Sl.....No. 01.....

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, FARIDKOT HOUSE, COPERNICUS MARG, NEW DELHI - 110001.

O.A 12 of 2024/EZ

BRATALINA DHAR (CHOWDHURY) Regd. No. 067/2022 Govt. of West Bengal NOTARY, CALCUTTA

In the matter of :

In Re : '14 Cottahs Mahisbathan pond turns into field, BMC steps, in Kolkata West Bengal'

.....Applicant

VS

Principal secretary Department of Environment & Ors.

.....Respondents

Affidavit on behalf of respondent nos. 6 to 9 to the instant Original Application.

I, Samar Kumar Mondal, son of Late Bhimchandra Mondal, aged about 74 years, by faith Hindu, by nationality Indian, by occupation business, residing at MB 38, Mahisbathan, Salt Lake - Sector V, Post Office - Krishnapur, Police Station - Electronic Complex, Ward No. 28, Kolkata - 700102, District- North 24 Parganas, do hereby solemnly affirm and state as follows:

1. That I am the Respondent No. 8 of the instant Original Application and as such I am well acquainted with the facts and circumstances of the case and I have been duly appointed by the Respondent Nos. 6, 7 & 9 as a constituted Attorney through a power of Attorney, dated 5th February, 2005 and otherwise competent to swear this affidavit on my behalf and on behalf of the other Respondent being No. 6, 7 & 9.

04 APR 2026

2. That a Joint Enquiry Report placed on record clearly records that though the land is described as 'Pukur' in the R.S./L.R. record, physically no water body exists, and the land is presently vacant (Bastu), supported by photographic evidence.

3. That the competent Revenue Authority has already initiated proceedings in respect of the subject land, and a Notice has been issued by the Office of the Additional District Magistrate & District Land & Land Reforms Officer, Barasat, annexed hereto as Annexure - A.

4. That the next date of hearing before the said authority is fixed on 12.05.2026.

5. That a tabulated chart annexed as Annexure - B clearly demonstrates that the Hon'ble Judicial Member has relied upon ground reality and evidence, whereas the Hon'ble Expert Member has proceeded on record-based presumption.

6. That the Respondent Nos. 6 to 9 respectfully rely upon the following judgments in support of their case, which clearly establish that (i) this Hon'ble Tribunal lacks jurisdiction over issues of land classification, (ii) environmental findings must be based on cogent evidence and not presumption, (iii) no liability can arise in absence of proven violation, and (iv) revenue entries are not conclusive proof of the nature of land:

   (a) Bhopal Gas Peedith Mahila Udyog Sangathan vs Union of India, (2012) 8 SCC 326;

   (b) Hanuman Laxman Aroskar vs Union of India, (2019) 15 SCC 401;

   (c) Paryavaran Suraksha Samiti vs Union of India, (2017) 5 SCC 326;

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(d) Balwant Singh vs Daulat Singh, (1997) 7 SCC 137;

(e) Atul Chandra Mahato vs State of West Bengal;

(f) State of Rajasthan vs Kashi Ram, (2006) 12 SCC 254;

(g) Calcutta Municipal Corporation vs Ganesh Chandra Naskar.

7. That in view of the facts and materials on record, including the Joint Enquiry Report showing absence of any water body, the initiation of proceedings by the competent Revenue Authority as evidenced by Annexure - A, the tabulated chart (Annexure - B) demonstrating that the Hon'ble Judicial Member has relied on evidence while the Hon'ble Expert Member has proceeded on presumption, and the legal position reflected in the judgments compiled as Annexure - C, it is respectfully submitted that no adverse inference or environmental liability can be drawn against the Respondent Nos. 6 to 9 and the findings of the Hon'ble Judicial Member deserve to be accepted, leaving the issue of land classification to be determined by the competent Revenue Authority in accordance with law.

8. That the statements made in paragraphs nos. 1 and 2 are true to my knowledge and belief and rest are my humble submission before this Hon'ble Tribunal.

Saman Kumar Mondal.

DEPONENT

Identified by me

Basudeb Patra

(BASUDEB PATRA)

Advocate

WB/1224/2011

BRATALINA DHAR (CHOWDHURY)
Regd. No. 067/2022
Govt. of West Bengal
NOTARY, CALCUTTA

04 APR 2026

VERIFICATION

I, Samar Kumar Mondal, son of Late Bhimchandra Mondal, aged about 74 years, by faith: Hindu, by occupation: business, MB 38, Mahisbathan, Salt Lake – Sector V, P.O.: Krishnapur, P.S. Electronic Complex Police Station, Ward No.: 28, Kolkata – 700102, do hereby verify that the contents of paragraphs 1 to 7 are true to my knowledge and the rest are my submissions before the Hon'ble Tribunal and that I am the Respondent No. 8 herein and I am also well acquainted with the facts and circumstances of the instant case. I am competent to verify the instant affidavit on behalf of me and for the respondent nos. 6, 7 and 9.

Samar Kumar Mondal.

Signature of Deponent

(SAMAR KUMAR MONDAL)

Date : 04.04.2026

Place : Kolkata

Identified by me :

Basu

(BASUDEB PATRA)

Advocate

WB/1224/2011

BRATALINA DHAR (CHOWDHURY) NOTARY, CALCUTTA Regd. No. 067/2022 Govt. of West Bengal

04 APR 2026

Signature of Executant/s are Attested on the Identification of the Advocate

Bratalina Dhar

Notary

Bratalina Dhar (Chowdhury)
Notary Govt. of West Bengal
Regd. No. 067/2022
Presidency Small Causes Court, Calcutta

Annexure - "A"

Government of West Bengal
OFFICE OF THE ADDITIONAL DISTRICT MAGISTRATE &
DISTRICT LAND & LAND REFORMS OFFICER, NORTH 24-PARGANAS
Administrative Building, 5th Floor, P.O. Barasat, Dist. North 24-Parganas, Pin. 700124, West Bengal
Phone No.-033-25846301, Fax No.-033-25823667, e-mail- dllro.n24pgs@gmail.com

Memo No .L-13011(11)/506/2025-DL&LRO/ 232(4) Date: 09.01.2026

NOTICE

Whereas vide order dated 24.07.2024, passed in Original Application No. 12/2024/EZ, the Hon'ble Eastern Zone Bench of the Hon'ble NGT directed the District Magistrate, North 24 Parganas to file affidavit to ascertain whether the change of character of the subject land took place before 24.03.1986, i.e. the date of publication in the Official Gazette in the West Bengal Land Reforms (Amendment) Act, 1981 or not

And.

Whereas, in pursuance of the direction so passed by the Hon'ble NGT on 24.07.2024, the District Magistrate, North 24 Pargans, caused an enquiry in this regard through B.L.&L.R.O., Rajarhat, which was submitted by the B.L.&L.R.O., Rajarhat on 06.01.2025

And

Whereas, the Hon'ble Bench in their order dated 30.07.2025, directed District Magistrate, North 24 Parganas to ensure that the Revenue proceedings relating to the application of Rule 166 of the West Bengal Land& Land Reforms Manual, 1991 are concluded by the competent authority giving the parties a reasonable opportunity of being heard

And

Whereas, from the order dated 30.07.2025, it appears that an application for correction of classification of the suit plot u/s 50(1)(f) of WBLR Act, 1955, was stated to have been filed before the B.L.&L.R.O., Rajarhat, and as stated by the Respondent Nos.6 to 9 of the O.A. and/or recorded raiyats against the subject plot, that those applications are pending before the Revenue Authorities.

And

Whereas from the above facts and circumstances, it appears that, a dispute has evidently arisen regarding the fact whether the land use of the subject plot of land was altered prior to 24.03.1986, the date of enforcement of Sec 4C of WBLR Act 1955 and the R.O.R. erroneously persisted with the previously recorded classification or the alteration of land use has been illegally done, post enforcement of the said Act.

And

Whereas the proceeding U/r 166 of WBL&R Manual, 1991 read with other relevant Sections of the WBLR Act, 1955, is a pre-requisite for statutorily determining the above issues,

Hence, the present notice is being issued, to;

1. Shyamal Kumar Mondal, S/O.- Bhimchandra Mondal, Mahishbathan
2. Samar Kumar Mondal, S/O.- Bhimchandra Mondal, Mahishbathan
3. Aloke Kumar Mondal, S/O.- Krishnapada Mondal, Mahishbatha
4. Ashis Kumar Mondal, S/O.- Krishnapada Mondal, Mahishbatha

To appear before the undersigned with all relevant documents/evidences for hearing and adjudication of the present matter, on 27.01.2026 at 2.00pm, failing which, the matter will be proceeded as per law.

09/01/2026

Additional District Magistrate &
District Land & Land Reforms Officer,
North 24 Parganas, Barasat

BRATALINA DHAR (CHOWDHURY)
Regd. No. 067/2022
Govt. of West Bengal
NOTARY, CALCUTTA

Annexure "J5"
-6-

Filed by [illegible] on 03.04.2026

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A 12 of 2024/EZ

In the matter of :

In Re : '14 Cottahs Mahisbathan pond turns into field, BMC steps, in Kolkata West Bengal'

.....Applicant

VS

Principal secretary Department of Environment & Ors.

.....Respondents

BRATALINA DHAR (CHOWDHURY) NOTARY CALCUTTA Regd. No. 067/2022 Govt. of West Bengal

Tabulated chart showing difference of opinion between the hon'ble judicial member and hon'ble expert member and submissions on behalf of respondent nos. 6 to 9

(As directed by this Hon'ble Tribunal vide Order dated 08.01.2026)

Sl.	Issue	Hon'ble Judicial Member (Para & Detailed Observation)	Hon'ble Expert Member (Para & Detailed Observation)	Respondent Nos. 6 to 9 (Stand)
1	Nature & Classifica	Para 20, 24, 26 - JM records rival claims	Para 4, 10, 11 - EM relies on R.S. and L.R.	Original classification 'Shali' (1941

	tion of Land	Member records rival claims ('Shali' vs 'Pukur'), holds classification dispute cannot be decided by NGT, and leaves issue to Revenue Authority.	on R.S. and L.R record showing 'Doba/Pukur' and treats same as indicative of water body.	deeds & C.S.). R.S./L.R. entries erroneous and under challenge u/s 50(1)(f). NGT cannot decide classification.
2	Existence of Water Body (Physical Reality)	Para 3, 5, 11 - Hon'ble Judicial Member relies on joint inspection & PCB report confirming no existing pond, land largely vacant with debris.	Para 10 - 11 - Hon'ble Expert Member infers existence of water body based on classification entries and alleged past status.	Physical inspection decisive - no 'Pukur' exists. Record-based inference cannot override ground reality.
3	Knowledge of Respondents	Para 23 - Hon'ble Judicial Member clearly holds no evidence of	(No specific para; presumption from long	No notice, no participation, no proof - absence of

		knowledge of reclassification from 'Shali' to 'Doba/Pukur'.	standing record)	knowledge; hence no deliberate act.
4	Alleged Illegal Filling	Para 21, 23 - Hon'ble Judicial Member finds no material showing when or by whom filling was done.	Para 1 - Hon'ble Expert Member proceeds from newspaper report alleging pond filling.	Newspaper report not evidence. No nexus with Respondents. No proof of act or involvement.
5	Jurisdiction of NGT	Para 24, 25 - Hon'ble Judicial Member holds NGT cannot adjudicate WBLR issues (classification/title).	(Not addressed; proceeds on environmental assumption)	Entire dispute is revenue-based. NGT must defer to BL&LRO.
6	Pending Revenue Proceedings	Para 17, 24, 26 - Hon'ble Judicial Member notes Sec. 50(1)(f) pending and directs	(Not considered)	Matter sub judice; parallel findings by NGT impermissible.

4.

		authority to decide expeditiously.		
7	Environmental Liability	Para 26 - Hon'ble Judicial Member makes liability conditional (only if classification proved + knowledge established).	Para 10-11 - Hon'ble Expert Member proceeds on assumption of water body to imply environmental impact/liability .	No liability without proof of (i) existence, (ii) act, (iii) knowledge - all absent.
8	Restoration Direction	Para 26 - Hon'ble Judicial Member directs restoration only subject to outcome of revenue proceedings and proof conditions.	Para 10-11 - Hon'ble Expert Member suggests restoration based on recorded classification.	Restoration cannot be automatic; must follow adjudication + due process.

CONCLUDING SUBMISSIONS

5.

1. That the divergence of opinion essentially arises from reliance on disputed revenue entries versus absence of factual and legal foundation.
2. That the Hon'ble Judicial Member has correctly appreciated:
   a) Lack of evidence,
   b) Absence of knowledge,
   c) Jurisdictional limitation of this Hon'ble Tribunal.
3. That the findings of the Hon'ble Expert Member, with utmost respect, proceed on presumptions rather than legally admissible evidence.
4. That the entire controversy is squarely a revenue dispute, presently pending before the competent authority, and cannot be adjudicated within the jurisdiction of this Hon'ble Tribunal.
5. That in absence of:
   A) Proven existence of water body,
   B) Deliberate act of filling,
   C) Finally knowledge of Respondents, no liability - civil or environmental - can be fastened upon Respondent Nos. 6 to 9.

In view of the above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to:

a) Accept the present tabulated chart;

6.

b) Hold that no adverse inference or liability can be drawn against Respondent Nos. 6 to 9;

b) Defer the matter to the outcome of the pending proceedings before the competent Revenue Authority;

c) Pass such further order(s) as this Hon'ble Tribunal may deem fit and proper.

And for this act of kindness, the respondent Nos. 6 to 9 shall ever pray.

Annexure - "C"

LAWS(SC)-2012-8-13

SUPREME COURT OF INDIA

Coram : S.H.KAPADIA, A.K.PATNAIK, SWATANTER KUMAR JJ.

Decided On : August 09, 2012

Appeal Type : WRIT PETITION (C) NO.50 OF 1998

Appellant(s) :

BHOPAL GAS PEEDITH MAHILA UDYOG SANGATHAN

Respondent(s) :

UNION OF INDIA

Advocate(s) :

SANJAY PARIKH

Referred Act(s) :

- Constitution Of India, Art.21, Art.32
- Drugs And Cosmetics Act, 1940
- National Greens Tribunal Act, 2010, S.14, S.29, S.30, S.38(5)

Judgment :

(1.) Unlike natural calamities that are beyond human control, avoidable disasters resulting from human error/negligence prove more tragic and completely imbalance the inter-generational equity and cause irretrievable damage to the health and environment for generations to come. Such tragedy may occur from pure negligence, contributory negligence or even failure to take necessary precautions in carrying on certain industrial activities. More often than not, the affected parties have to face avoidable damage and adversity that results from such disasters. The magnitude and extent of adverse impact on the financial soundness, social health and upbringing of younger generation, including progenies, may have been beyond human expectations. In such situations and where the laws are silent or are inadequate, the courts have unexceptionally stepped in to bridge the gaps, to provide for appropriate directions and guidelines to ensure that fundamentals of Article 21 of the Constitution of India (for short "the Constitution") are not violated.

(2.) The Bhopal Gas Tragedy is a glaring example of such imbalances and adverse impacts, where by court's intervention, poor and destitute have been provided relief and rehabilitation.

(3.) The Bhopal Gas Leak Disaster occurred on the intervening night of the 2nd/3rd of December, 1984. Data reflecting the exact number of affected persons was not available initially. Earlier, it was

felt that only a small number of persons were adversely affected in terms of health or otherwise by the leakage of toxic gases from the Union Carbide Unit at Bhopal. However, the Scientific Commission for Continuing Studies on Effects of Bhopal Gas Leakage on Life Systems (for short the 'Scientific Commission') released a Report titled 'The Bhopal Gas Disaster: Effects on Life Systems' in July, 1987 which suggested otherwise. This Report stated that for the estimated population of 2,00,000 exposed to the toxic gases in the severely and moderately affected areas of Bhopal and the variety of long-term problems anticipated in the crisis period, the number of exposees covered so far by the Indian Council of Medical Research (for short the 'ICMR') through the epidemiological surveys constitute less than 20 per cent of the population. With the passage of time, this figure of the affected population has swollen to nearly 5,00,000. By the same Scientific Commission, it was also found that in general, the output of the epidemiological project so far had not equalled the magnitude of the tasks assigned to them, presumably due to lack of resources, trained staff as well as physical inputs. An opportunity for mounting such a massive long- term longitudinal study on a population exposed to a one-time acute chemical stress may not present itself again and hence it would be a pity if that opportunity was missed. Various steps were recommended by the Scientific Commission, from time to time, to tackle the two main aspects of this disaster. Firstly, health care of the affected victims and secondly, research work with the object to deal with the acute problems arising from this disaster on the one hand and to suggest preventive steps on the other.

(4.) Writ Petition (Civil) No. 50 of 1998 was filed by the Bhopal Gas Peedith Mahila Udyog Sanghathan as a public interest litigation under Article 32 of the Constitution. This petition was founded on the rights available to the victims of the Bhopal Gas Disaster under Article 21 of the Constitution and it was prayed that they were entitled to receive free and proper medical assistance from the respondents, the Union of India and the State of Madhya Pradesh. It was also prayed that the respondents be directed to take effective steps in that regard which inter alia included providing of free medicines and preparing a detailed plan of medical rehabilitation that ensured the availability of basic medical facilities to the gas victims. Lastly, it was also prayed that the ICMR be directed to resume and conduct research studies and to make public the reports published by it so as to provide the basic ground for issuance of appropriate directions by this Court.

(5.) This Court has been passing various directions right from the filing of this petition and has directed certain effective and positive steps to be taken by the Union of India as well as the State of Madhya Pradesh to ensure providing of appropriate medical treatment to the gas victims. It is no use referring to the different orders passed by this Court from time to time in detail. However, we will be referring to some of the important orders in brief which have a bearing on the issue now pending before this Court and for passing of the final directions.

(6.) To begin with, the ICMR had undertaken certain research works immediately after the Bhopal Disaster and appropriate steps had been taken, as claimed by the State and the Central Government, to deal with the medical problems of the gas victims. However, it appears from the record and has been averred before us that after 1994, the ICMR allegedly took an irrational decision to disband all Bhopal

Gas Disaster related medical research. This abandoning of research work has been seriously criticised in the present petition. Certain appeals had been filed against the order of the High Court of Madhya Pradesh which came to be registered as Civil Appeal Nos. 3187-3188 of 1988, which were subsequently clubbed with Writ Petition (Civil) No. 50 of 1998. I.A. Nos. 32-35, 36-37 in Civil Appeal Nos. 3187-3188 of 1988 titled "Union Carbide Corporation Ltd. v. Union of India" were filed for seeking different directions, upon which and vide order dated 15th May, 1988, this Court directed creation of the Bhopal Memorial Hospital and Research Centre (for short 'BMHRC') and the Bhopal Memorial Hospital Trust (for short 'BMHT/the Trust') which was constituted for the purposes of healthcare of the affected gas victims. This hospital initially was to run for a period of eight years which term was extended from time to time and then finally, vide order dated 2nd May, 2006, the term was extended till completion of its object. Further, vide order dated 17th July, 2007, this Court also sought report from the ICMR on various toxic effects of the leaked gas.

(7.) This Court also, by order dated 17th September, 2004 passed in Writ Petition (Civil) No. 50 of 1998, ordered the constitution of two expert committees being the 'Monitoring Committee' and the 'Advisory Committee'. The latter was formed by ICMR under the Chairmanship of Director General of ICMR and its terms of reference were as follows:

"(i) To examine the treatment practices currently followed by medical personnel in the hospitals/clinics run by the Government for the Bhopal Gas victims for the various ailments suffered by them.

(ii) To recommend/advise on the appropriate line of treatment to be offered to the Bhopal gas victims.

(iii) To recommend/advise on the structure and content of the research to be undertaken in order to improve the quality of the treatment being offered to the Bhopal Gas victims."

(8.) The Advisory Committee has been submitting its reports from time to time and it was assured by the State Government that the said Committee will be provided with all facilities and technical inputs. Then, the ICMR conducted its research investigation in the form of 24 major research projects ranging from epidemiology to molecular biology implemented by 15 National Institutes. Vide letter dated 17th February, 2004, from the Director General of ICMR to the Government of Madhya Pradesh it was indicated that with respect to future needs for research, ICMR would facilitate the Madhya Pradesh State Government by constituting a Committee of experts which would look into the work carried out between 1985 to 1994 as well as the subsequent research by the Centre for Rehabilitation Studies under the Bhopal Gas Tragedy Relief and Rehabilitation Department (for short, the 'BGTRRD'), Bhopal from 1995 till date, so as to provide guidelines for future research. On 24th June, 2010, the Union Cabinet passed a resolution directing the ICMR to establish a new permanent research centre at Bhopal which was done on 11th October, 2010, namely, the National Institute of Research in Environment Health (for short the 'NIREH'). The research work is being continued by the ICMR, while it submits its report to this Court from time to time. The vision document was duly prepared by the NIREH.

(9.) In the background of this vision document, it is stated that after the Methyl Isocyanate (MIC) gas episode at Bhopal, various research programmes were conducted by the ICMR to monitor the research programme and also to undertake long term epidemiological studies to record the morbidity and mortality of the cohort of gas exposed and control population.

(10.) In order to ensure smooth running of the BMHT, a corpus had been created which was provided with funds and contributions that were invested from time to time and the total corpus, as of now, constitutes Rs. 436.47 crores. Out of this amount, Rs.226.61 crores has been invested in RBI Bonds in Banks, Rs. 196.54 crores in FDRs in Banks, Rs.11.65 crores in the short term deposits in Flexi/Quantum in Banks and Rs.1.67 crores is the bank balance.

(11.) During the pendency of this petition, various directions had been passed by this Court to ensure smooth working of the Trust in both the fields of health care and research work. We may refer to some significant orders passed by this Court.

(12.) The surveys conducted by the ICMR, including the epidemiological survey in 1994, showed multi-organ symptoms amongst the persons exposed and there was tremendous increase in symptoms exhibited by the affected persons. There was even shortage of medicines and various representations were made requesting improvement thereof. Vide order dated 17th September, 2004, the Court had spelt out the terms and conditions for the Monitoring Committee and the Advisory Committee. It related to procedural matters, functioning and terms of reference of the respective Committees. The paramount functions of the Monitoring Committee were to monitor suitability, availability and maintenance of medical equipments, deployment of adequate and competent medical personnel, more specifically the treatment offered at the hospitals and the functioning of these hospitals run by the Government for the Bhopal Gas victims, purchase and availability of medicines to the affected persons etc. Similarly, the Advisory Committee, while determining its own rules of procedure, was to examine the treatment practices currently followed by the medical personnel in the hospitals run by the Government for these victims in relation to various ailments suffered by them. Further, this Committee was to recommend and advice on the appropriate line of treatment to be offered to the Bhopal gas victims. It was further to recommend and advise on the kind of medical equipments and medicines required to be procured to improve the quality of treatment being offered to the victims as well as to initiate and recommend community health initiatives in health education and community participation for prevention and care.

(13.) Then vide order dated 17th July, 2007, the Court directed the State of Madhya Pradesh to take necessary steps for computerising the records of the hospital so that the details of the patients and/or their ailments were made permanent record to ensure their proper treatment in future. One of the factors which invited the attention of the Court at that time was that the patients who were not the victims of the gas tragedy had also started coming to the hospital, which led to passing of an order wherein the Court required the Monitoring Committee to submit a report if the treatment facilities afforded to such patients were adversely affecting the treatment of the gas victims.

(14.) Various reports were submitted by the two Committees afore-mentioned which were considered

from time to time by this Court. Vide order dated 15th November, 2007, the Court had called upon the State of Madhya Pradesh to provide answers to the questions which were raised by the Monitoring Committee which was overseeing the functions of the hospital and the research work. Report was also sought from the ICMR on various toxic effects of the gas.

(15.) Thereafter, because of certain events, the Chairman of BMHT resigned. The co-ordination and smooth functioning of these units was found to be lacking and many applications in this regard were filed before the Court. As already noticed, the Court had directed setting up of a hospital for treatment of Bhopal Gas victims vide its order dated 15th May, 1988 in furtherance to which the hospital was established and even the Trust was registered on 11th August, 1988. There existed uncertainty in the decision making process. The Attorney General for India made a statement that the Union of India had decided to take over the BMHRC and run it through Department of Biotechnology and Department of Automic Energy. In furtherance to this statement, the Court disposed of I.A. No. 58-59 of 2009 and vide its order dated 19th July, 2010, the Court directed the Central Government to take steps for winding up the Trust and taking over the management of the hospital.

(16.) Thereafter, certain IAs came to be filed before this Court. In these IAs, different parties had prayed for issuance of different directions in relation to the working, management and control of BMHRC. IA Nos.62-63 of 2011 in Civil Appeal Nos.3167-3188 of 1988 have been filed with the prayer that the Union of India be directed to take charge of the corpus funds of the erstwhile BMHT through its Department of Biotechnology and Department of Atomic Energy and transfer the accounts of BMHT to the new management. It was also prayed that the management of the erstwhile BMHT be relieved of all its responsibilities pertaining to management of the corpus and new authorised signatories be appointed for its accounts. One of the petitioners in the main petition filed an application being IA No. 14 of 2012, primarily relying upon the letter written by Dr. Sathyamala, (Member, Advisory Committee) to Dr. P.M. Bhargava, (Member, Advisory Committee and Chairperson of the Task Force). It was prayed that the same be taken on record and the Advisory Committee be directed to submit minutes of its meetings dated 13th August, 2009, 22nd September, 2010 and 10th December, 2011. Petitioner Nos.1 and 3 have filed IA No.16 of 2012 wherein they have prayed for issuance of certain directions. In this application, it has been stated that the Monitoring Committee in its reports dated 10th June, 2005, 31st October, 2005, 12th July, 2006, 20th December 2006, 7th August, 2007 and 27th May, 2008 have consistently recommended computerization of the hospital records and issuance of 'health booklets' to the gas victims. It is averred that recommendations of the Advisory Committee have not been complied with by the State Government, the ICMR and even the Union of India. They have also made a suggestion for issuance of 'smart cards' to the gas affected victims besides issuance of proper health booklets. The NIREH, as established by the ICMR, though was a welcome step, according to these applicants much is desired of the functioning of NIREH. The allegation is that the decision makers at the ICMR are doing everything on their part to ensure that the crucial issues affecting the life and health of the gas victims remain unaddressed at a macro level. All the concentration presently is on building the infrastructure for the NIREH. On this premise, the applicants have prayed that the orders of the Court should be complied with by the State

of Madhya Pradesh as well as the ICMR for issuance of 'health booklets' and 'smart cards' to the affected persons. They also prayed for adoption of a common referral system among various medical units under BMHRC and under the BGTRRD so that the gas victims are referred to the appropriate centres for proper diagnosis, investigation and treatment in terms of the nature and degree of injury suffered by each one of them and also in terms of therapeutic requirements.

They also prayed that NIREH be directed to set up completely computerized and centrally networked Central Registry, to maintain proper medical records of all gas victims, to streamline and intensify epidemiological studies among the gas-affected population and to prepare treatment protocol for treating each category of ailment that the gas victims are suffering, such as respiratory diseases, eye-related diseases, gastro-intestinal diseases, neurological diseases, renal failure, urological problems, gynaecological problems, mental disorders, etc.

(17.) In other IAs/ replies filed on behalf of different parties, it has been pointed out that the Monitoring Committee should have the jurisdiction over all hospitals, including non-governmental hospitals and clinics in Bhopal. They should also be vested with powers of recommending penal action against the persons who are found to be defaulting in carrying out the appropriate treatment or following the directions of the Monitoring Committee from time to time. It has also been prayed that the research work could be carried out by private laboratories or private research units besides the research work being carried on by the ICMR and/or its established unit. It was also brought out from the record before the Court that there is no co-ordination between the various functionaries dealing with this tragedy and, in fact, the views of the Advisory Committee are not given due weightage by the implementing agencies, thereby adding to the suffering and agony of the affected parties.

(18.) No doubt, the BMHT was established for providing medical treatment and care to the gas victims. Both the Monitoring Committee and the Advisory Committee, appointed by this Court, had different earmarked areas of their respective operation, though their aim was common. The Advisory Committee was required to advise as per its expertise on matters which the implementing agencies, i.e., the Trust as well as the State Government, were expected to perform. On the other hand, the Monitoring Committee was required to oversee the functioning of the research work as well as the timely providing of medical care and treatment to the gas affected victims.

Functions of each of these bodies were sufficiently and unambiguously spelt out in different orders of this Court. After submission of the reports by the respective Committees, this Court had also passed various directions for the better and improved performance of these units, so as to ensure better medical care and requisite treatment to the gas victims.

(19.) As we have already noticed, with the passage of time this disaster has attained wider dimensions and greater concerns, which require discharge of higher responsibilities by all the agencies. In terms of Article 21 of the Constitution, all the gas victims are entitled to greater extent of multi-dimensional health care, as their sufferings are in no way, directly or indirectly, attributable to them. It was, primarily and undoubtedly, the negligence on the part of the Union Carbide Ltd. that resulted in leakage of the MIC gas, causing irreversible damage to the health of not only the persons affected but

even the children who were still to be born.

(20.) The first and foremost question that arises for consideration of this Court is as to whether this matter should be kept pending before this Court or should it be transferred to an appropriate forum, including the High Court, for a more effective and purposeful management of these institutions and to ensure that they satisfactorily serve the purpose of 'public service and benefit' for which they have been constituted. Various applications filed before this Court and reports submitted by the Committees, as afore- referred, are to provide requisite help to the gas victims, as it is not possible for the poor victims to approach this Court for issuance of appropriate directions from time to time. This Court has already ordered providing of basic requirements and constitution of Advisory Committee and the Monitoring Committee. While the management of BMHT was taken over by the Union of India, through Ministry of Health and Family Welfare, the hospital was to run under the direct control of Department of Bio- Technology and Department of Atomic Energy and subsequently, the hospital was also placed under the control of the Ministry.

(21.) In our considered opinion, it will be appropriate that day-to-day directions are passed by a jurisdictional High Court. Such Court would be in a better position to appreciate the requirements of the gas affected victims as well as to exercise better control over the functioning of the said Committees and organizations. Such direct control would improve the functioning of these units and their inter and intra co-ordination resulting in better mutual performance. Therefore, we consider it not only desirable but also in the interest of all concerned that this matter should henceforth be dealt with by the High Court of Madhya Pradesh, Bench at Jabalpur.

(22.) In addition to the directions issued by this Court from time to time, it is also necessary for this Court to pass some further directions to provide clarity and precision and also to ensure effective implementation of the various orders which shall remain an integral part of this wide scheme sought to be enforced for the betterment of the gas victims. As far as the argument that there should be privatization of the research work and the Monitoring Committee should be empowered to have control over all hospitals where the gas victims may go for treatment, including private hospitals and clinics of Bhopal is concerned, the same is without any substance. We are of the considered opinion that it would neither serve the ends of justice nor the interest of the gas victims. On the contrary, there would be multi-differential research without any substantive result. Furthermore, the Monitoring Committee has been constituted by this Court vide its order dated 17th September, 2004, with a definite object and specifically assigned functions and terms of reference. There is no justification, much less any need, for expanding the scope of its functioning or bringing the private hospitals/clinics within the jurisdiction of this Empowered Monitoring Committee. Both these prayers, thus, need to be declined, which we do hereby decline.

(23.) Certainly, there are certain other matters which require attention of this Court. Matters in relation to better co-ordination between the functioning of the authorities, issuance of 'Health Booklets' and 'Smart Cards' to the gas victims, computerization of medical records of the hospitals, taking over of corpus of the BMHT, management of the Trust and certain matters where the State of Madhya

Pradesh has failed to effectively accept the recommendations of the Committees, are some of the matters where we would have to issue certain further directions. From the record before us, it appears that the meeting of the Monitoring Committee was held on 29th March, 2011. In this meeting, the Committee proposed that further powers be vested in it for improving the quality of medical care available to the Bhopal gas victims. The proposal of the Committee reads as under :

"The Monitoring Committee for Medical Rehabilitation of Bhopal Gas Victims proposes to have the following powers to be vested upon it by the Hon'ble Supreme Court for improving the quality of medical care available to the Bhopal Gas Victims.

1. Powers to take up matters on the basis of complaints made by any individual gas victim or representatives of organization of gas victims. Such complaints may be against any individual official of the department of Bhopal Gas Tragedy Relief and Rehabilitation or any employee in the hospital and other health care centers meant for medical care of gas victims or employed by any agency that is working under the Department of Bhopal Gas Tragedy Relief and Rehabilitation.

2. Powers to direct the concerned department of the State government to ensure facilities such as sufficient office space with furniture and furnishings, office staff including one secretary and one doctor to act as coordinating officer and one each of Hindi and English stenographer-cum-typist and one peon and for transportation of members one vehicle with seating capacity for at least five persons.

3. There should be provision of payment of honorarium to members of the committee and also to other persons who are assigned some specific job by the Committee. It is proposed that Rs.1,000/- per meeting or hospital inspection may be granted.

4. Powers in respect of the following matters namely :-

(i) Requisitioning any official document or inspect any official records that the Monitoring Committee finds relevant.

(ii) To ask concern institutions and/or officers for their examination and record their view.

(iii) This Committee should have the facilities of collection of sample of medicine etc as may be required from time to time for detailed examination for this drug controller may be requested for these. Collection samples of medicines, food and other items that may be necessary for assessment of quality of medical care provided at the health care facility. Drug controller may be requested to depute drug inspector for collecting sample etc. to complete the process of inquiry wherever it may be necessary.

5. Powers to recommend penal action against any officer who without any reasonable cause has failed to implement the recommendations of the Monitoring Committee within the time limit prescribed.

6. Powers to award studies to selected agencies (that could include non-government

BRATALINA DHAR (CHOUDHURY) NOTARY, CALCUTTA Regd. No. 067/2022 Govt. of West Bengal

agencies) is may be required from time to time for proper assessment of the quality of care provided at different health care facilities within the jurisdiction of the Monitoring Committee.

7. Powers to engage the services of experts in different fields for assessment of quality of care for implementations of recommendations made by the Monitoring Committee.

8. Powers to call for public hearing for recording and redress of grievances and creating awareness about the activities of the Monitoring Committee among the Bhopal Victims.

