



**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**  
**EASTERN ZONAL BENCH AT KOLKATA**  
**ORIGINAL APPLICATION No. 103 OF 2024**

**IN THE MATTER OF:**

Danish Ansari ..... Applicant

-Versus-

District Magistrate West Bengal & Ors. .... Respondents

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**NDoH: 08.08.2024**

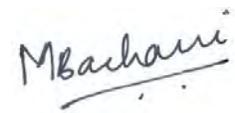
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Date: 07.06.2024

Place: Kolkata

**FILED BY:**


Mansi Bachani

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**SETTLED BY:**Mr. Sanjay Upadhyay  
[Senior Advocate]

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

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**ORIGINAL APPLICATION NO. 03 OF 2015**

**IN THE MATTER OF:**

1. Bijay Krishna Sarkar  
H-47, B.P. Upanagari,  
Kolkata-700094
  
2. Ashish Kumar Thakur  
Q-74, Baishnabghata Patuli Township  
Kolkata- 70009
  
3. Dr. Bharat Jhunjunwala  
Lakshmoli, P.O. Maletha, Kirti Nagar  
Uttarakhand- 249161
  
4. Tarun Sengupta  
Harmony Housing, 2<sup>nd</sup> Floor, Elite Corner  
English Bazar, Malda  
West Bengal- 732101
  
5. Debadityo Sinha  
943-a/8, III Floor, Govindpuri  
New Delhi -110019
  
6. Anil Prakash  
Jaiprabha Nagar, Majhulia Road,  
Muzzafarpur- 842001
  
7. Suresh Nishad  
Village Beekar, Tehsil Bara  
District Allahabad, Uttar Pradesh
  
8. Om Dutt Singh  
58 MG Marg, Allahabad  
Uttar Pradesh



9. Debasis Bandyopadhyay  
P.O. Raghunathganj, Dist. Murshidabad  
West Bengal- 742225 .....Applicants

Versus

1. Inland Waterways Authority of India  
Through its Chairman  
Head Office, A-13, Sector-1, Noida,  
Uttar Pradesh -201301
2. Kolkata Port Trust  
Through its Chairperson  
Head Office 15, Strand Road,  
Kolkata- 700 001
3. Department of Irrigation  
Through its Principal Secretary  
Government of Uttar Pradesh  
Sinchai Bhawan, Lucknow
4. Farakka Barrage Project  
Through its General Manager  
PO Farakka Barrage Project  
Dist Murshidabad West Bengal 742212
5. Tehri Hydro Development Corporation India Limited  
Through its Managing Director  
Corporate Office, Rishikesh  
Pragatipuram, bypass Road  
Rishikesh-249201 (Uttarakhand)
6. Uttarakhand Jal Vidyut Nigam Ltd.  
Through its Chairman  
Maharani Bagh, GMS Road  
Dehradun- 248006 (Uttarakhand)
7. Jaiprakash Ventures Power Ltd.  
Through its Chairman  
Sector -128, Noida  
Uttar Pradesh -201304

8. Alaknanda Hydro Power Company Ltd.  
Through its Managing Director  
Srikot, Srinagar, Dist. Pauri  
Uttarakhand-246174

.....Respondents

**COUNSEL FOR APPLICANT:**

Mr. Ankur Sood & Ms. Parul Gupta, Adv.

**COUNSEL FOR RESPONDENTS:**

Mr. Sanjay Upadhyay, Ms. Upama Bhattachajre, Ms. Eisha Krishn and Ms. Saumya Chaudhaari, Adv. for Respondent No. 1

Mr. Buddy A Rangaradhar, Ms. Stuti Krishnan, Adv. for Respondent No. 2

Ms. Deep Shikha Bharti, Adv. for Respondent No. 3

Mr. A.K. Prasad, Mr. Shashank Saxena, Adv. for Respondent No. 4

Mr. Neeraj Malhotra, Sr. Adv., Mr. Prithu Garg, Adv. for Respondent No. 5

Mr. Amit Anand Tiwari & Mr. Shaswar Singh, Adv. for Respondent No. 6

Mr. Pawan Upadhyay, Adv., for Respondent No. 7

Mr. M. L. Lahoty and Mr. Pabam K. Sharma, Adv. for Respondent No. 8.

**JUDGEMENT**

**PRESENT:**

**Hon'ble Mr. Justice Raghuvendra S. Rathore (Judicial Member)**

**Hon'ble Dr. Satyawan Singh Garbyal (Expert Member)**

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**Reserved on: 31<sup>st</sup> August, 2018**

**Pronounced on: 14<sup>th</sup> September, 2018**

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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?

**Dr. S.S. GARBYAL, (EXPERT MEMBER)**

1. In this Original Application the applicant has sought relief and compensation for the damages caused to river Ganga and its aquatic

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life by hydraulic structures at Uttrakhand, Uttar Pradesh and West Bengal which has resulted into loss of the livelihood to the fisherman.

2. Applicant's claim for compensation is on account of the environmental damage caused by the following dams, barrages and projects:

**a) Inland Waterways Authority of India. Due to dredging.**

**b) Kolkata Port Trust. Due to making of underground guide wall at Haldia and dredging operations.**

**c) Department of Irrigation, Government of UP: Due to abstraction of water from the Ganga and breaking longitudinal connectivity of the riverbed.**

**d) Farakka Barrage Project: Due to Farakka Barrage Project including Feeder Canal; breaking longitudinal connectivity of the riverbed; and discontinuous release of water from the FBP.**

**e) Tehri Hydro Development Corporation: Due to trapping of sediments and breaking longitudinal connectivity of the riverbed.**

**f) Uttarakhand Jal Vidyut Nigam Ltd: Due to breaking longitudinal connectivity of the riverbed.**

**g) Jaiprakash Power Ventures Ltd.: Due to breaking longitudinal connectivity of the riverbed.**

**h) Alakhnanda Hydro Power Co Ltd: Due to trapping of sediments and breaking longitudinal connectivity of the riverbed.**

3. Summary of claims made by the Applicant is given as follows:-



- a) *From IWAI, Respondent No. 1 herein: For fisheries in West Bengal Rs. 12 crores; Fisheries in Bihar Rs 120 crores; Fisheries in UP Downstream Allahabad Rs. 120 crores; Total Rs. 378 crores per year.*
- b) *From KPT, Respondent No. 2 herein: Erosion and Biodiversity in Estuary Rs. 82 crores; Non-use values Rs. 134 crores; Total Rs 216 crores per year.*
- c) *From Irrigation Department, UP, Respondent No. 3 herein: Fisheries in Bihar Rs. 840 crores; Fisheries in UP Downstream Allahabad Rs. 840 crores; Fisheries upstream Allahabad Rs. 854 crores; Fisheries UttarakhandRs. 6 crores; Biodiversity Ganga Rs 250 crores; Erosion and Biodiversity in Estuary Rs. 164 crores; and Non-use values Rs. 2003crores; Total Rs. 4957 crores per year.*
- d) *From FBP, Respondent No. 4 herein: Fisheries in West Bengal Rs. 108 crores; Fisheries in Bihar Rs. 240 crores; Fisheries in UP Downstream Allahabad Rs. 240 crores ; Biodiversity Ganga Rs. 50 crores; Erosion in West Bengal Rs. 690 crores; Erosion and Biodiversity in EsturyRs 164 crores; Flood congestion and water logging in West Bengal Rs. 1200 crores; and Non-use values Rs. 534 crores; Total Rs. 3226 crores per year.*
- e) *From THDC, Respondent No. 5 herein: Biodiversity Ganga Rs. 75 crores; Erosion and Biodiversity in Estuary Rs. 123 crores; and Non-use values Rs. 1669 crores; Total Rs 1867 crores per year.*
- f) *From UJVNL, Respondents No. 6 herein: Fisheries in UttarakhandRs. 6 crores; Biodiversity Ganga Rs. 30 crores; Erosion and Biodiversity in Estuary Rs 16.4 crores; and Non-use values Rs. 667 crores; Total Rs. 719.4 crores per year.*



**g) From JVPL, Respondent No. 7 herein:  
Biodiversity Ganga Rs. 15 crores; Erosion  
and Biodiversity in Estuary Rs. 8.2 crores;  
and Non-use values Rs. 333 crores; Total Rs.  
356.2 crores per year.**

**h) From AHPCL, Respondent No. 8 herein:  
Biodiversity Ganga Rs. 30 crores; Erosion  
and Biodiversity in Estuary Rs. 16.4 crores;  
and Non-use values Rs. 1335 crores; Total Rs.  
1381.4 crores per year.**

4. The applicant in his Original Application has not mentioned the dates of the commencement and execution of any of the projects mentioned above. By applicant's own admission is that all the above mentioned projects were executed almost 25 years ago with due permission under law and with all the environmental clearances from Competent Authorities after the environmental appraisal assessments.

5. The applicant has not come out with any basis for computing the total claim of fantastic amount of Rs. 13,101 crores every year. This allegedly is the loss caused to the fishermen in Sunderbans because of hydraulic structures over the length of more than 1500 km. from Uttarakhand to West Bengal across river Ganga.

6. The applicant submits that this is a continuing cause of action and is ongoing as all their projects are still in operation and therefore it is in accordance with Sect. 15 (3) of the NGT Act. 2010.

7. In this application no allegations have been made with regard to violation of any of the Acts given in schedule 1 of the NGT Act. of 2010. Moreover, Section 15 of the NGT Act. 2010 provides for the

compensation to the victims of pollution and another environmental damages arising under enactments specified in schedule 1. In fact Section 15 (3) provides for as under:-

***(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.***

8. We are of the considered opinion that the cause of action in this application should have arisen when these projects were first approved and executed, which the applicant admitted were much before and in some cases almost 25 years before, the promulgation of NGT Act in 2010. Moreover under sub Section 3 of Section 14 of the NGT 2010, it has been provided that no application for adjudication 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, in other words the intention of the said act namely National Green Tribunal, 2010 is that the aggrieved person should promptly approach the Tribunal for its redressal. In that respect also it has been made clear that the Tribunal should be approached as soon as the cause of action first arose. In the instant case the applicant has approached the tribunal after so many years whereas the fact regarding the construction of dams, barrages etc. had taken

place at least 20-25 years ago and their intention is known to all including the applicant and, therefore, on this count also there is no reason for the Tribunal to entertain the applicant and grant any relief to the applicant.

9. In view of the above this Original Application is devoid of merits and deserves to be rejected. Consequently, the Original Application is dismissed with no order as to cost.

.....  
**Justice Raghuvendra S. Rathore**  
**(Judicial Member)**

.....  
**Satyawan Singh Garbyal**  
**(Expert Member)**

**Dated: 14<sup>th</sup> September, 2018**  
**New Delhi**

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## Annexure A2

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1994 OF 2019

DR. BHARAT JHUNJHUNWALA & ORS. ...Appellant(s)

Vs.

INLAND WATERWAYS AUTHORITY OF INDIA & ORS. ...Respondent(s)

O R D E R

Heard Mr. Ankur Sood, learned counsel appearing for the appellant(s).

We are not inclined to entertain the present Civil Appeal, the same is accordingly dismissed.

Pending applications, if any, shall stand disposed of.

.....J.  
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.  
[ARAVIND KUMAR]

NEW DELHI;  
February 08, 2024

Signature Not Verified  
Digitally signed by  
Rajni Mukhi  
Date: 2024.02.10  
11:49:09 IST  
Reason: 

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ITEM NO.10

COURT NO.15

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1994/2019

DR. BHARAT JHUNJHUNWALA &amp; ORS.

Appellant(s)

VERSUS

INLAND WATERWAYS AUTHORITY OF INDIA &amp; ORS.

Respondent(s)

IA No. 67886/2020 - CONDONATION OF DELAY IN FILING THE SPARE COPIES  
IA No. 26827/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT

IA No. 145330/2019 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES

Date : 08-02-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA  
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s) Mr. Ankur Sood, AOR  
Mr. Varun Agarwal, Adv.

For Respondent(s) Mr. Sanjay Upadhyay, Sr. Adv.  
Ms. Mayuri Raghuvanshi, AOR  
Mr. Vyom Raghuvanshi, Adv.  
Ms. Eisha Krishna, Adv.  
Ms. Geetanjali Sanyal, Adv.  
Mr. Arushi Malik, Adv.

Mr. T. Harish Kumar, AOR  
Mr. Navneet Dugar, Adv.  
Mrs. Preethi G, Adv.

Mr. N Venkatraman, A.S.G.  
Mr. Rupesh Kumar, Sr. Adv.  
Mr. Rohit Verma, Adv.  
Mr. Anmol Chandan, Adv.  
Mr. Gurmeet Singh Makker, AOR

Mr. Prithu Garg, Adv.  
Mr. Parth Bhatia, Adv.  
Mr. Shivam Singh, Adv.  
Mr. Prithu Garg, AOR

Mr. Amit Anand Tiwari, Sr. Adv.  
Ms. Devyani Gupta, AOR  
Ms. Vatsala Chandra Chaturvedi, Adv.

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M/S. Unuc Legal Llp, AOR  
Ms. Sharmila Upadhyay, Adv.  
Mr. Pawan R Upadhyay, Adv.  
Mr. Sarvjit Pratap Singh, Adv.  
Mr. Rishab Khare, Adv.  
Ms. Supriya R Pandey, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Civil Appeal is dismissed in terms of the Signed Order which is placed on the file.

Pending applications, if any, shall stand disposed of.

