangalore-560001 Through its Chief Secretary and Others ... Respondents.

Original Application No. 222 of 2014

Decided on May 7, 2015, [Reserved on: January 27, 2015]

Counsel for Applicant:

Mr. Raj Pajwani, Sr. Adv. Along with Ms. Megha Mehta Agrawal, Advocate

Counsel for Respondents:

Mr. Devraj Ashok, Advocate for Respondent No. 1, 3, 4 & 5

Mr. B.R. Srinivasa G., Advocate for Respondent No. 7

Mr. R. Venkatramani, Sr. Advocate, Mr. Shekhar G. Devasa, Mr. D. Mahesh, Advocates for respondent No. 9

Mr. Raju Ramachandran, Mr. Devashish Bharuka, Mr. Vaibhav Niti and Mr. Suraj Govindraj, Advocates for Respondent No. 10

Mr. Sajan Poovayya, Sr. Advocate and Mr. Sumit Attri, Advocate for Respondent Nos. 11 & 12

JUDGMENT

1. Whether the judgment is allowed to be published on the net?

2. Whether the judgment is allowed to be published in the NGT Reporter?

SWATANTER KUMAR, (CHAIRPERSON):— All the three applicants have approached the Tribunal under the provisions of the National Green Tribunal Act, 2010 (for short 'the NGT Act'), with a common prayer that a direction be issued to respondent no. 1, the State of Karnataka to take cognizance of the Reports dated 12th June, 2013 and 14th August, 2013 prepared by respondent nos. 6 and 2 respectively, and take coercive and punitive action including restoration of the ecologically sensitive land. Further the applicants also prayed for issuance of a direction that the valley land is to be maintained as a sensitive area, without developments of any sort, so that the ecological balance of the area is not disturbed. Besides this, they even prayed for issuance of such other order or directions as the Tribunal may deem fit in the circumstances of the case and render justice.

The three applicants are either a registered charitable trust and/or a Society, registered under the relevant laws in force. They claim to be keenly interested in protecting the environment and ecology, particularly, in the State of Karnataka. Their principal grievance is in relation to certain commercial projects that are being developed by respondent nos. 9 & 10 in a large-sized, mixed use development project/building complex, including setting up of a SEZ park, Hotels, Residential



Apartments and a Mall, covering approximately 80 acres on the valley land immediately abutting the Agara Lake and more particularly identified as lying between Agara and Bellandur Lakes, exposing the entire eco system to severe threat of environmental degradation and consequential damage. According to them, it is of alarming significance that the Project has encroached an Ecologically Sensitive Area, namely, the valley and the catchment area and *Rajakaluves* (Storm Water Drains) which drains rain water into the Bellandur Lake. Thus, in the interest of environment and ecology, they have approached the Tribunal with the above prayers.

2. Shorn of any unnecessary details, the precise facts leading to the filing of this application are that, according to these applicants, the ecologically sensitive land allotted by the Karnataka Industrial Area Development Board (for short the 'KIADB'), respondent no. 7 herein, to respondent nos. 9 & 10 vide Notifications dated 23rd April, 2004 and 7th May, 2004, respectively. This land was allotted for setting up of Software Technology Park, Commercial and Residential complex, hotel and Multi Level Car Parks. The Master Plan formulated by the Bangalore Development Authority (for short the 'BDA'), respondent no. 8, identifies the allotted land as 'Residential Sensitive', though the same land was identified in the draft Master Plan as 'Protected Zone'. It is stated by the applicant that the Revenue Map in respect of properties as referred in the land lease Agreements has multiple *Rajakaluves*. The development projects in question sit right on the catchment and wetland areas which feeds the *Rajakaluves*, which in turn drain rain water into Bellandur Lake. The project will thus encroach two *Rajakaluves* of 1.38 acres and 1.23 acres each. The satellite digital images of the area from year 2000 to 2012 clearly show encroachment upon these *Rajakaluves*, as well as, the manner in which they are covered by this construction. The State Level Expert Appraisal Committee (for short the 'SEAC'), which was to assist State Level Environment Impact Assessment Authority (for short the 'SEIAA'), held its meetings on various dates to examine the project. It had required respondent no. 9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short the 'BWSSB'), respondent no. 5 herein, for the project in question. It was also observed that the project lies between the above stated two lakes. Respondent no. 9 was also directed to take protective measures to spare the buffer zone around *Rajakaluves* and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11th November, 2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

3. It is the case of respondent no. 5 that such NOC was issued but it covers only an area of 17,404 sq mtr, whereas the total built-up area as noted by the SEAC is 13,50,454.98 sq mtr. It is alleged by the applicants that respondent no. 9 obtained NOC from respondent no. 5 by concealing material facts and by misrepresenting that NOC is required only for residential units, which forms a very minuscule part of the total project. Respondent no. 9 had approached the Karnataka State Pollution Control Board (for short the 'KSPCB'), respondent no. 4 herein, for obtaining clearance which was granted on 4th September, 2012, subject to the fulfillment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. The applicant contends that the grant of consent by the KSPCB to respondent no. 9 also contained a condition with regard to obtaining Environmental Clearance from the Competent Authority and no construction was to commence until such clearance was granted.

4. According to the applicants, respondent no. 9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of the SEAC, in relation to buffer zone and construction over *Rajakaluves*. The construction has been commenced over the ecologically sensitive area of the Lake Catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities the applicant submits that the



conversion of land from 'Protected Zone' to 'Residential Sensitive' area is violative of the law. The Project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the *Rajakaluves*. It is also alleged that respondent nos. 9 & 10 have started to level the land by filling it with debris, thus causing damage to the drains. It is further stated that the conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the *Rajakaluves* have been violated. This has in turn, affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture which depends on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is also in violation of Rule 4 of Wetlands (Conservation and Management) Rules, 2010 (for short Rules of 2010). It is submitted that SEIAA in its meeting dated 29th September, 2012, decided to close the file pertaining to respondent nos. 10 due to non-submission of requisite information and the application therefore was rejected in November, 2012. Despite the rejection, respondent no. 10 commenced construction on the project in full swing.

5. The applicants have also relied on the findings of the Joint Legislative Committee, constituted under the chairmanship of Sh. A.T. Ramaswamy in the month of July, 2005, which stated that there were 262 water bodies in Bangalore city in 1961, which drastically came down because of trespass and encroachments. It was also affirmed that about 840 Kms of *Rajakaluves* have been encroached upon in several places and have become sewage channels.

6. The Hon'ble High Court of Karnataka in *Environment Support Group v. State of Karnataka*, Writ Petition No. 817/2008 appointed a Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil to suggest immediate remedial action in order to remove encroachments on the lake area and the *Rajakaluves* and preservation of the lakes in and around Bangalore city. Other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for Preservation, Restoration or otherwise of the existing tanks in Bangalore Metropolitan Area, 1986 which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tanks is not polluted. The findings of the Environmental Information System (ENVIS), Centre for Ecological Science, Indian Institute of Sciences, Bangalore, in May 2013 on the Conservation of the Bellandur Wetlands obligation of Decision Makers is ensure Intergenerational Equity recommended restoration of wetlands and cessation of plan to set up the SEZ in the area. Even the Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas.

7. The applicants claim to have obtained the monitoring report of the project by respondent no. 2 through RTI on 21st August, 2013. The report dated 14th August, 2013 revealed that the Project Proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that the Bellandur lake is not affected by the construction or operational phase of the project. This breach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

8. The Lake Development Authority (for short 'the LDA'), respondent no. 6 herein, had initiated an inspection in the catchment area of the Bellandur Lake. The report dated 12th June, 2013 confirms that the project will have disastrous impact, including deleterious effect on the Bellandur Lake. This report was brought to the notice of respondent no. 7 vide letter dated 7th July, 2013. Respondent no. 6 has also opined that the land should be classified and maintained as Sensitive Area. Respondent no. 7 in furtherance thereto had called upon respondent no. 9 to comply with rules of



Ecology and Environment Department and to obtain necessary approval from respondent nos. 6 and 4. It is alleged that a vague reply had been submitted by respondent no. 9 making certain misrepresentations. Despite all this, respondent nos. 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardizing the ecological balance in this sensitive area. The applicants also rely upon the fact that the revised Master Plan, 2013 issued by Respondent no. 8 specifically provides that 30 meters buffer zone is to be created around the lakes and 50 meters buffer zone to be created on either side of the *Rajakaluves*. It is also the case pleaded by the applicant that Respondent no. 9 had obtained the NOC from Respondent no. 5 only with regard to residential units and not for the entire project and that the Environmental Clearance obtained by the Respondent No. 9 is based upon the said partial NOC issued by Respondent no. 5 which itself is a misrepresentation. The applicants have pleaded that the projects are bound to create water scarcity as the requirement of project of Respondent no. 9 alone is approximately 4.5 million liters per day, i.e. 135 million liters per month, which is more than what Respondent no. 5 supplies to the entire Agaram Ward. It is stated by the applicants that the construction of respective projects by respondents No. 9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in topography of the area, posing potential threat of extinction of the Bellandur lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the water bodies.

The applicants have stated that they have filed the application against threat posed to the ecological balance from the ongoing commercial constructions project near Agara Lake and Bellandur Lake, and the same is continuing every day in violation of the law. With these allegations, the three applicants have instituted this application with prayers afore-noticed.

9. Different respondents in the application have filed independent replies as already noticed. Respondent nos. 9 and 10 are the Project Proponents against whom the applicant has raised the principal grievance. Thus, first we may notice the case advanced by respondent nos. 9 and 10. In its replies, respondent no. 9 has submitted that the said respondent corporation was incorporated with the objective of establishing an Information Technology Park and R&D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. This respondent had submitted the proposal to establish such Information Technology Park and other facilities to the State Government and requested for allotment of land for the project. Proposal of respondent no. 9 was considered in 78th High Level Committee meeting held on 21st June, 2000 and after examining the proposal, the same was approved by the government on 06th July, 2000. Before the State High Level Committee, the Respondent had mentioned that it would require 110 acres of land, 25MW of power from the Karnataka Power Transmission Corporation Limited (for short the 'KPTCL'), and 4 lakh litres of water per day from respondent no. 5. The lands for the project were initially notified by the BDA. However, later the lands were de-notified vide notification dated 10th February, 2004. Subsequently, the lands were allotted to the replying respondent vide letter dated 28th June, 2007 for which lease-cum-sale agreement was signed on 30th June, 2007. Considering the overall development of the State of Bangalore, the said Respondent proposed a Mixed Use Development Project consisting of an Information Technology Park, residential apartments, retail, hotel and office buildings with a total built up area of 13,50,454.98 sq mtr. The Project was conceived as a zero waste discharge project. According to this Respondent, the project is located one and a half kilometres away



from the southern-side of the Bellandur Lake. Towards the North adjacent to the Project site, lie vast stretches of lands belonging to the Defence, and towards the East, which is completely developed lies the Project of Respondent no. 10 and that another developer is also developing a project on the western side. Respondent no. 9 has submitted that it has obtained sanction plan on 4th July, 2007 which was being renewed from time to time. The Respondent also claims that it has obtained No Objection Certificate from Airport Authority of India on 9th April, 2010, certificate dated 15th April, 2010 from Dr. Ambedkar Institute of Technology and that the Bharat Sanchar Nigam Ltd., vide its communication dated 16th April, 2010, granted clearance for the project construction. BWSSB, respondent no. 5 herein vide its communication dated 26th April, 2011 issued No Objection Certificate for portion of the proposed construction to be built. Bangalore Electricity Supply Company Limited also granted No Objection Certificate for arranging power supply to the proposed residential and commercial building in favour of the Respondent no.

10. Environmental Clearance was granted by SEIAA vide communication dated 17th February, 2012. Director General of Police issued No Objection Certificate and KSPCB vide order dated 4th September, 2012 accorded its consent for construction of the said project site subject to the conditions stated therein.

Respondent no. 9 further states that after grant of the Environmental Clearance on 17th February, 2012, the same was published in the leading newspapers "Kannada Prabha" and the "Indian Express" on 12th and 14th March, 2012 respectively.

11. Respondent no. 9 later modified the building plan and the same was approved by Respondent no. 7 vide its letter dated 30th August, 2012, which was valid up to 10th August, 2014. It is further claimed that they started the construction of the project in November, 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. The respondent further submitted that he has raised the constructions in accordance with the plans and conditions of the Environmental Clearance and consent orders. According to him, he has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. The allegation with regard to the covering and blocking the Rajakaluves (Storm Water Drains) drying the wetland and raising of the construction thereupon adversely affecting the lake, are specifically disputed and denied. The Respondent claims that it has already spent a sum of Rs. 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities etc., that it has availed financial assistance from various banks and financial institutions towards the construction and proper execution of the project and that various contracts have been signed with third parties.

12. It is specifically stated by this Respondent that certain print media had published articles stating that construction was unauthorized, illegal and that it was prejudicial to the environmental and ecological interest of that area. Not only this, Namma Bengaluru Foundation, Citizen's Action Forum, Koramangala Residents Association and others, on the basis of a report prepared by Professor T.V. Ramachandra, filed a Public Interest Litigation in the High Court of Karnataka (Writ Petition No. 36567-36574/2013). Besides making the above allegation, it was also alleged in those petitions that the project would adversely affect the Bellandur Lake and prayed for stay of the construction activity. The Hon'ble High Court of Karnataka after hearing the parties issued notice, however, denied to pass any interim order of stay as prayed by the petitioners. The said petition is stated to be pending before the Hon'ble High Court.

In the meanwhile, Bruhat Bengaluru Mahanagara Palike (for short the 'BMP') issued a stop work notice to the said respondent in regard to illegal and unauthorized construction as well as its adverse impacts on the lake. Aggrieved from the stop work



notice dated 23rd December, 2013, Respondent no. 9 filed a Writ Petition before the Hon'ble High Court being Writ Petition No. 366-367 of 2014 and 530-625/2014 in which the Hon'ble High Court vide its order dated 21st January, 2014 stayed the operation of the stop work notice dated 23rd December, 2013. Another notice was also issued by respondent no. 7 directing stoppage of work on 2nd January, 2014, which was again challenged by the respondent no. 9 in Writ Petition No. 792 of 2014 before the same High Court and vide its order dated 7th January, 2014 the operation of the stay order was also stayed by the Hon'ble High Court. Replying respondent has taken up specific pleas with regard to the present application being barred by time because the Environmental Clearance was granted on 17th February, 2012 and even article in the newspapers were published on 3rd June, 2013 as such the present petition has been filed beyond the prescribed period of limitation and the Tribunal has no power to condone the delay which in fact has not even been prayed by the Applicant. According to respondent no. 9, this Tribunal has no jurisdiction to entertain and decide this application in the form and content in which it has been filed, as no question or substantial question of environment has been raised in relation to the Scheduled Acts under the NGT Act, 2010. Another objection raised by respondent no. 9 is that the applicants are guilty of suppression and misrepresentation of material facts and have not approached the Tribunal with clean hands and also that the proceedings before the Tribunal ought to be dismissed in face of the proceedings pending before the Hon'ble High Court of Karnataka in the Writ Petitions afore-referred. If the dates as stated by the applicant are taken to be correct, even then the application should have been filed within 30 days of the constitution of the Tribunal i.e. 18th October, 2010 and in any case within 60 days thereafter, by showing that they were prevented by sufficient cause. Since the application has been filed much beyond the prescribed period, it is barred by time and suffers from the defect of latches.

13. Respondent no. 10 besides raising the same preliminary objection with regard to the maintainability of the application and jurisdiction of the Tribunal, as raised by respondent no. 9, has also stated that application of applicant is hit by the Principle of *Falsus in Uno, Falsus in Omnibus*. It is also averred that the present application is a cut-paste of the Public Interest Litigation filed before the Hon'ble High Court of Karnataka and that the allegations made therein and in the present application are similar. On merits it is contended that averments made in the application are factually incorrect.

According to respondent no. 10, crux of the dispute is with regard to the allocation of the land and its conversion from 'Protected Zone' to 'Residential Sensitive' in the Master Plan, without giving any reason, which does not fall within the jurisdiction of the Tribunal. The applicants have raised multifarious proceedings against respondent no. 10 which is an abuse of the process of law and are *mala fide*. The applicant has not only stated identical facts in their application before the Tribunal, but have even submitted the same set of documents as were filed before the Hon'ble High Court of Karnataka, which clearly shows that the application before the Tribunal lacks *bona fides* and there is suppression and misrepresentation of material facts.

14. On merits respondent no. 10 has stated that the State of Karnataka has formulated a policy to invite investment in Karnataka and for that purpose the Karnataka Industries (Facilitation) Act, 2002 had been promulgated. Under this Act, State Level Single Window Clearance Committee and State High Level Clearance Committee were created to examine and clear the projects. All investment projects submitted to Karnataka Udyoga Mitra were forwarded to Single Window Agency, if it was less than the value of Rs. 50.00 crores for necessary processing and clearance and for value above Rs. 50.00 crores, is placed before the State High Level Clearance Committee for processing and approval. Respondent no. 10 had submitted a proposal for developing of a Software Technology Park with an investment of 48.75 crores in 25



acres of land along the outer ring road in Bangalore to which the clearance certificate dated 27th March, 2004 was issued. Respondent no. 10 submitted a revised proposal in respect of the same project and to obtain fresh clearance on 31st August, 2007 and revised proposal was with the investment of Rs. 179.22 crores. The State High Level Committee had cleared the project which was communicated to Respondent no. 10 on 25th January, 2008. According to Respondent no. 10, properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drain and secondary storm water drains that exist in the above properties. The application by respondent no. 10 seeking sanction of development and building plan in respect of the above properties into a Software Technology Park, Hospitality, Commercial and Residential Complex was also allowed and as per the directive of respondent no. 7, respondent no. 10 has deposited a sum of Rs. 1,28,56,830. Respondent no. 10 had also taken clearance from various authorities including Environmental Clearance and consent for establishment. The details of the same are as follows:

Sl. No.	Date	Document No.	Nature of Document	Issued by	Annexure
1	17.3.2011	ASC/CM(AO)/181/HAL: BG:58/2011	No Objection Certificate	Airport Services Centre, Hindustan Aeronautics Limited, Bangalore Complex	'R22'
2	30.07.2011	AGM(TP)/S:6/IX/2010-11.	No Objection Certificate	Bharat Shanchar Nigal Ltd., CGM, Telecom, KTK Circle, Bangalore	'R23'
3	22.05.2012	CEE(P&C)/SEE/(Plg)/EEE(plg)/K CO-95/F-46611/2012-13./R-50 (75)	No Objection Certificate	Karnataka Power Transmission Corporation Ltd., Chief Engineer, Electric City, Cauvery Bhavan, Bangalore	'R24'
4	03.08.2012	GBC(1)478/2011	No Objection Certificate	Office of Director General, Karnataka State Fire & Emergency Services	'R25'
5	04.04.2013	BWSSB/EIC/ACE @/DCE(M)-II/TA(M)-II/137/2012-13.	No Objection Certificate	Bangalore Water Supply & Sewerage	'R26'

				Board, Cauvery Bhavan, Bangalore	
6	03.06.2013	PCB/136/CNP/12/H321	No Objection Certificate	Karnataka State Pollution Control Board, Church Street, Bangalore	'R27'
7	30.09.2013	SEIAA:37:CON: 2012	No Objection Certificate	State Level Environment Impact Assessment Authority, Karnataka	'R28'

Certain sections of the media had raised some queries to respondent no. 10 to furnish the copy of the Consent to Establish and Environmental Clearance certificate on 30th September, 2013. They had also expressed that the project had started without such clearances. However, upon issuance of Consent to Establish and Environmental Clearance dated 4th June, 2013 and 30th September, 2013 respectively, same were furnished to the reporter of newspaper. The Hindu, vide letter dated 11th October, 2013. According to respondent no. 10, around this project, much development has already taken place, even around various lakes, but it has not caused any damage to the lakes and similarly, project of respondent no. 10 would also not cause any damage to the area and the lakes. Respondent no. 10 has also referred to the Writ Petition 36567-36574 of 2013, where relief of resumption of land from both the respondent nos. 9 and 10 was prayed. Notice dated 28th February, 2014 was issued by respondent no. 7 to respondent no. 10 containing direction to stop work/construction activity against which respondent no. 10 had also filed a Writ Petition in the Hon'ble High Court of Karnataka, being Writ Petition No. 18119 of 2014. The Writ Petition was pending and Interim Order was passed. This Respondent claims that they are entitled to develop the projects, having received all clearances. It is specifically stated that the Bellandur Lake does not support any fishing activity or forms a source of water for domestic purpose nor is the agricultural activity carried out at the said area. There are no wetlands and none of the functional aspects of the wetland exist on the site in question. It is also denied that the project carried out by respondent no. 10 on the property belonging to it has any adverse impact on environment. Respondent no. 10 further states that the ENVIS report relied upon by the applicant is prepared by persons interested in opposing his project. In any case, the said report dated 14th August, 2013 stood superseded by the Environmental Clearance dated 30th September, 2013, wherein, respondent no. 3 has accorded consent to the project after considering the actual facts, after due application of mind and by subjecting respondent no. 10 to strict terms and conditions as mentioned in the clearance dated 30th September, 2013. On these averments, respondent no. 10 prays that the application should be dismissed and no relief should be granted by the Tribunal to the applicants.