The Monitoring Committee for Medical Rehabilitation of Bhopal Gas Victims shall have jurisdiction over all the hospitals, clinic, day care centres and other health care units and centers meant for the medical rehabilitation of the Bhopal Gas Victims including those run by the Department of Bhopal Gas Tragedy Relief and Rehabilitation.

The foregoing power and functions of the Authority shall be subject to the supervision and control of the Hon'ble Supreme Court.

The direction of the Hon'ble Supreme Court dated 10.01.2011 would be taken into consideration by the Monitoring Committee."

(24.) These recommendations of the Monitoring Committee have been answered by the State by filing an independent reply. In this reply, it has been stated that the recommendation with regard to jurisdiction over all hospitals and clinics is contrary to the terms of the order of this Court dated 17th September, 2004. The power to receive complaints from the affected parties has already been permitted. The Monitoring Committee is also empowered to conduct hearing and collect evidence by requisitioning of the records and examination of the officers from various departments and the hospital. The State also has no objection to the Committee collecting the samples of medicines in accordance with the provisions of the Drug and Cosmetics Act, 1940 and the Drug and Cosmetics Rules, 1945. It is also the stand of the State Government that they have implemented most of the directions issued by the Monitoring Committee.

(25.) Another aspect that has been brought to the notice of this Court is that adequate space for office of the Monitoring Committee is not available. This makes it difficult for the public to gain accessibility to the small space that has been provided by the State to the said Committee. This is hampering its functioning in accordance with the orders of this Court.

(26.) It is commonly conceded before us that the corpus money stands completely transferred to the Ministry of Health and Family Welfare, Department of Health Research (for short 'DHR') and they have also taken over the management of BMHRC.

(27.) Thus, it is necessary for us to deal with the various prayers made in the above application and the background leading to the filing of such application in its correct perspective. We have to take a balanced approach which would further the cause of accurate research and better medical care in favour of the gas victims. The Union of India has already passed a resolution directing the ICMR to establish a permanent research centre at Bhopal which, as already noticed, has already been

established in the name of NIREH. This itself is sufficiently indicative of the intent of the Government of India to provide and procure necessary machinery for research related works as well as to further the process of getting much needed scientific manpower and research, which can contribute in research activities relating to gas affected persons.

(28.) The Advisory Committee is performing its advisory function continuously. Definite replies had been filed on behalf of the State of Madhya Pradesh and the Government of India ensuring their full cooperation and complete implementation of the recommendations of these Committees, so as to provide adequate medical facilities to the affected persons and the completion of the research work.

(29.) As already noticed, suggestions made by the Monitoring Committee in its Report dated 29th March, 2011 have been broadly accepted by the State of Madhya Pradesh, except for two of such proposals. The reservation of the State Government on the issue of assistance of non-governmental organisation and experts from outside in assessing the quality of care and research work, appears to be for valid and good reasons. We wish to make it clear that the recommendations of the Empowered Monitoring Committee, as afore-mentioned, shall not be deemed to have been accepted by this Court, except where directions in that behalf have been specifically passed by this Court in the operative part of this order.

(30.) Vide letter dated 12th April, 2012, the ICMR while making a reference to the order of this Court dated 19th July, 2010 had informed that the administrative control of BMHRC, after winding up of BMHT, had been transferred to the DHR, Ministry of Health and Family Welfare, Government of India and all other matters, including administrative, financial and legal, pertaining to BMHRC would be dealt with by the DHR. All documents were also admitted to have been transferred, except the corpus of the Trust. It was suggested that the Corpus of BMHT with accumulated interest along with original documents/receipts be transferred to the Secretary, DHR- cum-DG, ICMR and it was also stated that BMHT had been wound up as per the directions of this Court with effect from 19th July, 2010.

(31.) The BMHT had been constituted under the Deed of Trust dated 11th August, 1998. Since then, it had carried on its activities under the guidance of the Monitoring Committee, the Advisory Committee and as per the orders of this Court. The BMHT was to remain irrevocable for all times and the Trust Deed was to be construed and have effect in accordance with the Indian laws as per the terms and conditions of the Trust.

(32.) In terms of the clauses of this Deed, initially the Trust was to stand possessed of the Trust property and income thereof. This possession was to remain both during and after termination of the said period of eight years for the purposes and objects stated therein, which primarily were related to providing for infrastructure of the hospital and grant of medical aid to the poor, without distinction of race, caste or creed to the gas affected victims.

(33.) The accounts of the Trust had been audited and the chartered accountants submitted their Report dated 15th July, 2011 pointing out no irregularity or objections to the accounts of BMHT. This Report

was submitted to the Members of the Governing Body of the BMHT. In the opinion of the Chartered Accountants, the balance sheet of the state of affairs of BMHT upto 19th July, 2010 along with accounts giving the required information, gave the true and fair view and was in complete conformity with the accounting principles generally accepted in India. Similar remarks have been made in regard to the Income and Expenditure Account wherein an excess of income over expenditure can be seen for the said period.

(34.) It would still be in the interest of BMHT itself, particularly when the management and the corpus of the BMHT have been transferred to the Union of India that the Government agency, besides regularly inspecting the accounts of the BMHT, also gave their final report for the period ending July 2010. The Auditor General of the State of Madhya Pradesh would be the appropriate authority to inspect the accounts of the BMHT regularly even when the management and corpus thereof is transferred to the Union of India.

(35.) Having noticed in detail the factual aspect of this case, the suggestions made by various applicants, recommendations of the expert bodies and keeping in mind the very object for which the present Public Interest Litigation was instituted, we are of the considered view that issuance of certain specific directions are inevitably called for. These orders would be to ensure proper progress and implementation of the 'Relief and Rehabilitation programme' for the penurious gas victims as well as to ensure that the research work is result-oriented and continued with exactitude. We make it clear that these directions shall be in aid of the various orders passed by this Court from time to time in the present petition and not in derogation thereto. In other words, all orders passed by this Court with specific reference to the orders mentioned above, shall be read mutatis mutandis to these directions and shall remain in force. The orders-cum-directions are :

1) This Public Interest Litigation (Writ Petition (Civil) No.50 of 1998) shall stand transferred to the jurisdictional Bench of Madhya Pradesh High Court for better and effective control in this case. All applications filed henceforth shall be dealt with and disposed of by the concerned Bench of the High Court, in line with the various orders passed by this Court, so as to ensure proper functioning of the 'Relief and Rehabilitation Programme', working of the expert bodies and utmost medical care and treatment to the gas victims.

2) We request the Chief Justice of the Madhya Pradesh High Court to ensure that the case is dealt with by a Bench presided over by the Chief Justice himself or a Bench presided over by the senior most Judge of that Court or any other appropriate Bench in accordance with the High Court Rules of that Court or any special legislation governing the subject in that behalf.

3) Since the space already provided appears to be insufficient, the State of Madhya Pradesh is hereby directed to ensure provision of proper and adequate office space for the Monitoring Committee and the Advisory Committee, to perform their functions effectively. The space so provided should be accessible to public so that the gas victims can conveniently approach the Monitoring Committee for redressal of their grievances and difficulties.

4) We also direct the State Government to provide proper infrastructure to the Committees in the independent office space provided to it. The members would also be entitled to receive Rs.1,000/- honorarium for each effective meeting. However, no honorarium shall be payable on a day when the meeting is adjourned or no effective business is performed in the meeting of the Committee.

5) The Monitoring Committee has already been authorised and it is hereby clarified that it would hear the complaints and, if necessary, can even call for the records from the concerned hospital or department, record the statements of Government servants or employees of the hospital and make its recommendations to the Government for taking appropriate steps. If no action is taken by the State Government even upon a reminder thereof, the Committee would be well within its jurisdiction to approach the High Court for appropriate directions. We make it clear that the Empowered Monitoring Committee shall have no penal jurisdiction. It shall discharge its functions strictly within the framework of the powers vested and functions awarded to it under the orders of this Court. Such suggestions of the Monitoring Committee shall be primarily recommendatory and reformative in their nature and content.

6) The Empowered Monitoring Committee shall have complete jurisdiction to oversee the proper functioning of the hospital, i.e., BMHRC as well as other Government hospitals dealing with the gas victims. This jurisdiction shall be limited to the problems relateable to the gas victims and/or the problems arising directly from the incident or even the problems allied thereto. We make it clear that the Empowered Monitoring Committee shall have no jurisdiction over the private hospitals, nursing homes and clinics in Bhopal. However, it does not absolve the State of Madhya Pradesh and the Medical Council of India from discharging its responsibilities towards the gas victims who are being treated in private hospitals, nursing homes or clinics. We do expect these authorities to hear the grievances of the complainants as well as to ensure maintenance of due standards of treatment in these hospitals, nursing homes or clinics.

7) We direct the ICMR as well as NIREH to ensure that the research work is carried on with exactitude and expeditiousness and further to ensure disbursement of its complete benefit to the gas victims. We do not permit the research work to be carried out by any private/non- governmental institution, except the ICMR and NIREH.

8) The Government of India has already resolved to establish the NIREH and carry on the research work, for which it has been provided due infrastructure. Thus, we see no reason why the research work should not progress at the requisite pace in all fields while providing benefits for proper care and treatment of patients in the various hospitals in Bhopal. We further issue a clear direction to the Union of India and the State of Madhya Pradesh to render all assistance, financial or otherwise, to ensure that there is no impediment in the carrying on of the research work by the specialized institutions.

9) The Monitoring Committee must operationalize medical surveillance, computerization of medical information, publication of 'health booklets' etc. The Monitoring Committee shall also ensure that the 'health booklets' and 'smart cards' are provided to each gas victim irrespective of

where such victim is being treated. This direction shall apply to all the hospitals run by the Government or otherwise, in Bhopal. We direct the State Government to provide assistance in all respects to the Empowered Monitoring Committee and take appropriate action against the erring officer/officials in the event of default.

We also direct complete computerization of the medical information in the Government as well as non-government hospital/clinics, which should be completed within a period of three months from today.

10) We are informed that there are large number of vacancies of doctors and supporting staff in the hospitals and allied departments. In the BGTRRD, 80 per cent posts of specialists and 30 per cent of doctors are lying vacant. Some posts are also lying vacant in the Fourth Grade staff. Thus, we direct the concerned authorities to take appropriate steps in all respects not only to fill up these vacancies but also to provide such infrastructure and facilities that the doctors are not compelled to or prefer to resign from BMHRC employment and its various departments, due to inadequate facilities.

11) The Union of India, the State Government and the ICMR should even consider the proposal for providing autonomy to BMHRC and even make it a teaching institution so as to provide attractive terms, studies and job satisfaction therein. This will not only help in providing better opportunities of employment but would better serve the purpose of providing care and treatment of high quality to the gas victims.

12) It is indisputable that huge toxic materials/waste is still lying in and around the factory of Union Carbide Corp. (I) Ltd. in Bhopal. Its very existence is hazardous to health. It needs to be disposed of at the earliest and in a scientific manner. Thus, we direct the Union of India and the State of Madhya Pradesh to take immediate steps for disposal of this toxic waste lying in and around the Union Carbide factory, Bhopal, on the recommendations of the Empowered Monitoring Committee, Advisory Committee and the NIREH within six months from today. The disposal should be strictly in a scientific manner which may cause no further damage to human health and environment in Bhopal. We direct a collective meeting of these organizations to be held along with the Secretary to the Government of India and the Chief Secretary of the State of Madhya Pradesh within one month from today to finalize the entire scheme of disposal of the toxic wastes. The above direction is without prejudice to the appropriate orders or directions being issued by the court of competent jurisdiction.

13) The Advisory Committee, the Monitoring and the NIREH shall continue to file their respective quarterly reports before the High Court of Madhya Pradesh. These reports shall be dealt with and appropriate directions be passed by the High Court in accordance with law.

14) We have already noticed that the management of BMHT has already been vested in the Ministry of Health and Family Welfare, Government of India and the working of BMHT has come to an end. We, thus, direct that the Union of India and the State of Madhya Pradesh shall take appropriate steps to ensure the dissolution of the Trust in accordance with law. The BMHT was initially formed for a period of eight years and then was constituted for an indefinite period under the

orders of this Court. In the facts and circumstances of the case and the subsequent events, we direct that BMHT shall stand dissolved. All concerned to take steps in accordance with law, under which it was created and/or registered.

15) The corpus of BMHT has already been ordered to be transferred to the Government of India and would remain under the control of the Ministry of Health and Family Welfare. If any other steps are required to be taken, they shall immediately be taken by the concerned Ministry. We further issue a clear direction that all the Fixed Deposit Receipts, RBI Bonds, Short Term Deposits and the bank balance of the BMHT, Bhopal, shall stand transferred and be under the control of the said Ministry. If any steps even in this regard are required to be taken, we direct all concerned to take appropriate steps.

16) Accounts of BMHRC and the allied departments, as far as they are subject matter of the present writ petition, shall be audited by the Principal Accountant General (Audit), Madhya Pradesh. It shall also examine the accounts and the audit report dated 15th July, 2011 submitted by M/s. V.K. Verma and Company within three months from today.

17) We also direct the State Government and the Monitoring Committee to evolve a methodology of common referral system amongst the various medical units under the erstwhile BMHRC and BGTRRD to ensure that the gas victims are referred to appropriate centres for proper diagnosis and treatment in terms of the nature and degree of injury suffered by each one of them.

18) We also direct that the Monitoring Committee, with the aid of the Advisory Committee, NIREH and the specialized doctors of BMHRC, issues a standardised protocol for treating each category of ailment that the gas victims may be suffering from. This shall be done expeditiously. It will be highly appreciated if the Committee also prescribes scientific categorization of patients and injuries.

19) Lastly, we direct all concerned in the Union of India, State of Madhya Pradesh, Empowered Monitoring Committee, Advisory Committee, ICMR, NIREH, BMHRC and all other Government or non-government departments/ agencies involved in the implementation of Relief and Rehabilitation Programme and research activity, to carry out the above directions expeditiously and without demur and default. We grant liberty to the applicants and/or the petitioners or any other affected person to move the High Court of Madhya Pradesh, Bench at Jabalpur, in the event of violation, non-compliance or default of any of the above directions or any other orders passed by this Court.

(36.) Before we part with this matter, we consider it our duty to place on record our appreciation for the able assistance rendered by the learned counsel appearing for the respective parties and the functions performed by the various Chairpersons and Committees constituted under the orders of the Court, including the Bhopal Memorial Hospital Trust.

(37.) This writ petition is transferred to the High Court of Madhya Pradesh in the above terms. All applications are disposed of accordingly.

(38.) Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the 'NGT Act') particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule 1 should be instituted and litigated before the National Green Tribunal (for short 'NGT'). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and the NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before the NGT.

This will help in rendering expeditious and specialized justice in the field of environment to all concerned.

(39.) We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.

(40.) Normally, we would have even transferred this case to NGT. However, as it does not involve any complex or other environmental issues and primarily requires administrative supervision for proper execution of the orders of the Courts, we have considered it appropriate to transfer this case to the High Court of Madhya Pradesh. We may notice that the supervisory work concerns itself with regard to the proper functioning of the various Committees, which were constituted under the orders of the Court, to ensure proper running of the hospital established by the government and health care facilities available to the Bhopal Gas victims.

Thus, the matter should be heard and supervisory jurisdiction be exercised by the High Court to better serve the ends of justice.

(41.) The Registry is directed to transmit the records of the Writ Petition No. 50/1998 to the Madhya Pradesh High Court, Bench at Jabalpur, forthwith and also send copies of this order to all concerned quarters of the Union of India, the State of Madhya Pradesh, the Monitoring Committee, the Advisory Committee, ICMR, BMHRC and the NIREH for compliance of these directions without delay and default.

LAWS(SC)-2019-3-153

SUPREME COURT OF INDIA

Coram : Dhananjaya Y Chandrachud J.

Decided On : March 29, 2019

Appeal Type : Civil Appeal No 12251 of 2018, Civil Appeal No 1053 of 2019

Appellant(s) :

Hanuman Laxman Aroskar

Respondent(s) :

UNION OF INDIA

Referred Act(s) :

- Code Of Civil Procedure, 1908, S.100
- Constitution Of India, Art.48A, Art.5, Art.21, Art.14, Art.142
- Environment (Protection) Rules, 1986, R.5
- Environment Protection Act, 1986, S.5
- Forest Act, 1927, S.20, S.4
- Goa, Daman And Diu Preservation Of Trees Act, 1984
- Land Acquisition Act, 1894
- National Greens Tribunal Act, 2010, S.22, S.16(H)
- Wild Life (Protection) Act, 1972

Judgment :

DR DHANANJAYA Y CHANDRACHUD,J

(1.) Index A Introduction B Submissions C Scheme of the 2006 notification and the Guidance manual for Airports

C.1 EIA process

C.2 Guidance manual for airports

D Forests E Ecologically Sensitive Zones (ESZs) F Sampling Points

F.1 Air Quality

F.2 Water Quality

F.3 Noise Quality

F.4 Flora and Fauna

F.5 Felling of Trees

G Public Consultation H Appraisal by the EAC I The appellate jurisdiction of the NGT: the requirement of a merits review J Environmental Rule of Law K Directions A Introduction 1. An appeal was filed before the Principal Bench of the National Green Tribunal1 at New Delhi challenging the grant of an Environmental Clearance2 for the development of a greenfield international airport at Mopa in Goa. The NGT, by its judgment dated 21 August 2018 came to the conclusion that the present case "is not a case where the project compromises with the environment". While affirming the EC, the NGT came to the conclusion that "further safeguards for environmental protection need to be incorporated". The NGT, accordingly, proceeded to formulate additional conditions, while affirming the grant of the EC.

(2.) Village Mopa is situated in North Goa, in close proximity to the inter-state boundary which the state shares with Maharashtra. The site of the proposed airport lies at a distance of 35 kilometres from Panaji, the capital of Goa. The village of Mopa is situated in Pernem taluka. The site for the development of the airport is situated on a tabletop plateau which rises to a height of 150 to 180 meters above mean sea level and is surrounded by steep slopes. The soil is predominantly of a laterite character. The airport which presently serves the region is situated at Dabolim, Goa.

(3.) Since the airport at Dabolim is saturated in terms of its capacity for annual air traffic, the state government initiated a process in 1997 to commission studies and project reports for a proposed international airport, which include the following:

(i) A project report prepared by Engineers and Management Associates, Spain in 1997;

(ii) A preliminary technical feasibility study prepared by the Airports Authority of India in May 1998;

(iii) A final feasibility report for the proposed airport at Goa prepared by the International Civil Aviation Organisation, Montreal, Canada in August 2005;

(iv) A Goa dual airport study prepared by the International Civil Aviation Organisation in August 2007;

(v) A report of a Six Member Committee chaired by the Chief Minister of Goa in 2008 to "look into all aspects relating to construction of an international airport at Mopa, Goa"; and

(vi) A document styled as the "Airport Master Plan" dated 10 February 2012, submitted to the Public Private Partnership3 cell of the Government of Goa by Ammann and Whitney, USA envisaging: "consultancy services for preparation of master plan, preliminary project report, tender document and project management services for the proposed greenfield airport and commercial/industrial and allied development near Mopa in the State of Goa".

(4.) On 1 May 2006, the Government of India communicated its approval for the setting up of an

airport at Mopa and for the closure of the existing airport for civilian operations on the commissioning of the new airport. Subsequently, on 1 July 2010, the earlier decision was modified to allow for the continuation of civilian aircraft operations at Dabolim even after the commissioning of the new airport. The process of land acquisition commenced in 2008 under the Land Acquisition Act , 1894. Originally, the land area anticipated for the development of the project was pegged at 4,500 acres. During the pendency of project appraisals, the area required for the proposed airport stood reduced to 2,271 acres.

(5.) On 14 September 2006, the Government of India in the Ministry of Environment and Forests4 issued a notification5 mandating a prior EC for Category 'A' projects (specified in the Schedule) by the Union Government and for Category 'B' projects at the state level by the State Level Environment Impact Assessment Authority6. Following the 2006 notification, the MoEF placed an EIA Guidance Manual for Airports7 in the public domain in February 2010. The stages of scoping, public consultation and appraisal, leading up to the grant of the EC for the proposed airport are governed by the express terms of the 2006 notification.

(6.) In March 2011, the State of Goa, as the project proponent submitted Form 1 as stipulated in the 2006 notification to the MoEF. On 8 March 2011, the State of Goa applied for Terms of Reference8 to the MoEF. The ToR were finalized on 11 and 12 May 2011 by the Expert Appraisal Committee9 constituted under the 2006 notification. On 1 June 2011, the MoEF issued the ToR for the preparation of the Environmental Impact Assessment10 report. The ToR was valid for a period of two years until 31 May 2013. On 22 November 2012, the Government of Goa revised the project boundary by decreasing the project area from 4,500 acres to 2,271 acres. At its meetings on 28 and 29 January 2013, the EAC recommended an amendment to the ToR as requested by the state government and granted an extension to the validity of the ToR until 31 May 2014. On 19 June 2013, the MoEF communicated its approval for the amendment of the ToR and for the extension of its validity. 4 MoEF, later renamed as MoEFCC in 2014 5 S.O. 1533 ('2006 notification') 6 SEIAA

(7.) Guidance manual

(8.) ToR

(9.) EAC

(10.) EIA 7. On 3 October 2014, the state government floated a tender for the development of a greenfield international airport project on a PPP basis. On 20 October 2014, the Directorate of Civil Aviation, Government of Goa submitted a draft EIA report to the Goa State Pollution Control Board, requesting it to initiate steps to conduct a public hearing. A public hearing was conducted at the project site on 1 February 2015. The EAC, at its meetings held on 9-11 March 2015, recommended an extension of the validity of the ToR for another year ending on 31 May 2015. 8. On 20 May 2015, the State of Goa submitted a final EIA report to the MoEFCC, seeking the grant of an EC for the project. On 29 May 2015, the MoEFCC communicated its approval for extending the validity of the ToR until 31 May 2015. Between 24 and 26 June 2015, the EAC, at its 149th meeting, deliberated on the EIA

report and sought additional information from the project proponent, inter alia, on:

• "10 years data regarding rainfall in the area;

• Drawing of traffic circulation plan for smooth circulation of Traffic in the area;

• Minimum 20% energy conservation measures should be adopted in incorporating provisions for use of LED, star rated AC's, and a revised energy conservation plan to be submitted;

• Measures taken to comply with the CPCB guidelines formulated for noise pollution control in Airport area to be submitted."

In the meantime, a representation was submitted by the Federation of Rainbow Warriors, one of the appellants before this Court to the EAC. The EAC, at its 151st meeting held on 7-9 September 2015, deliberated upon the representation and sought a clarification from the project proponent on the issues raised. On 28 September 2015, the project proponent submitted its reply to the representation. The EAC, at its 152nd meeting on 20 October 2015, sought a further clarification from the project proponent on the reply submitted by the Federation of Rainbow Warriors. At that meeting, the EAC recommended the grant of an EC for the project. 9. On 28 October 2015, the MoEFCC, as the regulatory authority under the 2006 notification for Category 'A' projects, communicated its approval for the grant of an EC. Following the grant of the EC, the tender process which had been initiated on 3 October 2014 was concluded on 26 August 2016. Consequent to the opening of the final bids, a technical scrutiny, evaluation coupled with pre-bid meetings, deliberations on the draft concession agreement and other required steps, GMR Goa International Airport Limited11 was awarded the contract on a revenue sharing of 36.99 percent to the State of Goa. On 8 November 2016, the concession agreement was executed between the Government of Goa and GGIAL for the development and operation of the airport with the concession period of 40 years. Upon financial closure, the three-year period for the construction of the airport commenced on 4 September 2017. The target date for the commissioning of the first phase of the project is 3 September 2020. 10. The grant of the EC was challenged before the Western Zonal Bench of the NGT12 by the Federation of Rainbow Warriors. Hanuman Laxman Aroskar also filed an appeal13 before the Western Zonal Bench of the NGT. These appeals were subsequently renumbered14 before the Principal Bench of the NGT at New Delhi. On 7 November 2017, the NGT issued an ad-interim order restraining the cutting or felling of trees in the area designated as the site of the proposed airport. On 22 November 2017, the order of restraint was modified on the statement of the Advocate

(11.) GGIAL

(12.) Appeal No. 61 of 2015

(13.) Appeal No. 1 of 2016

(14.) Appeal Nos. 5 and 6 of 2018 General of Goa that the state shall not cut or fell any trees, nor allow it to take place without valid permission from the lawful authority for a fortnight thereafter in order to enable the appellants to pursue their remedies. On 6 February 2018, the Deputy Conservator

of Forests granted permission for felling 21,703 trees at the airport site. The appellate authority under the Goa, Daman and Diu Preservation of Trees Act 1984.15 dismissed the appeal on 7 March 2018. 11. On 8 March 2018, the High Court of Judicature at Bombay at its seat at Goa set aside the order of the Deputy Conservator of Forests and remanded the matter to be heard by the Principal Chief Conservator of Forests. On 2 April 2018, the Principal Chief Conservator of Forests stipulated several conditions for the cutting and the felling of trees at the site of the airport including: (i) enumeration of trees; and (ii) the plantation of ten times the number of trees felled. Upon being moved in a Public Interest Litigation16, the High Court by its order dated 25 April 2018 allowed the exercise of enumeration to be carried out. As a result, 54,676 trees were enumerated, including the 1,548 trees which had been felled earlier in terms of the order dated 6 February 2018 of the Deputy Conservator of Forests. On 13 January 2018, the High Court issued final directions in the PIL directing the State of Goa to approach the NGT seeking permission for felling and cutting trees. The state was directed to carry out the cutting and felling of trees only after prior permission was granted by the NGT.

(15.) Act 6 of 1984

(16.) PIL

(17.) 12. A Miscellaneous Application was filed by the State of Goa before the NGT on 2 July 2018 seeking permission for the felling of trees. By its judgment dated 21 August 2018, the NGT disposed of both the appeals and the Miscellaneous Application filed by the State of Goa, upholding the EC and imposing additional conditions to safeguard the environment. This Court has been informed that the felling of trees was initiated on 3 September 2018 and completed on 14 January 2019. Assailing the judgment of the NGT, two appeals have been filed before this Court: one by Hanuman Laxman Aroskar18 and the other by the Federation of Rainbow Warriors19. 13. On 18 January 2019, notice was issued in the appeals and an order of status quo was passed by this Court. The appeals were admitted for hearing and final disposal. B Submissions 14. We have heard Ms Anitha Shenoy, learned counsel appearing on behalf of the appellants. Mr K K Venugopal, learned Attorney General20 for India appeared on behalf of the State of Goa. Mr Atmaram S Nadkarni, learned Additional Solicitor General21 of India appeared on behalf of the MoEFCC. Mr Parag P Tripathi, learned Senior Counsel and Ms Aastha Mehta, learned counsel appeared on behalf of the Concessionaire. 15. Ms Anitha Shenoy, learned counsel appearing on behalf of the appellants urged that the EIA report which is carried out under the terms of the 2006 notification is a tool to evaluate the environmental consequences of a proposed activity. The proposed international airport, being a Category 'A' project, is governed by the second, third and fourth stages of scoping, public consultation and appraisal respectively envisaged under the 2006 notification. In addition to the 2006 notification, the Guidance manual furnishes a significant sign post in the procedure envisaged prior to the grant of an EC. The project proponent is required to submit Form 1 complete with relevant details of the proposed project and the status of the environment. The ToR which is finalized by the EAC is founded on the disclosures which are made by the project proponent. In this backdrop, the principal submissions urged by the appellants before the Court are as follows:

(i) There were material concealments by the project proponent in failing to disclose that as many as 54,676 trees were required to be felled. Form 1, which was submitted by the project proponent, was silent in regard to the number of trees required to be felled. The final EIA report, while dealing with the biological environment in clause 2.1.5 contains the following statement:

"2.1.5 Biological environment Construction phase Impacts (Significance-Medium) The area acquired for proposed airport has only few trees, mainly bushes. These will be cleared during site preparation."

Contrary to the above assertion is the statement contained in the counter affidavit filed by the State of Goa:

"..I say that the permissions which have been obtained for cutting of 54,676 trees have been granted by the concerned authorities in terms of the relevant statutory provisions and after laying down various conditions. I say that the context in which it was mentioned as sparse trees has to be seen from the huge area of the land. The land being 2133 acres, it would proportionally work out to about 25 trees in an area of 1 acre, i.e. 4000 sq. metres., which is one tree in an area of about 160 sq. metres."

The submission urged by the appellants is that the purpose of the EIA report is to form an assessment of the state of environment as it exists in reality. The project proponent is duty bound to make a proper disclosure and the highest level of transparency is required. Accompanying Form 1 is a declaration of the project proponent that the EC will be liable to be rejected in the event of a suppression or mis-statement of material facts. The State of Goa filed a Miscellaneous Application before the NGT seeking permission to fell around 55,000 trees. This is a clear indicator that the original statement by the project proponent in Form 1 as well as in clause 2.1.5 of the EIA report that only a few trees were required to be felled is factually incorrect;

(ii) There was a concealment of Ecologically Sensitive Zones22 in the State of Maharashtra. In terms of the Guidance manual, primary data through measures and full surveys; and secondary data from secondary sources have to be collected. Primary data includes the study area within 10 kilometres radius from the Aerodrome Reference Point23 and covers one season other than the monsoon. Secondary data includes data collected within an aerial distance of 15 kilometres for the parameters which are specifically mentioned in column 9 (III) of Form 1 of the 2006 notification and covers one full year. In the present case, while furnishing details of ESZs falling within an aerial distance of 15 kilometres, the EIA report stipulates that there were none in the State of Maharashtra. The State of Goa has also averred in its counter that there are no ESZs within a radius of 15 kilometres from the ARP and that there are no reserve forests in that radius. After hearings had begun before the NGT, a letter was addressed by the Principal Chief Conservator of Forests on 12 February 2018 to the Director of Civil Aviation stating that a list of reserved forests had been notified under Section 20 of the Indian Forest Act 1927 in Sawantwadi Forest Division of Sindhudurg district in Maharashtra which was obtained from the working plan of Sawantwadi Forest Division (2014-15 to 2023-24). The letter stated that there was no reserved forest notified under Section 20 of the Indian Forest Act 1927 in the Sawantwadi Forest Division, within a radius of 15 kilometres from the ARP. On this aspect, it

was urged on behalf of the appellants that restrictions come into force as soon as a notification under Section 4 of the Indian Forest Act 1927 is issued. Under the Forest Conservation Act 1980, any use of forest land for non-forest purposes requires prior permission of the Union Government, as elaborated in the judgment of this Court in TN Godavarman Thirumalpad v Union of India24 ("Godavarman"). The purpose of elucidating forest areas which fall within an aerial distance of 15 kilometres from the project site is to enable an assessment to be made of the impact of the project on forested areas. Failure to mention forests in the State of Maharashtra was a significant omission in the EIA report;

(iii) Form 1 requires a disclosure of the details of ESZs within an aerial distance of 15 kilometres of the project boundary. The EIA report rests content in stating that Pernem taluka is not included in an ESZ by the High Level Working Group25 constituted under the Chairmanship of Dr K Kasturirangan, Member (Science), Planning Commission26. The project proponent, in response to the 24 (1997) 2 SCC 267 25 HLWG 26 Kasturirangan report disclosures required for areas which are important or sensitive for ecological reasons - wet lands, water sources or other water bodies, costal zone, biospheres, mountains and forests, left the required details blank. In this context, it was urged by the appellants that the purpose of the EIA report was not only to make an assessment of the project site but also of an area surrounding the project site within an aerial distance of 15 kilometres. The HLWG recognized that there were ESZs. In the present case, several villages are situated at a bare distance of 1.5 kilometres from the project site in Maharashtra. Yet, there was no disclosure of this fact and the EIA report merely recorded that Pernem taluka is not included in an ESZ;

(iv) The State of Maharashtra comprises nearly 40 per cent of the study area. Yet, there was no sampling of soil, air and water in Maharashtra. Sampling was carried out in 2011 and 2014-15 in Goa but no sampling site is situated in Maharashtra. In the absence of baseline data generated with regard to environmental parameters in the State of Maharashtra surrounding the project site, the EIA report suffers from a gross deficiency; and

(v) The EIA report is grossly deficient in failing to notice wildlife in the surrounding forests. On the contrary, the appellants have relied on a rapid survey conducted to assess the presence of various mammals in the study area. Moreover, no avi-faunal study was done.

16. Apart from the above submissions, Ms Shenoy has urged that the stages of public consultation and appraisal under the 2006 notification are crucial to the assessment process. As far as the public consultation is concerned, the draft EIA is given before the hearing. During the course of the public consultation, as many as 70 persons spoke, 1,150 representations were received and 1,586 persons are stated to have participated. The range of concerns expressed during the course of the public consultation covered a variety of environmental issues. Amongst them was the presence of perennial springs, the porous nature of the laterite plateau where permeation is a source of drainage for water collection and the existence of cashew plantations on which the livelihood of the local residents depends. Under the 2006 notification, the State Pollution Control Board27 was required to collate the issues raised and the response of the project proponent, before submitting required documents to the EAC. Before the EAC, the project proponent in its presentation, indicated that the objections were

only about employment opportunities. The project proponent clearly failed in its duty to appraise the EAC about serious environmental concerns which were raised during the course of the public consultation. 17. On the aspect of appraisal, it has been urged that the minutes of the EAC meeting recommending the grant of an EC contain, as learned counsel for the appellants submitted, "not a line on the EIA report". The EAC was required to state its reasons for recommending the grant of an EC in terms of the 2006 notification. The reasons must indicate that there was an appraisal by the EAC. In the present case, the recommendations of the EAC are based on vague considerations such as: (i) larger public interest; (ii) non-concealment of the facts by the project proponent; and (iii) the delay which had occurred in the process. The submission urged is that the EAC, as an expert body, has failed to furnish reasons; acted on the basis of considerations which are not germane to the exercise of its functions and failed to apply its mind to relevant considerations including the environmental consequences of the project. 27 SPCB

(18.) Finally, it has been submitted that under Section 16(h) of the National Green Tribunal Act 2010,28 an appellate remedy is provided against the order granting EC. By virtue of the provisions of Section 20 , the NGT is under a mandate to apply the principles of sustainable development, the precautionary principle and the polluter pays principle while passing any order, decision or making the award. An appeal lies before this Court under Section 22 from an order, decision or award of the Tribunal on a substantial question of law as specified in Section 100 of the Code of Civil Procedure, 1908. The NGT, by virtue of its adjudicatory authority under Section 16(h) , is entrusted with a duty to conduct a merits review. The failure to consider materials on a vital issue constitutes a substantial question of law as does the failure to consider vital issues in the proceedings before it. In the present case, the Tribunal has merely relied on the process conducted by the EAC and its recommendations, abdicating its own jurisdiction to conduct a merits review.