(KAPIL TANDON)  
COURT MASTER (SH)

(NIDHI WASON)  
COURT MASTER (NSH)



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	<p><b>Item No.</b> <b>15</b></p> <p><b>November</b> <b>01, 2018</b></p>	<p>disposed of, with no order as to cost.</p> <p><b><u>M.A. No. 1290 of 2018</u></b></p> <p>This Application does not survive for consideration, in view of the fact that main Application itself stand disposed of.</p> <p>M.A. No. 1290 of 2018 stands disposed of accordingly.</p> <p style="text-align: right;">.....,JM (Raghuvendra S. Rathore)</p> <p style="text-align: right;">.....,EM (Dr. Satyawan Singh Garbyal)</p>
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IWAI-12017/11/2024-AS(LH)  
2079455/2024/IWAI-CE & Project Manager (JMVP)

**IN THE SUPREME COURT OF INDIA**

**Annexure A4**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 1411 OF 2019**

**BHARAT JHUNJHUNWALA & ORS.**

**Appellant(s)**

**VERSUS**

**INLAND WATERWAYS AUTHORITY OF INDIA & ORS.**

**Respondent(s)**

**O R D E R**

Mr. C.U. Singh, learned Senior Counsel appearing for the appellants has argued that the Ministry of Environment is to submit a final opinion to the Tribunal by 31.01.2019. Time to do so, we are told, has been extended.

However, the application that has been filed, being Original Application No. 487 of 2015, has been disposed of without the appellants being able to comment on the Report.

We make it clear that this Report will be given to the appellants, who can then approach the Tribunal by way of objections, if any, to the said Report in a fresh application filed for this purpose.

Accordingly, the appeal is disposed of.

All contentions of parties are left open.

Pending applications also stand disposed of.

..... J.  
(ROHINTON FALI NARIMAN)

..... J.  
(VINEET SARAN)

New Delhi;  
February 22, 2019.

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IWAI-12017/11/2024-AS(LH)

2079455/2024/IWAI-CE & Project Manager (JMVP)

**ITEM NO.14**

**COURT NO.6**

**SECTION XVII**

**S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S**

Civil Appeal No(s). 1411/2019

**BHARAT JHUNJHUNWALA & ORS.**

**Appellant(s)**

**VERSUS**

**INLAND WATERWAYS AUTHORITY OF INDIA & ORS.**

**Respondent(s)**

**(IA No.20485/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.20486/2019-STAY APPLICATION)**

**Date : 22-02-2019 This appeal was called on for hearing today.**

**CORAM :**

**HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN**

**HON'BLE MR. JUSTICE VINEET SARAN**

**For Appellant(s)** Mr. C.U. Singh, Sr. Adv.  
Mr. Vinay Navare, Adv.  
Mr. V.V.S. Patavi Ram, Adv.  
Ms. Shruti Agarwal, Adv.  
Mr. Nachiketa Joshi, AOR

**For Respondent(s)** Mr. Tushar Mehta, SG  
Mr. Sanjay Upadhyay, Adv.  
Ms. Mayuri Raghuvanshi, AOR  
Mr. Salik Shafique, Adv.  
Ms. Upama Bhattacharjee, Adv.  
Ms. Saumya Chaudhari, Adv.

**UPON hearing the counsel the Court made the following  
O R D E R**

**The appeal is disposed of in terms of the signed order.**

**(R. NATARAJAN)  
COURT MASTER (SH)**

**(RENU DIWAN)  
ASSISTANT REGISTRAR**

**(Signed order is placed on the file)**

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Item No. 02

(Court No. 1)

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

(By Video Conferencing)

Original Application No. 487/2015

(with M.A. No. 253/2019  
& I.A. No. 176/2021)

Bharat Jhunjhunwala &amp; Ors.

Applicant(s)

Versus

Inland Waterways Authority &amp; Ors.

Respondent(s)

Date of hearing: 04.05.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Ritwick Dutta, Advocate in M.A 253/2019

Respondent: Mr. Sanjay Upadhyay, Advocate for Inland Waterways Authority

**ORDER**

**The Issue**

1. The issue for consideration in main OA is whether EIA is necessary for navigation infrastructure in the River Ganga in the stretch from Allahabad to Haldia also known as the National Waterway 1 (NW1), undertaken by Inland Waterways Authority of India (IWAI), the project proponent (PP).

2. The project envisages developmental activities such as river terminal, jetties and locks and barrages and multimodal river water



terminals along with necessary dredging operations. It was estimated to cost ₹4,200 crores, to be completed in six years.

### **Procedural History and version of the parties**

3. The application was filed before this Tribunal on 29.10.2015. Notice was issued on 04.11.2015 to the respondents, including the PP, MoEF&CC, MoJS and States of UP and Bihar. The said respondents have filed their respective replies.

4. Stand of the PP is that it is executing the project under the National Waterway (Allahabad – Haldia Stretch of the Ganga-Bhagirathi–Hooghly River) Act, 1982, for regulation and development of River Ganga for shipping and navigation on the National Waterway Ganga-Bhagirathi–Hooghly River. The PP was constituted under the Inland Waterways Authority of India Act, 1985 for construction of National Waterways, safe navigation and allied infrastructure. The Indian Water Transport can be developed as a fuel-efficient, cost-effective and an environment-friendly mode of transport to supplement the overburdened rail and congested roads. The project is funded by the World Bank and in the process undergoes a rigorous environmental and social safeguard evaluation, which not only mandates the compliance of the country systems but also adds global parameters and safeguards from the environmental and social safeguards standpoints. The PP has undertaken detailed feasibility studies for capacity augmentation of the National Waterway wherein the analysis of key hydrographic, bathymetric, imagery, environmental, social and numerical modeling date to chartering the existing route of NW-1 from the point of view of navigability. It also sought a clarification from the MoEF&CC whether Environment Clearance (EC) was required in the present case. It deputed the Indian Institute of Technology, Roorkee, to

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carry out a study on the impact of the Multi modal terminal on Ramnagar fort near Varanasi. The study has concluded that there is no scientific evidence of any adverse impact on the Ramnagar Fort structure due to the construction of the multi modal terminal at Varanasi. The PP is not only complying with all the other applicable clearances and permissions but is also taking on board the opinion and apprehensions of local population of the area concerned and duly addressing their concerns. The PP has also engaged specialized accredited environmental agencies to carry out basin level critical environmental resource study to assess if there are any environmental consequences in the capacity augmentation of national waterways. There have also been visits by the Wildlife Institute of India (WII) to look into any impacts from the wildlife perspectives. The program intends to achieve an alternative transport corridor. It will not have adverse environmental and social implications. The PP is splitting the project in smaller stand-alone components for the purpose of evading scrutiny under the EIA notification. It is undertaking only maintenance dredging as opposed to capital dredging operations in NW-1 stretch to maintain Least Available Depth as and when the project commences. The EIA Notification has prescribed the prior/ environmental clearance conditions largely to Coast based development of ports, harbors, break waters and dredging and linked channel. For river-based projects, such as river valley projects and irrigation projects, there are specific conditions and requirements of prior EC. Similarly, there are prior EC requirements for oil and gas transportation, highways and aerial ropeways. Item 7 (e) included ports and harbors till 01.12.2009 after which it also added break waters and dredging. Maintenance dredging even under such coastal ports and harbors were exempted. As per Notification dated 15.01.2016, EIA Notification has been amended exempting requirement of EC *inter-alia* for



the dredging and desilting of dams, reservoirs, weirs, barrages, river and canals for the purpose of maintenance, upkeep and disaster management. No ports or harbours or break waters are proposed to be constructed. The inland waterways will offer sufficient financial benefits for transport which will heavily outweigh the social and environmental costs. Upon successful development of the waterways having depth of 2.5 to 3 m, the transportation will become cheaper by 60 to 70% as compared to the transportation by roadways and 25 to 30% cheaper as compared to transportation by Railways. Inland waterways are recognized as a fuel efficient, cost effective and environment friendly mode of transport but it has received lesser investment as compared to roads and railways. Since inland waterways are lagging behind other modes of transport, the central government has evolved a policy for integrated development of inland waterways. EIA and EMP have been drawn up for the multi modal river water terminal at Ramnagar, Varanasi, phase 1A, with adequate environmental measures. All necessary permissions on wildlife or from the pollution standpoint, wherever applicable, shall be taken in accordance with law. The annual maintenance dredging volume is about 8-10 million cum. in the Haldia- Varanasi-stretch which will be more or less consistent throughout the project period and even in future during the operational period. The overall silt load in Ganges (in the project stretch) is in the range of 700 million to 1 billion cum. annually, which has the highest sedimentation rate in the world and it is not practically feasible to carry out capital dredging in such highly sedimented rivers.

5. The stand of Respondent No. 2, MoEF&CC in its affidavit filed on 29.10.2016 is as follows:-

*“2. It is submitted that as per the provisions of EIA Notification, 2006 and its amendment from time to time, Ports, Harbours, break*



waters, dredging falls under item 7 (e) of the schedule given below and are required to obtain prior environmental clearance:

Project or Activity	Category 'A'	Category 'B'	Conditions if any
7(e) Ports, Harbours break waters, dredging	≥ 5 million TPA of cargo handling capacity (excluding fishing harbours	<5million TPA of cargo handling capacity and/ or ports/ harbours ≥ 10,000 TPA of fish handling capacity	General Condition shall apply Note: 1. Capital dredging inside and outside the ports or harbours and channels are included. 2. Maintenance dredging is exempted provided it formed part of the original proposal which for environment management plan and environment clearance

3. ***It is submitted that it does not mention jetty, multimodal terminal and Inland waterways. These are not covered under the EIA Notification, 2006. This project is also located near Kashi Tortoise Sanctuary. Therefore, clearance from National Board for Wildlife needs to be taken.***

6. The stand of the Ministry of Water Resources (now MoJS) is that the EIA is administered by the MoEF&CC and as per the Notification, EC is required for various category of projects.

7. The stand of Respondent No. 4, State of UP is formal as follows:-

*“5. That in the Year 2014, the Government of India announced ‘Jal Marg Vikas Project’ to facilitate and improve use of waterways for transportation purposes. That the stretch of the River from Allahabad in U.P to Haldia in West Bengal was declared as National Waterway 1(NWI) in 2014. It is submitted that for navigation, dredging and construction of Multi-Model Terminal from Haldia to Allahabad is to be done by the Inland Waterways Authority of India.*

*6. It is submitted that the main function/motive of the Irrigation and Water. Resources Department U.P is to provide irrigation facilities which includes Constructing Dams, reservoirs, barrages, weirs, major pump canals etc. on rivers. Further submitted that Irrigation and*



*Water Resources Department U.P has no concern in regards with promotion of Water Ways which is under the control of Ministry of Surface Transport and Shipping Inland Waterways Authority of India.”*

8. Stand of State of Bihar is also formal except for the factual position as follows:-

*“6. That it is most humbly submitted that there are many 6. rivers like Ghaghra, Kosi, Gandak, Mahananda and Bagmati which carry heavy silt load and pour it down in the mainstream of Ganga. The gradual deposition of silt in the bed leads to various issues like soil erosion, meandering, braiding and higher flood levels. This lead to loss human life and animals. Soil erosion results in various other problems. So removal of access silt deposit from mainstream will reduce the loss and will be helpful to maintain better flow of the river.”*

9. The Project Proponent has filed further affidavit on 16.01.2017 about the scope of the project and applicability of requirement of EC. It is stated that detailed environment assessment has been undertaken by engaging Experts on the subject as follows:-

***“Impact Assessment Studies:***

12. *Detailed Environmental Assessment (EA) has been undertaken for all the proposed components to identify the environmental issues associated with the project. As part of the Environmental and Social Safeguards Policy of the World Bank, the Respondent No 1 i.e. IWAI had engaged ESIA consultants (M/s EQMS India Pvt. Ltd., IRG Systems South Asia Pvt. Ltd. and Abnaki Infrastructure Applications and Integrated Development Pvt. Ltd.) to carry out a comprehensive ESIA study on NW-1 as part of the pre appraisal activity for the Jal Marg Vikas Project. The following Environment Assessment documents have been prepared for the Project:*

- i. A Cumulative Impact Analysis (CIA) report: This CIA includes a study on the critical environmental resources of the Ganges basin in India, to provide guidelines to avoid impacts on these as far as possible, and recommends strategies to manage direct, indirect and induced impacts (which include specific guidance for the Project and its EIA).*
- ii. A Consolidated Environmental Impact Assessment (EIA) for the Project: This is aimed to avoid, mitigate and/or manage Overall potential environmental, health and safety impacts from the Project*

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- iii. *The EIA and EMP reports includes specific environmental assessment of all major interventions currently planned in the project (barge operations, maintenance dredging, navigational lock at Farakka, multimodal cargo terminals at Varanasi, Sahibganj and Haldia);*
- iv. *The EIA includes an environmental management framework (anticipated potential issues and risks, terms of reference including scope of work for the EA to be undertaken) for civil works interventions that may come up in near future, such as RO-RO jetties, additional multimodal cargo terminals, and vessel repair and maintenance facilities;*
- v. *A summary of concerns raised during consultation has been included as a standalone document highlighting the different stakeholder consultations conducted, issues raised and how they have been incorporated in the project's plans and designs.*

*The environmental assessments were carried out in substantial consultation with stakeholders, to ensure that the environmental assessment and other compliance requirements are in alignment with the policies and procedures as specified by the Government of India and the World Bank Group safeguard policies.*

*It may also be noted that the draft EIA reports (the CIA, the Consolidated Environment Assessment containing the EMPs for maintenance dredging and barge operations; the stand-alone EMPs for Farakka Lock, Sahibganj, Varanasi and Haldia Terminals; and the Executive Summary) were disclosed on the IWAI website as early as in May 2016.*

- 13. *That based on the Comments from stakeholder the EIA reports were revised in September 2016. These revised versions of the EIA reports were uploaded on IWAI website in December 2016. That the Respondent No. 1 submits that any new investments in future that require use of a safeguard instrument such as an EIA reports will also follow the World Bank operational policies for public consultation and for disclosure.*