15. Respondent no. 7 has filed a short reply. He submits that after the possession of the land was handed over to respondent no. 9 and 10, one year time was granted to implement the project, which was extended from time to time. According to



respondent no. 7, the building drawings were approved on 4th July, 2007, modified building drawings were approved on 26th April, 2011 and 30th August, 2012 with specific conditions. In the meeting of the KIADB held on 16th July, 2013, it was resolved to inform respondent no. 9 to fully comply with the Ecology and Environment rules as well as to obtain approvals from the respondent no. 6, LDA and respondent no. 4, KSPCB. Respondent no. 6, LDA vide its letter dated 24th September, 2013, had informed respondent no. 7 that the construction activity in the catchment area in the Bellandur Lake could drastically impact the Lake, with deleterious effects and asked the Respondent no. 7 to stop construction activity of respondent nos. 9 & 10, however, the validity of the building drawings was again extended up to 10th August, 2014. The Lokayukta on 17th December, 2013 had written a letter in respect of complaint filed by South East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21st December, 2013 to keep in abeyance the approval accorded and even the revalidations of plans. This was also informed to respondent no. 9. The Board took a decision which was communicated to respondent no. 9 on 2nd January, 2014, wherein it asked the said respondent no. 9 to stop all construction activities on the allotted lands. It is admitted that the said communication was challenged by respondent no. 9 and on the stop work notice, stay was granted by the Hon'ble High Court of Karnataka. Stop work notice issued by BBMP dated 23rd December, 2013 was also challenged before the Hon'ble High Court and operation of the said communication was stayed vide order dated 21st January, 2014. It is submitted by respondent no. 7 that the project of respondent nos. 9 and 10 had been approved by the Government. It is specifically submitted that the answering respondent had not acquired any 'Rajakaluves' and the land allotted by respondent no. 7 to respondent no. 10 does not consist of the same. Respondent no. 7 further states that the Storm Water Drains are not always flowing in strict or permanent path and are prone to flow in different paths from time to time. Respondent no. 7 further states that it had allotted 17 acres 33½ guntas of land in favour of respondent no. 10 for the purpose of establishing Software Technology Park, Hospitality, Commercial and Residential Complex and has executed lease-cum-sale agreement on 20th March, 2008.

16. Respondent no. 6 has taken a stand that it was not at all aware of the project initiated by respondent no. 7, KIADB. The said respondent claims it came to know about the entire project only when certain newspaper reports surfaced during the month of June, 2013 and till that time respondent no. 6 was in the dark. After the complaints, the said respondent immediately inspected the Bellandur Lake and the Agara Lake on 12th June, 2013 and prepared an inspection report. In the report, it was noticed that the large scale construction activities in the catchment area of Bellandur Lake was going on and there was a change in the land use which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk which originally formed the irrigation area for the adjoining agricultural lands. Respondent no. 6, vide its letter dated 6th July, 2013, had questioned the decision of respondent no. 7 and even requested to stop the construction activity and to reclassify the land as non-SEZ area. It was thereafter on 31st August, 2013 that respondent no. 9 wrote a letter to respondent no. 6 for according approval for the proposed development projects. However, vide its letter dated 23rd September, 2013, respondent no. 6 informed respondent no. 7 that the replying respondent had no authority to grant or deny construction projects but at the same time it also communicated their objections to respondent no. 7, mentioning that construction activity would be in contravention to the directions of the Hon'ble High Court of Karnataka as well as of the Hon'ble Supreme Court. Despite these warnings, respondent no. 7 granted approval to the extension of building drawings of the project in favour of respondents no. 9 & 10 on 11th October, 2013 and 3rd January, 2013 respectively, with certain conditions like ensuring that all natural valleys, valley zone,



irrigation tanks and existing roads leading to villages in the said land should not be disturbed; further, that the natural sloping pattern of the project site shall remain unaltered and the lakes and other water bodies within and/or at the vicinity of the project area should be protected and conserved. Despite these objections by respondent no. 6, the plans were approved and approvals extended from time to time. Therefore, respondent no. 6 submits that these projects, as approved by respondent no. 7 would have adverse impacts on Bellandur Lake and Agara Lake.

17. Respondent nos. 1, 3 and 5 though have filed separate replies but they have taken up the stand that the projects have been granted, No Objections Certificates and Environmental Clearance by SEIAA, subject to the conditions noticed above. According to these respondents, if there is any breach, the same would be dealt with in accordance with law. According to respondent nos. 1 & 3, the file of respondent no. 10 was closed by SEIAA, Karnataka on 16th November, 2012 for non-submission of the required information but was later revived in the meeting held on 27th June, 2013 and Environmental Clearance was granted on 30th September, 2013. Both the projects are ongoing projects. The proposals have been considered in accordance with law.

18. Vide order dated 25th July, 2014 of the Tribunal, respondent nos. 11 and 12 were impleaded on their applications. Both these respondents are registered as charitable trust or a society. Replies by both these respondents have been filed wherein they have raised specific objections with regard to allotment of land in Ecologically Sensitive Area in the catchments of the Bellandur Lake for the construction of IT Park and related infrastructure, in flagrant violation of the applicable rules and regulations. According to respondent nos. 11 and 12, the allotment of this land is in contravention of the directions laid down by the Hon'ble Supreme Court in the case of *Karnataka Industrial Areas Development Board v. Sri. C. Kenchappa*, (2006) 6 SCC 371. It is further stated that the fact that these projects would essentially result in alteration of natural hydrology of the area and sloping pattern of the project site, clearly shows that there was no application of mind on the part of the concerned authority for granting approvals. The plans sanctioned in favour of respondent nos. 9 and 10 are replete with irregularities and illegalities and despite objections from respondent no. 6, the plans have been renewed contrary to law. For instance, respondent no. 9 had first represented that the project will have a built up area of 1.75 lakh sq.ft. while seeking approval from respondent no. 6, while in reality the built up area is 1.30 crore sq. ft./9.54 lakh sq. mtr., which is evidenced by respondent no. 9's own admission, and is not even disputed by him. The water requirement of the project would be nearly 135 million litres per month, which would exert excessive pressure over the wetland and would also lead to scarcity of water for the residents of the nearby areas. As already stated, the execution of the project will necessarily result in altering the hydrology of the area and the natural sloping pattern of the project site. Therefore, the conditions imposed in the Environmental Clearance are incapable of being complied with. According to these respondents, the Google satellite images that have been placed on record, reveal that the excavation work by respondent nos. 9 and 10 commenced much prior to obtaining approvals by them in 2012 & 2013 respectively, making the construction unauthorised and illegal. The matters before the Hon'ble High Court are stated to be restricted to the prayer for resumption of land and not connected with these proceedings before the Tribunal. According to these respondents, the stop work orders for the construction of the project have been stayed in terms of the orders of the Hon'ble High Court of Karnataka and are subject to the result of the Writ Petition and the Project Proponents are entitled to claim their equities in the event they failed before the Hon'ble High Court. The Hon'ble High Court had granted the interim order staying the stop work orders primarily on the ground that BBMP did not have jurisdiction to issue such order. According to respondent nos. 11 and 12, respondent no. 10 obtained the



Environmental Clearance on 30th September, 2013, but it still does not have the mandated clearance from the BDA which was one of the conditions imposed by the State High Level Clearance Committee on 25th January, 2008. The project consists of residential block and commercial block, among other constructed areas. It is averred that as of present, a very small part of the project has been completed and if the construction of the project is permitted to be completed in all respects, the environment and ecology of the area would suffer and residents and public at large would have to face severe and fatal environmental consequences. These adverse consequences would not only be limited to flooding, water shortage, geological instability but would also affect the Bellandur Lake, which is one of the largest lakes in Bangalore, gathering an area of 338.28 hectares, with catchment area, of approximately 171.17 square kms.

As already noticed, respondent nos. 11 and 12 were ordered to be impleaded as respondents in this case on the condition that they would withdraw the Public Interest Litigation filed by them before the Hon'ble High Court of Karnataka. These Respondents had thus moved the Hon'ble High Court for withdrawal of the Writ Petitions. However, the Hon'ble High Court only permitted these two Respondents to withdraw themselves from the Writ Petitions in terms of the undertaking given by them before the Tribunal. The Petitioner before the Hon'ble High Court who had not given any undertaking before the Tribunal, their Writ Petitions are still continuing before the Hon'ble High Court. They have denied the allegation that any of them has committed violation of the order of the Tribunal or abused the process of law. It is also denied that the averments made and stand taken by them is false, incorrect and vexatious. Respondent no. 7 had first issued a letter dated 14th August, 2013 requiring respondent no. 9 to comply with the ecology and environmental rules and also to take necessary approval from the LDA, Bangalore and KSPCB before taking up any further activity of the project. Then, it issued the order dated 2nd January, 2014 informing the said respondent that the layout plan has been kept in abeyance and thus the Project Proponent should stop all construction activities in the allotted land until further orders. It is also the case of respondent nos. 11 and 12 that the report by Dr. T.V. Ramachandra is not a report by interested persons, but is part of scientist's social responsibility and the report published in May, 2013 gives the complete and correct position at site. It is their case that the cause of action has arisen on various dates, including first on 11th October, 2013 when respondent no. 7, despite objections from various authorities, extended its approval of plan, on the conditions stated therein. They have, therefore, submitted that the application is neither barred by time nor can it be contended that it does not raise a specific question of environment within the ambit of the Scheduled Acts under the NGT Act, 2010.

19. From the above pleaded case of the respective parties and the submissions advanced on their behalf, the following questions fall for consideration and determination of the Tribunal:

1. Whether the application filed by the applicants and supported by respondent nos. 11 and 12, is barred by time and thus, not maintainable?
2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application, under the provisions of NGT Act, 2010?
3. Whether the present application is barred by the principle of *res judicata* and/or constructive *res judicata*?
4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petition 36567-74 of 2013 before the Hon'ble High Court of Karnataka?
5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in



the interest of environment and ecology issue any directions and if so, to what effect?

Discussion on Merits

1. Whether the application filed by the applicants and supported by respondent nos. 11 and 12, is barred by time and thus, not maintainable?

20. According to respondent no. 9, it had submitted a proposal to establish Information Technology Park, R & D Centre, Residential Complex and other facilities and sought for allotment of lands for the project in the year 2000. On 15th January, 2001, the Government in exercise of powers conferred upon it under Section 3(1) of the Karnataka Industrial Area Development Act, 1966 declared the land in question as an Industrial Area. Preliminary notification for acquisition of land in question was issued on 15th January, 2001 by KIADB and final Notification for acquisition of the land was issued on 23rd April, 2004, which was preceded by a Global Investor meet held on 10th February, 2004. On 28th June, 2007, respondent no. 7 issued the letter of allotment to respondent no. 9 allotting 63 acres 37½ gunta in Agara and Jakkasandra village. The possession certificate in favour of respondent no. 9 was issued on 29th June, 2007 in furtherance to which said respondent had paid the amount and executed the lease-cum-sale agreement. Project lease was sanctioned on 4th July, 2007. Airport Authority issued the NOC on 9th April, 2010. Clearance for the project construction was issued by BSNL on 16th April, 2010. BWSSB issued NOC on 12th May, 2011. Bangalore Electricity Supply Company Ltd. issued NOC on 27th April, 2011. After meetings of the State Level Expert Appraisal Committee and SEIAA, proposal was considered and Environmental Clearance was granted to respondent no. 9 on 17th February, 2012 for which notice was published in 'Kannada Prabha' and 'Indian Express' on 12th March, 2012 and 14th March, 2012 respectively. Modified building plan had been approved by respondent no. 7 on 30th August, 2012 which was valid up to 10th August, 2014. On 4th September, 2012, KSPCB issued consent for establishment under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as per conditions stated in the NOC. On 12th June, 2013, the LDA made a report stating that the KIADB has initiated a colossal mixed-use development project in the catchment area of Bellandur Lake. With reference to these dates and events, respondent no. 9 had advanced the plea that the application is barred by limitation. It is the contention of respondent no. 9, that all material events that would give rise to filing of an application under the provisions of NGT Act, 2010, had occurred on and prior to 17th February, 2012 and as the application was filed before the Southern Zone Bench of the Tribunal on 13th March, 2014, thus, same is hopelessly barred by time and is liable to be rejected on that short ground alone.

Similar events had taken place in regard to the project of respondent no. 10 who had been granted Environmental Clearance on 30th September, 2013. The contention raised by this respondent, which is, without prejudice to its other contentions, is that the grant of Environmental Clearance would put an end to all other challenges and even if the reports dated 12th June, 2013 and 14th August, 2013 are taken into consideration, even then the application had to be filed within a period of 6 months from the date on which the 'cause of action for such dispute has first arisen' in terms of Section 14 of the NGT Act, 2010. Admittedly, present application has been filed in March, 2014 i.e. much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Even otherwise, the period of 60 days beyond the prescribed period of limitation has long expired and as such the Tribunal will have no jurisdiction to condone the delay. The Applicants contend, which contention is also duly supported by respondent Nos. 11 and 12 that the present application is not an application simplicitor under Section 14 of the NGT Act. It is an application where a specific prayer has been made with reference to the reports dated 12th June, 2013 and 14th August, 2013 for restoration of



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the Ecologically Sensitive Land and for maintaining the sensitive area in its natural condition, so that ecological balance of the area is not disturbed. This being a petition under Section 15 of the NGT Act, it could be filed within five years from the date on which the cause for such compensation or relief 'first arose'. According to the applicants, the present application is even filed within the period of limitation as contemplated under Section 14 of the NGT Act, 2010, for the reason that with reference to the inspection reports dated 12th June, 2013 by respondent no. 6 and 14th August, 2013 by respondent no. 2, various actions had been taken by different authorities, fully substantiating the plea of the applicant that such huge construction activity in the catchment area of the lakes is bound to have adverse impact on the environment and ecology. According to them, it is evident from the record that on 14th August, 2013, respondent no. 7 had issued a communication to respondent no. 9 to comply with Ecology and Environmental Rules, as well as to take approval from the LDA. Various letters were exchanged between different authorities and the Project Proponent about the progress of the project and its irregularities. A letter of stop work notice was issued by the BBMP on 23rd December, 2013. KIADB also issued a stop work notice to respondent no. 9 on 2nd January, 2014. According to these applicants, in light of these facts, it is the case of 'continuing and/or recurring' cause of action relatable to environmental issues. Thus, the application had been filed within the prescribed period of 6 months even in terms of Section 14 of the NGT Act and the limitation would trigger from each of these dates mentioned above.

21. Sections 14 and 15 of the NGT Act, 2010 to a large extent are self contained provisions. They deal with the remedies that an aggrieved person is entitled to invoke. The present application, if treated as an application under Section 15 of the NGT Act, viewed from any angle, is within the prescribed period of limitation. The Environmental Clearance was granted to respondent no. 9 vide order dated 17th February, 2012 and all events have occurred thereafter till institution of the petition. The applicant has prayed for relief and restoration of ecology particularly with reference to the catchment areas of Bellandur Lake & Agara Lake. The applicant could not have availed of any remedy before the Tribunal, prior to 2nd June, 2010 and/or 18th October, 2010 respectively, i.e. the dates on which the Act came into force and the Tribunal was constituted. Thus, the period of limitation would start running at best from these dates. The present application for the purposes of Section 15 has been filed within 5 years there-from and thus, has to be treated as within time.

However, what needs to be deliberated upon is whether in terms of Section 14 of the NGT Act, 2010, the present application has been filed within the prescribed period of limitation or not. Section 14(3) mandates that no application for adjudication of dispute under Section 14(1) shall be entertained by the Tribunal unless it is made within the period of 6 months from the date on which the 'cause of action for such dispute first arose'. The jurisdiction of the Tribunal under Section 14 is over civil cases where a substantial question relating to environment, including enforcement of any legal right relating to environment, is involved and such questions arise out of the implementation of the enactments specified in Schedule I of the NGT Act. The dispute or questions that the Tribunal is required to settle must fall within the ambit and scope of Section 14(1) of the NGT Act. In other words, it must be a dispute raising a substantial question relating to environment.

22. The contesting respondents while relying upon the language of Section 14 read cumulatively, contend that the expression 'within the period of 6 months from the date of which the cause of action for such dispute first arose' mandates that the period of limitation has to be reckoned when the cause of action for such dispute first arose and not thereafter. In the present case, the Environmental Clearance had been granted to respondent no. 9 on 17th February, 2012 and therefore it is their contention



that the application could at best be filed by 16th August, 2012 and not thereafter.

23. 'Cause of Action' as understood in legal parlance is a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed. It is the foundation of a suit or an action. 'Cause of Action' is stated to be entire set of facts that give rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In other words, it is a bundle of facts which when taken with the law applicable to them gives the plaintiff, the right to relief against defendants. It must contain facts or acts done by the defendants to prove 'cause of action'. While construing or understanding the cause of action, it must be kept in mind that the pleadings must be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or passage and to read it out of the context, in isolation. Although, it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, from the pleading taken as a whole. [Ref. *Shri Udhav Singh v. Madhav Rao Scindia*, (1977) 1 SCC 511, *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies*, AIR 1989 SC 1239].

24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land *simplicitor* or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: *Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512, *J. Mehta v. Union of India*, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, *Kehar Singh v. State of Haryana*, 2013 ALL (I) NGT REPORTER (DELHI) 556, *Goa Foundation v. Union of India*, 2013 ALL (I) NGT REPORTER DELHI 234].

Furthermore, the 'cause of action' has to be complete. For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as afore-stated would have to be considered as to when it first arose.

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose'



would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of *Bal Krishna Savalram Pujari v. Sh. Dayaneshwar Maharaj Sansthan*, AIR 1959 SC 798.

26. In the case of *State of Bihar v. Deokaran Nenshi*, (1972) 2 SCC 890, Hon'ble Supreme Court was dealing with the provisions of Section 66 and 79 of the Mines Act, 1952. These provisions prescribed for a penalty to be imposed upon guilty, but provided that no Court shall take cognizance of an offence under Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the provision specifically provided that if the offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence continues. The Hon'ble Supreme Court held as under:

"5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

27. Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of 'continuing wrong or offence'. For instance, using the factory without registration and licence was an offence committed every time the premises were used as a factory. The Hon'ble Supreme Court in the case of *Maya Rani Punj v. Commissioner of Income Tax, Delhi*, (1986) 1 SCC 445, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not, the Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assessee does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. Hon'ble High Court of Delhi in the case of *Mahavir Spinning Mills Ltd. v. Hb Leasing and Finances Co. Ltd.*, 199 (2013) DLT 227, while explaining Section 22 of the Limitation Act took the view that in the case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury which renders the doer of the act responsible and liable for consequence in law.

Thus, the expressions 'cause of action first arose', 'continuing cause of action' and



'recurring cause of action' are well accepted cannons of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case. It is not possible to lay down with absolute certainty or exactitude, their definitions or limitations. They would have to be construed with reference to the facts and circumstances of a given case. These are generic concepts of civil law which are to be applied with acceptable variations in law. In light of the above discussed position of law, we may revert to the facts of the case in hand.

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: *Khatri Hotels Private Limited v. Union of India (UOI)*, (2011) 9 SCC 126, *Bal Krishna Savalram Pujari v. Sh. Dayaneshwar Maharaj Sansthan*, AIR 1959 SC 798, *G.C. Sharma v. Municipal Corporation of Delhi*, ILR 2 Delhi 771, *Kuchibotha Kanakamma v. Tadepalli Ptanga Rao*, AIR 1957 AP 419].

29. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011, shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and therefore, there is exclusion of the concept of the 'joinder of causes of action' under the Rules of 2011. The multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time. In first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may gives rise to a fresh cause of action.

To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the



action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of *M.R. Gupta v. Union of India*, (1995) 5 SCC 628, the Court held that:

"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China Subba Rao v. Mattapalli, Raju*, AIR (1950) FC 1."

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It



may have even be *de hors* the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: *Ex. Sep. Roop Singh v. Union of India*, 2006 (91) DRJ 324, *Bengal Waterproof Limited v. Bombay Waterproof Manufacturing Company*, (1997) 1 SCC 99].

32. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not *de bar* a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose.

33. The Environmental Clearance was granted to the project of Respondent no. 9 on 17th February, 2012 and to Respondent no. 10 on 30th September, 2013. Both these Environmental Clearances being appealable in terms of Section 16 of the NGT Act, 2010, their legality and correctness could be challenged within the prescribed period of limitation i.e. 30 days (or within the extended period of 60 days) which has not been done and as already noticed there is no challenge in this application to the grant of the Environmental Clearance. The applicants have primarily raised a challenge within the ambit and scope of Section 14 and 15 of the NGT Act. As already discussed, the application in so far as it prays for the relief of the restoration, it is within the period of limitation of 5 years. According to the applicants, the facts on record disclose violations of the condition of Environment Clearance and poses serious threat to the environment and ecology because of the reckless construction in the catchment areas of the lakes. During the period of August, 2012 to January, 2014, various notices have been issued by different authorities in relation to the modification of building plans. These stop work notices/orders and the inspection reports including report by LDA clearly demonstrates that the development project in the catchment area of Bellandur Lake as implemented would probably have adverse effect on the Bellandur Lake. The applicant may not challenge the grant of Environmental Clearance *per se* but upon commencement of the project and in view of their being definite documentary



evidence supported by data, that the Project Proponent has committed breaches and implementation of the project is bound to have serious adverse impacts on ecology, environment and particularly the water bodies would give an independent 'cause of action' to him *de hors* the grant of Environmental Clearance. The averments in the application and the record fully satisfy the ingredients of Section 14 of the NGT Act. From those occurrences particularly of January, 2014, a fresh period of limitation has to be reckoned. The applicant may rely upon various reports, notices and orders in support of its claim. Whether the applicant succeeds on merits or not, is a different issue. However, for the purpose of limitation, the dates of these reports, stop work orders and notices would be relevant dates, which would provide the 'recurring cause of action' to the applicant and thus, the application will be within the prescribed period of limitation. In addition to this, the applicant has also prayed for taking action in accordance with law on the basis of the report dated 14th August, 2013, communication letter of LDA dated 23rd September, 2013, communication dated 12th December, 2013 by LDA to Respondent No. 9, stop work notice dated 23rd December, 2013 issued by BBMP to Respondent No. 9 and stop work notice issued dated 2nd January, 2014 by KIADP to Respondent No. 9. Thus, the application having been instituted on 13th March, 2014 is well within the period of limitation under Section 14 of the NGT Act and for the reasons afore-recorded, we find no merit in the plea of limitation raised on behalf of the Respondents.

2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application, under the provisions of NGT Act, 2010?