(19.) Mr ANS Nadkarni, learned ASG appearing on behalf of the MoEFCC urged that the EIA report, besides dealing with environmental concerns, addresses the impact of the project during both the phases of construction and operation. The EAC is sourced from experts from outside the government. The airport project was conceived in 1996; consultants were appointed and three sites were initially short- listed. It was in 2011 that the ToR were sought by and given to the project proponent by the EAC. The draft EIA was placed for public consultation in 2014 and the final EIA report came to be submitted in 2015. The EAC deferred consideration of the EIA report on three occasions, including among them to consider the representation filed by the Federation of Rainbow Warriors. 28 NGT Act 2010

(20.) Countering the submission of the appellants on the non-disclosure of reserved forests in Form 1, the learned ASG urged the following submissions:

(i) The submission of the appellants was not raised either in the public hearing or in the grounds urged before the NGT, but was addressed in the written submissions filed before the NGT and when a map of the Surveyor General of India was produced;

(ii) Table 2.1.5 of the EIA report states that there is no reserved forest in the State of

Maharashtra while delineating ESZs within 15 kilometres from the project boundary. The report proceeded on the plain meaning of the Indian Forest Act 1927 according to which it is only upon the issuance of a notification under Section 20 that a reserved forest is declared;

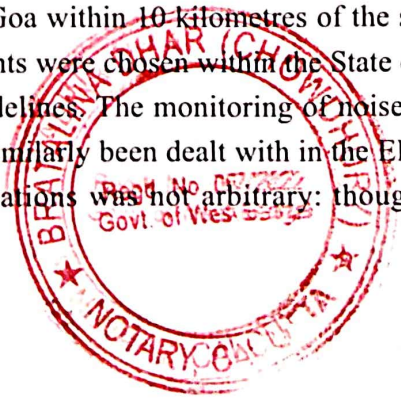
(iii) As a matter of fact, within the area of 15 kilometres from the project boundary in the State of Maharashtra, no reserved forest stands declared under Section 20(2) of the Indian Forest Act 1927;

(iv) The decision in Godavarman (supra) which adopts the ordinary meaning of the expression 'forest' is site specific: the MoEFCC follows it scrupulously even if there is a notification under Section 4 while considering the diversion of forest land for non-forest uses. The decision in Godavarman (supra) has also been explained in the decision of this Court in Construction of Park at Noida near Okhla Bird Sanctuary Anand Arya v Union of India29 ('Okhla Bird Sanctuary');

(v) The Guidance manual notices that environmental facets which have to be considered in relation to airport development are categorized into seven groups: (a) land use; (b) water quality; (c) air quality; (d) noise pollution; (e) 29 2011(1) SCC 744 biological environment; (f) socio-economic changes and occupational health; and (g) solid waste management. Baseline data of these environmental facets is ascertained through primary data extending to one season while secondary data extending to a year is gathered in terms of the Guidance manual and the distance specified in paragraph 4.1; and

(vi) The EIA report records that the surrounding land use of the airport site is predominantly forest land. Land use and land cover specifically for a 10 kilometre radius from the airport site in Maharashtra is also set out in Chapter II of the EIA report, which indicates a reference to the forest area. Annexure IX of the EIA report incorporates land use with land cover maps, both for Goa and Maharashtra in the 10 kilometre radius, which includes forested areas within the State of Maharashtra; Annexure X of the EIA report elucidates surface water bodies both in Maharashtra and in Goa in the radius of 10 kilometres while Annexure XI provides a hydro-geo-morphological map of Goa and Maharashtra. In other words, it was urged that: (i) a legally designated forest under the Indian Forest Act 1927 requires a notification under Section 20 ; however, at the same time, (i?i) the EIA report contains a clear disclosure of the presence of forest areas in both the States of Goa and Maharashtra within a radius of 10 kilometres including areas of dense forest.

(21.) As regards the lack of sampling points in Maharashtra, the learned ASG urged that while all the six sampling points for ambient air quality within 10 kilometres of the study area were in Goa, the air quality which was being tracked was within the stipulated radius and was not confined to the State of Goa. Similarly, in studying the water environment, the ground water quality was measured at four locations in Goa within 10 kilometres of the study area. As regards the monitoring of noise, nine 17 sampling points were chosen within the State of Goa in accordance with the Central Pollution Control Board30 guidelines. The monitoring of noise environment, both at the construction and operational phases, has similarly been dealt with in the EIA report. The learned ASG urged that the choice of the sampling locations was not arbitrary: though the sampling points were not in Maharashtra, data



required was tracked across a radius of 10 kilometres from the ARP which also included the State of Maharashtra.

(22.) Dealing with the submission that no avi-faunal study was carried out, it was urged that the EIA report specifically deals with this aspect in paragraph 4.6 of Chapter II which elucidates that 385 species of plants belonging to 88 plant families were documented and identified in the 10 kilometres radial distance of the proposed project site. The study similarly dealt with faunal diversity. As many as 86 species of birds were observed in the course of the avi-faunal study, which has been elucidated in table 4.17 of the EIA report.

(23.) On the issue of ESZs, the learned ASG urged that there is a specific reference to the Kasturirangan report, under the heading of 'Environmentally Sensitive Zones' in Chapter IV of the EIA report. The EIA report notices that the proposed airport site falls in Pernem taluka of North Goa which has not been included in the ESZs mapped by the HLWG. Annexure XVI of the EIA report is a notification dated 13 November 201331 of the MoEF, which contains a list of villages (state, district and taluk-wise) identified by the HLWG. Paragraph 9 of the 2013 notification which has been issued under Section 5 of the Environment (Protection) Act 1986 specifies the categories of new and expansion projects which are prohibited in the ESZ. The proposed airport 30 CPCB 31 2013 notification project does not fall within the prohibited category. Moreover, since the site of the proposed airport was not included in an ESZ, the prohibition imposed by the 2013 notification had no application.

(24.) The learned ASG has also urged that the report of the HLWG on Western Ghats, submitted on 15 April 2013, stipulates certain development restrictions in ESZs which are as follows:

(i) A complete ban on mining, quarrying and sand mining;

(ii) A complete ban on thermal power projects while hydro power projects may be permitted subjected to conditions;

(iii) A strict prohibition on 'red category' industries;

(iv) A prohibition on building and construction projects of 20,000 square metres;

(v) All other infrastructure and development projects/schemes would be subject to the grant of an EC as Category 'A' projects under the 2006 notification; and

(vi) All development projects within 10 kilometres of the Western Ghats ESZ and requiring ECs shall be regulated in accordance with the 2006 notification. Based on the above recommendation of the HLWG, it was submitted that the proposed airport project, which falls under Category 'A' projects as delineated by the 2006 notification, is regulated by it and does not attract a blanket prohibition.

(25.) The submission that the EAC had failed to apprise the environmental consequences of the project and should have applied its mind to environmental concerns has been countered by relying on

the Minutes of the meetings conducted by the EAC: th

(i) At its 149 meeting held on 26 June 2015, the EAC sought additional information on six distinct aspects upon receiving the presentation by the project proponent;

(ii) At its 151st meeting held on 7-9 September 2015, the EAC took note of a representation filed by the Federation of Rainbow Warriors and deferred further consideration of proposal for the grant of EC. The project proponent was called upon to submit a response to the issues raised in the representation; and

(iii) At its 152nd meeting held on 20 October 2015, the EAC dealt with clarifications issued by the project proponent to the concerns raised by Rainbow Warriors and proceeded to recommend the project for the grant of an EC subject to the stipulated conditions.

On 28 October 2015, the EC was granted by the Union Government. On the basis of the procedure which was followed by the EAC, the following submissions have been urged:

(i) The application of mind by the EAC can be inferred and seen from the record;

(ii) Where considered necessary, the EAC sought information outside the EIA report;

(iii) Having appraised the EIA report, the EAC imposed site specific conditions; and

(iv) The EAC consists of experts in the field and once it has been shown that all relevant considerations were borne in mind, this Court must give due deference to their view.

(26.) Mr K K Venugopal, learned Attorney General, appearing on behalf of the State of Goa, urged the following submissions:

(i) The proposed project for setting up an international airport at Mopa has been on the drawing board for nearly two decades. Successive studies were commissioned to assess the feasibility of the project from diverse sources, both within and outside government. This includes studies by private organisations as well as reports by the Airports Authority of India, the International Civil Aviation Organisation and the six member Committee constituted by the state government under the auspices of the Chief Minister;

(ii) The setting up of an airport is an imminent need, since the existing airport at Dabolim has reached a saturation point and is unable to cater to the growing volume of passenger traffic into Goa;

(iii) Tourism, it has been urged, is a major source of revenue for the state, with the banning of mining activities. A balance must be drawn between development and the environment. A distinction needs to be drawn between overwhelming environmental objections which are not reversible and incapable of amelioration, and cases such as the present where the environmental consequences of project are capable of being countered by suitable measures; and

(iv) Objections primarily based on a defect in procedure should not be sufficient to quash a

project conceived in public interest with vast benefits for the development of the state and for the members of the travelling public. It was urged that there was no major environmental objection and the challenge to the EIA report is not substantial enough to overcome the interests of three million passengers. The expected inflow is anticipated to reach 30 million in 2030.

(27.) On the aspect of the felling of trees, the learned AG submitted that following the order of the Bombay High Court, the Principal Chief Conservator of Forests passed an order on 2 April 2018 providing for: (i) enumeration of all trees covered by the project site; (ii) issuance of tree felling permission by the Deputy Chief Conservator of Forests; and (iii) plantation of ten times the number of trees felled under the supervision of the forest department. Thereafter, when the High Court was moved in a PIL, an order was passed on 13 June 2018 that the grant of permission for felling trees and the actual felling of trees will be carried out only after the NGT granted permission in the pending proceedings. A Miscellaneous Application seeking permission for the felling of trees was instituted before the NGT. In its final order dated 21 August 2018, the NGT disposed of both the appeals as well as the Miscellaneous Application. Moreover, the NGT has specifically dealt with the felling of trees in the course of its distinction.

(28.) On behalf of the concessionaire, Mr Parag P Tripathi, learned Senior Counsel and Ms Astha Mehta, learned counsel urged that upon the grant of an EC, a concession agreement was executed by it with the State of Goa on 8 November 2016. Possession of the project site was handed over on 4 September 2017 and work commenced on 3 March 2018. The indicative capital for Phase 1 of the development is Rs 1,900 crores while the cost of the entire project is likely to be Rs 3,000 crores. The State of Goa has incurred a total expenditure of Rs 240 crores for land acquisition, rehabilitation, road widening, consultancy and other related aspects while the concessionaire has thus far incurred an expenditure of Rs 230 crores as on 18 January 2019. 14.06 per cent of the project work has been completed and a manpower consisting of 1500 persons has been mobilized at the site together with plant and machinery.

(29.) The concessionaire has stated that it has tied up with a consortium of banks and the servicing of the loans is linked to project milestones. As on 18 January 2019, the major works in progress include: (i) site preparation and earth works such as excavation and filling up of runways, taxiways, aprons and parking bays; (ii) PTB- foundations and column works; and (iii) excavation of the foundations for the ATC building. The concessionaire has submitted that apart from the plantation of ten trees for every single tree which has been felled, the forest department identified about 500 trees for transplantation, which process is being carried out. In this background, it has been submitted that the project should not be interdicted. The concessionaire, it has been urged, is committed to the completion of the project which accords with all the approvals that have been received.

(30.) The rival submissions now fall for our consideration. C Scheme of the 2006 notification and the Guidance manual for Airports C. 1 EIA Process

(31.) The objective of the EIA process is to ensure that environmental and developmental concerns are appropriately balanced on the basis of the most accurate information available.

(32.) The Constitution (Forty-second Amendment) Act 1976, which came into force with effect from 3 January 1977, inserted Article 48A to the Constitution which mandates that the State shall endeavor to protect and improve the environment and safeguard the forests and wildlife of the country. Article 51A(g) of the Constitution places a corresponding duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. Following the decisions taken at the United Nations Conference on the Human Environment held at Stockholm32 in June 1972 in which India participated, Parliament enacted the Environment Protection Act 1986 to protect and improve the environment and prevent hazards to human beings, other living creatures, plants and property.

(33.) On 27 January 1994, the MoEF, in exercise of the powers conferred by sub- section (1) and clause (v) of sub-section (2) of Section 3 of the 1986 Act read with clause (d) of sub-rule 3 of rule 5 of the Environment (Protection) Rules, 1986, issued a notification33 imposing restrictions and prohibitions on the expansion and modernisation of any activity or new project unless an EC was granted under the procedure stipulated in the notification. Under the notification, any person undertaking a new project or expanding and modernizing an existing project was required to submit an application to the Secretary, Ministry of Environment and Forests, New Delhi.

(34.) The application, which was to be made in accordance with the Schedule provided in the notification was to be submitted with a project report which included with it an EIA Report, an Environment Management Plan34 and the details of a public hearing which had been carried out in accordance with guidelines issued by the 32 Stockholm Conference 33 S.O. 60(E) ('1994 notification') 34 EMP Central Government from time to time. Limited exceptions to the public hearing process and the submission of an EIA were provided.

(35.) MoEF as the Impact Assessment Agency35 would then evaluate the application and reports submitted. The IAA was empowered to constitute a committee of experts, if necessary, which would have a right of entry into and inspection of the site during or after the commencement of the preparations relating to the project. The IAA would prepare a set of recommendations based on the documents furnished by an applicant within 90 days from the receipt of the documents and a decision would be conveyed to the applicant within 30 days thereafter. The EC granted was valid for a period of five years and a successful applicant was required to submit half-yearly reports to the IAA. Concealing factual data or submitting false or misleading information would make the application liable for rejection and would lead to the cancellation of any EC36 granted on that basis.

(36.) The 1994 notification was amended to reflect the growing protection accorded to the environment.

(37.) On 14 September 2006, MoEF released another notification37 in supersession of the previous notification.

(38.) The 2006 notification directed thus:

".on and from the date of its publication the required construction of new projects or

activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the 35 IAA 36 EC 37 S.O. 1533 ('2006 notification') State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification."

(39.) There are significant differences between the 1994 notification and the 2006 notification. They are:

(i) The 2006 notification categorically states that an EC must be granted by the regulatory authority prior to the commencement of any construction work or preparation of land;

(ii) The 2006 notification divides all projects into Category 'A' and Category 'B' projects. The MoEFCC continues to regulate projects of a large scale (Category 'A'), while the SEIAA regulate comparatively smaller projects (Category 'B');

(iii) Under the 1994 notification, an applicant was required to submit an application along with all reports including the EIA report at the time of the application. Under the 2006 notification, prior to the preparation of the EIA report by the applicant, the concerned authority formulates comprehensive ToR on the basis of the information furnished by the applicant addressing all relevant environmental concerns. This forms the basis for the preparation of the EIA report. A pre-feasibility report must also be submitted with the application unless exempted in the notification. Under the 2006 notification, a draft EIA is first prepared and it is only after the public consultation process that a final EIA report must be prepared addressing all the concerns raised during public consultation;

(iv) The 2006 notification stipulates the creation of a regulatory body at the state level - SEIAA comprising members with expertise in the field of environmental laws which is charged with granting ECs for Category 'B' projects;

(v) Under the 1994 notification, the final approval was granted by the IAA. Under the 2006 notification, though the final regulatory approval is granted by the MoEFCC or the SEIAA, as the case may be, the approval is to be based on the recommendations of the EAC functioning in the MoEFCC or the State Expert Appraisal Committees38 which are constituted for that specific purpose;

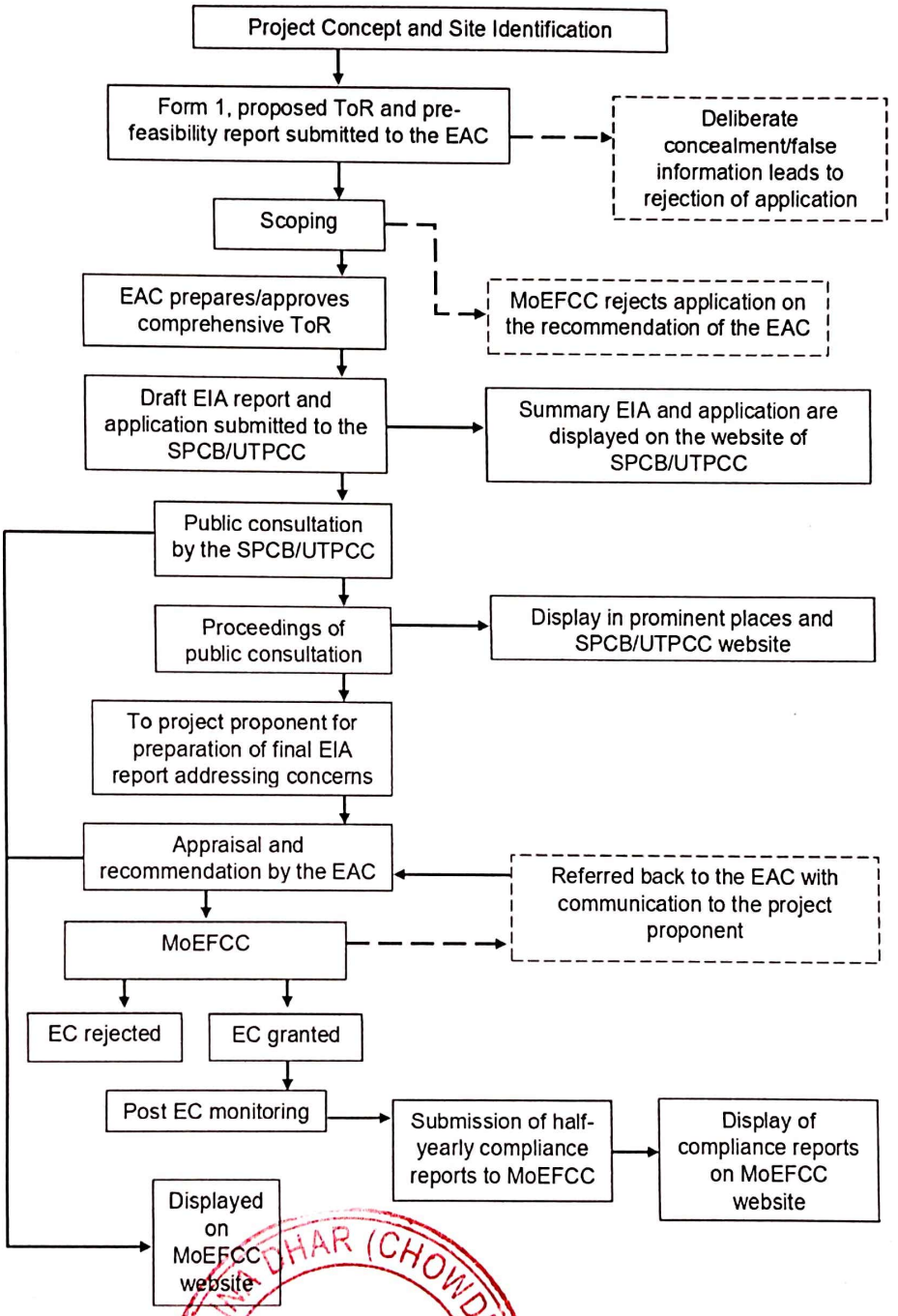
(vi) Under the 2006 notification, the application can be rejected by the regulatory authority on the basis of the recommendation of the EAC or the SEAC, as the case may be, at the preliminary stage itself, prior to public consultation; and

(vii) Under the 1994 notification, the public hearing process was overseen by the State Pollution Control Boards39 which would constitute a public hearing panel for the purpose. Under the 2006 notification, the public consultation process is expanded to include the receipt of written comments from concerned persons. The public hearing component was to be overseen by the SPCBs

or the Union Territory Pollution Control Committee40.

(40.) The salient objective which underlies the 2006 notification is the protection, preservation and continued sustenance of the environment when the execution of new projects or the expansion or modernization of existing projects is envisaged. It imposes certain restrictions and prohibitions based on the potential environmental impact of projects unless prior EC has been granted by the concerned authority. The EC is required before any construction work, or preparation of land (except for 38 SEAC 39 SPCB 40 UTPCC securing the land) is started on the project or activity listed in the Schedule to the notification. The process stipulated under the 2006 notification is illustrated by the following flow-chart:

EIA Process for Category 'A' projects



(41.) Based on the spatial extent of the potential impact and the potential impacts on human health

and natural and man-made resources, the 2006 notification categorizes all projects into Category 'A' and Category 'B' projects. The MoEFCC in the Central Government and the SEIAA at the state level constitute the regulatory authorities for the purposes of the notification. Category 'A' projects require prior environmental clearance from the MoEFCC, based on the recommendation of the EAC constituted by the Central Government for this purpose. Category 'B' projects will require prior environmental clearance from the SEIAA, based on the recommendations of the SEAC. Where no SEIAA or SEAC has been constituted, Category 'B' projects are treated as Category 'A' projects.

(42.) Once a prospective site has been identified by the applicant for the proposed project, all applications seeking an EC shall be made in the prescribed Form 1 and Supplementary Form 1A41, if applicable. The application must be submitted prior to the commencement of any construction activity, or preparation of the land at the site. A pre-feasibility report must also be submitted with the application except in the cases of construction projects in item 8 of the Schedule, for which a conceptual plan must be submitted. The significance of the information furnished by the applicant in Form 1 shall be explored shortly.

(43.) The process to obtain environmental clearance as stipulated by the notification for new projects42 comprises a maximum of four stages, all of which may not apply depending on the specific case stipulated under the notification:

1) Screening;

41 Only for construction projects listed under item 8 of the Schedule 42 Applications for EC for expansions or modernization of existing units as stipulated under the notification are made in Form 1 and shall be considered by the EAC or the SEAC within 60 days, which will decide on the due diligence necessary including the preparation of the EIA and public consultations and the application shall be appraised accordingly for the grant of environmental clearance.

2) Scoping;

3) Public Consultation; and

4) Appraisal.

(44.) SCREENING - This step is restricted only to Category 'B' projects. This stage entails an examination of whether the proposed project or activity requires further environmental studies for the preparation of an EIA for its appraisal prior to the grant of an EC. Those projects requiring an EIA are further categorized as Category 'B1' projects and remaining projects are categorized as Category 'B2' projects. Category 'B2' projects do not require an EIA. The categorization is in accordance with the guidelines issued in this regard by the MoEFCC from time to time.

(45.) SCOPING - At this stage, the EAC or the SEAC, as the case may be, formulates detailed and comprehensive Terms of Reference which address all relevant environmental concerns for the preparation of the EIA. Amongst other things, the information furnished by the applicant in Form 1/Form 1A along with the proposed ToR by the applicant form the basis for the preparation of the

ToR. The ToR must be conveyed to the applicant within 60 days of the receipt of Form 1, failing which, the ToR proposed by the applicant shall be deemed as approved. Significantly, applications for EC may be rejected by the regulatory authority at this stage itself on the recommendation of the EAC or the SEAC, as the case may be, and the decision along with reasons is to be communicated to the applicant within 60 days of receipt of application.

(46.) PUBLIC CONSULTATION - Prior to this stage, a Summary EIA is prepared in the format given in Appendix IIIA on the basis of the ToR furnished to the applicant. This stage involves the process "by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view of taking into account all the material concerns in the project or activity design as appropriate." The detailed procedure is stipulated in Appendix IV. Subject to the exceptions provided in the 2006 notification, all Category 'A' and Category 'B1' projects shall undertake the public consultation process. This stage comprises two components:

(i) A public hearing at the site or in its close proximity - district-wise to be carried out in the manner prescribed in Appendix IV; and

(ii) Procurement of written responses from concerned persons having a plausible stake in the environmental aspects surrounding the project.

(47.) The State Pollution Control Board43 or the Union Territory Pollution Control Committee44 is charged with conducting the public hearing in the manner stipulated in Appendix IV and forwarding the proceedings to the regulatory authority within 45 days of a request from the applicant. The regulatory authority is empowered to engage another public agency or authority to carry out the process within a further period of forty-five days in case the SPCB or the UTPCC does not adhere to the prescribed time period stipulated in the notification. The public hearing should be arranged in a "systematic, time bound and transparent manner" to ensure the "widest possible public participation at the project site(s) or in its close proximity District- wise". The public hearing proceeding is filmed and a copy of the video is submitted to the concerned regulatory authority. 43 SPCB 44 UTPCC

(48.) Within seven days of receiving a written request to initiate the public consultation process, the SPCB or the UTPCC shall place the Summary EIA and the application on their website and invite responses. The concerned authority may also make use of other appropriate media in addition to publication on their website to ensure wide publicity of the project. On a written request from any concerned person, the authority will make available a hard copy of the Draft EIA for inspection at a notified place during office hours till the date of the public hearing. A duty is placed on the authority to forward all responses and comments received at this stage to the applicant through the quickest available means.

(49.) After the public consultation process, the applicant is duty bound to address all the material environmental concerns expressed during the process and make appropriate changes to the Draft EIA and EMP. The applicant shall then forward the final EIA report to the regulatory authority to initiate

the next stage. Alternatively, the applicant may submit a supplementary report to the Summary EIA and EMP.

(50.) APPRAISAL - This stage involves detailed scrutiny by the EAC or the SEAC of all the documents submitted by the applicant for the grant of EC. The appraisal is carried out in a transparent manner in a process to which the applicant shall be invited for furnishing clarification in person or through an authorized representative. Appendix V stipulates that the following documents are also submitted to the regulatory authority:

(i) Final EIA Report

(ii) A copy of the video tape or CD of the public hearing proceedings

(iii) A copy of the final layout plan

(iv) A copy of the project feasibility report.

(51.) The regulatory authority must examine the documents "strictly with reference to the ToR" and communicate any inadequacy to the EAC or the SEAC, as the case may be, within 30 days of receipt of the documents. Within sixty days of the receipt of all the documents, the EAC or the SEAC, as the case may be, shall complete the appraisal process as prescribed in Appendix V. Within the next fifteen days, the EAC or the SEAC shall make categorical recommendations to the concerned regulatory authority to either grant the EC on the stipulated terms and conditions or reject the application, together with reasons. The appraisal of projects which are not required to undergo the public consultation process or the submission of an EIA is to be carried out on the basis of the prescribed application Form 1 or Form 1A, as applicable.

(52.) The MoEFCC or the SEIAA shall thereafter consider the recommendations of the EAC or the SEAC and convey its decision to the applicant within 45 days of receipt of the recommendations. The regulatory authorities shall normally accept the recommendations of the EAC or the SEAC, as the case may be. Where there is a disagreement, the regulatory authority shall ask for a reconsideration of the recommendation within 45 days of the receipt of the recommendations. This decision shall be conveyed to the applicant. The EAC or the SEAC shall then reconsider its recommendation within a further period of 60 days and make its recommendations to the regulatory authority. The regulatory authorities shall then take a decision after considering the views communicated to it and convey the decision to the applicant within the next 30 days.

(53.) If no decision is communicated to the applicant within the time prescribed, the applicant may proceed according to the recommendation of the EAC or the SEAC recommending either the grant or rejection of the EC. The decision of the regulatory authority and the final recommendations of the EAC or the SEAC shall be public documents on the expiry of the prescribed timelines. Deliberate concealment and/or the submission of false or misleading information material to the steps involved in the grant of an EC make the application liable for rejection and cancellation of any EC granted on that basis.

(54.) The 2006 notification embodies the notion that the development agenda of the nation must be carried out in compliance with norms stipulated for the protection of the environment and its complexities. It serves as a balance between development and protection of the environment: there is no trade-off between the two. The protection of the environment is an essential facet of development. It cannot be reduced to a technical formula. The notification demonstrates an increasing awareness of the complexities of the environment and the heightened scrutiny required to ensure its continued sustenance, for today and for generations to come. It embodies a commitment to sustainable development. In laying down a detailed procedure for the grant of an EC, the 2006 notification attempts to bridge the perceived gap between the environment and development.

(55.) It is for this reason that the EAC and SEAC comprise experts in the field of environmental law. The Chairperson of the EAC shall be a person who is an "outstanding and experienced environmental policy expert or expert in management or public administration with wide experience in the relevant development sector". Appendix VI to the 2006 notification stipulates that the EAC and the SEAC comprise 15 members who are either 'experts' or 'professionals'. Experts must have atleast 15 years of relevant experience in the field or an advanced degree (PhD) with 10 years of relevant experience. Where experts are not available, professionals may be appointed to the EAC.

(56.) The EAC and the SEAC are charged with evaluating the information submitted by the applicant in Form 1/Form 1A and preparing comprehensive ToR which guide the preparation of the EIA reports. Given that these bodies comprise experts in the field of environmental law, the recommendation of the EAC or the SEAC to grant EC to an applicant or reject the application is normally accepted by the regulatory authority.

(57.) The regulatory authority at the state level (SEIAA) which is charged with the approval or rejection of an application for EC comprises three members who possess the qualifications in the field as prescribed in Appendix VI. Significantly, sub clause (7) of paragraph 3 of the 2006 notification stipulates that all decisions of the SEIAA shall be unanimous and taken in a meeting. Given the environmental consequences of a proposed project, no difference of opinion is provided for in the grant of an EC at the state level. It is further mandated that the project management submit half-yearly compliance reports to the regulatory authority in respect of the EC and conditions.

(58.) Under the 2006 notification, the process of obtaining an EC commences from the production of the information stipulated in Form 1/Form 1A. Crucial information regarding the particulars of the proposed project is sought to enable the EAC or the SEAC to prepare comprehensive ToR which the applicant is required to address during the course of the preparation of the EIA. Some of the information sought is produced thus:

(i) Construction, operation or decommissioning of the project involving actions, which will cause physical changes in the locality (topography, land use, changes in water bodies, etc.);

(ii) Use of natural resources for construction or operation of the Project (such as land, water, materials or energy, especially any resources which are non- renewable or in short supply);

(iii) Use, storage, transport, handling or production of substances or materials, which could be harmful to human health or the environment or raise concerns about the actual or perceived risks to human health;

(iv) Production of solid wastes during construction, operation or decommissioning;

(v) Release of pollutants or any hazardous, toxic or noxious substances to air;

(vi) Generation of noise and vibration, and emissions of light and heat;

(vii) Risks of contamination of land or water from releases of pollutants into the ground or into sewers, surface waters, groundwater, coastal waters or the sea;

(viii) Risk of accidents during construction or operation of the project, which could affect human health or the environment; and

(ix) Environment sensitivity which includes, amongst other things, the furnishing of the following details:

a. Areas protected under international and national legislation;

b. Ecologically sensitive areas; and

c. Areas used by protected, important or sensitive species of flora or fauna.

(59.) Under the 2006 notification, the EC process is based on the information provided by the applicant in Form 1. That the information provided in Form 1 is crucial can be borne from the following circumstances:

(i) The EAC or the SEAC, as the case may be, formulates comprehensive ToRs on the basis of the information furnished in Form 1 which addresses all possible environmental concerns. It is on the basis of the ToR, that further studies and the EIA are carried out on the impact of the proposed project on the environment;

(ii) At the appraisal stage, the regulatory authority examines the documents submitted by the applicant "strictly with reference to the ToR" and communicates any inadequacy to the EAC or the SEAC;

(iii) Category B2 projects, which do not require scoping, are evaluated by the SEAC on the basis of the information furnished by the applicant in Form 1 alone;

(iv) The appraisal of all projects or activities which are not required to undergo public consultation, or submit an EIA report, shall be carried out on the basis of the prescribed application Form 1 and Form 1A as applicable; and

(v) An application for extension of the validity of the EC for certain projects is to be made by submitting a revised Form 1 within the validity period.

(60.) The information provided in Form 1 serves as a base upon which the process stipulated under

the 2006 notification rests. An applicant is required to provide all material information stipulated in the form to enable the authorities to formulate comprehensive ToR and enable concerned persons to provide comments and representations at the public consultation stage. The depth of information sought in Form 1 is to enable the authorities to evaluate all possible impacts of the proposed project and provide the applicant an opportunity to address these concerns in the subsequent study. Missing or misleading information in Form 1 significantly impedes the functioning of the authorities and the process stipulated under the notification. For 37 this reason, any application made or EC granted on the basis of a defective Form 1 is liable to be rejected immediately. Clause (vi) of paragraph 8 of the notification provides thus:

"Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

C.2 Guidance manual for airports

(61.) In February 2010, the MoEF brought out its Guidance manual for airports. The need for a sector specific manual arose because the 2006 notification "re-engineered the entire EC process" under its earlier avatar of 1994 and new sectors were incorporated into the ambit of the EC process. The 2006 notification noted that as many as 39 developmental sectors require prior ECs. Sector specific manuals, it was hoped, would bring about standardisation in the quality of appraisal and obviate potential inconsistencies between the work performed by SEIAAs and SEACs. Chapter IV of the Guidance manual, which is titled 'Description of Environment', prescribes the study area for carrying out an EIA:

"Primary data through measurements and field surveys; and secondary data from secondary sources are to be collected in the study area within 10 km radius from Aerodrome Reference Point (ARP). Primary data should cover one season other than monsoon and secondary data is to cover one full year. The basis for selection of these criteria is that the aircraft gains a height of 1000ft in this area below which noise and air pollution are generated maximum during its take off stage. Secondary data should be collected within 15 km aerial distance for the parameters as specifically mentioned at column 9 (III) of Form I of EIA Notification, 2006. Details of secondary data, the method of collection of secondary data, should be furnished. Similarly, the proposed locations of monitoring stations of water, air, soil and noise etc should be shown on the study area map."