**Environmental Advantages:**

- 14. *As mentioned earlier, Inland Waterway Transport (IWT) is the most environment-friendly mode of transport, compared to the other surface based modes of transport. The following are the major advantages of IWT over the surface modes of transport:*
  - *It is a non-water consumptive transportation with minimal resource depletion.*
  - *It will facilitate reduction of pressure on Railway network and National Highways, relieving congestion, reduced emissions from vehicles and railway engines on non-electrified routes, thereby reducing carbon emission and project footprint.*



- Use of modern inland water vessels, with natural gas (LNG/CNG) as fuel will reduce emission of SO<sub>x</sub> (50%), NO<sub>x</sub> (70%), Particulate Matter (95%) and CO<sub>2</sub> (25%). Hence will have negligible impact on ambient air quality.
- LNG/CNG engines on inland vessels have lower noise level than diesel engines. This has less impact on ambient noise level.
- Due to minimum requirement of land acquisition, there will be insignificant impact on ecology & biodiversity, agricultural activities as well as on the livelihood of the people.
- The data given below in Table-3 and Table-4 clearly bring out the environmental benefits of IWT over the other modes of transport:

**Table-3**

<b>External Costs of Pollution</b>	<b>Waterways</b>	<b>Road</b>	<b>Rail</b>
	<i>Rs./Tkm</i>	<i>Rs./Tkm</i>	<i>Rs./Tkm</i>
<b>External Costs of Air Pollution</b> <i>Source: Total Transportation System Study – Planning Commission Report</i>	0.3	0.20	0.0366
<b>External Costs of Noise Pollution</b> <i>Source: Union Internationale des Chemins de fer (PIANC)</i>	NIL	0.0032	0.0012
<b>Accident Cost</b> <i>Source: Total Transportation System Study – Planning Commission Report</i>	NIL	0.0620	0.0010
<b>Surface Occupation</b> <i>Source: Bundesamt fur Umweltschutz (PIANC)</i>	-	0.0002	0.0001

**Table-4**

<b>Emission of Green House gases</b>	<b>Freight Transport (gm/tkm)</b>		
	<i>As per 12<sup>th</sup> Five Year Plan</i>	<i>Mckinsey ‘Transforming the railways infrastructure’ 2010</i>	<i>International Union of railways</i>
<i>Road</i>	160	64	84
<i>Rail</i>	29	28	17
<i>Waterways</i>	31	15	-

*It is submitted that the project will further lead to socio-economic improvement of local communities and stakeholders e.g. local fisher-folks, ferry service providers, commuters, local business etc. by providing better connectivity along and between the north and south banks of river Ganga.*

15. *That in keeping with the principle of sustainable development and considering the least impact nature of the Jal Marg Vikas project and its environmental benefits, it is in the interest of the environment as also the nation that this project be allowed to proceed.”*



**Further Affidavit of PP placing on record Allahabad High Court order dated 28.04.2016 allowing the project to go ahead without EC**

10. The Project Proponent has also filed an affidavit dated 21.10.2016 to bring on record order of the Allahabad High Court dated 28.04.2016 in PIL No. 31229 of 2005, *Kautilya Society Thru' General Secy. & Anr. vs. State of UP Thru' Principal Secy. & Ors.* allowing the project to go ahead without EC. The said order is reproduced below:-

**“PUBLIC INTEREST LITIGATION (PIL) No. - 31229 of 2005**

*xx*

*xx*

*xx*

**Petitioner** :- *Kautilya Society Thru' General Secy. & Another*

**Respondent** :- *State Of U.P. Thru' Principal Secy. & Others*

*xx*

*xx*

*xx*

**Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice  
Hon'ble Dilip Gupta, J.**

*xxx.....xxx.....xxx*

**B. The Project of Inland Waterways Authority of India (IWAI)**

*The Inland Waterways Authority of India, which is a statutory body constituted under the Inland Waterways Authority of India Act 1982, is proposing to develop a **multi modal water terminal at Ram Nagar, Varanasi.** The land acquisition proceedings were completed in 2010 and approximately 5.6 hectares of land have been acquired. Among the waterways which have been declared as National Waterways, in implementation of the provisions of Section 14, is NW-1 which covers the Ganga - Bhagirathi - Hooghly river system from Allahabad to Haldia at a distance of 1620 Kms, traversing the States of Uttar Pradesh, Bihar, Jharkhand and West Bengal.*

***Permanent jetties with mechanical handling facilities have been set up at Patna and Kolkata in addition to which jetties for berthing facilities have been provided at two other places. The project envisages as many as twenty floating terminals at various locations between Haldia and Allahabad. The Vice Chairperson of IWAI, who has assisted the learned Senior Counsel during the course of the hearing of these proceedings, has stated before the Court that the project is being implemented with the technical and financial assistance of the World Bank involving a total of USD 859 million. The project at Ram Nagar is on the south bank of the river and involves the construction of off shore jetties which will not impede the flow or current of the river.***

***The Environmental Impact Assessment Notification of***

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***the Ministry of Environmental and Forests dated 14 September 2006 covers in item 7 (e) of its schedule, projects for ports and harbours. The Court has been apprised of the fact that though the provisions of the notification of MOEF dated 14 September 2006 are not attracted to the project, detailed environmental impact assessments and cumulative impact assessments have been carried out for the project***

***The learned Additional Solicitor General of India has placed on the record a copy of the Draft Environmental Assessment Report in respect of Phase 1A of Multi Modal River Water Terminal at Ram Nagar, Varanasi. The submissions which have been made before the Court indicate that the draft EIA report deals with the environmental impact assessment up to the stage of the commissioning of the project and hence, it would be appropriate if IWAI also undertakes to carry out an environmental impact assessment of the position after the commissioning of the project. We deem this suggestion to be fair and proper and the suggestion of the learned Amicus Curiae has not been opposed by the IWAI.***

***Accordingly, we allow the application which has been filed by IWAI and permit the authority to proceed with the project, subject to the receipt of all the required statutory clearances. This shall, however, be subject to the condition, which we have proceeded to accept of a requirement of obtaining an environmental impact assessment in respect of the project after the date of its commissioning.”***

#### **Order of the Tribunal dated 1.11.2018 disposing of the matter**

11. The matter was considered and disposed of by this Tribunal vide order dated 01.11.2018 in O.A. No. 487/2015, *Bharat Jhunjhunwala vs. Inland Waterways Authority of India & Ors.*, noting that there was no dispute about the EIA Notification not being applicable. However, it was observed that MoEF&CC may look into the issue in consultation with the Experts whether EC is required and whether EIA is to be done in relation to Inland Waterways Projects. The order is reproduced below:-

***“In this original application, the primary issue raised is as to whether Environmental Clearance in respect to Inland Waterways is required under Law or not. There is no dispute about the fact that the project of Inland Waterways is, as on date, not included in the EIA Notification, 2006. There is no doubt about the fact that such projects are first of its kind and may increase in the coming days.***

***Therefore, we consider it appropriate to direct Ministry of Environment and Forest to look into the issue in consultation with the Experts in the field, as to whether any Environmental***



***Clearance is required or not and whether Environmental Impact Assessment is to be done in projects relating to Inland Waterways. They may do this exercise within a period of three weeks.***

*The Ministry of Environment would submit their final opinion to the Tribunal by 31st January, 2019. Accordingly, this Original Application No. 487 of 2015 is disposed of, with no order as to cost.”*

**Order of Hon’ble Supreme Court dated 22.2.2019**

12. Against the above order, *Civil Appeal No. 1411 of 2019, Bharat Jhunjhunwala & Ors. vs. Inland Waterways Authority of India & Ors.* was filed by the applicant which was disposed of vide order dated 22.02.2019 as follows:-

*“However, the application that has been filed, being Original Application No. 487 of 2015, has been disposed of without the appellants being able to comment on the Report.*

***We make it clear that this Report will be given to the appellants, who can then approach the Tribunal by way of objections, if any, to the said Report in a fresh application filed for this purpose.”***

**Report of the MoEF&CC dated 13.3.2019 in pursuance of order dated 1.11.2018 and objections of the Applicant in pursuance of order of Hon’ble Supreme Court**

13. MoEF&CC has filed its report on 13.3.2019 in compliance with the order dated 1.11.2018 to which the applicant has objections by way of M.A. No. 253/2019. In its stand, MoEF&CC has stated that the Expert Committee has examined the issue on 24.10.2017 and concluded that no prior EC is required for maintenance dredging for navigational channel for Inland Waterways. OM No. 14-9/2016-IA-III dated 21.12.2017 was issued by this Ministry to permit Inland Waterways projects, subject to the implementation of detailed environmental safeguards and fulfilment of certain detailed environmental safeguards and fulfilment of certain conditions as enclosed as annexure to the OM. It is further submitted that the applicability of the EIA Notification, 2006 for the Inland Waterways

projects had already been examined by an 'Expert Committee' in its meeting held on 18.05.2017 which was also discussed between MoEF&CC and Ministry of Road Transport & Highways, Shipping and Water Resources, River Development & Ganga Rejuvenation on 24.10.2017 and thereafter a considered decision was taken by the Ministry and the same was communicated to the Ministry of Shipping vide O.M. dated 21.12.2017.

14. The objection of the applicant is that no Expert consideration has taken place after order of this Tribunal dated 01.11.2018 and earlier consideration does not take into account the entire scope of the work. The project cannot proceed without EC.

**Order of the Tribunal dated 10.1.2020**

15. The matter came up for hearing on 10.01.2020. The Tribunal framed following questions for consideration and sought response from MoEF&CC:

- "i. Whether the general issue of requirement of EIA raised in the order dated 14.09.2017 by this Tribunal and reiterated in further orders dated 30.05.2018 and 01.11.2018 has been gone into.*
- ii. Whether in view of order of the High Court and EIA which is said to have been conducted on 'precautionary' principle in respect of the project in question for the present project, no further EIA remains necessary."*

**No response from MoEF&CC, response sought from MoJS, Stand of MoJS dated 2.5.2022**

16. However, no response has been filed by the MoEF&CC when the matter was taken up on 16.12.2020 and 02.09.2021 and even today. The Tribunal, on understanding that it may be the Ministry of Jal Shakti instead of MoEF&CC to deal with the matter, sought a report from the said Ministry which has filed its view point on 02.05.2022 as follows:-

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*“12. That it is submitted that since the issue, primarily, in the above case, involves the applicability of the Environment Impact Assessment (EIA) study and the Hon’ble High Court of Allahabad in Writ Petition (PIL) No. 31229 of 2005, and the Hon’ble NGT have observed/considered the requirement of obtaining an environmental impact assessment study in respect of the project in questions, and directed to constitute an expert committee, the NMCG, Ministry of Jal Shakti shall have no objections if directed to be associated with the said Expert Committee, to be constituted by the MoEF&CC, in terms of the order dated 10.01.2020, passed by the Hon’ble Tribunal, mentioned here in above.”*

**Further consideration of objections of the Applicant to the affidavit of MoEF dated 13.3.2019 on the issue of EC for the project**

17. We have accordingly, considered the matter further and heard learned Counsel for the applicant in support of objections to the report dated 13.3.2019 filed by MoEF&CC in pursuance of order of the Tribunal dated 1.11.2018. None appears for MoEF&CC. We have heard learned Counsel for the PP also, who has appeared.

18. Learned Counsel for the Applicant submitted that response of the MoEF&CC dated 13.3.2019 does not show any consideration after order of the Tribunal dated 1.11.2018 inspite of further order of the Tribunal dated 10.1.2020. MoJS is not concerned in the matter as supposed by the Tribunal in its last order. MoEF&CC had opined by its communication dated 6.3.2017 that EC was required but subsequent view on 18.5.2017, 24.10.2017 and 21.12.2017 is incorrect. EC is required as the project involves not merely dredging but capital dredging as well as construction of ports, jetties and multimodal river water terminals squarely falling under entry 7(e) of the EIA notification dated 14.9.2006. Thus, without prior EC, the project cannot proceed.

19. As against above, learned Counsel for the PP submitted that the question is no longer open to be gone into by the Tribunal in view of order of the Allahabad high Court dated 8.4.2016 which has attained finality



and has been acted upon for the last six years. It was further submitted that no EIA is required having regard to the scope of work. Entry 7(e) is attracted only to coastal ports and harbours and not to river ports or activities involved in the present project. Further, rigorous studies have already been undertaken and safeguards adopted to comply with all environmental norms. No violation of any environmental norm has been pointed out in the present project which is meant to promote public interest and benefit environment by providing safe and environment friendly transport system, apart from legitimate economic activity.

### **Finding and further directions**

20. We have duly considered the matter. We do find that the MoEF&CC has failed to respond to direction of this Tribunal to have the matter examined by experts. Affidavit dated 11.3.2019 does not show consideration by any expert after order dated 1.11.2018. Further, in view of stand of MoJS, the matter is to be dealt with by MoEF&CC and not by MoJS, as assumed in the last order. MoEF&CC remains unrepresented. It needs to put its house in order by taking remedial action and fixing responsibility to avoid such lapses in failure.

21. However, on merits, we find that as far as the present project is concerned, the Allahabad High Court order dated 28.04.2016 clinches the matter and in the face of the said order, there is no scope for this Tribunal to consider the matter as far as this project is concerned. The High Court has expressly referred to the issue of EC and allowed the PP to proceed with the project and get EIA conducted after commissioning of the project. Any contra order by this Tribunal will be improper. Even if the order of the High Court proceeded on statement of Counsel, the same has been operative for six years and this Tribunal is not the forum to question the



same. As already suggested, for future consideration, MoEF&CC may study and clarify the matter for technical and Governance clarity for Inland Waterways projects.

The application alongwith all pending I.A.s/M.A.s is disposed of.

It will, however, be open to an aggrieved party to take remedy against any violation of environmental norms in executing the project, in accordance with law.