34. It is a settled principle that while determining whether the application discloses a cause of action, which would squarely fall within the ambit and scope of the provisions of the NGT Act, the petition has to be read as a whole by the Court or the Tribunal. Thus, we have to examine the cumulative effect of the averments made in the application, read in conjunction with the prayer clause. If upon reading of the entire application together, such cause of action is disclosed, that would fall within the jurisdiction of this Tribunal, the Tribunal would be obliged to entertain and decide such pleas. In the case in hand, the applicant has made reference to various activities in general and illegal and unauthorised activities of respondent nos. 9 and 10 in particular, which are having adverse effect on the water bodies as well as the water supply to the city of Bangalore. It is alleged that the construction activity that is being carried on by respondent no. 9 is in violation of all the stipulations of the Environmental Clearance. Rampant construction work is being carried on in the buffer zone as well as over and around the Rajakaluves. While pointing out the blatant irregularities, it is also averred that the project is in the midst of fragile wetland area and is bound to severely disturb and damage the Rajakaluves. In terms of the Environmental Clearance, a condition has been imposed that the project proponent shall not disturb the storm water drains, natural valleys, etc. and buffer zone area around the Rajakaluves was to be maintained. However, according to the applicant, the project area is located between two lakes and therefore, the construction is in violation of Rule 4 of the Wetlands (Conservation and Management) Rules, 2010. There has been violation of maintaining the buffer zone in accordance with the revised Master Plan of 2015. There has to be 30 meter buffer zone created around the lakes and 50 meter buffer zone created on either side of the Rajakaluves. This has also not been adhered to. Further, the consent had been granted to respondent no. 9 for residential units and not for other activities.

35. While referring the water shortage, the averment is that the project requires 4.5 million litres of water per day i.e. 135 million litre water per month. Such requirement of the project would be beyond the capacity of respondent no. 5, as the quantity of water required for the project would still be more than the water supply



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being made by respondent no. 5 to the entire Agaram ward in Bangalore. The NOC issued by respondent no. 5 covers an area of only 17404 sq. meters whereas the total built up area of the construction is 13,50,454.98 sq. meters. Thus, the NOC was partial. Therefore, it is clear that even the Environmental Clearance had been obtained by respondent no. 9 without disclosure of correct facts. Further, the averments are that the construction activity has severely disturbed and damaged the Rajakaluves that run through the entire land and in fact is likely to result in disappearance of the Rajakaluves. Relying upon the two reports dated 12th June, 2013 and 14th August, 2013, it is averred that the project will have disastrous effect on the Agara Lake and the Bellandur Lake. If the construction is not stopped, the sensitive area and its ecology and environment would be at stake. Even the authorities had issued notices/stop work orders to the respondents for the breach of the conditions committed by them and for the construction activity being illegal.

On these averments, the two prayers that have been made is that the respondent - State of Karnataka - should take cognizance of the reports dated 12th June, 2013 and 14th August, 2013 and should take coercive and punitive actions against the respondents, as well as restore the ecology in the sensitive area. Further that, the Government should be directed to maintain the very land as a sensitive area and no development or construction activity should be allowed to be carried on, that would disturb the ecological balance of the area.

36. We have to examine whether on the facts afore-noticed, the prayers made would squarely fall within the scope of implementation of any of the Acts specified under Schedule I to the NGT Act. This Tribunal has three jurisdictions - original, appellate and special jurisdiction, enabling it to grant reliefs of compensation and restitution of property and environment both. Section 14 gives a very wide jurisdiction to the Tribunal to resolve and pass orders in all civil disputes, where substantial question relating to environment including enforcement of legal right relating to environment is involved and such question arises from the implementation of the enactments specified under Schedule I. Section 16 provides that appeal would lie to the Tribunal against the certain orders passed by authorities and Boards, in relation to the orders specified in clauses (a) to (j) of section 16, which also includes appeal against an order refusing or granting Environmental Clearance for carrying out of any activity, operation or process. Section 15 of the NGT Act gives to the Tribunal jurisdiction to grant relief, compensation and restitution in the event there is a victim of pollution and other environmental damage arising under the enactment specified in Schedule I of the NGT Act, for restitution of property damage as well as for restitution of environment in such areas.

37. The definition of 'environment' under Section 2(c) of the NGT Act again is widely framed. It is comprehensive enough to take within its ambit all matters in relation to environment. This definition practically covers every activity that will have water, air and land and inter-relationship, which exists among and between these and the human being, other living creatures, plants, microorganism and property. This definition is identical to the definition of 'environment' as provided under section 2(a) of the Act of 1986. In terms of the object and purpose of the Act of 1986, it has primarily been enacted to protect and improve the environment and for prevention of hazards to human being, other living creatures, plants and property.

Therefore, both protection and improvement of the environment are two very fundamental aspects of these legislations. Certainly, the applicant has not raised specific challenge to the Environmental Clearances dated 17th February, 2012 and 30th September, 2013 in the present appeal, but what is being questioned is the disappearance and further likelihood of complete extinction of the water bodies in the area in question in the city of Bangalore. Furthermore, since studies have shown



serious adverse impacts upon the ecology and environment of the area, the authorities concerned, including the State Government, should take appropriate steps in accordance with law and the ecological degradation or damage should be directed to be restored. Once these reliefs are read in conjunction with the averments made in the record and examined within the domain of Order VII Rule 11 of the Code of Civil Procedure, 1908, then it is not possible to hold that the petition does not disclose a cause of action that would squarely fall within the ambit of the jurisdiction conferred upon the Tribunal in terms of Sections 14 and 15 of the NGT Act.

38. Section 15 of the NGT Act provides not only for relief and compensation to victims of pollution and other environmental damage arising under the enactments specified under Schedule I, but also for restitution of property and damage and restitution of environment for such area or areas. It is a general provision and covers victims of the pollution generally. In contradistinction thereto, Section 17 is a specific provision relating to death or specific injury which has occurred to a person, to a property or environment. Such death or injury has to result from an accident or adverse impact of activity or operation or a process, under any enactment specified under Schedule I, then the person responsible shall be liable to pay such relief or compensation for death, injury or damage, in terms of all or any of the heads specified in Schedule II of the Act and as determined by the Tribunal. This provision is person-specific and relates to such injury which results from an activity, operation or process and imposes liability on the person responsible for that activity, operation or process. Furthermore, when the provision of Section 14 and 15 of the NGT Act are examined in light of the Scheme of the Act, then it becomes clear beyond ambiguity that both these provisions operate in independent fields. They are mutually exclusive and not interconnected. Section 15 is not essentially dependent upon an order being passed under Section 14 as a condition precedent. In other words, remedy under Section 15 is not a consequential remedy to the provisions under Section 14. The legislature has provided distinct criteria, procedure and limitation under both these sections. If they were to be treated interconnected or inter dependent, there was no occasion to provide entirely different limitation within which an aggrieved person can invoke the jurisdiction of the Tribunal. The essentials to be pleaded and proved under these provisions are notably different. While under Section 14, an applicant has to show that he has raised a substantial question relating to environment, which arises out of the implementation of the enactments specified under Schedule I, under Section 15, an applicant is called upon only to show that he is victim of pollution or other environmental damage.

39. Another contention raised before the Tribunal by the respondents is that as far as grant of restoration under Section 15 is concerned, the applicant has not made out a case invoking the said jurisdiction and furthermore, that Section 15 comes into play post event. This argument cannot be accepted. Firstly, we have already noticed in some detail that the factual matrix of the case as pleaded by the applicant brings out a case for invoking the jurisdiction of the Tribunal under Sections 14 and 15 both. Secondly, Section 15 when construed on its plain language does not mandate a jurisdiction which can be invoked only post event. We are persuaded to hold so because of the clear distinction in language of Sections 15 and 17 of the NGT Act. Section 17 specifically requires that there ought to have been death, injury to any person or damage to any property or environment from an accident or adverse impact of an activity or operation or process where on the liability of the person to pay such relief or compensation shall be computed on the principle of no fault i.e. strict liability. In contradistinction thereto, Section 15 would operate both to a damage that has occurred as well as the damage which is likely to occur in relation to a property or environment. Of course, such damage will be to the victim of the pollution or other environmental damage arising under the enactments specified in Schedule I. Section

20 of the Act places an obligation on this Tribunal to apply the three principles of Sustainable Development, Precautionary Principle and the Polluter Pays Principle, in settlement of disputes before it. Since the precautionary principle will also be part of Section 15, its applicability in a likely damage to environment or property cannot be excluded. The legislature in its wisdom has enacted two different and distinct provisions. They have to operate in their respective fields, particularly, when their language is distinct and different. A clear distinction between two is that Section 17 would operate only for compensation while Section 15 would deal both with compensation and restitution.

40. The expression 'dispute' is relatable to a question which is a substantial question of environment and such question should arise out of the implementation of the scheduled enactments under the NGT Act. It is a term of wide connotation and once a fact is asserted by one party and disputed by the other it gives rise to a 'dispute'.

41. Wherever a dispute as afore-noticed would arise, it would certainly give rise to a cause of action and accrue a right to sue in favour of an applicant in order to invoke one or the other jurisdictions of the Tribunal. At this stage it may be useful to refer to the decision of the Tribunal in the case of *Kehar Singh v. State of Haryana*, 2013 ALL (I) NGT REPORTER (DELHI) 556, wherein it was held:

"16. 'Cause of action', therefore, must be read in conjunction with and should take colour from the expression 'such dispute'. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. 'Such dispute' has to be considered as a dispute which is relating to environment. The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate to environmental issues would not be 'such dispute' as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the 'cause of action' referred to under Sub-section (3) of Section 14 should be the cause of action for 'such dispute' and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act. The term 'cause of action' has to be understood in distinction to the nature or form of the suit. A cause of action means every fact which is necessary to establish to support the right to obtain a judgment. It is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. It is what a plaintiff must plead and then prove for obtaining the relief. It is the factual situation, the existence of which entitles one person to obtain from the court remedy against another. A cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It does not comprise evidence necessary to prove such facts but every fact necessary for the plaintiff to prove to enable him to obtain a decree. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In wider sense, it means



the necessary conditions for the maintenance of the suit including not only the infraction coupled with the right itself. To put it more clearly, the material facts which are imperative for the suitor to allege and prove constitute the cause of action. (Refer: *Rajasthan High Court Advocates Assn. v. Union of India* [(2001) 2 SCC 294], *Sri Nasiruddin v. State Transport Appellate Tribunal and Ramai v. State of Uttar Pradesh* [(1975) 2 SCC 671]; *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem* [(1989) 2 SCC 163]; *Bloom Dekor Limited v. Sujbhash Himatlal Desai with Bloom Dekor Limited v. Arvind B. Sheth* [(1994) 6 SCC 322]; *Kunjan Nair Sivaraman Nair v. Narayanan Nair* [(2004) 3 SCC 277]; *Y. Abraham Ajith v. Inspector of Police, Chennai* [(2004) 8 SCC 100]; *Liverpool and London S.P. and I. Asson Ltd. v. M.V. Sea Success I* [(2004) 9 SCC 512]; *Prem Chand Vijay Kumar v. Yashpal Singh* [(2005) 4 SCC 417]; *Mayar (H.K.) Ltd. v. Owners and Parties, Vessel M.V. Fortune Express* [(2006) 3 SCC 100].

17. Upon analysis of the above judgments of the Supreme Court, it is clear that the factual situation that existed, the facts which are imperative for the applicant to state and prove that give him a right to obtain an order of the Tribunal, are the bundle of facts which will constitute 'cause of action'. This obviously means that those material facts and situations must have relevancy to the essentials or pre-requisites provided under the Act to claim the relief. Under the NGT Act, in order to establish the cause of action, prerequisites are that the question must relate to environment or it should be a substantial question relating to environment or enforcement of any legal right relating to environment. If this is not satisfied, then the provisions of Section 14 of the NGT Act cannot be called in aid by the applicant to claim relief from the Tribunal. Such question must fall within the ambit of jurisdiction of the Tribunal i.e. it must arise from one of the legislations in Schedule I to the NGT Act or any other relevant provision of the NGT Act. For instance, the Tribunal would have no jurisdiction to determine any question relating to acquisition of land or compensation payable in that regard. However, it would have jurisdiction to award compensation for environmental degradation and for restoration of the property damaged. Thus, the cause of action has to have relevancy to the dispute sought to be raised, right to raise such dispute and the jurisdiction of the forum before which such dispute is sought to be raised."

42. The plea raised by the respondents that the application does not disclose any cause of action within the four corners of the statutory jurisdiction of the Tribunal is, therefore, liable to be rejected. The respondent can raise such plea only while on the assumption that the allegations made in the application are correct. In other words, such plea of rejection of plaint is a plea of demurer. Whether the applicant would ultimately be entitled to any relief or not, is a matter different from rejecting the application on the ground of non-disclosure of any cause of action.

43. Specific averments have been made in the application with regard to the construction activities being carried on in an irregular manner, in violation of Environmental Clearance conditions and its adverse impacts upon environment and ecology, particularly, the water bodies in the area. Furthermore, submissions have been made on the basis of reports that refer to the restitution of degraded and damaged ecology and environment, particularly with reference to the water bodies in the concerned areas. A general question with regard to adverse impacts on water supply and water bodies has been prominently raised. These averments have been denied by the project proponents. The authorities which had issued stop work notices to the project proponents have partly supported the case of the applicant, while some other respondents, including official respondents, have supported the project. Thus, these are the matters which certainly raise a substantial question relating to environment and which arise in relation to implementation of the enactments specified



in the Schedule to the NGT Act. Once, such disputes are raised which require determination by the Tribunal, it can hardly be contended that the application does not disclose any cause of action falling within the jurisdiction of the Tribunal.

44. Applicant can make a prayer of restitution of property damaged or of environment of such area under Section 15 of NGT Act. However, applicant has to show that it arises under the enactments specified under Schedule I. Thus, there is hardly any commonality in cause of action and ingredients thereto, required to be pleaded and proved and in the scope of jurisdiction exercisable by the Tribunal under sections 14 and 15 of the NGT Act. Therefore, these provisions are mutually exclusive and contentions of the Respondents that jurisdiction under Section 15 can only be invoked as a consequence of invocation of jurisdiction and orders of the Tribunal either under Section 14 or Section 16 of the Act is devoid of any merit.

45. The Learned Counsel appearing for the respondents, particularly the Project Proponents, while relying upon the judgement of the Hon'ble Supreme Court in the case of *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467 and *ITC Ltd. v. Debt Recovery Tribunal*, (1998) 2 SCC 70, contended that the application before the Tribunal does not disclose a cause of action, is a vexatious litigation without merits and is cleverly drafted to create an illusion of a cause of action and therefore the application should be rejected. In our considered opinion, the respondents cannot take any advantage from any of the judgements cited by them. Firstly, these were the judgements on their own peculiar facts. In the case of *T. Arivandandam* (supra), the Hon'ble Supreme Court was dealing with an appeal against the order of Hon'ble High Court of Karnataka dismissing the revision petition of the petitioner for granting injunction or stay on the order of the Trial Court directing vacation of premises. The Apex Court observed that it was an audacious attempt by the petitioner for seeking more and more time in vacating premises by filing these fake litigations. It was held by the Hon'ble Supreme Court that the plaint was manifestly vexatious and meritless in the sense of not disclosing a clear right to sue and, therefore, the plaint should be rejected. On the other hand, in the case of *ITC Ltd.* (supra), the appeal was filed against the judgment of the Learned Single Judge of High Court of Karnataka, dismissing the Writ Petition filed by the appellant against the orders of the Debt Recovery Tribunal and Appellate Tribunal, rejecting the application of the appellant under Order VII Rule 11 of the Code of Civil Procedure, 1908. The Hon'ble Supreme Court had therein observed that non-movement of goods can be for a variety of tenable or untenable reasons but that by itself will not give a reason to the plaintiff to use the word "fraud" in the plaint and cleverly get over any objections that may be raised by way of filing an application under Order VII Rule 11. In these circumstances, it was held that if the plaint in fact did not disclose a cause of action, clever drafting cannot create illusory cause of action. Hon'ble Supreme Court also stated that there was gross abuse of process of law repeatedly and observed that a plaint on a meaningful and not formal reading, should disclose the cause of action.

46. In the case in hand, as has already been held by us before, the litigation pending before the Hon'ble High Court of Karnataka and the Tribunal, fall under different jurisdictions. Even the Project Proponents themselves have filed Writ Petitions before the Hon'ble High Court of Karnataka challenging the stop work notices issued to them. In our considered view, on a meaningful reading of the application, particularly seen in light of the reports and other documents placed on record, the application does disclose a cause of action that would squarely fall within the ambit of jurisdiction of this Tribunal vested in it under Sections 14 and 15 of the NGT Act.

3. Whether the present application is barred by the principle of *res judicata* and/or constructive *res judicata*?

4. Whether the application filed by the applicants should not be entertained



or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petition 36567-74 of 2013 before the Hon'ble High Court of Karnataka?

47. The Respondents have raised the plea that the present application of the applicant is barred by the Principles of *res judicata*, constructive *res judicata* and in any case principle analogous thereto. This plea is found on the averment that some petitioners including Respondent Nos. 11 and 12 had filed a Writ Petition being Writ Petition No. 36567-574 of 2013, before the Hon'ble High Court of Karnataka with the following prayers:—

"PRAYER

In the above premises, it is prayed that this Hon'ble Court may be pleased to:

- (a) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 8 vide Lease cum sale agreement dated 30.06.2007 at Annexure "B", more fully described in the schedule to the said agreement;
- (b) Issue a writ of mandamus or any other appropriate writ or order, directing the Respondent no. 2 to resume the land which has been allotted in favour of Respondent no. 9 vide Lease cum sale agreement dated 20.03.2008 at annexure "C", more fully described in the schedule to the said agreement.
- (c) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from, in any manner, further alienating the public land, described in the schedule of the Lease cum Sale Agreement at Annexure B and C, in the vicinity of Agara lake to any private individual/institution/trust/societies/nongovernmental associates and organizations without following the due process of law;
- (d) Issue a writ of mandamus or any other appropriate writ or order, restraining the Respondent Nos. 1 and 2 from allotting the said land, described in the schedule to the Lease cum Sale Agreement at Annexure B and C, for purpose which may have an adverse consequences on the environment and, in particular the land in issue;
- (e) Direct the Respondent no. 1 to appoint a Task Force to look into illegal allotment of land in favour of private persons at the cost of environment and ecology and report to the Respondent no. 1 take action over them;
- (f) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case.

INTERIM PRAYERS

Pending consideration of this writ petition, this Hon'ble Court be pleased to:

- (a) Pass an order staying all construction activity under the project being carried out on the land in issue;
- (b) Pass an order restraining the Respondent Nos. 8 and 9 from alienating the land described in the schedule to the Lease cum Sale Agreement at Annexures B and C, or creating any third party rights or encumbrances on the land in issue; and
- (c) Pass such other orders and further orders as may be deemed necessary in the facts and in the circumstances of the case."

48. It is alleged that in the above mentioned Writ Petition, averments similar to that of present application had been made and in fact averments identical to the present petition were made in paragraphs 52 to 55 of the Writ Petition. Furthermore, the applicants did not disclose the factum of filing the Writ Petition before the Hon'ble High Court to this Tribunal. Also, the parties to both the proceedings to some extent are common.

It is also argued that respondent nos. 9 and 10 have also filed two Writ Petitions



before the Hon'ble High Court of Karnataka being Writ Petition No. 792 of 2014 and Writ Petition No. 366-367 of 2014, challenging the stop work notices issued to the respective respondents on 23rd December, 2013 and 2nd January, 2014 and that the operation of these notices have been stayed by the Hon'ble High Court on 21st January, 2014.

Thus, it is contended that the issues in the present application are directly and substantially in issue before the Hon'ble High Court of Karnataka and therefore, the present proceedings are barred by the Principle of *res judicata* and/or constructive *res judicata*. Neither the applicant nor respondent nos. 11 and 12 have disputed the filing of these Writ Petitions before the Hon'ble High Court, but have vehemently contended that neither the parties are common nor the issues in both the applications are directly and substantially the same. According to them, there is no commonality of cause of action or likelihood of a conflict between the judgments. It is therefore, their contention that the application is not liable to be rejected on that ground.

49. The pendency of the Writ Petitions before the Hon'ble High Court would not directly or incidentally render the proceedings before the Tribunal unsustainable. The scope of those Writ Petitions and the reliefs claimed therein are distinct and different. The matters relating to environment or the matters raising serious environmental issues are to be more appropriately tried before the Tribunal. We may at this stage refer to a recent judgment of the Supreme Court of India in the case of *Union of India v. Shrikant Sharma*, Civil Appeal No. 7400 of 2013 decided on 11th March, 2015. The Supreme Court in that case was dealing with a question of law whether the right of appeal under Section 30 of the Armed Forces Tribunal Act, 2007 against an order of the Tribunal with the leave granted by the Supreme Court against such orders, under Article 136(2) of the Constitution of India will bar the jurisdiction of the High Court Under Article 226 of the Constitution of India. After discussing the various provisions of the Act and various judgments of the Supreme Court in relation to basic principle for exercising power under Article 226 of the Constitution stated:

"34.

(iii) When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

(Refer: ***Nivedita Sharma***).

(iv) The High Court will not entertain a petition Under

Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance. (Refer: ***Nivedita Sharma***).

36. In ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO)*** this Court observed that it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.

In ***Chhabil Dass Agrawal*** this Court held that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

The Court then proceeded to examine the likelihood of analogous situation that could arise by exercise of such jurisdiction and finally concluded held as under:

"37.

...Once, the High Court entertains a petition Under Article 226 of the Constitution against the order of Armed Forces Tribunal and decides the matter, the person who thus approached the High Court, will also be precluded from filing an appeal Under Section 30 with leave to appeal Under Section 31 of the Act against the



order of the Armed Forces Tribunal as he cannot challenge the order passed by the High Court Under Article 226 of the Constitution Under Section 30 read with Section 31 of the Act. Thereby, there is a chance of anomalous situation. Therefore, it is always desirable for the High Court to act in terms of the law laid down by this Court as referred to above, which is binding on the High Court Under Article 141 of the Constitution of India, allowing the aggrieved person to avail the remedy Under Section 30 read with Section 31 Armed Forces Act.

38. The High Court (Delhi High Court) while entertaining the writ petition Under Article 226 of the Constitution bypassed the machinery created Under Sections 30 and 31 of Act. However, we find that Andhra Pradesh High Court and the Allahabad High Court had not entertained the petitions Under Article 226 and directed the writ Petitioners to seek resort Under Sections 30 and 31 of the Act. Further, the law laid down by this Court, as referred to above, being binding on the High Court, we are of the view that Delhi High Court was not justified in entertaining the petition Under Article 226 of the Constitution of India.