(62.) Baseline data of environmental parameters which may be affected by airport activities is collected through primary monitoring in the study area and through secondary sources. The baseline data facilitates the evaluation of the predicted impact on environmental attributes in the study area by using scientific analysis and EIA methodologies. The object is to also aid in the preparation of an EMP that would outline measures for improving environmental quality as well as retain the scope for future

expansions in a sustainable manner. The Guidance manual specifically requires collection of baseline data on the following: (i) land environment; (ii) water environment; (iii) air environment; (iv) noise environment; (v) biological environment; (iv) socio-economic environment and (vii) solid waste. The importance of collecting data on land environment is emphasised in the following extract:

"The terrain and hill slope, general slope and elevation of the area, the flow direction of streams and rivers, the water bodies and wet lands and the vegetation which together describe the physiography of the land, will control the drainage pattern in the region. Land farms, terrain, may get affected due to construction of airport. It may require large scale quarrying, dredging and reclamation, which may cause changes in the topography. This in turn may affect the drainage pattern of the land / terrain. Baseline data pertaining to existing land at the proposed project area including the description of terrain hill slopes, terrain features, slope and elevation are to be collected. Study of land use pattern, habitation, cropping pattern, forest cover, environmentally sensitive places etc., is to be undertaken by employing remote sensing techniques and ground truthing. Ecological features of forest area; agricultural land; grazing land; wildlife sanctuary land and national parks; migratory routes of fauna; water bodies; and drainage pattern including the orders of the drain and water sheds are to be described. Settlements in the study area may be delineated with respect to ARP on the site map. High rise buildings, industrial areas and zones, slaughter houses and other features of flight safety importance may also be marked on the map. Secondary data from Central Water Board GOI; State ground water department, State Irrigation Department is to be obtained. Geomorphology of the region is to be clearly delineated. Study of land use patterns, habitation, cropping pattern, and forest cover data is undertaken. Information on the location of water bodies, drainage, forests, surface travel routes with respect to the project site is obtained within the study area and plotted on a map. This map will show the natural slopes and the drainage patterns, which give a guideline while planning the drains in the airport project. The drains help in discharge of storm water from the airport to avoid flooding and water logging in the project area."

The study of the water environment is necessitated for the following reasons:

"Ground water quality is important, as change in its chemical parameters will affect the water quality. Airport activities during construction / operation may have impact on ground water quality. Due to airport construction existing low areas may be reclaimed with dredged spoil. The pollutants from dredged spoil are likely to enter into the ground water. This is likely to increase sedimentation of pollutants in airport area, which may migrate in time to the neighbouring ground water. Also runoff from solid waste if any, may percolate into the ground and may contaminate the ground water. Hence, they need to be studied through primary surveys and secondary sources. Monitoring locations are to be finalized as per CPCB norms which can represent the baseline conditions."

On the aspect of air environment, the Guidance manual emphasises that:

"Aircraft engines produce emissions that are similar to other emissions resulting from any oil-based fuel combustion. These, like any exhaust emissions, can affect local air quality at ground

level. It is emissions from aircraft below 1,000ft, above the ground (typically around 3km from departure or, for arrivals, around 6km from touchdown) that are chiefly involved in influencing local air quality. These emissions disperse with the wind and blend with emissions from other sources such as emissions from domestic sources, emissions from industries and from surface transport."

Local emissions attributed to aircraft operations at airports include Oxides of Nitrogen45, Carbon Monoxide46, Hydrocarbons47, Sulphur Dioxide48, and particulate matter (PM 10 and PM 2.5).

(63.) The Guidance manual brings into focus the biological environment. It acknowledges that airport operations may alter eco-systems, threaten endangered species and disturb the movement and breeding patterns of wildlife. In this context, the collection of baseline data on sensitive habitats and wild or endangered species in the project area is contemplated. The Guidance manual stipulates thus:

"Airport operations may cause change in local ecosystems, threaten endangered species, and disturb movements and breeding patterns of local wildlife. Airports are located within a variety of settings (both urban and rural), which support habitats and species of their own, some of which will have direct interaction with those located on the airport and vice versa. Some local areas will also be designated for their nature conservation value. The biological environment of the airport should hence be seen as an integral component of the wider landscape scale ecological network. To accomplish this,

• Baseline data from field observations for various terrestrial and aquatic systems are to be generated.

• Comparison of the data with authentic past records to understand changes is undertaken.

• Environmental components like land, water, flora and fauna are characterized and,

• The impact of airport development on vegetation structure in and around project site is to be understood.

Data on sensitive habitats, wild or endangered species in the project area also is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences. Wildlife symbolizes the functioning efficiency of the entire eco system. Just as wild flora needs special treatment for preservation and growth, wild fauna as well deserves specific conservatory pursuits for posterity. As per Wildlife Act (1972), the various wild animals are enlisted in the schedules of wildlife Act based on the intensity of threat to 45 NOx 46 CO 47 HC 48 SO 2 them as rare, endangered, threatened, vulnerable etc. Primary data on survey of the wild animals and birds in the study area is collected and identified with the classification into various schedules taken from secondary data."

(64.) It is in the backdrop of the 2006 notification and the Guidance manual that it becomes necessary to assess the process that was adopted in the present case and its outcome. D Forests

(65.) The essence of the challenge to the EC is two-fold: (i) Form 1, which was filed by the project proponent, did not contain any disclosure of the name or identity of forests within an aerial distance of

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15 kilometres. Item 2 under the heading of 'Environmental Sensitivity' requires a clear disclosure of "areas which are important or sensitive for ecological reasons - wet lands, water sources or other water bodies, coastal zone, biospheres, mountains and forests"; and (ii) Table 2.1 of Chapter II of the EIA report delineates ESZs within an aerial distance 15 kilometres from the project boundary. For the State of Goa, the table indicates the presence of forests but not of protected forests. For the State of Maharashtra, Table 2.1 indicates that there were neither reserved nor protected forests within 15 kilometres from the project boundary.

(66.) The learned ASG made an earnest effort to support this by urging that a reserved forest is one which is notified under Section 20 of the Indian Forest Act 1927. The issuance of a notification under Section 4 , it was urged, is indicative only of an intent and a forest stands reserved under sub-section (2) of Section 20 only upon the issuance of a notification. The ASG submitted that the reliance which the appellants placed on the Survey of India map is misplaced as, in the absence of a notification under Section 20 , a forest cannot be regarded as being reserved. In the alternative, it was urged that as a matter of fact, the EIA report (save and except Table 2.1) takes into account the forest cover surrounding the site and within the prescribed aerial distance. As regards Form 1, the learned ASG submitted that at that stage, the project proponent may not be expected to be aware of all the features of the environment and hence the omission to refer to forests and other areas which are sensitive ecologically should be discountenanced.

(67.) We cannot gloss over the patent and abject failure of the State of Goa as the project proponent in failing to disclose wet lands, water sources, water bodies, biospheres, mountains and forests within an aerial distance of 15 kilometres as required by Form 1. The disclosure in Form 1 constitutes the very foundation of the process which is initiated on the basis of the information supplied by the project proponent. Following the disclosure in Form 1, ToR are formulated, and this leads to the preparation of the EIA report. A duty is cast upon the project proponent to make a full, complete and candid disclosure of all aspects bearing upon the environment in the area of study. The project proponent cannot profess an ignorance about the environment in the study area. The project proponent is bound by the highest duty of transparency and rectitude in making the disclosures in Form 1.

(68.) There can be no manner of doubt that Form 1 is an important ingredient in the entire process envisaged under the 2006 notification. Hence, clause (vi) of para 8 of the 2006 notification provides that deliberate concealment or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection and lead to the cancellation of a prior EC granted on that basis. The declaration which is required of the project proponent is to a similar effect.

(69.) We are unable to accept the submission that the disclosure required was of reserved forests comprehended within a notification under sub-section (2) of Section 20 of the Indian Forest Act 1927. Form 1 requires a disclosure of areas which are important or sensitive for ecological reasons, among them, being "forests". The expression "forests" is used without reference to a statutory or artificial definition and must hence incorporate a meaning which bears upon the ordinary description of the

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term. The expression "forests", means a forest as commonly understood, without reference to a notification under the Indian Forest Act 1927 or any other statutory enactment. Such an interpretation will subserve the purpose of an EIA. The purpose is to ensure that all relevant facets of the environment are noticed, that base-lines are documented, and that the potential impact of a project or activity on the environment is assessed. Forests are forests without reference to recognition in a statutory form devised for a specific purpose.

(70.) The need to construe the expression 'forests' in a broad and generic sense was emphasized in the decision of this Court in Godavarman (supra). This Court held:

"4. The Forest (Conservation) Act , 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word 'forest' must be understood according to its dictionary meaning. This description covers all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest (Conservation) Act. The term 'forest land', occurring in Section 2 , will not only include 'forest' as understood in the dictionary sense, but also any area recorded as forest in the government record irrespective of the ownership."

(71.) Subsequently, in Okhla Bird Sanctuary (supra), this Court explained the position:

"Almost all the orders and judgments of this Court defining "forest" and "forest land" for the purpose of the FC Act were rendered in the context of mining or illegal felling of trees for timber or illegal removal of other forest produce or the protection of national parks and wildlife sanctuaries."

In Okhla Bird Sanctuary (supra), trees had been planted with an intent to set up an urban park. This Court found it "inconceivable" that those trees would turn into a forest "within a span of ten to twelve years and the land, which was for agricultural use would be converted into forest land". Hence, the decision was based on a factually distinguishable situation. The decision emphasises that in construing the term forest, courts must have due regard both to text and to context.

(72.) In the context of the 2006 notification and the underlying purpose of facilitating an EIA report, the expression 'forests' must receive its ordinary and natural connotation. The effort must not be o overlook and destroy forests but to notice and protect them.

(73.) Having said this, we must delve into the alternate submission that the EIA report does, as a matter of fact, consider the prevalence of forested areas both in Goa and in Maharashtra within the study area. In this context, para 2 of the Executive Summary introducing the EIA report acknowledges that the "surrounding land use of the airport site is predominantly forest land". In the context of land environment, the EIA report records that "forest is the predominant land use in the study area". The EIA report acknowledges that territories in Maharashtra fall within one kilometre from the proposed greenfield airport. Villages falling in Goa and Maharashtra within the 10 kilometre radius were considered for assessment. Para 2.3.1 of Chapter II deals with land use. Land use/land cover statistics

for a 10 kilometre radius from the Mopa airport in the State of Maharashtra have been tabulated. Among them is the following:

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Sr.No.	Description	Area (Sq.M.)	Area (Ha)
5	Forest-Tree Clad Area- Dense	66341913.84	6634.19

Similarly para 4.4 in Chapter IV, which is titled 'description of environment statistically', provides thus:

"Surrounding land use of the airport site is predominantly forest land. The northern and eastern side of site is reserve forest areas, whereas western side is barren and village cultivated land. The existing land use plan is attached as Annexure IX."

(74.) The presence of a "diverse system set as dense and open forest, cultivated lands, sand dune vegetation, wet lands and human habitation" is noticed in para 4.6 dealing with the biological environment. Annexure IX to the EIA report provides land use/land cover maps for both Goa and Maharashtra in the study area. The maps in Annexure IX cover forested areas in Maharashtra and Goa within an aerial boundary of 10 kilometres from the project site. Annexure XI contains the hydro-geo-morphological maps for Goa and Maharashtra.

(75.) Though the EIA report adverts to the presence of forests within the study area in Goa and Maharashtra, we have to consider whether this by itself warrants the grant of an EC inspite of the fact that there has been a patent failure on part of the project proponent to make a transparent and candid disclosure of material facts in Form 1. Information furnished in Form 1 is crucial to the preparation of the ToR by the EAC. The EAC comprises of experts. It is constituted, among other reasons, for the specific purpose of assessing the information furnished in Form 1 and preparing comprehensive ToR. There is an intrinsic link between the disclosures in Form 1 which constitute the basis for formulating the ToR and between the ambit of the EIA report required by the ToR and the final EIA report. The ToR guide the preparation of the EIA report. A failure to disclose information in Form 1 impairs the functioning of the EAC in the preparation of the ToR and in consequence, leads to preparation of a deficient EIA report.

(76.) The submission that the EIA report deals with the prevalence of forested areas and warrants the grant of an EC cannot be accepted for yet another reason. EACs and SEACs are conferred with the authority to reject applications for the grant of an EC at the stage of scoping itself, prior to the preparation of the ToR. The application may be rejected on the basis of the information furnished by the project proponent in Form 1. Claiming an EC as a matter of right merely because the EIA report has assessed parameters that were omitted in Form 1, bypasses the authority of the EAC and SEAC to reject an application at the preliminary stage and cannot be countenanced. The regulatory authority is

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required to assess the final documents submitted to it "strictly with reference to the ToR" and communicate to the EAC and SEAC any discrepancies between the EIA report and the ToR. A deficient ToR on the basis of the non-disclosure of material information in Form 1 impedes this process.

(77.) The failure on part of a project proponent to disclose material information in Form 1 as stipulated under the 2006 notification has a cascading effect on the salient objective which underlies the 2006 notification. The 2006 notification represents an independent code with the avowed objective of balancing the development agenda with the protection of the environment. An applicant cannot claim an EC, under the 2006 notification, based on substantial or proportionate compliance with the terms stipulated in the notification. The terms of the notification lay down strict standards that must be complied with by an applicant seeking an EC for a proposed project. The burden of establishing environmental compliance rests on a project proponent who intends to bring about a change in the existing state of the environment. Whereas, in the present case, there has thus been a patent failure on part of the project proponent to make mandatory disclosures stipulated in Form 1 under the 2006 notification, that must have consequences in law. There can be no gambles with the environment: a 'heads I win, tails you lose' approach is simply unacceptable; unacceptable if we are to preserve environmental governance under the rule of law. E Ecologically Sensitive Zones (ESZs)

(78.) The substratum of the case of the appellants is based on the following extract contained in the EIA report:

"Ecologically Sensitive Zones Ministry of Environment and Forests had constituted a High Level Working Group (HLWG) under the Chairmanship of Dr. K. Kasturirangan, Member (Science), Planning Commission vide office order dated 17.08.2012 to study the preservation of the ecology, environmental integrity and holistic development of the Western Ghats in view of their rich and unique biodiversity. HLWG submitted its report to the MoEF on 15th April 2013. HLWG identified 37% of natural landscape having high biological richness, low forest fragmentation, low population density and containing Protected Areas, World Heritage Sites and Tiger and Elephant corridors as an Ecologically Sensitive Areas (ESA). The present proposed airport site is falling under Pernem taluka of North Goa district. The Pernem taluka has not been included in the Ecologically Sensitive Areas submitted by HLWG. The MoEF order on ESA is attached as Annexure XVI."

According to Ms Shenoy, the EIA report notices the Kasturirangan report submitted on 15 April 2013. The submission is that the EIA report has conveniently glossed over the areas adverted to by the Kasturirangan report as an ESZ. This includes those areas which fall within the study area on the ground that Pernem taluka, where the project site is situated, has not been included as an ESZ. In this context, reliance is placed on a draft notification dated 3 October 2018 issued by MoEFCC under which the Union Government has proposed to notify 56,825 square metres spread across six states - Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu as the Western Ghats ESZ. The preamble to the draft notification adverts to the steps taken by the Union Government between 2013 and 2016 in pursuance of the report of the HLWG. This includes draft notifications issued on 10

March 2014 and 4 September 2015. The draft notification dated 3 October 2018 emphasises the importance of the Western Ghats as a global biodiversity hot spot:

"WHEREAS, Western Ghats is an important geological landform on the fringe of the west coast of India and it is the origin of Godavari, Krishna, Cauvery and a number of other rivers and extends over a distance of approximately 1500 kilometres from Tapti river in the north to Kanyakumari in the south with an average elevation of more than 600 metres and traverses through six States namely, Gujarat, Maharashtra, Goa, Karnataka, Kerala and Tamil Nadu; AND WHEREAS, Western Ghats is a global biodiversity hotspot and a treasure trove of biological diversity and it harbours many endemic species of flowering plants, endemic fishes, amphibians, reptiles, birds, mammals and invertebrates and it is also an important center of evolution of economically important domesticated plant species such as pepper, cardamom, cinnamom, mango and jackfruit; AND WHEREAS, Western Ghats has many unique habitats which are home to a variety of endemic species of flora and fauna such as Myristica swamps, the flat-topped lateritic plateaus, the Sholas and wetland and riverine Eco-systems; AND WHEREAS, UNESCO has included certain identified parts of Western Ghats in the UNESCO World Natural Heritage List because Western Ghats is a Centre of origin of many species as also home for rich endemic biodiversity and hence a cradle for biological evolution;"

(79.) Ms Shenoy has emphasised that sixteen villages in the Taluka of Sawantwadi of the district of Sindhudurg which fall within the study area have been mapped as an ESZ in the annexure to the draft notification dated 3 October 2018. They are:

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"State	District	Taluk	Village Name
Maharashtra	Sindhudurg	Sawantwadi	Tamboli
Maharashtra	Sindhudurg	Sawantwadi	Kumbhavade
Maharashtra	Sindhudurg	Sawantwadi	Degave
Maharashtra	Sindhudurg	Sawantwadi	Banda
Maharashtra	Sindhudurg	Sawantwadi	Padve Majgaon
Maharashtra	Sindhudurg	Sawantwadi	Ronapal
Maharashtra	Sindhudurg	Sawantwadi	Padve
Maharashtra	Sindhudurg	Sawantwadi	Dandeli
Maharashtra	Sindhudurg	Sawantwadi	Madura
Maharashtra	Sindhudurg	Sawantwadi	Dingne
Maharashtra	Sindhudurg	Sawantwadi	Aros
Maharashtra	Sindhudurg	Sawantwadi	Galel
Maharashtra	Sindhudurg	Sawantwadi	Kondure
Maharashtra	Sindhudurg	Sawantwadi	Satarda
Maharashtra	Sindhudurg	Sawantwadi	Dongarpal
Maharashtra	Sindhudurg	Sawantwadi	Sateli Tarf Soundal"

(80.) A comparison of the above villages with Annexure IX of the EIA report indicates that several of the above villages which have been mapped as ESZs in the draft notification fall within the 10 kilometre buffer from the project site. Hence, the submission of Ms Shenoy merits a close analysis.

(81.) The EIA report has rested content with the observation that Pernem taluka, where the project site is situated, is not an ESZ. That is not sufficient or adequate, since the purpose of the EIA report is to make an assessment of ESZs which fall within the study area. Mr Nadkarni's response to the above

submission is that: (i) neither the Mopa plateau nor Pernem taluka constitute a part of the Western Ghats; (ii) the HLWG chaired by Dr Kasturirangan recommended a prohibition of specified activities while for other activities, the 2006 notification was required to be followed; (iii) the EIA report, while considering the project, has also adverted to the Kasturirangan report; and (iv) infrastructure projects except in the prohibited category are permissible, subject to an EIA.

(82.) The report of the HLWG dated 15 April 2013 recommends that there should be a complete ban on mining, quarrying and sand mining activity in the ESZ. Similarly, it recommends that no thermal power project should be allowed in ESZs and that all 'red category' industries should be strictly banned. Building and construction projects of 20,000 square metres and above should not be allowed. However, all other infrastructure and development projects, which have been recommended, should be subject to the grant of ECs under Category 'A' projects of the 2006 notification.

(83.) The Union Government issued a notification on 13 November 2013 in pursuance of Section 5 of the Environment (Protection) Act 1986 to the effect that from the date of the issuance of those directions, no pending case or fresh case shall be considered by the EACs/MOEF or SEACs/SEIAAs covering the following industries:

(a) Mining, quarrying and sand mining;

(b) Thermal power plants;

(c) Building and construction projects of 20,000 square metres area and above;

(d) Township and area development projects with an area of 50 hectares and above and/or with a built-up area of 1,50,000 square metres and above; and

(e) 'Red category' industries.

(84.) The submission of the ASG is that there is no prohibition on setting up a Category 'A' project in an ESZ. An infrastructure project such as an airport does not fall within the range of prohibited activities. What is necessary is that the project must be assessed in terms of the 2006 notification.

(85.) The glaring deficiency which emerges from the EIA report is its failure to notice the existence of ESZs within a buffer distance of 10 kilometres of the project site. On one hand, the EIA report takes note of the HLWG report dated 15 April 2013. But, on the other hand, the EIA report ignores the existence of ESZs within the study area on the ground that the project site is not situated in an ESZ. That, as we have seen, can never be accepted as an adequate response. The purpose and object of the EIA report is to map areas, understand their vulnerabilities, and conduct a study on a scientific basis of the impact of the proposed project on an ecologically sensitive terrain. The EIA report fails to meet a classical requirement of administrative law: to take into account a relevant consideration namely, that within the study area which has to be considered, there is the presence of ESZs.

(86.) In deducing the impact of a proposed activity on an ESZ, it is not sufficient to take recourse to a generic assessment of a proposed activity on the ecology of the study area. The EIA report must factor

in those specific features which make an area ecologically sensitive. These would encompass all aspects of environmental concern which render the area ecologically sensitive. This would include wet lands, water sources, water bodies, costal zones, biospheres, mountains and forests. The vulnerabilities of each of them must be studied as distinctive components together with a holistic analysis of their existence in a chain of bio-diversity. Where an area is ecologically sensitive because of the presence of flora or fauna requiring protection, that must be specifically adverted to and studied. The deficiency of the EIA report emanates from its failure to notice that the purpose of the study was not only to determine whether the project site is ecologically sensitive. Confining itself to this aspect, the EIA report failed to consider a crucial and relevant consideration. F Sampling Points

(87.) The submission of the appellants is that the Guidance manual requires the collection of primary data through measures and field studies in the study area within 10 kilometres radius from the ARP. Secondary data has to be collected within a 15 kilometres aerial distance for the parameters mentioned in Colum 9(III) of Form 1 of the 2006 notification. In the present case, it was urged that not a single sampling station with reference to any of the parameters is situated in Maharashtra. As a result, no sampling sites for any of the parameters fall within 40% of the study area. Consequently, no primary data collection was done despite the carrying out of two samples in 2011 and 2014 respectively. In response to this submission, it has been urged that all sampling points were based on para 4.1 of the Guidance manual. As a result, it was submitted that areas within Goa and Maharashtra were studied along with impact studies. In order to assess the submission, it is necessary to refer to relevant aspects of the EIA report: F.1 Air quality

(88.) In order to study the ambient air quality in terms of Suspended Particulate Matter, Respirable Particulate Matter, SO2, NOX, CO and HC, Ambient Air Quality monitoring stations were set up at six locations. They are at Sinechaadvin, Katwal, Mopa village, Pernem, Nagzor and Patradevi. All are in Goa. The location at Patradevi was on the border shared by Goa with Maharashtra. The study area extended to a radial distance of 10 kilometres from the ARP. We accept the submission of the ASG that they would hence cover areas falling within both Goa and Maharashtra. Para 4.1.2 of Chapter IV of the EIA report sets out the baseline data collected at the monitoring stations. Since the entire study area within a radius of 10 kilometres was considered for monitoring air quality, we accept the submission that the location of the sampling points within Goa did not preclude the monitoring of air quality within the study area. F.2 Water quality

(89.) Para 4.2 of the EIA report states that ground water quality was measured at four locations: Mopa village, Pernem, Dargal and Patradevi marked within 10 kilometres of the study area. The surface water quality was measured at three locations: Chapora river, Tiraikol river and Nala near Mopa village within 10 kilometres of the study area. The impact assessment is contained in the EIA report. The Mopa plateau is at a height of 155 metres above mean sea level and water from the plateau flows down to the rivers in the State of Goa. The laterite plateau is an important source of drainage by providing natural channels for water. The impact of a greenfield airport on the closing of natural channels which feed the water bodies has not been scientifically mapped or studied. F.3 Noise quality

(90.) While monitoring the noise quality, the EIA report covered a radius of 10 kilometres. In order to obtain baseline data of noise quality, nine monitoring stations were chosen in the study area. While it is true that all nine locations were situated in the State of Goa, one (Patradevi) was situated on the border shared between Goa and Maharashtra. The EIA report contains an impact study and the study area covered includes both the states. F.4 Flora and fauna

(91.) The EIA report indicates that the area surrounding the site for the proposed airport has dense forests49. These total up to nearly 6,634.19 hectares50. Ms Shenoy has urged that it is impossible that the fauna found by the project proponent through both primary sampling and secondary sources was only limited to animals such as: domestic dog, cat and cattle, common house mouse, rat and mongoose, jackal and the three striped palm squirrel. This, in her submission, is a clear indication that the EIA report is faulty and clearly incorrect.

(92.) While dealing with the above submissions, it is necessary to note that the Guidance manual contains a specific reference to the collection of data of sensitive 49 See for instance para 2.0 of the executive summary and para 2.3.1 of Chapter I 50 See Para 2.3.1, Chapter II habitats and wild/endangered species in the project area. The Guidance manual stipulates thus:

"Data on sensitive habitats, wild or endangered species in the project area also is to be collected from Zoological Survey of India (ZSI), Botanical Survey of India (BSI), Wildlife Institute of India (WII) and Ministry of Earth Sciences. Wildlife symbolizes the functioning efficiency of the entire eco system. Just as wild flora needs special treatment for preservation and growth, wild fauna as well deserves specific conservatory pursuits for posterity".

(93.) The grievance is that no data has been collected from the State of Maharashtra and all secondary data collected by the project proponent related only to the State of Goa. There is substance in the submission which has been urged on behalf of the appellant. A reading of the counter affidavit filed by the State of Goa would seem to support the appellant's submission. It is stated:

"I say that several recognised publications and research papers were referred to in order to verify and assess the data collected, to name a few of the publications:

i. Birds of Goa by Heinz Lainer and Rahul Alvares;

ii. The Goan Jungle Book by Nirmal Kulkarni;

iii. A photographic guide to Butterflies of Goa by Parag Ragnekar;

iv. Flora of Goa, Diu, Daman, Dadra and Nagarhaveli (Vol.1) by RS Rao;

v. Flora of Goa, Diu, Daman, Dadra and Nagarhaveli (Vol.2) by RS Rao; vi. Red data book published by Botanical Survey of India; vii. Study materials published in Goa ENVIS Centre were also referred."

The appellant, on the other hand, has sought to rely upon several independent studies including the following:

"a. A rapid survey to assess mammal presence at Barazan Plateau, Mopa, Goa, India conducted by Girish Punjabi (Wildlife Biologist) and Atul S Borker (Full Member of IUCN/SSC Otter Specialist Group) that Schedule I species such as gaur, leopard and Indian Pangolin; Schedule II species such as giant squirrel, common palm civet; Schedule III species such as sambar, wild pig and Schedule IV species such as Indian hare, Indian porcupine. The report also mentions the presence of the Sawantwadi - Dodamarg wildlife corridor within the 10 km proposed project site.

b. Report on one day survey conducted to find evidence of Otter presence at Mopa, Goa conducted by Atul Borker (Full Member of IUCN/SSC Otter Specialist Group) that found that a perennial stream on the plateau had presence of the smooth coated otter, that falls within Schedule II of the Wildlife (Protection) Act, 1972.

c. Report on two days survey to find evidence of plant and bird species at Mopa Plateau conducted by Aparna Watve (Ecologist) and Sanjay Thakur (Wildlife Biologist) that found Schedule I species such as the Indian peafowl and the Dipcadi concanese which is critically endangered. The study clearly mentions that the EIA study is entire deficit as it does not accurately consider the flora and fauna of the area as well as the number of trees to be cut."

(94.) We find that the collection of both primary and secondary data of fauna in the EIA report was perfunctory. The primary study is not based on data collected from acknowledged sources such as the Zoological Survey of India, Wildlife Institute of India and Ministry of Earth Sciences as required under the Guidance manual. Similarly, as regard avi-faunal studies, the EIA report lists 385 plant species in table 4.15 of Chapter IV, titled 'Description on Environment'. It also states that 86 species of birds were observed during the survey in the 10 kilometre study area from the proposed site. Column 9 (III) of Form 1 refers to "areas" in the following terms:

"areas which are used by protected, important or sensitive species of flora or fauna for breeding, foraging, nesting, resting, over wintering or migration".

The above column was left blank by the project proponent in Form 1. According to the Guidance manual, secondary data has to be collected within an aerial distance of 15 kilometres for the parameters specifically specified in column 9(III) of Form 1 of the 2006 notification. This was evidently not done. A careful avi-faunal study was necessary, having due regard to the fact that the proposed project is an airport site. Bearing in mind the profile of airport operations, foraging or nesting by bird species in and around the airport must not be discarded. It must be accepted that in a project involving the setting up of an airport, the EIA report must deal with the impact of the airport on birds and likewise the impact of birds on aircraft operations. F.5 Felling of Trees

(95.) Para 2.1.5 of the executive summary to the EIA report deals with the biological environment. Para 2.1.5 stipulates thus:

"The area required for proposed airport has only few trees, mainly bushes. These will be cleared during site preparation." (Emphasis supplied) Similarly, Chapter II which deals with project description specifies in para 2.3.1 that "vegetation and trees are sparse at the site". That the trees which

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were required to be felled were far from "few" is evident from the reply filed by the State of Goa in the present proceedings where it has been stated that permissions were granted for the felling of 54,676 trees. The EIA report ignored them. The submission in the EIA report that there were only sparse trees is sought to be explained by the state from the perspective of the large area of the land proposed for the project. It is sought to be explained that since the total area is 2,133 acres, the number of trees would proportionately work out to about 25 trees in an area of one acre (about one tree in an area of 160 square metres). In terms of the order passed by the Bombay High Court in the PIL, to which we have adverted earlier, the Principal Chief Conservator of Forests, Goa passed an order on 2 April 2018 providing for (i) the enumeration of 58 PART F all trees; (ii) exploring the possibility of transplanting existing trees which could be safely transplanted into ground areas; (iii) issuance of tree cutting permission by the Deputy Conservator of Forests; and (iv) planting of ten times the number of trees felled by the concessionaire under the supervision of the Forest Department.

(96.) On 6 February 2018, the Deputy Conservator of Forests had granted permission for felling of 21,703 trees. Following the dismissal of an appeal under Section 15 of the Goa, Daman and Diu Preservation of Trees Act 1984 filed by the Federation of Rainbow Warriors, a Writ Petition was filed before the Bombay High Court51. The High Court set aside the order of the Deputy Conservator of Forests and remanded the proceedings to the Principal Chief Conservator who passed the order which has been noted above. Following the order of the Principal Chief Conservator, 54,676 trees were enumerated. The competent authority granted permission for the felling of trees thereafter on the following dates: (i) 1,422 trees by an order dated 20 April 2018; (ii) 18,408 trees by an order dated 24 July 2018 and (iii) 33,298 trees by an order dated 1 October 2018. Following this exercise, the felling of trees was completed on 18 January 2019. The Bombay High Court having directed that the order of the Principal Chief Conservator of Forests shall be subject to the specific permission of the NGT in the pending proceedings, a Miscellaneous Application was moved before the NGT. While disposing of the main appeal, the NGT also disposed of the Miscellaneous Application and under the head of 'Biological Environment', the following directions have been issued:

"E. Biological Environment 1. Efforts be made to transplant the trees to other locations in the same vicinity by using appropriate mechanical devices which are available these days.

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2. Efforts be made to plant indigenous species which are tall in size rather than small saplings.

3. Concerns have been raised by appellants with regard to plant species 'Dipcadi concanense' which has been claimed to be a threatened plant. This claim of the appellants have been negated by the respondent by producing a documentation of Botanical Survey of India, Western Regional Centre, Pune, Maharashtra titled as "A Note on Occurrence and Distribution of Dipcadi concanense". By invoking Precautionary Principle, we direct the Project Proponent to draw up a Conservancy by Plan/Scheme for 'Dipcadi concanense' in collaboration with Forest Department, State of Goa and Botanical Survey of India and ensure its implementation."

(97.) We express our serious displeasure with the manner in which the EIA report made an attempt to gloss over the existence of trees. The EIA report prevaricated by recording that the area required for the proposed airport has only a few trees, mostly bushes. The EIA report states that vegetation and trees are sparse at the site. A photograph and a google map image are put forth as illustrations in figure 2.3 of Chapter II. To realise later that the project involved the felling of 54,676 trees is indicative of the cavalier approach to the issue and a process of fact finding which is parsimonious with the truth. Post facto explanations are inadequate to deal with a failure of due process in the field of environmental governance. The State of Goa would have us gloss over the felling of trees by submitting that 54,676 trees over a project area of 2,133 acres averages out to 25 trees per acre or one tree over an area of 160 square metres. This is a fallacious approach to the issue. Mathematical averages cannot displace factual data about the actual number of trees which were affected by the project. The EIA report ought to have scrutinized the number of trees, their nature and longevity. Issues such as the extent to which the trees or some of them were capable of being transplanted had to be considered in the EIA report. The location of the trees is also significant. In a given case, if the trees appear in clusters or in a dense formation in segments of the project site, it would be necessary to determine whether felling all of them was necessary for the project to be implemented.

(98.) In the written submissions which have been filed by the State of Goa, it has been submitted that of the 54,676 tees which were felled: (i) 32,193 trees representing 59% had a girth of 30 to 50 centimeters; (ii) 19,903 trees representing 36% had a girth of 50 to 100 centimeters; and (iii) 'only 2,580 trees' had a girth exceeding 100 centimeters. The Goa, Daman and Diu Preservation of Trees Act, 1984 defines the expression "tree" in Section 2(j) in the following terms:

> "S. 2(j) - "tree" means any woody plant whose branches spring from and are supported upon the trunk or the body and whose trunk or body is not less than ten centimeters in diameter at a height of one meter from the ground level and includes coconut palm."

This definition has been highlighted to indicate that it incorporates a stringent meaning of the expression 'trees'. The point, however, is simple: there was a glaring omission of the factual existence of as many as 54,676 trees in the EIA report. For project proponents, the environment may not possess a human voice. But the purpose of prescribing an EIA report is precisely to undertake a baseline study on all aspects of the environment and to anticipate the impact of a projected activity on the environment. Ignoring any component of the environment amounts to a serious dereliction of duty which detracts from the rule of law in matters of environmental governance.