A copy of this order be forwarded to MoEF&CC by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

May 04, 2022  
M.A. No. 253/2019  
In Original Application No. 487/2015  
(I.A. No. 176/2021)  
SN



Annexure A6

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. \_\_\_\_\_ OF 2023  
[@ Diary No(s). 41793 OF 2022]

BHARATH JHUNJHUNWALA &amp; ORS.

Appellant (s)

VERSUS

INLAND WATER AUTHORITY OF INDIA &amp; ORS.

Respondent(s)

O R D E R

Delay condoned.

We find no ground to interfere with the impugned order passed by the National Green Tribunal. The civil appeal is, accordingly, dismissed.

Pending interlocutory application(s), if any, is/are disposed of.

.....J.  
[ AJAY RASTOGI ]

.....J.  
[ BELA M. TRIVEDI ]

New Delhi;  
FEBRUARY 10, 2023.

ITEM NO.16

COURT NO.5

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL Diary No(s). 41793/2022

(Arising out of impugned final judgment and order dated 04-05-2022 in MA No. 253/2019 passed by the National Green Tribunal)

BHARATH JHUNJHUNWALA &amp; ORS.

Petitioner(s)

VERSUS

INLAND WATER AUTHORITY OF INDIA &amp; ORS.

Respondent(s)

(IA No.21143/2023-CONDONATION OF DELAY IN FILING and IA No.21147/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.21145/2023-CONDONATION OF DELAY IN REFILEING / CURING THE DEFECTS)

Date : 10-02-2023 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AJAY RASTOGI  
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Ms. Anitha Shenoy, Sr. Adv.  
Ms. Srishti Agnihotri, AOR  
Ms. Ayushma Awasthi, Adv.  
Ms. Sanjana Grace Thomas, Adv.  
Ms. Namrata Sarah Caleb, Adv.  
Ms. Mantika Vohra, Adv.  
Ms. Sruthi K., Adv.

For Respondent(s) Mr. Sanjay Upadhyay, Adv.  
Ms. Mansi B., Adv.  
Ms. Gitanjali Sanyal, Adv.  
Ms. Mayuri Raghuvanshi, Adv.  
(Appearance slip not legible)

UPON hearing the counsel the Court made the following  
O R D E R

The civil appeal is dismissed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)  
ASTT. REGISTRAR-cum-PS

(VIRENDER SINGH)  
BRANCH OFFICER

(Signed order is placed on the file)

Item No. 01

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH, FINANCE CENTRE  
KOLKATA**

**(BY VIDEO CONFERENCE)**

Original Application No. 64/2020/EZ  
With  
I.A No. 99/2021/EZ, I.A No. 15/2023/EZ  
and I.A No. 16/2023/EZ

Dakshin Banga Matsyajibi Forum

Applicant

Versus

Inland Waterways Authority of India & Ors. ...

Respondent(s)

Date of hearing: 20.03.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Ritwick Dutta, Advocate (in Virtual Mode) a/w Mr. Kaustav Dhar, Advocate

Respondent(s): Mr. Sanjay Upadhyay, Advocate a/w Ms. Gitanjali Sanyal, Advocate for R-1 (in Virtual Mode),  
Mr. Soumitra Mukherjee, Advocate for R-2 (in Virtual Mode),  
Mr. Surendra Kumar, Advocate for R-3 (in Virtual Mode),  
Mr. Rajib Ray, Advocate for R-4, 7 & 8 (in Virtual Mode),  
Mr. Prithwish Basu, Advocate for R-5 (in Virtual Mode),  
Ms. Paushali Banerjee, Advocate for R-9

**ORDER**

**The issue**

1. Issue raised in this application is against inadequacy of mechanism to deal with incidents of capsizing of barges carrying fly-ash on the Indo-Bangladesh Protocol (IBP) Route which is through highly eco-sensitive and fragile Sundarbans in the State of West Bengal. Such incidents cause water pollution, affect water quality and deprive fishing community of livelihood.



Thus, there is need for preventing such incidents and remedying adverse effect thereof by holding owners of barges accountable.

### **Applicant's case**

2. Case set out in the application is that transportation of cargo on the route is governed by 1972 Agreement between India and Bangladesh which requires compliance of protocols on Indian side by the Indian Waterways Authority of India (IWAI). Central Pollution Control Board (CPCB) Guidelines of 2013 provide for designed jetty and dedicated boats being used for transportation of fly ash to avoid harmful impact on eco-sensitive area but the said guidelines are not adequate. Dredging is undertaken which disturbs watercourse, mangroves, etc. Navigation is permissible only during high tide but the vessels are plying in low tide also without safeguards. The vessels carry toxic fly ash. On 12.03.2020, fly ash laden barge capsized in River Hooghly after collision with Kolkata Port Trust's boat at Uludanga Mahestala South 24 Paragana. On 9.4.2020, separate incident took place in Hooghly River at Tangrachar, Kulpi South 24 Paragana and the other in Muriganga at Kachuberia, Sagar, South 24 Paragana. On 18.04.2020, Fly ash barge capsized in River Paragana. On 25.05.2020, another fly ash laden barge capsized after hitting a submerged pontoon jetty that was damaged by the Cyclone Amphan in Hatania Doania at Namkhana, South 24 Pargana. The Ministry of Environment, Forest and Climate Change (MoEF&CC) published its report titled "status of Tigers, Co-predators and prey in India (2018) stating that use of the rivers within the Sundarban landscape poses a huge obstruction to the movement of tigers. Fly ash spillage into river water violated conditions. No Environmental Impact Assessment (EIA) has been conducted about the harmful impact of movement of such vessels on the eco-sensitive route. There is no provision for taking Environmental Clearance (EC) for



movement of such vessels. Wildlife in the area is also adversely affected by use of water channels inside the forest for commercial boat traffic. There is CAG report no. 1 of 2017 on the issue of violation of CRZ Notification, 2011 and inaction of the WBSCZMA. According to CAG report, there were deviations from CRZ clearance in six out of 13 projects. Condition of CRZ clearance given in September 2009 requiring installation of no spillage system was not followed. The said report is extracted below:

***“(a) Spillage of fly ash in Haldi River***

*The proponent was engaged in export of fly ash to Bangladesh through barges. The fly ash was transported to the jetty by browsers and then filled into barges on the Haldi River using pipes. CRZ clearance was issued in September 2009 with the condition that the project proponent would install a system to ensure no spillage of fly ash into the river. Joint site inspection (24 June 2016) showed that fly ash was spilling into the river-water during loading of fly ash in barges. Further, NOC of WBPCB (March 2014) had stipulated the condition of annual export up to 1.2 lakh MT. Audit, however, observed that between 2014 and 2015, the proponent had exported 5.97 lakh MT of fly ash. thus violated the conditions of WBPCB. In addition, the process of loading of fly ash was also violating the conditions of the clearance which were stipulated to restrict water pollution.”*

3. It is thus stated that the safety protocols laid down in the CPCB Guidelines of 2013 are not adequate. Study was conducted by the IWAI titled “Final Technical, Economic & Financial Feasibility Report for Development of Sundarbans Inland Waterways” (2017) which found that barge operations need to be better regulated for safe and proper transport of cargo which should include fixing accountability of barge owners to prevent and remedy the adverse environmental impact of capsizing of the barges and violation of environmental norms during movement to mitigate harmful impact of discharge of pollutants. There is thus need for detailed study including sediment, transport, siltation and environmental impact assessment. E-tender for the purpose was released by IWAI in 2018 but

the study has still not been undertaken. Directions sought in the application are as follows:

- i. Direct that an enquiry be conducted by an Expert Committee to be appointed by this Hon'ble Tribunal on the fly ash barge capsizing incidents that have happened in the last five years on the River Hooghly in West Bengal and investigate the reasons for the frequent capsizing of fly ash barges in the Hooghly and fix responsibility prepare a time bound action plan to prevent such occurrence;*
- ii. Direct the IWAI to identify the responsible barge owners and to hold IWAI as well as respective barge owners responsible for damage to environment, and direct for payment of environmental damages in accordance with the Polluter Pay Principle under Section 15 of the National Green Tribunal Act, 2010;*
- iii. Direct that a Biodiversity Impact Assessment be conducted by the National Biodiversity Board with full participation of the fisherfolk and other coastal communities dependent on River Hooghly under the provisions of Section 36 (4) of the Biological Diversity Act, 2002 on the impact and risk due to transport of fly ash through ecologically sensitive areas including the sundarbans and cRZ-1 areas.*
- iv. Direct for a detailed study including sediment transport, siltation and environmental impact assessment needs to be carried out to confirm the available area for reclamation to minimize the impact on the ecological balance, as recommended and accepted by IWAI in its report titled "Final Technical, Economic & Financial Feasibility Report for sundarbans Waterways-" 2017;*
- v. Direct that until such an assessment is conducted, transportation of fly-ash and other harmful substances be restricted on this highly ecologically stretch passing through the Sundarbans, and alternative route be explored through the Bay of Bengal;*
- vi. Direct that IWAI, State Pollution Control Board and Forest Department jointly form a monitoring mechanism to check the safety standards for barges carrying fly ash including fixing an age limit for those allowed to enter India waters; in particular, that these agencies ensure that the CPCB Guidelines which state "Dedicated boats and baryes should only carry fly ash containers for transportation of fly ash. Specially designed Jetty with automatic loading and unloading system for transportation of fly ash from silo to container should be developed" are followed in letter and spirit.*
- vii. Direct that a time bound action plan is prepared and implemented to remove all the fly ash that has been deposited in the Hooghly River Network, including the fly ash that has been carried downstream in the river, and that the said plan is prepared and implemented in accordance with international best practices, and in a transparent manner with the involvement of the public and environmental groups;*



*viii. Direct for assessment of compensation and mechanism of disbursement of the same to the affected small scale and traditional fisherfolk communities who have suffered losses in terms of their livelihood due to the contamination and impact on the fish catch in the stretch in question due to the capsizing of the fly ash barges' pass any other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case."*

4. Before proceeding further, we may note that during pendency of the proceedings two more incidents have taken place. On 3.11.2021, a barge carrying fly ash capsized near Khashimara Village in Ghoramara Island in Sagar block. The applicant filed IA No. 99/2021/EZ on 20.11.2021 seeking direction to remove the fly ash and oil and fix responsibility on 'Polluter Pays' principle. Again on 25.2.2023, a barge with fly ash capsized near Nischintapur village in Kulpi Block in the Diamond Harbour sub division of the South 24 Parganas District. The applicant has filed IA No. 15/2023/EZ in respect thereof to which response has been filed by the IWAI. **I.A No. 16/2023/EZ** has been filed by Shyama Prasad Port Trust for direction against IWAI to restrain it from allowing barges from plying without safeguards particularly, Automatic Identification System. Direction has also been sought against MoEF&CC to restrict permission to the shipping agencies violating the rules and secure compliance of the regulations by the barges plying in Hooghly River.

#### **Orders of the Tribunal**

5. Vide order dated 19.10.2020, the Tribunal issued notice to the respondents including IWAI, CPCB, State PCB, Kolkata Port Trust (now named as Shyama Prasad Mukherjee Port) and the State of West Bengal. The Tribunal also constituted a joint Committee of CPCB, State PCB, PCCF Wildlife, West Bengal and District Magistrate, South 24 Parganas to verify factual aspects and suggest measures to prevent such incidents and mitigation measures for the fly ash already spilled in the waterway. The said Committee was reconstituted vide order dated 21.12.2020. By order dated 27.1.2022, the Tribunal required IWAI to indicate Standard

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Operating Procedure (for short 'SOP') to deal with such incidents. Vide order dated 13.10.2022, the Tribunal dealt with IA No. 99/2021/EZ. It was noted from the affidavit of the State PCB dated 22.12.2021 that fly ash and diesel were recovered from the boat. The Tribunal observed that it was for the State PCB to take further action as per Water Act. It was also observed that there should be a mechanism to determine compensation in such matters.

### **Stand of respondents**

6. The contesting parties have filed their respective replies. IWAI has prepared draft SOP in response to order of the Tribunal and CPCB has framed guidelines to determine environmental compensation for such cases. Committee constituted by the Tribunal has filed its report to which the applicant has filed suggestions.

### **Stand of IWAI**

7. The stand of the IWAI is that movement of vessels is in the course of transport of fly ash to Bangladesh. All safeguards are adopted. From 2010 to 2020 only 17 incidents have taken place out of 27,440 voyages. Inland Waterways Authority of India Act, 1985 provides for regulation and development of waterways for shipping and navigation and also provides for conservancy measures and training for safety and convenience of shipping and navigation. India has 14,500 km of navigable rivers and canals where environmental friendly mode of transport can take place. Fly ash utilization helps the environment and is as per the objectives of Fly Ash Notification, 1999 for speedy utilization of fly ash. Permit for the vessel is given under Indian Vessels Act, 1917 (now 2021 Act) by the State Government. IWAI inspects the waterways to ensure that they remain in navigable conditions. Air (Prevention and Control of Pollution) Act, 1981 (Air Act) and the Water (Prevention and Control of Pollution) Act, 1974

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(Water Act) provide for pollution control. Loading and transportation is according to the consent conditions under the said Acts. Port Trust is to maintain the port as per Calcutta Port Rules, 1994 which regulates Vessels also. Earlier, India Bangladesh inland waterway was through tiger reserve but after 2011 it is via Bidya-Satjaliya-Raimogla rivers outside the Tiger Reserve Forest. Safeguards to avoid accidents include permission from Protocol Authority of IWAI called PIWT&T which is after inspection of the vessels which enter Indian waters at the border. Other provisions are Prevention of collision on National Waterways Regulation, 2002; National Waterways, Safety of Navigation and Shipping Regulations, 2002; Inland Waterways Authority of India (Classification of Inland Waterways in India) Regulation, 2006; the Inland Vessels Act. Still, accidents happen for reasons beyond human control such as cyclones, mechanical failures of vessels, inclement weather, human error of judgment and sometimes negligence. In such cases, IWAI takes up the matter with BIWTA in Bangladesh to ensure that vessel and cargo are salvaged without polluting the environment. Removal of fly ash or any other spillage is the responsibility of the Vessel Owner, Shipping Agent and the designated Department of the State Government under the Inland Vessels Act. Most of the vessels that have met with an accident have been salvaged and the cargo safely removed from the vessel. Specific information has also been given with regard to the accidents in question - Collision of M.V. Mamatamoy Maa, vessel named D.V. Rabindra on 12.03.2020, M.V. Tofa and Tarif-4, M.V. Drubo Ruponty, M.V. Ariel Kha-1, M.V. Prianka. Draft of SOP prepared in November, 2022 has been filed which provides for survey of vessels, registration of vessels, navigation, safety and signals, prevention of pollution caused by Inland vessel, wreck and salvage, fixing liability, principles to be followed, insurance of mechanically propelled vessels



plying in inland waters, inquiry into casualty, accident or wreck, pilotage, vessel detention and development fund.