39. For the reasons aforesaid, we set aside the impugned judgments passed by the Delhi High Court and upheld the judgments and orders passed by the Andhra Pradesh High Court and Allahabad High Court. Aggrieved persons are given liberty to avail the remedy Under Section 30 with leave to appeal Under Section 31 of the Act, and if so necessary may file petition for condonation of delay to avail remedy before this Court."

50. Now firstly, let us examine if the parties in both these proceedings are common. The present application was instituted by 3 applicants and none of them is a party to the Writ Petition before Hon'ble High Court of Karnataka. The official Respondents are common in both the proceedings. Respondent Nos. 11 and 12 were the petitioners No. 1 and 2 in the Writ Petition before the Hon'ble High Court. However, at a later stage of pendency of this application, they filed M.A. No. 139 and 140 for being impleaded as party to the present application. This application was contested by the respondents including Respondent no. 9 and 10 in the present application and the same was allowed vide order dated 25th July, 2014 passed by the Tribunal. In the said order, it was recorded that both these Respondent Nos. 11 and 12 have given an undertaking to the Tribunal that they would withdraw the Writ Petition that they had filed before the Hon'ble High Court of Karnataka. In compliance to the undertaking given to the Tribunal, these two Respondents filed an application before the Hon'ble High Court and vide order dated 1st August, 2014 passed in Writ Petition No. 36567 of 2013, the name of these two Respondents as Petitioner Nos. 1 and 2 were ordered to be deleted. Thus, as of today, none of the above applicants is the party in the Writ Petition before the High Court and in fact, they have been impleaded as Respondent Nos. 11 and 12 in consonance with the order of the Tribunal and that of the High Court as afore-referred. Now, we may proceed to deal with the content and scope of these proceedings. Undisputedly, the jurisdiction of the High Court under Article 226 of the Constitution of India is very wide. The jurisdiction of the Tribunal is very limited and it has to exercise it within the limitation of the Statute that created it. There are similar and at some places even identical contentions raised by the applicants in the present application, to the facts averred in the Writ Petition by the Petitioners before the High Court of Karnataka. The prayers in the Writ Petition as referred to above, both generally and substantially relate to acquisition of land, requiring the respondent authorities to resume the land in question, to examine the question of illegal allotment of the land and stop allotment and alienation of land. While the prayers before the Tribunal are and have to be restricted to environmental degradation and its restoration along with treating the areas in question as sensitive areas. The rampant development activities carried out by Respondent Nos. 9 and 10 are stated to have adverse impact on ecology, environment and the water bodies. It is



further prayed before tribunal that there should be restoration of ecology of sensitive area. Thus, it is evident from the prayers and genesis of the respective proceedings that they are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment, ecology and its restoration and have to be essentially a civil proceeding. While the proceedings before the High Court relate to entirely different issues i.e. the acquisition of land, its allotment and its transfer to third party. Thus, the issues in both the proceedings are neither substantially nor materially identical. Both jurisdictions have to operate in different fields governed by different and distinct laws. The objection taken by the Respondent does not satisfy the basic ingredients to attract the application of *res judicata* or constructive *res judicata*.

51. One of the tests in regard to the above is that a 'cause of action' should culminate into a judgment and lose its identity by merging into the result of the judgment. Once a 'cause of action' is culminated into the judgment, the general principle of *res judicata* or *constructive res judicata* bars re-agitating the same issue all over again. The object is to prevent abuse of process of law by re-agitating the same issues in different courts.

For these reasons, we find no merit in this contention of respondent Nos. 9 and 10. The purpose of the doctrine of *res judicata* is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of re-agitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality in so far as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High Court and the Tribunal are concerned. There is no commonality in parties before the Tribunal and the High Court. The 'cause of action' in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor *constructive res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of judicial propriety, because of the Writ Petitions pending before the Hon'ble High Court of Karnataka.

In light of the above law enunciated by the Supreme Court of India, the contention raised on behalf of the applicant that this Tribunal should entertain and decide the application despite pendency of Writ Petitions before the High Court, deserves to be accepted.

5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

52. Discussion on this issue with reference to the facts of the case would require the Tribunal to decide as to what relief, if any, could be granted to the applicant and whether there is any need for the Tribunal to pass any direction in the interest of environment and ecology in the peculiar facts and circumstances of the case. As already noticed in the afore-indicated discussions, the serious objection herein is that these projects commenced their construction activities without seeking Environmental Clearance and therefore, the constructions are illegal and unauthorised. These huge constructions of residential, commercial and other purposes are located on the wetlands of different water bodies in the city of Bengaluru. The constructions have been raised even on the catchment areas of the water bodies. With reference to the



reports afore-noticed, averments are that these constructions have adversely affected the environment, ecology and particularly the water bodies and their biodiversity. These constructions would have tremendous impact on the water supply to the city of Bengaluru and that there is a likelihood of complete extinguishment of these historical lakes, which have been the basic factor behind maintaining the environmental and ecological balance in the city of Bengaluru.

53. One of the most important facets of deliberation on this issue would be the alleged construction on the wetlands and catchment areas of the water bodies, i.e. the Agara and the Bellandur Lakes. In common parlance, 'wetlands' are the areas where water is the primary factor controlling the environment and the associated plant and animal life. They occur where the water table is at or near the surface of the land or where the land is covered by water.

54. Ramsar Convention uses a broad definition of wetlands. It includes all lakes and rivers, underground aquifers, swamps and marshes, wet grasslands, peatlands, oases, estuaries, deltas and tidal flats, mangroves and other coastal areas, coral reefs, and all human-made sites such as fish ponds, rice paddies, reservoirs and salt pans.

55. The Indian definition of a 'wetland' means "an area or of marsh, fen, peatland or water; natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tide does not exceed six meters and includes all inland waters such as lakes, reservoir, tanks, backwaters, lagoon, creeks, estuaries and manmade wetland and zone of direct influence on wetlands that is to say the drainage area or catchment region of the wetlands as determined by the authority but does not include main river channels, paddy fields and the coastal wetland covered under the notification of the Government of India in the Ministry of environment and Forest, S.O. number 114(E) dated the 19th February, 1991."

56. Wetlands are amongst the most productive ecosystems on the Earth, and provide many important services to human society. However, they are also ecologically sensitive and adaptive systems. "Free" services provided by wetlands are often taken for granted, but they can easily be lost as wetlands are altered or degraded in a watershed. Estimates of the per acre value of wetland services run as high as \$370,000/acre in 1992 dollars (Heimlich *et al.* 1998). The exact value can be attributed to the type and location of the wetland, the services it provides, and the economic methods and assumptions used.

57. Ecosystem goods provided by the wetlands mainly include: water for irrigation; fisheries; non-timber forest products; water supply; Pollutant removal, Flood attenuation, Groundwater recharge, Shoreline protection, Wildlife habitat and recreation. Major services include: carbon sequestration, flood control, groundwater recharge, nutrient removal, toxics retention and biodiversity maintenance (Turner *et al.*, 2000).

58. Various services provided by wetlands include Carbon Cycle/Carbon Sequestration: Swamps, mangroves, peat lands, mires and marshes play an important role in carbon cycle. Though wetlands contribute about 40% of the global methane (CH₄) emissions, they have the highest carbon (C) density among terrestrial ecosystems and relatively greater capacities to sequester additional carbon dioxide (CO₂). Wetlands provide for habitat for more aquatic, terrestrial, and avian species on an area basis than any other habitat type, making them one of the most ecologically and economically important ecosystems on earth. Thus, wetlands provide for soil life, habitat, biodiversity maintenance and recreation. Wetlands are a service provider to Nutrient Removal, Flood attenuation and Water supply and Ground water recharge and even are a source of employment [Ref: Pant *et al.*, 2003; Groffman and Crawford, 2003; Juliano and Simonovic, 1999; Olewiler, 2004; MFPED, 2004]. It is essential to



provide an effective institutional framework to manage water bodies through governmental and even non-governmental organizations.

59. Bengaluru has many artificial lakes, built for various hydrological purposes and mainly to serve the needs of irrigated agriculture and other allied purposes. The studies placed on record show that lakes of Bengaluru occupy about 4.8 per cent of the city's geographical area (640 square meters) covering both urban and non-urban areas (Krishna M.B. *et al.*, 1996). The number of these lakes has rapidly fallen from 262 in 1960 to 81 in 1985. The quality of water has reduced due to discharge of industrial effluents and domestic sewage. Conversion of lakes for residential, agricultural and industrial purposes has engulfed many lakes. Similarly, between 1973 and 2007, this region lost 66 lakes with a water spread area of around 1100 hectares due to urban sprawl (Nitin Bassi *et al.*, 2014). General factors affecting wetlands especially lakes are Eutrophication, low dissolved oxygen and pH, sedimentation and heavy metal pollution, biodiversity loss, etc.

60. Studies also reflect that a comparative analysis of drainage network between the Bengaluru urban and rural areas showed that the water bodies in Bengaluru urban district were subjected to intense pressure due to the process of urbanization and increasing population, resulting in loss of interconnectivity, in contrast to water bodies in rural Bangalore, where less pressures from direct human activities were noticed. At Madivala and Bellandur, there is interconnectivity of lakes with the adjacent lakes. Due to conversion and encroachment of two water bodies, connectivity between Yelchenahallikere and Madivala is lost as in the case of *Bellandur* and *Ulsoor* lakes with the conversion of Challegatta tank into a golf course. The GIS analysis revealed that due to developmental activities in the catchment area, the drainage connectivity between the water bodies has been lost.

61. The loss in wetland interconnectivity in Bangalore district is attributed to the enormous increase in population and the reclamation of tanks for various developmental activities. Analysis of Madivala and Bellandur drainage network revealed that encroachment and conversion has resulted in the loss of connectivity between Yelchenahallikere and Madivala. Similarly the drainage network between Bellandur and Ulsoor is lost due to conversion of Chelgatta tank into a golf course (Status of wetlands in Bangalore).

62. In 1995, the National Lake Conservation Authority (NLCA) came up with National Lakes Conservation Plan (NLCP) for Bangalore, specifically aimed at raising the highest state of environmental alarm for dwindling quality of the remnants of the city's lakes. The National Lake Conservation Plan for Bangalore came with the theme of "*Integrated Lake Ecology with Water Quality*". This plan aimed at improving urban sanitation and health conditions, especially for the weaker sections of the society living within the lake catchment area. The plan also called for eco-friendly, low-cost, waste management bio-systems like "engineered wetlands". A total of 4 sub-systems comprising of around 20 lakes were selected for the first phase of the NLCP. These four subsystems included Agara Lake System (Hulimavu, Doddabegur, Madiwala, Puttenahalli; Agara Kere); Hebbal System (Narasipura I and II; Dodda Bomassandra, Hebbal Kere, and Nagavara); Bellandur Lake System (Ulsoor, Bellandur, Vartur); and Dorekere System (Vasanthapura, Janardhana, Dorekere, Moggekere). Rs. 5.542 Crore were sanctioned for the restoration of the Bellandur Lake under NLCP in January 2003. The proposal specified the following tasks for the restoration: de-silting of lakes, fencing around the lakes, afforestation and gardening, sewage water treatment, interception chambers, diversion channels, oxidation ponds, de-weeding of lakes, community sanitation, solid waste and garbage disposal, recreational facilities. This was to be a five year phasing project (1995-2000.) divided into the catchment area development (CAD); Sewage diversion channels; De-silting and Weed control; Face-lifting of lake; Biological studies and public awareness program; land acquisition, and



others. The total cost for five years was estimated at Rupees Twenty-One Crores, Twenty Lakhs and Thirty five thousands.

63. In late 2000, the Research and Development wing of KSPCB published its report on comprehensive monitoring of lakes in and around Bangalore Metropolitan area to assess the state of the water quality. This was an interesting report given the weight of the output carried after the first phase of the city's lakes restoration process. KSPCB's results as a result of water quality monitoring on 44 selected lakes (including all but 2 in the NLCP list) revealed that most lakes still remained highly polluted.

64. The LDA instituted in January 2002, identified about 60 lakes for immediate restoration soon after it was established. This program, like the NCLP one previously was proposed to be a five year phasing project costing Rs. 250 Crores, almost ten times the estimated cost proposed by the NLCA in 1995. These selected lakes included Ulsoor Lake, Sankey tank, Agara Lake, Narasipura Lake, Lal Bagh Lake, Dodda Bamasandra Lake, Hebbal Lake, Nagavara Lake and Bellandur Lake. The LDA's main objectives were: Resuscitation of lakes to boost aquifers, Diversion and treatment of sewage to generate alternative sources of raw water; improving sanitation and health conditions; and preserving the habitat of aquatic life.

65. The wetland management program generally involves activities to protect, restore, manipulate, and provide for the functions and values emphasizing both quality and acreage by still advocating sustainable usage of them [Walters, C. 1986.]. Management of wetland ecosystems requires an intense monitoring, increased interaction and co-operation among the various agencies (state departments concerned with environment, soil, natural resource management, public interest groups, citizen groups, agriculture, forestry, urban planning and development, research institutions, government, policy makers, etc.). Such management goals should not only involve buffering wetlands from any direct human pressures that could affect the wetlands normal functions, but also in maintaining important natural processes that operate on them that may be altered by human activities. Wetland management has to be an integrated approach in terms of planning, execution and monitoring requiring effective knowledge on a range of subjects from ecology, economics, watershed management, and planners and decision makers, etc. All this would help in understanding wetlands better and evolving a more comprehensive solution for long-term conservation and management strategies.

We have noticed the above studies on record to bring clarity in regard to the importance of these water bodies and need-oriented significance to maintain the wetlands and catchment areas in the interest of environment, ecology, biodiversity and hydrological balance. The merit or otherwise, of these cases have to be examined in light of these studies, which is a matter of record.

66. It is alleged that respondents 9 and 10 had started the construction activity of their projects without grant of Environmental Clearance and it is sought to be substantiated by placing the Google Images on record. However, it cannot be disputed that subsequently both these respondents obtained ECs for the projects in question on 17th February, 2012 and 30th September, 2013, respectively. After the grant of Environmental Clearance, the respondents were expected to carry on with the projects strictly as per the terms and conditions of the orders granting them Environmental Clearance. The allegation is that they have carried out the constructions in violation of the conditions of the Environmental Clearance and have encroached upon the wetlands and catchment areas of the lakes.

67. The Environmental Information System (ENVIS), Centre for Ecological Sciences, Indian Institute of Science, Bangalore had carried out a study and submitted a report on the need for 'Conservation of Bellandur Wetlands: Obligation of Decision Makers to Ensure Intergenerational Equity'. This report had specifically dealt with the activity of



the SEZ projects by Karnataka Industrial Area Development Board in six zones. It was opined that this activity is contrary to Sustainable Development as the natural resources, lakes and wetlands get affected due to such activity. Removal of Rajakaluve (storm water drains) and gradual encroachment over them amounts to removal of lake connectivity, which enhances the episodes of flood and associated disasters. The Supreme Court of India, in Civil Appeal No. 1132/2011 while expressing concern regarding encroachment, particularly over lakes, had directed the State Governments to remove encroachments on all community lands. Even the High Court of Karnataka in Writ Petition No. 817/2008 had directed that the lakes should be protected across Karnataka, prohibited dumping of garbage and sewage in lakes, removal of encroachments, plantation of trees in consultation with experts lake surroundings and to declare it a 'No Development Zone' around the lakes. The report also speaks of water shortage by stating that BWSSB had not given NOC to respondent no. 9 and had communicated inability to supply such huge quantity of water on regular basis, as these projects require 4,587 kilolitres water per day (4.58 MLD per day). In this report, the Institute did not approve of the decision of the authorities to go ahead with such huge project, but also made reference to the ecological and environmental implications as follows:—

"Ecological and Environmental Implications:

- Land use change: Conversion of watershed area especially valley regions of the lake to paved surfaces would alter the hydrological regime.
- Loss of Drainage Network: Removal of drain (Rajakaluve) and reducing the width of the drain would flood the surrounding residential as the interconnectivities among lakes are lost and there are no mechanisms for the excessive storm water to drain and thus the water stagnates flooding in the surroundings.
- Alteration in landscape topography: This activity alters the integrity of the region affecting the lake catchment. This would also have serious implications on the storm water flow in the catchment.

The dumping of construction waste along the lakebed and lake has altered the natural topography thus rendering the storm water runoff to take a new course that might get into the existing residential areas. Such alteration of topography would not be geologically stable apart from causing soil erosion and lead to siltation in the lake.

- Loss of Shoreline: The loss of shoreline along the lakebed results in the habitat destruction for most of the shoreline birds that wade in this region. Some of the shoreline wading birds like the Stilts, Sandpipers; etc will be devoid of their habitat forcing them to move out such disturbed habitats. It was also apparent from the field investigations that with the illogical land filling and dumping taking place in the Bellandur lakebed, the shoreline are gobbled up by these activities.
- Loss of livelihood: Local people are dependent on the wetlands for fodder, fish etc. estimate shows that wetlands provide goods and services worth Rs. 10500 per hectare per day (Ramachandra et al., 2005).

Decision makers need to learn from the similar historical blunder of plundering ecosystems as in the case of *Black Swan event* (http://blackswanevents.org/?page_id=26) of evacuating half of the city in 10 years due to water scarcity, contaminated water, etc. or abandoning of Fatehpur Sikhri and fading out of AdilShahi's Bijapur, or ecological disaster at Easter Island or Vijayanagara empire.

It is the responsibility of Bangalore citizens (for intergenerational equity, sustenance of natural resources and to prevent human-made disasters such as floods, etc.) to stall the irrational conversion of land in the name of development

and restrict the decision makers taking the system (ecosystem including humans) for granted as in the case of *Bellandur wetlands* by KIADB.”
This report also highlighted the threats faced by the wetlands in Bengaluru with particular reference to SEZ Bellandur wetlands, which is the land in question. The report recorded as follows:

“Greater Bangalore had 207 water bodies in 1973 (Figure 6), which declined to 93 (in 2010). The rapid development of urban sprawl has many potentially detrimental effects including the loss of valuable agricultural and eco-sensitive (e.g. wetlands, forests) lands, enhanced energy consumption and greenhouse gas emissions from increasing private vehicle use (Ramachandra and Shwetmala, 2009). Vegetation has decreased by 32% (during 1973 to 1992), 38% (1992 to 2002) and 63% (2002 to 2010).

Figure 6: Lakes encroached by land mafia

Disappearance of water bodies or sharp decline in the number of water bodies in Bangalore is mainly due to intense urbanisation and urban sprawl. Many lakes (54%) were encroached for illegal buildings. Field survey of all lakes (in 2007) shows that nearly 66% of lakes are sewage fed, 14% surrounded by slums and 72% showed loss of catchment area. Also, lake catchments were used as dumping yards for either municipal solid waste or building debris (Ramachandra, 2009a; 2012a). The surrounding of these lakes have illegal constructions of buildings and most of the times, slum dwellers occupy the adjoining areas. At many sites, water is used for washing and household activities and even fishing was observed at one of these sites. Multi-storied buildings have come up on some lake beds that have totally intervene the natural catchment flow leading to sharp decline and deteriorating quality of water bodies. This is correlated with the increase in built up area from the concentrated growth model focusing on Bangalore, adopted by the state machinery, affecting severely open spaces and in particular water bodies. Some of the lakes have been restored by the city corporation and the concerned authorities in recent times. Threats faced by lakes and drainages of Bangalore:

1. Encroachment of lakebed, flood plains, and lake itself;
2. Encroachment of *rajakaluves*/storm water drains and loss of interconnectivity;
3. Lake reclamation for infrastructure activities;
4. Topography alterations in lake catchment;
5. Unauthorised dumping of municipal solid waste and building debris;
6. Sustained inflow of untreated or partially treated sewage and industrial effluents;
7. Removal of shoreline riparian vegetation;
8. Pollution due to enhanced vehicular traffic.

These anthropogenic activities particularly, indiscriminate disposal of industrial effluents and sewage wastes, dumping of building debris have altered the physical, chemical as well as biological integrity of the ecosystem. This has resulted in the ecological degradation, which is evident from the current ecosystem valuation of wetlands. Global valuation of coastal wetland ecosystem shows a total of 14,785/ha US\$ annual economic value. Valuation of relatively pristine wetland in Bangalore shows the value of Rs. 10,435/ha/day while the polluted wetland shows the value of Rs. 20/ha/day (Ramachandra et al., 2005). In contrast to this, Varthur, a sewage fed wetland has a value of Rs. 118.9/ha/day (Ramachandra et al., 2011). The pollutants and subsequent contamination of the wetland has telling effects such as disappearance of native species, dominance of invasive exotic species (such as African catfish, water



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hyacinth, etc.), in addition to profuse breeding of disease vectors and pathogens. Water quality analyses revealed of high phosphates (4.22-5.76 ppm) levels in addition to the enhanced BOD (119-140 ppm) and decreased DO (0-1.06 ppm). The amplified decline of ecosystem goods and services with degradation of water quality necessitates the implementation of sustainable management strategies to recover the lost wetland benefits.

SEZ in Bellandur Wetlands: Irrational decision of setting up SEZ at Bellandur wetland would affect the lake. The Mixed Use Development Project - SEZ (figure 6) is proposed along Sarjapur Road in a wetland between Bellandur and Agara Lake, extending from 77°38'28.96" E to 77°38'57.99"E of Longitude and 12°55'24.98" N to 12°55'44.43" N of Latitude with an area of 33 hectare. The proposal of the project is to construct residential areas, offices, and retail and hotel buildings in this area.

Figure 6: SEZ

Significance of the Region:

1. Wetlands with remediation functional ability (function as *kidneys* of the landscape). Removal of wetlands will affect the functional ability of the lake and would result in the death of Bellandur lake;
2. Considering severe water shortage to meet the drinking water requirement in Bangalore, there is a need to remove deposited silt in the Bellandur lake, which will enhance the storage capacity and in turn helps in mitigating the water requirement;
3. Wetlands aid in recharging groundwater as soil are permeable;
4. Belanduru lake provide food (fish, etc.) and fodder;
5. Retain the excess water and prevent flooding in the vicinity;
6. Large number of farmers in the downstream is dependent on Belanduru lake water for agriculture, vegetable, etc.