(99.) The order of the Principal Chief Conservator of Forests mandating transplantation, where possible, and the plantation of ten trees for every tree felled provides a measure of rectification. But there is a reason why issues pertaining to vegetational cover must be taken seriously in the EIA process. The formula of planting a set number of trees for every existing tree felled must be alive to the fact that the survival of new plantations is replete with uncertainty. The survival of transplanted trees is equally a matter of uncertainty. Though the development of infrastructure may necessitate the felling of trees, the process stipulated under the 2006 notification must be transparent, candid and

robust. A regulatory regime for environmental governance is based on the hypothesis that all stakeholders will act with rectitude. Hiding significant components of the environment from scrutiny is not an acceptable modality to secure project approvals. There was a serious lacuna in regard to disclosures and appraisal on this aspect of the controversy. G Public Consultation

(100.) The importance of public consultation is underscored by the 2006 notification. Public consultation, as it states, is "the process by which the concerns of local affected persons and others who have a plausible stake in the environmental impacts of the project or activity are ascertained with a view to take into account all the material concerns in the project or activity design as appropriate". This postulates two elements. They have both, an intrinsic and an instrumental character. The intrinsic character of public consultation is that there is a value in seeking the views of those in the local area as well as beyond, who have a plausible stake in the project or activity. Public consultation is a process which is designed to hear the voices of those communities which would be affected by the activity. They may be affected in terms of the air which they breathe, the water which they drink or use to irrigate their lands, the disruption of local habitats, and the denudation of environmental eco-systems which define their existence and sustain their livelihoods.

(101.) Public consultation involves a process of confidence building by giving an important role to those who have a plausible stake. It also recognizes that apart from the knowledge which is provided by science and technology, local communities have an innate knowledge of the environment. The knowledge of local communities is transmitted by aural and visual traditions through generations. By recognizing that they are significant stakeholders, the consultation process seeks to preserve participation as an important facet of governance based on the rule of law. Participation protects the intrinsic value of inclusion.

(102.) The 2006 notification postulates:

(i) A public hearing at or in close proximity to the project site to ascertain the views of "locally affected persons";

(ii) Obtaining written responses from "other concerned" individuals having a "plausible stake" in the environmental aspects of the project or the activity;

(iii) The duty of the SPCB to conduct hearings and to forward the proceedings to the regulatory authority within the stipulated time;

(iv) Placing on the website of the Pollution Control Board a summary of the EIA report in the prescribed format and the making available of the draft EIA report by the regulatory authority on a written request by any person concerned, for inspection;

(v) The duty of the applicant to address all material concerns expressed during the process of public consultation;

(vi) The making of appropriate changes in the draft EIA and EMP; and

(vii) The submission of the final EIA report by the applicant to the regulatory authority for appraisal.

Each of these features is crucial to the success of a public consultation process. Public consultation cannot be reduced to a mere incantation or a procedural formality which has to be completed to move on to the next stage. Underlying public consultation is the important constitutional value that decisions which affect the lives of individuals must, in a system of democratic governance, factor in their concerns which have been expressed after obtaining full knowledge of a project and its potential environmental effects.

(103.) Apart from the intrinsic value of public consultation, it serves an instrumental function as well. The purpose of ascertaining the views of stakeholders, is to account for all the material concerns in the design of the proposed project or activity. For this reason, the process of public consultation involves several important stages. The Pollution Control Board is under a mandate to forward the proceedings to the regulatory authority. The project proponent must address all material environmental concerns and make appropriate changes in the draft EIA and EMP. The project proponent may even submit a supplementary report to the draft EIA. Each of these elements is crucial to the design features of the 2006 notification. A breach will render the process vulnerable to challenge on the ground that: (i) significant environmental concerns have not been taken into account; (ii) there was an absence of a full disclosure when the EIA report was put up for consultation; and (iii) concerns which have been expressed by persons affected by the project have not been adequately dealt with or analysed.

(104.) The public consultation was held on 1 February 2015 at Mopa. Nearly 70 persons spoke on the occasion and 1,586 persons signed the attendance sheet. 1,150 representations were received. Some of the environmental concerns expressed during the public hearing are catalogued below:

(i) Mopa plateau has multiple water sheds and the discharge of water goes down to the rivers;

(ii) Nearly forty springs would be affected along with flora and fauna;

(iii) The public hearing had been conducted in an area where the land was barren and with no plantation;

(iv) The impact on river Chapora, which is within a 10 kilometre radius from the project, has not been adequately analysed;

(v) Mopa plateau has a natural mechanism for ground water recharge;

(vi) Protection of the Western Ghats is necessary, particularly with the view to not disturb flora and fauna;

(vii) The EIA report has not been made available to the affected areas and Gram Panchayats in the buffer zone;

(viii) Local plantations would be affected;

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(ix) The number of trees to be felled by the project proponent has not been specified in the EIA report;

(x) The Dodamarg Wildlife Sanctuary had been 'sanitized' by the High Court;

(xi) Forest clearance had not been obtained;

(xii) The sacred groves of the area have not been described, including the Barazan which will be lost;

(xiii) The slopes sustain cashew plantations with nearly forty lakh cashew trees resulting in an annual income of Rs Fifty crores; and

(xiv) No study has been carried out in the 10 kilometre radius falling in Maharashtra.

(105.) These concerns are at the forefront of the debate in the present case. What is significant, is the manner in which they were projected before the EAC at its 149th meeting on 26 June 2015 where the project proponent made a presentation. The Minutes of the meeting recorded the following observations of the project proponent:

"x. Public Hearing was conducted on 01.02.2015 at Simechen Adven, Mopa, Goa. The major issues raised during public hearing and responses sought from the project proponent related to employment opportunities."

(Emphasis supplied) On the basis of a factual analysis, Ms Shenoy has submitted that only seven out of the 68 objections dealt with the issue of employment. Evidently, the project proponent failed to address the other significant concerns in the manner which is required by the 2006 notification.

(106.) In Utkarsh Mandal v Union of India52, the Delhi High Court has succinctly summarized the duty of the EAC to apply its mind to the objections raised in the course of public hearings:

"It is that body that has to apply its collective mind to the objections and not merely the MoEF which has to consider such objections at the second stage. We therefore hold that in the context of the EIA Notification dated 14th September 2006 and the mandatory requirement of holding public hearings to invite objections it is the duty of the EAC, to whom the task of evaluating such objections has been delegated, to indicate in its decision the fact that such objections, and the response thereto of the project proponent, were considered and the reasons why any or all of such objections were accepted or negatived. The failure to give such reasons would render the decision vulnerable to attack on the ground of being vitiated due to non-application of mind to relevant materials and therefore arbitrary."

52 (2009) SCC Online Del 3836

(107.) Crucial objections and environmental concerns which were raised during the consultative process were reduced to a single issue by the project proponent before the EAC: the need for employment opportunities. The project proponent failed in its duty to inform the EAC. The record

does not indicate a critical appraisal or analysis by the EAC. The EAC was duty bound to apply its mind to the environmental concerns raised by stakeholders. The duty of the project proponent to place fairly all the environmental concerns raised during the public hearing is the crucial link in the appraisal by the EAC. The Minutes of the meeting indicate that there was no fair and complete disclosure of the objections which were raised during the public hearing before the EAC. There is evidently a failure in the process of applying and implementing the norms laid down in the 2006 notification in this regard. H Appraisal by the EAC

(108.) Appraisal by the EAC is structured and defined by the 2006 notification. The process of appraisal is defined to mean "a detailed scrutiny" by the EAC of the application and other documents like the EIA report and the outcome of the public consultation, including the public hearing proceedings, submitted by the applicant to the regulatory authority for the grant of an EC. The EAC is under a mandate to conduct the process of appraisal in "a transparent manner". On the conclusion of these proceedings, the EAC has to make "categorical recommendations" to the regulatory authority either for: (i) the grant of a prior environmental clearance on stipulated terms and conditions; or (ii) the rejection of the application. The recommendations made by the EAC to the regulatory authority must be based on "reasons". th

(109.) The EAC, at its 149 meeting held on 26 June 2015, considered the EIA report and sought a clarification from the project proponent on the following six aspects:

"i. There is a need to superimpose the layout plan showing the drainage pattern including natural drainage, construction in the area on superimposed map showing clear topography of the region;

ii. 10 year data regarding rain fall in the area;

iii. Justification on sustainability of existing traffic and transportation arrangements especially at inter-section points of the approach road to the airport needs to be submitted;

iv. A traffic circulation plan needs to be evolved for smooth running of traffic in the area;

v. Measures taken to comply with the CPCB guidelines formulated for noise pollution control in airport areas to be submitted; and

vi. Minimum 20% energy conservation measures should be adopted incorporating provisions for use of LED, star rated ACs etc. Revised Energy Conservation Plan to be submitted."

(110.) A representation was received from the Federation of Rainbow Warriors, consequent to which the consideration was deferred and the project-proponent was requested to submit a "point-wise reply to the issues raised" in the representation. The EAC, at its 152nd meeting held on 20 October 2015, observed that the project proponent had provided "pointwise clarifications to the concerns raised by the 'NGO'". The EAC noted thus:

- "The EIA report has been updated by the PP after taking into account the issues raised in

the public hearing and the same has been put in public domain.

• The project is outside the ESZ delineated by the Dr Kasturirangan Committee and TERI.

• The project envisages construction of rain water harvesting pits within the plot area, which would contribute to ground water recharge. Hence, the objection of NGO in this regard does not hold.

• The biological data in respect of flora and fauna was collected by the functional area experts of M/s Engineers India Limited and not by M/s Pragati Labs stationed at Goa during November, 2014 to January, 2015 for collection of ambient air quality, noise, water quality, soil, socio-economics."

Following the above statement, the EAC recommended the grant of an EC subject to certain conditions. Para 3.1.2 of the Minutes of the EAC is as follows:

"The Committee noted the peculiar circumstances of the case and the difficulties in land acquisition which led to delay in preparation of the EIA report, and the larger public interest involved.

Keeping in view the fact that the project proponent has not concealed facts and circumstances of the case and the project is in the public interest, the Ministry may take an appropriate view on the objection that the public hearing could not have been held, in the absence of valid TOR, though the validity has been extended twice and regularized subsequently. The Committee also noted that the public hearing was attended by about 3000 people and hence there is substantive and active public participation as required under the law for public consultation. The PP further provided their reply to the rebuttal by the said NGO on various issues. The EAC, after deliberations, recommended the project for grant of EC subject to the above and the following:-

• The project proponent shall ensure availability of adequate land at the junction of the Mopa Airport road and Mumbai/Goa NH 17 for traffic circulation/ management and to provide for all the traffic interchanges and proposed clover.

• The approach and exit roads to the airport would be approved from the NHAI and should be according to IRC norms.

• A perusal of the Topo sheet superimposed on the runway area indicates that the extreme end of the runway is covering the drainage area partly. The drainage area which is under the runway needs to be channelized. The area between the parallel taxi way and run way needs to be handled carefully to drain the water from the area in the outfall."

(111.) The above explanation must be assessed with reference to the norm that the EAC is required to submit reasons for its recommendation. The above extract indicates that the EAC has adverted to the following circumstances:

(i) The "peculiar circumstances" of the case;

(ii) The difficulties in land acquisition which led to a delay in the preparation of the EIA report;

(iii) The "larger public interest" involved;

(iv) The project proponent had not concealed facts and circumstances of the case;

(v) The project is in the public interest; and

(vi) The project proponent had provided a reply to the rebuttal by Rainbow Warriors on various issues.

This analysis of the EIA report is, to say the least, sketchy and perfunctory and discloses an abdication of its functions by the EAC. The requirement that the EAC must record reasons, besides being mandatory under the 2006 notification, is of significance for two reasons:

(i) The EAC makes a recommendation to the regulatory authority in terms of the 2006 notification. The regulatory authority has to consider the recommendation and convey its decision to the project proponent. The regulatory authority, as para 8(ii) provides, shall normally accept the recommendations of the EAC. Where it disagrees, it would request reconsideration, stating the reasons for its disagreement. In turn, the EAC will consider the observations of the regulatory authority and furnish its views within a stipulated period; and

(ii) The grant of an EC is subject to an appeal before the NGT under Section 16 of the NGT Act 2010. The reasons furnished by the EAC for its recommendation are a basic link in the ultimate decision of the regulatory authority. They constitute substantive material which will be considered by the Tribunal when it considers a challenge to the grant of an EC.

(112.) What, then, do the reasons which have been furnished by the EAC tell us? The EAC relies on the "peculiar circumstances of the case" as the basis of its recommendation. What the peculiar circumstances are, is left for pure guess work or surmise. The EAC refers to the delay in acquisition proceedings, a larger public interest and the fact that the project proponent "has not concealed facts and circumstances". Each one of the reasons which has weighed with the EAC betrays a lack of comprehension of the true nature of its function under the 2006 notification. The EAC has failed to consider relevant circumstances bearing on the environmental impact of the project and has instead considered circumstances extraneous to its function. That the project proponent, according to the EAC, has not concealed facts and circumstances is not reason enough to warrant a grant of an EC. Moreover, even this hypothesis (as we have seen earlier) is incorrect. There is no analysis of the EIA report. The EAC has failed to answer to the call to its expertise.

(113.) Clause (vi) of para 8 of the 2006 notification stipulates thus:

"(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis.

Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

Deliberate concealment or the submission of false or misleading information or data material for screening, scoping, appraisal or decision on the application makes it liable for rejection. That the project proponent must submit all information and data without concealing relevant features is a basic hypothesis and expectation of the 2006 notification. The EAC has, in the brief reasons which are contained in para 3.1.2, not applied its mind at all to the environmental concerns raised in relation to the project nor do its reasons indicate an appraisal of those concerns by evaluating the impact of the project.

(114.) The EAC is an expert body. It must speak in the manner of an expert. Its remit is to apply itself to every relevant aspect of the project bearing upon the environment. It is not bound by the analysis which is conducted in the EIA report. It is duty bound to analyse the EIA report. Where it finds it deficient it can adopt such modalities which, in its expert decision-making capacity, are required. The reasons which are furnished by the EAC constitute a live link between its processes and the outomce of its adjudicatory function. In the absence of cogent reasons, the process by its very nature, together with the outcome stands vitiated.

(115.) Mr ANS Nadkarni, learned ASG urged that the EAC had, in its 149th meeting, sought additional information on six issues. Subsequently, at its 151st meeting, it deferred consideration upon the representation filed by the Federation of Rainbow Warriors and at its 152nd meeting, it analysed the response of the project proponent to the representation. Hence, the EAC must be deemed to have applied its mind. This approach is completely flawed. At its 149th meeting, the EAC specifically called for a clarification on six issues. The next meeting was deferred. The Minutes of the 152nd meeting contain no assessment of whether the clarifications which were sought by the EAC had been replied to its satisfaction by the project proponent. The objection to the modalities adopted by the EAC, however, are more fundamental. The Minutes of the 152nd meeting indicate that the EAC primarily, if not exclusively, dealt with the "pointwise clarifications" of the project proponent to the representation by the Federation of Rainbow Warriors. Dealing with a representation is not exhaustive of the function of the EAC. Arguably, if no representation was received, or if a representation submitted by an individual objector is found to be incorrect, that by itself is no ground to recommend an EC.

(116.) The EAC, as an expert body, has to scrutinize all relevant aspects of the project or activity proposed, including its impact on the environment. In taking that decision, the EIA report is an input for its analysis. The scrutiny and appraisal has to be undertaken by the EAC as an expert body and its reasons must reflect that this has been done. As the Minutes indicate, the non-application of mind by the EAC is evident with reference to the presence of 15 ESZs in the study area. The EAC notes that the project is outside the ESZ delineated by the Kasturirangan Committee. In the absence of a critical analysis, the EAC failed in discharging its duties under the 2006 notification. The recommendations of

the EAC furnish a guide for the MoEFCC. Indeed, the 2006 notification stipulates that the recommendations of the EAC would normally be accepted. Consequently, a failure of due process before the EAC, as in the present case, must lead to the invalidation of the EC. I The appellate jurisdiction of the NGT: the requirement of a merits review

(117.) The NGT is entrusted with appellate jurisdiction under Section 16 of the NGT Act 2010. Section 16(h) provides thus:

"16 Tribunal to have appellate jurisdiction. - Any person aggrieved by,- . (h) an order made, on or after the commencement of the National Green Tribunal Act , 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act , 1986 (29 of 1986);"

Section 20 mandates that the Tribunal shall, while passing any order, decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle. Several decisions of this Court have given meaning to these principles53.

(118.) The decision of the NGT indicates that several significant submissions were urged before it. The entire analysis by the NGT is contained in one paragraph of its judgment dated 21 August 2018 which is extracted below:

"27. We find that the Expert Appraisal Committee had before it point wise reply of the project proponent which we have already quoted above. Therein delay in land acquisition process and collection of fresh baseline data are mentioned. It is also mentioned that data for Maharashtra was also considered. Other issues duly explained are hydro-geological features and data with regard to flora and fauna, socio- economic profile, topography, vegetation, observance of due procedure in public hearing, relevance of study with regard to ecosensitive areas of Western Ghats, feasibility of proposed airport in terms of cost benefit analysis as well as environmental cost benefit analysis. EAC also considered the data compiled by various offices. Mere fact that different opinions have been expressed by other experts is not enough to hold that EAC did not apply its mind. The rehabilitation programme was also produced before the EAC".

53Vellore Citizens Welfare Forum v Union Of India, (1996) 5 SCC 647; M C Mehta v Kamal Nath, (1997) 1 SCC 388; M C Mehta v Union of India, (1997) 2 SCC 353; A P Pollution Control Board v Prof M V Nayudu (Retd.), (1999) 2 SCC 718; Narmada Bachao Andolan v Union of India, (2000) 10 SCC 664; Indian Council for Enviro Legal Action v Union of India, (2011) 8 SCC 161 The next paragraph contains a brief reference to the fact that the requirement of a study over a distance of 15 kilometres is in regard to the collection of secondary data. The above paragraph, in our view, does not fulfil the requirement of a merits review by an expert adjudicatory body vested with appellate jurisdiction.

(119.) The NGT Act provides for the constitution of a Tribunal consisting both of judicial and expert members. The mix of judicial and technical members envisaged by the statute is for the reason that the

Tribunal is called upon to consider questions which involve the application and assessment of science and its interface with the environment. In order to be eligible for appointment as an expert member, a person must fulfill the following qualifications prescribed in Section 5(2) :

"(2) A person shall not be qualified for appointment as an Expert Member, unless he,

(a) has a degree in Master of Science (in physical sciences or life sciences) with a Doctorate degree or Master of Engineering or Master of Technology and has an experience of fifteen years in the relevant field including five years practical experience in the field of environment and forests (including pollution control, hazardous substance management, environment impact assessment, climate change management, biological diversity management and forest conservation) in a reputed National level institution; or

(b) has administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or a State Government or in a reputed National or State level institution."

The NGT is an expert adjudicatory body on the environment.

(120.) In two of its previous decisions, the NGT has shown the path along with which it must traverse in arriving at its decisions. In Save Mon Region Federation v Union of India54, the grant of an EC to a 780 Megawatts Hydroelectric Project in Tawang 54 2013 (1) All India NGT Reporter 1 district of Arunachal Pradesh was challenged. The NGT framed the question before it in broad terms:

".the material issue, therefore, that needs to be answered in the present Appeal is as to whether the process of grant of prior EC to the project in question suffers from vice of faulty scoping process or not."

Having reviewed the information furnished in Form 1 by the project proponent as well as the multiple reports on record on the bird species involved in the site for the proposed project, the NGT held that facts material to the case were not present before the EAC and the consequent 'vacuum in the EIA report' lead to aberrations in the appraisal process conducted by it. Suspending the EC granted to the project, the NGT accepted the contention which was urged before it that the NGT has the 'authority to take an appropriate decision on the facts placed before it' and 'set aside or suspend the EC'. Similarly, in Shreeranganathan K P v Union of India55, the grant of an EC to the KGS Aranmula International Airport Project was challenged. The NGT found fault with the process leading to up to the grant of the EC since sector specific issues had not been dealt with. The NGT extensively reviewed the information submitted by the project proponent in Form 1, the deficiencies in the EIA report, the process of appraisal conducted by the EAC and the sector specific guidelines laid down with regard to the constructions of airports and held thus:

"182. a duty is cast upon the EAC or SEAC as the case may be to apply the cardinal principle of Sustainable Development and Principle of Precaution while screening, scoping, and appraisal of the projects or activities. While so, it is evident in the instant case that the EAC has

miserably failed in the performance of its duty not only as mandated by the EIA Notification, 2006, but has also disappointed the legal 55 2014 ALL (I) NGT Reporter (1) (SZ) 1 expectations from the same. For a huge project as the one in the instant case, the consideration for approval has been done in such a cursory and arbitrary manner without taking note of the implication and importance of environmental issues. .Thus, the EAC has not conducted itself as mandated by the EIA Notification, 2006 since it has not made proper appraisal by considering the available materials and objections in order to make proper evaluation of the project before making a recommendation for grant of EC. 187.the Tribunal is of the considered opinion that there is no option but to scrap the impugned EC granted by the MoEF to the 3rd respondent/project proponent for setting up the Aranmula airport"

(121.) The failure to consider materials on a vital issue and indeed the non- consideration of vital issues raises a substantial question of law leading to the invoking of the jurisdiction of this Court under Section 22 of the NGT Act 2010. The failure of process in the present case has been compounded by the absence of a merits review by the NGT.

(122.) The learned ASG has placed reliance on the decision of this Court in Lafarge Umiam Mining Private Limited v Union of India56 ("Lafarge") to contend that the failure to disclose the presence of trees should not lead to the invalidation of the EC. In that case, an application was made under the 1994 notification for the grant of an EC to a proposed limestone mining project at Nongtrai Village, East Khasi Hills District, Meghalaya. EC was granted for the project in 2001. Pursuant to a letter by the Principal Chief Conservator of Forests to the MoEF drawing attention to the non- disclosure of forests, the project proponent applied for a revised EC and forest clearance under the Forest (Conservation) Act 1980. An ex post facto EC along with forest clearance was granted in 2010. Challenging the grant of the EC, it was urged 56 (2011) 7 SCC 338 that there was a failing on part of the project proponent to disclose the presence of forests on the proposed project site.

(123.) A three judge Bench of this Court rejected the challenge and upheld the grant of the EC to the proposed project. This Court relied, among other factors, on the following: (i) the mining of limestone in the Khasi Hills dates back to 1763 and is an integral part of the culture of the Nongtrai Village; (ii) the site was cleared after thorough consultation with the custodian of the land, who decided to lease the land for the mining project following the loss of revenue caused due to mining by the unorganized sector; (iii) the Headman of the Nongtrai and the village durbar, who participated at the public hearing and filed written submissions before this Court, supported the project and certified that no damage would be caused to adjacent lands; (iv) at the stage of site clearance, the MoEF had before it certificates by the Executive Committee, Khasi Hills Autonomous District Council and the DFO, Khasi Hill Division, Shillong, certifying that there were no forests in the proposed project site; (v) the DFO certified that that the proposed mining site was not a forest as defined in Godavarman (supra); (vi) the 2006 notification was not applicable; and (vii) the MoEF had, at multiple stages, sought clarifications from the project proponent and had undertaken requisite care and caution to protect the environment. Upholding the grant of the EC and the forest clearance, this Court held thus:

"120. The word "development" is a relative term. One cannot assume that the tribals are not

aware of principles of conservation of forest. In the present case, we are satisfied that limestone mining has been going on for centuries in the area and that it is an activity which is intertwined with the culture and the unique landholding and tenure system of Nongtrai Village. On the facts of this case, we are satisfied with the due diligence exercise undertaken by MoEF in the matter of forest diversion. Thus, our order herein is confined to the facts of this case."

(Emphasis supplied)

(124.) The decision of this Court in Lafarge (supra), was based on the facts summarized above. Significantly, the standard of judicial review which must be applied in cases relating to the environment has been formulated by the three judge Bench in Lafarge (supra). Chief Justice S H Kapadia noted that the doctrine of proportionality must be applied to matters concerning the environment as part of judicial review. The principles of judicial review in environmental matters have been enunciated thus:

"In the circumstances, barring exceptions, decisions relating to utilisation of natural resources have to be tested on the anvil of the well-recognised principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the Court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint."

(125.) In a recent three judge Bench decision of this Court in Mantri Techzone Pvt. Ltd. v Forward Foundation57, this Court had the occasion to construe the provisions of Section 22 of the NGT Act 2010. Speaking for the Bench, Justice Abdul Nazeer held that the test to determine whether a substantial question of law arises (within the meaning of Section 100 of CPC) was formulated in the decision of a Constitution Bench in Sir Chunilal v Mehta and Sons, Ltd. v Century Spinning and Manufacturing58, where it was held thus:

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly 57 (2019) 4 SCALE 218 58 1962 Supp. (3) SCR 549 and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

Re-appreciation of the factual matrix has been held to be distinct from a substantial question of law. In the present case, we have indicated the basis for the invocation of the jurisdiction of this Court

under Section 22 . There was a failure to follow binding norms under the 2006 notification. There were serious flaws in the decision-making process. Relevant material has been excluded from consideration and extraneous circumstances were borne in mind. The EAC as an expert body abdicated its obligations to make an expert determination based on reasons. The NGT as an adjudicatory body failed to exercise the jurisdiction entrusted to it under Section 16(h) read with Section 20 of the NGT Act 2010 by merely deferring to the decision to recommend and grant an EC. The parameters in regard to the existence of substantial questions of law have hence been established in the classical or conventional sense of that expression. J Environmental Rule of Law

(126.) Fundamental to the outcome of this case is a quest for environmental governance within a rule of law paradigm. Environmental governance is founded on the need to promote environmental sustainability as a crucial enabling factor which ensures the health of our eco system.

(127.) Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement - both in developed and developing countries alike.59 The environmental rule of law seeks to address this gap.

(128.) The environmental rule of law provides an essential platform underpinning the four pillars of sustainable development - economic, social, environmental, and peace.60 It imbues environmental objectives with the essentials of rule of law and underpins the reform of environmental law and governance. 61 The environmental rule of law becomes a priority particularly when we acknowledge that the benefits of environmental rule of law extend far beyond the environmental sector. While the most direct effects are on protection of the environment, it also strengthens rule of law more broadly, supports sustainable economic and social development, protects public health, contributes to peace and security by avoiding and defusing conflict, and protects human and constitutional rights.62 Similarly, the rule of law in environmental matters is indispensable "for equity in terms of the advancement of the Sustainable Development Goals63, the provision of fair access by assuring a 59 United Nations Environment Programme, First Environmental Rule of Law Report. Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowe d=y 60 Ibid 61 Ibid 62 Ibid 63 SDGs rights-based approach, and the promotion and protection of environmental and other socio-economic rights."64

(129.) Amartya Sen argues for a broadening of the notion of sustainable development which is the most dominant theme of environmental literature, from a need-based standard65 to a standard based on freedoms.66 Thus recharacterized, it encompasses the preservation, and when possible even the expansion of the substantive freedoms and capabilities of people today without compromising the capability of future generations to have similar - or more - freedoms. The intertwined concepts of environmental rule of law thus further intragenerational as well as intergenerational equity.

(130.) Decision 27/9 which was adopted by the United Nations Environment Programme's67

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Governing Body at its first universal session in 2013 on 'Advancing Justice, Governance and Law for Environmental Sustainability' was the first internationally negotiated document to establish the term 'environmental rule of law.' It declared that "the violation of environmental law has the potential to undermine sustainable development and the implementation of agreed environmental goals and objectives at all levels and that the rule of law and good governance play an essential role in reducing such violations". It thus urged governments and organisations to reinforce cooperation to combat noncompliance with environmental laws towards achieving sustainable development. It also called upon the Executive Director to assist with the "development and implementation of environmental rule of law with attention at all levels to mutually supporting 64 UN Environment, Environmental Rule of Law. Available at https://www.unenvironment.org/explore- topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0 65 Bruntdland definition of Sustainable Development 66 Amartya Sen, Sustainable Development and our responsibilities. Available at http://www.comitatoscientifico.org/temi%20SD/documents/SEN%20Responsibility&SD%2010.pdf 67 UNEP governance features, including information disclosure, public participation, implementable and enforceable laws, and implementation and accountability mechanisms including coordination of roles as well as environmental auditing and criminal, civil and administrative enforcement with timely, impartial and independent dispute resolution." Similarly, the first United Nations Environment Assembly in 2014 adopted resolution 1/13, which calls upon countries "to work for the strengthening of environmental rule of law at the international, regional and national levels."

(131.) In 2016, the First World Environmental Law Congress, cosponsored by the International Union for Conservation of Nature and UN Environment, adopted the IUCN World Declaration on the Environmental Rule of Law68 which outlines 13 principles for developing and implementing solutions for ecologically sustainable development:

(i) Obligation to Protect Nature

(ii) Right to Nature and Rights of Nature

(iii) Right to Environment.

(iv) Ecological Sustainability and Resilience

(v) In Dubio Pro Natura

(vi) Ecological Functions of Property

(vii) Intragenerational Equity

(viii) Intergenerational Equity

(ix) Gender Equality

(x) Participation of Minority and Vulnerable Groups

(xi) Indigenous and Tribal Peoples

68 IUCN, Environmental Rule of Law. Available at ://www.iucn.org/commissions/world-commission-environmental- law/wcel-resources/environmental-rule-law

(xii) Non-regression

(xiii) Progression

(132.) Dhvani Mehta's doctoral thesis69 explores this idea of environmental rule of law in the Indian context by analysing the functioning of the three institutions of the government with regard to environmental law. It develops a framework to assess whether the environmental rule of law in India is being strengthened or weakened, through an analysis of the legal instruments of each of the institutions of government -statutes, executive orders, and judicial decisions. The indicators on the basis of which this is done are: a) the capacity of statutes to guide behaviour (one of the organising principles of the rule of law) by clearly articulating goals or balancing competing interests; b) the ability of the executive to take flexible but reasoned decisions grounded in primary legislation; and c) the ability of the judiciary to apply statutory interpretation and consistent standards of judicial review to give effect to environmental rights and principles.

(133.) In 2015, the International community adopted the 2030 Agenda for Sustainable Development and its 17 SDGs70. These 17 goals are:

(i) Eradication of poverty;

(ii) Eradication of hunger;

(iii) Good health and well-being;

(iv) Quality education;

(v) Gender equality;

(vi) Clean water and sanitation;

(vii) Affordable and clean energy;

69 Dhvani Mehta, The Environmental Rule of Law in India, University of Oxford, 2017. Available at https://ora.ox.ac.uk/objects/uuid:730202ce-f2c4-4d2f-9575-938a728fe82a 70 SDGs

(viii) Decent work and economic growth;

(ix) Industry, innovation and infrastructure;

(x) Reduced inequalities;

(xi) Sustainable cities and communities;

(xii) Sustainable consumption and production;

(xiii) Climate action;

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(xiv) Protecting life below water;

(xv) Life on land;

(xvi) Peace, justice and strong institutions; and

(xvii) Partnerships to achieve the goals.

(134.) Each of these goals has a vital connection to the others. Together, they provide an agenda for human development: development in a manner which accords adequate protection to the environment. The UNEP recognises that the natural environment - forests, soils and wet lands - contributes to the management and regulation of water availability and water quality, strengthening the resilience of water sheds and complements investments in physical infrastructure and institutional and regulatory arrangements for water access and disaster preparedness.

(135.) SDG 13 emphasises the urgent action required to combat climate change and its impacts. This is based on the recognition that extreme weather events such as heat waves, droughts, floods and tropical cyclones have aggravated the need for water management, pose a threat to food security, increase health risks, damage critical infrastructure and interrupt the provision of basic civil services.

(136.) The statistics on climate change indicate that:

(i) Between 1880 and 2012, average global temperatures have increased by 0.85 degrees Celsius;

(ii) Between 1901 and 2010, as ocean expanded, the global average sea level has risen by 19 centimeters;

(iii) Since 1990, global emissions of CO2 increased by almost 50 per cent; and

(iv) Between 2000 and 2010, emissions grew at a more rapid rate than each of the three decades preceding it.

(137.) In this backdrop, SDG 16 emphasises the need to protect, restore and promote sustainable use and management of terrestrial eco systems and forests, combat desertification of river lands, prevent land degradation and halt the loss of biodiversity. Terrestrial eco systems provide a range of eco system services including the capture of carbon, maintenance of soil quality, provision of habitat for biodiversity, maintenance of water quality and regulation of water flow together with control over erosion. Maintenance of eco systems is hence crucial to efforts to combat climate change, mitigate and reduce the risks of natural disasters including floods and landslides. In this backdrop, promoting environmental justice and ensuring strong institutions is quintessential to promoting peaceful and inclusive societies for sustainable development. SDG 16 therefore construes the promotion of the rule of law as intrinsic towards implementing multilateral environmental agreements and progressing towards internationally agreed environmental goals.

(138.) On 2 October 2016, India ratified the Paris Agreement 71 on climate change which reaffirmed

the goal of 'limiting global temperature increase to well below 2 degrees Celsius, while pursuing efforts to limit the increase to 1.5 degrees above 71 Entered into force on 4 November 2016 pre-industrial levels'. Article 5 of the Agreement encourages parties to conserve and enhance sinks and reservoirs of greenhouse gases, which includes forests. Under its Nationally Determined Contributions under the Paris Agreement, India made the following three commitments 72:

(i) Greenhouse gas emission intensity of its Gross Domestic Product will be reduced by 33-35% below 2005 levels by 2030;

(ii) 40% of India's power capacity would be based on non-fossil fuel sources; and

(iii) An additional 'carbon sink' of 2.5 to 3 billion tonnes of CO 2 equivalent through additional forest and tree cover will be created by 2030.