8. Affidavit dated 20.03.2023 deals with I.A. No. 15/2023 about capsizing of barge carrying fly ash on 25.02.2023 near Nischintapur village in Kulpi Block in the Diamond Harbour subdivision of the South 24 Parganas district. It is stated that an inspection committee was constituted which visited the site on 26.02.2023. Cause of incident was stated to be restricted visibility due to dense fog. The vessel was taken towards the bank side for safety. Indian Shipping agent has evacuated the petroleum, oil and lubricant (POL) through pump to the barrels and brought to the shore by the mechanized wooden launch. No spillage of POL was observed in the river.

#### **Report of the Committee constituted by the Tribunal**

9. The State PCB has filed recommendations of the Committee to prevent incidents in future as follows:-

*“i) Mandatory installation of tracking equipment on ships, barges enable tag and guide this ships/barges on scheduled at while on Indian water throw NW-1 and NW-97.*

*ii.) Proper demarcation of navy rational channel throw lighted buoys be maintained the IWAI for particularly during rough weather condition.*

*iii) Regular warning to be issued to Bangladesh bound barges by the IWAI to be extra cautious in accident prone 30 KM stretch (86% accidents) between Diamond Harbour to Sagar traversed by shifting submerged chars'.*

*iv) Under no circumstance the barges carrying flying ash be allowed to leave Indian Port without any certified 'Indian Master'. It should be notified that in case of non-compliance the respective shipping agent may be appropriately penalized.*

*v) A mechanism to verify the fitness of incoming vessels before allowing them through NW-97 be evolved by the Central Government as per Rules.*

*vi) A quick response team to be constituted under the ambit of State/Central Disaster Management Authority to address to any such eventualities in future and to conduct rescue and salvage operation as*



*well as to conduct water and sediment sampling immediately after the accident to assess the short term damage to the environment if any.*

*vii) In the event of Capsizing of fly ash bearing boats, the shipping agent is directed to deposit a damage cost/ compensation with the State Pollution Control Board following 'polluter pays' principle. In case of specific damage claimed by local fisherman and recommended by the district authorities such compensation may be awarded to the local fisherman. The quantum of such cost/ compensation may be decided by the Hon'ble National Green Tribunal.*

*viii) To assess environmental impact of the Waterway no. NW-97 through critically sensitive ecosystem of Sundarbans, IWAI may be directed to furnish a comprehensive EIA report (including short/ long term impact of such accidents) within a stipulated time as decided by the Hon'ble National Green Tribunal.*

*ix) Central Pollution Control Board may be urged to involve a methodology of assessment of environmental Compensation calculation to flying ash deposition in water environment (saline/fresh) riverine water, in line with such assessment for on land fly ash pollution/ non utilization.”*

10. **State PCB** has suggested that compensation for damage to environment due to capsizing of Barge MV Banglar Shanti-1 should be Rs. 1 lakh with bank guarantee of Rs. 30 lakhs submitted. IWAI should conduct damage assessment and there should be SOP for removal of fly ash and minimal dilution. There should be comprehensive EIA of National Waterway 97. As per representative of CPCB in the joint Committee, compensation should be Rs. 90 lakhs to be paid by the owner of the barge.

11. **According to the CPCB**, there is general framework of environmental compensation in pursuance to order of this Tribunal dated 24.04.2019 in O.A. No. 606/2018 which requires analysis of data to assess the cost of remediation. The framework also includes compensation for improper handling of hazardous waste. With regard to incident involving MV Banglar Shanti-1, it is stated that there is no evidence that fly ash existed at the site. As per field visit dated 09.08.2021 the Committee observed:-

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*“Solidified fly ash nodules and boulders recovered from study sites during previous salvage operation rule out the possibilities of long term or large scale leaching and contamination from fly ash loads in tidally affected saline water of neutral pH.*

*Any part of the mobile fly ash, however, if spilled in the tidal rivers during the accidents, would have been quickly dispersed and flowed towards the sea. No post facto mitigation measures could be suggested for such cases after the lapse of a year.”*

12. The report further suggests that there should be a clear direction as well as SOP by Inland Waterways Authority of India. There should be documentation with photographs mentioning GPS coordinates and date/time of fly ash removal and salvage operation of sunken Barge as a part of transparency in the process of removal of fly ash from sunken barge to avoid mixing with river water. The Barge MV Banglar Shanti-1 has not yet been salvaged. As per letter forwarded by M/s Inland Waterways Authority of India on 02.01.2023, cost of salvaging the Barge is about Rs. 30 Lakhs. Direction may be given to inland Waterways Authority of India to salvage the Barge and cost incurred for this purpose may be taken from the responsible person/barge owner/agent in respect of MV Banglar Shanti -1. With regard to environment compensation the report states as follows:-

*“As per “Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund”, 1.3.2 In other instances i.e. d, e and f, the environmental compensation may contain two parts - one requires providing immediate relief and other long-term measures such as remediation. In all these cases, detailed investigations are required from expert institutions/organizations based on which environmental compensation will be decided.*

**CPCB shall list the expert institutions for this purpose**

*However, for assessment of damage due to fly ash / HSD spillage in tidal stretch like the course of Sundarban waterways in Hoogly river, a detailed survey is required to be carried out by an interdisciplinary expert team consisting of Environmental Economist along with Environmental Chemist and Environmental Biologist following the “General Framework for Imposing Environmental Damage Compensation” published in Dec 2022 by CPCB. In continuation to the study, a specific methodology is also required to be formulated for evaluation of environmental damage-cost. Such study may be useful*



*for identification of the causes and possible solution in future for similar matters.*

*Fund for detailed investigations by expert institutions/organizations/ Interdisciplinary expert team, should be borne by responsible person/Barge Owner/Agent and accordingly direction may be given by Hon'ble National Green Tribunal to the Inland Waterways Authority of India.*

*Detail study report of ecological and economical damage due to non-salvaging of sunken Barge is not available and it is not possible by this committee as it is not an Expert institutions/organizations and such study may be done institutions/organizations/ Interdisciplinary expert team.*

*This is study may be a part of EIA /EMP of the water way no. NW 97 through critically sensitive ecosystem of Sunderbans, Hence, IWAI may be directed to furnish a comprehensive report (including short/long term impact of such accidents) within a stipulated time, as decided by the Hon'ble NGT.*

*A meeting was called on 09.01.2023. Committee has recommended following points as mentioned below:*

- 1. For assessment of damage due fly ash/HSD spillage in tidal stretch like the course of Sundarban waterways in Hoogly river, a detailed survey is required to be carried out by an interdisciplinary expert team consisting of Environmental Economist along with Environmental Chemist and Environmental Biologist following the "General Framework-Imposing Environmental Damage Compensation" published in Dec 2022 by CPCB. In continuation to the study a specific methodology is also required to be formulated for evaluation of environmental damage-cost. Such study may be useful for identification of the causes and possible solution in future for similar matters.*
- 2. Till finalisation of such methodology, ad-hoc Environmental compensation of 1 Lakh INR on each case of barge accidents on the National Waterway NW-97 and 01(in Part) should be imposed on the transport company to be collected through IWAI to be deposited to the DDMA (District Disaster Management Authority, South 24 Parganas) or as decided by Hon'ble National Green Tribunal, for paying compensation to damage to the fishermen livelihood and any other damages.*
- 3. For any such sunken barge incident, a bank guarantee/ collateral of 30 lakhs INR may be submitted to West Bengal Pollution Control Board or as ordered by Hon'ble National Green Tribunal, which will be returned if the salvage operation is done within 3 three months. Beyond the three months, the bank guarantee may be utilized for salvage operation.*
- 4. Henceforth, for any recovery and disposal operation of fly ash from the sunken barges proper documentation with photographs from the accident location (GPS location) are to be conducted by the IWAI for damage assessment and the same to be sent to the Expert*



*Committee/Expert Institution/ Expert Organisation  
/Interdisciplinary expert team WBPCB as applicable.*

5. *It was also suggested that IWAI may be asked to formulate a SOP for removal of the fly ash with minimum dilution of the same with the river water after being technically vetted, and come out with a provision to impose certain damage cost and assessment of actual damage in case of capsizing of the Barge in future.*
6. *A Comprehensive EIA report (including short/long term impact of such accidents) on the National Waterway 97 is long due from the Inland Waterways Authority of India, and this must be completed within one year or as decided by the Hon'ble NGT.”*

13. It is further stated that in response to the letter of the CPCB to the Indian Agent of the vessel, M/s Kanishka responded that the fly ash was manually removed in gunny bags and transported to village Nischintapur, Kulpi. With regard to capsizing of barge on 25.02.2023, the IWAI has stated that Indian shipping agent of the vessel has evacuated the Petroleum Oil and Lubricant (POL) through pump to the barrels and brought the same to the shore by mechanized wooden launch. Fly ash was transported to merchant Kulpi.

### **Response of the Applicant**

14. The applicant has filed response on 30.01.2023 to the SOP filed by the IWAI. It is stated that the same does not cover loss of livelihood of fishermen community. It does not specify the authority responsible for salvaging and restitution of environment. As per SOP, role of IWAI is limited to intimation of the accident and keeping of record. Onus is sought to be shifted to State Government by referring to the Inland Vessel Act, 2021. SOP does not provide for details of the action by the State under the Inland Vessel Act, 2021. Fly ash is a pollutant. Suggestions of the applicant to prevent such incidents are as follows:-



*“i. Installation of Radar which is used for collision avoidance and navigation and complying with the requirements of the relevant International Maritime Organisation Standards.*

*ii. Installation of speed and distance indicator which is an equipment used for indicating speed of the vessel and distance steamed by the ship over water and complying with the requirements of the relevant International Maritime Organisation Standards.*

*iii. Every vessel shall be provided with a steering compass and efficient means for taking bearings, measuring depth of water, and measuring distance steamed.*

*iv. Emergency towing arrangements for tankers, chemical carrier and Gas carrier or vessels carrying hazardous and noxious substances of 50,000 tons deadweight or more shall be provided with an emergency towing arrangement in compliance with the relevant International Maritime Organization standard.”*

15. The applicant has also stated that upgraded mechanism is required to avoid accidents in future. This should take into account not only Inland Vessel Act, 2021 but also the Merchant Shipping, (Safety of Navigation) Rules, 1997. With regard to compensation, loss of livelihood must be factored in while determining compensation. Comment of the applicant about the stand of CPCB is:-

*“i. Though CPCB has tried to cover various elements, however, it is pertinent to note that the CPCB has failed to cover the critical aspect of loss of livelihood of people, especially the especially the fishing communities affected by the submergence of vessel. Hence, a very crucial aspect which is the very contention of the present Application has been overlooked thereby defeating the sole purpose.*

*ii. Further, it is to be noted that the CPCB framework has also missed upon the major aspect on who will be the implementing or regulating authority, as it has remained silent that against which actions who are the implementing agencies who shall take cognizance of the same and do the needful.*

*iii. Furthermore, it is significant to note that the CPCB framework has failed to provide any detailed information with regard to which specific mechanisms need to be formed or adopted to impose clean-up of costs and other remedial activities, as the framework is generic and has not discoursed about any particular mechanisms to be followed.”*

~~48~~**Consideration by the Tribunal and directions**

16. Question for consideration is the scope for interference by the Tribunal in the given fact situation.

17. We have heard learned Counsel for the appearing parties and with their assistance gone through the record to which our attention has been drawn substance of which has been noted hereinabove.

18. While learned Counsel for the applicant has suggested revisiting regulatory framework to protect the environment and the fishermen, learned Counsel for IWAI states that there is adequate regulatory framework in the form of existing environmental laws. SOP has been prepared by the IWAI which can be revisited considering suggestions of the applicant or any other affected person. Compensation regime exists which has to apply as per applicable norms on facts. There is no grievance of any aggrieved individual seeking compensation nor alleged violators before the Tribunal. Thus, claim of the applicant is hypothetical in absence of claimant and alleged violator.

19. We have considered rival submissions. While it is undisputed that there have been incidents of capsizing of vessels carrying hazardous material on account of which damage to the environment is patent. It can also not be disputed that such incidents must be avoided and if such incident takes place, victim has to be compensated on principle of absolute liability.