Realizing these, BDA has aptly earmarked these regions in CDP 2005 for "ENVIRONMENT PROTECTION AND HERITAGE CONSERVATION". The masterplan includes the protection of valleys and tanks as part of the vision and enforcing the ban on construction over protected areas. CDP 2015: As per CDP 2015, valley region are "No Development Zone"

1. In case of water bodies a 30.0 m buffer of 'no development zone' is to be maintained around the lake (as per revenue records) with exception of activities associated with lake and this buffer may be taken into account for reservation of park while sanctioning plans.
2. If the valley portion is a part of the layout/development plan, then that part of the valley zone could be taken into account for reservation of parks and open spaces both in development plan and under subdivision regulations subject to fulfilling section 17 of KTCP Act, 1961 and sec 32 of BDA Act, 1976.
3. Rajakaluve/storm water drains categorized into 3 types namely primary, secondary and tertiary. These drains will have a buffer of 50, 25 and 15m (measured from the centre of the drain) respectively on either side. No activities shall be permitted in the buffer zone."

This technical report was prepared in the year 2013 when these projects had already commenced their constructions. Of course, as per the case of the project proponents themselves, the construction activity was not in full swing.

68. After inspection of the projects in question, another report was prepared by the Regional Office, Southern Zone (Bengaluru) of the Ministry of Environment and Forests, Government of India, in relation to the building project undertaken by respondents No. 9, which was sent to the Additional Principal Chief Conservator of



Forests (Central), Ministry of Environment and Forests, Bangalore, on 14th August, 2013. It reported on the construction of mixed use development with residential, retail, hotel office, SEZ and Non-SEZ by respondent No. 9. In part III of this report, the MoEF commented upon each condition of the order granting Environmental Clearance and compliance thereto. It noticed that the projects are under initial stages, i.e. only levelling and excavation works are going on. It will be useful to refer to some of the significant observations relating to the compliance of the conditions of the Environmental Clearance in relation to the project of Respondent No. 9 in this Report. They read as follows:

Sl. No.	Conditions	Compliance
xiv)	Disposal of muck, construction debris during construction phase should not neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in approved sites with the approval of competent authority	The project authorities stated that, the excavated soil from the project site would be stored in Rachenahalli village, K.R. Puram Hobli, Bangalore East Taluk which is about 10 km away from the site and further stated that, the construction debris will be reused/recycled for back filling/sub base work for roads, pavements, drains etc., within the project site and the earth work excavated material will be managed through back filling between foundations on the back side of retaining walls and underground tanks/sumps and also will be reused for filling up low lying areas within the site. As on today the levelling and excavation works are going on. The foundation work of commercial block in Phase-I has been started from here the excavated earth is kept just adjacent to this foundation work within the site and agreed to reuse back.
xv)	Soil and ground water samples should be tested at the project site during the construction phase to ascertain that there is no threat to ground water quality by leaching of heavy metals and or other toxic contaminants and reports submitted to SIEAA.	Soil (one location) and ground water (.....location) samples are being tested on monthly basis through the third party. The heavy metal has not been analyzed yet and agreed to analyse in future.
xvi)	Construction spoils, including bituminous material and other hazardous materials, must not be allowed to contaminate water courses and the dumpsites for such material must be secured so that they should not leach into the around water.	The project authorities assured that hazardous material will not be used in the site.

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xx)	Fly ash should be used as building material in construction as per the provisions of fly Ash Notification of September 1999 and amended as on August, 2003.	Fly ash bricks are not used because there is no coal based thermal power plant located within 200 km of the project site.
xxiv)	No ground water is to be drawn without permission from the Central Ground Water Authority.	Agreed to comply. The project construction activities are under initial stages. As gathered that, the ground water is purchased from outside for drinking and sanitation purpose.
xxxiv)	The project authority shall maintain and operate the common infrastructure facilities created including STP and solid waste management facility for a period of 5 years after commissioning the project.	Agreed to comply.
xxxix)	The natural sloping pattern of the project site shall remain unaltered and the natural hydrology of the area be maintained as it is to ensure natural flow of storm water.	Execution of the project will necessarily sloping pattern of the project site and the natural hydrology of the area and hence specific condition no xxxix cannot be complied.
xi)	Lakes and other water bodies (if any) within and/or at the vicinity of the project area shall be protected and conserved.	The project area is in the catchment area of Bellandur lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by the project activities either during construction or during operation phase.
B. General Conditions		
ii)	All commitments made by the proponents in their application, and subsequent letters addressed to the SEAC/SEIAA should be accomplished before the construction work of the project is completed.	The project authorities have agreed to implement all the commitments made to the SEAC/SEIAA before the construction work of the project is completed.
v)	In case of any changes(s) in the scope of the project, the project would require a fresh appraisal by this Authority	Agreed to comply.
xii)	The issuance of Environmental Clearance doesn't confer any right to the project proponent to operate/run the project without obtaining Statutory clearance/sanctions from all other concerned authorities.	Agreed to comply.

There does not appear to be any such similar report in relation to the project of



respondent no. 10. However, there are other general reports which deal with the project properties of respondent No. 10.

69. We have also noticed above that the High Court of Karnataka in W.P. No. 817/2008 had passed certain directions in regard to the preservation of lakes and wetlands in the State of Karnataka. These directions were based upon the report dated 21st February, 2011, submitted to the High Court by the Committee Chaired by Justice N.K. Patil, in relation to the preservation and restoration of lakes in and around the city of Bangalore. In the report, recommendation had been made with regard to preservation of lakes, noticing rapid urbanisation of Bangalore city as the main cause for reduction in water bodies. While referring to an earlier report of 1985, prepared by Shri N. Lakshman Rau Expert Committee, constituted by the Government of Karnataka, it was emphatically stated that necessity of lake preservation is more pronounced in the context of urbanization, when city takes more and more villages into its fold, as in case of Bangalore city. It stated that the lakes are the lung spaces of a city and climate moderators, adding to thermal ambience. Most importantly in this report, emphasis was made on the role of the LDA in preservation of lakes. It was referred that the LDA was constituted in the year 2002 as a registered society. Its jurisdiction extends over lakes in metropolitan cities area of Bangalore inclusive of Bangalore Metropolitan Region Development Authority area, besides this LDA has jurisdiction over the lakes in other Municipal Corporations and Town Municipal Councils within the State. It is the regulatory, planning and policy making body with nodal functions for protection, conservation, reclamation, restoration, regeneration and integrated development of lakes in its jurisdiction. Another important feature of this report was in relation to augmenting water supply to Bangalore city from these lakes. It stated that Bangalore population was likely to exceed 12 million by 2020 and at the current growth rate, the water shortage may lead to water crisis, if the problem is not tackled with advance planning. Report further stated that, the ground water was depleting and that bore-wells of 700 to 1000 feet deep were quite common in this city. These all were indicators of a grave situation.

70. The Hindu newspaper on 3rd June, 2013 had widely raised the issue of environmental degradation in the catchment area of the Bellandur Lake due to construction of mixed use development projects, as also undertaken by both the respondents no. 9 and 10. After this report, instructions were issued by the CEO of LDA on 4th June, 2013 to inspect the lake premises. Inspection was conducted by Shri S.R. Nagraj, EE, LDA and Sh. C. Nagesh Rao, AEE, LDA. After the inspection, a report dated on 12th June, 2013 was prepared which concluded as under:

At the time of inspection it was observed that huge construction activities were observed in this catchment area and on enquiry it was informed that the above said land was acquired by the KIADB for SEZ and allotted for different agencies for construction of apartment complexes, malls, etc., Due to huge construction activities in this catchment area there is change of land use and directly impacting the catchment of Bellandur lake.

As per the Para 2 of the report, it is reported that the wet land (a marshland ecosystem typically found around water bodies) has shrunk. It is not the wetland of Bellandur lake. It is a wetland of Agara lake. Originally Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake was with MI Department and MI has not constructed any wetland in Bellandur lake. It is catchment area which was shrunk due to allotment of agricultural land by KIADB to different agencies for construction of apartment complexes, malls etc.

Hence KIADB's colossal "mixed - use development project in the catchment area of Bellandur will probably have adverse effect to Bellandur lake.

The above conclusions suggest that these multi-purpose construction activities of huge dimensions could have adverse environmental and ecological impacts. Of course, the report submitted by the MoEF primarily deals with the construction activity and projects of respondent No. 9 only. However, the other reports are of general nature which deals with the construction of multi-purpose projects and their adverse impacts on environment, ecology with particular reference to the water bodies like lakes etc.

71. In order to analyse the environmental and ecological impacts of these multipurpose projects appropriately, the case can be divided into two parts: First, what are the irregularities or breaches which the project proponents, i.e. respondent nos. 9 and 10 as stated to have been committed. Secondly, the likely impacts of these projects upon the environment and ecology of the area in question, particularly on the water bodies.

Proposed Mixed Use Development Project is located at Agara Village and Jakkasandra Village, Begur Hobli, Bangalore South. Special Economic Zone (SEZ) is located between the Agara Lake & Bellandur lake. The Mixed Use Development Project - SEZ is proposed along Sarjapur Road in the catchment of lakes Bellandur and Agara Lake, extending from 77°38'28.96" E to 77°38'57.99" E of Longitude and 12°55'44.43" N of Latitude with an area of 33 hectare. Agara Lake is located at other side of 45 m wide road whereas Bellandur Lake is just 50 m away from the project boundary. Rajakaluve (Natural Drain) is running all along the project site.

Proposal envisages for construction of residential apartment with (Block-1 (Block A: 2B+G+ 14UF; Block B: 2b+G+10 UF) + Block 2 (2B+G+14UF), retail, hotel & office building with 3B+G+11 UF, SEZ with 3B+G+11UF +Terrace and Non-SEZ 3B+G+12UF+Terrace on the plot area of 2,92,636.03 sqm. The total built-up area is 11,50,454.98 sq. m. The total water requirement is 4587 KLD and the investment is of Rs. 2347 crores.

72. In light of the above scope of the project and records before the Tribunal and the defaults on the part of the Project Proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:

- 1) The construction of both the projects had started prior to the grant to Environmental Clearance.
- 2) The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment.
- 3) Revenue Map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
- 4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
- 5) Google Satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13th November, 2000 and 23rd November, 2010. Secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance.
- 6) Restriction in regard to extraction of ground water was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.
- 7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved: The inspection report by the MoEF clearly notes that condition nos. (xxxix) and (xl) in the Environmental Clearance of respondent no. 9 cannot be



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complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase.

73. There are four reports on record which are suggestive enough that there would be adverse impacts of these projects upon the environment and ecology of the area, particularly on the lakes and the wetlands. The report prepared by the Committee chaired by Justice N.K. Patil filed before the Tribunal states that the lakes and the wetlands should be protected in the city of Bangalore. Measures were required to be taken in that direction and to remove encroachment in lake area and *Rajakaluves*. The large construction activity was stated to be prejudicial to the environment in those areas. Contents of this report are neither denied nor admitted by respondent no. 9 who, in its reply, has required contents of the report to be proved by the applicants. On the other hand, respondent no. 10 has submitted that there are no *Rajakaluves* or canal in his property and thus the above recommendations are not applicable to respondent no. 10. The other report on record is prepared by ENVIS, Centre for Ecological Sciences, Indian Institute of Science, Bangalore. This report focuses on possible consequences for setting up SEZ in Bellandur Lake area and also recommends restoration of wetlands in that area. In this report, how the land use changed from 2007 to 2012 was illustrated, stating that the wetlands have decreased from 32.80 ha to 5.95 ha, whereas the Open land (Conversion of Wetlands to SEZ Construction site) has increased from 0.6 ha to 27.46 ha. Noticing the major violations, it was recorded that development in wetland violates the CDP 2015, which would result into flooding in the vicinity due to encroachment of drains, alterations in topography, encroachment of lake-bed and encroachment of lake itself by dumping debris and filling up of same; there was violation of 30 metre buffer (lake floodplain); traffic congestion and filling of a portion of lake with building debris. While respondent no. 9 termed the report as speculative and based on presumptions, respondent no. 10 denied it as frivolous and baseless and termed it as tailor made to support the case of the applicants. At this stage, we may also notice that in the column of 'Acknowledgement' of this Report, the name of Koramangala Residents Association has been mentioned. It is contended that this Association had approached Dr. T.V. Ramachandran to prepare the Report. The said Resident Association is a party to one of the Writ Petitions before the Hon'ble High Court of Karnataka. Therefore, it is argued that the report stand vitiated because of the self-interest of Dr. T.V. Ramachandran who was a member of the Committee which prepared the said report. On the other hand, the contention of the applicant and respondent nos. 11 and 12 is that Dr. T.V. Ramachandran prepared the said Report as a part of scientists' social responsibility and that the observations and findings of the report by the scientists do not become invalid/*non est* merely because the study was undertaken at the request of a concerned group of citizens.

74. The objection taken by the respondents does not appeal to us. This report was not prepared by an individual but by a team of scientists from a Government Institute. Apparently, it appears to be in discharge of his scientists' social responsibility that Dr. T.V. Ramachandran participated in preparing this report. However, this issue loses its significance, because it is the content of the report which is to be considered by the Tribunal and not the persons who have prepared the report. There is a vague denial to the contents of the report by the respondents, who have not placed any report on record to contradict the contents of this report, which itself is largely supported by three other reports placed on record.

75. Report which is placed on record by respondent no. 10 is prepared by a Private Consultant, which only mentions that there will be no adverse impacts on



environment. This report does not aspire confidence, as it is not data based and in fact, does not meet any of the issues raised in the four reports placed by the applicant on record. The other two reports are the MoEF Monitoring Committee report and the inspection report prepared by the LDA, which we have already discussed in some detail above.

76. The MoEF monitoring report prepared by regional office of MoEF has forwarded on 14th August, 2013 mentions two most significant conditions which have a substantial bearing on the matters in issue before us is with regard to the preservation of the water bodies in Bengaluru and the natural slopping pattern and natural hydrology of the area to remain unaltered. These conditions having been noticed as not possible to be adhered to, we really do not understand as to how these projects have been permitted to progress any further.

77. Lastly, it is the report of LDA, which as already noticed is the Society created by the Government of Karnataka with a specific purpose of protecting the lakes and the wetlands. This report had specifically recorded that the projects are bound to have adverse impacts on the catchment area of Bellandur Lake. This report has also been denied by the respondents stating that it is frivolous and according to respondent no. 10, there are no wetlands around Bellandur Lake.

78. There is sufficient material by way of reports, google images and other documents that the Bellandur Lake and even other lakes for that matter have wetlands and catchment areas. There are encroachments on the Rajakaluves as well as on the catchment areas of the water bodies. The adverse impacts of this colossal mixed development projects had got the attention of all concerned, including the Press and the issue was widely raised. This resulted in the inspection by the LDA as well as other authorities, which commented on the adverse impacts of this project in the interest of environment and ecology. Furthermore, the stop-work notices issued by different authorities from time to time also suggest that the work and progress of the projects was in violation of the laws in force. Of course, these stop-work notices have been challenged before the Hon'ble High Court of Karnataka which has granted stay on these notices, but the fact of the matter remains that various authorities including the BBMP and the KIADB have found out and observed that the construction should be stopped forthwith.

79. The cumulative effect of the above discussion would be that there is a definite possibility of environment, ecology, lakes and the wetlands being adversely affected by these projects. There are multiple public authorities including SEIAA involved in regulating such projects and they are also responsible for protecting interest of environment and ecology while keeping in mind the settled canon of sustainable development. It is the contention of the respondent nos. 9 and 10 that there are large numbers of other projects located around these lakes. If that be so, then we have no hesitation in observing that various regulatory authorities including SEIAA ought to have examined the cumulative Environmental Impact Assessment in these cases on the water bodies as the protection of the water bodies, the wetland and the catchment areas of the lakes is the obligation of these authorities.

80. It was vehemently contended before us that the construction of the projects is nearing completion and huge money of respondent nos. 9 and 10 including investments made by various land and other area purchasers is at stake. Thus, according to these respondents, the application should be declined by the Tribunal only on that fact. We are not impressed with this contention at all. The respondents have started the construction even prior to the grant of Environmental Clearance and instigated the public to invest money. They cannot be permitted to take advantage of their own wrong. However, it may also not be in the interest of justice and particularly, while applying the Principle of Sustainable Development in terms of Section 20 of the

NGT Act, that these properties be demolished but that does not mean that they should not be directed to take all measures and precautions, even if it results in necessary demolition of some parts of the projects in the interest of environment, ecology and protection of lakes and wetlands. It cannot be disputed that there is serious scarcity of water in the city of Bangalore. Impact of these projects on water bodies ought to have been of fundamental consideration before the authorities concerned. In our considered view, they have failed to take complete notice of this fact and act objectively in light of the laws in force.

81. The project proponents, i.e. respondent nos. 9 and 10 submitted their respective applications for grant of Environmental Clearance to the concerned authorities in the year 2011 and 2012 respectively. The Environmental Clearance was granted to the Project proponents on 17th February, 2012 and 30th September, 2013 respectively. However, construction activities had been carried out by the project proponents much prior to the grant of Environmental Clearance. There is not even an iota, much less valid, reason placed by the project proponents before the Tribunal as to why the applications for Environmental Clearance were moved at such belated stage and why construction was started prior to grant of Environmental Clearance. The provisions of the EIA Notification, 2006 which was in force at all relevant times does not permit carrying on of any construction or any other activity in relation to the project prior to the grant of Environmental Clearance. The provisions of this Notification admit of no ambiguity that specific project or activities shall not require prior Environmental Clearance. All steps in that direction, including site selection, are the subject matter of scrutiny at the time of grant of Environmental Clearance. The project proponents are clear defaulters of compliance of the statutory provisions. They cannot take advantage of their own wrong of raising construction prior to submission of the application for Environmental Clearance and even grant of Environmental Clearance. The respondent nos. 9 & 10 are intentional defaulters. They violated the law being fully conscious of their obligations under different laws in force. The authorities concerned had sanctioned the building plans of these respondents subject to a specific stipulation that such sanction was subject to grant of other clearances including Environmental Clearance under different laws. Since the construction and allied activities were being carried on contrary to law, they even would be deemed to have caused pollution not only of the environment but more particularly of the lakes and caused obstructions of the Rajakaluves in the area. Applying the Principle of 'Polluter Pays' as contemplated under Section 20 of the NGT Act, the project proponents must be held liable to pay compensation for restoration and restitution of the environmental pollution and degradation. There is sufficient material on record to show that there has been environmental degradation. From the date of grant of Environmental Clearance, the construction is supposed to be carried on in accordance the conditions of the Environmental Clearance and with due protection of the environment, which the respondents have failed to comply with. The project proponents are liable to pay compensation under the 'Polluter Pays' Principle, for the illegal and unauthorised construction carried on in violation of the environmental laws and prior to grant of Environmental Clearance. One who violates law renders itself liable for consequences of such violations.— Respondent nos. 9 & 10 commenced excavation and even construction prior to submission of their application for grant of Environmental Clearance. Obviously at that stage they did not take any protections in the interest of environment and ecology in relation to the project activities. The terms & conditions in that behalf came to be stipulated only in the order granting Environmental Clearance; prior thereto the entire project activity was illegal and unauthorised. The mining, excavation and construction work adversely affected the Lakes and the Rajakaluves. The possible risk and degradation, due to construction and operation of the project include actual damage and even threats to environment and ecology pertaining to



pollution, encroachment, eutrophication, illegal mining of soil, loss of Biodiversity, ungoverned human activities and cultural misuse. The consequential damage and degradation of environment and ecology from the activities of these projects can broadly be placed under two distinct heads, while invoking the Polluter Pays Principle. First being the damage that has already been caused because of such activity, particularly, for the period when the activity was carried out in an illegal and unauthorised manner and without sanction of the competent authorities. Secondly, the damage and environmental degradation that is likely to occur upon completion of these projects and the liability of the concerned respondents in regard to restoration and restitution of environment. Another very important aspect which cannot be overlooked by the Tribunal is with regard to the respondent nos. 9 & 10 carrying on their project activity fully knowing that they were incapable of or it was not possible for them to comply with condition no. xxxix and xl (or alike conditions) in the order granting the Environmental Clearance. This has even been noticed by the MoEF in its monitoring report dated 14th August, 2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof.

82. It may not be possible to determine the above compensation with exactitude but that does not mean that the project proponents can avoid liability in that regard. The Supreme Court in the case of *Sterlite Industries (India) Ltd. v. Tamil Nadu PCB*, JT 2013 (4) SC 388, had directed payment of Rs. 100 crores by the Company which operated without consent of the Board. It needs to be noticed that M/s Sterlite Industries was possessed of the consent from the Board prior as well as subsequent to the period for which the compensation was imposed. In order to comply with the principle stated by the Hon'ble Supreme Court in the case of *Sterlite Industries* (supra) and as followed in the case of *Sarang Yadwadkar v. The Commissioner, Pune Municipal Corporation*, 2013 ALL (I) NGT REPORTER (DELHI) 299, discussed hereafter, we may refer to some relevant facts and figures from the records before us. The project area of respondent no. 9 is nearly 2,92,636.03 sq. m, while the built-up area is 13,50,454.98 sq.m., with a project cost of Rs. 2,347 Crores. While in the case of respondent no. 10 the plot area is 33,333.00 sq.m., while the built-up area is 72,180.64 sq. m., with a project cost of Rs. 450 Crores. The afore-noticed project activities and construction started much prior to moving of application and grant of Environmental Clearance. The principle which has often been adopted by the Courts, including the Hon'ble Supreme Court in the case of *Goa Foundation v. Union of India*, (2014) 6 SCC 590, is to direct deposit of certain percentage of the cost of the project at the first instance. In the case of *Goa Foundation*, the Supreme Court had directed deposit of 10 per cent of the value of the mineral extracted. In the case of *Krishankant Singh v. National Ganga River Basin Authority*, 2014 ALL (I) NGT REPORTER 3 DELHI 1, this Tribunal directed Simbhaoli Sugar Mills which had operated without consent of the concerned Board for a long period and had polluted the environment, Phuldera drain as well as the underground water, to pay a compensation of Rs. Five Crores. The said sugar factory had operated with the consent of the Board prior and subsequent to this period. The compensation was imposed for flouting the law and for causing the pollution. It may be noticed that the appeal against the said judgment of the Tribunal was dismissed by the Supreme Court in Civil Appeal No. Civil Appeal No. 10434 of 2014 vide its order dated 21st January, 2015. This liability primarily accrues on account of the illegal and unauthorised activities carried on by the Project Proponents. These are purely commercial ventures of respondent nos. 9 & 10 to make high profits, while causing environmental and ecological degradation and also by carrying on illegal and unauthorised activities, particularly, for the period prior to grant of Environmental Clearance.