(139.) In March 2019, UNEP released the Global Environment Outlook themed 'Healthy Planet, Healthy People'.73 Noting clear 'links between human health and the state of the environment', the report concludes that clean-up and efficiency improvements are not adequate to pursue the 2030 Agenda and the SDGs and achieve the internationally agreed environmental goals on pollution control. Instead, 'transformative change' which reconfigures basic social and production systems and structures is needed. This includes well-designed policies on institutional frameworks, social practices, cultural norms and values along with their implementation, compliance and enforcement. In this view, a systemic and integrated policy action74 would ensure that a "healthy environment is a prerequisite and foundation for economic prosperity, human health and well-being"75 72 India's Intended Nationally Determined Contribution: Working Towards Climate Justice at P. 29, submitted to the UNFCCC secretariat 73 Global Environment Outlook 6, UNEP, 4 March 2019 74 Global Environment Outlook 6, UNEP, 4 March 2019 75 Ibid

(140.) The rule of law requires a regime which has effective, accountable and transparent institutions. Responsive, inclusive, participatory and representative decision making are key ingredients to the rule of law. Public access to information is, in similar terms, fundamental to the preservation of the rule of law. In a domestic context, environmental governance that is founded on the rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution. Proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution.

(141.) The 2006 notification must hence be construed as a significant link in India's quest to pursue the SDGs. Many of those goals, besides being accepted by the international community of which India is a part, constitute a basic expression of our own constitutional value system. Our interface with the norms which the international community has adopted in the sphere of environmental governance is hence as much a reflection of our own responsibility in a context which travels beyond our borders as much as it is a reflection of the aspirations of our own Constitution. The fundamental principle which emerges from our interpretation of the 2006 notification is that in the area of environmental

governance, the means are as significant as the ends. The processes of decision are as crucial as the ultimate decision. The basic postulate of the 2006 notification is that the path which is prescribed for disclosures, studies, gathering data, consultation and appraisal is designed in a manner that would secure decision making which is transparent, responsive and inclusive.

(142.) Repeatedly, it has been urged on behalf of the State of Goa, MoEFCC and the concessionaire that the need for a new airport is paramount with an increasing volume of passengers and consequently the flaws in the EIA process should be disregarded. The need for setting up a new airport is a matter of policy. The role of the decision makers entrusted with authority over the EIA process is to ensure that every important facet of the environment is adequately studied and that the impact of the proposed activity is carefully assessed. This assessment is integral to the project design because it is on that basis that a considered decision can be arrived at as to whether necessary steps to mitigate adverse consequences to the environment can be strengthened.

(143.) In the present case, as our analysis has indicated, there has been a failure of due process commencing from the non-disclosure of vital information by the project proponent in Form 1. Disclosures in Form 1 are the underpinning for the preparation of the ToR. The EIA report, based on incomplete information has suffered from deficiencies which have been noticed in the earlier part of this judgment including the failure to acknowledge that within the study area contemplated by the Guidance manual, there is a presence of ESZs.

(144.) The EAC, as an expert body abdicated its role and function by taking into account circumstances which were extraneous to the exercise of its power and failed to notice facets of the environment that were crucial to its decision making. The 2006 notification postulates that normally, the MoEFCC would accept the recommendation of the EAC. This makes the role of the EAC even more significant. The NGT is an adjudicatory body which is vested with appellate jurisdiction over the grant of an EC. The NGT dealt with the submissions which were urged before it in essentially one paragraph. It failed to comprehend the true nature of its role and power under Section 16(h) and Section 20 of the NGT Act 2010. In failing to carry out a merits review, the NGT has not discharged an adjudicatory function which properly belongs to it.

(145.) In this view of the matter, neither the process of decision making nor the decision itself can pass legal muster. Equally, as an area requiring balance between development of infrastructure and the environment, we are of the view that appropriate directions should be issued by this Court, which would ensure that while the need for a public project as significant as an international airport is duly factored into the decision making calculus, such development proceeds on a considered view of the importance of the prevailing state of the environment. Bearing in mind the need to bring about a wholesome balance between the development of infrastructure of an airport and the preservation of the environment, we have come to the conclusion that time bound directions should be issued.

(146.) Bearing in view the necessity to maintain a balance between the need for an airport and environmental concerns, we are of the view that it would be appropriate if the EAC is directed to revisit the conditions subject to which it granted its EC on the basis of the specific concerns which

have been highlighted in this judgment. Such an exercise primarily is for the EAC to carry out in its expert decision making capacity. The EAC is entrusted with that function as an expert body. The role of judicial review is to ensure that the rule of law is observed. Hence, we propose by the directions which we will issue under Article 142 of the Constitution, to direct the EAC to revisit the conditions for the grant of an EC. While doing so, it would be open to the EAC to have due regard to the conditions which were incorporated in the order of the NGT and to suitably modulate those conditions in pursuance of the liberty which we have preserved to it. To facilitate an expeditious decision, we propose to direct the EAC to carry out this exercise in a prescribed time schedule during which period, the EC shall remain suspended. We propose to direct that after the EAC has formulated its views, they shall be placed before this Court in a Miscellaneous Application in the present proceedings, so as to enable the Court to pass final orders. The Miscellaneous Application may be filed either by the State of Goa as the project proponent or by the MoEFCC. We clarify that no other Court or Tribunal shall entertain any challenge to the ultimate decision of the EAC and final orders thereon shall be passed by this Court in the present proceedings. Directions

(147.) We accordingly issue the following directions:

(i) The EAC shall revisit the recommendations made by it for the grant of an EC, including the conditions which it has formulated, having regard to the specific concerns which have been highlighted in this judgment;

(ii) The EAC shall carry out the exercise under (i) above within a period of one month of the receipt of a certified copy of this order;

(iii) Until the EAC carries out the fresh exercise as directed above, the EC granted by the MoEFCC on 28 October 2015 shall remain suspended;

(iv) Upon reconsidering the matter in terms of the present directions, the EAC, if it allows the construction to proceed will impose such additional conditions which in its expert view will adequately protect the concerns about the terrestrial eco systems noticed in this judgment. The EAC would be at liberty to lay down appropriate conditions concerning air, water, noise, land, biological and socio- economic environment;

(v) The EAC shall have due regard to the assurance furnished by the concessionaire to this Court that it is willing to adopt and implement necessary safeguards bearing in mind international best practices governing greenfield airports;

(vi) We grant liberty to the State of Goa as the project proponent and the MoEFCC, as the case may be, to file the report of the EAC before this Court in the form of a Miscellaneous Application so as to facilitate the passing of appropriate orders in the proceedings; and

(vii) No other Court or Tribunal shall entertain any challenge to the report that is to be submitted before this Court by the EAC in compliance with the present order.

(148.) Before we part with the present case, we consider it appropriate to record a finding on the bona

fides of the appellants before this Court. It was briefly urged by the respondents that the appellants have invoked the jurisdiction of this Court based on a personal agenda and consequently, the present appeal is liable to be dismissed. This argument cannot be accepted. We accept the submission of Ms Shenoy, learned counsel appearing on behalf of the appellants, that the non-consideration of vital issues by the EAC has led to the invocation of the statutory remedy available to them under Section 22 of the NGT Act 2010. Vague aspersions on the intention of public-spirited individuals does not constitute an adequate response to those interested in the protection of the environment. If a court comes to the finding that the appeal before it was lacking bona fides, it may issue directions which it thinks appropriate in that case. In cases concerning environmental governance, it is a duty of courts to assess the case on its merits based on the materials present before it. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow.

(149.) The learned Attorney General for India has presented the submissions before this Court with his characteristic sense of objectivity and candour. We wish to record our appreciation for the able assistance rendered to this Court by Ms Anitha Shenoy, learned counsel for the petitioner, Mr ANS Nadkarni, learned Additional Solicitor General for the MoEF, Mr Parag P Tripathi, learned senior counsel and Ms Aastha Mehta, learned counsel for the concessionaire.

(150.) The appeal is allowed in the above terms. There shall be no order as to costs. Civil Appeal No 1053 of 2019

(151.) This appeal is also disposed of in the same terms, conditions, directions and observations as in Civil Appeal No 12251 of 2018.

LAWS(SC)-2017-2-93

SUPREME COURT OF INDIA

Coram : J.S.KHEHAR, D.Y.CHANDRACHUD, SANJAY KISHAN KAUL JJ.

Decided On : February 22, 2017

Appeal Type : Writ Petition(C) No. 375 of 2012

Final Verdict : Writ petition stands disposed of

Appellant(s) :

Paryavaran Suraksha Samiti And Another

Respondent(s) :

UNION OF INDIA AND OTHERS

Advocate(s) :

Colin Gonsalves, Gunjan Singh, JYOTI MENDIRATTA, PINKY ANAND, S.W.A.QADRI, AJAY SHARMA, BALENDU SHEKHAR, Ansh Singh Luthra, HEMANT ARYA, G.S.Makker, ANIL GROVER, SATISH KUMAR, Sanjay Kumar Visen, S.S.SHAMSHERY, AMIT SHARMA, Ankit Raj, RUCHI KOHLI, Purushaindra Kaurav, Mishra Saurabh, Ankit Kumar Lal, Vanshuja Shukla, Anuradha Mishra, HEMANTIKA WAHI, Jesal Wahi, MAMTA SINGH, Bhuvneshwari Pathak Kaushik, Shilpi Satya, Priya Satyam, RAHUL KAUSHIK, ASHUTOSH KUMAR SHARMA, TAPESH KUMAR SINGH, Mohd Waquas, SUKANT VIKRAM, Aditya Pratap Singh, S.UDAYA KUMAR SAGAR, Mrityunjai Singh, GUNTUR PRABHAKAR, Prerna Singh, M.R.SHAMSHAD, RAJAT SINGH, Aditya Samaddar, Harshita Deshwal, PARAMASIVAM, B.BALAJI, Muthuvel Palani, S.KUMAR, VIJAY PANJWANI, Varsha Poddar, GOPAL SINGH, JOYDEEP MAZUMDAR, DEBAJYOTI BHATTACHARYA, PARIJAT SINHA, KRISHNAYAN SEN, Himanshu Bhushan, Uddyam Mukherjee, SAKSHI KAKKAR, C.D.SINGH, MOHIT KUMAR SHAH, GAURAV KANTH, Pushkar Taimni, V.N.RAGHUPATHY, Lagnesh Mishra, Parikshit P.Angadi, Prakash Jadhav, SAURABH AJAY GUPTA, Nishant Bishnoi, KULDEEP SINGH, C.K.SASI, VARINDER KUMAR SHARMA, SUNITA SHARMA

Referred Act(s) :

- Constitution Of India, Art.243X, Art.243Y

Judgment :

JAGDISH SINGH KHEHAR,CJI.

(1.) The petitioners have approached this Court, seeking a writ in the nature of mandamus, for a

direction to the respondents, (which includes the Union Government, all the State Governments and the Union Territories) to ensure, that no industry which requires "consent to operate" from the concerned Pollution Control Board, is permitted to function, unless it has a functional effluent treatment plant, which is capable to meet the prescribed norms for removing the pollutants from the effluent, before it is discharged.

(2.) The Union of India, and the State Governments (including the Union Territories) have filed counter affidavits, expressing their individual positions. During the course of hearing, learned counsel representing the respondents, also made some suggestions, which could be highly beneficial, in carrying forward the process of removing pollutants, from the discharged effluent, in a systematic and co-ordinated manner.

(3.) During the course of hearing, it was not disputed between the rival parties, that the initiation of the process has to be at the individual level of the industry itself. It was suggested that each industry which requires "consent to operate" from the concerned Pollution Control Board, should be mandated to set up a functional primary effluent treatment plant. We are informed, that only when such an effluent treatment plant has been set up, the concerned Pollution Control Board grants a "no objection" to the industry, and accordingly "consent to operate", so as to allow the industry to become functional. It is therefore apparent, that all running industrial units, which require "consent to operate" from the concerned Pollution Control Board, have a functional primary effluent treatment plant, in place.

(4.) The question that arises for our consideration is, whether the same is maintained in good order, after the industry itself has become functional. The industry requiring "consent to operate", can be permitted to run, only if its primary effluent treatment plant, is functional. We therefore consider it just and appropriate, to direct the concerned State Pollution Control Boards, to issue notices to all industrial units, which require "consent to operate", by way of a common advertisement, requiring them to make their primary effluent treatment plants fully operational, within three months from today. On the expiry of the notice period of three months, the concerned State Pollution Control Board(s) are mandated to carry out inspections, to verify, whether or not, each industrial unit requiring "consent to operate", has a functional primary effluent treatment plant. Such of the industrial units, which have not been able to make their primary effluent treatment plant fully operational, within the notice period, shall be restrained from any further industrial activity. This direction may be implemented by requiring the concerned electricity supply and distribution agency, to disconnect the electricity connection of the defaulting industry. We therefore hereby further direct, that in case the concerned State Pollution Control Boards make a recommendation to the concerned electrical supply and distribution agency/company, to disconnect electricity supply to an industry, for the reason that its primary effluent treatment plant is not functional, it shall honour such recommendation, and shall disconnect the electricity supply to such defaulting industrial concern, forthwith.

(5.) Such an industrial concern, which has been disabled from carrying on its industrial activities, as has been indicated in the foregoing paragraph, is granted liberty to make its primary effluent treatment plant functional to the required capacity, and thereupon, seek a fresh "consent to operate" from the

concerned Pollution Control Board. Only after the receipt of such fresh "consent to operate", the industrial activities of the disabled industry, can be permitted to be resumed. In carrying out the above exercise, we consider it just and appropriate to require, the Pollution Control Boards to carry out inspections, by prioritizing inspections of severely and critically polluted industries, so that visible results emerge at the earliest.

(6.) Liberty is hereby granted to private individual(s) and organizations, to address complaints to the concerned Pollution Control Board, if any industry is in default. On the receipt of any such complaint, the concerned Pollution Control Board, shall be obliged to verify the same, and take such action against the defaulting industry, as may be permissible in law. Such action, would be in addition to the discontinuation of industrial activity forthwith, in the manner directed hereinabove (but only after verification).

(7.) Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants. We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50 per cent, that of the concerned State Government (including the concerned Union Territory) is 25 per cent. The balance 25 per cent, is to be arranged by way of loans from banks. The above loans, are to be repaid, by the industrial areas, and/or industrial clusters. We are also informed, that the setting up of a common effluent treatment plant, would ordinarily take approximately two years (in cases where the process has yet to be commenced). The reason for the above prolonged period, for setting up "common effluent treatment plants", according to learned counsel, is not only financial, but also, the requirement of land acquisition, for the same.

(8.) In view of the fact, that the financial position has been taken care of, as has been expressed above, we are of the view, that the setting up of "common effluent treatment plants", should be taken up as an urgent mission. With reference to common effluent treatment plants, which are already under implementation, we hope and expect, that they would be completed within the time lines already postulated. With reference to common effluent treatment plants, which are yet to be set up, we consider it just and appropriate to direct, the concerned State Governments (including, the concerned Union Territories) to complete the same within a period of three years, from today. We are also of the view, that while acquiring land for the 'common effluent treatment plants', the concerned State Governments (including, the concerned Union Territories) will acquire such additional land, as may be required for setting up "zero liquid discharge plants", if and when required in the future.

(9.) During the course of hearing, we were informed by learned counsel, that the running of 'common effluent treatment plants', which are in place, is also a matter of serious concern. In this behalf, it was submitted, that some of the common effluent treatment plants are dis-functional, because of lack of finances, whilst some others are dis-functional, because of the requirement of repairs, which have not been carried out, again because of lack of financial resources.

(10.) Given the responsibility vested in Municipalities under Art. 243W of the Constitution, as also, in item 6 of the 12th Schedule, wherein the aforesaid obligation, pointedly extends to "public health,

sanitation conservancy and solid waste management", we are of the view, that the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). Given the aforesaid responsibility, the concerned municipalities (and/or local bodies), cannot be permitted to shy away, from discharging this onerous duty. In case there are further financial constraints, the remedy lies in Articles 243X and 243Y of the Constitution. It will be open to the concerned municipalities(and/or local bodies), to evolve norms to recover funds, for the purpose of generating finances to install and run, all the "common effluent treatment plants", within the purview of the provisions referred to hereinabove. Needless to mention, that such norms as may be evolved for generating financial resources, may include all or any, of the commercial, industrial and domestic beneficiaries, of the facility. The process of evolving the above norms, shall be supervised by the concerned State Government (Union Territory), through the Secretaries, Urban Development and Local Bodies respectively, (depending on the location of the respective common effluent treatment plant). The norms for generating funds, for setting up and/or operating the 'common effluent treatment plant' shall be finalized, on or before 31.03.2017, so as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement of the next financial year, the concerned State Governments (or the Union Territories), shall cater to the financial requirements, of running the "common effluent treatment plants", which are presently dis-functional, from their own financial resources.

(11.) Just in the manner suggested hereinabove, for the purpose of setting up of "common effluent treatment plants", the concerned State Governments (including, the concerned Union Territories) will prioritize such cities, towns and villages, which discharge industrial pollutants and sewer, directly into rivers and water bodies.

(12.) We are of the view, that in the manner suggested above, the malady of sewer treatment, should also be dealt with simultaneously. We therefore hereby direct, that 'sewage treatment plants' shall also be set up and made functional, within the time lines and the format, expressed hereinabove.

(13.) We are of the view, that mere directions are inconsequential, unless a rigid implementation mechanism is laid down. We therefore hereby provide, that the directions pertaining to continuation of industrial activity only when there is in place a functional "primary effluent treatment plants", and the setting up of functional "common effluent treatment plants" within the time lines, expressed above, shall be of the Member Secretaries of the concerned Pollution Control Boards. The Secretary of the Department of Environment, of the concerned State Government (and the concerned Union Territory), shall be answerable in case of default. The concerned Secretaries to the Government shall be responsible of monitoring the progress, and issuing necessary directions to the concerned Pollution Control Board, as may be required, for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data, and shall furnish the same to the Bench of the jurisdictional National Green Tribunal.

(14.) To supervise complaints of non-implementation of the instant directions, the concerned Benches

of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The above mentioned case files, will be listed periodically. The concerned Pollution Control Board is also hereby directed, to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters.

(15.) Liberty is granted to private individuals, and organizations, to approach the concerned Bench of the jurisdictional National Green Tribunal, for appropriate orders, by pointing out deficiencies, in implementation of the above directions.

(16.) It however needs to be clarified, that the instant directions and time lines, shall not in any way dilute any time lines and directions issued by Courts or Benches of the National Green Tribunal, hitherto before, wherein the postulated time lines would expire before the ones expressed through the directions recorded above. It is clarified, that the time lines, expressed hereinabove will be relevant, only in situations where there are no prevalent time line(s), and also, where a longer period, has been provided for.

(17.) It would be in the interest of implementation of the objective sought to be achieved, to also require each concerned State(and each, concerned Union Territory) to make provision for "online, real time, continuous monitoring system" to display emission levels, in the public domain, on the portal of the concerned State Pollution Control Board. We are informed, that at least three State Governments have already adopted the aforesaid measures. Such measures shall be put in place by all the concerned State Governments(including, the concerned Union Territories), within six months from today.

(18.) The instant writ petition stands disposed of, in the aforesaid terms.

LAWS(SC)-1997-7-16

SUPREME COURT OF INDIA (FROM: PUNJAB & HARYANA)

Coram : A.S.ANAND, K.VENKATASWAMI JJ.

Decided On : July 07, 1997

Appeal Type : Civil 2295 and 293 of 1984 and 1984

Final Verdict : Appeal allowed

Appellant(s) :

BALWANT SINGH

Respondent(s) :

DAULAT SINGH

Advocate(s) :

S.B.SANYAL, MIRA AGARWAL, R.C.MISHRA, R.S.SODHI, SUBODH MARKANDEYA, AJAY SINGH, MINAKSHI AGARWAL, CHITRA MARKANDEYA, P.D.SHARMA, ALOK K.SHARMA

Referred Act(s) :

- Code Of Civil Procedure, 1908, Or.22R.3, Or.22R.9
- Evidence Act, 1872, S.35
- Hindu Succession Act, 1956, S.14(1)
- Transfer Of Property Act, 1882, S.122

Judgment :

K. Venkataswami, J.

(1.) Both these appeals are preferred against the judgment and decree of the Punjab and Haryana High Court in R.S.A. No. 25 of 1976 dated 29-11-1983.

(2.) The facts are given below. The defendants in Suit No. 158 of 1973 on the file of the Court of Sub-Judge, First Class, Gurdaspur, are the appellants in these two appeals. The plaintiffs-contesting respondents herein preferred the said suit under the following circumstances.

(3.) One Khushal Singh was the owner of an extent of land measuring 270 kanals 9 marlas in village Gandhian, Tehsil and District Gurdaspur. The above-said land after consolidation was found measuring only 264 kanals and 7 marlas. The suit property is the said extent of 264 kanals and 7 marlas. The original owner, Khushal Singh, died issueless on 5-9-1950. Subsequently, the suit lands

were mutated in the name of one Durga Devi widow of deceased Khushal Singh on 19-7-1952. The said Durga Devi purporting to fulfil her husbands desire of taking in adoption one Balwant Singh and Kartar Singh (both minors) expressed her desire to mutate the lands in favour of the said minors Balwant Singh and Kartar Singh. Accordingly, the mutation was effected on 19-7-1954 under Mutation No. 1311.

(4.) One of the reversioners of Khushal Singh, (sic) y, Chet Singh filed a suit bearing no. 194 of 1955 in the Court of Senior Sub-Judge, Gurdaspur praying for a declaration that the mutation of gift-deed dated 19-7-1954 would not affect the reversionary rights of the plaintiff after the death or after the re-marriage of Durga Devi. In the said suit the validity of the adoption of Balwant Singh and Kartar Singh was one of the issues and the trial Court found that the alleged adoption was not proved and the mutation would not bind the reversionary rights of the plaintiff in that suit after the death of the widow Durga Devi or after her marriage according to custom. The defendants in that suit, the predecessors in title of the appellants herein (some of them), challenged the judgment and the decree of the trial Court by filing Civil Appeal No. 88 of 1956 before the District Judge, Gurdaspur. That appeal was dismissed by the appellate Court on 17-8-1957 by confirming the decree of the trial Court. No second appeal was preferred against that appellate Courts judgment. After the judgment of the appellate Court, the suit lands were again mutated under Mutation No. 1348 in favour of Durga Devi.

(5.) After the latest Mutation No. 1348 the said Durga Devi claiming to be the absolute owner of the suit property after the coming into force of the Hindu Succession Act, 1956, had executed four separate gift deeds in favour of the appellants/their predecessors in title. Those gift-deeds were executed on 1-8-70, 9-9-1970 and 7-10-1970. Thereafter on 24-4-1973 the said Durga Devi died.

(6.) After the death of Durga Devi, the reversioners including the legal representatives of Chet Singh, (the plaintiff in O.S. No. 194 of 1955) filed the aforesaid suit bearing no. 158 of 1973 in the Court of Senior Sub-Judge, Gurdaspur, for recovery of possession of the suit lands, substantially on the basis of the decree in Suit No. 194 of 1955. It is stated that the earlier suit was filed as representative suit for the benefit of all the reversioners and as heirs of Khushal Singh who would be alive at the time of death of Durga Devi.

(7.) In the pleadings, it was stated that the mutation after the judgment of the appellate Court in Civil Appeal No. 88 of 1956 (supra) reverting the land back to Durga Devi was of no consequence as the same was based on a misreading of the findings of the trial and appellate Courts. Likewise, they also pleaded that the gift-deeds executed by Durga Devi asserting that she was the absolute owner of the property, will not confer any title on the donees beyond the lifetime of Durga Devi in view of the judgment in the earlier Court proceedings. It was the contention of the plaintiffs, (the contesting respondents herein), that Durga Devi was not in possession and enjoyment of the suit lands in her own rights on the date of coming into force of Hindu Succession Act, 1956 which alone would enable her to make alienation as absolute owner. It was also the contention of the plaintiffs that the decision in the earlier Court proceedings would operate as res judicata against the defendants, appellants herein.

(8.) The defendants in the present suit, appellants herein, contesting the suit pleaded that in the earlier

Court proceedings the adoption having been found as not proved, the first mutation, namely, Mutation No. 1311 will have to be ignored and no title was passed on to the adoptees. In other words, it was pleaded that Durga Devi continued to be owner and in possession of the suit property notwithstanding Mutation No. 1311 dated 19-7-1954. In any case, it was further pleaded that by virtue of subsequent mutation bearing No. 1348, Durga Devi was put in possession and enjoyment of the suit lands and, therefore, she had every right to execute the gift-deeds challenged in the suit.

(9.) The trial Court on the basis of the pleadings framed eleven issues and on the basis of the oral evidence and documents filed before it and on appreciation of pleadings found that in view of the decree in the earlier Court proceedings the alienation by way of mutation gift by Durga Devi would not be binding on the reversionary rights of the plaintiffs after her death. The decree in the earlier proceedings confirmed by the appellate Court operates as res judicata against the defendants in the suit. As a result of mutation on 19-7-1954 under Mutation No. 1311, Durga Devi was divested of her title to the suit property and consequentially divested of possession also. Therefore, on the date of coming into force of the Hindu Succession Act the widow was not in possession of suit lands to enable her to validly execute the deeds in question. The trial Court also held that the subsequent mutation bearing No. 1348 was on misreading of the earlier Court proceedings and, therefore, will not come to the aid of the defendants. On the basis of these findings, the trial Court decreed the suit on 14-2-1975.

(10.) The defendants (appellants herein) preferred Civil Appeal No. 39/83 of 1975 in the Court of Second Additional District Judge, Gurdaspur, who, by judgment dated 11-12-1975, dismissed the appeal confirming the decree of the trial Court.

(11.) The High Court in Second Appeal No. 25 of 1976 considered only one question whether Durga Devi was in possession of the gifted land when the Hindu Succession Act, 1956 came into force and found that she was not in possession. Accordingly, the second appeal was dismissed.

(12.) It is under these circumstances these two appeals are filed against the said second appeal.

(13.) Mr. Sanyal, learned senior counsel appearing for the appellants in C.A. No. 293/84 before taking us into the merits of the case, prayed for orders in I.As. Nos. 3-6/96. Straightway, we can order I.A. No. 6/96 for deleting respondent No. 14 as he, according to the counsel is not a contesting respondent. So far as I.A. No. 4/96 is concerned, it relates to setting aside the abatement of appeal as a result of death of one Makan Singh, appellant No. 4 in C.A. No. 293/84. There is an inordinate delay in filing the applications for bringing the legal representatives of the deceased, 4th appellant. Therefore, application for condonation of delay and for setting aside the abatement were filed for bringing on record the legal representatives of the deceased.

(14.) The learned counsel appearing for the contesting respondents, Mr. Markandeya, seriously opposed the application for bringing on record the legal representatives of the deceased-4th appellant and he further contended that in view of the death of 4th appellant and the failure to bring the legal representatives on record in time, the whole appeal is abated and on that short ground both the appeals are liable to be dismissed as the suit was one.

(15.) In reply, Mr. Sanyal submitted that in the event of this Court not willing to condone the delay and consequently set aside the abatement, the appeal as a whole will not stand abated, but only the properties dealt with under the deed dated 9-9-70 executed in favour of Makan Singh alone will be affected and to that extent, the appeal may stand abated.

(16.) We have considered the rival submissions. We find from the facts that the deceased Makan Singh alone was the donee of specific items of properties under gift deed dated 9-9-70 and his possession and enjoyment of properties was independent of others. Therefore, his death would not abate the whole of the appeal. In our view, the decree is divisible being a decree in favour of several reversioners against several independent donees having specified shares in identifiable properties. We are not satisfied with the reasons given for the inordinate delay of more than 25 years and, therefore, the appeal stands abated in respect of properties given to the deceased-Makan Singh under the gift deed dated 9-9-70.

(17.) Now coming to the merits, though, Mr. Sanyal argued extensively concerning various points said to arise out of the judgments of the trial Court, appellate Court and High Court, we are of the view that since the High Court had considered and decided only one point viz, whether the widow, Durga Devi died, possessed by the suit properties in her own rights when the Hindu Succession Act, 1956 came into force, that alone need be considered by us. If the answer to the question is in the affirmative, the appellants are entitled to succeed. Otherwise, the appeals are liable to be dismissed on merits.

(18.) On the point of possession, it is the argument of Mr. Sanyal, learned Senior Counsel for the appellants that all the three Courts below went wrong in assuming that as a result of mutation bearing no. 1311 dated 19-7-54, Durga Devi divested herself of her title and possession to the suit property and from that date the title in the suit property and possession thereof vested with the persons in whose favour mutation was effected, namely, Balwant Singh and Kartar Singh. The legal effect of mutation, according to the learned counsel, has been clearly laid down by this Court in a recent judgment in Smt. Sawarni v. Smt. Inder Kaur, JT 1996 (7) SC 580 . According to the learned counsel, mutation of the property in the revenue record will not extinguish title nor has it any presumptive value on title. Therefore, according to the learned counsel, by mutation No. 1311, the widow has not been divested of her title in the properties and consequently she continued to be in possession and enjoyment of the property. She became absolute owner of the properties on the coming into force of the Hindu Succession Act, 1956. In any case, learned counsel further argued that after the decree in suit No. 194/55 as confirmed by the appellate Court, there was a re-mutation in favour of the widow under mutation No. 1348. That re-mutation having been allowed to remain unchallenged, whatever the effect of mutation No. 1311, has been reversed by the latter mutation No. 1348. On the basis of these arguments, learned counsel submitted that the appeals are to be allowed, if not in full, except to the extent the properties covered by the gift deed in favour of Makan Singh.

(19.) Mr. R.S. Sodhi, learned counsel for appellants in C.A. No. 2295/84, adopted Mr. Sanyals arguments.

(20.) Mr. Markandeya, learned counsel appearing for the contesting respondents, submitted that the

Courts below were right in holding that the widow was divested of her possession and enjoyment from the date of first mutation viz. 19-7-54 and the second re-mutation was not legal and valid in law.

(21.) We have considered the rival submissions and we are of the view that Mr. Sanyal is right in his contention that the Courts were not correct in assuming that as a result of mutation No. 1311 dated 19-7-54. Durga Devi lost her title from that date and possession also was given to the persons in whose favour mutation was effected. In Smt. Sawarnis case, Pattanaik J., speaking for the Bench has clearly held as follows:-

"Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment."

(22.) Applying the above legal position, we hold that the widow had not divested herself of the title in the suit property as a result of mutation No. 1311 dated 19-7-54. The assumption on the part of the Courts below that as a result of the mutation, the widow divested herself of the title and possession was wrong. If that be so legally, she was in possession on the date of coming into force of the Hindu Succession Act and she as a full owner had every right to deal with the suit properties in any manner she desired.

(23.) It is relevant to point out that it is only the trial Court that has dealt with the matter elaborately on facts. The first appellate Court has dealt with the only point regarding validity and the genuineness of the adoption. The High Court, as pointed out earlier, dealt with only with the question of possession. Therefore, we have to look into the trial Court judgment for findings on facts. The trial Court on the fact of possession observed as follows:

"Durgi continued to live with Balwant Singh and Kartar Singh and the necessary conclusion that must be drawn is that hence- forward after she made the gift the property went to the minors Balwant Singh and Kartar Singh and if at all she continued living with the minors and managing the property, if at all, the same must be only on behalf of the minors and not in her own right."

(24.) On the question of the consequences of mutation, the trial Court observed as follows:-

"I hold that the transaction in question i.e. mutation no. 1311 of 19-7-54 was a gift and the effect of the judgments and decree in suit No. 194 of 1955 is that the alienation in favour of Balwant Singh and Kartar Singh continued to be valid till the death of Durga Devi and thereafter in view of the decree, cannot have any effect as against the reversionary rights."

(25.) So far as re-mutation in favour of Durga Devi is concerned, the trial Court observed as follows:-

"The land had been again mutated in the name of Durga Devi and there is no evidence that in fact Balwant Singh and Kartar Singh reconveyed the property or treated the gift as cancelled, thus

the mere entry in the revenue records of the name of Durga Devi wont make her full owner."

(26.) At the risk of repetition, we point out that the first appellate Court and the High Court have not discussed the possession aspect in the light of the above extracted findings of the trial Court.

(27.) In the circumstances, we are of the opinion that the trial Court erred in assuming that by Mutation No. 1311, the widow divested herself of the title to the suit property by treating the mutation as gift and conveying title. Further it has not applied uniform test in appreciating the mutation entries. In one place, the trial Court has accepted mutation entries in toto even for conveying title but in the other place, the trial Court was not prepared to accept the mutation entries by expressing some doubt about it. It is to be stated that this Court in Gurbaksh Singh v. Nikka Singh, (1963) 1 Suppl. SCR 55 , has held that entries in mutation must be taken as correct unless the contrary is established. Here the trial Court has shifted the burden on the appellants to prove the entries as correct. The trial Court has failed to apply the same yardstick that it had applied to Mutation No. 1311 to Mutation No. 1348. Assuming for the sake of arguments, that Mutation No. 1348 was on the basis of misunderstanding of the judgments in the earlier proceedings, that having been allowed to remain unaltered without challenge, cannot be brushed aside as worth nothing. Anybody affected by such entries should have challenged the same as provided under the law. In the absence of that, the entries cannot be ignored. Be that as it may, we have already noticed that mutation entries do not convey or extinguish any title and those entries are relevant only for the purpose of collection of land revenue. That being the position. Mutation No. 1311 cannot be construed as conveying title in favour of Balwant Singh and Kartar Singh or extinguishing the title of Durga Devi in the suit property. Consequently, the title to the suit property always vested with the widow notwithstanding the Mutation No. 1311. viewed in this manner, the decision in the earlier proceedings namely, decree in Suit No. 194/55 even assuming operates as res judicata, will not be of any avail to the contesting respondents, (plaintiffs) in the present suit because the reliefs sought in the prior proceeding was for a simple declaration that the mutation gift of 1954 would not affect the reversionary rights of reversioners. As noticed already, mutation entries will not convey or extinguish title in the property. Therefore, under Mutation No. 1311 neither Balwant Singh and Kartar Singh acquired title nor Durga Devis title in the property got extinguished. The earlier Court proceedings did not and could not convey title in favour of reversioners, as the relief sought was for a simple declaration as mentioned above. If no title as such was passed on under the alleged mutation gift, the limited right of the widow in the property would get enlarged on the coming into force of the Hindu Succession Act, 1956.

(28.) The widow must be deemed to have continued in possession and she became absolute owner on the coming into force of the Hindu Succession Act, 1956. On that view, the alienations made by her and challenged in the present litigation, cannot be said to be without authority.