20. Duty cast on the State under Articles 47 and 48-A in particular of Part IV of the Constitution has been read as conferring a corresponding right on the citizens under Article 21. Regulatory provisions of different legislations have to be read as being in addition to and not in derogation of the requirements of the Environment Protection Act, 1986 which has been



enacted to give effect to international conferences under Entry 13 of List I to Seventh Schedule read with Article 253 of the Constitution. The State, in particular has duty in that behalf to forge in its policy to maintain ecological balance and hygienic environment. Right to life with human dignity encompasses within its ambit the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation. These principles are well settled and for ready reference some of the observations in Supreme Court judgements are reproduced below:

**M.C. Mehta v. Union of India (Shriram - Oleum Gas), (1987) 1 SCC 395 – absolute liability for harm as a result of hazardous/dangerous activity:**

*31. ... We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process of operation from the hazardous preparation of substance or any other related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where in enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to*

*compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher*

**M.C. Mehta v. Union of India (Delhi vehicular air pollution), (2001) 3 SCC 756 : Other statutory norms are in addition to environmental norms**

*8. ....Besides, directions given for safeguarding health of the people, a right provided and protected by Article 21 of the Constitution, would override provisions of every statute including the Motor Vehicles Act, if they militate against the constitutional mandate of Article 21. We must, however, hasten to add that norms fixed under the Motor Vehicles Act are in addition to and not in derogation of the requirements of the Environment Protection Act*

**Virender Gaur v. State of Haryana, (1995) 2 SCC 577, at page 580 : Environment protection is part of right to life**

*7. Article 48-A in Part IV (Directive Principles) brought by the Constitution 42nd Amendment Act, 1976, enjoins that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes "a fundamental duty" on every citizen of India to "protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures". The word 'environment' is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water, pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment.*



**Research Foundation for Science Technology National Resource Policy v. Union of India, (2005) 10 SCC 510 : Responsibility of MoEF**

*21. It is, therefore, imperative to direct the Central Government to consider in detail and with all seriousness, the recommendations of restructuring and other suggestions which flow from the aforequoted part of the report. The Central Government and MOEF would also consider the strengthening of Hazardous Substances Management Division but not at the cost of weakening the other divisions.*

**M.C. Mehta v. Union of India, (1998) 9 SCC 589**

*5....We consider it appropriate that before issuing such directions, the Central Government should be given one more opportunity to indicate all the measures taken by it so far for discharge of the duty enjoined on it by the above provisions in Part IV of the Constitution and the Environment (Protection) Act, 1986.*

*It need hardly be added that the **duty cast on the State under Articles 47 and 48-A in particular of Part IV of the Constitution is to be read as conferring a corresponding right on the citizens and, therefore, the right under Article 21 at least must be read to include the same within its ambit. At this point of time, the effect of the quality of the environment on the life of the inhabitants is much too obvious to require any emphasis or elaboration.***

*7. We may also add that the **Central Government in addition to stating all the steps taken so far, as indicated above, must also place before the Court the national policy, if any, drawn up in this behalf for the protection and improvement of the environment and the steps it proposes to take to restore the quality of the environment at least to the level at which it existed in 1977 together with the time-frame for the implementation of the programme.** These particulars be furnished on the affidavit of the Secretary, Ministry of Environment and Forests, Government of India.”*

21. Since several incidents have taken place causing pollution with potential for damage to the fish, there is need to take mitigation measures against such incidents in future. If such incident happens, there has to be mechanism for all possible remedial measures. This requires revisiting the applicable regulatory framework.

22. Section 14 of the IWAI Act 1985 lays down functions of IWAI which include “carry out surveys and investigations for the development, maintenance and better utilisation of the national waterways and the appurtenant land for shipping and navigation and prepare schemes in this



behalf; (b) provide or permit setting up of infrastructural facilities for national waterways; (c) carry out conservancy measures and training works and do all other acts necessary for the safety and convenience of shipping and navigation and improvement of the national waterways; (d) control activities such as throwing rubbish, dumping or removal of material, in or from the bed of the national waterways and appurtenant land, in so far as they may affect safe and efficient, shipping and navigation, maintenance of navigable channels, river training and conservancy measures; (e) remove or alter any obstruction or impediment in the national waterways and the appurtenant land which may impede the safe navigation or endanger safety of infrastructural facilities or conservancy measures where such obstruction or impediment has been lawfully made or has become lawful by reason of long continuance of such obstruction or impediment or otherwise, after making compensation to person suffering damage by such removal or alteration; (f) provide for the regulation of navigation and traffic (including the rule of the road) on national waterways; (g) regulate the construction or alteration of structures on, across or under the national waterways; (h) disseminate navigational meteorological information about national waterways; (i) ensure co- ordination of inland water transport on national waterways with other modes of transport; and (j) establish and maintain pilotage on national waterways.” Inland Vessels Act 2021 contains regulatory provisions for safety of vehicles and also to deal with pollution by such vehicles and IWAI has regulatory powers under the said Act also. CPCB guidelines 2013 are “Guidelines for Loading, Unloading and Nuisance free transportation of all types of fly ash, including bottom ash etc. generated by Thermal Power Stations provide for safeguards in the course of loading, unloading and transportation of fly ash”.



23. Thus, regulatory regime is available and only issue is failure of specified authority to take necessary measures. In absence of particulars of damage or victims and in absence of alleged violators being before the Tribunal, no particular relief can be given in respect of incidents mentioned. Prayers in the application as well as IA No. 16/2023/EZ filed by the Shyama Parshad Mukerjee Port Trust are omnibus and beyond observing that steps should be taken to prevent such incidents and if such incident happens, the situation should be satisfactorily remedied, we find it difficult to pass any specific direction. In the course of proceedings before the Tribunal, the committee has made recommendations and the applicant has made suggestions which need consideration by the statutory regulators and the authorities, including the IWAI, State PCB and MoEF&CC.

24. Needless to say that if incident takes place in India, any entity violating Indian law has to be dealt with as per laws of the country. A vessel owned by a foreign entity violating environmental safety norms does not stand on different footing. The proposed SOP prepared by the IWAI may be revisited in the light of above observations including inputs of the applicant which will be in addition to and not in derogation of existing environmental norms. This may be done preferably within two months.

25. With regard to incidents in question, we leave remedy of affected parties undisturbed subject to violator being party and details of loss caused being substantiated. However, with regard to different views on quantum of compensation to be recovered, we leave the matter to be finalized by the Chairman, State PCB after hearing the affected parties. This aspect may also be finalized preferably within two months.

The application is disposed of.

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All pending IAs will also stand disposed of.

A copy of this order be forwarded to MoEF&CC, CPCB, State PCB and District Magistrate, Hooghly and IWAI by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

B. Amit Sthalekar, JM

Dr. A. Senthil Vel, EM

March 20, 2023  
Original Application No. 64/2020/EZ  
With I.A No. 99/2021/EZ, I.A No. 15/2023/EZ  
and I.A No. 16/2023/EZ  
DV+A+AB+AVT

Item No. 05

Court No. 1

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

(By Video Conferencing)

Original Application No. 190/2020

(With Report dated 06.10.2020)

Noble M Paikada

Applicant

Versus

Union of India &amp; Ors.

Respondent(s)

Date of hearing: 28.10.2020

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SHEO KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. SATYAWAN SINGH GARBYAL, EXPERT MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**Applicant: Mr. Aniruddha Deshmukh, Advocate  
Respondent: Mr. Ravinder Gupta, Advocate for MoEF&CC**ORDER**

1. In this application, challenge is to the Notification dated 28.03.2020, amending the Notification dated 14.09.2006, on the subject of requirement of Environment Clearance before undertaking some projects impacting environment. The amendment exempts new lessees of mining leases (in respect of leases where EC had been earlier granted in favour of the previous leasee) from requirement of EC for two years from the date of original lease. Further exemption, inter-alia, is to extraction of earth for linear projects such as roads, pipelines, etc., dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.

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2. The matter was considered on 07.09.2020 and after referring to the main provision and noting the submission on behalf of the applicant, the Tribunal sought response from the MoEF&CC. Relevant extract from the impugned notification is as follows:-

*“In the said notification,-*

*(i) in paragraph 11, after sub-paragraph (2), the following sub-paragraph shall be inserted, namely:-*

*“(3) The successful bidder of the mining leases, expiring under the provisions of sub-sections (5) and (6) of section 8A of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) and selected through auction as per the procedure provided under that Act and the rules made thereunder, shall be deemed to have acquired valid prior environmental clearance vested with the previous lessee for a period of two years, from the date of commencement of new lease and it shall be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee on the said lease area for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier:*

*Provided that the successful bidder shall apply and obtain prior environmental clearance from the regulatory authority within a period of two years from the date of grant of new lease.”;*

*(ii) in the Schedule, against the item 1(a), in the column (5), after clause (2) of the Note, the following clause shall be inserted, namely:-*

*“(3) The evacuation or removal and transportation of already mined out material lying within the mining leases expiring under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), by the previous lessee, after the expiry of the said lease, shall not form the part of the mining capacity so permitted to the successful bidder, selected through auction as per the procedure provided under that Act and the rules made thereunder.”;*

*(iii) for Appendix-IX, the following Appendix shall be substituted, namely:-*

EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely:-

“.....

6. *Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.*

7. *Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.”*



3. The Tribunal noted the contention of the applicant as follows:

*“2. Learned Counsel for the applicant submits that the requirement of EC in the mining leases has been laid down by the Hon’ble Supreme Court in Deepak Kumar & Ors. v. State of Haryana & Ors. (2012) 4 SCC 629 and the same cannot be exempted. With regard to the exemption to extraction of earth for linear projects, it is submitted that neither there is condition for exemption nor there is any limit to the extent of such extraction. Blanket exemption will be against the ‘Sustainable Development’ concept, including the ‘Precautionary’ principle required to be enforced by this Tribunal under Section 20 of the National Green Tribunal Act, 2010.*

*3. In view of above, let the MoEF&CC furnish its response within one month by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.”*

4. Accordingly, MoEF&CC has filed its response by way of affidavit on 06.10.2020 as follows:-

*“It is further submitted that notification which is in question was issued in public interest and all the above mentioned cases in APPENDIX-IX is self-explanatory that the notification is for the aid of general public.*

*It is respectfully submitted that prior to this notification the answering respondent also has exempted the above mentioned cases in APPENDIX-IX by issuing certain OM's and Circulars time to time. It is further submitted that the Ministry has clarified by way of Notification dated 28.03.2020, S.O. 1224 (E), that following activities are exempted from obtaining the Prior Environmental Clearance.*

*It is respectfully submitted that the notification dated 28.03.2020, S.O. 1224 (E), which the was issued by the ministry of Environment, Forest and Climate Change is only 28.03.2020, S.O. 1224 (E) has provided assistance to the Kumhars (POTTER), Farmers, Gram Panchayats, Vanjara, Oads of Gujarat and to all the non-mining activities declared by the State Government under legislations or rules. But the applicant is wrongly trying to build a parallel analogy averring that the Ministry of Environment, Forest and Climate Change has exempted list of activities from obtaining prior environmental clearance. The applicant is trying to twist the facts in order to mislead the Hon'ble Tribunal therefore, the present original application ought to be dismissed on this ground alone.*

*It is respectfully submitted that a writ petition no. 631 of 2020 titled as Society for protection of Environment and Biodiversity versus Union of India was filed in the Hon'ble Supreme Court*

*challenging the same notification dated 28.03.2020. The Hon'ble Supreme Court in its vide order dated 28.07.2020 stated that:*

*The writ petition is dismissed.  
As a sequel to the above, pending interlocutory applications, if any, stand disposed of."*

*It is respectfully submitted that the notification dated 28.03.2020 has been adjudicated by the Hon'ble Supreme Court and has been upheld."*

5. We have heard learned counsel for the parties and considered the rival submissions.

6. As regards dismissal of a writ petition by the Hon'ble Supreme Court, it is not clear whether the merits have been gone into. It is also not clear as to what was the contention or the issue therein. The order cited cannot be read as laying down law. While parties to the petition are bound but it is difficult to accept the plea that the matter is concluded by the said order.

7. On merits, there are two issues. First issue is exemption to a leasee where EC was earlier granted but a fresh lease was granted before expiry of validity of EC. There may be justification for the exemption as such but some mechanism is required for damage assessment and mitigation measures in respect of a particular lease at the time of transfer. Further, some time limit must be fixed for the new leasee applying for the EC and also for the SEIAA/EAC for taking decision on such application. Such a course will balance the need for the protection of the environment on the hand to effectuate the mandate of judgement of the Hon'ble Supreme Court in Deepak Kumar, supra and obviating hardship to a new leasee in respect of lease for which earlier EC had been granted.

8. The second issue is exemption from requirement of EC for extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc and for dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management. It is possible to take a view that the EC can be exempted for these situations on account of assessment already made or for extraction of earth for linear project but such blanket exemption must be balanced by sustainable development concept. The exemption should strike balance and instead of being blanket exemption, it needs to be hedged by appropriate safeguards such as the process of excavation and quantum. Similarly, in respect of item 7, safeguards are required to be incorporated in terms of disposal of dredged material. These aspects are not shown to have been considered and the reply does not provide any explanation thereon. Learned counsel for the MoEFCC is also unable to provide any justification why these aspects be not addressed and incorporated in the notification for ensuring sustainable development concept which is required to be enforced by this Tribunal under section 20 read with section 15 of the NGT Act, 2010.

9. We accordingly dispose of this petition by directing the MoEFCC to revisit the impugned notification in the light of the above observations within three months.

In view of the order passed in main matter, I.A. No. 293/2020 also stands disposed of.

Adarsh Kumar Goel, CP

S.K. Singh, JM

Dr. S.S. Garbyal, EM

Dr. Nagin Nanda, EM

October 28, 2020  
O.A. No.190/2020  
A



2024 INSC 241

Annexure A9

**Reportable**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 1628-1629 OF 2021**

**Noble M. Paikada****... Appellant***versus***Union of India****... Respondent**

**J U D G M E N T**

**ABHAY S. OKA, J.****FACTUAL ASPECTS**

1. These appeals take exception to the judgment and order dated 28<sup>th</sup> October 2020 (for short, ‘the impugned judgment’) passed by the National Green Tribunal, Principal Bench, New Delhi (for short, ‘the NGT’). There is also a challenge to the order dated 24<sup>th</sup> December 2020, by which, the NGT rejected the review petition filed by the appellant for seeking review of the impugned judgment.