83. The drawings and construction plans had been approved by respondent no. 7 vide its letter dated 4th July, 2007 and 22nd April, 2008, for respondent nos. 9 and 10 respectively. Despite this, the applications for seeking Environmental Clearance were moved much later i.e. on 3rd March, 2011 and 4th February, 2012. Even these letters granting approval of drawing and plans had mandated that these Respondents are expected to comply with all bye-laws and even other laws in force. When they applied for renewal of building plans and drawings, the same were granted vide letter dated 11th October, 2013 and 3rd January, 2013 respectively, where specific conditions were stipulated that other laws in force relating to construction and use of premises should be complied with and they were required to install ETP/STPs and use of recycled water for washing and flushing was mandated. From this, it emerges that there was clear onus on the part of these respondents to seek Environmental Clearance before commencing construction, which they intentionally and flagrantly violated and furthermore, there is nothing on record to show that the conditions with regard to setting up of ETP/STP and recycling of water have fully been satisfied. Furthermore, respondent no. 10 has been issued a specific letter on 18th March, 2013 by respondent no. 7 directing it that no construction works should commence prior to obtaining Environmental Clearance. They were also directed to obtain Consent for Establishment from KSPCB which was also not adhered to. They were required to furnish the requisite information within 7 days. These are the apparent violations of law committed by respondent nos. 9 and 10.

84. We are conscious of the fact that the projects in question have already been granted the Environmental Clearances and that they have raised constructions in furtherance to such Environmental Clearances. Still as discussed above, the matters in relation to conditions of the orders granting Environmental Clearances, adverse impacts of these projects upon the environment, ecology, lakes and wetlands, need for taking preventive and remedial measures for restoration of the environment and ecology as well as protection of the water bodies in future, are the matters which have been examined by us above. We may also appropriately make reference to the judgment of this Tribunal in the case of *Sarang Yadwadkar v. The Commissioner, Pune Municipal Corporation*, 2013 ALL (I) NGT REPORTER (DELHI) 299, wherein under somewhat similar circumstances, the Tribunal had while declining to demolish the construction raised in the project, issued substantive directions in the interest of environment and ecology and for protection of River Mutha in Pune. The Respondent Corporation had preferred an appeal before the Supreme Court of India being Civil Appeal Diary No. 3445 of 2015, which was dismissed on merits on 12th February, 2015. The Project Proponent was thus directed to comply with the directions of the Tribunal including partial demolition of the project in question. We have already indicated that at this stage the entire amount of compensation payable on various counts by the Project Proponent cannot be determined with exactitude, however, liability to pay for violation of law, raising construction unauthorizedly and illegally, renders the Project Proponent liable to pay the environmental compensation forthwith. The final amounts for restoration of environment and ecology would be determined by the Committee constituted in this judgment. We are of the considered view that 10 per cent of the project cost may be somewhat on the higher side and to maintain the equitable balance between the default and the consequential liability of the applicant, we direct the Project Proponents to pay at the first instance compensation for their default at the rate of 5 per cent of the cost of the project. In light of this, Respondent No. 10 would be liable to pay a sum of Rs. 22.5 crores and Respondent No. 9 would be liable to pay a sum of 117.35 crores.

85. This is a fit case where in exercise of its jurisdiction in terms of Section 20 of the NGT Act, the Tribunal has to invoke both polluter pays principle as well as precautionary principle. Further, where the Tribunal should also apply the principles of



law enunciated by the Supreme Court and this Tribunal in the case of *Sterlite Industries* (supra), *Krishankant Singh* (supra) and *Sarang Yadwadkar* (supra) and issue the following directions:

- 1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal *inter alia* but specifically on the issues stated herein after.
 - a) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
 - b) CEO of the Lake Development Authority, Karnataka State.
 - c) Chief Town Planner of BBMP, Bangalore.
 - d) Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.
 - e) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.
 - f) Dr. Siddharth Kaul, former Advisor to MoEF.
 - g) An Senior Officer from the National Institute of Hydrology, Roorkee.
- 2) Member Secretary of the Karnataka State Pollution Control Board shall act as the Convenor of the Committee and would submit the final report to the Tribunal.
- 3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the water bodies, with particular reference to lakes.
- 4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake particularly, Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify if any Rajakaluves have been covered by the construction activities of respondent nos. 9 and 10 or by any of the projects in the area in question.
- 5) Committee should submit in its report if these projects have any adverse impacts upon the surrounding ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.
- 6) The Committee shall substantially notice if any of the conditions of the Environmental Clearance order in each case of respondent nos. 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.
- 7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The committee shall also report whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.
- 8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly, in the city of Bangalore.
- 9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letter dated 4th July, 2007 and 22nd April, 2008 respectively. Further, the Committee would also report whether both respondent nos. 9 and 10 have



installed ETP/STP and have taken full measures for recycling of used water for washing and flushing etc., in terms of letters dated 11th October, 2013 and 3rd January, 2013, issued by the Karnataka Industrial Area Development Board to respondent nos. 9 and 10 respectively.

- 10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and water bodies.
- 11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both respondent nos. 9 and 10 are hereby restrained from creating any 3rd party interests or part with the possession of the property in question or any part thereof, in favour of any person.
- 12) The committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the water bodies in the city of Bangalore.
- 13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic effluents into the lake or any of the water bodies in and around of the area in question.
- 14) For the reasons stated in the judgment respondent no. 9 is liable and shall pay a sum of Rs. 117.35 crores, while respondent no. 10 shall pay a sum of Rs. 22.5 crores respectively being 5 per cent of the project value, within two weeks from today. The said amount would be paid to the KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the Project Proponent in that area, after taking approval of the Tribunal.
- 15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of direction 14, onto the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly.

86. Thus, we dispose of the Original Application No. 222 of 2014 in the above terms while leaving the parties to bear their own costs.

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SUPREME COURT CASES

1991 Supp (1) SCC

land —

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11. In *Keshav Vithal Mhatre v. Arbind Ranchhod Purekh*² a learned Single Judge has held that a lease of land granted by a Manager under Section 47 of the Bombay Tenancy and Agricultural Lands Act, 1948, comes to an end with the termination of the management of the land by virtue of Section 61 of the Act. If the tenant continues to remain on the land thereafter, he would be cultivating it unlawfully as a trespasser and he cannot, therefore, claim to be a deemed tenant under Section 4 of the Act. This is consistent with the decision in *Ghambhir Lal case*¹ relied on by the Tribunal.

12. Thus, Sections 4 and 4-B were not applicable during the period from expiry of the lease to the termination of management.

13. In the result, we find no merit in this appeal and it is dismissed, but without any order as to costs.

1991 Supp (1) Supreme Court Cases 518

(BEFORE M.N. VENKATACHALIAH AND P.B. SAWANT, JJ.)

ALPHA CHEM AND ANOTHER .. Appellants;

Versus

STATE OF U.P. AND OTHERS .. Respondents.

Civil Appeal No. 282 of 1991[†], decided on January 8, 1991

Constitution of India — Articles 13(2), 32 and 226 — Challenge to constitutionality of a statute (Section 4-A of U.P. Sales Tax Act) — Held, maintainable only under Article 226 or 32 and not in proceedings before authorities constituted under the statute itself or even in appeal or revision before High Court from such proceedings — U.P. Sales Tax Act, 1948, Section 4-A (as introduced by U.P. Act 25 of 1985 and amended by U.P. Act 17 of 1987) — Judicial review

Held :

The authorities under the Act cannot go into the vires of the very statutes under which they are constituted and draw their power and jurisdiction there from. The same is the position of the High Court in matters arising before it from proceedings under the Act and it cannot examine the constitutionality of the statute and its provisions. The High Court can, of course, deal with the question of constitutionality in judicial review of legislation under Article 226. The High Court was, therefore, not justified in requiring the appellants to have recourse to proceedings of revision taken under the 'Act' to have the contention as to constitutionality resolved. (Para 4)

² (1973) 75 Bom LR 694; AIR 1974 Bom 94; 1973 Mah LJ 958

[†] Arising out of Special Leave Petition (Civil) No. 14336 of 1990



ALPHA CHEM v. STATE OF U.P.

519

K.S. Venkataraman & Co. (P) Ltd. v. State of Madras, (1966) 2 SCR 229: AIR 1966 SC 1089: 17 STC 418, followed

Alpha Chem v. State of U.P., 1990 UPTC 1212 (All HC), partly reversed

a Appeal allowed R-M/AU/10663/S

ORDER

1. We have heard Sri Raja Ram Agarwal learned senior counsel for the appellants and Sri R.S. Rana for the respondents. Special leave granted.

b 2. The appeal is against the order dated September 3, 1990 of the Allahabad High Court in Civil Misc. Writ Petition No. 1072 of 1988 in which the appellants sought to assail the vires of Section 4-A(3) of the U.P. Sales Tax Act, 1948. That provision came to be introduced by U.P. Act 25 of 1985 and was further amended by U.P. Act 17 of 1987.

c 3. The High Court dismissed the writ petition on the view that the contention as to the constitutional validity of the impugned provision could be raised and adjudicated in certain revision proceedings arising out of certain orders made in exercise of powers of the impugned provision which is pending before it. Learned counsel for the appellants contends that the question of the validity of a provision cannot be assailed before and pronounced upon by the authorities constituted under the Act and, as a necessary corollary, even by the High Court in appeal or revision arising out of the proceedings taken by or before the authorities constituted under the 'Act' and that question of constitutionality can be gone into in the jurisdiction of judicial review of legislation.

d 4. We are of the view that there is force in this contention. The High Court was not right in its contemplation that the vires of the impugned provisions could be examined in the revision proceedings. The jurisdiction of the High Court in revision is under the same limitation insofar as the contention as to constitutionality is concerned as was indicated by this Court in *K.S. Venkataraman & Co. (P) Ltd. v. State of Madras*¹ in the context of the reference jurisdiction of the High Court under the Income Tax Act. It was held: (SCR pp. 247-48)

e "Up to this stage all the three authorities are the creatures of the Act and they function thereunder. They cannot ignore any sources of income on the ground that the relevant provisions offend the fundamental rights or are bad for want of legislative competence. The Act does not confer any such right on them Whether the provisions are good or bad is not their concern Can it be said that a question whether a provision of the Act is ultra vires of the legislature arises out of the Tribunal's order? As the Tribunal is a creature of the statute, it can only decide the dispute between the assessee and the Commissioner in terms of the provisions of the

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i
1 (1966) 2 SCR 229, 247-48 : AIR 1966 SC 1089 : 17 STC 418



Act. The question of ultra vires is foreign to the scope of its jurisdiction. If an assessee raises such a question, the Tribunal can only reject it on the ground that it has no jurisdiction to entertain the said objection or decide on it. *As no such question can be raised or can arise on the Tribunal's order, the High Court cannot possibly give any decision on the question of the ultra vires of a provision*"

(emphasis supplied)

Even as the authorities under the Act cannot go into the vires of the very statutes under which they are constituted and draw their power and jurisdiction therefrom so is the High Court in matters arising before it from proceedings under the Act and examine the constitutionality of the statute and its provisions. The High Court can, of course, deal with the question of constitutionality in judicial review of legislation under Article 226. That is what the appellants sought to do before the court in the writ petition. The High Court was not justified in requiring the appellants to have recourse to proceedings of revision taken under the 'Act' to have the contention as to constitutionality resolved.

5. Accordingly, this appeal is allowed, the order of the High Court under appeal set aside and the writ petition remitted to the High Court for disposal in accordance with law.

6. It would, perhaps, be appropriate for the High Court, if it is otherwise feasible, to deal with the revision petition and the writ petition together.

7. Learned counsel for the appellants requested us to stay the order of the Commissioner till the disposal of the writ petition before the High Court. We do not think we should accede to this request. However, we stay that order for a period of four weeks so as to enable the appellants to approach the High Court for such interlocutory relief as the High Court may consider appropriate to grant. Parties shall bear and pay their own costs in this appeal.

1991 Supp (1) Supreme Court Cases 520
(BEFORE K.N. SAIKIA AND R.M. SAHAI, JJ.)

T.N. RUGMANI AND ANOTHER .. Appellants;

Versus

C. ACHUTHA MENON AND OTHERS .. Respondents.

Civil Appeal Nos. 557-558 of 1986†, decided on December 20, 1990

Town Planning — Scheme — Until framing of town planning scheme,

† From the Judgment and Order dated April 12, 1985 of the Kerala High Court in W.A. Nos. 182 and 183 of 1985



Economics

Indian Poultry Farms Are Breeding Drug-Resistant Superbugs

By [Natalie Obiko Pearson](#)

July 20, 2017, 9:31 AM GMT+5:30

- ▶ Largest such study finds rampant antibiotic use in chickens
- ▶ Almost 90% of broiler farms harbor multi-drug-resistant germs

Indian poultry farms aren't just rearing chickens – they're also breeding germs capable of thwarting all but the most potent antibiotics, researchers found.

Random tests on 18 poultry farms raising about 50,000 birds each in India's northwestern state of Punjab found that two-thirds of fowl harbored bacteria that produce special enzymes, known as extended-spectrum beta-lactamase, or ESBL, that destroy most penicillin- and cephalosporin-based antibiotics. Of tested birds destined for meat consumption, 87 percent had the super germs, a study published Thursday in the journal Environmental Health Perspectives showed. That compared with 42 percent of egg-laying hens.



<https://www.bloomberg.com/news/articles/2017-07-20/poultry-farms-in-india-resemble-superbug-reservoirs-study-finds>

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1/14/2021

Indian Poultry Farms Are Breeding Drug-Resistant Superbugs - Bloomberg

Broiler chicks drink water at a poultry farm in Ranga Reddy, India. *Photographer: Dhiraj Singh/Bloomberg*

Farms supplying India's biggest poultry-meat companies routinely use medicines classified by the World Health Organization as "critically important" as a way of staving off disease, an investigation by Bloomberg News showed last year. The latest research, the largest of its kind in India to date, highlights the consequence of this for the nation's food supply.

"This study has serious implications, not only for India but globally," said study author Ramanan Laxminarayan, director at the Center for Disease Dynamics, Economics & Policy in New Delhi, in a statement. "We must remove antibiotics from the human food chain, except to treat sick animals, or face the increasingly real prospect of a post-antibiotic world."

Mutant Germs

Worldwide, animals receive about twice the volume of antibiotics that humans do. Much of it is administered in doses that speed growth in livestock, but aren't strong enough to kill all the bacteria, leaving mutant germs to not only survive, but thrive and potentially spread.

That's alarming veterinary and medical experts, who say the practice is stoking infections that no medicine will cure. Drug-resistant diseases have the potential to cause a level of economic damage similar to – and probably worse than – that caused by the 2008 financial crisis, the World Bank said in September. It could add as much as €0.82 trillion a year to health-care costs by 2050 across the globe.



<https://www.bloomberg.com/news/articles/2017-07-20/poultry-farms-in-india-resemble-superbug-reservoirs-study-finds>

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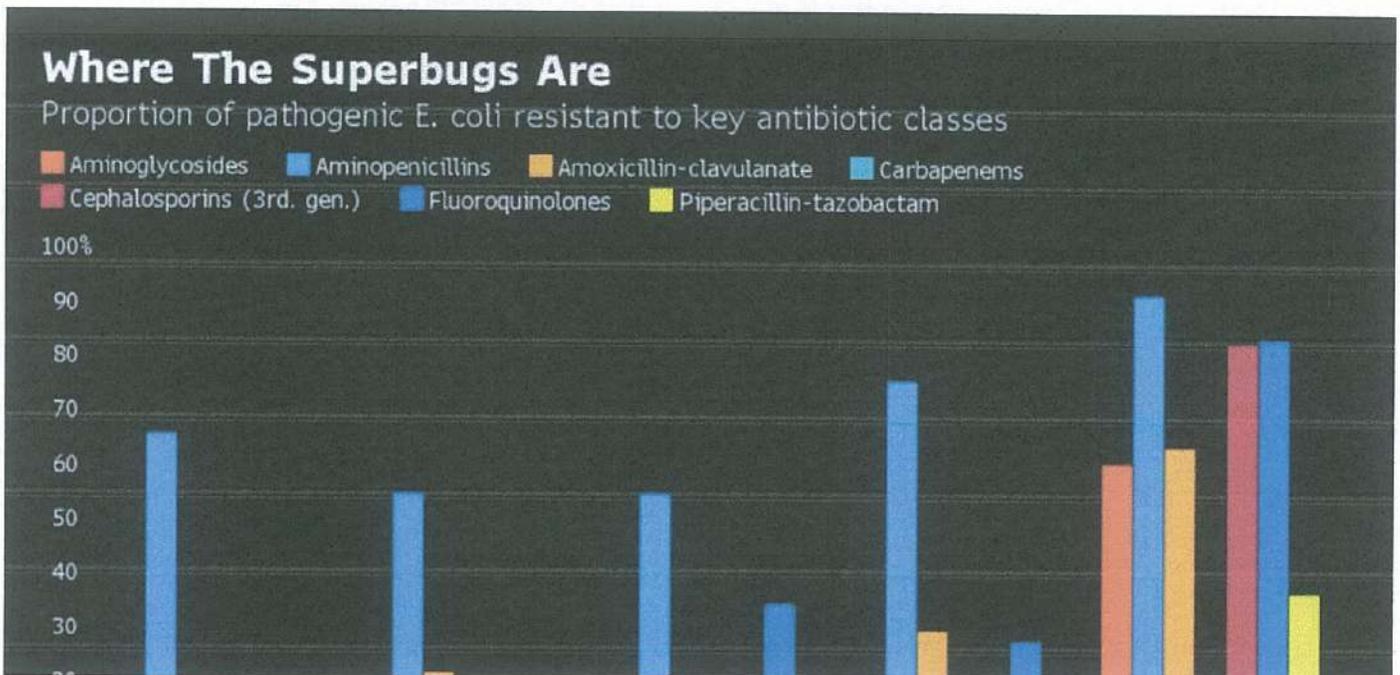
Chickens inside a car at the Ghazipur Poultry Wholesale Market in Delhi. *Photographer: Prashanth Vishwanathan/Bloomberg*

Of the 16 farms in Punjab that answered questions on antibiotic use, all used the medicines to treat sick birds and to stave off disease, while two-thirds also used the drugs to spur chick growth. The researchers compared drug use with levels of resistance present in 1,556 E. coli specimens collected from more than 500 birds.

Superbug 'Reservoirs'

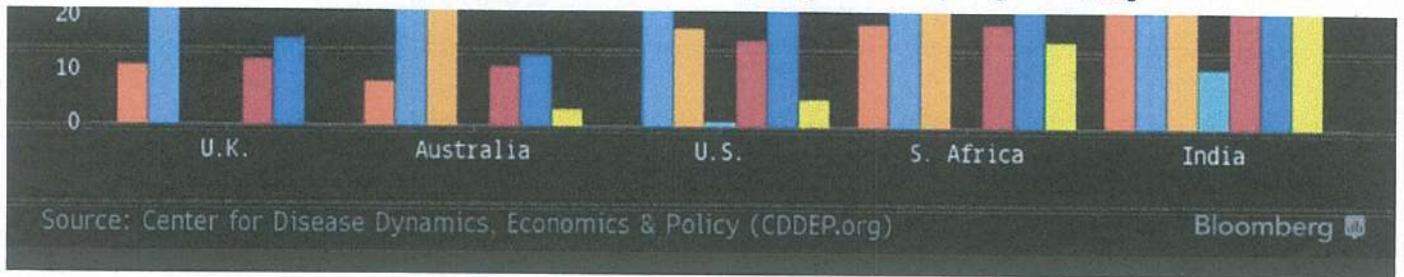
“Our findings suggest that antimicrobial use for growth promotion promoted the development of reservoirs of highly resistant bacteria on the studied farms, with potentially serious implications for human health,” Laxminarayan and colleagues wrote in the study.

Farmhands who handle the birds often wear open-toe shoes, providing “a conduit of entry for resistant bacteria and resistance genes into the community and hospitals, where further person-to-person transmission is possible,” they said.



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Indian Poultry Farms Are Breeding Drug-Resistant Superbugs - Bloomberg



“Withdrawal of non-therapeutic use of agricultural antimicrobials in India would be prudent to protect public health,” the authors said.