(29.) We may also point out that the trial Court was prepared to accept that factually possession and enjoyment were with Durga Devi, but it held that such possession and enjoyment as one on behalf of the minors in whose favour the mutation was earlier effected on 19-7-54. In view of our conclusion that by mutation the widow has not divested herself of title and possession, the erroneous conclusions

reached by the Courts below have to be set aside.

(30.) In the result, the appeals are allowed except regarding the properties gifted to Makan Singh under gift deed dated 9-9-70 and the properties dealt with under this gift deed will go to the plaintiffs/reversioners as per the judgment of the trial Court confirmed by the appellate Court and the High Court. There will be no order as to costs.

BRATALINA DHAR (CHOWDHURY)
Regd. No. 067/2022
Govt. of West Bengal
NOTARY, CALCUTTA

 -95- 358

LAWS(CAL)-2002-9-42

HIGH COURT OF CALCUTTA

Coram : TARUN CHATTERJEE, ASIT KUMAR BISI, A.K.MITRA JJ.

Decided On : September 11, 2002

Appeal Type : Full Bench Ref. 1 of 1984

Final Verdict : Order accordingly

Appellant(s) :

ATUL CHANDRA MAHATO

Respondent(s) :

STATE OF WEST BENGAL

Advocate(s) :

BHASKAR GHOSH, BIMAL CHATTERJI, AMARTA GHOSH, RABI LAL MOITRA, A.N.BANERJI, ZIAUL ISLAM

Referred Act(s) :

- West Bengal Estates Acquisition Rules, 1954

Judgment :

ASIT KUMAR BISI, J.

(1.) In F.M.A. No. 471 of 1978 a Division Bench of this Court has recommended to the Honble Chief Justice to constitute a Full Bench of 5 Judges for deciding the following question:

"Whether or not, a transferee after the date of vesting under the West Bengal Estates Acquisition Act, is entitled to a notice for a proceeding under Section 44 (2a) of the said Act."

(2.) However, the Honble Chief Justice has constituted this Special Bench of three Judges. After the constitution of this Bench we wanted to send the reference back to the Honble Chief Justice for constituting a Full Bench of 5 Judges. At the time of hearing, the learned Counsel for the parties submitted before us that this Special Bench as constituted by the Honble Chief Justice can dispose of the matter by answering the same as the Division Bench by mistake instead of sending the aforesaid question to be answered by a Special Bench has recommended a Full Bench of 5 Judges when there was a difference of opinion between two Division Benches of this Court. Such being the stand taken by the parties, we decided to answer the question posed by the Division Bench in its order dated 15th of February, 1984 passed in FMA No. 471 of 1978.

(3.) Before we proceed to take up the question for decision, we may briefly state the facts arising out of FMA No. 471 of 1978, which was preferred by the appellants/petitioners.

(4.) The said appeal arose out of the judgment passed on a writ petition made by the appellants/petitioners before this Court inter alia challenging the ex parte order dated April 30, 1973 passed in suo motu proceeding under Section 44(2a) of the West Bengal Estates Acquisition Act, 1953 (in short "the Act") in Case No. 7404. According to the appellants/petitioners, they purchased the lands in question from one Kishori Mohan Bandopadhyay sometime on 20th February, 1973 and after the purchase, they owned and possessed the said lands. Prior to the said transfer the said Kishori Mohan had been in khas possession of the said lands. Further case of the appellants/petitioners is that the lands originally belonged to one Gostha Khatua and after his demise the properties were owned and possessed by his widow Smt. Monorama Khatua who transferred the lands in question to Kishori Mohan. As alleged by the appellants/petitioners, the respondents Nos. 4 to 8 made an application before the Revenue Officer for correcting the entries in the finally published record of rights in respect of the said lands claiming themselves to be bargadars under the said Monorama and sought their names to be recorded as bargadars in the finally published revisional record of rights. Thereafter the concerned Revenue Officer initiated suo motu proceeding under Section 44(2a) of the Act. In the said proceeding neither the appellants/petitioners nor their vendor had been impleaded but the notice was served on Smt. .Monorama Khatua and on the basis of her concession the said suo motu proceeding was concluded and the entries in the record of rights were corrected and the names of respondents Nos. 4 to 8 were recorded as Bargadars. The appellants/petitioners came to know about such adjudication which was made ex parte whereupon they made an application for review of the said order of the Revenue Officer and after hearing the appellants/petitioners and the objectors namely respondents Nos. 4 to 8 the order was cancelled and the earlier entries in the said record of rights were restored. Against the said order of review the respondents Nos. 4 to 8 preferred an appeal under Section 44(3) of the Act before the learned Tribunal and the appeal was disposed of by the Tribunal inter alia on a finding that the Revenue Officer had no jurisdiction to review his order. Subsequently the appellants/petitioners preferred an appeal under Section 44(3) of the Act against the original order of adjudication passed in the said suo motu proceeding but the said appeal was not entertained as being time barred.

(5.) Thereafter the appellants/petitioners moved a writ application before this Court assailing the adjudication of the Revenue Officer and a rule being C. R. 5574(W) of 1974 was issued by this Court. The Rule was discharged on the ground that as the Tribunal was not inclined to condone the delay under Section 5 of the Limitation Act there was no question to think that the Tribunal had come to the conclusion not warranted in the relevant evidence available Before the Tribunal. It was the contention of the appellants/petitioners that being subsequent purchaser after the date of vesting of the disputed land they were entitled to get a.notice of the said suo motu proceeding and the ex parte adjudication made in such proceeding without serving any notice on them was illegal. As noted hereinearlier, the question arose for determination as to whether the appellants/petitioners were entitled to get a notice of the proceeding under Section 44(2a) of the Act or not. The Division Bench in F.M.A. No. 471 of 1978,

while referring the matter to the Honble Chief Justice for constituting a larger Bench, observed as follows:

"We are inclined to hold that the appelants petitioners having purchased the disputed properties after the date of vesting are vitally interested in any adjudication under Section 44(2a) of the West Bengal Estates Acquisition Act relating to the said lands. But in view of the Division Bench decision made in Pijus Kanti Roys case this appeal cannot be disposed of by deciding the said question."

(6.) In view of the above, the Honble Chief Justice has constituted this larger Bench and accordingly this matter was heard by us in presence of the learned Counsel for the parties and the question that has been referred to us is being answered in the manner indicated hereinafter.

(7.) In the case of State of West Bengal v. Pijus Kanti Roy reported in (1975) 79 Cal WN 556 at page 560 (para 10) the Division Bench comprising S. P. Mitra, C. J. and S. K. Datta, J. (as their Lordships then were) held as follows : "In exercising jurisdiction under sub-sec. (2a) of S. 44, the officer especially empowered is to take into consideration the state of affairs as existing on the date of vesting which is the point of time relevant for the purpose. Persons interested who are entitled to notice of proceeding under the said sub-section accordingly must be the persons who were interested in the land or tenancy at the material point of time i.e. date of vesting and the said officer is not required under the relevant provisions to take into- consideration any transfer of property subsequent to the relevant date. Accordingly the subsequent purchasers claiming to be purchasers of the interest of the persons interested on the material date in respect of the land or tenancy in dispute, are thus not entitled to any notice, as they are not persons interested on the relevant date.

(8.) Under sub-sec. (2a) of S. 44 of the Act as amended up to date an officer specially empowered by the State Government may, on application within 9 months, or of his own motion within fifty years from the date of final publication of the records of rights or from the date of coming into force of the West Bengal Estates Acquisition (second amendment) Ordinance, 1975, whichever is later, revise an entry in the record finally published in accordance with the provisions of sub-sec. (2) after giving the persons interested an opportunity of being heard and after recording reasons therefor. It is to be noted in this context that the time limit for taking action suo motu by the officer specially empowered was extended to different periods by different amending Acts and at present the time limit is a period of fifty years as amended by S. 2 of the West Bengal Estates Acquisition (Amendment) Act, 1997.

(9.) Now the question to be decided in the instant reference case is whether a transferee after the date of vesting under the Act can come within the category of persons interested as envisaged under sub-sec. (2a) of S. 44 of the Act. If a transferee after the date of vesting under the Act can be treated as a person interested within the meaning of sub-sec. (2a) of S. 44 of the Act, he is entitled to a notice for a proceeding under the said provision of the Act. As noted hereinbefore, in State of West Bengal v. Pijus Kanti Roy (Supra), the Division Bench held that the persons interested who were entitled to notice of the proceeding under the said sub-section must be the persons who were interested in the land or tenancy on the date of vesting and the subsequent pur chasers claiming to be purchasers of the interest

of the persons interested on the date of vesting in respect of the land or tenancy in dispute would not be entitled to any notice of the proceeding under the said subsection. In other words as per decision of the Division Bench made in the said case of State of West Bengal v. Pijus Kanti Roy (1975 (75) Cal WN 556) (supra) a transferee after the date of vesting under the Act is not entitled to a notice for a proceeding under S. 44 (2a) of the Act.

(10.) Mr. Bhaskar Ghosh, the learned Advocate for the appellants/petitioners has submitted that the entire scheme and purpose of the Act is not only to provide for the State acquisition of estates as mentioned in the preamble of the Act but also to provide for compensation for the vested land under Chapter-III of the Act and to prepare and maintain the record of rights and revise and correct or modify the same in order to represent the existing state of affairs incorporating all changes which occurred in any tenancy since the last preparation of the draft or finally published record of rights due to inheritance, succession, transfer or otherwise as per the procedure contained in Schedule B appended to the West Bengal Estates Acquisition Rules (hereinafter referred to as the Rules).

(11.) Under Section 39(1) of the Act State Government may, for carrying out the purposes of the Act, direct: (a) preparation of the record of rights, or (b) revision of the record of rights prepared and finally published under chapter X of the Bengal Tenancy Act, 1885 in respect of any District, or part of a District. Mr. Ghosh the learned Advocate for the appellants /petitioners has drawn out attention to different provisions of the Act and the Rules. He has referred to S. 44(1) of the Act which provides detailed procedure for publication of draft of the record prepared or revised in the prescribed manner and receipt and consideration of any objection to any entry therein by the Revenue Officer. Section 44(2) of the Act prescribes procedure for final publication of the record of rights.

(12.) Section 44(2a) of theAct, as already referred to, empowers the officer concerned to revise any entry in the record finally published on an application or suo motu within the prescribed period referred to therein after giving the persons interested an opportunity of being heard.

(13.) Section 47 of the Act lays down provision for modification of the finally published record of rights.

(14.) Mr. Ghosh has drawn our attention to the aforesaid sections of the Act and the relevant Rules particularly Rule 25 which deals with the procedure of preparing or revising a record of rights in the manner described in Schedule B appended to the Rules. He has argued that the relevant provisions of the Act and the Rules clearly indicate that the words persons interested as used in S. 44(2a) of the Act include the persons who acquired interest in the land either due to inheritance, succession, transfer or otherwise and in any proceeding under the said sub-section such person is to be given an opportunity of being heard. He has further argued that a person who has acquired interest in respect of any retained land from any intermediary or a raiyat will be vitally affected if any proceeding is taken and order is passed under the Act in absence of such person and such person will not be in a position to show that his predecessors in interest had valid title to convey.

(15.) Mr. Balai Lal Sahoo, the learned Advocate appearing for private respondent Nos. 4 to 8 has

opposed the contentions raised by Mr. Ghosh on behalf of the appellants/petitioners and submitted that the whole purpose of the Act was for acquisition of estates and vesting of rights of intermediaries in the State on and from the date of vesting and as such preparation and revision of record of rights are to be carried out keeping in view the said purpose of the Act. He has further argued that the provision of S. 44(2a) of the Act.cannot go beyond the scope of the Act and the Rules. He has drawn our attention to preamble of the Act and also to S. 4(1) which provides for issuance of notification relating to vesting of estates and rights of intermediaries in the State free from all encumbrances. He has further drawn our attention to S. 5 of the Act which, deals with the effect of notification. It is his contention that the whole purpose of the act is the purpose of acquisition of estates and rights of intermediaries by issuance of notification on and from the date of vesting and that being so. the date of vesting is the relevant date of judging the rights of the parties under the Act. He has referred to the decision in the case of Collector of 24-Paragnas v. Life Insurance Corporation of India reported in (1970) 74 Cal WN 166 wherein at page 167 (para2) a Division Bench of this Court held that the record of rights which was prepared under the Act was for carrying out the purposes of the Act and the purposes of the Act, primarily, at least had reference to the date of vesting which was the relevant date for judging the rights of the parties under the Act. Mr. Sahoo has submitted that the Division Bench correctly laid down the law State of West Bengal v. Pijus Kanti Roy (1975 (79) Cal WN 556) (supra) wherein it had been held that the subsequent purchasers after the date of vesting would not be entitled to any notice of a proceeding under S. 44(2a) of the Act.

(16.) Mr. Rabi Lal Moitra, the learned Gov ernment Pleader appearing for the State respondents has supported the above noted contentions made by Mr. Sahoo and submitted that the transferee after the date of vesting was not entitled to a notice of any proceeding under S. 44(2a) of the Act. The submissions made by Mr. Moitra are more or less identical with the submissions made by Mr. Sahoo. Mr. Moitra has referred to the decision of the Supreme Court in the case of State of West Bengal v. Atul Krishna Shaw reported in AIR 1890 SC 2205 and another decision of the Supreme Court in the case of State of West Bengal v. Suburban Agriculture Dairy and Fisheries Pvt. Ltd. reported in AIR 1993 SC 2103 in support of his contentions with regard to the purpose and object of the Act. He has further argued that the post vesting transferee cannot acquire a legal right since by operation of S. 4 or S. 5 of the Act the right, title and interest of the intermediaries vested in the state and subsequent transferees after the date of vesting cannot derive any valid title from their vendors.

(17.) After hearing the learned Advocates for the parties and considering the relevant provisions of the Act and the Rules we find that the contentions raised by Mr.. Ghosh on behalf of the appellants/petitioners are of considerable force. None of the two decisions of the Supreme Court reported in AIR 1990 SC 2205 and AIR 1993 SC 2103 as cited by Mr. Moitra on behalf of the State respondents renders any assistance to the respondents since the aforesaid two decisions of the Supreme Court in no way relate, to the point of law involved in the instant reference case. True, thje record of rights must have reference to the state of things as it existed on the date of vesting as enunciated by the Division Bench of this Court in the case of Collector of 24-Parganas (1970 (74) Cal WN 166) (supra) cited by Mr. Sahoo. But the said decision does not relate to a case dealing with the question as to

whether a post vesting transferee is a person interested within the meaning of S. 44(2a) of the Act and the observations made in the aforesaid decision do not at all indicate that the sole purpose of the Act is to judge the rights of the parties under the act only on the date of vesting and not beyond that. As per Rule 6 of Schedule B relating to attestation of a proclamation shall be published before the attestation begins. It provides inter alia as follows :-

"A proclamation shall also be published before attestation begins in the village giving due notice to the landlords and tenants and calling on them to appear before the Revenue Officer on the date fixed, with reevant documents in support of their title and possession. The proclamation shall also specify that all persons who have derived or lost Interest in any khatian should Invariably be present at the time of attestation and that all changes which occurred in any tenancy since the last preparation of the draft or finally published record-of-rights due to (a) inheritance, succession, transfer or otherwise: (b) amalgamation or subdivision of ten- (c) Surrender or abandonment of tenancies: (d) new settlement: or (e) any other reasons shall be brought to the notice of the Revenue Officer. As each person appears before him the Revenue Officer shall examine his khatian, read out all the entries, make corrections where required, and see that the khatian is complete in all particulars. Disputes regarding the ownership of land, or the ownership of any interest in land, shall be decided by the Revenue Officer in a summary manner and on the basis of present possession or possession during the agricultural year preceding the year in which the date of vesting under S. 4 of the Act falls where notification under that section has been issued."

(Emphasis supplied)

(18.) The above Rule makes it manifestly clear that the proclamation must specffy that all persons who have derived or lost interest in any khatian should invariably be present at the time of attestation and that all changes which occurred in any tenancy since the last preparation of the draft or finally published record of rights due to inheritance , succession, transfer or otherwise or other reasons as already indicated must be brought to the notice of the Revenue Officer. We respectfully point out that the Division Bench which decided the case of State of West Bengal v. Pijus Kanti Roy (1975 (79) Cal WN 556) (supra) did not take into consideration all the relevant provisions of the Rules relating to preparation of the records under Chapter V of the Act and Appendix B of the said Rules. This aspect of the mat ter had clearly been pointed out by the Division Bench comprising Chittotosh Mookerjee, J. and Bankim Chandra Roy, J. (as their Lordships then were) in the case of Monoranjan Belthoria v. Deputy Commissioner of Purulia reported in 1979 (1) Cal LJ 557 at page 564 (para 11), The Division Bench further observed as follows :

"In case revision is made of the Record- of-Rights previously published in Chapter X of the Bengal Tenancy Act, no fresh enquiry regarding the details indicated in Rule 6 would be necessary if they are found to be correct on the basis of present and actual possession or possession during the period stated above where notification of vesting under S. 6 of the Act has been issued. There is no reason why different standard should be applied at the stage of revision of records under S. 44(2a) to deny right of hearing to persons interested at the stage of revision under S. 44(2a) of the West Bengal

Estates Acquisition Act."

(19.) Section 5A of the Act deals with restriction on certain transfers effected between 5th May, 1953 and the date of vesting. If after an enquiry-under S. 5A of the Act the State Government finds that such transfer was not bona fide the same shall stand cancelled. As per proviso (i) of sub-sec. (5) of S. 5A of the Act no order can be passed in any enquiry held under the said except after giving the transferor and the transferee an opportunity of being heard. As per Clause (iv) of sub-sec. (7) of S. 5A of the Act the transferor and the transferee include successors in interest of a transferor or a transferee. Since an order for cancellation of transfer as contemplated under sub-sec. (2) of S. 5A of the Act would affect the intermediary and the transferee to whom the former might have made a transfer between 9th May, 1955 and the date of vesting, both are entitled to get opportunity of hearing in a proceeding under S. 5A of the Act.

(20.) Section 44(2a) of the Act has not defined the expression "persons interested" who shall be given opportunity of being heard.before an entry in the finally published record of rights is revised. The record of rights prepared or revised under the Act contains the particulars mentioned in Rule 26. In the case of Monoranjan Belthoria (1979 (1) Cal LJ 557) (supra) at page 562- 563 (para 8) the Division Bench of this Court pertinently observed as follows :

"It is undisputed that the record of rights prepared under the west Bengal Estates Acquisition Act contain entries not only in respect of proprietors, tenure-holders, raiyats and under-raiyats but also in respect of persons who are not intermediaries and whose interests on land are not liable to vest. In a given case a revision of the record of rights may also affect the later category of persons. Therefore, the expression "persons interested" appearing in S. 44(2a) obviously means persons who are interested in respect of any of the entries made in record of rights and which is proposed to be revised either suo motu or upon an application made within the prescribed time. These different entries inter alia record not only the name and status of the tenant but also the name of the landlord, rent payable, conditions and incidents appertaining to such rights like pasturage, forest rights, fishing rights etc., rights and obligations of tenant, special conditions and incidence, easement rights etc. Therefore, before altering any of these entries the Revenue Officer who exercises quasi-judicial powers is bound to hear the persons who would be affected by revision of the entry or entries concerned. The expression "persons interested" under S. 44(2a) clearly mean those whose interests would be affected by proposed revision. The expression "persons interested" appearing in S. 10 of the Land Acquisition Act by various judicial decisions has been interpreted to include those who are interested in the property. The Supreme Court in Srimati Raj Lakshmi Dasi v. Banamali Sen, AIR 1953 SC 33, held that the mortgagees were within the definition of the said phrase "persons interested" under S. 10 of the Land Acquisition Act. Similarly, the expression "persons interested" in S. 44(2a) of the West Bengal Estates Acquisition Act, in our view, should mean the person having been present interest so far as known to the officer exercising his powers under S. 44(2a). We have already stated that the power under S. 44(2) of the West Bengal Estates Acquisition Act is a quasi-judicial one. Under S. 44(4) every entry in the records has a statutory presumption of correctness. Therefore, an

entry made in the record of rights may affect claims and contentions relating to the property in question. We should avoid an interpretation of the expression "persons interested" which may result in shutting out the persons having present interest for a proprty from being heard at the stage of revision of the records and at the same time there would be a presumption of correctness of the said entries as against them".

(Emphasis supplied).

(21.) We respectfully agree with the view expressed in the case of Monoranjan Belthoria (1979 (1) Cal LJ 557) (supra) as quoted hereinabove. If it is held that the expression "persons interested" means only those persons who had interest in the land or tenancy on the date of vesting and the said expression does not include subsequent purchasers after the date of vesting, that would be contrary to the principles of natural justice.

(22.) In our view, the intention of the Act and the Rules in the matter of preparation or revision of the records is to give opportunity to the persons interested including the subsequent purchasers who have acquired interest in the land or tenancy after the date of vesting. The expression "person interested" is used in S. 44(2a) of the Act with intention to give opportunity of hearing to all interested persons. We may refer to sub-sec. (3) of S. 44 which lays down that any person aggrieved by an order passed in revision under sub-sec. (2a) may appeal in the prescribed manner to a tribunal appointed for the purpose of this section. Use of the expression "any person aggrieved" in sub- sec. (3) of S. 44 is significant as well. It is preposterous to argue that a post vesting transferee purchses a property subject to the risk of revision of the record of rights in respect of such property and therefore, he should not be given an opportunity of hearing before such record is revised to his detriment

(23.) For the reasons as aforesaid we are of the view that in a proceeding under S. 44{2a) of the Act opportunity must be afforded to a subsequent transferee after the date of vesting to vindicate his claim of ownership and possession and to establish what was the true state of things at the time of vesting. It may so happen that a post vesting transferee fails to prove in a proceeding that his predecessor in interest had valid title and possession in respect of the land in question at the relevant time. At the same time a post vesting transferee who has purchased the land retained by the intermediary within the prescribed ceiling after the date of vesting and acquired valid title and lawful possession in respect thereof can establish his claim in a proceeding under S. 44(2a) of the Act. If the said post vesting transferee is deprived of opportunity of hearing in a proceeding under S. 44(2a) of the Act and debarred from making submissions to justify his claim over the property in such proceeding, it would be tantamount to violation of the redeeming principles of natural justice which are running like golden thread in the web of system of justice.

(24.) In Sm. Gunwant Kaur v. Municipal Committee, Bhatinda AIR 1970 SC 802, it was urged on behalf of the Municipal Committee, Bhatinda before the Supreme Court that the appellants purchased the land claimed by them after notification under S. 4 of the Land Acquisition Act was issued and they had no right to challenge the issue of the notification. In the said case at page 805 (para 17) the Supreme Court observed as follows:-

"It was urged by Mr. Hazarnavls on behalf of the Municipal Committee. Bhatinda. that the three appellants were purchasers of the lands claimed by them after the notification under S. 4 was Issued and they had no right to challenge the issue of the notifi cation. If however, the notification under.S. 4 was vague, the three appellants who are purchasers of the land had title thereto may challenge the validity of the notification. The appellants have spent in putting up substantial structures considerable sums of money and we are unable to hold that merely because they had purchased the lands after the issue of the notification under S. 4 they are debarred from challenging the validity of the notification, or from contending that it did not apply to their lands."

(Emphasis supplied).

(25.) In Shantiniketan Society v. State reported in 2001(1) Cal HN 259 at page 286: (2001 AIHC 1196) (para 71) the Division Bench of this Court held that the decision of this Court in the State of West Bengal v. Pijus Kanti Roy (1975 (79) Cal WN 556) (supra) had not considered the vital aspect of the matter and in particular the interpretation of the words in "persons interested" could not be said to have laid down the law in absolute terms.

(26.) Having regard to the above principles of law and the relevant provisions of the Act and the Rules we are clearly of the view that a transferee after the date of vesting under the West Bengal Estates Acquisition Act is entitled to a notice for a proceeding under S. 44(2a) of the said Act.

(27.) For the forgoing reasons we are unable to agree with the law laid down by the Division Bench in State of West Bengal v. Pijus Kanti -Roy (1975 (79) Cal WN 556) (supra).-We express our agreement with the view of the Division Bench reflected in Monoranjan Belthoria (1978 (1) Cal LJ 557) (supra). The question referred to by the referring Division Bench for decision is, therefore, answered in the following manner: "A transferee after the date of vesting under the Act is entitled to a notice of a proceeding under S. 44(2a) of the Act."

(28.) The reference case is accordingly disposed of. Let the matter be placed before the appropriate Division Bench for final disposal.

(29.) Xerox certified copy of this judgment, if applied for, be given to the learned Advocates for the parties as expeditiously as possible. Order accordingly.

BRATALJNAADHAR (CHOWDHURY) NOTARY, CALCUTTA
Regd No. 067/2022
Govt. of West Bengal

LAWS(SC)-2006-11-24

SUPREME COURT OF INDIA (FROM: RAJASTHAN)

Coram : B.P.SINGH, TARUN CHATTERJEE JJ.

Decided On : November 07, 2006

Appeal Type : Criminal Appeal 745 of 2000

Final Verdict : Appeal allowed

Appellant(s) :

STATE OF RAJASTHAN

Respondent(s) :

KASHI RAM

Advocate(s) :

DOONGAR SINGH, V.J.FRANCIS, A.RADHA KRISHNA, ANUPAM MISHRA, P.I.JOSE, NAVEEN KUMAR, MUKUL SUD, S.GUPTA, SHIKHA TANDON, ARUNESHVAR GUPTA

Referred Act(s) :

- Evidence Act, 1872, S.106
- Indian Penal Code, 1860, S.302

Judgment :

B. P. Singh, J.

(1.) This appeal by special leave has been preferred by the State of Rajasthan against the common judgment and order of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Criminal Appeal No.622 of 1999, D.B. Jail Appeal No.619 of 1999 and D.B. Criminal Murder Reference No.2 of 1999 whereby the High Court by its impugned judgment and order dated December 21, 1999 allowed the appeals preferred by the respondent and declined the murder reference made by the learned Additional Sessions Judge for confirmation of the sentence of death. We notice that both the criminal appeals were preferred by the respondent herein, one from jail and the other presented through an advocate. The judgment and order of the Special Additional District and Sessions Judge (Women Atrocities), Sri Ganganagar in Sessions Trial No.39 of 1998 dated September 29, 1999 sentencing the petitioner to death under Section 302 I.P.C. was set aside.

(2.) The respondent herein Kashi Ram was married to Kalawati (deceased) about seven years before the occurrence. They were blessed with two children, Suman (deceased) and Guddi (deceased) aged

two and half years and two and half months respectively. It appears from the record that the relationship between them was not cordial and there were incidents of the respondent assaulting Kalawati and treating her with cruelty. A Panchayat had also been convened at the house of the father of the respondent, however, the respondents father pleaded helplessness since the appellant did not pay any heed to his advice. The result was that Kalawati stayed with her parents for about two years. Later Harchand, father of the respondent assured her parents that Kashi Ram had improved in his behaviour and, therefore, Kalawati should be sent to her matrimonial home. On being convinced, Kalawati was sent to her matrimonial home.

(3.) The case of the prosecution is that after some time Kashi Ram again started mis-behaving in the same old manner and used to beat his wife Kalawati off and on.

(4.) The case of the prosecution is that the respondent killed his wife and two daughters on the night intervening 3rd and 4th February, 1998 and thereafter disappeared. The first information regarding the incident was given by Inder Bhan, PW-6, a cousin of the father of Kalawati (deceased). On the basis of information given by him, a formal first information report was drawn up and a case registered against the respondent under Section 302 IPC. The first information was recorded at 10.15 a.m. on February 6, 1998 in which the informant stated as follows : The respondent was married to Kalawati (deceased) about seven years before the occurrence. Kalawati used to come to her parents off and on in the first six months after marriage but it appears that there were frequent quarrels between Kalawati and her husband (respondent herein) who used to complain that she had brought a camel instead of a buffalo at the time of marriage. He also complained that she was dark complexioned. Things came to such a stage that Kalawati had to return to her parents. On the very next day, the informant along with the father of the deceased and others went to the father of the respondent namely - Harchand and complained to him about the behaviour of his son. Harchand pleaded helplessness in the matter and advised them to do whatever they liked, since his son was not under his control. In these circumstances, Kalawati continued to stay with her parents for about one and half or two years. One day, Harchand, father of the respondent came to the house of the father of Kalawati and assured him that his son Kashi Ram (respondent herein) had improved in his behaviour and assured him that she will be cared for in her matrimonial home. The father of the deceased and other relatives after getting assurance from the brothers of Harchand decided to send her back to her matrimonial home. The respondent along with his father Harchand came and the deceased accompanied them to her matrimonial home. The respondent and his wife Kalawati (deceased) were blessed with two daughters who were two and half years and two and half months old at the time of occurrence. The respondent and Kalawati (deceased) resided with the respondents parents for some time but about two months before the occurrence the respondent shifted to a rented premises in Prem NagA. R.

(5.) Milk used to be sent to Kalawatis house from her fathers house, and her brother Mamraj, PW-2, used to supply milk everyday. On February 3, 1998 as usual Mamraj, PW-2 had gone to supply milk. His sister Kalawati told him not to bring milk in future. On the next day, that is on February 4, 1998 Mamraj PW-2 noticed that the entrance of the house of the respondent was locked. On enquiry, he was

told by a neighbour Gurdayal Singh that he had seen the respondent and his family members till last evening but he did not know where they had gone thereafter.

(6.) In the evening at about 5.30 p.m. the mother of Kalawati (PW-5) came to the informant and told him that she suspected something, and therefore, requested him to find out the whereabouts of the respondent and his family members. The informant went on a motor-cycle along with one Sheo Narayan (PW-1) to search for the respondent and his family members. On the way, he met Kashmiri Lal and another son of Harchand on the bridge. On enquiry they told him that the respondent along with his family members may have gone to the Suratgarh fair and that they were also waiting for them. In the meantime, Harchand father of the respondent also came. The informant asked them to come to the house of the respondent rather than wait on the bridge. Accordingly, they all proceeded towards the house of the respondent on their respective vehicles, but as soon as they came near Prem Nagar, the two brothers of accused disappeared from his sight. At about 7.30 p.m. the informant came to the house of the respondent and found the main entrance locked. The doors were got opened and inside the house they found the dead body of Kalawati lying on a cot and dead bodies of the two children lying on another cot. It was, therefore, alleged by the informant that the respondent had committed the murder of his wife and two daughters and had thereafter disappeared.

(7.) Dr. Prem Arora, PW-10 conducted the post mortem examination of the dead bodies of Kalawati and her two children. On Kalawati he found the following injuries :

"Mark of ligature present on neck 2cm in width and knot present on back of neck, ligature mark is situated just below the thyroid certilage and encircling neck completely. Base of mark is pale, dry and hard. One cut section tissue below ligature mark is dry and white. No external injury present anywhere in body".

(8.) Death in his opinion was caused by asphyxia. In his opinion, death of the two children was also caused by asphyxia. In his opinion, deaths had occurred 48 to 72 hrs. before the post-mortem examination which was conducted on February 7, 1998.

(9.) At the trial several witnesses were examined to prove the case of the prosecution. PW-1, Sheo Narayan, is the person with whom PW-6 Inder Bhan had gone to search for the respondent and his family members on the request of the mother of the deceased namely - PW-5, Jai Kauri. He fully supported the case of the prosecution to the effect that he had gone with the father of the respondent and Inder Bhan, PW-5 to the house of the respondent in the evening of February 6, 1998 and after opening the main gate and removing the door from the entrance of the house they entered the house and found the dead bodies lying on two cots inside the house.

(10.) PW-5, Jai Kauri, mother of the deceased has also deposed to the effect that her daughter was treated with cruelty by the respondent. She has narrated the incidents which took place before deceased Kalawati was sent back with her husband to her matrimonial home. She has deposed that milk used to be delivered by her son Mamraj, PW-2 at the house of the respondent and on February 3, 1998 when Mamraj had gone to deliver milk Kalawati had asked him not to bring milk thereafter since

milk was to be supplied by her husbands elder brother. She claimed that she had gone to the house of the deceased on Thursday, i.e. on February 5, 1998, but finding the doors locked she had returned. She had made enquiries from the neighbourers, who told her that they had seen them on Tuesday (February 3, 1998) evening but not thereafter. She had again gone to her daughters house on Friday and it was again found locked. She grew suspicion and, therefore, requested Inder Bhan, PW-6 and Sheo Narayan, PW-1 to search for them.

(11.) PW-2, Mamraj, a brother of deceased Kalawati has also narrated the incidents relating to the cruel treatment meted out to Kalawati by her husband. According to this witness, he used to deliver milk at the house of the respondent, since the brother of Kashi Ram, who used to supply milk to them, was ill. On February 3, 1998 when he had gone to supply milk he was told by the respondent and his sister Kalawati (deceased) to stop further supply of milk. On February 4, 1998 while returning home he had found the house of Kalawati (deceased) locked. On the next day, when his mother PW-5, went to the house of Kalawati, she also found the house locked. The neighbourers had informed them that Kalawati and Kashi Ram were last seen on Tuesday evening (3.2.1998). When his mother again went to the house of Kalawati on February 6, 1998 she found the house locked and, therefore, she had requested Inder Bhan and Sheo Narayan to search for them. This witness has been cross-examined at length but nothing has been elicited in his cross-examination which may discredit him. The assertion of this witness that he has been told by deceased Kalawati and her husband (respondent herein) on Febraury 3, 1998 to stop supply of milk, went unchallenged in his cross-examination. Only with a view to assure ourselves that this witness had also said so in his statement recorded under Section 161 Crl.P.C. we read his police statement and we find that he had said so even in the course of investigation. We have looked into the case diary not as substantive evidence but only to verify whether PW-2 had omitted to say so in the course of investigation. The substantive evidence of PW-2 that he had seen his sister and the respondent on February 3, 1998, has gone unchallenged.

(12.) The prosecution examined two witnesses Dinesh Kumar, PW-3 and Om Prakash, PW-4 to prove that the respondent had made an extra-judicial confession before these two witnesses on February 17, 1998. The prosecution also relied on the evidence of recovery made at the instance of the respondent pursuant to which a waist chord and keys of the locks put on the two doors were recovered from the possession of the respondent on February 18, 1998. The prosecution also examined several other witnesses to prove its case.