2. A notification was issued on 14<sup>th</sup> September 2006 (for short, ‘the first EC notification’) by the Ministry of Environment and Forests (for short, ‘MoEF’) in exercise of powers under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (for short, ‘the EP Act’) read with clause (d) of sub-rule (3) of Rule 5 of the Environment

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Reason:



(Protection) Rules, 1986 (for short, 'the EP Rules'). Clause 2 of the first EC notification is material, which reads thus:

**“2. Requirements of prior Environmental Clearance (EC):-** The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product – mix in an existing manufacturing unit included in Schedule beyond the specified range.”



3. The notification provided that the projects falling under categories A and B set out in the Schedule to the notification will require prior Environmental Clearance (EC) from the concerned Regulatory Authority. The Regulatory Authorities for different projects have been named in clause (2) of the first EC notification. For the A category, the Central Government in the MoEF was named as the Regulatory Authority. For projects in the B category, the State Environment Impact Assessment Authority (for short, 'SEIAA') was named as the Regulatory Authority. Various procedural aspects regarding applying for a grant of EC, its processing, etc., have been incorporated in the first EC notification. There were subsequent modifications to the first EC notification. Another notification was issued on 15<sup>th</sup> January 2016 (for short, 'the second EC notification'), by which the first EC notification was partly modified. Clause 7B and Appendix-IX were added to the first EC notification, providing for an exemption to specific categories of projects from the requirement of obtaining EC. Item 6 in the said Appendix-IX reads thus:

**“Appendix-IX**

**Exemption of certain cases from requirement of Environmental Clearance**

The following cases shall not require prior environmental clearance, namely:

.....  
 .....

6. Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their



maintenance, upkeep and disaster management.

.....”

Though the NGT struck down a part of the second EC notification, Appendix-IX was not touched.

4. In the Original Application subject matter of these appeals, the challenge before the NGT was to the notification dated 28<sup>th</sup> March 2020 (for short, ‘the impugned notification’), which modified earlier EC notifications. Appendix IX to the second EC notification provided for exempting certain cases from the requirement of obtaining EC. By the impugned notification, Appendix-IX was substituted. The substituted Appendix-IX provided that the prior EC will not be required in the thirteen cases set out therein. We are concerned with items 6 and 7 of the substituted Appendix-IX, which read thus:

**“Appendix-IX**

**Exemption of certain cases from requirement of Environmental Clearance:** The following cases shall not require Prior Environmental Clearance, namely:-

.....  
.....

6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.

7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.

.....”

Thus, item 6 in Appendix IX of the second EC notification was maintained but was renumbered as item 7. Item 6 was newly added.

**5.** Before we go into the challenge to the impugned notification, we must note here that items 6 and 7 were substituted by further notification dated 30<sup>th</sup> August 2023 (for short, ‘amended impugned notification’) issued during the pendency of these appeals. Substituted items 6 and 7 in the amended impugned notification read thus:

“6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. shall be subject to the compliance of standard operating procedures and environmental safeguards issued in this regard from time to time.

7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management shall be subject to the compliance of environmental safeguards issued in this regard from time to time.”

**6.** The impugned notification was challenged on several grounds before the NGT by filing the Original Application subject matter of these appeals. Apart from other grounds, it was contended that the impugned notification violated the directions issued by this Court in the case of **Deepak Kumar**



**& Ors. v. State of Haryana & Ors**<sup>1</sup>. Even the ground that the impugned notification was arbitrary and violative of Article 14 of the Constitution of India was invoked. We must note that in the Original Application, the specific challenge was only to item 6 of the impugned notification.

7. By the impugned judgment, it was held that the exemption under item 6 should strike a balance. The finding recorded on this aspect in paragraph 8 of the impugned judgment reads thus:

“8. The second issue is exemption from requirement of EC for extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc and for dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management. **It is possible to take a view that the EC can be exempted for these situations on account of assessment already made or for extraction of earth for linear project but such blanket exemption must be balanced by sustainable development concept. The exemption should strike balance and instead of being blanket exemption, it needs to be hedged by appropriate safeguards such as the process of excavation and quantum. Similarly, in respect of item 7, safeguards are required to be incorporated in terms of disposal of dredged material. These aspects are not shown to have been considered and the reply does not provide any**

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<sup>1</sup> (2012) 4 SCC 629



**explanation thereon.** Learned counsel for the MoEFCC is also unable to provide any justification why these aspects be not addressed and incorporated in the notification for ensuring sustainable development concept which is required to be enforced by this Tribunal under section 20 read with section 15 of the NGT Act, 2010.”

(emphasis added)

Accordingly, the Original Application was disposed of by directing the Ministry of Environment, Forest and Climate Change (for short, 'MoEF&CC') to revisit the impugned notification within three months. An application for review was filed, which was dismissed by the second impugned order dated 24<sup>th</sup> December 2020.

**8.** Notice was ordered to be issued on 13<sup>th</sup> December 2021 on the appeals. On 10<sup>th</sup> August 2023, submissions were heard, and the judgment was reserved. After the judgment was reserved, the respondent-Union of India filed an affidavit of Dr Sujit Kumar Bajpayee, Joint Secretary, MoEF&CC, dated 12<sup>th</sup> September 2023. Along with the affidavit, two documents were also filed on record. The first document was the Office Memorandum dated 21<sup>st</sup> August 2023 issued by the MoEF&CC, purportedly laying down the enforcement mechanism for items 6 and 7 in the impugned notification. The second document brought on record was the amended impugned notification. In view of the issuance of the amended impugned notification, even after the verdict was reserved, the

parties were permitted to make further submissions on the legality and validity of the amended impugned notification.

### **SUBMISSIONS**

**9.** The learned senior counsel appearing for the appellant submitted that the object of the EP Act is to provide for the protection and improvement of the environment. She invited our attention to Section 3 of the EP Act, which confers a power on the Central Government to take such measures as it deems necessary or expedient for protecting and improving the quality of the environment and preventing and abating environmental pollution. She pointed out that the first EC notification was issued in the exercise of powers conferred under sub-section (1) and clause (v) of sub-section (2) of Section 3 of the EP Act. Clause (v) empowers the Central Government to take measures for restrictions of the areas, in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. She also invited our attention to the EP Rules and, in particular, Rule 5 thereof. It lays down that the Central Government may consider the factors set out in sub-rule (1) while prohibiting or restricting the location of industries and carrying out operations and processes in different areas. She pointed out that before issuing the first EC notification, the process laid down in sub-rule (3) of Rule 5 was followed.

**10.** The learned senior counsel invited our attention to a decision of this Court in the case of ***Hanuman Laxman***

***Aroskar v. Union of India***<sup>2</sup>. She also relied upon a decision of this Court in the case of ***Deepak Kumar***<sup>1</sup>. She pointed out that as a result of item 6, there will not be any regulation of the extraction of ordinary earth for utilisation in linear projects, such as, roads, pipelines, etc. She submitted that such a blanket exemption will defeat the very object of enacting the EP Act and, in particular, Section 3 thereof. She submitted that the decision of this Court in the case of ***Deepak Kumar***<sup>1</sup> and subsequent decisions mandated that there must be a requirement to obtain EC for the minor minerals pertaining to materials used for linear projects. The learned senior counsel submitted that allowing the extraction of the earth in such an indiscriminate manner is wholly arbitrary and violative of Article 14 of the Constitution of India.

**11.** Inviting our attention to the amended impugned notification, the learned senior counsel pointed out that the substituted item 6 provides that extraction of ordinary earth for linear projects shall be subject to compliance with the Standard Operating Procedure (SOP) and safeguards issued in this regard from time to time. Thus, the exemption remains. However, an SOP will be laid down to avail the exemption. She urged that the substituted item 6 is more arbitrary.

**12.** The learned senior counsel also pointed out that the whole issue was directed to be reconsidered under the impugned judgment. But nothing has been placed on record to

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<sup>2</sup> (2019) 15 SCC 401



show that the Central Government made reconsideration in true letter and spirit.

**13.** The learned senior counsel pointed out that the decision of this Court in the case of **Deepak Kumar<sup>1</sup>** still holds the field, which directs that the leases of minor minerals, including their renewal for an area less than 5 hectares, shall be granted by the States/Union territories only after getting EC. She submitted that the impugned notification and the amended impugned notification, insofar as item 6 is concerned, are completely contrary to the directions issued by this Court in **Deepak Kumar<sup>1</sup>**. She also urged that before publishing the draft of the impugned notification, objections to the draft notification were not invited. She submits that this action contravenes the provisions of sub-rule (3) of Rule 5 of the EP Rules.

**14.** The learned Additional Solicitor General appearing on behalf of the respondent – Union of India, submitted that in view of the insertion of Section 8B in the Mines and Minerals (Development and Regulation) Act, 1957 (for short, ‘the MMDR Act’), the amendment to the first EC notification was required to be made. Our attention was invited to Section 8B, incorporated on 13<sup>th</sup> March 2020 and amended Section 8B, effective from 28<sup>th</sup> March 2021. She submits that the provisions of the first EC notification must conform with the amended provisions of the MMDR Act, and therefore, the amendments were necessitated. She also pointed out that in terms of the impugned order, the matter was placed before the

Expert Appraisal Committee (EAC), non-coal mining and EAC, MoEF&CC and others in a meeting. Thereafter, the issue was deliberated in the meeting convened on 30<sup>th</sup> June 2022 under the chairmanship of the Joint Secretary of the concerned department. She invited our attention to the minutes of the said meeting held on 30<sup>th</sup> June 2022. She submitted that the ultimate endeavour is to uphold the principles of sustainable development. Relying upon the amended impugned notification, she submitted that now the exemption granted by items 6 and 7 cannot be said to be arbitrary, and it will be subject to compliance with the SOP issued on this behalf from time to time. Therefore, safeguards have been introduced, and the exemption is not blanket. She also pointed out that the Office Memorandum dated 21<sup>st</sup> August 2023 takes care of the safeguards. It was also submitted that the grant of exemption from the first EC notification is a matter of policy for the Central Government and no interference be called for with policy matters.

### **CONSIDERATION OF SUBMISSIONS**

**15.** We have carefully considered the submissions. The EP Act was brought into force on 19<sup>th</sup> November 1986. The statement of objects and reasons of the EP Act specifically refers to the substantive decline in environmental quality due to increasing pollution, loss of vegetal cover, etc. It also notes the growing risk of environmental accidents and threats to life support systems. It refers to the decisions taken at the United Nations Conference on the Human Environment held in



Stockholm in June 1972. In the said Conference, the world communities resolved to protect and enhance the environmental quality. Clause (3) of the statement of objects and reasons reads thus:

**“(3) In view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable co-ordination of activities of the various regulatory agencies, creation of an authority or authorities with advocate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health.”**

(emphasis added)

Even from the preamble of the EP Act, it is apparent that the object is to provide protection to the environment and to improve the environment. Section 3 of the EP Act confers power on the Central Government to take measures to protect and improve the environment. Sub-sections (1) and (2) of Section 3 read thus:

**“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.**

**(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--**

(i) co-ordination of actions by the State Governments, officers and other authorities--

(a) under this Act, or the rules made thereunder, or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever: Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the



emission or discharge of environmental pollutants from such sources;

**(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;**

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;



(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.”

(emphasis added)

Section 3 of the EP Act must be read with Rule 5 of the EP Rules. Rule 5 has been enacted to give effect to clause (v) of sub-section (2) of Section 3 of the EP Act, which empowers the Central Government to put restrictions on the areas in which industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. Rule 5 of the EP Rules reads thus:

**“5. Prohibition and Restriction on the location of industries and the carrying on processes and operations in different areas.**

(1) The Central government may take into consideration the following factors



while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas-

(i) Standards for quality of environment in its various aspects laid down for an area.

(ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.

(iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(iv) The topographic and climatic features of an area.

(v) The biological diversity of the area which, in the opinion of the Central Government needs to be preserved.

(vi) Environmentally compatible land use.

(vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life



(Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(ix) Proximity to human settlements.

(x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.

**(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.**

**(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.**

**(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the**



**industries and carrying on of process or operations in that area.**

**(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.**

**(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may within 1 [three hundred and sixty-five days] from such day of publication] impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.**

**(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3)."**

(emphasis added)

### **SCOPE OF ADJUDICATION**

**16.** As far as the scope of adjudication in these appeals is concerned, it is necessary to refer to the Original Application

no.190 of 2020 filed by the appellant. There were three prayers made in the said Original Application, which read thus:

“(a) Pass an Order quashing newly inserted Clause 6 of the Impugned Notification dated 28.03.2020 as being violative of Article 14 and 21 of the Constitution of India, ultra vires the provisions of the EPA Act, 1986, the EIA Notification dated 14.09.2006, and in further violation of the Judgment passed by the Hon’ble Supreme Court in the Deepak Kumar case (supra);

(b) Pass an appropriate Order quashing the Impugned Notification dated 28.03.2020 as being violative of the principles of Polluter Pay, Non-regression, sustainable development and Precautionary Principle;

(c) Pass an appropriate Order directing the Respondent not to allow any mining of ordinary earth without a prior environmental clearance.”

From the prayers mentioned above in clauses (a) to (c), it is apparent that the specific challenge was to item 6. Regarding clause (b), perhaps the only ground of challenge taken in the application was that no public interest was involved in exercising the power under sub-rule (4) of Rule 5 of the EP Rules for dispensing with public notice.

**17.** After perusal of the impugned judgment, we find that the submissions made by the learned counsel appearing for the appellant before the NGT were not recorded therein. The order

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dated 29<sup>th</sup> June 2021 passed by this Court in the present appeals is relevant, which reads thus:

“X(name masked), learned senior counsel appearing for the appellant, submits that the learned counsel appearing for the appellant before the National Green Tribunal argued that exemption could not have been granted by the Notification of the Ministry of Environment, Forest and Climate Change which has not been considered by the Tribunal. Y(name masked), learned counsel who appeared before the Tribunal, is directed to file an affidavit that he, in fact, raised this point before the Tribunal during the course of hearing.