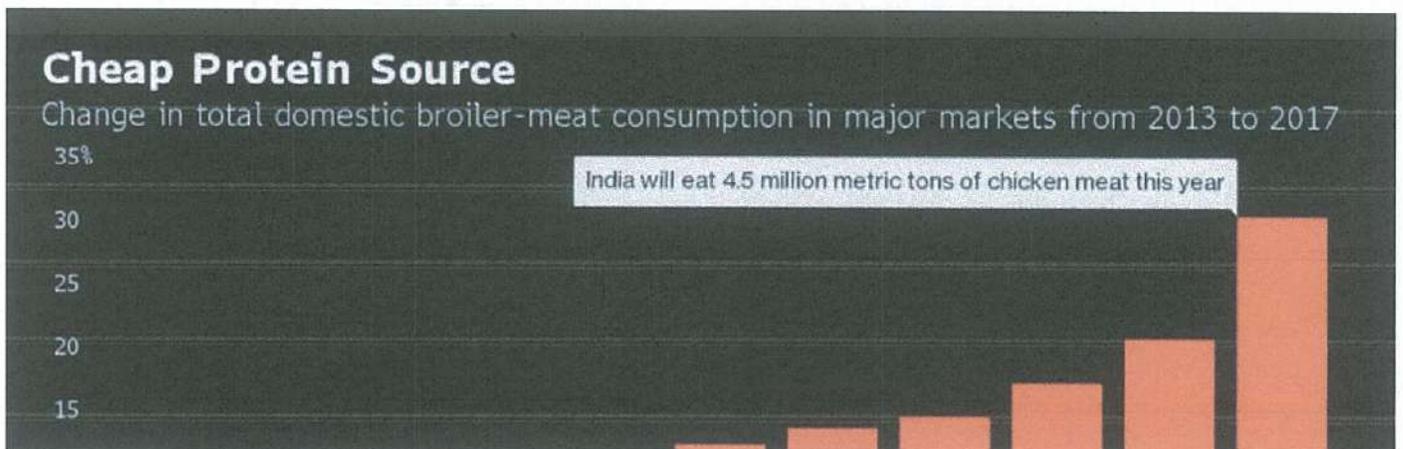
‘Ecological Problem’

Antibiotic resistance is an “ecological problem that spans humans, food-animals and the environment,” Laxminarayan said in an email. Genes that enable bacteria to evade anti-infective agents are widespread, and are frequently transferred between environments and microbial species in India, spurred by indiscriminate use of the medications in both human and veterinary medicine.

“Easy access to high-end antibiotics, inappropriate prescription practices, and lack of awareness are major issues,” he said.

More than 56,000 newborns die annually in India because of bloodstream infections that aren’t cured by first-line antibiotics, Laxminarayan estimated in a paper in the Lancet in October. “It is worrying that resistance-related infections and deaths in India are approaching epidemic proportions.” he said.

Agricultural systems in emerging economies such as China and India have increasingly turned to antibiotic-dependent intensive farming methods in order to meet the surging demand for protein as dietary habits change and incomes rise.



<https://www.bloomberg.com/news/articles/2017-07-20/poultry-farms-in-india-resemble-superbug-reservoirs-study-finds>



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Indian Poultry Farms Are Breeding Drug-Resistant Superbugs - Bloomberg



Chicken is the most-consumed meat in India. It's cheaper than other meats and is subject to fewer religious prohibitions or cultural taboos. Consumption has increased more than 30 percent since 2013, out-pacing all major markets, according to U.S. Department of Agriculture data.

A 2015 study predicted the use of antibiotics in livestock could more than quadruple by 2030 in some parts of India, primarily driven by "extreme" growth in chicken consumption. Broiler production is mainly concentrated in the states of Tamil Nadu, Andhra Pradesh, Maharashtra, Uttar Pradesh, and Telangana, the USDA said in a report in December.

– With assistance by Jason Gale

In this article

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Chicken May Be Spreading Superbugs Through India's Food Chain - Bloomberg

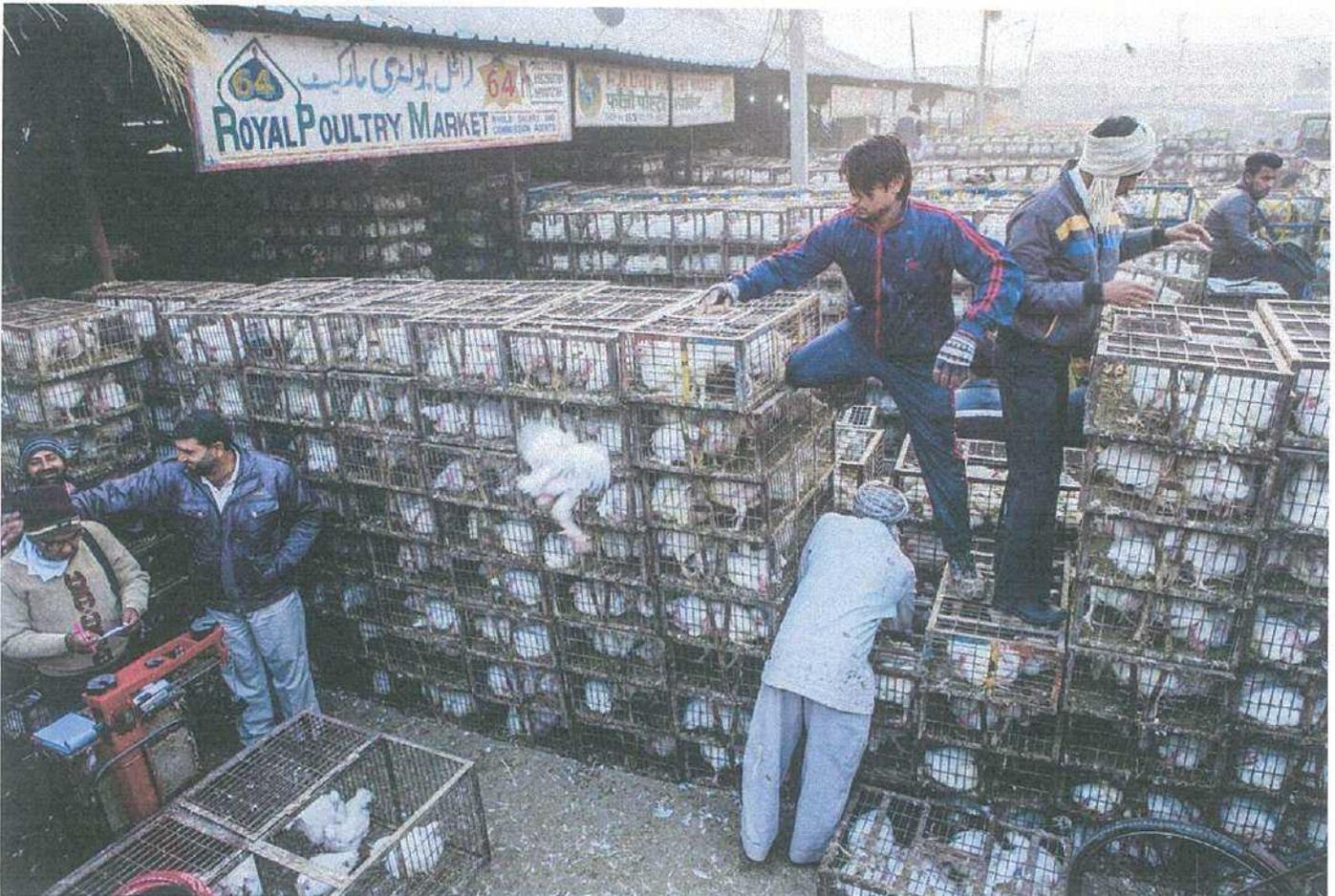
Business

Chicken May Be Spreading Superbugs Through India's Food Chain

By Natalie Obiko Pearson

November 18, 2016, 5:29 AM GMT+5:30

- ▶ Scientists find more virulent form of drug-evading bacteria
- ▶ Superbugs found in 11% of chicken samples in India's Hyderabad



Chickens at the Ghazipur Poultry Wholesale Market in Delhi. *Photographer: Prashanth Vishwanathan/Bloomberg*

Stealthy drug-evading bacteria with heightened virulence and ability to infect humans have turned up in chickens in India, scientists said, indicating an “alarming” consequence of the nation’s fast-growing poultry industry and the misuse of antibiotics.

Eleven percent of chickens sampled at fresh produce markets around the southern city of Hyderabad carried a multidrug-resistant form of a bacteria commonly found in birds and known to sicken people, a study found. The supergerms were detected in both intensively farmed



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Chicken May Be Spreading Superbugs Through India's Food Chain - Bloomberg

broilers and free-range fowl, and were capable of thwarting routine antibiotics, scientists from the University of Hyderabad and the Robert Koch Institute in Berlin said.

The finding suggests contaminated meat may be spreading superbugs through the food chain and the environment, potentially causing hard-to-treat infections in people. Farms supplying India's biggest poultry-meat companies routinely use antibiotics classified by the World Health Organization as "critically important" as a way of staving off disease, a months-long investigation by Bloomberg News in the Hyderabad region this year showed.

"Our findings provide scientific support to what is known about the use of antibiotics in the food-animal sector amid a lack of a properly enacted antibiotics policy in this country," said Niyaz Ahmed, a senior author on the paper, which was published Nov. 4 in the journal Applied and Environmental Microbiology, in an e-mail.

[For a story about the use of antibiotics in Indian poultry, click here](#)

DNA Damage

The *Helicobacter pullorum* bacteria found in the chickens was remarkable because, beside harboring various genes for drug resistance, strains were also armed with the ability to produce toxins that potentially can damage the DNA of human cells, the researchers found. Their research was based on a study of the gastrointestinal tracts of 55 broiler and 45 free-range chickens bought at seven produce markets in Hyderabad.

More than 100 virulence genes were identified in the bacterial samples, including 40 related to motility, which could enhance the pathogen's ability to take hold inside the intestinal tracts of both chickens and people, and 20 that enhanced the microbe's ability to persist, including in warmer-bodied poultry, the authors said. Some genes also better equipped the bacteria to evade the immune system's defenses.

In humans, *H. pullorum* is thought to cause gastroenteritis and may be associated with cancer and cirrhosis of the liver.

'Significant Threat'

"If this organism uses antimicrobial resistance to augment its fitness, persistence and thereby its transmission, then it can emerge as a significant threat to human health," said Ahmed, who is now senior director of Bangladesh's International Centre for Diarrhoeal Disease Research.

<https://www.bloomberg.com/news/articles/2016-11-17/stealthy-chicken-germs-show-risk-from-india-s-poultry-industry>

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1/14/2021

Chicken May Be Spreading Superbugs Through India's Food Chain - Bloomberg

The fact that free-range chickens, which aren't routinely administered antibiotics, carried the superbugs was "truly unexpected," he said.



A chicken's head protrudes from a cage at the Ghazipur Poultry Wholesale Market. *Photographer: Prashanth Vishwanathan/Bloomberg*

It could indicate that these fowl occasionally eat antibiotic-containing feed, or are exposed to the bugs via contaminated water and food, or of the feces of infected animals and people, Ahmed said. But it means the gene-altered bacteria from the intensive poultry industry have spread to "even the stocks that were so far considered as a safe choice," he said.

Growing Meat-Eaters

Agricultural systems in emerging economies such as China and India have changed radically in recent years, becoming increasingly intensive in order to meet growing domestic and global demands for animal protein, the Food and Agriculture Organization of the United Nations said in a report Wednesday. This is likely to heighten the occurrence and spread of infectious diseases in these systems, leading to increased antibiotic usage and resistance.

[Read more: Antibiotic resistance -- a QuickTake explainer](#)

<https://www.bloomberg.com/news/articles/2016-11-17/stealthy-chicken-germs-show-risk-from-india-s-poultry-industry>

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1/14/2021

Chicken May Be Spreading Superbugs Through India's Food Chain - Bloomberg

Indians consume 14 times more chicken meat than they did in 1985, and the market is one of the fastest-growing in the world. A study last year predicted the use of antibiotics in livestock could more than quadruple by 2030 in some parts of India, primarily driven by “extreme” growth in chicken consumption.

The bulk of antibiotics are used to spur animal growth. Stopping that practice in India would result in an annual loss of meat production worth about €0.91 billion, an Organisation for Economic Co-operation and Development report last year found.

Drug-resistant infections have the potential to cause a level of economic damage similar to -- and likely worse than -- that caused by the 2008 financial crisis, the World Bank said in September. Worldwide, it could add as much as €0.82 trillion a year to health-care costs by 2050.

India doesn't have regulatory provisions for the use of antimicrobial drugs in cattle, chickens and pigs raised for domestic consumption, Ramanan Laxminarayan, a researcher with the Public Health Foundation of India, said in a study in March. A separate study published in April found 4 percent of chicken bought from shops in the eastern city of Kolkata harbored strains of salmonella, most of which were resistant to one or more antibiotics.

The latest study found that the *H. pullorum* bacteria were vulnerable to several older antibiotics, including the last-resort drug colistin, Ahmed said. Unless the use of the bacteria-fighting medicines are controlled on farms, it's “only a matter of time” before the germs won't be stopped by any drug, he said.

In this article

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Antibiotic Apocalypse Fear Stoked by India's Drugged Chickens

Feeding chickens antibiotics may speed diseases costing €82.31 trillion



Photographer: Dhiraj Singh/Bloomberg

By **Natalie Obiko Pearson** and **Sharang Limaye**

March 30, 2016, 3:48 AM GMT+5:30

Wearing only silver toe rings on her bare feet, Manisha Bal Reddy pads through h
4,800 cackling chickens in a coop in south India to retrieve a blue and white bottle on the

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<https://www.bloomberg.com/news/features/2016-03-29/antibiotic-apocalypse-fear-stoked-by-india-s-drugged-chickens>



husk-covered floor. It contains a mix of three antibiotics, including the last one currently available to treat the most perilous bloodstream infections in people.

The drug cocktail is to be added to the birds' drinking water, according to notes scrawled in a candy-pink logbook. Daily entries direct Manisha and her husband, G. Bal Reddy, to use five antibiotics over six weeks. The instructions are written and signed by a supervisor from SR Group, the broiler company that supplied the couple with chicks, feed and medicines, and bought the birds back when they were ready for slaughter.

All of the antibiotics listed in the logbook are legal for veterinary use in India, but two are banned or not approved for use in poultry in the U.S., Canada, the European Union and Australia, where authorities have sought to prolong their efficacy in people. Worldwide, animals consume more antibiotics than humans, an amount researchers estimate will jump 67 percent in the 20 years through 2030 as India, China, Brazil and other developing countries expand livestock production to meet unprecedented demand for animal protein.

While antibiotics are helping to sustain intensive food production, doctors worry their uncontrolled use on farms is turning animals into reservoirs of hard-to-kill bacteria that can spread rapidly and globally. G. Bal Reddy said it seems he's fighting a losing battle. "We have to use more medicines these days," he said. "Diseases have become harder to beat in the last two to three years."

About 100 miles from the poultry farm in Telangana state, medical college microbiologists studying a bacterium spreading mostly in hospitals reported in June that 6.7 percent of specimens were resistant to all antibiotics. While the Indian government doesn't keep data on deaths due to antibiotic-resistant infections, one study by researcher Ramanan Laxminarayan and colleagues estimated that more than 58,000 newborns died nationwide in 2013 from bacterial infections capable of evading most antibiotics.

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Antibiotic Apocalypse Fear Stoked by India's Drugged Chickens - Bloomberg

Indian Farms Feed Chickens Last-Resort Antibiotics

“The world is on the brink of losing its miracle cures,” World Health Organization Director-General Margaret Chan said in an email. Once antibiotics stop working, hip replacements, organ transplants, cancer chemotherapy and care of preterm infants will be far more difficult or even too dangerous to undertake.

Failure to act on drug-resistant infections will lead to 10 million extra deaths a year and cost the global economy €82.31 trillion by 2050, according to a February 2016 report on antimicrobial resistance commissioned by U.K. Prime Minister David Cameron. Jim O'Neill, the British economist who coined the acronym BRIC for Brazil, Russia, India and China, is chair of the independent review.

“We need to act now—governments, industry and all 7 billion individuals—to eliminate this otherwise inevitability,” said O'Neill, a former chairman of Goldman Sachs Asset Management, who is now Commercial Secretary to the Treasury, in an e-mail.

Drug-defying germs, which can spread internationally in infected travelers in hours, threaten to reverse a century of progress in human and animal health, and are a risk to global food security, the Food and Agriculture Organization said on Feb. 10.

“How can we reduce rural poverty when the drugs given to ill farm workers and their families no longer have effect?” FAO Deputy Director-General Maria Helena Semedo told European ministers of health and agriculture at a conference on antimicrobial resistance in Amsterdam. “How can we eliminate hunger or improve sustainability when we cannot cure sick animals?”

Rich countries began using antibiotics once the incidence of infectious diseases had plummeted following public-health improvements. In India, antibiotics are often used as a substitute for sanitation and hygiene, said researcher Laxminarayan, who is dire

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Center for Disease Dynamics, Economics & Policy. Consequently, the nation shoulders among the highest rates of antibiotic resistance in the world.

A panel advising the Indian government in 2011 called for restrictions on antibiotic use in both people and animals following the discovery of a superbug-spawning gene in a patient from New Delhi that spread to dozens of countries within a few years. Five years later, there still are no regulations governing the use of antibiotics in livestock and a lack of enforcement of existing rules means medicines are often bought without a prescription.

“India does not have significant regulatory control over either the manufacture or sale of antibiotic agents,” said Brian Evans, a deputy director general of the World Organisation for Animal Health, the Paris-based policy-setting group representing 180 countries. “Potentially, up to 50 percent of our member-countries do not have appropriate legislation at this time.”



Farmers in Ranga Reddy say they are advised to feed antibiotics to day-old chicks.

Photographer: Dhiraj Singh/Bloomberg

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<https://www.bloomberg.com/news/features/2016-03-29/antibiotic-apocalypse-fear-stoked-by-india-s-drugged-chickens>

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The Bal Reddys' farm is an example of what that laxity allows. The logbook, labeled "farmer's flock record," shows they were instructed to begin a series of antibiotic regimens on Oct. 25, the day after the couple took delivery of the newly hatched chicks. A solution combining enrofloxacin, ciprofloxacin and colistin was started on Nov. 19 and continued for six days. The bottle's label says it's an "animal feed supplement" that should be mixed in drinking water for the "prevention of respiratory infections."

On Dec. 1, the Bal Reddys were instructed to use two more antibiotics to help sanitize their shed after the chickens were collected for slaughter. An additional antibiotic, gentamicin, was delivered on Nov. 16, though there is no record of it being used.

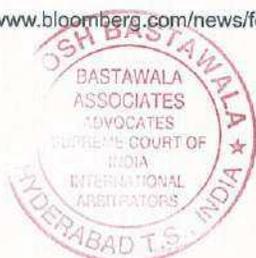
SR Group, the broiler company that supplied the drugs, only uses antibiotics when it's "imperative" and employs as many as 20 veterinarians, said S. Ravinder Reddy, the company's technical director. "Nobody uses antibiotics unnecessarily because we are professionals," he said in a March 4 telephone interview. "We are not illiterate farmers. We know what we are doing."

SR Group doesn't allow the use of medicines that are also used in people on its flocks because of the threat to human health, Reddy said. "Whatever medicines that are used in chicken are not used in humans," he said. Reddy didn't respond to questions about observations that some farmers were instructed to use colistin and ciprofloxacin—antibiotics deemed "critically important" by the WHO.

Visits to 13 other farms in the Ranga Reddy district—some of which supply to, and are supervised by other broiler companies—revealed widespread use of antibiotics in feed and water, and by injection to thwart current and potential disease outbreaks.

The use of antibiotics at low or sub-therapeutic strengths is known to speed growth in food animals—an outcome acknowledged by organizations including the American Veterinary Medical Association and the Animal Health Institute, which say the drugs help eliminate bugs so that the animals' gut can absorb nutrients more efficiently with less feed.

Information about the antibiotics used, and their duration and method of delivery was gathered from interviews with farmers, product labels observed on the farms, delivery receipts and the handwritten instructions by field staff in flock management logbooks that carried the logos of some of India's biggest chicken companies.

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Antibiotic Apocalypse Fear Stoked by India's Drugged Chickens - Bloomberg

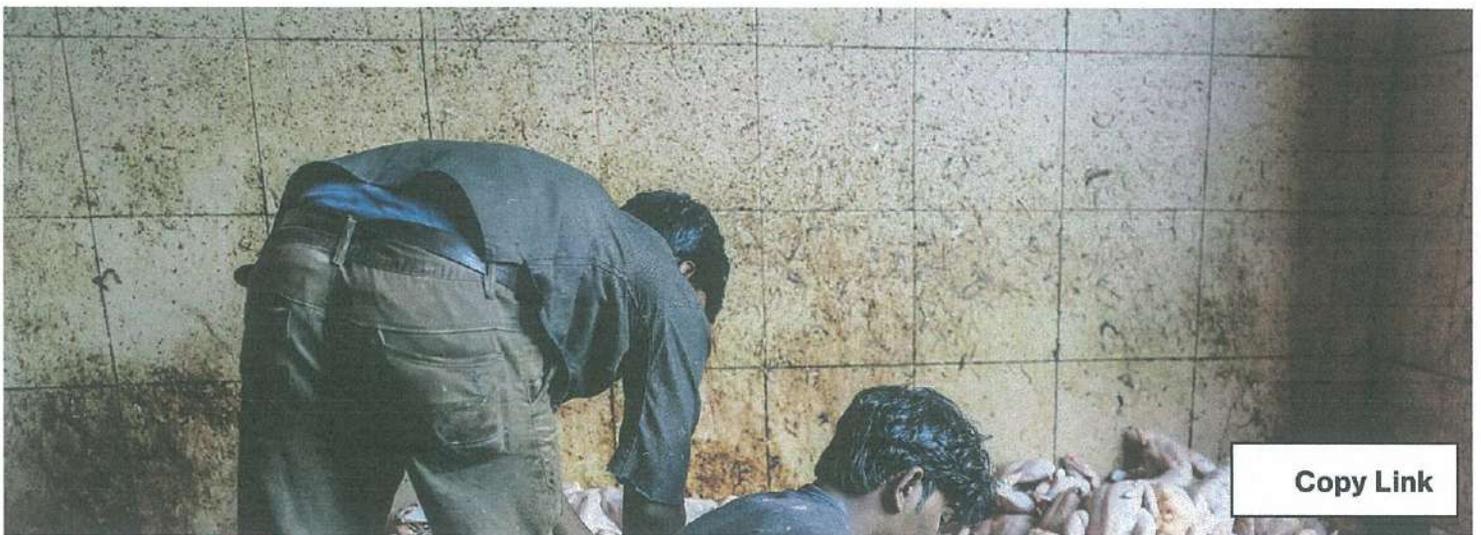
Records shown by the farmers indicated that at least nine antibiotics were in use, five of which are critical for treating everything from pneumonia to lethal bloodstream infections in humans. Among them were products made by Bayer AG, Zoetis Inc. and Cadila Healthcare Ltd.'s Zydus animal health unit, which are prohibited for use in poultry in Canada, the U.S., the European Union and Australia.