(13.) The trial court on an exhaustive consideration of the evidence on record came to the conclusion that the prosecution had successfully established that the deceased Kalawati was last seen alive in her house on February 3, 1998 and that Mamraj, PW-2 had seen her as well as her husband in their rented premises. It also held that the prosecution had proved that the two doors of the house were found locked on the morning of February 4, 1998 and that the concerned prosecution witnesses entered the house after removing the door on February 6, 1998. The house was also found locked on February 4, 1998 when the mother of deceased Kalawati had gone to her house. The trial court relied on the recoveries made of the weapon of offence namely- the waist chord, and the keys of the two locks,

from possession of the respondent pursuant to his statement recorded under Section 27 of the Evidence Act. Reliance was also placed by the trial court on the extra-judicial confession said to have been made by the respondent before PWs 3 and 4. The trial court also found that the house was found locked on February 4, 1998, and till he was arrested on February 17, 1998, the whereabouts of the respondent were not known. Even after his arrest he did not offer any explanation and even at the trial only denied the allegations made against him without offering any explanation for his absence during the crucial days. Relying on these circumstances, and finding that the deaths were homicidal as proved by the medical evidence on record, the trial court came to the conclusion that the only inference that could be drawn from the proved facts and circumstances was that the respondent after committing the murder of his wife and his two daughters locked the house and disappeared from the scene. He was arrested two weeks later but failed to give any explanation in defence. Accordingly, the trial court finding the respondent guilty of the offence punishable under Section 302 IPC sentenced him to death having regard to the heinous nature of the crime committed by him in which three innocent lives were lost including two infants.

(14.) On appeal, the High Court reversed the findings of fact recorded by the trial court and acquitted the respondent. Before adverting to the other incriminating circumstances we may at the threshold notice two of them namely - the circumstance that the respondent made an extra-judicial confession before PWs 3 and 4, and the circumstance that recoveries were made pursuant to his statement made in the course of investigation of the waist chord used for strangulating Kalawati (deceased) and the keys of the locks which were put on the two doors of his house. The High Court has disbelieved the evidence led by the prosecution to prove these circumstances and we find ourselves in agreement with the High Court. There was really no reason for the respondent to make a confessional statement before PWs 3 and 4. There was nothing to show that he had reasons to confide in them. The evidence appeared to be unnatural and unbelievable. The High Court observed that evidence of extra-judicial confession is a weak piece of evidence and though it is possible to base a conviction on the basis of an extra-judicial confession, the confessional evidence must be proved like any other fact and the value thereof depended upon the veracity of the witnesses to whom it was made. The High Court found that PW-3 Dinesh Kumar was known to Mamraj, the brother of deceased Kalawati. PW-3 was neither a Sarpanch nor a ward member and, therefore, there was no reason for the respondent to repose faith in him to seek his protection. Similarly, PW-4 admitted that he was not even acquainted with the accused. Having regard to these facts and circumstances, we agree with the High Court that the case of the prosecution that the respondent had made an extra-judicial confession before PWs-3 and 4 must be rejected.

(15.) So far as the recoveries are concerned, the High Court has not accepted the same since PW-6, Inder Bhan admitted in the course of his cross-examination that the waist chord which had been used for strangulating Kalawati was recovered much earlier from the scene of offence by the police itself. Moreover, the waist chord as well as the keys were not even produced before the Court. It may be that some other witnesses have stated that the waist chord was not recovered from the spot, but in the facts of the case the benefit of doubt must go to the accused.

(16.) The most important circumstance that the respondent was last seen with the deceased on February 3, 1998 whereafter he had disappeared and his house was found locked and that he had offered no explanation whatsoever, was disposed of by the High Court in one short paragraph observing that there was nothing unusual if the accused was seen in the company of his own family members in his house. On such reasoning, the High Court held that the circumstantial evidence relied upon by the prosecution was not strong enough to sustain the conviction of the respondent. Accordingly, the High Court allowed the appeals preferred by the respondent and declined the death reference made by the trial court for confirmation of the sentence of death.

(17.) We have been taken through the entire evidence on record. The medical evidence on record clearly proves that the death of Kalawati and her two minor daughters was homicidal caused by strangulation. The cause of death was asphyxia. It is also established on record that the deceased was last seen alive in the company of respondent on February 3, 1998 at her house. The prosecution has also successfully established the fact that the house was found locked on the morning of February 4, 1998 and continued to remain locked till it was opened after removing the door on February 6, 1998. Throughout this period the respondent was not to be seen and he was arrested only on February 17, 1998. Neither at the time of his arrest, nor in the course of investigation, nor before the Court, has the respondent given any explanation in defence. He has not even furnished any explanation as to where he was between February 4, 1998 and February 17, 1998. It has been argued on behalf of the prosecution that this most important circumstance has been completely ignored by the High Court. The case of the prosecution substantially rested on this circumstance. The respondent was obliged to furnish some explanation in defence. He could have explained where he was during this period, or he could have furnished any other explanation to prove his innocence. Counsel for the respondent on the other hand, contends that though the respondent furnished no explanation whatsoever, there is evidence on record to prove that he had gone to attend Suratgarh fair with his family members. A question, therefore, arises whether the presumption under Section 106 of the Evidence Act may be drawn against the respondent in the facts of the case, since the facts as to where he was during the relevant period and when he parted company with the deceased, were matters within his special knowledge the burden of proving which was cast upon him by law.

(18.) Learned counsel for the State strenuously urged before us that the High Court committed an apparent error in ignoring the evidence on record which disclosed that the respondent was last seen with deceased Kalawati in his house on February 3, 1998 late in the afternoon. Thereafter, he was not seen by anyone and his house was found locked in the morning. The evidence of PW-5, mother of the deceased Kalawati, and her brother Manraj, PW-2, clearly prove the fact that the house was found locked on February 4, 1998. The evidence also establishes beyond doubt that the doors were removed and dead bodies of the deceased Kalawati and her daughters were found inside the house on February 6, 1998. In these circumstances, the disappearance of the respondent was rather suspicious because if at all only he could explain what happened thereafter. He, therefore, submitted that in the facts of the case, in the absence of any explanation offered by the respondent, an inference must be drawn against the respondent which itself is a serious incriminating circumstance against him. He has supported his

argument relying upon several decisions of this Court.

(19.) Before adverting to the decisions relied upon by the counsel for the State, we may observe that whether an inference ought to be drawn under Section 106 IPC is a question which must be determined by reference to proved. It is ultimately a matter of appreciation of evidence and, therefore, each case must rest on its own facts.

(20.) In Joseph s/o Kooveli Poulo v. State of Kerala (2000) 5 SCC 197; the facts were that the deceased was an employee of a school. The appellant representing himself to be the husband of one of the sisters of Gracy, the deceased, went to the St. Marys Convent where she was employed and on a false pretext that her mother was ill and had been admitted to a hospital took her away with the permission of the Sister in charge of the Convent, PW-5. The case of the prosecution was that later the appellant not only raped her and robbed her of her ornaments, but also laid her on the rail track to be run over by a passing train. It was also found as a fact that the deceased was last seen alive only in his company, and that on information furnished by the appellant in the course of investigation, the jewels of the deceased, which were sold to PW-11 by the appellant, were seized. There was clear evidence to prove that those jewels were worn by the deceased at the time when she left the Convent with the appellant. When questioned under Section 313 Cr.P.C., the appellant did not even attempt to explain or clarify the incriminating circumstances inculpating and connecting him with the crime by his adamant attitude of total denial of everything. In the background of such facts, the Court held :

"Such incriminating links of facts could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, courts have, from the falsity of the defence plea and false answers given to court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed (see State of Maharashtra v. Suresh, (2000) 1 SCC 471). That missing link to connect the accused-appellant, we find in this case provided by the blunt and outright denial of every one and all the incriminating circumstances pointed out which, in our view, with sufficient and reasonable certainty on the facts proved, connect the accused with the death and the cause for the death of Gracy".

(21.) In Ram Gulam Chaudhary and Ors. v. State of Bihar (2001) 8 SCC 311; the facts proved at the trial were that the deceased boy was brutally assaulted by the appellants. When one of them declared that the boy was still alive and he should be killed, a chhura blow was inflicted on his chest. Thereafter, the appellants carried away the boy who was not seen alive thereafter. The appellants gave no explanation as to what they did after they took away the boy. The question arose whether in such facts Section 106 of the Evidence Act applied. This Court held :

"In the absence of an explanation, and considering the fact that the appellants were suspecting the boy to have kidnapped and killed the child of the family of the appellants, it was for the appellants to have explained what they did with him after they took him away. When the abductors withheld that information from the court, there is every justification for drawing the inference that they had murdered the boy. Even though Section 106 of the Evidence Act may not be intended to relieve

the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The appellants by virtue of their special knowledge must offer an explanation which might lead the Court to draw a different inference".

(22.) In Sahadevan alias Sagadevan v. State represented by Inspector of Police, Chennai (2003, the prosecution established the fact that the deceased was seen in the company of the appellants from the morning of March 5, 1985 till at least 5 p.m. on that day when he was brought to his house, and thereafter his dead body was found in the morning of March 6, 1985. In the background of such facts the Court observed:

"Therefore, it has become obligatory on the appellants to satisfy the court as to how, where and in what manner Vadivelu parted company with them. This is on the principle that a person who is last found in the company of another, if later found missing, then the person with whom he was last found has to explain the circumstances in which they parted company. In the instant case the appellants have failed to discharge this onus. In their statement under Section 313 CrPC they have not taken any specific stand whatsoever".

(23.) It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the Court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Re. Naina Mohd. AIR 1960 Madras 218.

(24.) There is considerable force in the argument of counsel for the State that in the facts of this case as well it should be held that the respondent having been seen last with the deceased, the burden was upon him to prove what happened thereafter, since those facts were within his special knowledge. Since, the respondent failed to do so, it must be held that he failed to discharge the burden cast upon him by Section 106 of the Evidence Act. This circumstance, therefore, provides the missing link in the chain of circumstances which prove his guilt beyond reasonable doubt.

(25.) Counsel for the respondent submitted that no reliance can be placed on the evidence of Mamraj, PW-2, the brother of the deceased, who stated that when he had gone to the house of the deceased on

February 3, 1998 he had seen his sister as well as the respondent in the house and he was asked not to bring milk thereafter since alternative arrangement had been made. This statement of Mamraj, PW-2 was not even challenged in his cross-examination. Even in the course of investigation Mamraj, PW-2 had made a statement to the same effect. It cannot therefore, be said that he had introduced this fact for the first time at the trial. Learned counsel submitted that the aforesaid statement of PW-2 was not specifically put to the accused when he was examined under Section 313 Cr.P.C. That may be so, but in the facts of the case, we find that by such omission no prejudice has been caused to the appellant. Mamraj, PW-2 had deposed in his presence and was exhaustively cross-examined by counsel appearing for him. The statement of Mamraj, PW-2 regarding his having seen the deceased last in the company of the respondent was not even challenged in his cross-examination. Moreover, from the trend of the answers given by the respondent in his examination under Section 313 Cr.P.C., it appears that the respondent made only a bald denial of all the incriminating circumstances put to him, and had no explanation to offer.

(26.) It was then submitted on behalf of the respondent that the neighbourers who had stated that they had seen the respondent and deceased Kalawati on the evening of February 3, 1998 were not examined by the prosecution. In view of the evidence of PW-2, Mamraj who proved this fact, the non-examination of those witnesses does not have any adverse effect on the case of the prosecution. It was also submitted that there is no evidence to show that the respondent No.1 was absconding after the occurrence. From the facts proved on record it is established that on February 4, 1998 the house was found locked. The same was the position on February 5, 1998, when PW-5, Jai Kauri, mother of deceased Kalawati visited the house of her daughter and found the house locked. Finding the house also locked on February 6, 1998, she became anxious to know about the welfare of her daughter and, therefore, she went to the informant, PW-6 and requested him to find out the whereabouts of her daughter Kalawati and members of her family. These facts clearly prove that while the doors of the house of the respondent were locked, he was nowhere on the scene. The fact that PWs-1 and 6 went in search of the respondent and the deceased and their children, and were informed by the respondents brother that he may have gone to Suratgarh fair, also points in the same direction. Obviously, therefore he was absconding after commission of the offence. In fact, he never appeared on the scene till his arrest on February 17, 1998. There is, therefore, abundant evidence to prove that the respondent was traceless between February 4, 1998 and February 17, 1998. Reliance placed by counsel on the decision of this Court in P. Mani Vs. State of Tamil Nadu (2006) 3 SCC 161, is of no avail in the facts and circumstances of this case.

(27.) It was lastly submitted that in his examination under Section 313 Cr.P.C. though the circumstance regarding his having been seen on the evening by his neighbourers on February 3, 1998 was put to the respondent accused, the name of PW-2 was not mentioned as a person who had also seen him on that day with the deceased. The fact remains that the incriminating circumstance was put to the accused and his response was a bald denial. We do not find that any prejudice was caused to the respondent by not mentioning the name of PW-2, when the incriminating circumstance appearing against him was put to him.

(28.) In the facts and circumstances of the case, we are satisfied that this appeal ought to be allowed. The High Court completely brushed aside the most incriminating circumstance which was proved by the prosecution namely - that the respondent was last seen with his wife on February 3, 1998 whereafter the house was found locked and the respondent was not to be seen anywhere. He continued to be traceless till February 17, 1998 when he was arrested. The respondent did not offer any explanation in defence and his response to all the incriminating circumstances put to him in his examination under Section 313 Cr.P.C. was a bald denial.

(29.) The following incriminating circumstances are clearly established against the respondent :

a) That he was not on cordial terms with his wife Kalawati.

b) On the evening of February 3, 1998 he was seen in his house with his wife Kalawati (deceased).

c) The house of the respondent was found locked on the 4th, 5th and 6th February, 1998.

d) On February 6, 1998 when his house was opened the dead bodies of his wife and daughters were found, and the medical evidence established that they had been strangulated to death, the cause of death being asphyxia.

e) Since the respondent was not traceable the mother of the deceased PW-5, Jai Kauri became anxious to know about their whereabouts and requested PWs-1 and 6 to search for them. f) In the course of investigation the respondent never appeared at any stage, and for the first time he appeared on the scene when he was arrested on February 17, 1998.

g) Even after his arrest he did not offer any explanation as to when he parted company with his wife nor did he offer any exculpatory explanation to discharge the burden under Section 106 of the Evidence Act.

(30.) These incriminating circumstances in our view form a complete chain and are consistent with no other hypothesis except the guilt of the accused respondent. If he was with his wife on the evening of February 3, 1998, he should have explained how and when he parted company and/or offered some plausible explanation exculpating him. The respondent has not pleaded alibi, nor has he given an explanation which may support his innocence.

(31.) We are aware of the fact that we are dealing with an appeal against acquittal, but having appreciated the evidence on record we have come to the conclusion that the High Court has completely given a go-bye to the most important incriminating circumstance which appeared against the accused respondent. In the facts and circumstances of the case the most incriminating circumstance about the respondent being seen with his wife on February 3, 1998 and disappearing thereafter, and his failure to offer any explanation when arrested, has been completely ignored by the High Court by simply recording the finding that there was nothing unusual in the husband being found with the wife in his house. The High Court failed to appreciate the other co-related circumstances namely - his disappearance thereafter locking of the house, and his failure to offer a satisfactory explanation in

defence. Thus, the High Court has ignored important clinching evidence which proved the case of the prosecution. Therefore, interference with the judgment of the High Court is warranted.

(32.) In the result, we allow this appeal and set aside the impugned judgment and order of the High Court. On the question of sentence, having regard to the fact that the offence took place in February 1998 and the respondent was acquitted by the High Court, we sentence him to imprisonment for life. The respondent may have been released pursuant to order of this Court dated 1.9.2000 issuing bailable warrant of arrest. His bail bonds are cancelled and he is directed to be taken into custody forthwith to serve out his sentence.

LAWS(CAL)-1994-7-1

HIGH COURT OF CALCUTTA

Coram : P.K.MAJUMDAR, NRIPENDRA KUMAR BHATTACHARYYA JJ.

Decided On : July 07, 1994

Appeal Type : Original Order 319 of 1994

Final Verdict : Appeal dismissed

Appellant(s) :

CALCUTTA MUNICIPAL CORPORATION

Respondent(s) :

GANESH CHANDRA NASKAR

Advocate(s) :

P.S.BOSH, S.K.MAL, A.K.MAJUMDAR, P.K.MULLICK, P.CHATTERJI, D.KUNDU, PRABIR BANERJI

Referred Act(s) :

- Calcutta Municipal Corporation Act, 1980, S.496
- West Bengal Land Reforms Act, 1955

Judgment :

N.K.BHATTACHARYYA, J.

(1.) By this appeal the respondents in the writ petition challenged the order / judgment dated 30/03/1994 passed by the Hon'ble Mr. Justice Shyamal Kumar Sen in Matter No.1036 of 1994 allowing the writ petition filed by the petitioner directing the respondents to issue permission forthwith to the petitioner to fill up the low land in the premises being No. 171/ C / 1 Picnic Garden Road Calcutta-7000 39 preferably within six weeks from the date of the communication of the order. The writ petitioner in his writ petition prayed for a writ of mandamus commanding the respondents and each one of them to forthwith issue permission to the petitioner to fill up the ditches in the premises being premises No. 171 / C / 1, Picnic Garden Road, Calcutta-700 039. A writ of certiorari was also prayed along with the prayer for injunction directing the respondents to forthwith grant permission to the petitioner to fill up the ditches pertaining to the premises referred to above.

(2.) In the said writ petition the petitioner, inter alia, alleged that the petitioner purchased more or less 1.54 acres of sali land (paddy land) by a deed of purchase dated 31/05/1969 which was recorded in the record of rights as sali land. The petitioner further stated that a portion of the said land measuring more

or less 3.5 bighas is low-lying land as such the petitioner could not take any steps for making construction therein without the permission of the respondents / Corporation Authorities.

(3.) According to the petitioner the land aforementioned is neither a tank nor a pond but a low-lying land where rain water deposits during monsoon for a brief period.

(4.) The Chief Valuer and Surveyor's department in a guideline for sanction and development cases stipulated the guideline. The said guideline is Annexure- D to the writ petition. Paragraphs 6 and 7 of the guideline are set out as under:-

(6) "For all development cases covering land area above 500 sq. mts. after all processing has been completed, before placing the case to the MIC, opinion of the C.M.A. and T.P. / Mpl. Planner (B) should be taken. This is as per prevailing procedure of the Building Department for sanction of the building cases under the T and C (P and D) Act, 1979.

(7) Filling up of tanks / ponds / water bodies and marshy land etc. is development within the meaning of sub-section (7) of Section 2 of the West Bengal Town and Country (Planning and Development) Act, 1979. For such development no permission shall be given for tanks / ponds / water bodies / marshy land if it is considered necessary. (A) For the use as a public water body. (B) For maintaining the drainage facility of the locality. (C) Fire fighting purpose. (D) For retaining the existing use for environmental / ecological point of views. (E) For pisicultural purpose. (F) Any other material consideration of public interest as may be deemed fit by the sanctioning authority. In this regard for examining these requirements the processing should be done as given below: (a) For being used as public water body. : Local enquiry and the recommendation of the Borough Committee. (b) For maintaining the drainage facility of the locality. : Opinion of Drainage Deptt. of C.M.C. (c) Fire fighting purpose : Opinion of the Director West Bengal Fire Services. (d) For retaining the existing use for environmental ecological point of view : Opinion of the ch. Mpl. Health Officer and the Member, M.I.C. (Bustee and Environment) (e) For piscicultural purpose. : Local enquiry and the opinion of the (f) Any other material consideration. : Opinion of the Borough Committee / sanctioning authority."

(5.) The petitioner alleged that in compliance with the said guidelines the petitioner obtained 'No Objection Certificate' from the Health Officer, Calcutta Municipal Corporation and also from the Director of West Bengal Fire Service. The District Health Officer- III by his letter dated 30/06/1992 registered his 'No objection' to permit the petitioner to fill up the ponds / ditches in question with consultation of other concerned departments of C.M.C. observing all sanitary rules. The Director, West Bengal Fire Service by his letter dated 27/01/1992 informed the petitioner about their 'No Objection' for back filling of the three low ditches for development purpose only to use as residential area and in that letter the Director further informed the petitioner that a senior inspector of the department inspected the premises in question and found that all three of them are low ditches, none of them are natural tank. Only rain water accumulates into them during monsoon and that in other seasons water is not available in those ditches and that land is a low land of 'sali' type. These two letters are annexed as Annexure- E to the writ petition.

(6.) The petitioner applied to the Chairman of the Borough Committee for permission to fill up the ditches and the application was forwarded by the Borough Committee to the proper authorities. The petitioner also wrote several letters to the Executive Engineer (South) Drainage Department, Calcutta Municipal Corporation and also to the Chief Valuer, Calcutta Municipal Corporation. The said letters are annexed as Annexure- F to the writ petition. In those letters the petitioner sought permission from the said authorities to fill up tanks / water bodies etc. at premises No. 171 / C / 1 Picnic Garden Road. The local residents also made a representation (Annexure- D to the writ petition) to respondents Nos. 3 and 4 for permission to fill up the said low land on the ground of health hazard. As the petitioner had not been favoured with any reply of his letters (Annexure- F) either from the Executive Engineer (South) Drainage Department, Calcutta Municipal Corporation or from the Chief Valuer, Calcutta Municipal Corporation the petitioner took out the writ petition on 21st of January, 1994.

(7.) On 3rd of February, 1994, the respondent produced the record before the trial Court and Mr. Bose, the learned advocate, pointed out from letter dated 19/03/1992 addressed to Brindaban Mondal, constituted attorney of the petitioner, that the Chief Valuer and Surveyor of the Calcutta Municipal Corporation by his letter No. CH V / S 915 dated 3/10/1991 requested the petitioner to submit 'No Objection Certificate' from the Collector of Land and Land Revenue Department, Government of West Bengal, Writers' Buildings, Calcutta for conversion of wet land into solid land.

(8.) Mr. Kundu, the learned advocate for the petitioner, brought it to the notice of the trial Court that the area in question is within the Calcutta Municipal area and as such the Collector of Land and Land Revenue Department is not competent person to issue such 'No Objection Certificate'. He also pointed out that there is no conversion of land or change of user to be made by the petitioner or is contemplated by him and as such the question of 'No Objection Certificate' from the Collector of Land and Land Revenue, Government of West Bengal does not arise. Mr. Bose complained that the petitioner did not give any reply to such letter of respondent No. 4. On such submission by the learned advocates for the parties the trial Court by its order dated 3-2-94 directed the petitioner to give a reply to such letter within three weeks from the date of the order and the respondent the Competent Authority of the Calcutta Municipal Corporation, was directed to hear the writ petitioner. Liberty was given to the petitioner to urge and submit all the points that may be deemed fit and proper or may be advised in accordance with the law including the point of "No Objection Certificate." The respondent No. 4 was also directed to consider the application made by the local residents (Annexure- G to the writ petition) and to take steps according to law. The competent authority was directed to dispose of both the applications within four weeks from the date of filing the reply by the petitioner. The competent authority was also directed to submit their finding in sealed cover before the trial Court after six weeks.

(9.) By order dated 18-3-94 of the trial Court, which was passed in presence of the learned advocate, for the parties, the Chief Valuer, Calcutta Municipal Corporation was directed to hear the petition on the basis of the reply of the petitioner dated 11-2-94 at 12 noon. The Municipal Architect and Town Planner was directed to fix the hearing under Section 496 of the Calcutta Municipal Act, 1980 at 3 P.

M. in respect of the representation received by him from the local residents (Annexure- G to the writ petition). The finding was directed to be produced before the trial Court in sealed cover by 25-3-94. The Chief Valuer, Calcutta Municipal Corporation was directed to be present in person in Court on 25-3-94. The Chief Valuer and Surveyor of the Calcutta Municipal Corporation submitted his report dated 23-4-94 before the trial Court (Annexure- 'C' to the stay application) wherein he pointed out that petitioner should get necessary clearance for filling up the tank and low land from the Fisheries Department, Government of West Bengal and to submit the same to him and after getting such observation he would submit his report to the Mayor-in-Council in an item form for consideration. The Municipal Architect and Town Planner, C.M.C. after hearing the parties concerned on 22/03/1994 submitted his report dated 25-3-94 before the trial Court (Annexure- C to the stay application). In his report the Municipal Architect and Town Planner C.M.C., inter alia observed that the

"premises No. 171 / C / 1 Picnic Garden Road has already been sub-divided into 37 plots without any sanction under Sections 364 and 365 of the C. M. C. Act 1980."

He further observed in his report as under :-

"That under Section 496 of the C. M. C. Act, 1980 the owner is liable for the pollution of the waterbody. That the owners should not be allowed to fill up a waterbody which had an area of more than 1500 sq. mt. as stipulated in the Outline Development Plan prepared under the West Bengal Town and Country (P and D) Act, 1979 and the area and depth of that waterbody are reduced by the owner himself in an unauthorised manner and the same reduction of depth and area of the waterbody is sited for the permission for the filling up of that waterbody. That the Health Department and / or any department yet found out any reason for which it becomes extremely necessary to pass an order to fill up the waterbody. That the plans and documents etc. submitted by the owner is varying widely and cannot be fully relied upon".

(10.) On such finding the Municipal Architect and Town Planner of the Calcutta Municipal Corporation recorded the following order :-

"I am of the opinion that the waterbodies in the Dag Nos. 52, 53, 54 and 55 and 82 are to be restored by the owner as waterbody by cleaning u / S. 496 of the C.M.C. Act 1980. The cleaning shall include removal of unauthorised filled up materials, demolition of illegal subdivision walls and removal of unauthorised structures constructed upon the illegally filled up land. These works are to be done within a period of one month from the date of receiving such order,"

(11.) The learned trial Judge after hearing the learned advocates for the parties and on consideration of the materials on record disposed of the writ application by his order dated 30/03/1994. In that order he recorded that there is no post of Collector, Land and Land Revenue Department, Government of West Bengal Writers' Buildings Calcutta and that the West Bengal Land Reforms Act, 1955 being Section 1(2) thereof specifically excluded the area where the land in question is situated. He also observed that "The West Bengal Inland Fisheries (Amendment) Bill, 1992 (Bill No. 38 of 1992)" which was published in the extraordinary Calcutta Gazette on lst December, 1992 has not yet been

matured into an Act and as such no reliance can be placed upon the said bill and it is not necessary for the petitioner to apply for permission only on the basis of draft bill which has been placed before the Assembly. On the basis of the above observation the trial Court while disposing of the writ application directed the respondents to issue permission to the petitioner to fill up the low land in the premises being No. 171 / C / 1 Picnic Garden Road, Calcutta 700 039 forthwith preferably within six weeks from the date of the communication of the order.

(12.) The respondents being aggrieved by the said order preferred the present appeal and also moved an application for stay of the order of the trial Court dated 30/03/1993 and obtained an order of stay.

(13.) The writ petitioner figured as respondent No. 1 in the appeal and he filed an affidavit-in-opposition against the stay application. The appellants also filed a reply thereto.

(14.) Mr. Bose, the learned advocate appearing for the appellants contended that the trial Court has passed the impugned order without taking into consideration the facts and circumstances of the case. He further contended that the Court has also failed to take into consideration that before passing the order of the Court the Municipal Architect and Town Planner has already passed an order upon an application made before him by the residents of the locality in exercise of his power under Section 496 of the Calcutta Municipal Corporation Act, 1980. He also contended that the report of the Municipal Architect and Town Planner has not been considered by the learned trial Court in its proper perspective.

(15.) In the next place Mr. Bose contended that the original letters of 'No Objection' from the Director of Fire Service and also the District Health Officer-III have not been filed before the Chief Valuer and Surveyor of the Calcutta Municipal Corporation by the petitioner and that fact has not been taken into consideration by the learned trial Judge. Mr. Bose argued that the learned trial Judge overlooked the fact that the portion 'I' measuring about 1353 sq. mt. was found dry and the portion marked '2' and '3' measuring about 900 sq. mt. and 480 sq. mt respectively contained very little water and individually none of these portions is more than 2089 mts. and is such it is the discretion of the Mayor-in-Council of the Calcutta Municipal Corporation to consider the appeal. Mr. Bose contended that for the aforesaid reasons the impugned order warrants interference by the Appellate Court.

(16.) Mr. Mullick, the learned senior advocate for respondent No. 1, on the other hand contended, by referring to paragraph 26 of the stay application, that portion of the land measuring about 1353 sq. mt. was a dry and the portion marked '2' and '3' measuring 900 sq. mt. and 480 sq. mt. respectively contained very little water and individually none of these portions is more than 2089 mts. He further contended, by referring to paragraph 27 of the said application, that the guideline drawn in the proceeding of the Mayor-in-Council of the Calcutta Municipal Corporation dated 26-7-91 is not very clear in context of definition of 'wet land' or 'the private land' that can be utilised for the purpose of holding reservoir for the surrounding drainage. He further contended that as the land is dry and as there is no well, pool, ditch, tank, pond, pit or marshy or undrained ground or any cistern reservoir or water butt or any other receptacle of place where water is still or accumulates or any waste or stagnant water, whether within any private enclosure or not, as contemplated in Section 496 of the Calcutta

Municipal Act, 1980, invocation of Section 496 of the Calcutta Municipal Act, 1980 by the Municipal Architect and Town Planner, C.M.C. was unwarranted directing the petitioner to restore the water bodies in dag Nos. 52, 53, 54, 55 and 82 as water bodies by cleaning the said plots. He further directed that the clearing shall include removal of unauthorised filled up materials, demolition of illegal sub division wells and removal of unauthorised structures constructed upon the illegally filled up land. He further contended that Section 496 of the Calcutta Municipal Corporation Act, 1980 envisages power to direct to fill unwholesome well, pool etc. He further contended that provision can be taken recourse to in reference to any well, pool, ditch, tank, pond pit or marshy or undrained ground or any cistern, reservoir or water but or any other receptacle or place where water is stored or accumulates or any waste or stagnant water, whether within any private enclosure or not by the Municipal Commissioner. As the land in question does not come within the purview of any of the description and mentioned in S. 496 (1), invoking of the power under Section 496 of the Calcutta Municipal Corporation Act, 1980 by the Municipal Architect and Town Planner, Calcutta Municipal Corporation is uncalled for and without jurisdiction. He further contended that the learned trial Judge has taken into consideration all the aspects of the matter and passed an appropriate order in accordance with law.

(17.) After hearing the rival contention of the learned advocates for the parties the following point emerges for determination: whether by invoking the power under Section 496 of the Calcutta Municipal Corporation Act, 1980, in the instant case the Municipal Architect and Town Planner of the Calcutta Municipal Corporation has acted illegally and without jurisdiction.

(18.) Section 496 of the Calcutta Municipal Corporation Act, 1980 envisages invoking of the power to direct the filling up etc. in respect of the matters as contained in sub-section (1) of Section 496 of the Act. According to the petitioner the land in question is a low sali land. It appears from the 'No Objection Certificate' dated 27-1-92 of the Director of West Bengal Fire Service that the land in question are low ditches and none of them are natural tank only rain water accumulates during the monsoon season and in all other seasons that land remains dry and the land is sali land. The Municipal Architect and Town Planner, Calcutta Municipal Corporation has also found in his report that the construction has been made upon the illegally filled up land. The appellants in the stay application at paragraph 26 stated that the land measuring about 1353 sq. mt. is dry and the portion marked '2' and '3' measuring about 900 sq. mt. and 480 sq. mt. respectively contained very little water. The Municipal Architect and Town Planner of Calcutta Municipal Corporation observed in his report "that the owner should not be allowed to fill up a water body which had an area of more than 1500 sq. mt. as stipulated in the outline development plan prepared under the West Bengal Town and Country (PandD) Act 1979 and the area and depth of the water body are as reduced by the owner himself in an unauthorised manner and the same reduction of depth and area of the water body is sited for the permission for the filling up of that water body." (sic)

(19.) Admittedly the area of the ditch is less than 1500 sq. mt. Not only that the land is a low sali land and as it does not come within the purview of the description in sub-section (1) of Section 496 of the Calcutta Municipal Corporation Act, 1980, invoking of the said section by the Municipal Architect

and Town Planner is uncalled for and without jurisdiction. At the hearing of the trial the respondent took two objections for granting permission. (1) Submission of 'No Objection Certificate' from the Collector, Land and Land Revenue Department, Government of West Bengal, Writers' Buildings, Calcutta and (2) 'No Objection Certificate' from the Fisheries Department, Government of West Bengal. The learned trial Judge found that the area in question is within Calcutta Municipal Corporation and the provision contained in West Bengal Land Reforms Act, 1955 being Section 1(2) specifically exclude the area where the land in question is situated and that there is no such post of Collector Land and Land Revenue Department, Government of West Bengal, Writers' Buildings, Calcutta. He also found that the question of 'No Objection Certificate' from the Fisheries Department, Government of West Bengal does not arise inasmuch as the West Bengal Inland Fisheries (Amendment) Bill, 1992 (Bill No. 38 of 1992) though being placed before the Assembly but has not been enacted as yet. On these observations the learned Judge passed the impugned order taking into consideration the two reports as submitted by Chief Valuer and Surveyor C.M.C. dated 24-3-94 and the Architect and Town Planner, C.M.C. dated 25-3-94. We do not find any illegality or infirmity with the impugned order / judgment warranting interference by the appeal Court.

(20.) In view of our discussions and observations above we hold that the appeal must fail. The appeal is accordingly dismissed. All interim orders of stay stand vacated.

(21.) Learned counsel for the appellants prays for grant of a certificate under Article 133 of the Constitution. We do not find any necessity for granting such certificate. Prayer for grant of the certificate is refused.

(22.) Learned counsel for the appellants prays for stay of operation of this Order. Learned counsel for the respondent opposes such prayer. The operation of this Order will, however, remain stayed for the period of a fortnight from date.

(23.) All parties shall act on a signed copy of the minutes of the operative part of this judgment upon usual undertaking.

(24.) PRABIR KUMAR MAJUMDAR, J :- I agree. Appeal dismissed.