List the matter after two weeks.”

The advocate filed an affidavit dated 11<sup>th</sup> December 2021. In paragraph 5(a) of the affidavit, he stated thus:

“5. . . . .

(a) That the OA No. 190/2020 was listed for hearing before the Hon'ble Tribunal by way of video conferencing on 28.10.2020. On that day the Deponent appeared before the Hon'ble Tribunal and was granted a hearing. **During the course of the hearing the Deponent raised his submissions inter-alia including the fact that the Ministry of Environment and Forests did not have the power to exempt the removal of ordinary earth from the purview of the EIA Notification and that the exemption as granted for the removal of ordinary earth was illegal and ultra vires the Environment Protection Act as well as the**



**judgment of this Hon'ble Court in Deepak Kumar's Judgment.** It is submitted that the aforesaid point was raised, however the Hon'ble Tribunal did not find merit in the said submission as is evident from the judgment dated 28.10.2020.”  
(emphasis added)

Thus, the Advocate-on-Record stated in the affidavit that what was argued before the NGT was the challenge to the exemption granted for the removal of ordinary earth for linear projects. We may note here that item 7 in the substituted Appendix-IX brought on record by the impugned notification was already there as item 6 in Appendix-IX to the second EC notification dated 15<sup>th</sup> January 2016. The appellant did not challenge the notification dated 15th January 2016. Even if we set aside or strike down item 7 regarding dredging/desilting in the impugned notification, it will continue to exist as item 6 in the second EC notification. The second EC notification is not under challenge. Therefore, we restrict the challenge to item 6 in the substituted Appendix-IX to the impugned notification.

**CHALLENGE TO ITEM 6 IN THE IMPUGNED NOTIFICATION**  
**Failure to follow the procedure prescribed by sub-rule (3) of Rule 5**

**18.** We have already quoted Rule 5 of the EP Rules. There is no dispute that the first EC notification, the second EC notification and the impugned notification were issued in the exercise of powers under sub-rule (1) of Rule 5 of the EP Rules. Sub-rule (2) of Rule 5 provides that while passing an order prohibiting or restricting the location of industries and carrying

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on processes and operations, the Central Government shall follow the procedure laid down in Rule 5. Sub-rule (3) of Rule 5 requires the Central Government to publish a notice of its intention to do so in the official Gazette and in such other manner as the Central Government deems fit. Any person interested is entitled to file objections against the proposed prohibition or restriction. The Central Government is required to consider the objections before issuing the final notification. The said procedure was followed before publishing the first EC notification.

**19.** Sub-rule (4) of Rule 5 empowers the Central Government to dispense with the requirement of publication of notice under sub-rule (3) of Rule 5 when it appears to the Central Government that it is in the public interest to do so. Thus, sub-rule (4) of Rule 5 is an exception to sub-rule (3). The exception can be invoked only on the grounds of public interest.

**20.** Now, we turn to the impugned notification dated 28<sup>th</sup> March 2020. The recitals of the said notification are important, which read thus:

**“S.O. 1224(E).—**WHEREAS, vide the Mineral Laws (Amendment) Act, 2020 (2 of 2020), the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (hereinafter referred to as MMDR Act) has been amended with effect from the 10th day of January, 2020 and, inter alia, new section 8B relating to the provisions



for transfer of statutory clearances has been inserted;

AND WHEREAS, sub-section (2) of section 8B of the MMDR Act provides that notwithstanding anything contained in this Act or any other law for the time being in force, the successful bidder of mining leases expiring under the provisions of sub-sections (5) and (6) of section 8A and selected through auction as per the procedure provided under this Act and the rules made thereunder, shall be deemed to have acquired all valid rights, approvals, clearances, licences and the like vested with the previous lessee for a period of two years;

AND WHEREAS, sub-section (3) of section 8B of the MMDR Act provides that notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the new lessee to continue mining operations on the land, in which mining operations were being carried out by the previous lessee, for a period of two years from the date of commencement of the new lease;

AND WHEREAS, in pursuance of the aforesaid amendment to the MMDR Act, the Central Government deems it necessary to align the relevant provisions of the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1533 (E), dated the 14th September, 2006 (hereinafter referred to as the EIA Notification, 2006);

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**AND WHEREAS, the Ministry of Environment, Forest and Climate Change is in the receipt of representations for waiver of requirement of prior environmental clearance for borrowing of ordinary earth for roads; and manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community;**

**Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government, after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of the rule 5 of the said rules, in public interest, and in supersession of the notification number S.O. 4307(E), dated the 29th November, 2019, hereby makes the following further amendments in the EIA Notification, 2006, namely:-**

.....”

(emphasis added)

By the impugned notification, after sub-paragraph (2) of paragraph 11 of the first EC notification, sub-paragraph (3) was inserted to give effect to Sections 8A and 8B of the MMDR Act. An entry has been made in the Schedule against Item 1(a) in column (5) for inserting a clause dealing with the evacuation or removal and transportation of already mined out material.



Appendix IX, which contains the list of projects exempted from obtaining EC, was substituted by the impugned notification.

**21.** We have quoted above the recitals of the impugned notification. The first three recitals refer to the necessity of giving effect to Sections 8A and 8B of the MMDR Act. Thereafter, the last recital refers to the Ministry receiving representations for waiver of the requirement of prior EC for borrowing of ordinary earth for roads. After that, without giving any details, it is mentioned that in the public interest, the requirement of publication of notice under sub-rule (3) of Rule 5 was dispensed with. At this stage, we may refer to the relevant ground specifically taken in the Original Application filed by the appellant before the NGT. Ground J was specifically taken on this aspect, which reads thus:

“J. Because the Respondent has deliberately and ostensibly circumvented the requisite procedures before issuing the Impugned Notification, including evading previous publication, inviting public objections under Rule 5(3) of the EP Rules, 1986, and by wrongly exercising its powers under Rule 5(4) of the EP Rules under the garb of "public interest" during the Covid-19 national lockdown without offering even a shred of reasoning for its actions. It is most respectfully submitted that the amendments brought forth by the Impugned Notification serve and further the interest of private miners and contractors, and the actions of ratifying such illegal and mala fide acts of disregard and disobedience to



environmental norms is in fact against public interest at large.”

**22.** We have carefully perused the counter affidavit filed by the MoEF&CC before the NGT. The said affidavit does not deal with Ground J at all. It does not specify or set out reasons for concluding that in the public interest, the requirement of publication of prior notice was needed to be dispensed with. It is pertinent to note that before the issue of the second EC notification by which Appendix-IX was incorporated, the procedure of inviting objections to the draft notification was followed, and the objections were considered. There is no reason to dispense with this important requirement before publishing the impugned notification. Article 21 guarantees a right to live in a pollution-free environment. The citizens have a fundamental duty to protect and improve the environment. Therefore, the participation of the citizens is very important, and it is taken care of by allowing them to raise objections to the proposed notification. After all, citizens are major stakeholders in environmental matters. Their participation cannot be prevented by casually exercising the power under sub-rule (4) of Rule 5.

**23.** In the present appeals, the questions of law (e) and (f) have been incorporated regarding the illegal invocation of the power under sub-rule (4) of Rule 5 of the EP Rules. In the grounds of the challenge, ground EE has been taken explicitly on this aspect. We have perused the counter affidavit filed by the MoEF&CC in these appeals. We find from the counter



affidavit that the contention raised regarding the illegal invocation of power under sub-rule (4) of Rule 5 has not been dealt with. We are not going into the question of whether it was necessary for the Central Government to specify reasons in the impugned notification itself why it came to the conclusion that in the public interest, the requirement of public notice should be dispensed with. However, the reasons for the said conclusion ought to have been set out in the counter affidavit filed before the NGT or, at least, in the counter affidavit filed before this Court. The document recording the satisfaction of the competent authority about the existence of public interest and the nature of the public interest ought to have been produced by the Ministry. But, no such document was produced. Only one conclusion can be drawn. The drastic decision to invoke sub-rule (4) of Rule 5 was made without any application of the mind. Hence, the decision-making process has been vitiated.

**24.** The impugned notification was issued two days after the nationwide lockdown was imposed due to the COVID-19 pandemic. At that time, the work of linear projects, such as roads, pipelines, etc., had come to a grinding halt. So, there was no tearing hurry to modify the EC notifications. Apart from the fact that no reasons have been assigned in the counter affidavit filed by the Central Government for coming to the conclusion that in the public interest, the requirement of prior publication of notice was required to be dispensed with, we fail to understand the undue haste shown by the Central

Government in issuing the impugned notification during the nationwide lockdown. Therefore, the inclusion of item 6 of the substituted Appendix-IX will have to be held illegal. We have already given reasons for not dealing with the challenge to item 7 of the impugned notification.

### **ARBITRARINESS**

**25.** There is one more important ground for striking down item 6. But for item 6 in Appendix-IX to the impugned notification, for extraction, sourcing, or borrowing of ordinary earth for linear projects, prior EC would have been required in terms of the first EC notification. The very object of issuing the first EC notification incorporating the mandatory requirement of obtaining EC for projects was that the damage to the environment must be minimised while implementing projects. When an exception is sought to be carved out by incorporating Appendix-IX to the requirement of obtaining EC in the first EC notification, the exception must be specific. Item 6 grants exemption for “extraction or sourcing or borrowing of ordinary earth for linear projects, such as roads, pipelines, etc.” There is no specification about the quantum of ordinary earth, which can be extracted on the basis of the exemption. There is no specification of the area which can be used to extract ordinary earth. It is also not provided that only that quantity of ordinary earth, which is required to implement the linear projects, is exempted. Importantly, “linear projects” have not been defined. Without the definition, it is difficult to imagine which projects will be termed linear projects. The term “linear projects” is very



vague. The process to be adopted for excavation has not been set out. Thus, item 6 is a case of completely unguided and blanket exemption, which is, *per se*, arbitrary and violative of Article 14 of the Constitution of India. There is no provision for setting up an authority which will decide whether a particular linear project is covered by item 6.

**26.** As stated earlier, during the pendency of the appeals, an amendment was made to item 6 by the notification dated 30<sup>th</sup> August 2023. Even the amended impugned notification does not elaborate on the concept of linear projects. The only addition to item 6 is that the extraction, sourcing or borrowing shall be subject to compliance with SOP and environmental safeguards issued in this regard from time to time. The authority to issue the SOP and environmental safeguards has not been specified. No provision has been made to enforce the SOP and environmental safeguards. No restriction is imposed on the quantum of ordinary earth, which can be extracted for linear projects. Therefore, even the amended item 6 continues to suffer from the same vice of arbitrariness, which Article 14 of the Constitution of India prohibits.

**27.** The learned Additional Solicitor General placed reliance on the Office Memorandum dated 21<sup>st</sup> August 2023. It provides that before carrying on activities mentioned in entry 6, the project proponents must notify the State Pollution Control Board/Pollution Control Committees. The State Pollution Control Boards are required to monitor the compliance status of the SOP/environmental safeguards. As entry 6 is arbitrary,

the Office Memorandum is of no consequence. Hence, on account of the violation of Article 14, item 6 in the impugned notification, as well as the amended impugned notification, will have to be struck down. As noted earlier, the object of the EP Act is to protect and improve the environment. Apart from the illegality committed by non-compliance with sub-rule (3) of Rule 5 of the EP Rules, the exemption granted without incorporating any safeguards is completely unguided and arbitrary. Grant of such blanket exemption completely defeats the very object of the EP Act.

**NON-COMPLIANCE WITH THE DIRECTIONS OF THE NGT**

**28.** In paragraph 8 of the impugned order, which we have quoted earlier, the NGT observed that the blanket exemption needs to be hedged by appropriate safeguards, such as, the process of excavation and quantum. Therefore, in paragraph 9, a direction was issued to MoEF&CC to revisit the impugned notification in the light of the observations made in paragraph 8. Within the three months provided by the NGT to do so, no steps had been taken to revisit item 6 of the impugned notification.

**29.** The Ministry has filed an additional affidavit dated 18th July 2023, and reliance has been placed on the guidelines for sand mining. As far as item 6 is concerned, in the counter affidavit, reliance was placed on the Office Memorandum dated 8<sup>th</sup> August 2022, purportedly issued in terms of the directions issued in paragraph 9 of the impugned judgment. It records that item 6 shall be subject to the SOP attached to the said



Office Memorandum. We have perused the said SOP. We find that the SOP creates no regulatory machinery to ensure the implementation of the terms of the SOP. The SOP does not refer to item 6 at all; it merely refers to the activities relating to the identification to borrow areas to obtain earth or soil materials. It does not refer to extracting ordinary earth for linear projects, such as roads, pipelines, etc. Therefore, the said SOP can hardly be said to be in terms of what the NGT ordered the Central Government to do in terms of paragraphs 8 and 9.

**30.** We are not entertaining a challenge to item 7 of the impugned notification. As none of the respondents have challenged the impugned notification, they will have to implement the directions issued in terms of paragraph 9 of the impugned judgment regarding item 7.

**31.** Thus, notwithstanding the specific directions issued in paragraph 8 read with paragraph 9 of the impugned judgment, no safeguards have been provided, such as laying down processes, the mode and the manner of excavation and quantum.

**32.** Therefore, we have no hesitation in striking down item 6 of the substituted Appendix-IX forming part of the impugned notification dated 28<sup>th</sup> March 2020 and item 6 of the amended impugned notification dated 30<sup>th</sup> August 2023. Accordingly, we quash item 6 in the two notifications above.

**33.** The appeals are, accordingly, partly allowed on above terms. There will be no order as to costs.

.....J.  
(Abhay S. Oka)

.....J.  
(Sanjay Karol)

**New Delhi;  
March 21, 2024.**