Most of the farmers didn't know what an antibiotic was, describing it as just one of the vitamins, medicines and disinfectants they use to keep the birds healthy. On visits to three veterinary shops in the district, sales staff were willing to sell antibiotics without a prescription, which would violate a drug law. At least one of them violated another part of the law by not recording the purchaser's name and address.

None of the farms visited had treatment systems for managing effluent from their chicken coops, with the liquid waste typically running freely into gardens growing vegetables that were consumed by their families, with surplus sold to the public.

Enrofloxacin made by Bayer and Zoetis, and a similar drug levofloxacin, manufactured by Zydus, were contained in bottles shown by six farmers, who said the contents were added to water and given to chicks as young as 1 day old to stave off disease.

Both drugs are in the same antibiotic class and allowed for veterinary use in India. Still, enrofloxacin should only be used to treat ill animals and under the supervision of a veterinarian and not to prevent disease or promote growth, Bayer and Zoetis said. A Zydus spokeswoman acknowledged questions sent by e-mail, but didn't respond to follow-up e-mails seeking a response.



<https://www.bloomberg.com/news/features/2016-03-29/antibiotic-apocalypse-fear-stoked-by-india-s-drugged-chickens>

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Antibiotic Apocalypse Fear Stoked by India's Drugged Chickens - Bloomberg



Butchers prepare chicken meat at Crawford market in Mumbai. Chicken consumption in India is now 14 times higher than in 1985.

Photographer: Dhiraj Singh/Bloomberg

“Enforcement by local authorities of regulation requiring a veterinary prescription for these products will help protect the health of people and animals,” Zoetis said in an e-mailed response to questions.

The Indian government’s National Policy for Containment of Antimicrobial Resistance, a 55-page document released in 2011, called for a ban on the non-therapeutic use of antibiotics and over-the-counter sales, and recommended rules for livestock use. The proposed drug restrictions incited protest and the policy was shelved soon after.

In 2013, India’s Health Ministry added 24 antibiotics to a list of drugs whose sale requires pharmacists to retain details of the prescription in a register for three years. The measures, though, were primarily aimed at human medicine and cover only two of the nine antibiotics found on the Ranga Reddy poultry farms. There are no directives governing the usage of the other seven drugs.

Regulations made by the central government depend on under-resourced state officials to implement and enforce, said N.K. Ganguly, a former director general of the Indian Council of Medical Research, who was one of 13 members of a task force that prepared the 2011 policy document. Still, he said he’s confident India is on the right track.

“All of these you will see will start to take effect in another half a decade,” Ganguly said. “It takes time with the vastness of the country.”

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As it is now, the government doesn't collect data nationally on the volume of antibiotics used in either animals or humans or prohibit their use as growth promoters in livestock. It banned the use of certain antibiotics only in aquaculture in 2011, and says it only monitors drug residues in chicken meat destined for export.

The agriculture ministry issued guidelines to state authorities in December 2014, advising that antibiotics shouldn't be allowed in feed, and should be tracked from manufacturer to users. The one-and-a-half-page circular didn't specify whether the suggestions were mandatory or how they would be enforced.

Agriculture Minister Radha Mohan Singh didn't respond to written and verbal interview requests. S.K. Dutta, assistant commissioner, and Sagar Mehra, director of the ministry's department of animal husbandry, dairying and fisheries, declined to say if a policy was being drafted or answer questions when contacted by phone.

"India is definitely the country of most importance when it comes to the need for surveillance," says Thomas Van Boeckel, a post-doctoral research fellow at the Swiss Federal Institute for Technology in Zurich, who was part of the team that conducted the first attempt to quantify global antibiotic consumption in animals.

India consumes the largest volume of antibiotics in the world, but the consumption per person, at 10.7 units, is about half the 22 units per person consumed in the U.S., according to the Center for Disease Dynamics, Economics & Policy in Washington.

Use of antibiotics in animals in India is projected to more than double by 2030, driven by a surge in chicken production, Van Boeckel and colleagues showed in a study in November 2014. In a country with twice as many meat-eaters as vegetarians, chicken consumption is now 14 times higher than in 1985.

The solution isn't to ban bactericidal drugs on farms, said Vincent Doumeizel, a vice president at Lloyd's Register Quality Assurance in London, where he focuses on food safety and sustainability. "It's absolutely impossible at the moment," he said. "Banning them would just collapse the current production system overnight."

"That leads us to the next question: are animals a good way to get protein?" Doumeizel said.

"That's a big concern because we won't be able to feed 9 billion people with animal protein."

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protein.”

In the U.S., the Food and Drug Administration asked drug manufacturers in December 2013 to voluntarily stop selling antibiotics for growth promotion, but the regulator still allows them to be used to prevent infections.

“That’s a massive, massive loophole,” said Lance Price, a genomic epidemiologist at George Washington University, who testified to U.S. Congress in April 2013 on antibiotic resistance. “And if we don’t get good laws on the books, then how do we ask China or India to cut back?”

Seshagiri Rao, who is authorized to dispense prescribed veterinary medicines from a shop in Hayathnagar, in Ranga Reddy district, suspects something’s not right. Farmers are raising too many chickens, too fast, he said, having almost reduced by half the time it takes for chicks to reach slaughter-weight during the past two decades.

“The medicines we used seven or eight years ago don’t work anymore,” he said, adding that farmers have begun asking for new, more powerful remedies. “But what happens when those stop working? There’s nothing left.”

--With assistance from Ganesh Nagarajan and Pratik Parija.

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Business

Hen's-Eye View of Drug Use in the Fastest-Growing Chicken Market

By [Natalie Obiko Pearson](#) and [Ganesh Nagarajan](#)

March 30, 2016, 3:32 AM GMT+5:30

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- ▶ Chicken companies suggest adding critical antibiotics to water
 - ▶ Drugs banned in the U.S. for poultry are used on Indian farms
-

QLM to Offer 210 Million Shares in IPO

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Indian Farms Feed Chickens Last-Resort Antibiotics

India's biggest chicken supplier maintained for years that antibiotics weren't used to produce its meat, and KFC's local operator had said none of its chicken farmer-suppliers administered antibiotics used on humans. A close look at more than a dozen farms in India have led both to change their public stance.

Farmers raising thousands of fowl under contracts with broiler companies in the south Indian state of Telangana said they routinely gave antibiotics to their chickens via feed, water and injections, sometimes continuing the treatments until just days before the birds were slaughtered, according to a months-long investigation of poultry-raising practices in India. The drugs included "critically important" ones the [World Health Organization](#) says should be safeguarded to prolong their efficacy in people.

<https://www.bloomberg.com/news/articles/2016-03-29/hen-s-eye-view-of-drug-use-in-the-fastest-growing-chicken-market>

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Broiler chickens in a coop in Ranga Reddy district, India. *Photographer: Dhiraj Singh/Bloomberg*

Logbooks and delivery receipts indicate that antibiotics were used on 14 farms in Telangana's Ranga Reddy district, including one raising chickens for Suguna Foods Pvt., India's largest broiler company, and three contracted to sell to VH Group, the main supplier to KFC India. Interviews with farmers indicated that the drugs, permitted for veterinary use in India, were sometimes viewed as vitamins and feed supplements, and were used to stave off disease -- a practice linked to the emergence of antibiotic-resistant bacteria.

Selective Pressure

"Routine use of antibiotics at sub-therapeutic levels kills the weakest bacteria, but lets the more resistant ones survive," WHO Director-General Margaret Chan said in a Jan. 8 e-mail. "This occurs in medicine and also in animal husbandry and agriculture, especially when massive quantities of antibiotics are used to promote growth, not to treat sick animals."

On the farm contracted to supply Suguna Foods, a poultry production supervisor recommended the antibiotic levofloxacin be given to chicks starting the day after they hatched in September, according to notes recorded in a logbook kept by the farmer. The last of such regimens was

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recommended when the chicks were 28 days old and continued for two more days, the farmer said.

The antibiotic is permitted in India, but isn't approved for animal use in the U.S., EU, Australia and Canada, where it's deemed important for treating abdominal infections and pneumonia in people. On the poultry farm in Ranga Reddy, it was used to fortify drinking water suspended in plastic tubs from the coop's tin roof, the farmer said in an interview.

Website Outdated

Suguna Foods, which sells chicken nuggets and sausages under its "Home Bites" brand, had said on its website that "antibiotics are not used either in the feed or medicines." When asked on March 8 whether the statement reflected current farm practices, Managing Director G.B. Sundararajan said the page hadn't been updated in at least five years and was meant to pertain to antibiotic residues in packed meat, not what was used on farms.

The website was updated later the same day to read: "quality is further pronounced by ensuring antibiotic residues within acceptable level as permitted in our country."

Antibiotics may be given if prescribed by a veterinarian to prevent disease, Sundararajan said on March 3. The telephone interview and the one five days later were preceded by multiple e-mails, telephone calls and text messages to his office and to other Suguna Foods officials over six weeks to clarify the company's antibiotic policy and to seek comment on the recommendations observed on the farm.

Add to Water

Three other farms in the Ranga Reddy district contracted to VH Group's poultry unit -- the biggest chicken supplier in India to Yum! Brands Inc.'s KFC restaurants -- were instructed by a farm supervisor to mix Vendox-N powder containing the antibiotics neomycin and doxycycline into the chicks' water, according to the yellow and blue logbooks kept by the farmers. The chicks were less than two weeks old at the time the farms were visited.

The medicinal blend is "one of the safest and most economical products" for the treatment of E. coli and respiratory infections and the prevention of early chick mortality, VH Group's animal health division said on its website.



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'Best Global Practices'

VH Group follows "best global practices" and its processes are "internationally followed and applauded," said Rohan Bhagwat, assistant company secretary for the group's publicly traded chicken subsidiary Venky's (India) Ltd., in a March 23 letter. The company has about 50 veterinarians and scientists in a research and development unit that India's Ministry of Science & Technology listed in 2014 among 621 recognized scientific and industrial research organizations.

"Be rest assured, we follow most scientific systems of breeding chickens such that there is no harm to either the birds or consumers thereof," Bhagwat said.

Critical for Humans

Neomycin is used treat skin infections in people, a complication of liver failure, and to reduce the risk of infection from bowel surgery. Doxycycline is a treatment for plague, anthrax and Lyme disease, and can be used to prevent malaria. The WHO categorizes them respectively as "critically" and "highly" important for human medicine -- the kind of antibiotics KFC India initially said weren't used on farms supplying its restaurants.

After saying in January that none of its chicken suppliers use antibiotics that are used on humans, KFC India modified its statement in March in response to observations made by Bloomberg News on VH Group farms. Poultry suppliers use antibiotics that are approved for veterinary use or for dual veterinary and human use, KFC India said in a March 16 e-mail.

KFC India has four suppliers in addition to VH Group, the company said in January, adding that its farms are secured, subjected to bird health checks, and that every chicken is traceable.

As part of its processes, chicken supplied to KFC is free of antibiotic residues -- a status "achieved by following a withdrawal period specific to each antibiotic," the company said.

Antibiotic Confusion

The farmer supplying Suguna Foods said he was told by officials at the Coimbatore, Tamil Nadu-based company not to disclose what he gave the birds. When asked, he couldn't explain what an antibiotic is. "Medicine" usually refers to what is injected into a bird, not what's given through feed or water, the farmer said.



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Prepared broiler food on a farm in Ranga Reddy. *Photographer: Dhiraj Singh/Bloomberg*

Handwritten notes by the supervisor in the pale blue book, titled Farm Record and bearing the Suguna Foods logo, recorded recommendations to administer levofloxacin to the poultry at least six more times. The final dose was given seven days before the birds were collected for slaughter, according to the farmer.

Levofloxacin was recorded as being received by the farmer on a signed and dated “broiler-medicine delivery note” also carrying the Suguna Foods logo.

Meningitis Treatment

Another delivery note said five lots of a second antibiotic, gentamicin, were received by the farmer the day after the chicks hatched. There is no written record in the logbook suggesting how or when the broad-spectrum drug -- usually reserved for severe infections, including meningitis, in people -- should be used. The farmer said he administered it by injection every fourth day.

The farmer's name and address weren't shared with Suguna Foods. Recommendations made about the use of antibiotics would make the farm an exception among Suguna Foods' suppliers,



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said Sundararajan, the company's managing director. "This is not a common practice," he said. "The vet would have prescribed the medicines to the supervisor."

With 24,000 farmers, Suguna Food's veterinarians can't visit each farm individually, Sundararajan said. Prescriptions and drug deliveries are often dispatched via supervisors. The company uses "growth promoters" allowed by the government containing probiotics and herbal products, "not antibiotics," Sundararajan said.

"We are also concerned and we don't want to use more antibiotics," he said. "Only as a last resort is antibiotic used."

Supplying McDonald's

Suguna Foods' customers include India's biggest business conglomerate Taj Group, supermarkets across the nation, as well as McDonald's Corp.'s chicken supplier in India, Vista Processed Foods Pvt. Suguna Foods also exports frozen meat to Japan and the Middle East, according to its website.

"Vista fully adheres to the best practice protocols of our customers," the company said in an e-mail.

In India, McDonald's said that it doesn't source chicken meat from the Ranga Reddy district. The restaurant chain confirmed its sole chicken supplier in India is Vista Foods, as listed on Suguna's website, but only approves certain farms and can trace every product it serves to a specific plot, said Vikram Ogale, the company's director of national supply chain and quality assurance in India.

"McDonald's in India uses only approved antibiotics for the specific purpose of treating, controlling or preventing against established disease or illness," Ogale said in a March 15 e-mail. "If farm animals are treated with antibiotics, we follow specific withdrawal period as per government regulations."

McDonald's Vision

Ogale declined in a Jan. 13 telephone interview to provide a list of antibiotics that are permitted on its supplier-farms in India, saying the information is confidential. The company's Oak Brook, Illinois-based parent announced a global vision for antimicrobial stewardship in March 2015 that



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included a goal of prohibiting the use of drugs in food-animals that are critically important to human medicine and not approved for veterinary use.

“Our approach to animal welfare standards and practices is global and continually improving,” said Becca Hary, McDonald’s director of global media relations. “In Asia-Pacific, we will be working with our supply partners and relevant experts to implement this enhanced measure. This will occur over time depending on the complexities of local supply chains.”

The Taj Group said that Suguna Foods supplies only its Mumbai-based TajSATS Air Catering Ltd. business. The unit counts more than two dozen international airlines among its clients, according to its website.

‘No Cause for Concern’

Suguna is approved by the Food Safety and Standards Authority of India and “hence is already certified to be following safety norms,” TajSATS said in a March 15 e-mail. “The poultry supplied to us by this vendor is grown in bio-secured farms and is subjected to regular residue monitoring analysis by government authorities.”

TajSATS routinely audits Suguna Foods, including its stockrooms and product handling techniques, and has “found no cause for concern,” it said.

Drug Residues

An animal given an antibiotic will harbor traces of the drug until it’s eliminated over time, depending on factors including the medicine’s type, duration and strength, the U.S. Department of Agriculture says. If insufficient time has lapsed before the animal is slaughtered, the drug can remain in the meat. Some antibiotics can remain active even after cooking, potentially perturbing the body’s helpful bacteria when the contaminated meat is consumed.

Antibiotic residues have turned up in local supplies of chicken meat, milk and honey, according to the Centre for Science and Environment. The New Delhi-based group found 40 percent of 70 samples of chicken meat bought in the national capital’s markets from September 2013 to June 2014 contained antibiotic residues. One sample contained 64.59 micrograms per kilogram of ciprofloxacin, a drug allowed in India, but not permitted for use in poultry in the U.S., Canada, European Union or Australia.



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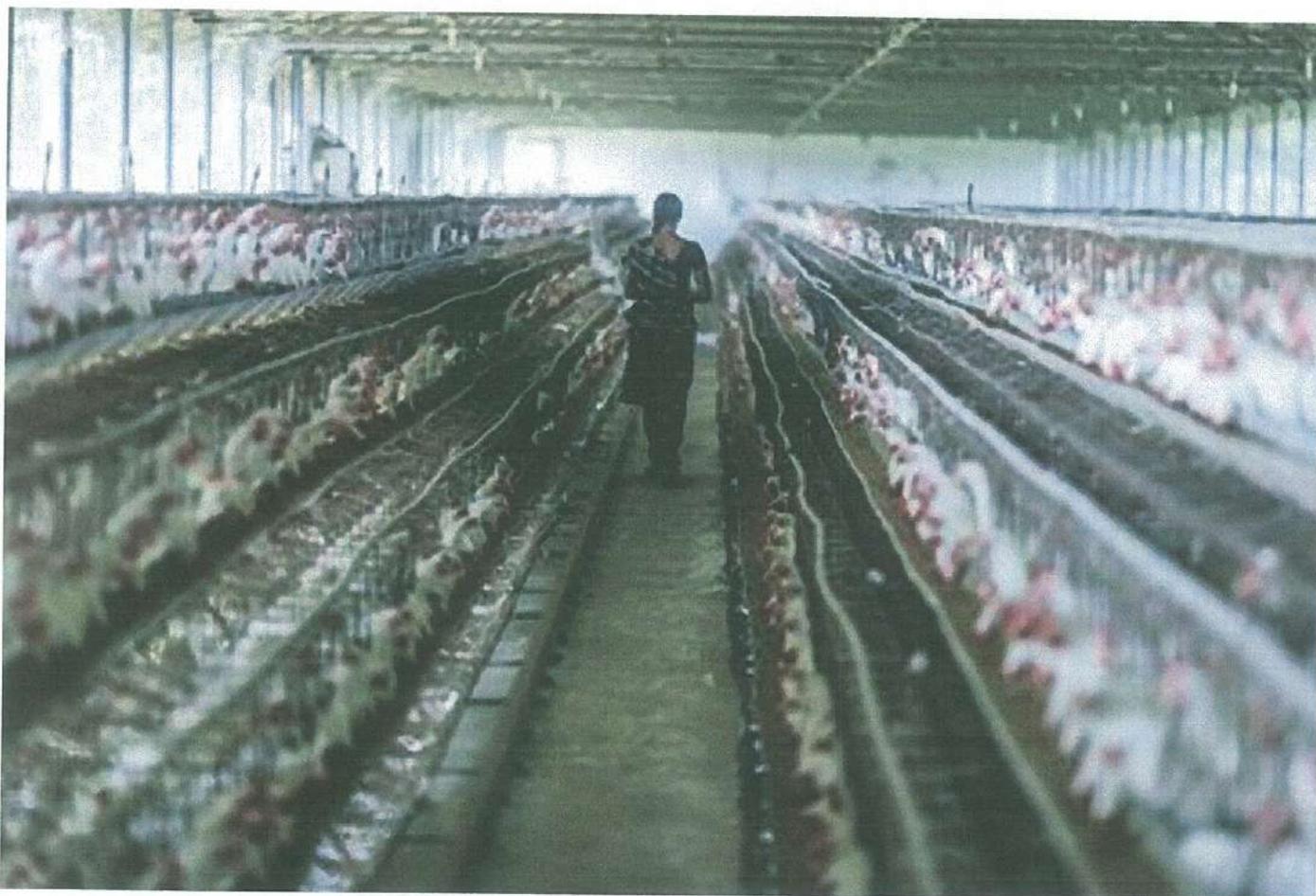
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One other farm supplying a third major broiler company received recommendations to administer antibiotics six days before the flock was collected for slaughtering. Regulators in India mandate a 28-day withdrawal period, unless the manufacturer specifies a shorter time on the drug's label.

Gentamicin, sold by Merck & Co.'s animal health division as Garasol, should be used in day-old chickens only, according to its website. Chickens injected with Garasol mustn't be slaughtered for food for at least five weeks following treatment. For levofloxacin, at least eight days is usually needed for chickens to eliminate the drug, with a longer withdrawal period needed if the liver is being consumed, a study by Bulgarian researchers found.

Product Checks

If levofloxacin and gentamicin are prescribed, Suguna Foods observes a 14-day and 35-day withdrawal period respectively, Sundararajan said. "We are exporting to many countries," he said. "We check the meat for residues. We regularly check."



Egg-laying hens on a farm in Ranga Reddy. *Photographer: Dhiraj Singh/Bloomberg*



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Adding to the difficulty controlling antibiotic use is the fact that products containing the medicines aren't always labeled as such. On one farm in Ranga Reddy district, a giant barn on concrete stilts houses thousands of egg-laying hens, jammed four in each cage.

'Just Vitamins'

On the floor lies a blue, 1-kilogram bag of powder which improves feed efficiency, according to the label. Listed among its ingredients is tylosin, an antibiotic permitted in India, but banned by the European Union as a growth promoter in 1998 after studies showed it fueled a surge in bacteria with cross-resistance to a drug used routinely on people.

The owner of the barn, Yadi Reddy, insists his layers aren't medicated through their feed. "That's not medicine -- it's just vitamins," he said.

Antibiotics recommended for use on Ranga Reddy district poultry farms, which are all permitted for veterinary use in India, included:

DRUG	DESCRIPTION
colistin	last-resort drug for severe, multi drug-resistant infections in humans; not approved for veterinary use in Canada
enrofloxacin	withdrawn for poultry in the US by the Food and Drug Administration, which found its widespread use in chickens made a virtually identical drug, ciprofloxacin, less effective in humans; not approved for use in poultry in Canada and Australia
ciprofloxacin	for urinary tract, joint and abdominal infections in humans; not approved for use in poultry in the US, EU, Australia, Canada
levofloxacin	for pneumonia and urinary tract and abdominal infections in humans; not approved for use in poultry in the US, EU, Australia, Canada
tylosin	banned by the EU as a growth promoter in 1998 because of risk of cross-resistance with a treatment for syphilis and chlamydia in humans, but allowed as a treatment for disease in flocks
gentamicin	for bloodstream and bone infections and meningitis in humans; classified by the WHO as "critically important" to human medicine



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doxycycline used to treat plague, anthrax and Lyme disease in humans; not approved for use in poultry in the US and Canada

– With assistance by Sharang Limaye

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